LEXIS VERSUS TEXT
The Case for Translating English Legal Texts into Arabic

S Karakira

Master of Arts (Honours) (Translation)

1997
LEXIS VERSUS TEXT
The Case for Translating English Legal Texts into Arabic

S Karakira

Master of Arts (Honours) (Translation)

1997

The University of Western Sydney
TC 492.780221 KARA
Karukira, Steven.
LEXIS versus text: the case for translating
39339053400419
PLEASE NOTE

The greatest amount of care has been taken while scanning this thesis,

and the best possible result has been obtained.
CERTIFICATION

I certify that this thesis has not been previously submitted for any university degree or for any similar award.

Steve Karakira  
March 1997
ABSTRACT

1. Nature of the problem

The following thesis attempts to explore the nature of the difficulties involved in translating legal texts, focusing mainly on translating English legal texts into Arabic. It shows that these difficulties fall into two categories, structural and terminological. Furthermore, it shows that the problems arising from difficulties of the latter category are the more damaging and usually have more serious implications if left unsolved or if solved unsatisfactorily.

It has been found that translating legal documents into Arabic has traditionally been given low priority. Emphasis has always been on more practical areas with immediate application, such as medicine, science and technology. Legal translation has, therefore, remained a domain of only a few highly specialised translators working with specialised multinational or international bodies, such as the Arabian American Oil Company, and the United Nations. It is when such effort is undertaken by other professional, or sometimes paraprofessional translators, such as newspaper staff, that problems start to emerge. The language of law is distinct, rigid, precise and too formal. It is possibly not an overgeneralisation to hypothesise that this observation is applicable to most, if not all, languages. The difficulty arises when a translator's exposure to the cultural and legal environments of his working languages is unbalanced. This could lead a translator to misunderstand not only the significance of the specialised terms used, but also the distinctive features of syntax and register of the original language text; the translation will suffer
accordingly.

The other, and more significant, difficulty arises from the lack of equivalence at the term level in the two languages. Opting for a term that might be either completely wrong or inadequate could have serious implications on the understandability of the document. The damage could become more serious and costly if the translation is to be used in legal proceedings.

The thesis shows that whilst difficulties of the first kind are more manageable by professional translators once they are made aware of the linguistic features of legal texts, the lack of proper equivalence at the term level is a problem that has still to be addressed at the lexicology and lexicography levels. The research will deal with both problems; focus, however, will be more on the problem of lack of equivalence.

2. Methodology of research
The research will be in two parts. In the first part, original legal texts in both English and Arabic will be analysed, and the linguistic exponents extracted and compared. As part of this exercise, the Arabic translation of several short English legal texts will be analysed, as a means to determine the major problem areas. It will be shown that some of the errors committed are of a nature that is applicable to a large extent to translations of any other texts, technical and non-technical alike. It will also be demonstrated that there are more similarities than differences between the English and Arabic legal texts. To this end, examples of such texts will be compared and evaluated for the common features.
In the second part of the research, the development process of the English and Arabic legal terminology is considered, and the differences in terminology imposed by the different nature of legal environments, including the adversarial versus inquisitorial systems, are explored. The history of development of modern Arab laws are also considered against a religious, and more recently, a secular background. The state of the bilingual English Arabic dictionaries will be considered, with the major deficiencies highlighted and problem areas identified. The word forming techniques and the role of the Arabic academies will also be discussed, together with their effect on translators in the area of creating legal equivalents. This will lead to the main thrust of the thesis, namely that it is in the area of terminology that legal translations from English into Arabic suffer the most.

An empirical study will conclude this Thesis. It consists of a questionnaire and a list of legal terms which twenty translators have been asked to complete. The results of the study clearly show that translating legal texts is considered a difficult task, and that the lack of reliable, easy-to-use Arabic equivalents of English legal terms constitutes the major difficulty in this task.

3. Results and conclusions of the research

The results of this research are quite controversial. The argument is that difficulties involved in legal translations are more conceived than real in so far as textual, syntactic and structural features are concerned. The similarities between English and Arabic legal texts in this respect are striking. Furthermore, what English aspires to achieve in legal formularies
Arabic does as a matter of habit, given that Arabic displays and even encourages many of the features considered much desired in English legal writing.

The results in this sense are encouraging. The confusion and indecisiveness which usually reign when translating English legal texts into Arabic will be alleviated through providing examples from contemporary Arabic legal texts, accompanied by textual and linguistic analyses.

The real difficulty, as already mentioned, is in the field of terminology. The enormity of the work involved in trying to solve this difficulty is acknowledged. However, a corpus of terms in the criminal code will be discussed in Chapter Seven. The focus in this respect will be on terms with direct application to the Australian situation. This will be of direct benefit to Arabic translators and interpreters in Australia and other English-speaking countries.

April 1997
PREFACE

This Thesis attempts to examine the difficulties involved in translating legal texts from English into Arabic. It shows that a large number of difficulties perceived in this field of translation are shared by translations in other fields of human endeavour. It then proceeds to prove that the real difficulty is one of lexicology, particularly the lack of Arabic terms equivalent to those in English legal texts.

Legal reports translated into Arabic from English are often difficult to understand. This is due to the complex nature of legal writing, but more so to the wrong choice of Arabic words made by translators. Given that modern societies are governed by laws, rules, regulations, as well as treaties, agreements and a host of other legal documents, the need for legal translations is enormous. Yet, translations of these documents from English into Arabic, as published by the various government departments in Australia, for instance, as well as the news items touching upon legal matters which appear in the Arabic newspapers in Australia tend to lack the accuracy which is the essence of law. Furthermore, lack of standard translations of specific legal terms has meant that any translator, and any interpreter for this matter, has been using the term they believe most appropriate at the time. Corroboration of what they believe to be true is not always easy; indeed occasionally dictionaries might support a wrong term choice. Bilingual legal dictionaries have had limited success in solving the problems faced by Arabic translators. In some instances these dictionaries provide one Arabic term to translate two terms in legal
English which have two distinct meanings. The lack of knowledge of the legal environment of both cultures has a direct impact on the word choice, and to a lesser extent on the sentence structure.

Since the ultimate objective of translating - and interpreting - is successful communication, it follows that lack of clarity due to this confusion at the legal term level robs the translator the opportunity to achieve this objective.

This Thesis attempts to provide an understanding of the nature and causes of the problem, and provides practical methods for dealing with difficulties in this area. Furthermore, it sheds light on some perceived textual difficulties and deals with them as translation problem areas of a more general nature.

April 1997
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Chapter One</th>
<th>Introduction</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.1</td>
<td>Overview of Thesis</td>
</tr>
<tr>
<td>1.2</td>
<td>Why Legal Translation?</td>
</tr>
<tr>
<td>1.3</td>
<td>Background of Research</td>
</tr>
<tr>
<td>1.4</td>
<td>Objectives of Thesis</td>
</tr>
<tr>
<td>1.4.1</td>
<td>Superordinates versus Hyponyms</td>
</tr>
<tr>
<td>1.4.2</td>
<td>Using the Wrong Term</td>
</tr>
<tr>
<td>1.4.3</td>
<td>Bilingual Legal Dictionaries</td>
</tr>
<tr>
<td>1.4.4</td>
<td>The Legal Systems</td>
</tr>
<tr>
<td>1.4.5</td>
<td>Lack of Standardisation of Terms</td>
</tr>
<tr>
<td>1.5</td>
<td>Conclusion</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter Two</th>
<th>Legal Texts: Discourse and Context</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>30</td>
</tr>
<tr>
<td>2.1</td>
<td>The Notion of Legal Language - Real or Fictitious</td>
</tr>
<tr>
<td>2.2</td>
<td>Definition of Legal Texts</td>
</tr>
<tr>
<td>2.3</td>
<td>Legal Language as a Distinct Genre</td>
</tr>
<tr>
<td>2.4</td>
<td>Legal Language as a Special Technical Language</td>
</tr>
<tr>
<td>2.5</td>
<td>What Constitutes a Legal Text - Legal Discourse</td>
</tr>
<tr>
<td>2.6</td>
<td>Legal Documents versus Legal Texts</td>
</tr>
<tr>
<td>2.7</td>
<td>Cohesion of Legal Texts</td>
</tr>
<tr>
<td>2.8</td>
<td>Cohesive Devices and Semantic Representations</td>
</tr>
<tr>
<td>2.8.1</td>
<td>Co-reference</td>
</tr>
<tr>
<td>2.8.2</td>
<td>Co-classification</td>
</tr>
<tr>
<td>2.8.3</td>
<td>Recurrence</td>
</tr>
<tr>
<td>2.8.4</td>
<td>Blend Words</td>
</tr>
<tr>
<td>2.8.5</td>
<td>Articulation and Numbering</td>
</tr>
<tr>
<td>2.9</td>
<td>Legal Texts and Conversational Maxims</td>
</tr>
<tr>
<td>2.10</td>
<td>Register and Legal Texts</td>
</tr>
<tr>
<td></td>
<td>Field of Discourse</td>
</tr>
<tr>
<td></td>
<td>Mode of Discourse</td>
</tr>
<tr>
<td></td>
<td>Tenor of Discourse</td>
</tr>
</tbody>
</table>

| Chapter Three | Arabic and English Legal Texts: |
## COMPARISON

### 3.1 Structural Organisation of Legal Texts
- **3.1.1 Macro-structure**
- **3.1.2 Sentence Length**
- **3.1.3 Punctuation as a Matter of Interpretation**
- **3.1.4 The Nature of Punctuation in Arabic**
- **3.1.5 Other Layout Features**

### 3.2 Micro-structure
- **3.2.1 Function of Legal Texts**
  - Action Rules
  - Stipulation Rules
  - Definition Rules
  - Performative Rules

### 3.3 Relational Features in English and Arabic Legal Texts
- **3.3.1 Interpretation of the Relations**
- **3.3.1.1 The last antecedent rule**
- **3.3.1.2 Modifiers as precursors of rule of law**
- **3.3.1.3 Binomials and multinomials**
- **3.3.1.4 Modality**
- **3.3.1.5 Special words of precision**
- **3.3.1.6 Conjunctions, disjunctions and combinations**

### 3.4 Plain English in Legal Texts

## CHAPTER FOUR LEGAL TERMS

### 4.1 Legal Terms - Myth or Reality

### 4.2 Legal Language as a Technical Genre

### 4.3 Importance of Technical Terms in Legal Writing and Speech

### 4.4 Nature and Origin of Legal Terms
- **I. Borrowing**
- **II. Linguistic Derivation**
- **III. Term Coinage**

## CHAPTER FIVE DEVELOPMENT OF THE ARABIC LEGAL ENVIRONMENT

### 5.1 Islam and Arabic Inseparable

### 5.2 The Holy Quran as a Source of Legislation

### 5.3 Islamic Schools of Law
CHAPTER SIX  SITUATION OF ARABIC TERMINOLOGY, WITH FOCUS ON LEGAL TERMS

6.1 Dictionaries 186
6.2 Arabic Specialised Dictionaries 190
6.3 Arabic Legal Dictionaries 197
   6.3.1 Rarity of the English Arabic Legal Dictionaries 201
   6.3.2 Incompleteness of Faruqi's Dictionary 203
   6.3.3 Standardisation as an impediment and an advantage 206
   6.3.4 Problem of Definitions as Equivalents 214
   6.3.5 The Question of Compound Terms 220
   6.3.6 Derivations 228
6.4 Enrichment and Development Methods of the Arabic Language 231
   6.4.1 Al-Qiyas 232
   6.4.2 Al-Ishtiqaq 235
   6.4.3 Al-Naht 247
   6.4.4 Al-Irtijal 253
   6.4.5 Al-Ta'rib 254
6.5 The Arabic Academies and Similar Bodies 263
   6.5.1 The Arabic Language Academy of Damascus 264
   6.5.2 The Arabic Language Academy of Cairo 265
   6.5.3 The Iraqi Arabic Language Academy 266
   6.5.4 The Jordanian Arabic Language Academy 266
   6.5.5 The permanent Office for the Coordination of Translation in the Arab World 267

CHAPTER SEVEN  A LIMITED EMPIRICAL STUDY

Introduction 269
7.1 Research Design 270
7.2 Validity of Research 271
7.3 Limitation of Research 275
7.4 The Questionnaire 276
7.5 The List of Terms 282
7.5.1 Deeming 283
7.5.2 Practicability 285
7.5.3 Reasonableness 287
7.5.4 Appealable 288
7.5.5 Informations 288
7.5.6 Statement 291
7.5.7 Committal Proceedings 292
7.5.8 Forge and Utter 293
7.5.9 Witness Box 294
7.5.10 Money Laundering 295
7.5.11 Defendant, Accused and Respondent 298
7.5.12 Culpable Driving 304
7.5.13 Proceedings in camera 306
7.5.14 Crime commission rate 308
7.5.15 Summary jurisdiction 308
7.5.16 Cumulative and concurrent sentences 310
7.6 Conclusion 313

CHAPTER EIGHT

CONCLUSION AND RECOMMENDATIONS

8.1 Summary of Main Points 317
8.2 Objectives Achieved and Recommendations 320

APPENDICES

APPENDIX 1

The Questionnaire 323

APPENDIX 2

The List of Terms 327

APPENDIX 3

Key to transliteration system 330

BIBLIOGRAPHY 332
CHAPTER ONE

INTRODUCTION

1.1 Overview of Thesis

To translate is simply to communicate. Hence, effective translation is more or less equivalent to effective communication. Since communicating with a group requires a thorough appreciation of the precise elements and norms of communication utilised by members of that group, a logical corollary is that the most effective and acceptable communication process - and hence translation - is one which adheres to the norms and idiosyncrasies of the target language. This undoubtedly supports the often stated rule that translation involves conveying the message of what is written (or said) rather than reproducing the words and structures of the original. In speech and in writing, ideas are usually expressed and conveyed by means of morphemes, words, clauses, sentences, and texts. This is true of all genres and of all text types. Translators have to concern themselves with all these linguistic levels. There is one minor difference, however, which has a great impact on the way legal texts can be analysed and translated. In a purely non-technical text, translators are encouraged to read the whole text, sometimes more than once, before they commence the process of translating proper (given that reading in this case is an element of the overall translating process). This is very important because, in many instances, the meaning of some terms or the message that the writer wants to convey early in the text may not be clearly understood by merely looking at that part of the text. However, for all their assumed complexity, legal texts are known to be 'time
savours', to use the vernacular, when it comes to translation. More often than not, translators need not look beyond the paragraph, as it usually contains a complete legal idea, rule, premise, condition, instruction, finding or conclusion. The title of the document itself may provide solutions for many word-choice exercises: in a power of attorney for instance, no experienced translator would render 'attorney' as 'lawyer' rather than 'appointed agent'.

A striking feature of all technical - including legal - texts is the precision of expression at term level. The term, therefore, becomes the main concern of technical, and in this case, legal translators. This hypothesis is the ultimate concern of this thesis. However, to get to this level the often stated comment that difficulties of legal texts arise from the complex structures, formality of register, punctuation and format will have to be addressed first. Indeed, many Arabic translations of English legal texts are so lacking in clarity that more than a simple checking process is needed to rectify them. This is mainly due to misunderstanding the significance of features of legal texts, some of which are non-lexical but nevertheless of great importance for understandability.

As already mentioned, the thesis will demonstrate that legal terms are the main cause of mistranslating English legal texts into Arabic. It will further try to investigate the reasons for mistranslating them. There is a general lack of a useful dictionary of legal terms in Arabic. This is not equivalent to saying that there are no bilingual legal dictionaries. Such dictionaries do exist; however, they tend to compound rather than solve the problem. They are deficient, especially in the area of terms that are
most needed by professional translators, as these dictionaries often seek to provide definitions and explanations rather than precise equivalent terms in Arabic. These dictionaries can also be misleading due to providing the same term in Arabic for two or more different terms in English which could have widely different meanings. Another reason for difficulty at the term level could be the lack of adequate knowledge on the part of translators of the legal systems of their working languages.

The thesis is divided into chapters, each dealing with a particular topic that contributes to the general discussion and leads to the conclusion. In this Chapter I will try to explain the nature of legal texts, highlight the background of this research and the objective of the Thesis. Examples of mistranslations based on the use of inappropriate Arabic equivalents of English terms (the problem) will be given, with a limited description of the legal systems, lack of standardisation and other related issues which also contribute to the problem.

In Chapter 2 the discussion will be centred on analysing legal texts. I will firstly discuss whether there is a legal language, then define what constitutes a legal text, try to demonstrate that legal language does not only exist but is also a distinct genre, a special technical language. A discussion of legal discourse as a precursor for legal texts will then be undertaken, followed by drawing the line between legal documents and legal texts and dealing with cohesion and the various cohesive devices employed in legal texts. The applicability of other features to legal texts is then discussed with emphasis on such matters as blending, articulation, numbering and the conversational maxims, together with a study of the
legal register. This Chapter is important because it introduces a comparison of textual features between Arabic and English legal texts.

In Chapter 3 I will conduct a comprehensive comparison between the Arabic and English legal texts for the purpose of identifying where they meet. Firstly, a study of the structural organisation of legal texts in general will be conducted, and elements such as macro structure or text mapping, sentence length, and punctuation as a matter of interpretation are discussed. A discussion of other features at the micro level will follow, including the function of legal texts, relational features and interpretation of those relations. This Chapter will show that there are more textual similarities than dissimilarities between the English and Arabic legal texts.

Chapter 4 will explore whether the notion of legal terms is a real one, and the conclusion depends on discussing once more the fact that legal texts constitute a special technical genre. This is followed by a discussion of the importance of technical terms in legal writing and speech, as well as the nature and origin of those terms. This Chapter will show that legal terms are the creation of their environment, and it leads automatically to a description of the development of the Arabic legal environment in Chapter 5, which emphasises such points as the view of inseparability of Islam and Arabic in divinity and the Holy Quran as a source of legislation. The four Islamic schools of law and the unity of the Holy Quran as a source of law, together with the various levels of jurisdiction in Islamic law will also be covered in Chapter 5, which concludes with an important description of the developments of the modern Arabic laws.
Chapter 6 is the backbone of this Thesis, as it serves as a synthesis of views on terminology. It starts with describing the situation of Arabic terminology in general and legal terms in particular, including the situation of the various types of dictionaries, including the general bilingual and specialised legal dictionaries. This is followed by an assessment of the bilingual English Arabic specialised legal dictionary, pointing out some of the problems there, including lack of standardisation, providing definitions rather than concise equivalents, and an assessment of the importance of standardisation. This Chapter also deals with the various enrichment and development methods of the Arabic language, including qiyas (analogy), ishtiqaq (derivation), naht (blending), irtijal (coining) and ta'rib (transliteration). The Chapter concludes by tracing the efforts of the various Arabic academies in several specialised areas of language development but not in the realm of law.

Chapter 7 is a limited empirical study that consists of a questionnaire and a list of a hundred legal terms that twenty subjects (professional translators as well as translation students) were asked to respond to. The results of the study are reported upon, and a limited qualitative analysis of the responses is carried out, which shows in the main the validity of the claims made in this Thesis.

Chapter 8 contains the conclusions and some recommendations resulting from this study.
Since the various chapters deal with different topics that contribute to the development of the Thesis, and in order to avoid repetition, I am deviating from the general practice of reviewing the relevant literature in this Chapter. Literature review, discussion, and critique will instead be provided in the respective chapters.

1.2 Why Legal Translation?

Generally speaking, legal texts are a sub-category of technical genre, given that 'genre' here refers to 'conventional forms of texts associated with particular types of social occasion' (Hatim and Mason, 1990, p. 241). And yet, these texts come in all shapes and forms. Besides the laws, by-laws and regulations, charters, protocols and treaties which govern the full range of human activity, and which regulate interaction among individuals and nations in established societies as well as in the oceans and even outer space, there are also a whole host of other documents which can be classified as legal texts. Lease agreements, powers of attorney, contracts of sale, court orders, and even applications to transfer money overseas can all be grouped under the same heading. It is clear that legal texts affect the life of all individuals living in societies. It follows that they also deal with all aspects of life of these individuals and their societies.

Hence the paradoxical notion that legal texts can be highly technical and at the same time dealing with simple, everyday life issues. This is an interesting fact from a research point of view, because such texts allow us to readily compare between different strategies employed to deal with problems specific to each text type within the same document that we
may broadly call legal. We may consider, for instance, an application for appeal, where legal premises, specific references and legal opinions (persuasive text; technical material) are stated side by side with the facts of the case (expository text; usually non-technical). It is also challenging, because the varying levels of formality imposed by the subject matter (for the time being this will be referred to as 'field of discourse'), and the writer-reader relationship ('tenor of discourse'), force translators to make allowances or changes or both to accommodate such variations in the target language text.

The multitude of texts that can be referred to as legal suggests that there are a multitude of legal styles, legal registers, legal reasoning, and legal 'sub-genres'. Such suggestions may be made on the basis that the subject matter of a given text decides not only the level of register, which is 'the tendency to pattern language behaviour in relation to a particular type of activity, level of formality, etc.' (Hatim and Mason, 1990, p. 243), but also the field of discourse. The field of discourse, however, is the term used to refer to the linguistic choices that a writer - or speaker - makes to describe or refer to 'what is going on' rather than to the subject matter itself. According to Crystal and Davy (1969), who make this point, regardless of the type of subject matter in any legal text, it can always be reduced to "an underlying logical structure which says something like 'if X, then Z shall be Y' or alternatively 'if X, then Z shall do Y'... every action or requirement from a legal point of view, depends upon a set of conditions which must be satisfied before anything at all can happen". (Crystal and Davy, 1969, p. 203; Emphasis is mine).
This statement, however, is ideally applicable to legislations rather than judicial material. In the English legal system, the two are intertwined and inter-dependent. The reference here is to the English common law system, which is followed in most English speaking countries, including Australia and New Zealand, England, the United States and Canada. Despite this inter-dependence, there are significant differences which have been neatly summed up by Yon Maley (1994):

There is no one legal discourse but a set of related legal discourses. Each has a characteristic flavour but each differs according to the situation in which it is used. There is judicial discourse.... There is courtroom discourse, used by judges, counsel, court officials, witnesses and other participants... There is the language of legal documents ... And there is the discourse of legal consultation, between lawyer and lawyer, lawyer and client. (Maley 1994; p. 13)

Maley explains the judicial discourse as being the language of judicial decisions, either spoken or written, that is reasonably flexible and varied but none the less contains recognisably legal meanings, in predictable patterns of lexicogrammar. The courtroom discourse, on the other hand, is interactive language, peppered with ritual courtesies and modes of address. It is the closest approximation to everyday speech of all public legal discourses. Legal documents include contracts, regulations, deeds, wills, acts of parliament, all of which are decidedly legal and essentially formal.

My concern here is not so much the discourse of interactive language in the courtroom or the legal discussions among lawyers and between lawyers and their clients. Apart from being "the closest approximation to
everyday speech of all public legal discourses', they are probably more suitable for a research into interpreting techniques employed in those situations. Rather, it is the legal documents and the processes that precede them, including to a large extent the judicial decisions, judicial reasoning, and judicial points of view, which together make up what is known as the common law.

The above discussion promotes the argument that legal texts do have a lot in common, with legal points of view being the dominant factor, regardless of the subject matter of the text. When we talk about legal translation the reference is usually to strategies to translate the linguistic devices utilised in conveying these legal points of view in the original text.

1.3 Background of research

Translating legal documents has traditionally been - and will continue to be - one of the most sensitive, responsible and prestigious undertaking by professional translators. The impact that an international agreement on trade tariffs, for instance, could have on the economy of signatory countries is significant by any standard. The slightest inaccuracy in translating the agreement into another language could lead either to additional levy burden, or to disputes among these countries, or to both.

At the more local level, taking the example of the non-English speaking communities in Australia, inaccurate translation of brochures and booklets issued by the various Federal Government and State Governments such as the Australian Taxation Office, the Department of
Immigration and Multicultural Affairs or the Roads and Traffic Authority in NSW or its equivalent in other States, could result, for instance, in some people incurring financial losses for excluding some deductions or facing fines for failure to disclose particular types of income; or in some people failing to successfully sponsor their relatives or facing hefty fines for non-compliance with specific rules; or even in death due to mistranslating the road safety rules. Of course, we are talking about accuracy here, which is the essence of all translations; but the wide application range of legal texts tends to emphasise the point.

Observation of published, translated material into Arabic indicates that translators might sometimes mistranslate due to one or more of the following points:

a. Misjudging the importance of the format, that is macro-structure of legal texts. This leads to a lack of understanding of the non-lexical systems (punctuation, paragraph indentation, numbering for instance) in English.

b. A desire to inappropriately mimic the complex structures of the English texts.

c. A desire to free the translation completely from the compact structure of the original English text, believing that such structure cannot be employed in Arabic texts.

d. Lack of proper, standardised and acceptable word-building
techniques in Arabic sufficiently capable to keep abreast with the strategies used in English and with new concepts and terms that constantly enrich the English language, including legal texts. This is not to suggest that such techniques do not exist; it is only that the restrictions placed by the various Arabic academies render them almost completely inoperable by even the most educated user of Arabic.

e. Inadequate understanding of the legal environments in the Arab World and in Australia, and hence of the legal documents that they have been asked to translate.

g. Confusion created by the lack of useful bilingual legal dictionaries, which should not only provide explanation and historical background of the legal terms, but also facilitate the work of translators by providing equivalent terms in Arabic that can be used readily and reliably.

It is likely that translators often err due to one or more of the above areas. The last three points, however, seem to account for the majority of translation mistakes in legal translation, and mistakes in these areas tend to be the most damaging and, potentially, the most costly. News reports touching upon legal matters, which are published in the Arabic newspapers in Australia, provide good examples of mistakes which arise from lack of understanding of the Australian legal system as well as from lack of knowledge of the proper legal terms.
This Thesis, therefore, concerns itself mostly with the importance of legal terms in translation. This, however, will not be achieved in isolation; all other relevant points will be adequately discussed. Besides, this topic will be tackled only following a comprehensive textual analysis of, and comparison between, English and Arabic legal texts. This comparison is not a peripheral aspect of the Thesis; it aims at providing a descriptive account of what is acceptable in Arabic legal texts, based on a better understanding of the English legal points of view. Accordingly, the lexical side of my work will be framed by a textlinguistic approach.

1.4 Objectives of Thesis

This Thesis will attempt to examine the problems faced in translating English legal texts into Arabic. More specifically, it will cover the following points with equal emphasis:

A. Textual difficulties

B. Terminological problems

The textual difficulties will be examined in terms of contrastive analysis of Arabic and English legal texts. The Thesis aims to prove that these difficulties are solvable as part of the normal translator's training and development. To come to this conclusion, however, a thorough, discrete analysis of English legal texts will be undertaken. A similar, but more limited, analysis of similar texts in Arabic will be conducted; this will then enable an appropriate contrastive analysis. The emphasis on English is to provide a solid understanding of the concepts of the English common
law, which constitutes the major point of conflict with the Arab laws, based on codes. The aim is also to isolate textual features, both lexical and non-lexical (punctuation, format, capitalising, and so forth), that account for translation difficulties. This will lead to vindicating the main hypothesis of this research, namely that it is *lexis* rather than *text* that constitutes the main difficulty for translators of English legal texts into Arabic.

On the other hand, a research into the translation of legal texts always leads to a question that is considered at the core of the problem: Can a comprehensive glossary of English legal terms with precise Arabic equivalent terms be compiled? The answer to this simple question is both 'yes' and 'no'. The answer is definitely in the negative if such a glossary is meant to be used universally, that is all over the Arab World and in the Arabic-speaking communities elsewhere, just as any general, bilingual dictionary. The limited usefulness of such an undertaking does not justify the effort. Available English Arabic legal dictionaries do exist, but the material they cover is either mostly historical or too 'regionalised' to be of real benefit to translators. The situation, however, can be reversed if the objective is just to compile a dictionary of English legal terms for Arabic-speakers in the English-speaking countries that follow the common law system. In the first case, the glossary would be an important contribution to a reference library; its usefulness as far as translators are concerned, however, will remain limited. It is the second type of glossaries that translators usually find most useful for direct application in their work. Rather than providing a historical background and detailed explanation of legal terms in the various English-speaking
countries, such dictionaries are often compiled with the legal system of one particular source language country (or countries if they share the same legal system) in mind. This Thesis, however, recognises that even attempting a glossary of the second type would be an enormous task that cannot be accommodated here. Instead, suggestions and useful examples will be presented as areas for further work and research.

