

Comparative Law

Chapter 1: Legal Translation and Comparative Law

EPI: https://cours.univ-paris1.fr/course/view.php?id=44520

Chapter 1, Section 1: Legal Languages Around the World

§1: A first approach to translation

Untranslatable!

¿No es traducir, sin remedio, un afán utópico?

J. Ortega y Gasset, *Miseria y esplendor de la traducción* (1937)

[N]othing is translatable. Indeed, it has become trite to observe that 'secularism' does not carry the same meaning as *laïcité* or that 'contract of sale' does not mean the same as *Kaufvertrag*.

S. Glanert, *Engaging Translation*

Traduttore, traditore

Common saying.

Notoriously Untranslatable Legal Phrases (I)

English	Spanish	French	German
Affirmative action			
Common Law			
Consideration			
Equity			
Estoppel			

The Evolution of Equity

The English legal system is shaped by its dual heritage of Common Law and Equity, systems that developed in parallel to address the evolving needs of justice.

1

Foundations of Common Law

Post-Norman Conquest, royal courts established a uniform system based on custom and judicial precedent. This system, while providing stability, became rigid over time.

2

Birth of Equity

When common law proved inflexible or harsh, petitioners sought direct intervention from the King, leading to the Lord Chancellor's Court (Court of Chancery) applying principles of fairness and conscience.

3

Chancery's Ascent

Equity evolved distinct remedies, such as injunctions and specific performance, to address injustices common law could not. This often led to conflict between the two systems.

4

Fusion of Administration

The Judicature Acts of 1873-75 merged the administration of common law and equity, allowing both sets of rules to be applied in all courts, though their underlying principles remain distinct.

Notoriously Untranslatable Legal Phrases (II)

English	Spanish	French	German
Furlough			
Privacy			
Remedy			
Trust			
Tort			

Notoriously Untranslatable Legal Phrases (III)

Spanish	German	French	English
Amparo	Amparo / Verfassungsbeschwerde	Amparo	Amparo / Constitutional appeal
Laicidad	Laizismus/Säkularismus	**Laïcité**	Secularism/Separation of church and state
Estado de derecho	**Rechtsstaat**	Etat de droit	Legal state
Administración de justicia	**Rechtspflege**	Justice/Administration de la justice	Administration of justice

A (Partly?) Flawed Glossary for Basic Legal Terms

English	Spanish	French	German	Chinese
Law	Derecho	Loi	Gesetz	法律 (Fǎlǜ)
Contract	Contrato	Contrat	Vertrag	合同 (Hétóng)
Liability	Responsabilidad	Responsabilité	Haftung	责任 (Zérèn)
Jurisdiction	Jurisdicción	Juridiction	Gerichtsbarkeit	管辖权 (Guǎnxiá quán)
Evidence	Evidencia/Prueba	Preuve	Beweis	证据 (Zhèngjù)
Agreement	Acuerdo	Accord	Vereinbarung	协议 (Xiéyì)
Court	Tribunal	Tribunal	Gericht	法院 (Fǎyuàn)
Judge	Juez	Juge	Richter	法官 (Fǎguān)
Plaintiff	Demandante	Demandeur	Kläger	原告 (Yuángào)
Defendant	Demandado	Défendeur	Angeklagter	被告 (Bèigào)

Plain Inaccuracies

Taking English as the source language, some translations in this tabella (found online) for 'law' and 'jurisdiction' are inaccurate:

- 'Law', in most cases, is 'droit' in French and 'Recht' in German (here the Spanish 'derecho' seems correct and preferable to 'ley');
- 'Jurisdiction' either refers to compétence/Zuständigkeit or to un ordre juridique/eine Rechtsordnung (at least in most cases)

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Lack of Correspondence

Because the listed terms are of such frequent use in legal practice, it is easy to think of **contexts** in which they would not have the same **meaning** as that of their counterparts

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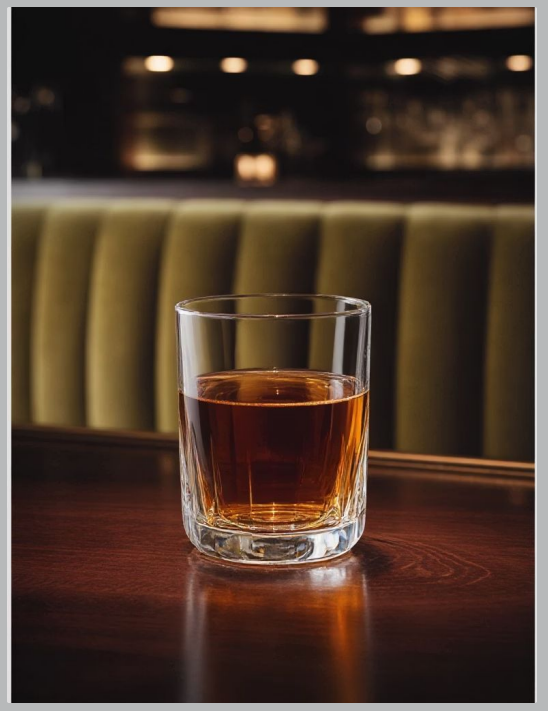
Insufficient Correspondence

Because the listed terms are of such frequent use in legal practice, it is easy to think of **contexts** in which they would not have the same **meaning** as that of their counterparts:

- Provisions of the German ZPO (Civil Procedure Code) typically refers to the 'Gericht' (tribunal) where the provisions of the French Code refer to the 'juge' (judge);
- etc.

Diverging Views on the Achievability of Translation





Most/Some Things are Translatable

The Suggested Approach

Nothing is Translatable

Translation cannot be achieved, if by translation we mean perfect coincidence of meaning in the source and target languages. Therefore, phrases known as 'untranslatable' (as opposed, implicitly, to 'translatable' ones) are just the 'tip of the iceberg,' ie the most telling examples of **a general phenomenon**; focusing on these so-called untranslatable might even distract us from the actual challenges of translation.

Most/Some Things are Translatable

Translation can be achieved, if by translation we mean **the most accurate rendition possible (or just an accurate enough rendition) of the meaning of the original text, by the translated text**. However, some utterances will remain (forever?) incapable of being equated with more or less satisfying equivalents in other languages.

We will never achieve a perfect translation, but it is possible to have an idea (reach an agreement) of how close to perfection translations end up being. It is also possible to differentiate between a translation and an adaptation. The **purpose of translation** has to be carefully assessed; the **active role of the translator** has to be recognised as central to the process.

'Meaning' and 'Context'

Meaning

In linguistics, 'meaning' refers to the denotative and connotative value of words and phrases. Meaning is heavily dependent on context.

Context(s)

Linguistic context includes the surrounding text and situational factors. For (legal) translation, 'context' is paramount, encompassing the entire legal and cultural framework, the specific document's purpose, and the target audience's legal understanding (target audience in the source language, not in the target language). This framework dictates how meaning is truly conveyed.