“Language is medium, process and product in the various arenas of the law where legal texts, spoken or written, are generated in the service of regulating social behaviour. Once norms and proceedings are recorded, standardised and institutionalised, a special legal language develops, representing a predictable process and pattern of functional specialisation”.

To understand English legal language better, one needs to begin with a brief introduction to Anglo-American and Continental legal traditions and with a brief account of legal English origin.

**Major European legal systems** and origin of legal English

The countries of the European Continent are primarily countries of civil law. The civil law system traces its origins to Roman law and, more specifically, to the most distinguished contemporary compilation of Roman law, the sixth century Corpus Juris Civilis of Justinian (the Justinian Code). National legal systems emerged through the process known as codification.

The common law systems have their roots in the British law and include all present and former members of the British Empire and also the United States of America. Although the common law and civil law systems share roots in Roman law, the evolution of the common law system has been much different from that of the civil law. The general principles of the common law grow not out of codification, but rather out of the judicial decisions in court cases by individual judges over a long period of time. The common law system concentrates big power in the courts and gives primary influence within the system to lawyers.

Common law was originally unwritten and existed only in the memories of its legal practitioners. Early in the last millennium judges began to record their court decisions. This gave rise to judge-made case law. The written language of the law after the Norman Conquest was at first English and Latin, but Latin was predominant. Latin

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was the language of formal legal written documents, like writs\(^3\) or text of maxims\(^4\). By the 14\(^{th}\) century, French had taken over from Latin as the language of the Year Books\(^5\) and statutes\(^6\). Legal French had a big lexical and morphological influence, all laws and reported court cases in England were recorded in legal French. Legal English started to replace legal French in the late 15\(^{th}\) century\(^7\).

As was said legal English stems from Latin and French and therefore has got several layers. Much of the technical vocabulary in legal English derives directly from French or Latin and not from Anglo-Saxon. Sometimes the Anglo-Saxon, Latin and Norman French terminology still exist side-by-side in legal texts. Consider the following examples:

<table>
<thead>
<tr>
<th>Anglo-Saxon</th>
<th>Norman French</th>
</tr>
</thead>
<tbody>
<tr>
<td>bid</td>
<td>offer</td>
</tr>
<tr>
<td>freedom</td>
<td>liberty</td>
</tr>
<tr>
<td>land</td>
<td>country</td>
</tr>
<tr>
<td>theft</td>
<td>larceny</td>
</tr>
<tr>
<td>worth</td>
<td>value</td>
</tr>
</tbody>
</table>

Since the 18\(^{th}\) century there has been a slow simplification. In the 19\(^{th}\) century the efforts of “Plain Legal English Campaign” started, but despite these efforts at simplification and clarification, the gap between legal language and everyday language is still very wide.

The complexity of the legal register is most apparent in written documents which are often not easily understood by the general public, i.e. the consumers of legal services, and, subsequently, require a lawyer to explain the meaning of the “legalese”\(^8\) to the consumer. However, the “plain legal language” movement has been compelling commercial, banking, and insurance companies to rewrite information about their policies in everyday English and make contract documents clear and short. Many English-speaking countries have passed laws requiring the leases, insurance policies, loan agreements, and other documents intended for non-lawyers be written in “plain English”.

On April 26, 1998 the legal language and traditions that characterised British courts for decades were swept away in a new set of rules published in a 800-page

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3. orders issued from a court requiring performance of a specified act, or giving authority to have it done
4. principles of Equity. For explanation of the term “equity” see details later in this article
5. British earliest law reports
6. most important kind of legislation (otherwise called Acts of Parliament)
7. English became the official language of law by the Act from 1650: “An Act for Turning the Books of Law, and All Processes and Proceedings in Court of Justice into English” 455, 1650, 11 Acts and Ordinances of the Interregnum
8. the term “legalese” is used for legal writing

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document by the Lord Chancellor’s Department. Old Latin and French law terms such as writ or plaintiff were replaced by “plain legal English” terms. Out went familiar Latin tags such as ex parte, inter partes etc. Here are some examples:

<table>
<thead>
<tr>
<th>LEGAL ENGLISH</th>
<th>PLAIN LEGAL ENGLISH</th>
</tr>
</thead>
<tbody>
<tr>
<td>pleading</td>
<td>statement of case</td>
</tr>
<tr>
<td>plaintiff</td>
<td>claimant</td>
</tr>
<tr>
<td>minor/infant</td>
<td>child</td>
</tr>
<tr>
<td>writ</td>
<td>claim form</td>
</tr>
<tr>
<td>in camera</td>
<td>in private</td>
</tr>
<tr>
<td>ex parte</td>
<td>without notice</td>
</tr>
<tr>
<td>inter partes</td>
<td>with notice</td>
</tr>
</tbody>
</table>

Despite of this effort to make legal language easier for understanding, the present day legal English continues to be a highly specialised and distinctive field of English.

**Understanding expressions “common law”, “equity” and “civil law” in different contexts**

Three technical legal terms of great importance, likely to be misunderstood, are the terms “common law”, “civil law” and “equity”. Their meanings in English vary with the context.