1.4.1 Superordinates versus Hyponyms

It is not uncommon for translators and interpreters to use superordinates, or hyperonyms, instead of hyponyms when one-to-one equivalence is lacking. However, a modifier is usually used to narrow down a wider meaning of the word and make it closer to the meaning of the term in the source language text.

An example of using a hyperonym instead of the correct hyponym is the use in Arabic of the word "جريمة" (jarimah) for any class of criminal offence, rather than "مخالفة" (mukhalafah), "جنحة" (junah), and "تدابير" (jinayah), for 'offence', 'misdemeanour' and 'felony' respectively.

1.4.2 Using the Wrong Term

In some instances, translators may simply choose a wrong term for the same reason explained above. This, however, can be explained in a discussion of semantic fields and text analysis. It is argued that, as in any other kind of translation, text analysis features prominently as an area of investigation for introducing improvements to, or solving difficulties in, legal translations. It sometimes appears, however, that it is not sufficient to identify the general nature of the text and pinpoint its
theme and subject for translators to make correct word choices.

In reporting on Australia's joining the International Trade Treaty, an Arabic newspaper published in Sydney wrote the following:

"انضمام استراليا للمعاهرة الدولية
مير البرلمان الفدرالي يوم أمس مشروع قانون يقضي
بانضمام استراليا إلى معاهرة التجارة العالمية التي تضم
123 دولة..."

Back translated, this passage would read as follows:

**Text 1.1: "AUSTRALIA JOINS THE INTERNATIONAL TREATY**

The Federal Parliament yesterday *passed* a bill effecting Australia's joining the World Trade Treaty, which includes 123 states..." *(An-Nahar, 15 December 1994; Page 12)*

The word 'passed' in this passage was originally translated literally from English, with the root component 'pass' as the resultant meaning. The back translation, therefore, fails to expose the distortion of meaning in the target language (TL) text. It is undisputed though that there are many meanings for this word, only one of which is to be used in the legal sense. Most general bilingual dictionaries list a wide range of possible meanings of word fields. In this case, twenty-four meanings used as a verb, including twenty-two that can be considered hyponyms, are listed in one general dictionary *(Karmi 1988; p. 951)* for the word 'pass'. The translator opted for a false equivalent, "مَرَّ", that is better suited for a sentence such as 'He passed her the bread'. The term that should have been used in the quoted passage is "إِثْر" or "أُجَاز", meaning 'approved' or
'endorsed' respectively. It can be assumed, in this example, that the translator has failed to correctly analyse the semantic field of the term as used in a legally oriented text, or that the dictionary used was lacking in specialised terms. Another example can be found by comparing the following pair of sentences:

Text 1.2a "The NSW Crime Commission is a statutory authority charged with combatting crime in the State."

Text 1.2b "Tougher measures in NSW will mean that the commission of crimes in the State will lead to having more offenders charged."

The subject in both sentences is 'crime', and the theme could generally be labelled 'combatting crime in NSW'. It is apparent that both sentences are taken from texts bordering on legal discourse, or possibly even from one such text. In this case, ignoring the synonyms, there is a 1:4 equivalence (English:Arabic) for the word 'commission' as a noun: مفوضية, تفويض, إقرار وعملة 和 تفويض وعملة. These are respectively equivalent to 'authorising', 'organisation', 'brokerage' and 'perpetration'. Interestingly, two out of four practising translators have translated 'the commission of crimes in the State' in Text 1.2b, which can be translated in Arabic as "إرتكاب الجرائم في الولاية" [irtikab al-jaraim fi al-wilayah], as the 'State Crime Commission' i.e. "مفوضية مكافحة الجريمة" [mufawadiyyat mukafahat al-jarima]. It is apparent that Text 1.2a had a certain impact on the understanding by the two failing translators of Text 1.2b, notwithstanding the difference in capitalisation between the two sentences. Admirably, however, none of the translators seemed to have confused 'charge = accuse' with 'charge =
assign'.

1.4.3 Bilingual Legal Dictionaries

A major problem that confronts most legal translators is the recurrence of compound terms; types of charges; and names of acts, agreements, statutory bodies, titles, organisations and similar entities. These are items that are rarely found in bilingual legal dictionaries, and indeed even in monolingual legal dictionaries. As an example, a criminal offence phrased 'Forge and Utter', under the New South Wales Crimes Act, has been investigated for a semantically accurate and legally justifiable equivalent in Arabic. It has been found that neither Faruqi's bilingual English/Arabic law dictionary (Faruqi; 1991), nor Osborn's monolingual English legal dictionary (Burke, 1976), has an entry for this charge. Instead, both dictionaries have entries for 'forge' and 'utter', as two separate items; translators will then have to combine the meaning of both words to come up with what appears to them as a viable solution. In fact, Faruqi (1972) makes the point that users of his dictionaries have to arrive at the meaning of a compound term by combining the meanings of its constituent words. He gives an example:

"If you want the meaning of 'taqah kahrabaiyyah' [electrical power], for instance, you will find 'taqah' [power] under 't' and 'kahrabaiyyah' [electrical] under 'k'; you then need to combine the two words". (Faruqi 1972; Preface). [My translation]

We know, however, that translation is not done as simply as that.

"... it is erroneous to assume that the meaning of a sentence or text is composed of the sum of the meanings of the individual lexical items, so that any attempt to
translate at this level is bound to miss important elements of meaning".
(Hatim and Mason 1990; pp. 5-6)

Knowledge of the legal system and practice in the Arab World would be of major assistance in this case, as it would enable us to identify a 'context of culture' which is made of several factors that, as Halliday suggests, "... determine, collectively, the way the text is interpreted in its context of situation" (Halliday & Hasan 1985, p. 47). In fact, the charge 'forge and utter' does exist in the Lebanese Penal Code: "التزوير واستعمال المزوير", that is 'Forging and using the forged thing'. (Cf. 7.5.8).

The above example demonstrates that in translation, and indeed in discussing any aspect of language, the various elements of analysis are inseparable, and lexical and textual features interact in a way that is vital for linguists and translators to unfold.

Let us consider another example:

"... وزعمت الشرطة أن الجنايات حدثت في الفترة الواقعة بين الثالث عشر من تشرين الأول ويوم الجمعة الماضي. وأما النتيجة الأولى فتعلق باستخدام جهاز غير طبيعي والثانية بمحاولة تزوير شهادة مصرفية بهدف الحصول على مكاسب مالية."

Back translated into English, it will read as follows:

Text 1.3 "The Police alleged that the felonies took place in the period between 13 October and last Friday. The first charge relates to using an 'unreal apparatus' and the second to attempting to 'forge a bank certificate with the intention of obtaining financial gains."
(El-Telegraph, 23 January 1995; Page 8)
In this example, where the Arabic text had been originally translated from a New South Wales Police report, the meaning of the first charge was completely altered due to mistranslating both words. This in turn is due to a lack of understanding of the nature of the charge in English. It is apparent that the translator has some doubts as to the accuracy of his or her own translation; hence the insertion of the charge between two inverted commas. The original English report contains the words 'make a false instrument', which is a criminal offence under the New South Wales Crimes Act 1900. The translator initially seems to have translated 'instrument' as 'apparatus' rather than 'document'. What followed was a mere exercise in collocation based on an initial false choice of words, which ended in using 'unreal', rather than 'untruthful' or 'forged', for the English word 'false'. Here again, it seems that the existing dictionaries are deficient and of no real assistance to the work of legal translators. Indeed, legal dictionaries, both monolingual and bilingual, have been found in this particular instance no more valuable to translators than a general bilingual dictionary. It also appears that, despite the clarity of the context which gave rise to the charge, the translator has failed to relate the charge to the events that had led to it being laid.

The lack of appropriate dictionaries should not exonerate translators from their responsibility to produce, not only adequate, but also accurate translations. This is particularly vital in legal translations, as single terms could - and often do - become a central issue. A problem area is that what we call a legal text can potentially incorporate a range of different speech acts and cover a variety of subjects. Accordingly, the translator in
the example quoted assumed that merely using an 'unreal apparatus' could be a criminal offence, or a felony. Limited text analysis, however, would tell us that such an assumption is wrong; that the facts of the case deal with fraud, forgery and bank documents; and that 'apparatus' stands out as an alien (out of context) term in this text.

One way to avoid such problems is by producing glossaries not only of legal words *per se*, but of compound terms and even phrases that incorporate such matters as charges, levels of courts, court procedures, titles of judicial officers in the various jurisdictions, and so forth. This, however, is not an easy task by any measure. It pre-supposes a thorough knowledge of the legal and judicial systems of both language communities, and more specifically of the particular country in which such texts are produced.

1.4.4 The Legal Systems

Part of the difficulty involved in legal translations could also be explained in terms of the different environments in which the legal issues were debated and settled or continue to be debated. Legal language develops in societies as a reflection of their social environments. In one sense, laws are like languages; both are constantly changing to reflect the full reality of their societies: cultural, religious, moral, material, industrial - indeed the whole spectrum of social activity. Social activity has to be regulated, organised and even codified.

"Particularly in literate cultures, once norms and proceedings are recorded, standardised and institutionalised, a special legal language develops,
representing a predictable process and pattern of functional specialisation. In the Anglo-Saxon common law system, a discrete legal language has been apparent since post-Conquest England, which in many essentials has persisted to the present day."
(Maley 1994; p. 11)

Translating a novel that deals with normal human endeavours, emotions, setbacks and successes may have its own problems. These problems, however, are of a nature that can be solved at the average human experience level. In other words, the ideas expressed in a novel that deals with such emotions and experiences are generally universal, and therefore the amount of cultural adjustment that is usually needed to convey them from a language to another may be relatively limited. Admittedly, there are major difficulties of other kinds involved in translating such texts. Legal texts, on the other hand, are primarily the creation of their own environment, which means that to translate a given legal text from language A to language B, the translator needs to be familiar with the two legal environments that these languages represent.

This makes legal texts a category of its own, as it is only in the legal area do we find such an almost complete differentiation. In other technical fields, changes or variations are relatively minimal. Electricity generation, supply, transmission and distribution may be carried out in slightly different ways in different countries; generally speaking, however, the main features of all these operations are the same. Similarly, in accounting, architecture and electronics, to name a few, the operations, aims and results are similar in many modern societies to a large extent.
There is another point. In almost all technical fields, once a new process, operation or innovation is proven better than an existing one it gains popularity and completely replaces the old. In another twenty years, manual transmission vehicles may be completely forgotten. Manual typewriters are already becoming collectors' items. Laws, however, can neither be forgotten nor ignored. They have always constituted a background for further development, not necessarily in a strict chronological order. The English Common Law, for instance, is the sum total of the rules and procedures which have evolved from the decisions of judges of the Norman kings who travelled around England since 1066, to hear and determine cases. By the making of decisions which were consistent, the body of case-law thus emerging became 'common' to all England. This Common Law was introduced into Australia at the time of settlement and has continued to evolve since that time.

It may be argued that such a complex description of the origins and development of the Common Law is hardly necessary when in fact 'common' is such a common word. The fact is that a good understanding of the subject matter - and the subject matter in this instance is legal although the text could include a large chunk of non-legal material - is essential not to translate the word 'common', but rather to achieve clarity of purpose when 'common law' is mentioned side by side, for instance, with 'statute law', or even worse still with 'equity law'. For the legal translator this last term can be exceptionally intriguing and is in fact an illustration of the proposition that some words have a legal meaning that is very unlike that of their ordinary one.
"In ordinary language 'equity' means natural justice; but the beginner must get that idea out of his head when dealing with the system that lawyers call equity... The student should not allow himself to be confused by the lawyer's habit of contrasting 'law' and 'equity', for in this context 'law' is simply an abbreviation for the common law. Equity is law in the sense that it is part of the law of England, it is not law only in the sense that it is not part of the common law." (Williams 1982; p. 26)

Other examples can be found in the Australian legal system, where an offender who is defending charges preferred against him or her is referred to as 'defendant' at the local court level and as 'accused' at the district and supreme Court levels, and where the presiding justice is referred to as 'magistrate' and 'judge' respectively.

1.4.5 Lack of Standardisation of Terms

It is conceded that there are many factors in the Arab World which hinder any efforts to standardise terms in any field of activity. In the legal area, however, this problem is more prominent due to the strong influence of Islam on the development of laws. This sounds at odds with the generally accepted notion that Islam has played a unifying role in the Arabic language through the Holy Quran, which is still considered to be, at least, a source for Arabic grammar. Yet, in the Arab World these days, there are a number of countries that adhere more closely than others to the teachings of Islam and have this adherence reflected in their statutes. There are other countries which have made big strides towards secularisation of their laws in the last two centuries have more recently found that they had to introduce some amendments to these laws, albeit in some cases only cosmetic, in an effort to appease the new Islamic
movements which call for the revival of the fundamental tenets of Islam, and hence the *Shari’ah* (Quranic law). Naturally, there are other Arab countries which are satisfied with their laws modelled after the French, Italian or other Western laws as will be discussed later in Chapter Five. Such variety in the legal backgrounds and development makes it impracticable to standardise legal terms, as many of these would have no application in some countries while others would be rather confusing due to the multitude of sources.

As already stated, part of the difficulty involved in translating legal texts has to do with the cultural environments of both SL and TL. In some societies, religion has traditionally played a very important role in many fields, law no exception. Until the beginning of the 19th century, most Arab and Islamic countries followed the Quranic law, commonly known as *Shari’ah*. The legal matter of the Holy Quran consists mainly of broad and general propositions as to what the aims and aspirations of Muslim society should be: compassion for the weaker members of society, fairness and good faith in commercial dealings, incorruptibility in the administration of justice and so on. The quantity of Quranic legislation, however, is not great by any standard: some six hundred verses, with no more than eighty of them only dealing with legal topics in the strict sense of the term (Coulson 1978; p. 12). Small in volume as it may be, the influence of these legal and other Quranic verses on the life of Muslim societies has been incalculable. Fourteen hundred years after the 'dawn of Islam', and nearly two hundred years after adopting Western laws in most Arab countries, the influence of the Quranic style and diction in legal texts is still a testimony to the fact that laws (and also language in
the case of Arabic) change slowly and rarely, if ever, disappear completely. Furthermore, the influence of Shari'ah and other Islamic motifs still exist. The Egyptian Court of Cassation, for instance, still follows the Hijrah (Islamic lunar year, 11 days shorter than the Gregorian year, started from AD 622, the year of Prophet Muhammad's departure from Mecca to Medina) in calculating the age of minor victims of sexual assault. It is interesting to note in this respect that, in using the lunar calendar the Egyptian law aims at protecting the defendant by trying to find a legal loophole through which he can be found not guilty. The concept is very similar in its objective to the Islamic ruling (إدراو الحدود بالشبهات), [ward off legal punishment through judicial errors], which allows judges to err in favour of the accused or find loopholes that would allow them to avoid convicting him or her. It also concurs with the 'level of proof' in the criminal jurisdiction of the English legal system which requires the prosecution to prove the charge against the defendant 'beyond reasonable doubt'.

As a result of the persistent influence of the Quran, Arab lexicographers and linguists still have to come to terms with the arduous task of making compatible in translation two different cultures, one of which is a function of such lasting influence as religion. Faruqi recognises this difficulty in the preface to his dictionary, when he admits that

"... many terms of the Islamic Doctrine which have no equivalent in English, have been omitted."

(Faruqi 1991; Preface). [My translation]

There is also the element of rivalry among the Arab countries which makes efforts to standardise any terms, not only in the legal area, an
arduous task. Another element which hinders standardisation is the interference caused by colloquial Arabic, which is a function of the exposure of the population in the various Arab regions to different kinds of experiences, most importantly during the colonial period in some Arab countries, mainly in North Africa, and the mandate period which followed the First World War in some other Arab countries such as Lebanon, Syria, Jordan, Iraq and Egypt as a result of the Sykes-Picot agreement between England and France.

There are other examples of a more general nature. In the military institutions of the Arab World, for instance, the word "رئيم" (za'īm) means 'brigadier general' in Jordan and formerly in Iraq and Syria as well), while it formerly also meant 'colonel' in Iraq and Lebanon. 'Helicopter' means "طواقة" (tawwafah) in Lebanon, a word that in Egypt is used for 'patrol boat'. Of interest, though, is that in Lebanon there is also another term used for 'helicopter', namely "طائرة عمودية" (tairah 'amudiyyah). There are a countless number of examples of such confusing situations.

A question that should be asked at this junction, however, is: Why is standardisation of terms so important for legal translations? The answer is that given the importance that legal texts accord to all their lexemes, and considering that precision is the essence of legal writing and that ambiguity should be avoided at any cost, even at the expense of repetition and the frequent use of binomials, standardisation in the one legal text or across all legal texts generated in a particular language community becomes the major issue. Indeed, it can be stated that one of the main roles that dictionaries are supposed to play is to standardise the
use of words and terms in their respective languages.

An example of general lack of standardisation appears in Text 1.1 above, where International (dawliyyah) and World ('alamiyyah) are used interchangeably as qualifiers for the 'Trade Treaty', where only one or the other should have been used. Although hardly confusing in this particular example, standardisation should always be an objective of translators of non-literary texts. Sager (1990) justifies this objective on the basis of three factors. These are:

"1. in the interest of economy, if one of the competing terms is noticeably more cumbersome than the other;

2. in the interest of precision, if one term offers markedly greater clarity of reference or less inherent ambiguity than the other;

3. in the interest of appropriateness, if one term has, for example, disturbing connotations not possessed by the other."
(Sager 1990; p. 115)

We can say that legal translators should aim at a high level of standardisation for the last two reasons proposed here. The language of law is very precise; translators, therefore, have an obligation to maintain this precision in the TL text.

On the other hand, given that language is what it is, particularly that apart from a relatively small proportion words do usually have connotative beside propositional meanings, the language of law tries to narrow down or, ideally, close this gap by the extensive use of other
features, such as synonymy, hyponym stringing, and repetition.

In reporting on the trial of ex-members of the disbanded Lebanese Forces faction in Lebanon, the Arabic newspapers published in Sydney in the first quarter of 1995 referred to the 'record of interview' interchangeably as a 'record of investigation' (mahdār tahqiq) and a 'record of cross-examination' (mahdār istījwab). I am supporting the first term at this stage (having been read in original Arabic court reports and respected novels, such as in Salamah 1994), although there are some differences in the way crimes are investigated and dealt with in the Australian and Lebanese legal systems which need to be elaborated

1.5 CONCLUSION

Translating legal material, whether undertaken by students of translation or by professional translators, seems to pose certain levels of difficulty. The language of law is too precise and compact and leaves no scope for translators to perform many of the strategies otherwise considered appropriate.

Legal texts have special features not shared by other types of writing. It is imperative that these features be clearly identified, and neatly isolated, so that they can then be successfully analysed and a comparative study can be undertaken against the characteristic features of legal texts in the other language.

It appears that the lack of specialised, standardised, bilingual legal dictionaries still constitutes the main obstacle to legal translators and
interpreters. It is failure in this area that usually leads to a consequential problem of lack of understanding of legal texts. Furthermore, it is believed that some textual features of legal writing require an extra effort by translators to analyse, and that they usually are more difficult than those encountered in translating other texts, technical and non-technical. However, understanding the purpose of legal texts in general, and analysing the strategies and elements of discourse employed, usually help in reducing - and sometimes eliminating - this aspect of difficulty.

In the following chapters I shall attempt to prove both points. Although the main thrust will be highlighting the difficulties encountered in terminology, text analyses will also feature adequately as they constitute a necessary background for furthering my thesis.

It is hoped that the results of this thesis be useful for Arabic translators in Australia and other English common law countries as well as in the Arab World, who undertake translating English legal texts. My attempt at a glossary blueprint which concludes this research is, however, intended mainly to be a catalyst for those who wish to pursue this matter further, especially for Arabic translators working in Australia and other common law English speaking countries.
CHAPTER TWO
Legal Texts: Discourse and Context

Introduction
A generally accepted view that cannot be overlooked when undertaking a research of the type I am embarking upon is that problems should be thoroughly investigated but not exaggerated. Another preliminary and valid statement is that my work can never claim comprehensibility, exhaustiveness or infallibility. Rather, it aims at identifying some of the problems Arabic translators face in translating English legal texts and, as far as possible, suggesting viable solutions. The topic is not new; it has been discussed, in part, by academics in the Arab World and elsewhere. This thesis, however, attempts to review relevant parts of what has already been done, isolate and eliminate problem areas that are considered of a general nature, highlight more complex problems particular to legal texts, and conclude with a finding that a real problem does exist in the legal terminological area and that a solution is not beyond reach.

2.1 The Notion of Legal Language - Real or Fictitious
A question that requires an immediate answer is: What constitutes a legal text? To give a successful answer it is imperative that I say a few words about texts in general, and how they are created. Before writers even contemplate putting anything on paper, they must know what they want to say and to whom they want to say it. Sometimes it is easy to know both things, but often it is not. The task of a writer who is asked to compile a paper on the importance of computers as educational aids can
be made tremendously easier if that writer is told about the educational level, technical training, motivation and, perhaps in this particular case, the age bracket of the potential readers. The text produced will accordingly be either easy and of a generally informative nature, or highly technical and complex. Of course, it can be anywhere between these two extremes. Thus, a text, however created, should be able to have an effect on the knowledge of particular groups of people, in particular situations. This description of any text concords with the Hallidayan definition:

"We can define text, in the simplest way perhaps, by saying that it is language that is functional. By functional, we simply mean language that is doing some job in some context, as opposed to isolated words or sentences that I might put on the blackboard." (Halliday & Hasan 1985; p.10)

Interestingly, Hasan later proposes that "text and context are so intimately related that neither concept can be enunciated without the other" (Halliday & Hasan 1985; p. 55). It is, in fact, this intimate link between text and context that enables us to identify individual types of texts as expository or pursuasive, for instance, or even to classify texts as examples of particular genres - literary, scientific, technical, and so forth. The mere existence of some computer terms in a particular text, however, does not make it a technical document. Likewise, a piece of writing that contains a reference to a court or a criminal charge should not necessarily be considered a legal text. Accordingly, a police facts sheet that constitutes part of the prosecution brief cannot be considered a legal text simply because it is used in legal proceedings. What does, then, constitute a legal text?
2.2 Definition of Legal Texts

For the purpose of this thesis a legal text is any piece of writing that regulates human interaction, carries an obligation, prohibits or allows certain actions or things, makes a binding promise, or sets out penalties to be imposed in case of breaches.

"Laws are in essence attempts to control human behaviour, mainly through a system of penalties for law breaking. The Law exists to discourage murder and theft, and bad faith in business dealings among other offences". (Gibbons 1994; p. 3)

It is admitted that this is a very narrow definition of what may constitute legal writing; yet it is given here to facilitate discussion, but more importantly because it is felt that other texts which do not comfortably fit this definition do not necessarily have to be accounted for here. Our concern is a special language that has been developed over the centuries to become the domain of special people, in a professional rather than a social sense. Referring to a definition of special languages as "semi-autonomous, complex semiotic systems based on and derived from general language", Sager makes the point that the effective use of such special languages "is restricted to people who have received special education and who use these languages for communication with their professional peers and associates in the same or related fields of knowledge (Sager 1990; p. 105).

Gibbons (1994; p. 3) makes the point that "... the basic concepts of the rights and obligations of a member of a community are deeply embedded
in the fabric of language itself, and existed before there were codified laws." He argues that language preceded laws, and has hence constructed and continues to construct them, rather than the opposite. Even the concepts of 'murder' and 'guilt', for instance, did exist in languages even before laws were conceived or codified (Gibbons 1994; p.3).

Another view of the origins of legal texts can be gleaned from Maley:

"Particularly in literate cultures, once norms and proceedings are recorded, standardised and institutionalised, a special legal language develops, representing a predictable process and pattern of functional specialisation. In the Anglo-Saxon common law system, a discrete legal language has been apparent since post-Conquest England, which in many essentials has persisted to the present day." (Maley 1994; p. 11)

Although Maley can be interpreted as saying that legal concepts had existed first and that a special language was created or developed to cater for these concepts, it can be argued that the 'discrete legal language' referred to was in fact part of the existing language which was then modified, or simply exclusively allocated for use by legal practitioners and judges. There is evidence to support the second interpretation. We all use the words 'actual', 'bodily' and 'harm' in our everyday conversation. They are neither technical nor highly learned terms. In combining the three words together, the Crimes Act of NSW has given a completely new meaning to this combination in the criminal charge 'assault occasioning actual bodily harm'. The word 'actual' is the key element in proving the charge against the offender. It means that the skin of the victim should have been opened through the use of personal force or of a certain
weapon before the charge could be found proven. More interestingly from a technical viewpoint is the fact that

"If a person is caused a hurt or injury resulting, not in physical injury, but in an injury to the state of his mind for the time being, that is within the definition of actual bodily harm. An assault which causes an hysterical and nervous condition is an assault occasioning actual bodily harm." (R. v. Miller [1954], per Bartley 1982; p. 59).

Thus, we here have a situation where 'actual bodily' actually refers to 'bodily' as well as 'mentally'. This is obviously contrary to our normal understanding of the word bodily to mean just the opposite of mentally. 'Weapon' is another term that is used differently in a legal sense. Contrary to the general idea we usually associate to this word, namely war machines and firearms, in law it simply means anything at all that is used to commit an assault offence. But back to 'actual', the precise meaning of the term, in a legal sense, becomes even more important and crucial when it is contrasted with another term, 'grievous', in another criminal charge under the Act: 'assault occasioning grievous bodily harm'. 'Actual' and 'grievous' are modifiers of crimes at different levels of seriousness expressed through the use of words that had already existed in the English language but were then made to acquire specific and precise meaning for the proper conduct of law. The superlativeness of 'grievous' is obvious in this charge as it was in Mark Anthony's "And grievously hath Caesar answered it" (William Shakespeare, Julius Caesar; Act 3 Scene 2). The time span separating the two usages of this term, nearly three hundred years, has changed neither its main concept nor its superlativeness. It is only that the law has given it a significantly
technical weight which the prosecution would usually endeavour to prove and the defence would either deny or downgrade to 'actual', in which case the lesser charge would then carry a lesser sentence.

It is this special usage, or special meaning, given to ordinary words that made Melinkoff theorise that "... the language of the law depends for survival upon those it unites in priesthood - the lawyers... only the lawyers can exploit the capabilities of the language of the law..." (Melinkoff 1963; pp. 453-454). Others have even suggested that the legal language can be reduced to English only in translation (within the same language), and consequently that the language of the law is not yet a part of English until such translation process has been achieved.

"... it is useful to treat common-law mens rea terms, and indeed much of the language of the law, as words that must be translated into ordinary language before one can learn what they mean and how to use them." (Low, Jeffries Jr & Bonnie 1986; cited in Morrison 1989; p. 275)

Morrison, who is critical of Melinkoff's 'rhetoric' and the 'excesses' of others, makes the point that the debate surrounding the language of law is not unique, as it has also existed in the area of philosophy and mathematics, among others. The question at the core of the controversy, according to her, is whether or not lawyers, after all, use the language, and if the answer was in the negative, as some had suggested, they had actually failed to prove their case beyond doubt and in fact had created more questions than answers. She sums up her argument, without exaggerating to prove the correctness of her point of view, but strongly enough to rebut the argument that the language of law and the ordinary
language are not one and the same:

"The bald contention that only lawyers speak the law, or that the law is in a language only lawyers can speak, is false - patently, historically, legally, and dangerously false. There is no question of whether legal language can be reduced to English because the law already is in English.

Is there, then, no truth in some form of the "expert's only" thesis? The answer is, there is some truth. There is something distinctive about how lawyers speak, although this feature is not distinctive to only legal language; and there is something distinctive about the meanings of some "legal" words although this distinctive feature falls short of turning the language of the law into a technical language that only lawyers speak and falls short of being unique to legal language." (Morrison 1989; pp. 286-287)

The distinctness that Morrison refers to is in the high level of care lawyers use in their speech rather than technicality, and that this level of care itself is responsible for making the language of the law somewhat alien to non-lawyers. She further makes the point that speaking carefully rather than technically is not exclusively limited to the legal profession. Whilst it is true that lawyers make a distinction between 'verdict' and 'judgment', 'accused' and 'defendant', 'summons' and 'subpoena', it is also true that this is motivated by lawyers' preference for particular terms to refer to particular persons, things or concepts. This is not unlike the colourist whose range of colours he knows by name is wider than that used by laypersons. A colourist may refer to Persian turquoise or American turquoise, while a layperson may refer to both as shades of blue. In both cases, the use by lawyers and colourists of the 'preference-among-meanings phenomenon', as Morrison calls it, that is the preferred
term chosen from a range of very close options, could lead to difficulties in conversations between lawyers and colourists on the one hand and laypersons on the other. She concludes that both use their words more carefully, but not technically. However, she refers to their words as 'jargon' or 'trade talk', without elaborating on whether this in itself is not considered a precursor for the existence of a technical language, which I call here 'legal language'.

2.3 Legal Language as a Distinct Genre

It can be argued that any technical language has its seeds in jargon. In fact, it is the preference-among-meaning pursuit that also leads to technicality, and consequently to refraining from using terms within the same field interchangeably. Accordingly, 'washer' and 'nut' are not the same and cannot be physically or linguistically used interchangeably, despite the physical similarity they may have. Likewise, 'magistrate' cannot be used to refer to the justice in a district or supreme court, despite the similarity in the general functions and powers he shares with a 'judge' in these higher courts. This is so because, firstly, similar is not identical, and, secondly, to refer to these two positions by either term only would be misleading, confusing and contrary to the main function of language, namely proper labelling of people, things and concepts and hence proper and effective communication. Synonymy is ideally not a feature of technical language (Yallop 1989; p. 2), that is technical terms in this case. A 'washer' is just a 'washer', and a 'judge' is just a 'judge'. It is a long way from the proverbial rose that smells as sweet regardless of its name.
One should remember that it is not only the specialised terms themselves that make a part of the language a distinct genre. Historical developments, religious influences, and cultural values, to name a few, have played a remarkable part in shaping the language of law in the various cultures. In the case of English, "... it seems there has never been a time since the Norman Conquest when the English of the law has been in tune with common usage. It has always been considered a language apart and there are good historical reasons why this should be so" (Maley 1994; p. 11). Although there was English law before 1066, the Normans brought with them a wealth of legal concepts and procedures. Maley (1994; p.12) explains that the written language of the law after the Conquest was Latin and English, although Latin was predominant and gained ground steadily. By the fourteenth century, however, French had taken over from Latin.

When in 1650 English became the official language of the law, a host of Old English, Latin, and Norman-French terms had become fixed in the vocabulary of lawyers. The effect of the varied origins of the English law is still apparent particularly in its vocabulary. Despite efforts later to simplify and clarify the English laws, Maley notes that

"the gap between legal discourse and everyday discourse is still very wide, ... present day legal discourse retains its identity as a highly specialised and distinctive discourse type or genre of English" (1994; p. 13).

Special features of English legal language have been discussed by many theorists, lawyers and linguists. The predominance of French as a language of law in the fourteenth century has been investigated,
especially that French was then dying as a language of communication in the British Isles. It should be remembered that it was in the fourteenth century that the first major English literary work, *The Canterbury Tales*, by G Chaucer (1340 - 1400), was published to remarkably represent a turning point in the history of the English language. With this background, it appears paradoxical that French was implanting itself firmly in the English language of law, despite the fact that in the 1360s the English language was established, for the first time, as the official language of the law-courts (Wilson 1958; p. 39).

There is a school of thought which maintains that the judiciary and legal profession intentionally couch the legal language in specialised and even foreign terms to keep it apart from the ordinary language, thus monopolising an undertaking that is considered the utmost in prestige and power. One proponent is Melinkoff (1963; p. 12) who suggested that one reason for the use of French in legal documents was the urge to have a secret language and to preserve a professional monopoly. Commenting on this suggestion, Maley notes:

"There is of course strong precedent throughout history and in various cultures for the powerful and elite reserving for themselves a special language which serves both to set them apart socially and to reinforce and perpetuate power by depriving the less powerful classes of access to its mysteries, whether or not this motivation was present in the minds of the lawyers in the thirteenth and fourteenth centuries [in England]." (Maley 1994; p. 12)

It should be remembered that the notion of a language for the elite or powerful is not a new one, and that it has probably existed ever since
man lived in communities. Religious knowledge and language were tools of power in medieval Europe, and in some parts of Europe until well after the Reformation. Priests have always used their specialised language, sometimes purported to have been revealed only to them to the exclusion of everyone else. In this respect, the first calls to have the Bible translated into the various languages of the masses were not unlike similar calls for the simplification of the laws and rewriting them in 'plain English'. In both cases, the motive was to bring concepts, rules or revelations closer to the ordinary human mind by removing the shroud of ambiguity that had covered them through the use of special languages. But in both cases too the opposition to the change was formidable. Wilson notes that some translators of the Holy Bible had to defy an ecclesiastical ban in order to start their translation:

"... in 1408 it was laid down by the authorities that any man attempting to translate the Bible - without permission from a bishop-was to be punished with excommunication, that is to say, with being deprived of full membership of the Church." (Wilson 1958; p. 54)

Likewise, having discussed the plain English movement in the judicial system in the United States, Solan concludes that

"Courts at times rely heavily on what they perceive to be plain language even where ambiguity exists. At other times, they refuse to rely on language that they recognise is clear. But there are many instances in which ... language is not and cannot be clear." (Solan 1952; p. 117)

There are different motives for having a special language. Apart from the social prestige, secrecy, and monopolising, Melinkoff (1963; p. 188)
mentions the material gain as well. Regardless, however, of the motives or results, there is no doubt that the language of law in English has established itself as a distinct language, that because lawyers speak more carefully and choose their words more accurately their language borders more on the technical genre, and because these words acquire in law new, more elaborate or refined or modified meanings, where synonyms can no longer be used, closeness to the technical genre becomes more noticeable.

2.4 Legal Language as a Special Technical Language

"What makes the physicist's language a technical language? The short answer is, she speaks a technical language of physics insofar as when she is speaking as a physicist, she uses words or terms that are not familiar to those of us who have an excellent grasp of English but do not know physics." (Morrison 1993; p. 35)

In this short definition, the word familiar is significant. Morrison explains that familiar words are part of the ordinary English language, and a word is familiar when speakers of English from all walks of life use the word in much the same ways specialists do. In other words, when a term is used by specialists and non-specialists to mean one and the same thing it cannot be said to be technical. Even terms that are used by the two different groups to express different meanings do not qualify to be technical terms, in Morrison's view. Words like 'cell' in biology and 'solid' in physics (and 'equity' in law, if we were to follow Morrison's reasoning) should not be considered technical, because despite their usage in specialised areas of knowledge, they are familiar to the ordinary users of
English and hence are ordinary terms.

According to Morrison, only an expression like \( y = k \cos h \frac{x}{k} \) is technical language because it is a sentence of mathematics, and because it needs to be translated into English for non-mathematicians to understand. There is no doubt this is a very narrow view of what constitutes a technical language. It would appear grossly misleading to judge a term merely on the basis that it exists phonologically and graphically in everyday usage, and that this is a sufficient reason to exclude it from the realm of technical languages. I have earlier given the example of 'committal proceedings', which is made up of two terms that are in common usage by specialist and non-specialist users of English but which in its legal sense, that is technical sense, represents something that is more than the sum total of the two separate words. Obviously not all users of English would be familiar with the meaning of this term, or at least with what it really involves as part of the criminal justice system in the English-speaking countries. The same can be said of 'equity'.

I would also argue that a mathematical sentence such as \( y = k \cos h \frac{x}{k} \) can be no more technical than a sentence which consists of ordinary English words, rather than signs and symbols. In the first instance, the mathematical equation quoted is really nothing more than an expression of an idea using graphological signs but which, when read, is understood in terms of the ordinary or semi-ordinary use of language when taken in proper context. The letters \( y, k \) and \( x \) are ordinary letters of the English alphabet, and indeed can refer to anything at all, including perhaps any words that start with \( y, k \) and \( x \) respectively. Obviously, I can use these
letters to refer to anything at all: oranges, apples and carrots; motor cars, bikes and trucks; cottages, flats and villas; etc. It is the context which would eliminate some possibilities and direct our understanding of y, k and x in a particular manner. This is not unlike using the word 'instrument' to mean a document rather than a mechanical or an electronic apparatus, which meaning is dictated by the context, such as in 'making a false instrument'. As for the term 'cos' in the example of mathematical sentence, it is admitted that perhaps not many users of English would realise that it is an abbreviation of 'cosine', and that 'cosine' is a trigonometric function that in a right-angled triangle is the ratio of the length of the adjacent side to that of the hypotenuse. But here too, this is not unlike such legal terms as 'mens rea', 'voire dire', and even 'indictable', because not all English users would readily understand them, unless they have been directly exposed to the legal process, that the first refers to the guilty state of mind of the offender, and that the second refers to 'a preliminary examination of a witness by the judge in which he is required to speak the truth with respect to the questions put to him; if his incompetency appears, e.g. on the ground that he is not of sound mind, he is rejected', (Burke 1976; p. 343). In the following paragraphs I will prove by a direct example the highly technical nature of legal terms.

In the Macquarie Concise Thesaurus, the word 'excise' is defined as 'tax', while 'exciseman' is defined as 'taxman' (1992; p. 266). Collins Concise English Dictionary provides a more elaborate definition of 'excise': tax on goods, such as spirits, produced for the home market; a tax paid for a licence to carry out various trades, sports etc. (1986; p. 386). Other examples of goods subject to excise are cigarettes and petroleum
products. In Australia, Section 90 of the Constitution states that "on the imposition of uniform duties of customs the power of the Parliament to impose duties of customs and of excise...shall become exclusive". This means that the Federal Parliament only, as opposed to the parliaments of the states, shall have the power to impose customs and excise. Accordingly, the Federal Government only shall have the power to collect excise on petrol, liquor and cigarettes. Since the states are thus prohibited from imposing and collecting excise duties, other methods of raising revenue have been sought. Hence the term 'franchise licensing fee', which in effect was different only in minute details, was introduced by some Australian states. In other words, while the tax was the same, the name had to be changed to escape restriction of the Constitution's terminology. Thus in 1960 a State tax in the form of a business franchise fee assessed on turnover in a prior period was held by the High Court of Australia (in Dennis Hotels Pty Ltd v Victoria [1960] 104 CLR 529) not to be an excise.

That ruling was used by the New South Wales and Victorian governments to collect the equivalent of excise, franchise fees. The validity of the tobacco franchise legislation in both states has recently been challenged by tobacco wholesalers on the ground that they were actually imposing an excise contrary to the Commonwealth Constitution. The High Court of Australia, however, decided in favour of the two states by holding that the duty they were collecting could not be termed 'excise'. The situation we have here is that terminology has become a debatable issue on the basis of which the Australian states' power to impose and collect a certain tax could be jeopardised or allowed. More importantly, a decision would be instrumental in another type of matters. In April 1996 charges were
laid by the New South Wales authorities against a group of people who were charged with a conspiracy to defraud the State, through evading payment of the 'franchise licensing fees', a term used by the NSW government to describe the duty paid on tobacco sales. The charge is a serious one and could carry a lengthy jail sentence. The defence counsel are now taking the matter to the High Court of Australia (listed for March 1997) to challenge the constitutionality of the 'franchise licensing fees' which, they are arguing, are nothing but 'excise' in disguise. The word 'excise' has become a central issue at a State versus Commonwealth level, and also at the criminal proceedings level. In Atlantic Smoke Shops Ltd v Conlon [1943] AC 550 at 564, it was described as 'a word of vague and somewhat ambiguous meaning', while in Philip Morris, Mason CJ and Deane J define it as 'a tax, however calculated, upon a step in the process of production, manufacture or distribution'. Being a tax, however, Johnson in the Dictionary of the English Language (1755) defines it as 'a hateful tax levied upon commodities, and adjudged not by the common judges of property, but wretches hired by those to whom excise is paid'.

The above discussion can really be reduced to saying 'if it is $x$ then it is allowed; if it is $y$ then it is not allowed', where $x$ and $y$ are two symbols, the meaning of which is known or can be determined only by the highest level of the judiciary. This is obviously not unlike the equation $y = k \cos h (x/k)$ where $x$, $y$, $h$ and $k$ are also symbols known only to those in the mathematical field of knowledge. It really makes no difference to the layperson whether the term is excise, duty, tax or licensing fee, because to that person such terms represent only amounts of money, taxes, and nothing else. It is to those knowledgeable in the field only that such
terms make a difference. And it is because of this knowledge that people are prepared to pay huge amounts of money to those knowledgeable people, the experts, to submit to the judges that a different interpretation of these terms should be applied.

To recap the argument in this section, one can say that the language of law and judges is a very specific and specialised type of language that has been shaped by practice and need. The need to be precise requires exercising a high level of care as well. Hence members of the judiciary and legal profession speak not only technically, but also carefully, in both choosing their words and stringing them together. (Cf. 4.2.)

2.5 What Constitutes a Legal Text - Legal Discourse

As stated, we have laws because of the need to regulate societies, protect life and property, and to punish offenders. It is obvious that under this short but broad definition a large number of statutes can be grouped. They are undoubtedly legal texts and constitute the main part of our discussion in this thesis. According to the above discussion (cf. 2.2), however, the types of documents that can be called legal are still numerous indeed. Apart from the statutes, there are their derivatives, including but not limited to the following:

In the criminal law
- search warrants,
- injunctions or restraining orders,
- charge sheets,
- bail undertaking and recognisance documents,
- subpoenas and summonses,
- applications made under the crime and other acts,
- the various court orders made under the above acts, etc.

In the civil jurisdiction
- court orders and applications made under the civil status laws (such as the Family Law of Australia, the various business and corporate laws, etc);
- powers of attorney;
- lease agreements;
- contracts of sale or provision of goods and services;
- contracts made for specific purposes, such as insurance, employment, travel, etc.

The majority of these documents (other than the statutes themselves) usually contain quotations from a particular act (or acts), together with some material that can be broadly described as "narrative". This is inevitable in some legal documents (charge sheets and contracts, for instance). It is for the sake of avoiding big chunks of non-legal material that other documents that can be otherwise legitimately classified as legal have been excluded from this definition. Examples of these are: facts sheets, statements, statutory declarations, transcripts of evidence, and so forth. In this respect, the definition is faulty according to the law; for our purposes, however, it will be essential for the sake of minimising 'interference' from non-legal material.

The above definition is not very different from that given by Crystal and
Davy: "The law includes many different activities, from the drawing up of statutes to the contracting of agreements between individuals, all of which need to be recorded in a written form" (1969; p. 193).

Commenting on this definition, Emery (1989; p. 2) made the point that there were other written instruments which self-evidently belong to the legal domain, such as court judgements, police reports and proce-verbals. He explained that

"the latter are less 'predictable' in terms of both subject-matter and logical structure than the former, which, in addition to statutes and contracts, include constitutions and charters, treaties, protocols and accords, and by-laws and regulations" (Emery 1989; p. 2).

Thus by a process of inclusion and elimination, Emery tends to emphasise the importance of the statutes and their derivatives for the purpose of studying legal translation, and at the same time to play down the relevance of other documents although they "self-evidently belong to the legal domain". The international treaties and agreements are also considered part of our discussion, as they are contracts at a global level.

However, legal texts are not only those of a statutory or formulary nature. We have to utilise our knowledge of the legal discourse to judge which texts are legal and which are not. It helps to note that there is not only one legal discourse. Maley (1994; p. 13) stated that there was not one legal discourse but a set of related discourses, which she categorised as judicial discourse, the courtroom discourse, the language of the legal documents and the discourse of legal consultation (Cf. 1.2).
At the outset we ought to exclude the courtroom discourse and discourse of legal consultation, not because they are less important than the other types, but rather because they are more attractive subjects for a research into interpreting rather than translating. The judicial discourse, on the other hand, has to be included in this discussion although the judicial decisions are not only written, but spoken too. The difference, as will be discussed later, is that these decisions are written to be spoken and to be confirmed in writing, that is 'collected in reports'. In this case, the tenor of discourse is the decisive factor: these reports are written by the judiciary for the judiciary and the legal profession and are, therefore, decidedly legal.

It is argued that translating non-documentary, persuasive texts of legal discourse, mainly judicial decisions, usually poses a tougher challenge even to the most experienced translator. The difficulty in this case arises mainly from the special features of persuasive texts, which are made more complex through the use of legal terminology.

In a nutshell, therefore, our main concern is the statutes and their derivatives, and judicial decisions; accordingly they will be the texts which will be examined in this thesis. It is obvious, however, that the full text of any judicial decision or judgment, let alone any act cannot be reproduced here for practical reasons. Instead, in the case of statutes, references will be made to particular acts or other legal documents, and short quotations will be given as examples. When a whole act has been the subject of an inquiry as part of this thesis, the full title of the act will
be provided together with the results of the inquiry. In the case of judicial decisions, excerpts will be provided for discussion.

2.5 Legal Documents versus Legal Texts

So far, I have been using the terms 'legal texts' and 'legal documents' interchangeably. The fact, however, is that each refers to a more specific thing. A document—which is a non-term in linguistics—should be understood to refer to all the written or illustrated material contained on a piece of paper or in a big volume, which deals with a particular topic. According to this rudimentary, but nevertheless valid definition an act can be considered one document. It is not unusual, however, that a portion of a document (in this case one part, chapter, or one provision of an act) is identified as a document. In most cases these days, a page or several pages tendered in court for any reason are referred to as a document. For our purposes, however, a document can contain one or—in many cases—more than one text. I have earlier quoted Halliday's definition of a text, namely "that it is language that is functional" (Cf. 2.1). According to this definition, the road sign 'STOP' is a text, because it does some job in some context. The sign is erected on the road for a specific purpose: to ensure the safety of the driver and other road users. But it is also erected there as a result of some directive issued by a certain authority for the specific purpose stated. Furthermore, a driver who approaches this sign will not disobey it not only for his safety as well as that of other road users, but also because he (or she) is aware that it is a legal requirement, that disobeying it is not allowed by law, and that ignoring it may result in penalties regardless of the consequences.
The above example ultimately leads us to say that the word (or rather text) STOP has to be understood in terms of its environment: what has preceded it and what might follow it. The driver who approaches the sign automatically thinks of the regulations which caused it to be erected and of the consequences (penalties, injuries) in case of violations. STOP in this case cannot be taken in isolation; its context is the determining factor in making it and its implications better understood by drivers. Besides, given that it requires us to do something (stop) together with the understanding that a penalty may be imposed in case of breaching it, the text is decidedly of a legal nature. The legal 'flavour' of this text is best seen through its intertextuality, as it has to be understood in terms of its cause and possible effects, both of which are covered in other texts.

The distinction made between legal documents and legal texts is important for this research, as it allows us to quote small parts (not necessarily words as in the extreme example quoted), that is texts, rather than lengthy documents which could mean a lot of repetition and irrelevant material.

Another point is that a legal document does not necessarily always contain a legal text. Let us have a look at the text of a facts sheet, which is considered a legal document as already stated.

Text 2.1 "About 6:35 pm on Tuesday 18 September 1992, Police from the Surry Hills Station were conducting an undercover operation. As a result, Police went to 77 Throne Street, East Sydney, and whilst in those premises the defendant was seen to throw a small, clear plastic bag containing a white powder out of the window of the
master bedroom. The defendant was arrested and conveyed to Surry Hills Police Station where he was interviewed and charged with supply a prohibited drug. Total weight of drug: 12.3g. Approximate value of drug: $4000"

This text can be described as purely narrative. The language does not belong to a special variety of the type referred to by Sager. It is rather simple, straightforward and follows a very direct chronological order. Even its content of legal terms is minimal. Yet, it is considered a legal document, mainly because of the format itself (which does not transpire in the quotation) and due to the role it plays in the prosecution case. Legal documents in this sense will, therefore, not be considered in this study. When mention is made of any, the reference will be rather to the fixed text that precedes or follows the narrative text, that is the formularies, rather than the details.

2.7 Cohesion of Legal Texts

In writing any text the main task may be to argue, or it may be to describe, or classify, or summarise, or analyse, or compare and contrast, or it may be to narrate (Style Manual 1992; p. 5). Furthermore, topics of similar interest and importance should usually receive similar emphasis by the writer. Then there is the linking material which involves writing transitional paragraphs or sentences or words, to link ideas, that is to create a cohesive text. The ideal unified paragraph in expository writing is one in which all sentences relate to one purpose. The central idea is normally stated in a single sentence, which is the case in expository writing, although in other types of writing it may be the last. All these things are utilised to establish and maintain cohesion across the text.
The Style Manual further lists several methods which writers follow to organise their paragraphs:

"• working from the general to the particular;
• working from the particular to the general;
• alternating the order of general and particular, or pro and con;
• following the order of time;
• following the order of space;
• building up to a climax" (1992; p.6).

The above quotation is important because it describes the methods recommended for the Commonwealth public servants who have the task of preparing the various government documents, especially that it constitutes a background where comparison with the methods followed in drafting legal texts will become more meaningful.

However, to discuss and compare the elements of cohesion in legal and non-legal texts we have to turn to Halliday once more. To him cohesion is a non-structural resource for discourse (1985; p. 288) .

"...a very wide range of relationships is encoded through the clause complex. But in order to construct discourse we need to be able to establish additional relations within the text, relations that may involve elements of any extent, both larger and smaller than clauses, from single words to lengthy passages of text; and that may hold across gaps of any extent, both within the clause and beyond it, without regard to the nature of whatever intervenes." (Halliday
Beaugrande (1981), on the other hand, makes cohesion one of seven standards which should be satisfied for the production of a text rather than a non-text.

"A text will be defined as a communicative ice-rink which meets seven standards of textuality. If any of these standards is not considered to have been satisfied, the text will not be communicative. Hence, non-communicative texts are treated as non-texts." (Beaugrande 1981; p. 3)

These standards are: cohesion, coherence, intentionality, acceptability, informativity, situationality and intertextuality. Beaugrande explains that coherence concerns the ways in which the components of the textual world are mutually accessible and relevant, cohesion is one of the ways in which components of the surface text are mutually connected within a sequence, primarily concerned with grammar (1981; pp. 3-4). However, for the time being, we will not be concerned with the grammatical cohesive devices. I shall go back to the consensus so far seen in so far as cohesion is concerned, namely the way it is established through the use of certain lexical items. In particular, I shall consider the cohesive elements of elaboration (such as 'moreover' and 'rather'), enhancement (for example 'thus' and 'as') and extension ('instead', 'however', etc.). These were grouped by Halliday (1985) under the term 'conjunctions', which he described as clauses or clause complexes or some longer stretches of semantic relations. These are usually of two kinds: conjunctions that link sentence to sentence, and those that link paragraph to paragraph.
It is appropriate at this stage to see to what extent these cohesive elements or ties are utilised in legal texts. For this exercise, I have used four complete legal texts: The NSW Crimes Act, 1900; The NSW Bail Act, 1978; The NSW Drug Trafficking (Civil Proceedings) Act, 1990; and the NSW Drug Misuse and Trafficking Act, 1985. A computer assisted research has been conducted to measure the use of selected conjunctions. Table 2.1 lists the results to enable comparison with the total number of words of each of the Acts quoted (which will be identified in the Table as A, B, C and D respectively.

<table>
<thead>
<tr>
<th>Conjunction</th>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>Total number of ties</th>
</tr>
</thead>
<tbody>
<tr>
<td>however</td>
<td>8</td>
<td>8</td>
<td>0</td>
<td>1</td>
<td>17</td>
</tr>
<tr>
<td>in addition</td>
<td>12</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>14</td>
</tr>
<tr>
<td>otherwise</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>on the other hand</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>indeed</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>accordingly</td>
<td>0</td>
<td>4</td>
<td>0</td>
<td>0</td>
<td>4</td>
</tr>
<tr>
<td>in spite of</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>in fact</td>
<td>1</td>
<td>4</td>
<td>0</td>
<td>0</td>
<td>5</td>
</tr>
<tr>
<td>moreover</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>at last</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>furthermore</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>consequently</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>in the first place</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>thus</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>secondly</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>for example</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>finally</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>for instance</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>as a result of</td>
<td>1</td>
<td>1</td>
<td>3</td>
<td>0</td>
<td>5</td>
</tr>
<tr>
<td>then</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>nevertheless</td>
<td>3</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>5</td>
</tr>
<tr>
<td>likewise</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

**TOTAL**

|              | 27 | 20 | 3 | 2 | 52 |
The table below shows that there is one cohesive tie for each 2,903 words of legal text.

<table>
<thead>
<tr>
<th>Text</th>
<th>Number of words</th>
<th>Number of conjunctions</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>107,757</td>
<td>27</td>
</tr>
<tr>
<td>B</td>
<td>13,997</td>
<td>20</td>
</tr>
<tr>
<td>C</td>
<td>16,473</td>
<td>3</td>
</tr>
<tr>
<td>D</td>
<td>12,761</td>
<td>2</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>150,988</strong></td>
<td><strong>52</strong></td>
</tr>
</tbody>
</table>

The sample is appropriate in the sense that it constitutes the core of what is considered legal texts. There may be an argument to the effect that the samples may not be fully representative of legal texts as a genre, especially that they are all taken from one state in Australia. It is admitted that this could be a valid argument; the above numerical evidence, however, is overwhelmingly convincing. Allowing for variances and different legislatures in Australia and other English speaking countries, it is strongly believed that the result is unlikely to change significantly.

It is pointless to conduct a similar exercise for an ordinary - that is non-legal, expository- text. It is apparent that such ties do exist abundantly in most such texts. As a matter of fact the lack of them in expository texts would create what Beaugrande terms a non-text. The logical question to be asked is: does the scarce occurrence of cohesive ties of this nature make legal texts less cohesive? And if the answer is no, how then do they establish cohesion?

### 2.8 Cohesive Devices and Semantic Representations

Hasan explains another class of cohesive elements, which she calls

2.8.1 Co-reference

Sometimes a text is made cohesive through the use of personal, demonstrative and possessive pronouns. Pronominals constitute a small but very important proportion of the lexical inventory of any language. These pronominals are referred to as co-referential cohesive devices, simply because they are used to refer to identical classes of things, processes or circumstances.

It can be stated at this point that some languages rely more heavily on pronominals than others. Arabic texts, for instance, often contain more pronominals than what we ordinarily find in English. Furthermore, the number of such pronominals in English legal texts is often less than that in non-legal texts. In many legal texts more emphasis is on repeating the noun for the sake of precision. The inferences that can be made are:

1. Arabic texts are, generally speaking, more explicitly cohesive than English texts through the use of pronominals. The more frequent use of pronominals as cohesive elements in Arabic legal texts is due to their fully inflected nature for number and gender. Besides the singular and plural there is also a dual number. Arabic pronominals thus acquire a greater referential value than their English counterparts.

2. English legal texts are, generally speaking, more explicitly
cohesive than English non-legal texts through the frequent use of pronominals.

Let us consider, as an example, a paragraph chosen at random from the NSW Bail Act 1978:

Text 2.2 "66. (1) Where a police officer contravenes or fails to comply with a provision of this Act that is applicable to him, the contravention or failure is not punishable as an offence (whether under this Act or otherwise) unless a penalty is expressly provided by this Act in respect of the contravention or failure."