The law of countries such as England, Wales, the USA, Australia etc. may be said to be composed of three basic elements:

<table>
<thead>
<tr>
<th>COMMON LAW</th>
<th>EQUITY</th>
<th>LEGISLATION</th>
</tr>
</thead>
</table>

The phrase “common law” seems little confusing at first, because it is always used to point a contrast and its precise meaning depends upon the contrast that is being pointed.

Originally this meant the law that was not local law, that is, the law that was common to the whole of England. This may still be its meaning in a particular context, but it is not the usual meaning.

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More usually the phrase will signify the law that is not the result of legislation, that is, the law created by the custom of the people and decisions of the judges. Within certain narrow limits, popular custom creates law, and so (within much wider limits) do the decisions of the courts, which we call precedents.

The phrase may mean the law that is not equity. In other words it may mean the law developed by the old courts of common law as distinct from the system (technically called equity) developed by the old Court of Chancery. In this sense “common law” may even include statutory modifications of the common law, though in the previous sense it does not.

It may also mean the law that have adopted English law as a starting-point. In this sense it is contrasted with (say) Roman law or French law, and in this sense it includes local customs, legislation and equity.

The phrase can be used to designate general law in treaties on French commercial law (“le droit commune”, literally, common law); in that context it means “general law” provided by the French Civil Code.

In contemporary “European Union” English the term “common law of Europe” is also used. In such context the phrase is employed to designate the general principles of law of European states.

The term “equity” is an illustration of the fact that some words have a legal meaning very unlike their ordinary one. In ordinary language “equity” means natural justice; but in its legal sense equity is nowadays in fact nothing else than a particular branch of the law.

The term “civil (or civilian) law” is predominantly used for Continental legal systems. The expression “civil law” can be also used within the Anglo-American legal system to refer to the law that provides remedies between private persons, it means in contradiction to “criminal law”.

“Civil law” is sometimes used in English to translate the term “ius civile” when used in Roman law to mean the old strict law.

**Introduction to main difficulties of legal translation**

The law is always a subject to interpretation. The translation of legal texts of any sort stands at the crossroads of (at least) four areas of theoretical inquiry:

- legal theory
- comparative legal theory
- language theory
- translation theory

The following definition nicely summarise how the bulk of theorists and practitioners view the legal translation:

“The translator’s main task (in translating legal documents) is to translate a text as precisely as possible. S/he has to find linguistic equivalents which in their legal
relevance correspond to both the original text of the source language and the translated text of the target language”.

When translating legal texts, the translator must develop some or all of the following skills:
- The ability to understand why legal documents are written the way they are;
- The ability to understand how these documents are constructed, interpreted and used;
- The ability to read and clarify these legal documents for the benefit of lay audience.

Translation of legal texts is not simply a matter of linguistic transference alone. It is an attempt to communicate someone else’s message through another language. It is an attempt to communicate one world in terms of another. In order to accomplish it successfully and effectively, the translator must understand two semiotic systems at the same time. When translating legal text one must concentrate on many factors. Among the most important are:
- interpretation or intended use of the translation,
- easification or facilitation of the original text,
- context of situation,
- rhetorical context,
- communicative purpose,
- textual organization,
- generic knowledge (genre analysis), etc.

Linguistic difficulties often arise when two legal cultures clash during translation. The root of these problems lies in their varying legal histories, cultures, and systems. The task of legal translator, like that of any technical translator, is to transfer one highly technical language (e.g. English legal language), into another highly specialised language (e.g. Czech legal language). Simultaneously, translators must acquire a basic knowledge of the legal systems of the source and target languages and always be sensitive to the fundamental differences of these systems. One of the principal difficulty in legal translation, regardless of the subject matter, is the question of conceptual differences between the two languages and the absence of equivalent terminology.

Assuming that translators are adequately equipped with linguistic competence in everyday use of language, they still need to be given enough background information about the contexts in which legal rules are drafted, interpreted and used. Particular attention needs to be given to the dual characteristics of legal rules, i.e. clarity, precision and unambiguity, on the one hand, and all inclusiveness, on the other. The translator also needs to be given sufficient practice in analysis of sentences used in legal texts, especially focusing on the use of lexico-grammatical devices which are typically used to make interpretation and use of legal texts certain as well as flexible. Particular attention must be paid to the identification and use of complex-prepositional phrases and qualificational insertions to make rules clear, precise and unambiguous and to binomial expressions to make them all-inclusive. A lot of attention can also be paid to cognitive structuring typically associated with legislative sentences.

It appears to be a universal feature of legal style that the author, together with the translator, disappear. Legal translators provide the exact transference of meaning from the original language into precise conventional formulations of the target language, with no regard (except in extraordinary circumstances) for authorial style, or for authorship at all.

It is transparent that legal translation is in many respects the ultimate linguistic challenge. The difficulties involved in this field are aggravated by the limited nature of the traditional tools of the translator’s “trade”, eg. dictionaries and glossaries, and require an in-depth knowledge of the subject matter. A successful translation of legal texts should communicate the content of a document, all the while employing equivalent and adequate syntax, semantics, and pragmatics.

**LITERATURE**