There are three demonstratives of the same type and one dative pronominal, that is one pronominal to every 13 words of text. The demonstratives are arguably redundant in English as capitalisation in 'Act' should suffice to create precision. The definite article 'the' is another lexeme used as a cohesive device. Its use, however, is not limited to legal texts; and there is no evidence to suggest that it is more widely used in legal than non-legal texts. Accordingly, it is not counted as a cohesive device of benefit to us in this study.

It should be remembered that these items become cohesive elements only because they have a cohesive function in the text - by referring to, and thus becoming capable of being interpreted in terms of their relation to, some other elements in the same passage. Accordingly, not all pronominals are of a cohesive nature. The existential 'it' cannot be considered a co-referential cohesive device in the sentence-front phrases 'It suffices to say...', 'It can be stated...' and so forth. The existential
'it" can be used to refer to any part of the text, a phenomenon which is called 'extended reference' by Halliday and Hasan (1976; p. 52). It is a very effective cohesive device of a type that is commonly used in non-legal texts, but which is almost non-existent in legal texts.

The repetitive use -that is recurrence- of the same class of cohesive devices of a co-referential nature ('this' in Text 2.2) suggests that, when writing legal texts, there is an urge (even an obsession) to eliminate all possibility of misunderstanding. It can be argued that the elaborate use of pronominals in this genre as discussed is a by-product of a deep desire and long tradition to maintain the highest level of accuracy and eliminate ambiguity.

2.8.2 Co-classification

Contrary to the co-referential devices of cohesion that are realised by pronominals and demonstratives, the co-classification devices are realised by substitution and ellipsis. Hasan (Halliday & Hasan 1985, p. 74) makes the point that such a statement describes typical but not all cases, as either of the co-referential or co-classificatory devices "can realise either of the relations, but it is more typical for reference type devices to signify co-referentiality and for substitution and ellipsis to signify the relation of co-classification".

Ellipsis is defined as the "omission (for reason of economy) of linguistic items whose sense is recoverable from context" (Hatim and Mason 1990; p. 240). In the sentence "I do my washing and my room-mate does his", the pronoun 'his' is the elliptical form of 'his washing'.

Page 59
In everyday contacts as well as in many English text types ellipsis of anaphoric nature similar to the example given above abound. They are, however, not as common as in other languages such as Arabic, for instance. According to Hatim and Mason (1990; p. 201) such anaphoric references are devices that are subject to the restrictions on syntactic combinations in particular languages. They make the point that

"languages in which nouns are marked for gender permit a greater density of pronominal reference than those such as English which are restricted to the single pronoun it for reference to all inanimate nouns" (Hatim & Mason 1990; p. 201).

This last remark is very important, as we shall see later, for drawing a comparison between English and Arabic legal texts and the problems - or rather advantages- involved in translating from English into Arabic. It suffices to say at this point that anaphoric ellipsis is very scarce in English legal texts. The NSW De-facto Relationship Act 1984 (10 086 words) was investigated for this purpose and has been found to contain no such cohesive devices.

Anaphora, however, represents only one type of ellipsis. The second type, cataphora, which is "the use of a linguistic item to refer forward to subsequent elements in a text" (Hatim & Mason 1990; p. 239) has also been researched and found to be a very common feature of English legal texts. Consider the following examples:

Text 2.3 "14 CI(b) in the case of a statement wholly or in part reproducing or derived from information from one or
more devices, the reliability of the device or devices..."
( NSW Evidence Act 1989)

Text 2.4 "The offer made herein by the Renter shall be deemed to have been accepted by the Company upon the installation or delivery of the goods in or to the premises described in the Schedule."
(Appliance Rental Agreement, Appliance City Rentals)

Text 2.5 "The Organization shall ... create new and develop concepts and approaches, in respect of industrial development."
(UNIDO Constitution. 3. Quoted by Emery in Babel 1989; 35:1.)

In the first example we have four possible extensions: wholly reproducing from information, in part reproducing from information, wholly derived from information and in part derived from information. These will become eight possible extensions when we consider that this information has been taken from one device or from several devices. But more importantly here is the nature of the cataphoric - or forward - reference, which makes this textual compaction possible. Similar analyses can be made for the other two examples.

Emery notes that ellipsis of a cataphoric type is a factor which may lead to less repetition in English legal texts (1989; p. 4), as we have seen in the above examples. Generally speaking, however, English legal texts are notoriously repetitious, a phenomenon which according to Crystal and Davy (1969; P.202) leads to a reduction in anaphoric links between sentences. Here too, the main motivation is to achieve exactness of reference.
2.8.3 Recurrence

Lexical repetition is abundant in English legal texts. At times it appears that repetitions are forced into the text; stylistic aesthetics are sacrificed for the sake of exactness of meaning. Let us consider the following text, which is a clause taken from a Rental Agreement - 'Terms and Conditions:

Text 2.6 "The Renter agrees to take the said goods upon rent for the initial term stated in the Schedule, provided that if the Renter shall have given the Company not less than seven (7) days before the expiration of the initial term notice of termination of the renting at the expiration of the initial term, then the renting shall terminate on the expiration of the initial term."

Unlike Text 2.2, where recurrence involves a noun and its demonstrative "this Act", in this clause a string of lexical items, "the expiration of the initial term", has been repeated three times. The point to make here is that the text could have been re-written with less repetitions and without any loss of meaning. The writer of the text, however, decided not to do so because of a deeply rooted commitment to clarity, which is based upon a long history of claims that have succeeded only due to the existence of some loopholes in the previous rental agreements of this nature. Of note is the complete absence of pronouns of any sort in this text. The motivation here, again, is exactness of meaning: 'it' has not been used for the 'Company' because it can be interpreted - or misinterpreted- to mean the Renter as well. It can be further said that where a legal text of this nature, where obligations of the parties to a contract are elaborated upon, does rely more on pronouns and ellipsis and less on cataphoric links and recurrence one could be pardoned to think that the writer is either too trusting or inexperienced in legal

Page 62
writing, and that sooner or later experience will convince the issuing party that it would be in its interest to have the text amended for the reasons stated above.

2.8.4 Blend Words

Another element of cohesion heavily relied upon in all English legal texts is the elaborate use of blend, or portmanteau, words where two meanings are packed into one word. The aim is to ensure precision of reference for the reasons outlined in 2.5.3 above.

Text 2.8 "It is hereby agreed that, notwithstanding anything to the contrary that may be contained in the annexures hereto, nothing provided hereinbelow shall exempt the Contractor or the agents thereof from public liability that arises from the Contractor's failure to comply with the Public Safety Clauses provided for hereinbefore ..."

(A clause in Aramco's service contracts, 1975.)

It is through precise reference to the whole legal text or any of its parts that textual cohesion is strengthened in English legal texts. All the blend words italicised serve this purpose. "Thereof" in this text refers to the Contractor rather than the Contract or the clause itself, and therefore does not strictly speaking serve as a textual cohesive tie in this case. Emery notes that "thereof has the function of personal reference to the parties involved in the contract" (Emery 1989, in Babel Vol 35, No 1, p. 9). This adverbial, however, is also used for reference to inanimates as well, particularly to any other document that does not constitute part or annexure to the subject text.

2.8.5 Articulation and Numbering

Page 63
A common feature of legal texts is their rigid articulation and numbering system. Constitutions and acts, for instance, follow a strict method of dividing the document into chapters or parts, sections or divisions, paragraphs and sub-paragraphs, which may also be divided into smaller articulated provisions. Throughout the text references are clearly made to the various parts thus articulated, using the number or character allocated for each. The point to make here is that this elaborate referencing system within the one text is a strong cohesive feature shared by all English legal texts except some powers of attorney which may still follow the one-paragraph system.

In this respect, English legal texts are very different from non-technical, narrative texts and literary writing and closer to technical and scientific texts. No such referencing system can be found in a novel, for instance, or in a newspaper editorial; a basic numbering system, however, does exist in scientific research papers or any text prepared along similar lines (linguistics books, this thesis).

The above discussion shows that English legal texts are no less cohesive than non-legal texts, that they employ a larger variety of cohesive devices, and that the use of these devices is forced onto texts in large numbers at the expense of naturalness and stylistic smoothness. The following table summarises the various devices often used in legal and non-legal texts in English:
TABLE 2-2

<table>
<thead>
<tr>
<th>TYPE OF TEXT</th>
<th>LEGAL</th>
<th>NON-LEGAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transitionals and prepositionals</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Co-referential ties</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Co-classificational ties</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Anaphora</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>- Cataphora</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Recurrence</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>'It' as an extended reference</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Blend (portmanteau) words</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Articulation and numbering</td>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>

(X signifies 'exist').

2.9 Legal Texts and Conversational Maxims

In discussing 'felicity conditions', which refer to the conditions "which have to be fulfilled in order for an utterance to be successful in achieving its intended function", Hatim and Mason (1990; p. 62) give the example of court interpreters who should be aware of the conditions governing appropriate utterance in various judicial contexts. They, for instance, should understand the role assigned to every person in the court room: judge or magistrate, accused or defendant, witnesses, prosecutor, etc. Each of these can do particular things but not others. The law strictly describes the role of each, and consequently the type of utterances they can make. A judge, for instance, can adjourn the case, but a solicitor can apply to have it adjourned. In fact knowledge of the speech event, that is the participants, situation and style, give us a greater ability of expectancy. It follows that knowledge of the roles assigned to each
participant in the court room gives interpreters a prediction power and improves their performance. This same knowledge can have a similar effect on the performance of translators as well.

Developing such sense of expectancy will have to rely on some objective rules against which utterances, that is speech acts, of participants can be measured and evaluated. These rules can also be useful in contrasting utterances and establishing their real inference. Many studies have referred to the Gricean Maxims as an effective method that we, as text analysts, can employ to achieve a better understanding of the text, and consequently that we, as translators, can benefit from in producing a more accurate translation. Of note, however, is that Grice is not primarily concerned with written text. Baker (1992; pp. 224-225) explains that Grice "does not only restrict his comments to spoken exchanges, he restricts them to a very small sub-set of these - namely questions/answer sequence". Nevertheless, Baker admits that Grice's Maxims are still of benefit to translators, although their usefulness is on the basis that they "provide points of orientation rather than strict rules which have to be followed by language users" (Baker 1992; pp. 224-225). The Gricean Maxims are derived from the Co-operative Principle which, he posits, should be observed for a successful conversation to be maintained.

"Make your conversational contribution such as is required, at the stage at which it occurs, by the accepted purpose or direction of the talk exchange in which you are engaged." (Grice, 1975; p. 45)

Apart from the Co-operative Principle, Hatim and Mason summarise...
these Maxims as follows:

"...
2. Quantity: make your contribution as informative as (but not more informative than) is required.
3. Quality: do not say what you believe to be false, or that for which you lack adequate evidence.
4. Relation: be relevant.
5. Manner: be perspicuous, avoid obscurity of expression, avoid ambiguity, be brief, be orderly.

(Hatim and Mason 1990; p.62)

It should be stated at this point that the Maxims can be - and are - infringed for many reasons. In journalistic commentaries, for instance, the maxims of relation, manner and quality are often deliberately breached to achieve one of several objectives: mislead the readers to gain their support on false information (quality and manner); or amuse the readers or criticise a person, institution or policy by using irony (relation and manner). At this stage, it is important to analyse an English legal text for the purpose of determining the extent to which these Maxims are followed, or infringed, in such texts. The following is part of a judgment by the Court of Appeal in NSW in the case of Conwell v Tapfield and Another, May 12, 13; July 24, 1981.

Text 2.7 "Upon the first aspect of this question, namely whether it is proper to adduce evidence of a sound recording of a conversation, no challenge has been raised in the present appeal, and I entertain no doubt that a sound recording of a conversation is properly admissible in evidence. This has been recognised throughout all of the cases as reference to the judgment in R v Gaudion [1979] VR 57, discloses. It is the second aspect of the question, that is to say by what means can this be placed before the court, that has given rise to differing expressions of opinion.
In my view the question is to be answered by the application of the best evidence rule. What is the best evidence of the sounds entrapped in the record? It seems to me that there can be only one answer to this question, namely, the best evidence is the reproduction of those sounds as sounds when the record is played by appropriate sound reproducing equipment. Much of the confusion that has crept into the cases stems from the fact that normally it is the human voice that is recorded and, when reproduced, this is commonly done in writing. But if, say, the relevant evidence was a screech of tyres before a collision and that had been recorded, there would be no denying that the best method of placing this evidence before the court would be by playing the record. There is not the slightest difference in basic principle where the recorded sound is the human voice."

In relation to the Co-operative Principle, we can quickly make the comment that it has been adhered to closely throughout that part of the text. The comment is made on the basis that, despite the absence of another interlocutor, we can safely assume that the judge was engaged in a conversation between two entities, one being the judiciary as interpreters of the law and the other being the people of New South Wales through counsel for the appellant who had already put their reasons for the appeal. Furthermore, the judge was also making references to questions that had not been explicitly made by counsel but which he thought might arise later or should have been brought up in their appeal. He makes it clear that "no challenge has been raised in the present appeal", and yet he confirms that there is "no doubt that a sound recording of a conversation is properly admissible in evidence". There is no doubt, in this case, that the judge was making his "conversational
contribution such as required by the accepted purpose or direction of the
talk exchange in which [he was] engaged" (Grice 1975; p.45). The purpose
is to reach a fair, justifiable and valid interpretation of the law in a
matter that has been referred to him. The methodology he is using is one
that has been established and followed for centuries. Interestingly,
although the judgment does not indicate the presence of another speaker,
the judge himself poses questions which he then proceeds to answer.
These questions, of which only one appears in the passage quoted (in the
second paragraph), strengthens the valid assumption of the presence of
another speaker or speakers (counsel for the appellant and the
respondent, and the people of NSW).

A striking feature of all legal texts, including the quoted passage, is that
the quantity of information they contain is usually dictated or restricted
not by time or space or by fear of sounding repetitious, but rather by a
desire to explain beyond any reasonable possibility of misunderstanding
all the elements to be discussed or determined. Accordingly, Grice's
maxim of quantity does not seem to be strictly adhered to by writers of
legal texts. Law drafters, members of the legal profession and the
judiciary do not seem to be perturbed by making their contribution more
informative than is required in many cases. In the passage quoted, the
judge had to justify his judgment, and he does that through reference to
precedents and through a process of self-debating the issue using
established judicial reasoning. Since the judgment would have to serve
not only as a decision in the appeal being determined but also as a
precedent for similar cases or appeals that may be heard or lodged in
future, the judge would have to exhaust all possible arguments that could
possibly have been raised in this appeal or could be raised in similar future appeals. The maxim of quantity is obviously a victim of this process.

The law and the judicial system in any community are tightly organised; they are there to ensure that fairness is achieved and injustice is avoided. In courts, evidence is given on oath or affirmation, and members of the legal profession are bound to observe the highest level of honesty and integrity. It is for this reason that perjury is a criminal offence in all legal systems. It is also for this reason that there are strict rules of evidence which prohibit even asking witnesses leading questions unless certain conditions have been fulfilled first. In criminal cases in the Australian judicial system, for instance, the prosecutor cannot ask prosecution witnesses leading questions, while such leading questions are allowed to be asked by the defence counsel when cross examining the same prosecution witness. Leading questions may be asked only on the basis of instructions or information the lawyer had received from his client or from other witnesses who would be prepared to testify. Questions of the "I put it to you..." type are meant for this sort of questioning, and pose special difficulty to the court interpreters if they are not well aware of the correct legal procedures in court and of the rules of evidence.

Likewise, in the above passage the judge had collected all the relevant material to support his ruling, together with evidence from precedents as well as arguments which, he believed, satisfy logic and common sense and are applicable to the matter under consideration. In this sense, legal texts are supposed to be narration of a series of facts or correct
statements that are not made unless there is enough evidence to support them. Although Grice's quality maxim seems to be more applicable to oral exchange, in the case of legal texts it is adhered to almost without exception.

The extent to which the relation maxim is followed in legal texts can also be investigated using the above passage. Although it constitutes only a small part of a longer text, the passage serves to show that only relevant material is included. Again, this is true of legal texts which originate as writing or as verbal communication. An order or a judgment given by a judge is likely to be subject of an appeal if it contained material or evidence that is not relevant to the matter.

Likewise, in courts, questions directed by members of the legal profession as well as answers given by witnesses are usually objected to and struck off the record if they are not relevant. In fact, even a statement, argument or reference given by a magistrate or a judge can be objected to by counsel if such statement, argument or reference is not relevant.

It is in the maxim of manner that people sometimes disagree as to whether it is often followed in legal texts. Grice advises interlocutors to avoid obscurity of expression and ambiguity, and to be brief and orderly. Brevity is not a major concern for legal writers, as already explained in my discussion of the maxim of quantity, since the aim is not to save time or space but rather to ensure that the matter has been covered from all angles before a legal opinion is expressed. The orderliness of legal texts,
especially laws and the legal formularies, is an established fact through the elaborate use of lexical and extra-lexical features, including the organisation of the text into chapters, sections, paragraphs, sub-paragraphs and so forth. It is also evident through the logical or chronological arrangement of the ideas in the document. In the passage quoted, the neat reproduction of the judge's ideas is striking, but it is not uniquely so. In fact, it is this careful organisation that contributes also to a more important element in the maxim of manner, namely lucidity and avoidance of obscurity of expression. Some analysts and translators usually link the obscurity of expression to the existence of difficult, but not necessarily obscure, terms. They conclude that legal texts are usually obscure and, accordingly, more difficult to translate. Difficult, specialised terms, however, should be treated as a further element of lucidity rather than a cause of a perceived difficulty.

2.10 Register and Legal Texts
The question of register has been addressed by many linguists and translation theorists. Register is basically defined as a variety of language that a language user considers appropriate to a specific situation (Baker 1992; p.15). It is apparent that language users utilise a variety of registers to suit a variety of situations, and that the concept of a 'whole language' cannot be of much use for many linguistic purposes (Catford 1965). While it is recognised that the question of dialects is important when discussing register, the fact that we are dealing with written texts makes dialects irrelevant for our discussion. Even in the handing down of judgments in courts, members of the judiciary usually follow the 'standard' language, that is the dominant dialect of a particular country.
or a nation. The language of law is too formal to allow for regional or social dialects to interfere in the high level of understandability and clarity required. Despite the dialectal differences in the Arab countries, for instance, the spoken language of courts is decidedly the classical Arabic, but now more often the Modern Standard Arabic, which is the medium of communication understood by the majority of Arabic speakers regardless of the country or region they come from. I have chosen the example of the Arab countries due to the significant difference between the colloquial Arabic used in these countries, which is the language of verbal communication at many levels, and the classical or Modern Standard Arabic, which are normally the languages of writing. In this respect, there is a similarity between the situation of the law and courts in the Arab countries and in the English speaking countries. Colloquialisms are referred to as such, when used, to indicate that they are either quotations or used in deviation from normal practice.

The other dimension that affects register is that of situation, and in particular how the relation between the situation and language user affects the register. Following the model set by Halliday, I shall attempt to describe how register, or rather its three elements - field, mode and tenor of discourse - affect legal texts in English.

Field of discourse affects the language user's choice of linguistic items depending on what kind of action the language user is involved in apart from the immediate action of speaking or writing. Linguists agree that there is a difference between the field of discourse and the subject matter of any piece of writing. An act of parliament which controls the
importation, manufacturing and distribution of certain chemicals is actually about controlling, that is regulating, these things. This is a legal field of discourse, although the subject matter is chemicals and chemical processes, and possibly some importation aspects. Likewise, a decree announcing the appointment of a new department head or commissioner, or to establish a new department, is issued usually to declare and enforce. This is again a legal field of discourse although the subject matter would be about appointment of people and so forth. Since laws and court judgments concern themselves with almost all areas of human activity, we can say that the subject matter of legal texts is unlimited, yet the field of discourse is homogeneously legal.

**Mode of discourse** on the other hand refers to the role that the language is playing and the medium through which it is playing it. As already stated, legal texts usually regulate, declare, create responsibilities, prohibit or allow, sanction, censor, and so forth. This is usually done in writing, but sometimes orally as well. In fact, even judgments and orders made by magistrates and judges in courts have their origin in writing. An apprehended violence order or an eviction order usually follows a set format which the magistrate simply spells out with variation only to the personal details, dates and similar variables. It should be noted that such orders are then written down on the court papers. "Therefore, much legal writing is by no means spontaneous but is copied directly from 'form books', as they are called, in which established formulae are collected" (Crystal and Davy 1969; p.194). This means that the mode of discourse in such legal speech acts can be reduced to a formula, following Gregory and Carroll (1978; p. 47):
Apart from that, legal texts are written to be read as if overheard (to be read as if thought). Given their importance as regulatory and declaratory instruments, legal texts are used and acted upon only after they have been read and scrutinised. When Sir Francis Bacon (1561-1626) wrote 'Of Studies', he indicated that 'Studies serve for delight, for ornament and for ability.' It is the latter category of study that legal texts are used for. It is the category that has to be 'chewed and digested' in order to be understood and fully acted upon. The above formula also means that what is allowed in ordinary speech is usually not allowed in legal texts. The verbal apostrophe in 'he's' and 'I'm', for example, are not allowed in legal texts. Furthermore, specific writing conventions have to be adhered to in such texts, even if they had been first spoken (as in the case of orders and judgments). In referring to precedents, a judge may make references to an appeal heard by 'Judge Thorley' or 'Chief Justice Woods'. When this judgment is later printed, it will have 'Thorley J' and 'Woods CJ' instead. Such convention, however, should not be misinterpreted to mean that such abbreviations as 're' and 'asap' are also acceptable. The latter has developed by writers in general, especially in the commercial sector, for reasons of brevity and convenience. The former follows an old tradition that has developed over many years and has become part of a 'special language' used by the judiciary and legal profession. It has to be treated the same way as we treat the expressions 'your learned brother'
for 'the other magistrate or judge' or 'my learned friend' for 'the other solicitor or barrister' in court.

**Tenor of discourse** which refers to the relationship between the addressee and the addressee is also of major importance, given that the language people use varies depending on their interpersonal relationship, and "may be analysed in terms of basic distinctions such as polite-colloquial-intimate, on a scale of categories which range from formal to informal" (Hatim and Mason 1990; p. 50). The language of law is formal. This can be explained by the fact that the law is usually written by the highest authority in the country, the legislature or the judiciary. Since laws are written for application, one would assume that they should be couched in a language that is easy to understand by all. This is hardly the case, however. More often than not, laws are highly complex both in structure and terminology, or that is how they appear to be at least. Statutes and other legal texts have evolved over the centuries in a way that makes their true meaning accessible in many cases only to lawyers. 'Legalese' or 'legal jargon' is the result, which has meant that the special language of the law has effectively excluded everyone other than legal professionals from the realm of understanding them. From the section on the Mode of Discourse above, we know that legal texts aspire to achieve deference, avoid colloquialisms, and achieve their goal through a combination of textual features. There is also intertextuality, which is another element that both depends on and contributes to the sort of tenor that exists in these legal texts. Intertextuality refers to the ability of readers to connect what they read in this text with the contents of another text or texts. The point to make is that the ability of lawyers to
discover such connections, through their experience in the particular branch of law and familiarity with precedents, that makes them more equipped to understand legal texts. It can be even suggested that a solicitor's training in case law is a training in intertextuality. It is this situation also that makes a thorough understanding of such texts more difficult for the non-legally experienced readers. This leads us to make another point, namely that it is because of this knowledge that statutes and other legal texts in general are addressed to lawyers rather than the ordinary people. It is for the same reason that many legal documents are now re-written in what is referred to as 'plain English', following an effort to 'reform' the legal system.

Another factor that may have contributed to the high level of formality in legal texts is the fact that laws originated from religious doctrines and concepts (G Hull 1994; verbal notes). The word 'religious' here is used loosely to refer to any teachings or traditions that people considered sacred. We have clear evidence about the formality of the religious books of Islam, Christianity, Judaism and Buddhism. We have also evidence that priests have traditionally played an important role in the application of religious books as a source of judging people and legislating for them. Whilst it is true that the hold of religions on modern laws has waned, it is possible that the effect of religions has unconsciously continued.

Tenor of discourse is also responsible for the frequent use in legal texts of foreign words and expressions. In England, Latin continued to be the language of law for a few centuries even after the year 1400, when the King's English became a standard language following the Middle English
phase, when all the dialects of England seemed to be as good as each other, and all of them had literatures. French has also a niche in the English legal texts, and to-date some of these texts are still studded with Latin and French words and terms. Lawyers and members of the judiciary are usually more aware of the meaning of these terms (also sometimes whole concepts) in the Roman Law and of their application in the Australian and other common law legal system countries. It is this knowledge that removes the restriction to use these foreign terms, knowing that a peer would have no difficulty understanding the meaning packed in what a lay person would not be able to understand without research or advice.

Having studied the main features and characteristic properties of the English legal texts, it is imperative that a comparative study be mounted between Arabic and English legal texts. This is the topic of the next chapter.
CHAPTER THREE

ARABIC AND ENGLISH LEGAL TEXTS: COMPARISON

In this Chapter I shall attempt to provide a linguistic comparison between Arabic and English legal texts. In the first part I shall deal with the macro-structure of these texts, pointing out similarities and differences, while in the second part the aim will be to identify more language specific matters.

3.1 Structural organisation of legal texts

3.1.1 Macro-structure

As in any non-fiction piece of writing, legal texts follow a standard skeletal plan. Due to the large number of texts that can be referred to as legal, it would be time consuming and perhaps repetitious to deal with all types to investigate their structure. I shall focus on the problem areas that translators, and indeed all readers, may encounter with legal texts. The features of layout in English legal texts constitute one of the problem areas expounded by Crystal and Davy (1969; p. 213). The problem lies in the fact that the significance of some layout features may not be readily understood by the reader. It is perhaps appropriate at this stage to explain exactly what is meant by 'layout':

"Layout refers to the sketch or plan of the text's physical appearance. Basically, this relates to paragraphing, indentation, and graphetic choices, viz., capitalizing, italicizing, underlining and bold-typing. On the other hand, these features are sometimes governed by language-specific constraints such as the standards of paragraphing
and capitalizing in English."
(Farqhal and Shunnaq 1992; pp. 205-206)

Whether it is a whole statute, a decree, a court order, an international treaty or a sales contract, there is always a preamble which sets out the reason why the document should exist. There may be one or more reasons, and these are often listed in a point form starting with 'whereas', 'further to', 'subject to' or 'pursuant to' or similar terms. Sometimes these reasons may be in the form of a list of non-finite clauses which start with 'noting that...', 'acknowledging that...' and so forth. All these points have to be treated as one whole paragraph connected with the initial noun phrase in the preamble. The meaning becomes complete only when the verb appears after these points, often preceded by a portmanteau type word such as 'therefore', 'hereby' and so on. What follows is usually a list of obligations or things to be done by either party to the contract or agreement, or by everyone if the document is a statute or an order. The layout of some legal documents could also take a simpler form, with the names of the parties stated, together with the details of the property or service subject of the document, followed by the list of obligations and things as stated.

Maley (1994) sums up the physical organisation of acts as follows:

"The actual configuration of elements, both obligatory and optional, may vary ... and certain types of statute have a specific generic structure. However, some generalisations across the different types and jurisdictions can be made. There is first pre-material, giving long title, year and number, short title, preamble and an enacting formula. The body of the statute follows, divided into numbered sections, subsections and paragraphs. Larger units may be
used; for example, a definitions part or division, followed by a substantive part and a procedural part. Schedules are appended as end material. Definitions may occur here as a schedule, if they do not constitute a separate part in the body of the Act. Some elements are optional, e.g. short title and preamble, division into parts, but the sequence of elements is invariable". (Maley 1994; p. 19)

Indentation in the legal texts is very important and could easily lead to problems in understanding. This is due to the fact that a paragraph might lead to two or more possibilities, that is sub-paragraphs, each of which might in turn have two or more other possibilities and so forth. Capitalisation is another area which could cause problems: example 'according to the law' and 'according to the Law'. The first refers to the nature of law in general, while the second refers to the Law under consideration.

A comparison between several Australian (English) and Lebanese and Egyptian (Arabic) statutes shows that the description given above by Maley applies across all these statutes. While this practice is particularly apparent in the enabling decrees in the case of Arabic statutes, Maley (1992; p. 24) states that the numbered and lettered paragraphs constitute a typical drafting practice also in all common law countries. This feature is more prominent in other legal documents, namely treaties and the like, in both English and Arabic, although the latter may have been so as a result of the influence of translations of the former. Accordingly, a professional translator who has been exposed to statutes of the English and Arabic systems should normally have no difficulty in providing meaningful and well structured translations in either direction. Undergraduate translation students at the University of Western Sydney
who have been given relevant sections of various Australian laws for translation into Arabic have in fact provided adequate translations despite their limited knowledge of the statutes in Australia and the Arab countries.

Results from a similar exercise reported by Farghal and Shunnaq (1992), however, are not as encouraging. In their study, 13 postgraduate translation students at a Jordanian university who were asked to translate a United Nations legal text seem to have committed mistakes stemming from their failure to understand the significance of the skeletal structure of the document, despite their free access to reference books during the test. Farghal and Shunnaq explain, obviously correctly, that layout features can be of significance in the text, i.e. their employment affects the meaning of the text and, consequently, they are relevant to the process of translating.

"This being the case, the translator should be aware of the employment of significant layout feature in technical texts in general and legal texts in particular. The failure to do so may affect both the cohesion and coherence of the text." (1992; p. 206)

The UN text subject of Farghal and Shunnaq's study is in fact one sentence that is 300 words long. Perhaps it is appropriate to reproduce here a short passage which seems to have presented difficulty to students in their study.

**Text 3.1**

"The General Assembly,
Recalling its resolution 35/206N of 16 December 1980,
Gravely concerned about the inhuman oppression of millions of women and children under apartheid,
Commending . . .
Noting the . . .
1. Invites all Governments and . . .
2. Encourages . . .

In the study 10 out of the 13 examinees have failed to appreciate the significance of the layout, and also used many full-stops in their translations, thus interrupting the structural and semantic flow of the text. Accordingly, rather than making the first unnumbered points premises for the resolution itself, some of the translation examinees have transformed them into a statement. In so doing, the aim of the text has collapsed, because the premises have become resolutions, and accordingly the resolutions themselves, which follow the premises in the original English text, would be lacking in supporting material. Following is a sample of the examinees' translations of the first part of the document (3.1.A) followed by an accurate translation as provided by Farghal and Shunnaq (3.1.B).

**Text 3.1.A**

الجمعية العامة تشير إلى قرارها رقم 25/1980 الصادر في كانون أول 1980. كما تعبر عن قلقها الشديد تجاه الإضطهاد الإنساني للذكور، النساء والأطفال تحت نظام الفصل العنصري...

[Back translation - The General Assembly refers to its resolution No 35/206N of December 1980. It also expresses its grave concern about the inhuman oppression of women and children beneath apartheid, ...]

**Text 3.1.B**

ان الجمعية العامة,...
It appears that examinees who were the subjects of this study lacked more than just an appreciation of the significance of the layout in this text. The word 'under' which has been literally translated into Arabic to mean 'beneath' signifies a more acute problem that has to do with their translating competency in general. The Arabic equivalents of 'under' do not have the metaphoric sense conveyed by the English word, hence the meaningless 'beneath apartheid' in the above quotation. It is maintained that layout of English legal texts is a very significant feature, and in many cases constitutes an essential framework for understandability. Layout features, however, should not pose any level of difficulty that cannot be solved by properly trained translators.

3.1.2. Sentence length
Another feature of English legal texts is the extraordinary length of sentences, be it in statutes or other legal documents, including international treaties (and the UN resolutions like the one quoted in 3.1.1. above). In the past English statutes were even more awkward - each section was presented as a continuous and usually unpunctuated single sentence, unlike the present statutes with the elaborate use of other punctuation forms within the one sentence. According to Renton (1975)
the retention of the one sentence section is directly traceable to institutional methods of interpretation, since lawyers believe that it is easier to construe a single sentence than a series of sentences (elaborated by Maley 1994; p. 25). There is, therefore, less potential for uncertainty.

The length of the sentence quoted by Farghal and Shunnaq in the preceding section is not unusual in English legal documents. Bhatia (1994; p. 141) gives another example, Section 14A(1) of the Income Tax Act, 1984, Singapore, which is 271 words in length, and which compares with the average 27.6 word-long sentence in written scientific English as calculated by Barber (1962).

Currently produced English legal texts still seem to alternate between the long sentence without punctuations and the more normally punctuated sentence. This has been found to be the case even in powers of attorney. There is, however, a historical background for the non-use of punctuation marks in English statutes, a practice that was quickly followed by drafters of other legal instruments. Sir Peter Benson Maxwell, a British ex-chief justice of the Straits Settlements, explains that bills, at one stage of their production, were engrossed without punctuation on parchment,

"but as neither the marginal notes nor the punctuation appeared on the roll, they formed no part of the Act. This practice was discontinued in 1849, since which time the record of the statutes is a copy printed on vellum by the Queen's printer; and both marginal notes and punctuation now appear on the rolls of Parliament".
(Maxwell 1883; pp. 51-52).

The above examples should not be treated as extremes. A quick glance at
the Acts quoted earlier in 2.4 reveals many sections that are between 100 and 200 words long. To investigate this feature in Arabic statutes, I have conducted a study on the Lebanese Act of Civil Proceedings. This has shown a more liberal use of full-stops across sections and paragraphs. It has also been found that where the lettered or numbered sub-paragraphs in the English texts usually end in commas or semi-colons, depending on the content and structure of each such sub-paragraph, the Arabic sub-paragraphs invariably ended with a full stop. Thus Paragraph 93 of the Lebanese Act of Civil Proceedings reads as follows:

Text 3.2.A

مادة 93- تنظر محكمة الاستئناف في الطعن بالأحكام والقرارات القابلة للإستئناف والصادرة ضمن منطقتها:
1- عن محكمة الدرجة الأولى في القضايا المدنية والتجارية.
2- عن دوائر التنفيذ واللجان والمجالس الخاصة في الأحوال التي ينص عليها القانون.

A possible translation of the quoted section is:

Text 3.2.B

"Article 93. The Court of Appeal shall hear appeals against appealable orders and judgments originating within its jurisdiction:
1) From Courts of First Instance in civil and commercial matters.
2) From executive departments and special committees and boards in matters stipulated by the Act."

Apart from the full-stops at the end of the two numbered clauses, of note is that the preposition 'from' in the quoted paragraph was left to occur at the beginning of each numbered clause rather than being moved up to the end of the opening sentence, that is immediately after 'jurisdiction'.
The positioning of the first full stop in Text 3.2.B, that is in Point 1) creates a flaw in the linguistic and legal sense. This leads to a legal problem, because it would then mean that the Court of Appeal shall hear appeals from the Courts of First Instance in civil and commercial matters, only. The full-stop is thus positioned prematurely, and indeed uselessly, but most probably unintentionally. One may be pardoned to think that punctuation is probably not as relevant in Arabic as it is in English. The truth, however, lies elsewhere.

3.1.3 Punctuation as a matter of interpretation

In both English and Arabic legal environments the judiciary is referred to as the highest authority. Yet it seems there are significant differences. In common law countries judges resort to linguistic argumentation in what appears to be an effort to find a seemingly scientific and neutral justification for difficult decisions (Solan 1993; p. 11). Solan explains that in many instances the linguistic argumentation either falls hopelessly flat or is seen as window dressing. Nevertheless, courts and statutes in common law countries cannot function effectively without judges capable of successfully and convincingly interpreting these statutes. When a judge in Australia, for instance, declares to the members of the jury that they are the judges of the facts while he or she is the judge of the law, they simply mean that they are in charge of interpreting the law, directly linguistically and indirectly based on precedents. A comma or a full-stop may and do decide cases. When a judge gives a decision or order verbally, they will have already exhausted all possible counter-arguments that might later be put forward by an appeal counsel. The argument already referred to in Text 2.7 above is a case in point.
"In giving judgment, a judge could, of course, simply declare the principle of law which is applicable to the instant case. The principle of law is called the 'ration decidendi' or reason for deciding. But common law judges do not discharge their obligations so simply. Not only do they declare the law, they make `explicit the reasoning processes which have led them to that decision, the cases they have considered, the analogies they have considered and rejected - in short, their individual 'fullest examination'."
(Maley 1994; p. 43)

While statutes in common law countries have to be studied carefully and interpreted by judges to make sure that the flexibility and specificity of sections of the act have been fully considered, continental judges (as well as those in the Arab countries whose legal systems have been shaped to a large extent on the European models) are, according to Friedman (1975; p. 223) likely to be officials and bureaucrats, and as such their decision-making is correspondingly restrained and frequently rigid in style and format. For continental judges it suffices to quote the number of the section under which a particular offence fits without much ado about analysis of the text of the law itself. Friedman's statement appears to be too harshly set against judges outside the common law countries, for they too do enjoy a certain latitude of freedom in interpreting statutes. The Lebanese Act of Civil Proceedings, for instance, stipulates in Article 4 that

"A judge may not refrain from making judgments on the pretext of the vagueness or lack of provision....When a certain provision is ambiguous a judge shall interpret it in line with its intended purpose and such that harmony between that provision and the other provisions is assured".
The above and similar provisions nevertheless fail to give judges in the Arabic and similar legal environments the same interpreting power afforded to justices in common law countries. Accordingly, in the former situation the question of full-stops instead of semi-colons, for instance, should not mean a lot, not because of the judges' incompetence or failure in any way, but simply because their limited role does not allow or require them to conduct comprehensive analysis undertaken by their counterparts in the common law countries, where judges can also assume the role of linguists in interpreting the law.

3.1.4 The nature of punctuation in Arabic

The situation of the linkage system in Arabic can still be said to be chaotic, notwithstanding the many studies that have dealt with this topic. Kharma (1985) states that all classical Arabic writings are devoid of punctuation, while Shouby (1951; p. 292) claims that the Arabs are characterised by "general vagueness of thought" due to the fact that modern literary Arabic is constituted of "diffuse, undifferentiated and rigid units and structures" (both cited in Sa'adeddin 1987; p. 143). These remarks have apparently been made on the assumption that Arabic writing, both classical and modern, does not follow a systematic punctuation system. Sa'adeddin, on the other hand, claims that these are simply partial truths. He makes the point that Arabic relies more heavily on linguistically-overt linkage system as opposed to the Western notationally-codified systems. He further suggests that criticism by researchers of Arabic linkage system settled into a deprecatory stance towards the Arabic language and culture.
Despite the criticisms against Arabic punctuation practice and the defence by Sa'adeddin and others, partly motivated perhaps by nationalistic feelings, the fact that we have to face is that the way punctuation is used in Arabic texts is erratic to say the least. It appears that every writer uses a system to suit his or her own needs, or one which is influenced by the writer's training. There are hardly two books in Arabic that follow identical systematic punctuation rules that are based on linguistic analysis. Sa'adeddin is obviously correct in stating that the Arabic "\text{\textasciitilde}\text{\textasciitilde}"; i.e. "and", is equivalent to the comma in English and that it was an obvious mistake for some Arabic writers to adopt the comma instead. I should add that, based on an observation of Arabic writers in the past, it would be even worse to insert \text{\textasciitilde}\text{\textasciitilde} after the comma as some translators and Western influenced writers nowadays do. In fact this practice seems to be a reflection of a high level of uncertainty, as the writer wants to retain the Arabic \text{\textasciitilde}\text{\textasciitilde} but at the same time also desires to emulate the English way or writing and thus uses the comma. Sa'adeddin's defence of the Arabic linkage system, however, is too narrow and cannot be extended to apply to other linkage forms. Besides, it should not exonerate us from responsibility to produce balanced, coherent and cohesive texts that are capable of being interpreted on a sound systematic basis, especially when it comes to translating legal texts. It is admitted that judges in the Arab countries may not concern themselves with interpreting the law to the extent their counterparts do in common law countries. But statutes are not the only legal documents that affect the lives of people these days. In a world of international treaties which literally regulate even the air we breathe, there is no excuse for leaving Arabic, which is a United Nations
language, lagging behind the other languages simply because some scholars maintain that the existing linkage system is appropriate. It seems, however, that even in treaties among Arab countries drafters have elected to do away with punctuation. The following is taken from the Arab Solidarity Accord - II.

Although this accord is relatively new (1957), there are no full-stops and only one comma in the first paragraph, which is positioned haphazardly. There are no full-stops either in the cited passage or in the other four paragraphs cited by Mansour but not reproduced here. As a matter of fact the single comma is the only punctuation tool in the whole text.

There is no justification for the almost complete absence of non-lexical linkage tools. Even classical writing did have punctuation, and classical work that is being reprinted after much scrutiny usually does contain a lot of punctuation. *Nahjul Balagha* [Peak of Eloquence], which is the collection of sermons, letters and sayings of Imam Ali, is a case in point. The prose is peppered with commas and full-stops, some of which are admittedly for rhetoric purposes, but in the main they are there to serve
a purpose not unlike that for which they are used in English.

Modern Arabic writing is often flawed either because of the excessive use of punctuation or the almost complete lack of it. This renders Arabic texts either too fragmented and abrupt, or disorganised and vague. In some instances it appears that users of Arabic utilise the comma or the full-stop only on the basis of the sentence length or the ability to read 'in one breath'. Obviously more accurate, systematic rules to apply punctuation should be followed, not necessarily in unison with the English punctuation system. (Cf. 3.2.1, pp. 99-100.)

Before concluding my discussion of the importance of punctuation, I shall here refer to a 1969 California appellate court decision, Anderson v. State Farm Mutual Automobile Insurance Co, which was reported on in Solan (1993; pp. 29-30). I shall quote a large portion of the case because it will assist later in another discussion.

"The Anderson case involved a car owner's lawsuit against her insurance company. In an entertaining fashion, the appellate court explained that Mrs Anderson had left a California country fair, and had driven off with a Mr Larson in Mr Larson's car. The newly met couple arrived at a restaurant where they spent several hours, after which time Mr Larson excused himself to go to the restroom, never to return. Mrs Anderson, who had consumed only part of a single drink during this period, testified that she left the restaurant and drove off in what she thought was Mr Larson's car. It was not. Rather, it was Mr Yocum's Cadillac. While driving Mr Yocum's car, Mrs Anderson was involved in an accident, which damaged Mr Yocum's car. Mr Yocum sued Mrs Anderson and won a judgment of about thirteen thousand dollars. Mrs
Anderson tried to collect from State Farm, her own insurer, but the insurance company denied coverage. She then sued State Farm.

In deciding the case, the court relied on the following portion of Mrs Anderson's automobile insurance policy:

Such insurance as is afforded by this policy ... with respect to the owned automobile applies to the use of a non-owned automobile by the named insured ... and any other person or organisation legally responsible for use by the named insured ... of an automobile not owned or hired by such other person or organisation provided such use is with the permission of the owner or person in lawful possession of such automobile."

In this case, the court decided that Mrs Anderson was entitled to compensation from her insurance company, State Farm. In handing down this judgment, the court took into account two matters, one of which was the fact that no comma separates the second class of drivers and the clause starting with 'provided'. The court reasoned that the absence of any punctuation may be taken as evidence of the intended linkage between the provided clause and the second of the two classes of drivers.

3.1.5 Other layout features

Other features that may contribute to the comprehension and proper interpretation of statutes and other legal texts include the typographic styles and fonts now available in wordprocessors in both English and Arabic. Bold, italic and underlined texts are increasingly becoming accessible to all practising translators, and accordingly should not pose any difficulty. The only matter which has to be mentioned here is the capitalisation of specific things or matters in English texts and the way
Arabic translators have to deal with them. In this respect, we should bear in mind that in English the capital letter at word-beginning is calculated to achieve specificity, a direct reference to an entity. Once this is deduced, other lexical features of Arabic should adequately cover the situation.

3.2 Micro-structure

In order to develop a good understanding of the structure of legal texts and its role in the overall scheme it is important to understand first the aim of such texts. Many legal experts and translators are puzzled with the seemingly complex patterns and structures of legal texts and wonder whether they could ever be simplified. In fact, the plain English movement constitutes one possible response to what appears to many as an unnecessary complication of laws. There is, however, a reason other than keeping the law as a domain for the specially trained. In explaining the plight of draftsmen, Solan (1993) refers to Benjamin Cardozo, a justice of the Supreme Court of the United States from 1932 until 1938:

"The overriding theme of Cardozo's extrajudicial writings is the tension between the need for the law to be both sufficiently flexible to accommodate new cases as they arise and sufficiently rigid to maintain its predictive power. If the law is not flexible enough, then it is doomed to irrelevance and to becoming the source of injustice. If the law is too flexible, then it becomes so unstable that it fails to define with any reliability people's rights and obligations, even in seemingly simple situations. This results in decay of the rule of the law." (Solan 1993; p. 12)

This is a very important notion, especially as far as translation is concerned. Some translators believe that the complex structure could be
simplified in translation to facilitate understanding. The direct result of Solan's view, however, is that it should be left only to a presiding judge to determine cases on the base of the statute as it is drafted not on the basis of someone else's interpretation. What is felt to be difficult structure should also be understood to be a necessary feature of the statute to allow sufficient flexibility and sufficient rigidness at the same time.

Solan later explains the judge also has the role of a linguist, basically because, given the way it is, the language of the law forces him to be one.

"The linguistic issues arise when lawyers for opposing parties attempt to convince a court that a statute or insurance policy or contract or some other legal document should be interpreted to favor their own clients' interests with respect to a dispute whose resolution depends crucially on the proper construal of the particular document. Assuming no disagreement about the events has occurred, it is for the court to decide what should follow from applying the language of the document to the events." (Solan 1993; p. 28)

3.2.1 Function of legal texts

In describing legislative writing, Bhatia (1994; pp. 136-137) says it is highly impersonal and decontextualised, in the sense that its illocutionary force holds independently of the speaker or originator on the one hand and the hearer or the reader on the other. Bhatia makes the point that since the general function of legislative writing is directive, namely to impose obligations and confer rights, and given that human nature is what it is - trying to wriggle out of obligations and to stretch rights to unexpected limits - legal draftsmen "attempt to define their model world of obligations and rights, permissions and prohibitions as
precisely, clearly and unambiguously as linguistic resources permit" (1994; p. 137) in order to guard against human eventualities of this nature. Paradoxically, however, these draftsmen have to guard against eventualities of another type. Since statutes are supposed to cover a universe of human behaviour whose limitations cannot be fathomed at the time of drafting the statute - or at any later time for this matter - legal draftsmen have also to attempt to refer to every conceivable contingency, thus their writing is not only precise, clear and unambiguous, but also all-inclusive, flexible and accommodating, in order for judges to exercise their interpreting capabilities with a view to covering eventualities not previously contemplated.

It should be pointed out that in case of ambiguities in the statute, judges have to decide in favour of the accused in criminal matters, or in civil matters against the insurance company, for instance, if the matter relies heavily on the clauses of, say, an insurance policy. I shall deal later with the features which make legal writing clear and unambiguous, as well as how courts decide against the party whose rules are ambiguous. Before doing that, however, it is important to use Gunnarsson's (1984) classification of the legislative provisions and their objectives, as reported by Bhatia.

"1. Action rules, which are applicable to only a set of specified descriptions of cases and are mainly meant to impose duties and obligations, to give rights, to prohibit actions, to assign power to certain members or bodies of the executive or other parties, or to state the law or just the penalties imposed on specific actions. . . .

2. Stipulation rules, which define the domain of
application of a particular act or any section of it, ... .

3. Definition rules, which are applicable to the entire Act and are primarily meant to provide terminological explanation, ... ."
(Bhatia 1994; pp. 138-139)

To these, another class of rules may be added, namely performative rules, which are usually the enabling clauses at the beginning of a statute. Although strictly speaking they do not form part of the statute itself, they nevertheless constitute part of the legal writing which exists with the main body of the statute. Another comment is that Gunnarsson's study dealt with one particular statute in Sweden, but the classification he presented actually applies not only to statutes in general, but also to other legal documents of similar nature, such as contracts, agreements and the like.

Examples of action rules:

**Text 3.3**
"Bail shall be granted unconditionally unless the authorised officer or court is of the opinion that one or more conditions should be imposed for the purpose of..."
(Section 37.1 of the Bail Act 1978, NSW)

**Text 3.4**
"يتمنع أعضاء مجلس الجامعة وأعضاء لجانها وموظفوها الذين ينص عليهم في النظام الداخلي بالإمتناعات والحماية الدبلوماسية أثناء قيامهم بعملهم"

**Text 3.4.A Translation**
"Members of the League Council, as well as members and staff of its committees who are specified in the by-laws shall enjoy diplomatic immunity and privileges during the
course of their work."
(From the Pact of the League of Arab States; cited in Mansour 1965b; p. 273)

The similarities between the Arabic and English examples are striking, despite the extra modifying clauses in the Arabic text and the differing Subject - Predicate configuration.

Examples of stipulation rules:

Text 3.5
"Upon agreement as signified by acceptance of this Agreement by the warehouse employees and the Ingleburn warehouse, signatures shall be attached hereto and the terms and conditions of this Agreement shall apply therefrom subject only that the wage increase shall be paid from the first full pay period after the date of Agreement."
(Section 21 of an Industrial Agreement between Franklins Ltd and National Union Workers; September 1995.)

Text 3.6
"ينشر هذا القانون في الجريدة الرسمية ويعمل به اعتباراً من اليوم التالي لتاريخ نشره يبصم هذا القانون بخاتم الدولة وينفذ كقانون من قوانينها?"

Text 3.6.A Translation
"This Act shall be published in the official gazette and shall become effective from the day following the publication date[, T]his Act shall be stamped with the State seal and be implemented as an Act of the State?"
(Article 5, Preamble, Egyptian Bequest Tax Act.)

Here again, the similarities in the function of the text are noticeable.
Another noticeable feature in the Arabic text is, as foreshadowed earlier, the erratic nature of how punctuation marks are employed. There is no full stop in the Arabic text to separate the two sentences which make up the Article. The question mark at the end of the Article is totally unjustified. Other articles in the same Act have been found to end in an exclamation mark, a series of dots, or simply no punctuation at all. Although it is possibly inappropriate to make assumptions without substantiation, there is apparently a lack of appreciation of the role of punctuation that borders on recklessness.

Examples of definition rules:

**Text 3.7**

"In this Act, except in so far as the context or subject-matter otherwise indicates or requires:
- applicant includes a cross-applicant;
- appointed day means the day appointed and notified under section 2(2);
- de facto partner means:
  (a) in relation to a man, a woman who is living or has lived with a man as his wife on a bona fide domestic basis although not married to him; and
  (b) in relation to a woman, a man who is living or has lived with a woman as her husband on a bona fide domestic basis although not married to her; . . . "
(Section 3.(1) De Facto Relationships Act 1984; NSW.)

**Text 3.8**

"الدعوى هي الحق الذي يعود لكل ذي مطلب بأن يتقدم به إلى القضاء للحكم له بموضوعه."

**Text 3.8.A**

"A claim is the right to which any applicant shall be entitled to bring to the court for decision."
(Article 7, Lebanese Act of Civil Proceedings.)
It has been noticed that whilst definition rules constitute an important feature of the English statutes and occupy a specified position in them, namely at the beginning of the statute itself, definitions in the Arabic statutes are much less in number and could occur anywhere in the text. Of note also is the fact that whilst the majority of definition rules in the English statutes are meant to provide terminological explanation, those in statutes in other languages (such as Arabic) go beyond this objective and are treated as "the law itself tout court" (Swales 1981b; p. 109; cited in Bhatia 1994; p. 139). In describing these rules, Swales was referring to clauses which specify, for instance, how a particular offence is defined and what conditions have to be satisfied for it to be an offence. An example of definition rules that can be classified as "the law itself tout court" can be cited from Articles 50 and 52 of the Lebanese Act of Civil Proceedings 1983:

مادة 50 - الدفاع هو كل سبب يرمي به الخصم الى رد طلب خصمه لعدم صحته بعد بحث الحق في الموضوع.
مادة 52 - الدفع الإجرائي هو كل سبب يرمي به الخصم الى إعلان عدم قانونية الحاكمة أو سقوطها أو وقف سيرها.

[Back translation -
Article 50 - Defence is any argument resorted to by the respondent to dismiss the claimant's claim due to the invalidity of such claim following the investigation of rights at issue.
Article 52 - Procedural defence is any argument resorted to by the respondent to announce the illegality, lapse or stay of proceedings.

Thus the definition rules in the above examples are not only calculated to improve the comprehension of the law, they constitute an integral part of
the law. Performative rules, on the other hand, abound in both English and Arabic legal writing. They have the effect of performing by merely stating. Take the following example from the Lebanese Act of Civil Proceedings 1983:

**Text 4.9**

ان رئيس الجمهورية
بتاء على الدستور
- بناء على القانون رقم 32/77 تاريخ 1982/11/17 (منح الحكومة حق
اصدار مرسوم اشتراعية)، الممدد بالقانون رقم 32/11 تاريخ
1983/5/21،
- وبعد استشارة مجلس شورى الدولة،
- بناء على اقتراح وزير العدل،
- وبعد موافقة مجلس الوزراء بتاريخ 24/8/1983،
يرسم ما يأتي:
المادة الأولى: يصدر قانون اصول المحاكمات المدنية ويوضع قيد التنفيذ
بنصه المرفق بهذا المرسوم الإشتراعي.
المادة الثانية...

**Text 4.9. A Translation**

"The President of the Republic
Pursuant to the Constitution;
In accordance with Act 36/82 of 17. 11. 1982, conferring
on the government the right to make legislative decrees,
as extended by Act 10/83 of 21. 5. 1983;
Further to advice from the State Consultative Council;
Pursuant to suggestion of the Minister for Justice; and
Further to the approval by the Council of Ministers on 24.
8. 1983;
Decrees as follows:
Article 1. The Civil Proceedings Act shall [hereby] be
promulgated and become effective as worded in the text
appended to this Legislative Decree.
Article 2. ..."

In this example the President is stating, but he is also performing an act,
namely promulgating an act and making it effective. This performative clause continues to do its role until another Legislative Decree of a similar performative nature annuls the existing one. Other features which are apparent in this example include the length of the sentence, the special layout, and the preoccupation with details and accurate referencing. An equivalent for the portmanteau word 'hereby' is not in the original Arabic text, and performativity is instead established by the use of the present tense of performative verbs such as 'decide', 'decrees', 'resolves' etc. Another example of performative English in legal texts is to be found in the justices' sentencing phrase 'You are hereby convicted and sentenced to ... of imprisonment. The prisoner may be removed'. As soon as the sentence has been uttered the status of the accused undergoes an instantaneous transformation, which makes him a prisoner forthwith.

3.3 Relational features in English and Arabic legal texts

In describing English legal texts Crystal and Davy indicate that the province of written legal texts is generally reducible to "an underlying logical structure which says something like 'if X, then Z shall be Y' or, alternatively 'if X, then Z shall do Y'" (1969; p. 203). It is appropriate to reproduce here a short text which constitutes part of the NSW Evidence Act 1989:

Text 4.10
"Attestations etc. before a justice
52A. Where by any Act or by any rule, regulation, ordinance or by-law made under any Act, any document is required, authorised or permitted to be attested or verified by, or signed or acknowledged before a justice of the peace, it shall be sufficient for all purposes if such document is attested or verified or signed or
acknowledged in any part of His Majesty's dominion outside New South Wales by or before a justice of the peace for that part."

This paragraph can be reduced to a statement of the first kind. At first reading it may sound confusing or, at best, overlapping. The reduction, however, becomes easier if we consider that X and Z are almost the same - the only difference being a spacial modifier. Thus X is "... any document is required, authorised or permitted to be attested or verified by, or signed or acknowledged before a justice of the peace, ...", and Z is "... such document is attested or verified or signed or acknowledged in any part of His Majesty's dominion outside New South Wales ...". It is the underlined part that makes Y clearer to the reader, that is "... it shall be sufficient for all purposes ...".

In fact, the simple and straightforward analysis of the above paragraph can be easily applied to many paragraphs of the Evidence Act with almost a direct similarity to Crystal and Davy's hypothesis that written legal texts can be reduced to a logical structure which says 'if X, then Z shall be Y or Z shall do Y'. Although valid to a large extent, it would be too simplistic a view to adopt if we were to content ourselves with a hypothesis that reduces all legal writing to one of two equations. In many ways legal writing, particularly statute language, is analogous to a relational database, where only the main entities (for instance person, vehicle, address) appear on the first screen whenever one tries to access information about only one of these entities, with additional information provided on the screen following each entity (date of birth, registration number, address). A third, deeper screen would tell us more about these
entities, such as physical description of the person, the vehicle or the property. There could also be one more screen, the text window, where a narration of the events leading to the linking of the three entities is provided. Likewise in legal texts, it should be helpful to isolate the main entities which are subject of the article or section or clause, then to try and allocate the conditions (modifiers or modifying clauses) ascribed for each entity, and last but not least try to work out the link that is meant to exist among the main entities or between any two of them.

3.3.1 Interpretation of the relations
As stated in various parts of this thesis, in common law countries the law exists not as a rigid piece of writing. It is rather a blueprint for the administration of justice. Of course everybody has heard how laws are never to be breached or ignored, or 'twisted'. Rather than twisting the law, judges as interpreters of the law never hesitate to interpret them in accordance with their understanding not only of legal matters, but also of linguistic analysis. Nothing is sacrosanct when it comes to that. Judges, however, do not do their interpretation in vacuum. Being what it is, common law means that once a rule is established and overcomes legal challenge it becomes binding on all judges who are tasked with deciding similar matters. This includes linguistic matters as we shall see in the following few paragraphs.

3.3.1.1 The last antecedent rule
This has nothing to do with previous cases, as 'antecedent' here does not refer to similar previous matters. Instead, the reference is purely to the syntax of legislative writing. The rule of law simply says that a modifying
clause of the 'provided' or 'provided that' or similar type is deemed to be modifying only the last entity that precedes it rather than all the entities that precede it, although these entities may be linked by 'and' or some other linkage forms.

In 3.2 I referred to Anderson v. State Farm Mutual Automobil Insurance Co. as an example of the importance of punctuation. We saw that the judge decided in Mrs Anderson's favour despite what seemed to us a straightforward article of the insurance policy conditions, and that in justifying his decision the absence of commas was quoted. Another matter that the judge relied upon was the rule of last antecedent. I shall provide here the text of the article, at the expense of repetition, to facilitate discussion:

"Such insurance as is afforded by this policy ... with respect to the owned automobile applies to the use of a non-owned automobile by the named insured ... and any other person or organisation legally responsible for use by the named insured ... of an automobile not owned or hired by such other person or organisation provided such use is with the permission of the owner or person in lawful possession of such automobile."

In justifying his decision in favour of Mrs Anderson, the judge reasoned that the "second of the two classes of potential drivers is the last antecedent, and therefore the owner's permission is not needed when the car is driven by the named insured herself" (Solan 1993; p. 30). The court further reasoned that had the car been driven by someone legally responsible for use by Mrs Anderson, rather than Mrs Anderson herself, then the owner's permission would have been required.
The lesson to be learnt from this case as far as translation is concerned is to try and order the entities and their modifiers the same way as they are in the original. Although it sounds pedantic, the fact is that relying on more subtle forms of reference within the text can be elusive no matter how careful we may be.

It can be counterargued that Arabic legal writing is more straightforward and explicit and rarely becomes the subject of interpretation as happened in Mrs Anderson's case. Whilst this is true to a large extent, the truth also is that Arab legislators and draftsmen never hesitate to do what their counterparts in the English system do, and for the same reason. Let us consider this example:

Text 3.11
ولا يحق للأشخاص المذكورين في الفقرة الأولى، بحال تخلفهم عن الحضور، بعد دعوتهم حسب الأصول أن يطلعوا على التحقيقات التي جرت بغيابهم.

Text 3.11.A Translation
"The persons mentioned in the first paragraph, in case they fail to attend following duly inviting them, shall not have the right to peruse the investigations conducted in their absence."

(Section 71 of the Act of Criminal Proceedings, Lebanon)

There is no doubt that the draftsmen of this clause were aware of the normal way of writing, namely in Subject - Predicate form without interrupting it by forcing a long modifier into the structure. They have, however, decided otherwise. It should be stated that, having perused a number of Arabic acts and the full collection of legal texts provided in
Mansour (1965a and b), such structures are not as frequent in Arabic legal texts as they are in English.

3.3.1.2 Modifiers as precursors of rules of law

Modifiers, or qualifications as Bhatia (1994) calls them, are the essence of legal writing. Most legislative provisions are extremely rich in qualificational insertions within their syntactic boundaries, and they tend to make the provisions extremely restricted.

"In fact, without these qualifications the legislative provision will be taken to be of universal application and it is very rare that a rule of law is of universal application. The qualifications seem to provide the essential flesh to the main proposition without which the provision will be nothing more than a mere skeleton, of very little legal significance." (Bhatia 1994; p. 147.)

To return to our relational database analogy, what Bhatia is saying is that the legislative provision without its qualification insertions is no more than a first screen with fixed entities - names, but no further description. Bhatia makes a very interesting point, namely that while it is true that qualifications make provisions more precise and clear, they can also promote ambiguity if they are not placed judiciously. In fact, that is the main reason why legal writers "try to insert qualifications right next to the word they are meant to qualify, even at the cost of making their legislative sentence inelegant, awkward or even tortuous" (Bhatia 1994; p. 147). This obviously was the essence of the decision in favour of Mrs Anderson.

Aesthetics are sacrificed in legal texts for the sake of clarity. Bhatia notes
that the insertion of qualifications at the points exactly intended by the legislator has meant that syntactic discontinuities frequently occur in legal writing but only rarely in any other genre. This adds to the complexity of an already complex syntactic character of the legislative sentence and causes serious psycholinguistic problems in the processing of such provisions, and consequently in the translation of them:

"So far as qualificational insertions are concerned, legal draftsmen do not consider any phrase boundaries sacrosanct, be it a verb phrase ..., a noun phrase, binomial phrase or even a complex prepositional phrase." (Bhatia 1994; p. 148)

Bhatia gives examples of noun phrases, binomial phrases and complex prepositional phrases which are made discontinuous through the use of such qualifications, the like of which are very rare in Arabic legal texts.

3.3.1.3 Binomials and multinomials
Another feature that is very common in English legal texts is the frequent use of binomials and multinomials, which may be explained, as already stated, in terms of the desire to achieve a high level of precision. Binomial and multinomial expressions are "collocations of synonyms or near synonyms" (Emery 1989; p. 9), or sequences of "two or more words or phrases belonging to the same grammatical category having some semantic relationship and joined by some syntactic device such as 'and' or 'or'" (Bhatia 1984; p. 90). The text to follow represents the first registered grant of land in New South Wales given to ex-convict James Ruse, and was signed by Governor Arthur Phillip. It is reproduced here because of its historical value besides its richness in the various features
of English legal texts, including the use of several binomials and one multinomial:

**Text 3.12**

"Whereas full power and authority for granting Lands in the Territory of New South Wales, to such persons as may be desirous of becoming settlers therein is vested in me, His Majestys Captain General and Governor in Chief in & over the said Territory and its Dependencies, by His Majestys Instructions under the Royal Sign Manual Bearing date respectively the twenty fifth day of April, one thousand seven hundred and eighty seven, and the twentieth day of August, one thousand seven hundred and eighty nine.

In pursuance of the power and authority vested in me as aforesaid, I do by these Presents give & grant unto James Ruse His Heirs and Assigns, to have and hold for ever Thirty Acres of Land, in One Lot, to be known by the name of Experiment Farm, laying on the south of the Barrack Ponds at Parramatta, the said Thirty Acres of Land to be had & held by him the said James Ruse, His Heirs and Assigns, free from all Fees, Taxes, Suit Rents & other acknowledgments, for the space of Ten years, from the date of these presents; provided that the said James Ruse, His Heirs or Assigns, shall reside within the same & proceed to the Improvement & Cultivation thereof, such Timer as may be growing or to grow hereafter upon the said Land, which may be deemed fit for Naval Purposes, to be reserved for the use of the Crown; & paying an annual Suit Rent of One Shilling after the expiration of the Term or Time of ten years before mentioned.

In Testimony whereof I have hereunto set my Hand & the Seal of the Territory at Government House, Sydney in the Territory of New South Wales, this twenty second day of February in the year of Our Lord One Thousand seven hundred & ninety." (underlines and italics are mine.)
Apart from the seven binomials and one multinomial (underlined), the use of portmanteau type words (italicised) are also noted in this text, together with the elaborate use of capitalisation, sometimes erratically or unnecessarily, perhaps as a means of added formality and/or referential clarity and precision. In some instances these binomials have been found to be of differing rather than similar nature: 'directly or indirectly', 'bought or sold', 'in cash or in kind' and so forth. Some others are of a more complex nature, for instance 'emanating from this provision or relating to the regulations'. In fact, these and others can be grouped as qualifications as well, including the tendency to insert them where they should belong thus creating a discontinuation of the type discussed in the previous section.

Since the use of binomials and multinomials in the English legal texts is calculated to create universality of application, the corollary is that any translation should aim to create an equivalent universality through the proper positioning of such expressions in the translated text. Of note is that Arabic is a language that readily accepts this feature. Indeed, binomials and multinomials abound in all Arabic texts, almost without exception, including legal texts. It could be that stylistic techniques in Arabic require more generous use of binomials, such as in journalistic, literary and religious registers than in English (Qadi 1987; p. 67. Quoted in Emery 1989). Readers of Arabic are sometimes 'put off' by the frequent use of binomials, which are sometimes nothing but very close synonyms which add nothing much to the meaning. While this practice can be understood in some genres as a tool of enhancing the aesthetics of the text, in many other instances it can simply be nothing more than
futile tautology. It may well be that the practice perhaps echoes "a more florid earlier style of the language" (Emery 1989; p. 9).

The Arabic text which will follow is a legal document that belongs to the legal formularies group, and was written by a drafter in the city of Safad, in north Palestine, during the Ottoman rule shortly after 1850. It has been selected because it belongs to a period not too long after the English deed of grant reproduced above, but also because it is one of the very few such Arabic documents to survive from that period. The manuscripts are kept at the University of Leeds and were investigated by Ebied and Young (1976).

Text 3.13

"سبب تحريره وموجب تسطيره هو أنه قد بعنا الى فلان الفلاني ما هو لنا متصلا بالارث الشرعي وهو البستان المعروف بالبستان الفلاني الكاين في المل الفلاني - بعناه اياه فاشتراه منا بتمن قدره وبيانه من الغروس الاسدية الويئة السلطانية التعامل بها يومئذ كذا وكذا. بعناه البستان المذكور بالتمن المسفور بيعنا صحيحا شرعيما قاطعا ماضيا مضيا لا شرط فيه ولا فساد ولا رجع ولا معاد بل بيع الإسلام وصحة نفوذ الأحكام، وقبضنا منه التمن المرقوم قبضة واحدة في مجلس واحد فصار البستان المذكور ملكا للشاري الحرر يتصرف بها كيفما شاء وآرآه، وحدوده ... وقد أبرأنا دمه وأبرآ ذمته من كل ما في هذا البيع والشرة من الغبن الفاحش والاغترار والاكراء والاجبار..."

Following is a possible translation, by Ebied and Young, which will be provided now for the sake of facilitating discussion:

Text 3.13A

"The reason for the engrossing of this [document] and its being committed to writing is that we have sold to ... property accruing to us by lawful inheritance, namely the orchard known as the ... orchard situated in ... (name of place). We have sold it to him and he has purchased it
from us for a price of the stated amount of ... in current imperial Asadi piastres, being legal tender at the present time.

We have sold him the aforementioned orchard for the price stated, through a valid, lawful, definitive, effectual, ratified sale, containing no stipulation or defect or [right of] withdrawal or recission, but being an Islamic sale and valid with regard to the effect of its provisions.

We have received from him the stated price in one transaction on one occasion, and the aforementioned orchard has become the property of the aforementioned purchaser. He may dispose of it in any way he desires or wishes.

Its boundaries are ...

We have acquitted him, and he has acquitted us, of all criminal fraud, deception, duress and compulsion in this sale and purchase."

(Ebied & Young 1976; pp. 13 & 45 respectively)

There are twelve binomial expressions in this Arabic formulary, some of which are more complex than those found in the English Deed of Grant provided above. Although part of the complexity, and perhaps the hidden aspect of binomialism, is due to the effect of translation, the point is that both English and Arabic legal texts share this feature. Other features of this Arabic text include the use of homeotelenton [سجع] (the occurrence in Arabic of the same sound at the end of adjacent or closely connected words) such as in سبب تحريره وموجب تسطيره (sababu tahririh, wa mujibu tastirihi), البستان الذكور بالتنين المسفور (al-bustanu al-majkour bi al-thamani al-masfour) and الإسلام وصحة نفوذ الاحكام (al-islam wa sihati nufuzi al-akham). It is to be noted that both homeotelenton and binomialisation are features of an earlier era of Arabic, and while the first feature has lost its appeal to writers and speakers of Arabic these days, the second continues to influence many writings, not necessarily
only legal. An unrelated point to be made about the Arabic text is that it constitutes only one paragraph, which is not reflected in the English translation.

3.3.1.4 Modality
Another aspect of legal texts that gives rise to problems in their interpretation for the sake of application as well as in their translation is the question of modality. Since statutes and other legal texts seek to create obligations or prohibit actions, special semantic tools that carry the obligatory or prohibitionary function of the text become very important. Not all modals, however, relate to this function. Halliday (1985; p. 86) talks about two kinds of modality: modalisation (usually referred to as modality) and modulation. The former deals with the varying degrees of probability and usuality, while the latter deals with the various degrees of obligation and inclination (Maley 1994; p. 46). While modals of the second category are usually found in statutes and other legal documents (contracts, deeds of sale, insurance policies and so forth), those in the first category are often to be found in judges' orders and judgments, as they are more suited for the carriage of explicatory and argumentative, that is mostly subjective, statements.

In both statutes and judicial texts modals of both types may not be necessary in some parts of the text at least. When a judge delivers a judgment the part which contains the facts of the case does not usually have any modals, as it is often a reproduction of the facts as they took place. It is only when a judge moves to justify a judgment that modalisation is used, and when references are made to specific provisions
(as well as when the judge's final judgment is stated) that modulation is used. Likewise in statutes, there are occasions when modals are not needed and an ordinarily inflected verb for tense is sufficient.

**Text 3.14**

"3A. A written notice *may* be laid before a House of Parliament by a Minister or by the Clerk of that House.

4. Failure to lay a written notice before each House of Parliament in accordance with this section *does* not affect the validity of a statutory rule, but such a notice *must* nevertheless be laid before each House."

(NSW Interpretation Act 1987)

In clause 3A the emphasis is not on the 'laying of the written notice' itself, but rather on the categories of people who are *acceptable* to lay such notice before a House of Parliament. This is made clearer in clause 4 which makes it imperative that the written notice *must* be laid before the House regardless of whether it is laid by a person of either category (Minister or Clerk of that House). Proper understanding of these two clauses would enable a similarly proper translation, depending primarily on the correct positioning of the equivalent of 'may' in the Arabic translation. 'May', 'does' and 'must' in the above two clauses respectively convey possibility, fact and obligation.

While 'may' and 'must' in English legal texts can be clearly understood to mean what any user of English understands them to mean in any other text, another modal, 'shall', continues to pose a level of difficulty in both interpretation of clauses containing it and in the translation of such clauses. 'Shall' has traditionally played a role not unsimilar to that of
'must'. Thus in goods or service provision contracts "The contractor shall be responsible for the provision of ..." simply means "The contractor must provide ...". More recently, probably due to some unnecessary extension of the use of this modal to situations which do not call for such use (consider 'does' in clause 4. above), 'shall' has lost some of its imperative power. Judges, however, continue to deal with it in exactly the same manner as they always have, when it is in fact intended to create an obligation, and likewise refers to its unnecessary imposition on the text when it is not justified. Perhaps it is in order to refer now to an appeal (NRMA Insurance Limited v McCarney) that was heard by the Supreme Court of New South Wales (CA 371/88, DC15430/83) on 22 October 1992. The clause in question as well as the justification to grant the appeal shed some light on the importance of modality, as well as on the difference between modals and ordinarily inflected verbs.

The case which was initially dealt with before the District Court involves an insurance claim declined by NRMA Insurance Limited on the basis that the claimant, McCarney, was under the influence of intoxicating liquor at the time of the accident which gave rise to the claim. The trial judge decided in favour of the claimant, notwithstanding evidence that such claimant was in fact under the influence of intoxicating liquor. The claim was thus allowed on the basis of, inter alia, s 4E (13) (a) of the Traffic Act 1909, which provides:

**Text 3.15**
"The fact that a person has undergone a breath test or submitted to a breath test analysis, the result of a breath test or breath analysis ... shall not for the purposes of any contract of insurance, be admissible as evidence of the fact
that person was at any time under the influence of or in any way affected by intoxicating liquor or incapable of driving or of exercising effective control over a motor vehicle, but nothing in this subsection precludes the admission of any other evidence to show any such fact."

The appeal judge argued that the paragraph provides relevantly that the matters referred to (that is breath test analysis and the results thereof) "shall not ... be admissible as evidence of the fact that the person was at any time under the influence of ... intoxicating liquor". The appeal judge further did not dispute the effect of 'shall be' as a conclusive prohibition for the judiciary to use the matters referred to as evidence. The appeal judge, however, noted that the paragraph does not make such evidence completely inadmissible in insurance cases. Yet, this finding was not based on attributing any lesser weight to 'shall be' than had been intended by the legislature. In fact, he argued that such evidence would have been completely inadmissible had the paragraph finished with the words "shall not, for the purposes of any contract of insurance, be admissible as evidence". He found that the fact that the paragraph does allow the admission of any other evidence to show any such fact, namely that "that person was at any time under the influence of ..." would allow a party to provide such evidence. The appeal judge did not make any reference to 'precludes', as it simply means what it says with no modality involved in it. Thus, it becomes a fact which has to be treated in the same manner as any reasonable user of English would.

Modality (or rather modulation) in Arabic legal texts do not always allow for as clear understanding as it is in English. This is due to the overlapping use of some lexical items in the construction of legal and
other text sentences. A reader of an Arabic statute should first attempt to understand the general import of the paragraph and the real intention of the drafter. This is not always an easy task. The difficulty does not arise from the use of the equivalent of 'must' and 'may' in Arabic, as these are usually of universal application throughout Arabic texts, legal and non-legal. It rather lies in whether the intention is 'shall', with an obligation element, or a present tense statement. The following clauses are taken from an agreement concluded between Egypt and Jordan before 1958. They are contained in Mansour (1965b; p. 204). My English translation follows.

Text 3.16

1. على سلطات الطيران المدني لدى كل من الطرفين التعاقدين أن تختار سلطات الطيران لدى الطرف التعاقد الآخر ...
2. يجوز لسلطات الطيران لدى أحد الطرفين التعاقدين ...
3. تشير القوانين والقواعد المعمول بها لدى أحد الطرفين التعاقدين ...
4. يجب ألا تسيء المؤسسات المعينة من أي من الطرفين التعاقدين استعمال الحقوق لها أثناء تشغيلها الخطوط الجوية ...

1. The aviation authorities of either contracting party must notify the aviation authorities of the other party ...
2. The aviation authorities of either contracting party may ...
3. The rules and regulations in force by either contracting party shall apply ...
4. Organisations appointed by either contracting parties must not abuse the rights assigned thereto during the operation of the airlines ..."

The modal 'must' is expressed in Arabic in these examples in the two lexical items على، while 'may' is expressed as يجوز. Other Arabic equivalents of 'may' that have been identified in various legal texts
include can, be an example, be a case, ... On the other hand, other equivalents of 'must' in Arabic are more limited in legal texts, thus ي ينبغي يتم تعين therein have been found in a very small number of the Arabic legal texts consulted, including statutes. While the situation with 'may' and 'must' is quite straightforward and does not present any serious difficulty, translators would more often have to carry out a limited text analysis to define the nature of some seemingly 'innocent' verbs, such as في السير in the above example. A translation decision had to be made as to whether this verb simply means 'applies' or 'shall apply'. Analysis would reveal that the paragraph does not refer to a simple fact, but rather to either an obligation for the contracting party to apply such laws and regulations or an allowance for it to do so. In both cases the use of 'shall' is more justified, a decision that is supported by perusing similar stipulations in original English texts. In many cases the modal 'shall' is translated into Arabic as "يكون" or one of its derivatives. It is well established in Arabic legal writing that this verb implies an obligation; ت تكون الشركة مسؤولة عن ... would become 'The Company shall be responsible for ...'. Likewise, تتحمل الحكومة الكويتية تكاليف إزالة الألغام والعبوات المشعة من مواقعها البحرية would translate as 'The Kuwaiti government shall bear the cost of removing all mines and explosive charges from its seaports'.

Another tool used in Arabic to indicate obligation in the sense of 'that' is the very common nominal sentence marker inna (إن). When late Egyptian president Gamal Abdul Nasser declared: إن حرية الكلمة هي المقدمة الأولى للديمقراطية, not many people understood it to mean that the freedom of
expression should be granted to the people of Egypt, it was rather thought of as a statement of a fact, a slogan, as it were, since the people continued to quote it, in good faith, for many years. Had the Egyptians then thought of it as a commitment, a pledge, by their sovereign to grant them this right they would have then invoked that presidential statement, in the sense of a pledge by the highest executive authority of their country, to question many matters they were reportedly not satisfied with. A direct example can be found in the Lebanese Act of Criminal Proceedings:

المادة ٤٦ - Text 3.17

إِنِ الأمر بتسليم الخلاصة أو النسخة يبرئ ذمة الشخص الموجودة لديه تجاه ذري اللاقة بها.

A possible translation of this part of Article 409 would be: "An order to deliver the summary or the copy shall exonerate the person who is in possession of such summary or copy vis-a-vis the persons concerned therein". Following is another example, also taken from the same source:

المادة ١٠: إِن موظفي الضابطة العدلية مكلفون استقصاء الجرائم وجمع أدانتها والقبض على فاعليها واحالتهم على المحاكم الموكول إليها أمر معاقبتهم.

A possible translation would read: "Justice police officers shall be assigned the task of investigating offences, gathering evidence, and arresting and referring offenders to the courts charged with sentencing."

The only difference between the two examples is that in the former إن...
refers to the verb يُبرِئ while in the latter it refers to a noun مكلفون [literally means 'people assigned to do something'; the translation does not bring this out]. The similarity, however, is that in both examples the nominal sentence marker is redundant and can be omitted without any loss of meaning or performative power. In fact, this leads us to another possibility of 'shall' in Arabic legal texts, that is when the sentence is nominal with no marker. The statutes reviewed provide many examples. In this respect there is a strong resemblance to the verbal sentences.

Two performative verbs that are occasionally used in Arabic to indicate the power of obligation carried by 'shall' are يجري و يتم. They are to be avoided, however, as there is no evidence that original Arabic legal texts favour them. It is believed that their use has originated in Arabic legal translations undertaken by translators who lacked appropriate training in the subject. The frequent use of these two verbs, in many instances unnecessarily, seems to have originated from the need to avoid ambiguity usually associated with the verb used in passive constructions, especially when it was difficult to put the implied vowel marker, damsah, above the first letter of the Arabic verb. Thus يتم تنفيذ حكم الإعدام instead of نُفِذ حكم الإعدام. The structure in some cases is totally irrelevant and tautological. Consider جرى تنفيذ المشروع [the implementation of the project has been done], or وقد تم إعداد مسودة البيان [the preparation of the statement has been done], instead of تنفيذ المشروع [the project has been executed] and أُعدت مسودة البيان [the draft statement has been prepared] respectively. However, with the rapid spread of Arabic word processors, the need for such ploy is constantly diminishing.
3.3.1.5 Special words of precision

Many aspects of legal writing have so far been found to be directly contributing to one of the main objectives of law: achieving precision of purpose. Apart from syntactical features, such as the breaking of sentences for the insertion of qualifications or the use of binomials and multinomials even at the expense of creating abruptness or discontinuity in the case of complex extremes, there are words that are frequently used in legal texts because they are thought to be as adding more precision. These are 'said', 'same', 'aforesaid', 'aforementioned'. Examples have been given in both Arabic and English texts (see Texts 3.12 & 3.13A). These words hardly present any difficulty in the process of translation. However, they are discussed here to indicate that contrary to their assumed importance as precision tools, their use on some occasions fails to achieve what they are purported to achieve and in some others attracts criticism. It is true that these words refer to something that has already been mentioned in the text, but in this case their usefulness is no more than that of the simple article 'the', especially when the clause contains only one referent of the type referred to after any of these words. Solan (1993) makes the point that the word 'said' is derived from 'aforesaid' and can be traced to the early English period. The former term is now more popular than the latter because, according to Mellinkoff (1963) "lacking the Old English 'afore said' is not twice as archaic as it could be". 'Aforementioned' on the other hand seems to have been replaced almost completely by 'abovementioned'. There are opponents for the frequent, unnecessary use of 'said', which seems to be the most favoured from this class of words:
"Not surprisingly, I have never seen *said* narrow the class of antecedents that would have been available if *the* were used instead. In written language, the only way to justify using any definite description is by mentioning it earlier in writing, since gesturing and shared experience are unavailable."

(Solan 1993; p. 129)

While the second part of Solan's argument is fully justified, the complete denial of significance for 'said' seems to need further discussion. In Text 3.12, for instance, there are several references to antecedents through the use of 'said', some of which seem to be irrelevant, since they do not contribute to precision through clarity of reference. On the other hand, 'the said James Ruse' needs to be explained in terms of the intent of the grantor, the Governor in this case, which if gleaned from the structure of the paragraph and its delicate referentials would leave no doubt that the grantee is James Ruse who has been mentioned earlier in the Deed as opposed to any other person whose name may be James Ruse but is not intended for the grant. It is at the other extreme of the open-ended use, as it were, of such references as 'one James Ruse' or 'a James Ruse'.

3.3.1.6 Conjunctions, disjunctions and combinations

Related to the frequent use of binomials and multinomials in legal texts is the question of the conjunctive 'and' and disjunctive 'or' and their combinations. There is also a link between 'and' and 'or', on the one hand, and punctuation on the other. The reference is to instances when we have a series of related lexical items in English legal texts, where each pair of such items are separated by a comma, with a disjunctive or conjunctive tool inserted before the last item. Let us first consider the following example:
Text 3.19

The Company shall provide at the construction site all equipment, machinery, plants, supplies and tools.

The commas used in this sentence have only one role to play, that is conjoining all these items with a view to create an all-encompassing obligation for the company. Arabic translations of such text have been found to suffer from the irrational desire of translators to emulate the linking system in English, symbolised in this short text by commas. In many cases the translation rendered would be in the following form:

Text 3.19A

تقدم الشركة في موقع الإنشاء جميع المعدات، الآلات، المعامل، اللوازم واللوازم والأدوات.

Translation students who have been instructed in the proper use of the comma in Arabic, and the preference for the use of 'wa' [and] in place of the comma in their Arabic translations, have found it hard to do away completely with the English linkage tool. Following is an example:

Text 3.19B

تقدم الشركة في موقع الإنشاء جميع المعدات، والآلات، للمعامل، واللوازم والأدوات.

It is not clear whether translation students, or many other Arabic writers for this matter, prefer these days the use of the comma instead of 'wa' due to their exposure to the Western linkage systems. There is no doubt that 'wa' has been misused in Arabic, in the sense that it is used when some other connective should have. It is probably a subconscious effort by Arabic writers to avoid this word and the stigma attached to it, a stigma that has been created by various writers who tried to compare the
The stylistic features of Arabic with those of Western languages.

"Teachers at the American University of Beirut refer to the 'wa-wa' method of writing because of the Arabic \textit{wa} 'and', which is exceedingly used as a sentence connector." (Yorkey 1974; quoted in Sa'adeddin 1987; p. 142)

Of note is that the frequent use of 'and' as a connector is not an Arabic-only feature; it is shared by other Semitic languages, including Hebrew, which has not escaped such remarks. In discussing the translation of the Old Testament, Wilson (1958) refers to Old Hebrew as an influencing factor in the translation. And although he declares that "Old Hebrew poetry had a richness and a sensuous quality appropriate to a warm and passionate land", he nevertheless maintains that it had an "almost childish way of joining its sentences together" (Wilson 1958; p. 56).

In rebutting such claims, Sa'adeddin makes the point that they had been made without any acknowledgement of the fact that "the linguistically-overt Arabic linkage system and the notationally-codified Western systems are radically different methods of symbolisation, accomplishing more or less different functions", and that the Arabic linkage system symbolises "junction by means of lexical items which explicitly transmit the coherence of the text to native Arabic speakers, who perceive the import of those items so intuitively that they seldom think of them" (Sa'adeddin 1983; pp. 142-143). Although Wilson and Sa'adeddin refer mostly to 'and' as a sentence connector, the same argument for and against its use applies equally to its employment as a word connector. Accordingly, despite the importance of punctuation in any type of writing, in both Arabic and English, it is the lexical connector 'wa' that
should be used in the above example rather than the comma, which would create a discontinuity in the text and render it artificially punctuated, an artificiality that would be able to be picked up *intuitively*, to use Sa'addeddine's word, by native Arabic speakers. The preferred translation would then be:

Text 3.19 C

تقدم الشركة في موقع الإنشاء جميع المعدات والآلات والمعامل واللوازم والأدوات.

Another matter that relates to the use of 'and' and 'or' is the question of how they are interpreted by the judiciary. It should be remembered that it is interpretations by judges of statutes and other legal texts that makes the work of translators a constant challenge, as they have to keep abreast of what such interpretations are. This is both a problem and a challenge, especially that approximately 40% of the work of the courts in Australia and England requires a ruling upon what particular paragraphs or words of some legislative instruments really mean (Pearce 1974; p. 1). In this respect, judges assume the role of linguists and decide cases on this basis, in conjunction with the intention of the legislature as they understand it to be. On the question of 'and' and 'or', for instance, the federal and state courts of New York decided that they may generally be "construed as interchangeable when necessary to effectuate legislative intent" (Solan 1993; p. 45).

Solan elaborates on the issue by quoting the commentator on the statute as observing that drafters of statutes often make mistakes in the use of the word 'and' when 'or' is intended, or vice versa, and that the popular
use of these two words is "notoriously loose and inaccurate, and this use is reflected in the wording of statutes". (Solan 1993; p. 45) The commentator adds that when a judge realises that a piece of legislation has been flawed because of such inappropriate use of 'and' or 'or', he or she will make the necessary change in the statute so that it can then conform to the legislative intent. This in itself is not something that translators of legal texts have to concern themselves with, although what follows is that translators should maintain their alertness to identify all conjuncts since the outcome of a case can be decided only on satisfying all the conditions, for instance, or since in a contract of services the contractor is responsible for some items to the exclusion of others. Easy as it seems, Solan (1993; p. 50) gives as an example a paragraph from the United States Comprehensive Crime Control Act of 1984, which permits the United States government to seize property which can be proven to be derived from narcotics sales. The paragraph ends with 'without the knowledge or consent of that owner'. The question here is whether the legislature meant 'without the knowledge and without the consent of that owner' or 'without the knowledge or without the consent of the owner'. Although it can be said that purely linguistically the first interpretation would be the accurate one, as was found by the judge hearing the case, another judge later decided that the second alternative would be the more accurate interpretation. The case was eventually decided in favour of the linguistically sound interpretation, but only on the ground that a disjunctive reading of "or" would lead to an absurd result. It is interesting to conclude this section by stating that the Queen's Bench, in the matter of Regina v. Oakes 1959 (Queen's Bench Reports 2), has found that "and does any act" must be read as "or does any act" (Official Secrets Act
1920). This is at odds with the finding by Blackburn J.: "The proposition that 'and' can sometimes mean 'or' is true neither in law nor in English usage". (A Licensing Appeal 1968, Federal Law Reports 12).

Another matter that occasionally gives rise to problems for Arabic translators is the use of 'and/or' as one unit, especially when it is positioned at the end of a list type sentence as in Text 3.19. In the case of only two items separated by this conjunction/disjunction a rule was devised by the Arabic translators working for Aramco (the Arabian American Oil Company) in the 1970s, namely to spread it among its constituents. Thus: "The Contractor shall provide a car 'and/or' a truck for the site inspector" would become "يقدم المقاول سيارة أو شاحنة أو كلا المركبتين للفتش الموقع". The back translation into English is: "The Contractor shall provide a motor car or a truck or both vehicles to the site inspector". It is believed, however, that the translation of this sentence is slightly flawed, despite its simplicity. The flaw does not arise from interpreting the meaning of 'and/or', but from the addition of the word 'المركبتين', which was not in the original text. Whilst it is true that the meaning has not changed in translating this sentence, the English back translation would definitely give rise to misinterpretation of the clause, given that the word 'المركبتين', or 'both vehicles', does not explicitly refer to the car and truck mentioned in this clause. I have already explained that precision of legal texts is based, among other things, on the quality of references. It is believed that this is lacking in this translation. The acceptable translation should read as follows (back translated): "The Contractor shall provide a motor car or a truck or a car and a truck for the site inspector". This is a legally acceptable translation because it complies with a judicial
interpretation given in the matter of *Gurney v. Grimmer* (1932) (reported in 38 Commercial Cases 7), where it was stated that "a clause in a charterparty that the ship is to proceed to A and/or B at charterer's option means that the charterer may send the ship to A alone or B alone or to A and to B". It is interesting to note, however, that other judges have criticised the use of 'and/or' in legal texts. Thus in *Neame v. Neame* (1956 Scots Law Times 57) it was found that it was "undesirable to use the expression 'and/or' in formal legal writs. Likewise, in *John G Stein & Co. v. O'Hanlon* (1965 Law Reports Appeal Cases 890), Lord Reid observed that the symbol 'and/or' is not yet part of the English language.

Despite such legal opinion by the judiciary the expression 'and/or' continues to be used. But what would the situation be when the clause contains more than two items? Would the same principle of 'spreading out' apply? The answer is obviously in the negative, simply because the larger the number of items connected in this way the more complicated it will become for the translator to count and arrange the possible combinations. While it is manageable in the case of X and/or Y to say that it is equivalent to X or Y or X+Y, and in the cases of X, Y and/or Z to say that it is equivalent to X or Y or Z or X+Y or X+Z or Y+Z (6 possibilities), the possibilities for 6 items thus joined would be 22, and so on, obviously a puzzling, unmanageable method to solve a problem of this nature. The legal authority for this interpretation is to be found in Law Journal, New Series, Common Pleas Division 82, in *Stanton V. Richardson* (James 1986; p. 136), where Cairns C. observed that where statements or stipulations are coupled by and/or they are
"to be read, either disjunctively, or conjunctively, e.g. 'the contract on the face of the charterparty was that the parties were to load a full and complete cargo of sugar, molasses, and/or other lawful produce'; so that, according to the contract, the parties were either to load 'a full and complete cargo of sugar and molasses, and other lawful produce', or, 'a full cargo of sugar and molasses, or a full cargo of other lawful produce,' leaving it open in every way by reason of the words 'and/or' being introduced into the charterparty".

A workable system for translators would be one that follows the way writers of Arabic normally use 'and' as a conjunction (as in Text 3.19), or 'or' as a disjunction, as in the following example: لا يُسمح للمقيمين في الفندق بإلقاء النفايات أو الفضلات أو القمامة أو المناشف الورقية في البواليع. This is a translation of: Residents in the hotel are not allowed to throw waste, leftovers, rubbish or paper towels down the drains. It is suggested that this natural method of writing, which intuitively appeals to Arabic readers, be extended to apply to the and/or structure as well. Thus if instead of "or paper towels" we had "and/or paper towels", the Arabic translation of this sentence should become: لا يُسمح للمقيمين في الفندق بإلقاء النفايات و/أو الفضلات و/أو القمامة و/أو المناشف الورقية في البواليع. It is an application of an acceptable system in Arabic to a new stylistic necessity that is gaining popularity in various text types, including legal texts, despite opposition from the judiciary.

3.3 Plain English in legal texts

In this Chapter I have attempted to show the various features that are common to English and Arabic legal texts with a view to demonstrating that there are more similarities than dissimilarities between the two
languages. I have pointed out similarities at both the text-mapping, that is macro-structure level, as well as at the purely lexical, stylistic and syntactic level. Examples have been provided to support the claim of similarity. The underlying theme in this Chapter, and indeed throughout this Thesis, is precision and ways of achieving it in legal texts. Before closing this Chapter, however, it is important to point out that there are new trends in legal writing which are diametrically opposed to the matters that have been raised in this Chapter as conducive to precision and clarity. It should be noted that there are supporters for the maintenance of the status quo, as it is felt by many members of the legal profession and judiciary that it is only through the use of technical terms, maintaining a rigid style, and using complex structures that statutes and their derivatives can be interpreted meaningfully.

It is interesting that proponents of the Plain English movement concern themselves not only with rhetoric and general principles, but with the building blocks, as it were, of legal writing. They lay down specific rules to cover all aspects of the drafters' work, from the sentence structure to the layout of a full statute. Squires (1982) thus instructs legal drafters to open a sentence with its subject, place transitional words near the subject, keep subject and verb close together and to use the subject-verb-object pattern. She further warns against split infinitives unless ambiguity or awkwardness results from leaving them intact, against ambiguous modifiers at the end of a sentence (although any modifier can in fact be considered ambiguous and open for interpretation by courts), and to end sentences swiftly and effectively, as soon as one has completed a subject-verb unit. She stresses that significant words or
phrases should be put in the final position and that prepositional phrases in the final position should be avoided. (Squire 1982; pp. 63-76).

At the macro-structure level, Squire recommends that sentences should never be over 25 words long, that only one point is to be made in each sentence, and that sentences should be in the affirmative rather than negative. Furthermore, Squire and Rombauer, in advocating clarity call for the use of words in their literal sense, for the omission of archaic legalisms including portmanteau type words, the use of simple and familiar words instead, as well as the use of unqualified nouns, adjectives and verbs (Squire 1982; pp. 101-107).

There are others, who although not advocates of plain English, are nevertheless critical of the legal syntax that has been developed by lawyers over the years. Solan remarks that "specialised legal writing, or 'legalese', as it is sometimes called, sounds so pompous and silly that it is now literally against the law to use it in certain contexts." (Solan 1993; p. 119). Later, he remarks:

"We are thus left with a body of writing that calls itself precise, but reserves the right to be as imprecise as it wishes, when the situation calls for imprecision. This state of affairs is widely criticized by lawyers and nonlawyers alike, who recognize much of legal language as arrogant and empty hocus-pocus."
(Solan 1993; p. 120)

On the other hand, Maley argues that "discourses of law are integral to a particular kind of legal system and legal culture ... any reformation of legal discourse must take into account the contingency between language
change and legal, i.e. institutional change" (Maley 1994; p. 48). Maley points out that an investigation by Danet (1990) of the developments in the plain language movement in the USA, England, Australia and some European countries has achieved good results in the simplification and reorganisation of many business and government documents, but not in the statutes themselves, as the latter involves huge expense and effort.

There is another opinion which defends the situation of the existing legal texts, mainly legislative statements, on the basis that they

"have good reasons to be what they are, and one should try to understand this genre on its own terms rather than by imposing standards of ordinary expression from the outside, as it were, on a genre which has its own specialised concerns and specific constraints under which they are written and read" (Bhatia 1994; p. 154).

Furthermore, Bhatia argues that although there have been some improvements in style over the past few decades, especially in the devices of what I previously called macro-structure, that is textual-mapping, the reforms have been few and slow and, hence unnoticed by ordinary readers (Bhatia 1994; p. 155).

The impact of all this on translation of English legal texts into Arabic, and possibly for many other languages for this matter, is that the issues that have been raised in this chapter will continue to form some basis for solving problems encountered in both interpretation of the legal texts as well as their lexical, syntactic and stylistic processing. Bhatia is obviously correct in claiming that reforms of a few decades have been unnoticed;
this is so not the least because a tradition of several centuries of common law cannot be changed in such a short time, but also because there is no clear evidence that instructions such as those recommended by Squire (1982), for instance, would eliminate the need for judges to interpret statutes the way they do now. This is due to the fact that what is considered plain and clear by one person may be considered complex and ambiguous by another. This is the essence of the selective application by the American courts of the plain language rule, as there is really no perfect test or gauge, so to speak, to judge any text as plain/complex or clear/ambiguous. This applies to both style, including such matters as discourse, cohesion, cohesiveness, syntax, sentence length, punctuation etc., and lexis, which is the subject of the next chapter.
CHAPTER FOUR

LEGAL TERMS

4.1 Legal Terms - Myth or Reality

The first point to be made when discussing legal terms is that they carry a restricted, very specific, meaning (cf. 2.4). Perhaps this is the central theme of the whole thesis.

"The aesthetic purport of fiction is determined not so much by its overt verbal content as by a stream of associations brought forth in a recipient's mind by a word or by text in general, both at the conscious and the subconscious level." (Feinberg 1985; p. 52)

These associations, Feinberg explains, are called forth by the semantics as well as by rhythm, phonetics, or even by the sonority of the word; accordingly, fiction translation is essentially of a polysemous nature, as opposed to the monosemous nature (Feinberg calls them monosemantic and polysemantic) of scientific translation which seeks to render the exact word value wholly identical in the scientific language of any nation. In this context, scientific does not mean legal; yet there are many features in the former that can be safely applied to the latter, hence the comparison.

An early discussion of the statement that lawyers and judges "speak carefully rather than technically" (cf. 2.2) led to an assertion that theirs is a very specific and specialised type of language that has been shaped by practice and need, that their need to be precise requires exercising a high level of care as well, and that, accordingly, they speak not only
technically but also carefully. A direct result of this assertion is that while "in a given context there is seldom only one 'correct' word choice" (Squire 1982; p. 101), in technical writing the need for using the exact and monosemous word for a particular object or process is vital for the creating and maintenance of precision and clarity of reference.

Perhaps it is of value at this stage to refer to some attributes of technical terms, in general, and test legal terms against these attributes for the sake of finalising the discussion on the technicality of legal terms. The first such attribute is that technical terms "often constitute a nomenclature, a well-defined and organized set of terms that are in many ways names rather than vocabulary in the usual sense" (Yallop 1989; p. 1). In this respect, technical terms lend themselves to explanation by definition and by reference to a particular object or a particular process. Another attribute of technical terms is that they are commonly

"... thought of as specialised ... this will be reflected in the frequency and distribution of technical terms in texts. We would expect a technical term to occur relatively frequently in the relevant specialist literature but to be extremely rare outside those tests" (Yallop 1989; p. 1).

A third matter that refers to the technicality of terms comes from the fact that they are often under the control of some more or less authoritative organisation or body (Sager et al. 1980; pp. 329-343). In the case of legal terminology, authority does not simply come from such organisations as the law societies, whose role is more of a watchdog for the profession, ensuring the ethical behaviour of legal practitioners, but rather from the highest authority of democratic countries - the judiciary.
Apart from the judiciary, however, there are other individuals or bodies who constantly endeavour to maintain the specificity of meaning of legal terms. The *Australian Current Law* is just one example of authoritative publications which have such aim. These publications are reprinted regularly with additions covering newly derived, borrowed or coined terms that have come into being in the meantime. It covers "classified and concise information of cases in all Australian law reports and statutes of all states and the Commonwealth of Australia (Adam 1972; cover page), and provides an easy and quick reference to the contents of Australian current law (Bowyer 1987; Editor's preface). Although the main objective of this publication is not terminological, the listing provides an invaluable resource for any terminologist through its extensive cross-referencing mechanism.

If we were to examine legal terms according to these criteria we would find that these three criteria are satisfied. In the first instance legal terms tend to constitute a nomenclature, and they lend themselves to explanation by definition rather than by synonymy. Words such as 'caveat', 'subpoena', 'summons', 'tenants in common', for instance, are usually difficult if not impossible to explain by providing synonyms. Rather, any monolingual legal dictionary would give appropriate definitions for such terms, which definitions more often than not contain other legal terms that need to be understood first. Consider, as an example, the definition of the word 'subpoena':

A *writ* issued in an action or suit requiring the person to whom it is directed to be present at a specified place and time, and for a specified purpose, under a penalty (*sub*
They are tested in the name of the Lord Chancellor. The varieties in use are: (1) the subpoena ad testificandum, used for the purpose of compelling a witness to attend and give evidence; (2) the subpoena duces tecum, used to compel a witness to attend in court or before an examiner or referee, to give evidence and also bring with him certain documents in his possession specified in the subpoena. (Burke 1976; pp. 315-316)

It can be argued that as an entry in a specialised dictionary a detailed definition of this nature can be justified and is not unusual, given that it puts the term in its application context and makes the distinction between the two types of subpoena. A valid counterargument is that even general monolingual dictionaries list a definition of this term, although on a much narrower scale. In Collins, for instance, 'a subpoena is a writ issued by a court of justice requiring a person to appear before the court at a specified time' (Wilkes & Krebs eds 1986; p. 1161), while in The Australian Concise Oxford Dictionary it is 'a writ ordering a person to attend a lawcourt' (Hughes, Mitchell and Ramson eds 1993; p. 1156). This is in line with the way entries regarding terms from other technical fields are dealt with, although this is not the practice when meanings of ordinary, non-technical words, are the subject.

And yet it can be argued that such common words as 'tree', 'window', 'spoon' and 'car' may deserve to be defined in the same way, especially since each has technical references that could be more complex than that of 'subpoena'. While in fact trees, cars and even spoons could be more complex entities than a subpoena, they are also more frequently used, both in texts of whatever nature, not necessarily technical, and by all
people of various educational levels, social classes, professional endeavor, and ages. They are perhaps some of the first words in the child's lexicon, and accordingly a comparison between them and legal terms quoted above cannot be justified. Furthermore, while the use of common terms is dictated and controlled by the need, taste, and norms of society at large, the same cannot be said about legal terms which are controlled by only a small group in the society, namely members of the legal profession and the judiciary.

Yallop (1989; p. 2) makes the point that although "[m]ost discussion of technical terms focuses on the natural sciences and technology (including medicine and engineering) ... many words outside these fields have most if not all of the hallmarks of technical terms". He gives examples from the administrative and institutional languages, which interestingly are there to regulate things, this being the essence of law. Terms used in the social security, health and similar fields can be grouped under the 'technical' area, as they are defined by regulation or legislation. The principle of 'deeming', for instance, is a new concept that was introduced by the Australian Government five years ago to redress a very specific situation. Although originating from a common verb, 'deem', the term had acquired a specifically technical meaning by referring to a theoretical interest rate that the Government considered likely to be obtained by pensioners on their savings, although many of them had previously put their funds in non-interest bearing accounts or low-interest bearing accounts for various reasons, which resulted in less earnings for pensioners from interest and, consequently, in more financial expenditure by the Government in the form of higher pensions.
The conclusion that legal terms do constitute part of the technical term domain is an important one, as it will enable us to examine them in light of research that has already been conducted in that domain.

4.2 Legal Language as a Technical Genre

The language of law is specific and accurate, and laws are generally regarded as a type of informative texts. Words themselves can be viewed in two different ways. Firstly, there is what is called the lexical meaning, or the denotation. It is the meaning that is usually obtained from a dictionary, perhaps a basic dictionary. There is, secondly, the group of associations that the word has gained through constant use, that is the connotations of the word. Wilson (1958) gives an interesting example to highlight the distinction. A basic dictionary will tell us that the word 'mother' means the female parent of an animal. This is the denotative meaning. But because we first use it in connection with our own mothers, this word carries many associations - warmth, security, comfort, love. That is why the word 'mother' is used in connection with other things about which we are expected to feel strongly: 'motherland' and 'mother nature', for instance. 'Mother' is then rich in connotations.

Wilson makes the following conclusion

"... various activities which involve the use of words and are concerned with giving orders or information - the framing of club rules, for instance - will try to restrict words to denotation only. The writer of a science book, the creators of new constitution for a country ... do not want to appeal to the emotions of the reader, only to his brain, his
understanding. They are not writing literature."
(Wilson; 1958, p. 8)

This quotation is important because it, firstly, sets the rules for the difference between literary writing and scientific writing, and, secondly, it actually puts different things such as a science book and a new constitution in one group. This is the non-artistic group with which creators of laws and their derivatives, as well as translators and interpreters of such texts, should be concerned. The writer of literature is more concerned with the connotations, the ways in which he makes the words move or excite us. The higher we go up in literary forms the more the reliance will be on these connotations: short story, poem, play. On the other hand, writers of legal texts aspire to eliminate any possibility of misinterpretation by limiting the connotative values of the words they use. The above discussion was neatly elaborated upon by Lyons (1971; pp. 448-450), as an offshoot of discussing synonymy. He refers to how many semanticists invoke the distinction between 'cognitive' and 'emotive' (or 'affective') meaning, and suggests that these terms actually reflect the "view that the use of language involves two or more distinguishable psychological 'faculties' - the intellect, on the one hand, and the imagination and the emotions, on the other... It is often said that, by contrast with the vocabulary of scientific and technical discourse, the words of 'everyday language' are charged with emotional 'associations, or 'connotations', over and above their primary, purely 'intellectual' meaning."
(Lyons 1971; p. 449)

Earlier, however, Lyons (p. 405) poses the following question: How
different must the meanings associated with a given form be before we decide that they are sufficiently different to justify the recognition of two, or more, different words? He refers to attempts made by the Greeks to formulate principles to account for the extension of words' ranges of meaning beyond their original meanings, and mentions metaphor as one of those principles. Obviously metaphor is not something that we expect to encounter in legal texts, and when we do meet metaphors, they are usually those which are so regularly used that for the most part have lost their metaphorical reference and become fixed in the vocabulary as terms of original rather than metaphorical meaning. Head, for instance, can be used as a part of the body and a person responsible for a section or a department. In the former case, head is used in its originally cognitive sense, but in the latter it is used in a metaphorical sense, although the widespread use of this word in the sense described has made it too a cognitive meaning, perhaps a secondary cognitive meaning. Accordingly, the metaphorical terms or expressions that we are least likely to encounter in legal texts are those of literary value or nature.

The value of the above discussion to translators can be summed up in the following two statements:

"... since an important feature of poetic discourse is to allow a multiplicity of responses among SL readers, it follows that the translator's task should be to preserve, as far as possible, the range of possible responses; in other words not to reduce the dynamic role of the reader."
(Hatim & Mason 1990; p. 11)

"Since laws are regarded as a type of informative text, the view is held that translators of laws should strive to
achieve denotative equivalence that focuses on reproducing the linguistic information content of the text. Accordingly, one of the main problems for translators of laws is how to achieve denotative equivalence when translating culture-bound terms designating institutions and specific legal concepts representing the social reality of the SL country."

(Sarcevic 1985; p. 127)

In literary translating, Hatim and Mason argue, the process of constant reinterpretation is most apparent and that the translator's reading of the source text is but one among infinitely many possible readings. Legal texts, on the other hand, aim at maintaining only one clear meaning no matter how many times they are read. To achieve this, writers of legal texts employ several methods, one of which is the use of words that are very low in connotative value, as we have seen. When the choice of low-connotation words is limited, the onus will still be on the creator of the legal text to strip the connotation off these words. There are various methods to achieve this objective. One method is to provide a glossary of the words used, explaining the denotative meanings intended and thus eliminating the possibility of misinterpretation of the law by erroneously ascribing the unintended connotative values to such words. Thus, the Companies (NSW) Code, for example, specifies a 'foreign company' as:

"(a) any body (including a society or association) incorporated outside the State, not being -
(i) a recognised company;
(ii) a corporation sole; or
(iii) a body corporate that is incorporated within Australia or an external Territory and is a public authority or an instrumentality or agency of the Crown in right of the Commonwealth, in right of a State or in right of a Territory; or
What is important here, besides listing detailed classes which fit the description of a 'foreign company', is the fact that 'foreign' simply means outside the State of New South Wales, as opposed to outside Australia. Of note is that according to The Australian Concise Oxford Dictionary 'foreign' does actually mean 'of another district or community' as well (Hughes, Mitchell and Ramson eds 1993; p. 438). The legislature has accordingly found it fit to provide a definition to eliminate the other semantic possibilities and, perhaps, to eliminate the possibility of attributing any connotations of the word: 'not familiar, strange, in an abnormal place or position' (Wilkes and Kerbs eds 1985; p.435).

In NSW, there is an act of parliament, The Interpretation Act 1987, which is designed specifically to explain the meaning of some of the terms and expressions used in the State's laws. In its preamble, the Act states that it is "An Act relating to the interpretation, construction, application and operation of the legislation of New South Wales". Furthermore, in almost all statutes there is a chapter, usually the first chapter, that lists the intended meanings of the terms used in that particular statute. It is to be noted that legal texts encourage the use of standard terms whenever possible, and this can be viewed as a reason for the enactment of the Interpretation Act. Laws, however, are not blindly restrictive as they are thought to be sometimes. They allow a niche for freedom of comprehension on the basis of the context or subject matter. The Interpretation Act itself stipulates that "Definitions that occur in an Act
or instrument apply to the construction of the Act or instrument except in so far as the context or subject-matter otherwise indicates or requires".

The significance of this stipulation is that in translating legal texts, the same principles which dictate the choice and use of words, terms and expressions in non-legal texts will still have to apply here, albeit at a significantly lesser degree. The word 'equity' in the expression 'equity and access' cannot be deemed to mean the same thing as in the expression 'your equity in the property'. In trying to understand, and hence to translate the word 'equity', we have to be guided by the context in which it is used.

4.3 Importance of Technical Terms in Legal Writing and Speech

Proponents and supporters of the plain English movement in legal texts seem still to favour the use of technical terms in those texts. The argument is that laws seek to achieve clarity and precision by utilising two methods: special syntactic features and special terminology. But since laws have failed to achieve such precision through complex syntactic structures that usually leave judges with the daunting task of analysing and extracting their true meaning, specialised terms become a necessity, not only for the correct interpretation of statutes but also to enable proper and easy communication among members of the legal profession and judiciary:

"The law is often complicated, and like most complicated fields, practitioners have developed a special set of words with which to communicate. As a general matter, a
technical vocabulary should serve to reduce confusion by permitting those in a field to discuss a particular phenomenon without having to describe it separately each time reference to it is made."
(Solan 1993; p. 130)

Solan then plays the role of the devil's advocate against himself, arguing that despite their utility, technical words constitute an undemocratic feature of an institution that purports to be fair and to provide equal treatment for all. He adds that the technical vocabulary is only alienating to those not familiar with it. He poses the hypothetical question whether the "law would become more democratic, more accessible to those without formal legal training, if we were to eliminate this technical vocabulary and describe all legal concepts with ordinary words on every occasion" (Solan 1993; p. 131). His answer is that such a move would be a step backward in clarity, and that it would do nothing to make legal stipulations more accessible to the non-professional readers. He then makes the point that "many peculiar legal expressions that add nothing to meaning stay alive through the inertia of legal writers. But it is simply not the case that all legal terminology is part of some sinister plot to obscure the law to the public" (Solan 1993; p. 132). His conclusion is that technical words should be useful exactly to the extent that they are able to represent the core of concepts that would not be expressed as easily without them, but at the same time it should be remembered that the fact that some of the difficulties with legal concepts come from their substance, and not only from the quality of the language used to describe them (pp. 133-135).
4.4 Nature and Origin of Legal Terms

A striking terminological difference between legal and other technical domains is the relatively small corpus of terms in the legal area that can be labelled as technical. There are said to be over 1000 named diseases, over 10 000 dyes, about 250 000 flowering plants and a similar number of beetles, while the number of names in organic chemistry may be over four million (Sager et al 1980; p. 230). The influx of new terms to the various areas of sciences continues at an overwhelming rate. A glance at the various technical dictionaries readily shows the large volume of such terms in the various sciences in comparison with law. (Stedman's Medical Dictionary of over 1 650 pages of entries; The Petroleum and Oil Industry English - Arabic Dictionary of 527 pages; Osborn's Concise Law Dictionary of 352 pages). Two points have to be made in this connection:

1. Legal concepts, and consequently legal terms which have developed from the interpretation and application of laws are almost static in number, with relatively few additions made to them. It is perhaps for this reason that law dictionaries have such a large number of entries in French and Latin, reflecting the old origin of these terms.

2. On the other hand, modern law dictionaries are justified in including terms from other domains. Such terms are constantly growing. Reference has already been made to the principle of 'deeming'; another term from the economics and finance area would be 'negative gearing'. From the field of medicine 'euthanasia' would be a ready candidate along with
'surrogate'. Thus the legal lexicon grows not by its own technical terms, but by adopting terms from other areas that become the subject of legislation. The New South Wales acts grouped in alphabetical order under the letter C include, inter alia, acts that deal with Commonwealth powers (poultry processing), community land development, community service orders, companies and securities, companies (death duties), the compensation court, competitive policy reform, confiscation of proceeds of crime, construction safety, consumer protection, contracts review, conveyancers licensing and even conversion of cemeteries.

In discussing the nature and origin of legal terms it is vital to make the following classification:

A. Terms which consist of lexical items of a general nature, which assume a completely different meaning when joined together to serve a legal purpose, e.g. committal proceedings; frank-fee for freehold land (Burke 1976; p. 152); fabric lands, which is a term used in England for lands given to provide for the repair of, or to maintain the fabric, or structure of a church (Burke 1976; p. 142). In some instances the term can be so simple that it is thought no ambiguity could arise from its use, but in legal application it creates a specificity of purpose that is known only to those knowledgeable in this field. 'Young person' to any user of English is just what it means; however, according to Section 107 of the Children and
Young Persons Act 1933 of the United Kingdom, a 'young person' is one "of 14 and upwards, and under 17". Another, more complex example can be found in the Human Tissues Act of New South Wales 1983, the term 'premises' also "includes any means of vehicular transport".

It is terms such as the last example that makes opponents of the use of non-technical terms in legal texts adamant that 'reformation' would not make laws any more accessible to the ordinary, nonprofessional person. The argument is that opting for simple terms can be deceitful, as readers would not be able to comprehend the intended legal meaning notwithstanding the innocent look, as it were, of these terms.

On the other hand, terms such as 'fabric lands', the meaning of which could never be known by anyone but a law expert, are not unlike technical terms in other fields. The meaning of 'dumb terminal' (for a terminal without programmable memory), in the computer field, is made of two everyday words that acquire, and are intended to import, a completely different meaning when placed together; a meaning, though, that could be the privilege of only experts in the computer industry. This unusual collocation further demonstrates the technical nature of legal terminology.

B. Terms specifically set for legal purposes are, on the other hand, the result of several methods of acquisition. In this class of legal terms we can also identify several sources:
I. Borrowing from other languages, mainly Latin and French. Such terms are sometimes italicised, to indicate their foreign origin, such as *mens rea, habeas corpus, voire dire*. In some other cases, such terms are no longer italicised due either to their frequent use in legal discourse or simply to the lack of standardised procedures. 'Subpoena' and 'de facto' are examples, although the latter is now more usually not italicised due to its common usage these days by specialists and nonspecialists alike, in both speech and writing, mainly in reference to de facto relationships. Interestingly, the antonym of 'de facto', that is *'de jure'* , is consistently written in italics, thus identifying its origin, although it is likely that both terms were borrowed into English at the same time as terms of diplomacy and international law. There is a third group of legal terms that are derived from foreign languages, but have gained full acceptance in the English lexicon and are thus no longer italicised or identified as of foreign source. Thus 'forensic' (for pertaining to, or used in legal proceedings), which is originally a Latin word, has lost its sound or look of foreignness.

The abundance of Latin and French terms in the legal lexicon is a logical product of two facts. Firstly, Latin was originally an undisputed language of science, and "[e]ver since Latin was discarded as a universal language of science, and 'discoverers' in different countries started introducing terms almost arbitrarily, the problem of terminology adoption and
translation has been solved in various ways" (Feinberg 1985; p. 1).

Secondly, in English legal texts, it was French which took over as the language of the earliest law reports and statutes in the British Isles (Maley 1994; p. 12). An effect of borrowing from French is the frequent use of binomials or multinomial expressions as previously discussed. The Anglo-Saxons were fond of term pairing, such as 'safe and sound'; but following the Norman invasion "French synonyms were added to the Middle English word pairs ... [t]hus many legal terms have come to us in triplicate, for example 'give (Old English), 'devise' (Old French) and 'bequeath (Old English)" (Squire 1982; p. 110). Other legal terms that have been borrowed from French include covenant, confess, chattels.

II. Linguistic derivation continues to play a major role in enriching the various fields of knowledge in the English language, the legal field being no exception. This feature is not an exclusive feature for English; all languages have certain rules of inflecting, suffixing, prefixing, and infixing for the creation of more words to suit new concepts and things. It becomes apparent that these terms are arguably easier to understand, being English in look and grammatical attributes. This is not always the case though, as explained in the case of 'deeming', a perfectly clear word *prima facie* but with a very specialised
meaning that is not so easy to unfold.

The biggest source of legal terms is thus the English language itself, with all its word-forming capabilities. As many other languages, English has tremendous capabilities to form new words through a system of prefixing, suffixing and infixing. This continues to be an ideal method for the enrichment of the vocabulary of any language. French utilises 116 prefixes of a Greek origin and another 43 prefixes of Latin origin, together with 155 suffixes of both origins (Al-Samman 1975; p. 34)

"Thanks to these prefixes and suffixes, French and other European languages have been able to form hundreds of thousands of technical words and terms, and to lay down fixed and clear rules to guarantee the possibility of creating new terms for whatever concepts or thoughts that may be discovered, invented or developed in future" (Al-Samman 1975, p. 34).

Such rules constitute the backbone of the English language word-forming techniques. In English legal texts, words created through the processes of suffixing and prefixing constitute a sizeable part of the overall text, and in many cases they are used for the principles so far outlined, the main one of which is the desire for legal texts to create and maintain clarity and precision. In discussing accident and absolute liability in anthropology, Goldman, in an effort to show the difference between the two concepts makes use of the following two groups of terms: inadvertently, unintentionally, coincidentally, accidentally,
mistakenly, absent-mindedly; and intentionally, wilfully, deliberately, purposefully (Goldman 1994; pp.51-53). He further differentiates between coincidental and non-coincidental accidents. In the first group we have six adverbials referring to an almost - but not quite - identical concept, namely the involuntariness of action, while in the second group we have another four adverbials referring to the opposite concept. For all the conceptual difference, words in both groups have the common format of derivation, a popular feature of English but carried to an extreme in legal jargon. In so far as translation is concerned, the practice no doubt poses a certain amount of challenge, given the closeness of meaning among members of each group. In the case of coincidental and non-coincidental, the difficulty arises not so much from the concept embedded in each, but rather from the collocation which may be thought to have rendered the adjective redundant, given that it may be argued that accidents can only be coincidental and that no accidents are premeditated, that is non-coincidental.

Other examples of linguistic derivation, which border on coinage, are 'underwrite' (for guarantee) and 'undertake' (for promise). Other examples of linguistically derived legal terms include 'grantee', which is seldom used outside legal context; and 'asylee' which has been lately used by the Australian Department of Immigration and Ethnic - now Multicultural - Affairs. In some cases legal terms may be thought to fall into this category when in fact they are 'stand alone' terms in their own right. 'Joinder of
parties', for instance, may be suspected to have been derived from some verb, 'joind', which in fact does not exist. In this instance, a process of reshaping of a foreign term, (French *joindre* for join) has taken place and resulted in the English term, joinder, which is used mainly in legal proceedings. One can only hypothesise as to why such reshaping has been done in the case of *joindre* but not in other words with similar ending despite their foreign origin and sound, such as 'centre' and 'meagre' (English usage).

III. Term coinage is another source for the enrichment of English legal terminology. Examples are 'fee simple', 'fee tail', 'preference shares' and 'joint stock'. It is to be noted that despite their appearance as terms of economics and finance, these examples are decidedly technical terms in the legal sense, as they are there for a regulatory purpose which is the essence of law. 'Negative gearing' is a new addition, taken from the field of mechanical engineering and given a new mandate by the Australian Taxation laws in the field of finance (investment).

An interesting example is 'franked dividends'. Collins Concise English Dictionary provides eight meanings for the word 'frank', including its meaning in 'franked mail', which graphologically and grammatically seems the closest to our example. Of note is that this term is not listed in any of the three specialised dictionaries consulted: Osborn's Concise Law Dictionary, Faruqi's Law Dictionary (English - Arabic) and the bilingual Dictionary of
Economics, Business & Finance (Ghattas, 1989). It seems that the finance and legal community has adopted the term in its past participle form to act as an adjective for a fairly common type of investment with only one difference. Rather than letting investors pay their own tax on profits realised on company shares, the legislature now allows investors, subject to several conditions which should be satisfied by the company, to receive nett profits. One may wonder why another, perhaps clearer term was not adopted to indicate that investors would not then have to pay tax. The answer is that 'franked' does not simply mean 'tax paid'; it rather means 'tax paid to an extent', that is to a certain percentage. Accordingly, an investor with an income in the higher tax bracket than that of the tax percentage paid by the company would still have to pay some tax, being the difference between the two rates.

To these three sources I would like to add the large number of archaic words which are no longer used in ordinary English writing but continue to exist in English legal texts. This category basically refers to the 'portmanteau' words, such as 'herein', 'forthwith', 'hereby', 'notwithstanding', 'heretofore', and so forth (Crystal and Davy 1969; p.208). The use of such archaic terms in English legal texts is now strongly opposed on the grounds that "[n]ot only are these words obstacles to the lay reader, but they are also imprecise and thus troublesome to the legal reader ... they may create the appearance of precision, thus obscuring ambiguities that might otherwise be recognized" (Squire 1982; p. 103). The opposition seems to be steadily gaining
ground. A comparison between English legal texts from two different periods (Deed of Grant of Land in NSW, 1791; and the De Facto Relationships Act, NSW, 1984) clearly shows the result of efforts in this direction. Squire gives an example of the ambiguity involved in terms that are supposedly used to avoid it. 'Herein', he suggests, is a term that has been frequently litigated as to whether it refers to the paragraph in which it is used, or to the section or indeed the whole document (1982; p. 103). He suggests that such terms have to be removed and then consideration should be given as to whether one must add precise references to time, place or concept (1982; p. 104). It should be added, however, that although these archaic words are disappearing from new statutes and amendments to old ones, the same cannot be said about legal documents drawn by lawyers in other fields of legal activity, given that the statute drafters' work is editorially regulated while lawyers' work as drafters is not. Other archaic forms, such as 'witnesseth', which bear the hallmark of an Old English era, have disappeared almost completely from English legal texts. They continue to exist only in some old type formularies, including parliamentary and court documents, themselves waiting for revamping efforts.

It is such an argument that makes translators make decisions on the basis of knowledge at a different, non-linguistic level, provided that they have access to that level. Translating any material, not necessarily legal, requires the translator to ideally have sound knowledge of the subject matter, almost to a level of professionalism in that technical field. This seems to be almost completely lacking to a large extent, at least in the case of Arabic, and hence the large volume of work of technical
translation referred to translators usually without technical background. It is a problem identified, in the case of Arabic, by Al-Samman when he argued that "a major obstacle hindering the formulation of sound terms [in Arabic] is that the majority of scientists are very poor in Arabic and that linguists are too far detached from the field of science, contrary to the situation in most advanced countries" (1975; p. 34).

Perhaps it is opportune to say a few words about how, apart from suffixing and prefixing, some legal terms are coined, following the example of technical terms in general. "Sometimes a non-scientific term is chosen to define a newly discovered object, phenomenon or property" (Feinberg 1985; p. 52). In other words, a specific term originally appears as a metaphor, then gradually becomes stabilised in its newly acquired special scientific, or legal, sense and loses its non-legal connotations. 'No man's land' is a term which utilises basic words, the concepts of which exist in all languages: negation, the human race and land. However, its application in international law has restricted its meaning so that it now refers to nations rather than men and women in an individual sense. A clearer example is 'legal tender'. As a noun, 'tender' means a small boat towed or carried by a ship, a vehicle drawn behind a steam locomotive to carry the fuel and water, or simply a person who tends (Collins Concise English Dictionary). Taken in its entirety as a legal term, legal tender becomes "tender or offer of payment in a form which a creditor is obliged to accept" (Osborn's Concise Law Dictionary). Once it is qualified by 'legal', the word 'tender' no longer invokes any of the meanings provided in Collin's dictionary. Its legal meaning has become fixed, and along with this it has lost all its non-technical references or connotations.
Occasionally a non-scientific term is introduced not as a metaphor but,

"as it then appears, for a precise designation of basic property of an object. But this is a dangerous road to embark on, for subsequent development of science may disprove the initial understanding of the phenomenon, in which case the word becomes dissociated from the object's true properties."
(Feinberg 1985; p. 52).

Investigation has shown that this rule which applies to other scientific terms does not apply to legal terms, for very good reasons. Firstly, the majority of the legal terms that have been fully incorporated in the English language are from Latin, French or some other foreign origin. Words such as ‘jurisprudence’, ‘mortgage’, ‘canon’, ‘fee’, and even ‘simple’ are examples of such words whose origin is now of interest only to those interested in etymology research. For all purposes they have long become established as part of the English lexicon. Secondly, since laws continue to exist for long times, and since legal concepts and general principles seldom change, the need for the introduction of new terms into the legal technical area is really very limited. If not French or Latin, most English legal terms are originally from the Old English stock. In this case too, the origin of these terms is no longer interesting to most.

On the other hand, given that any field of human activity could become subject to regulation, it follows that the technical terms of any such activity might find their way into the laws governing those activities. In this regard, however, we should make a distinction between two sets of stipulations in statutes, contracts and similar documents. Paragraphs
which deal with purely technical matters pertaining to such activity are usually not, and will often not become part of the legal terminology. A government contract for the building of a submarine does not result in the addition of technical terms used in the shipbuilding industry to the legal lexicon. On the other hand, an act of parliament which seeks to regulate the work of financial institutions, and in the process introduces new concepts in banking, investment, international fund transfers and so forth could become fertile grounds for the coining of new legal terms. Recent examples already referred to in this Thesis include 'money laundering' and 'negative gearing'. An understanding of the concepts behind these terms is necessary for accurately translating them, as they both involve very complex background and processes. Although the first term could give an idea, albeit a superficial one, of the intended meaning, it is impossible for a reader to understand the second term, let alone translate it, unless a thorough understanding has been achieved first.

It remains to be stated that English as a medium of legal writing (and by English I refer also to Old English) has a relatively short history. I have already stated elsewhere that Latin and then French were the languages of law. Apart from the laws, though, there was a body of legal texts written in Old English, but this was very small in volume and scope, and it did not start until well into the eleventh century, given that the "English society between the fifth and eleventh centuries was largely an oral society" (Danet and Bogoch 1994; p. 103). According to Danet et al. only scribes were allowed to put quill to parchment, although their exact role in the composition of legal documents is still not known. Writing was not something the English society considered dear or prestigious, and of
all the kings of Anglo-Saxon England up to the Norman Conquest in 1066.
only "Alfred is an important figure in the history of English literature ... he knew how to write good clear prose" (Wilson 1958; p. 28). The significance of all this to us is that despite the overwhelming body of legal doctrine in English, the practice of legal writing is not as old as it is in the case of Arabic, Latin or Greek, for instance, and consequently it is neither possible nor helpful to embark on a comparative historical study between English on the one hand and Latin on the other to identify similarities and differences in both doctrine and terminology. The adoption of Latin and then French was a straightforward exercise, which had its reasons in the historical events that took place in the British Isles and to a lesser extent in continental Europe up until the eleventh century. As far as this research is concerned, it suffices to remember that despite the great influence the Romans had on the way of life of the Anglo-Saxons, modern English laws are indebted to Latin only in the area of terminology and broad doctrinal matters. As for the administration of law, the English legal system has wandered away into what is now known as 'common law' with its 'adversarial' methodology in court hearings, while Europe continued to apply the new version of the Roman Law, that is Napoleonic law, with the 'inquisitorial' system that complements it. It is basically this latter law that has been adopted by the majority of the Arab countries. And it is to the Arab countries I shall now turn, to describe and discuss the question of legal environment and terminology.
CHAPTER FIVE
DEVELOPMENT OF THE ARABIC LEGAL ENVIRONMENT

Introduction
This Chapter deals with the origins of Arabic and Islamic laws, and traces the efforts of theologians and jurists in the Arab World (and indeed also in Islamic, non-Arab countries as well) either to oppose any amendments to Allah's commandments, or on the other hand to adapt those commandments to the changing circumstances. The discussion aims firstly to explain the general legal principles that govern Islamic laws, and secondly to show that the environment in which the Islamic laws were formulated and developed was very different from the environment and method in which the English case law gradually came into being. As a by-product of this difference, it will become apparent that the legal terms in the two environments naturally had to be different as well. Indeed, there are a large number of Islamic legal terms which have not been - and perhaps never will be - translated into English. Faruqi (1991) provides examples of these terms in the preface to his English Arabic Law Dictionary, but also notes that in some famous English monolingual law dictionaries a number of terms of Islamic jurisprudence have been presented in their original Arabic form under the assumption that no precisely corresponding terms exist in the English legal tongue. He argues that in the majority of these terms, the assumption is erroneous, considering that those terms have identical equivalents in the English language. Examples of these terms that Faruqi quotes include *haq* (right), *istimrar* (perpetuity), *qadi* (judge), *talaq* (divorce) and *shuf'a* (preemption). This Chapter, however, will prove that
even such terms can have different meanings in the two legal environments (including the all-ubiquitous qadi). Perhaps the respect and awe with which Muslims deal with the Word of Allah are responsible for this feeling of a constant failure to grasp the full meaning of the Quranic terms, and thus these terms are treated as symbols that can be otherwise referred to only by way of explanations, and thus can never have synonyms. It is perhaps this awe that has made many foreign lexicographers and terminologists, including those responsible for the famous dictionaries that Faruqi referred to in his preface, refrain from providing direct equivalents to many Islamic jurisprudence terms.

In this thesis, I have been referring to Islamic and Arabic laws and terms and so forth as two separate entities, consciously trying to differentiate between the two in my discussion. This, however, is not the general view of many Muslim Arab writers and intellectuals.

5.1 Islam and Arabic inseparable
To the majority of Muslims Arabic, as the language of the Quran, is as sacred as the teachings which were revealed to Prophet Mohammad (p.b.u.h.) in that language. These are the very principles which the Muslim community is supposed to follow in order to secure the mercy of Allah in the 'Hereafter'.

"It becomes incumbent upon each and every person who seeks the dignity of this world and the bliss of the Hereafter to regulate his life according to [the Quran], to implement its commandments and to pay homage to the magnificence of the One Who revealed it. This can be an easy task for those favoured with guidance from Allah,
especially those blessed by an understanding of Arabic, the language of the divine communication. But for those not acquainted with Arabic, their ignorance is a barrier between them and this source of guidance and illumination."

(Mushaf Al-Madinah Al-Nabawiyyah, n.d., p.iii)

The argument that the Holy Quran is a source of regulating the life of the Muslim community in every respect is well documented in a huge volume of literature by Muslim theologians and jurists. The above quotation reiterates this conviction and paves the way for the importance of translating the Holy Quran so that the mercy and blessing of Allah may be extended to as many people as possible. The quotation is also important because it emphasises another conviction: since Prophet Mohammad (p.b.u.h.) was an Arab, and since the Holy Quran was revealed to the Prophet in Arabic, then Arabic must be a favoured language, and the Arabs are accordingly blessed for being able to use Arabic.

This concept has developed into a sort of indispensable introduction for any book written in or translated into Arabic, and even in Arabic monolingual and bilingual dictionaries alike. Thus, any work in Arabic is thought to be done in response to Allah's choice which made Arabic a blessed language through the Holy Quran, and more directly in an effort by Muslims to contribute to Allah's will to preserve the Holy Quran and its language:

"إِنَّا نَحْنُ نَزَّلْنَا الْذِكْرَ وَإِنَّا لَهُ لَحَافِظُونَ"

"We have without doubt sent down the message, and We will assuredly Guard it (from corruption)."
Arab writers and linguists thus conceive of their work as heavenly ordained and rewarded, especially when their work directly contributes to preserving the words of the Holy Quran and guarding against corruption of the Arabic language. Al-'Adnani (1989) thus makes the point that he is

"merely a small link in a long and large chain of men, who have committed themselves to serve their language and correct the grammatical errors which have spread in the community, with a view to maintaining the power of the Arabic language, and severely punishing those who commit grammatical errors or try to belittle the status of the Arabic language, because an offence against that language is as serious as offending against our nationalism and Arabism" (Al-'Adnani 1989; p. g).

These sentiments are echoed throughout the Arabic dictionaries, linguistics books and publications. Another theme is that Arabic can successfully be a medium of communicating science, culture and technology. Al-Khatib (1981), for instance, contends that the Arabic language

"has demonstrated its ability to carry the scientific, technological and civilised mission accurately and comprehensively as it did in the past, when it continued and for many centuries to be the language of science and civilisation" (Al-Khatib 1981; p ix).

The strong affinity with Arabic and the commitment to that language is not limited to Muslim writers. Christian Arabs have shown similar, and occasionally even stronger enthusiasm for maintaining the purity of
Arabic and at the same time reforming it, thus making it in a better position to serve the Arab nation. Thus, Ul-Bustani (died 1883), a Christian Arab, in prefacing his famous Arabic monolingual dictionary, praises Allah for "bestowing Arabs with the most eloquent of words and for making Arabic a pearl in the midst of all other languages" (Ul-Bustani 1987; Preface). Such statements should not be misconstrued as an attempt by Christian Arabs to appease their Muslim rulers or to gain social acceptance and prestige in the Arab society. Opposed to this view is the idea that Christian Arabs in fact promoted pan-Arabism and Arab nationalism in the nineteenth century in order to guarantee their protection by ensuring the prevention of a pan-Islamic variety of Arab nationalism. But regardless of the political factors, the fact is that a large volume of work in Arabic in the last two centuries, produced especially in Lebanon, has been originated by Christian writers, some of whom were even members of the clergy, such as Father Louis Sheikho (1859-1927), author of many books on the Arabic literature and language. This zeal for Arabic among Arab Christian writers can perhaps only be explained by a genuine love for Arabic as a language.

A direct result of the preoccupation of Arabs with the maintenance of the purity of Arabic is that the majority of the work of lexicographers in the Arab World has been traditionally in the area of monolingual dictionaries. Al-Qasimi (1989) rightly points out that

"... bilingual dictionaries are new in Arabic, one century old at the most, and thus are not compiled on the basis of the long experience which has backed the Arabic monolingual dictionaries over many centuries of development until they have become the best in the
world" (Al-Qasimi 1989; p.41).

It should be remembered that the greatest efforts in the monolingual dictionaries in Arabic were directed at explaining and interpreting the words and intentions of the Holy Quran, given its importance as a book for this world as well as for the 'Hereafter'. Its concern with the worldly affairs is directly linked to the fact that the Holy Quran is considered a source of legislation. In this respect, the Holy Quran generated an overwhelming interest right from the beginning, and the efforts to make it available to as many Muslims as possible led to committing it not only to writing from the very time it was revealed to Prophet Mohammad (p.b.u.h.), but also to the large number of Muslims whose duty was to memorise its verses.

Thus when during the rule of Caliph 'Othman the Holy Quran was compiled as one book, those first writings of the revelations had to be corroborated by the memory of others. The large volume of books on the interpretation of the Holy Quran is an evidence of its proliferation in the community from an early stage. This is in sharp contrast with the situation of the Holy Bible in Christiandom. Indeed the split which rocked Christian Europe in the sixteenth century was directly related to the long-standing tradition of the Catholic Church which "has always insisted that the Word of God is enshrined within the Church itself, as Christ's own foundation; the Protestants[,] however,] seek the Word of God in the Bible" (Wilson 1958; p. 53). Accordingly, the history of Protestantism is also the history of making the Holy Bible accessible to the masses of believers, by making its language more readily understandable by the ordinary people, not only by the clergy. From a historical viewpoint, the translation of the
Holy Bible could have been fuelled by a vigorous translation movement during the reformation.

Muslim and Christian theologians have had different tasks. While the former sought from an early stage to explain the words and meanings of the Holy Quran, the early Christian monks simply created a monopoly on the understanding of the Gospel, which continued to be in Latin throughout Europe until the Reformation, while the reformists later preoccupied themselves with simplifying the language of the Holy Bible itself rather than embarking upon an exercise similar to that of the Muslim theologians which would have left the Holy Bible in its original form.

The embracing of the Holy Quran by Muslims as a Word of Allah which had to be understood and complied with had meant that the words of the Holy Quran, through the frequent recitals and the daily five prayers, would become an integral part of the Muslims' vocabulary. Not that the Holy Quran used a language far removed from the understanding of the Arabs in the sixth century, but the totality of the Holy Quran is perceived as beyond the ability of any humans and non-humans alike, an idea propagated by the Holy Quran itself:

"Say, if the whole of mankind and jinns
Were to gather together to produce the
Like of this Quran, they could not
Produce the like thereof; even if they
Backed up each other with help and support"
(Holy Quran, Surat Al-Israa, 88)
5.2 The Holy Quran as a source of legislation

In Common Law countries, lawyers and judges are usually concerned not with the old English laws and their origin, but rather with the most recent antecedents. Accordingly,

"Western jurisprudence as a whole relegates the historical method of enquiry to a subsidiary and subordinate role; for it is primarily directed towards the study of law as it is or as it ought to be, not as it has been"
(Coulson 1964; p. 1).

Therefore, whilst the Western jurisprudence grew out of its own community and developed along with it, Muslim jurisprudence, in its traditional form, provides a much more extreme example of a legal science divorced from historical considerations.

"Law, in classical Islamic theory, is the revealed will of God, a divinely ordained system preceding and not preceded by the Muslim state, controlling and not controlled by Muslim society. There can thus be no notion of the law itself evolving as an historical phenomenon closely tied with the progress of society."
(Coulson 1964; pp. 1-2)

Coulson further notes that upon the death of Prophet Mohammad the Islamic law, commonly known as shari'ah, was static and immutable since it was believed it had achieved perfection of expression. What followed was a direct application of the conviction that Muslim legal philosophy had been essentially the elaboration of the analysis of shari'ah law rather than a body or a science of law emanating from courts. In the majority of instances the role of Islamic jurisprudence was to tell the courts what ought to be done. This is a view not shared by Muslim theologians and
writers, who explain that

"Islamic jurisprudence is a developing science ... it deals with numerous and varied problems which are faced by people in their everyday lives, which problems require judges to exercise *ijtihad* [the exercise of human reason to ascertain a rule of shari'ah law]. It has been natural that new rules are made by these judges which are added to the jurisprudential wealth treasured in the books" (Abou Fares, 1978, p. 7).

Coulson, however, later (p. 76) explains that there are four basic principles which represent distinct but correlated manifestations of God's will. These manifestations, which are well documented and exhaustively explained in books of Islamic jurisprudence, and which are usually known as the 'roots of jurisprudence', are:

1. The Holy Quran itself, which is the Word of God.

2. *Sunnah*, which literally means 'the trodden path' and often refers to the behaviour and actions of Prophet Mohammad (p.b.u.h.), that is the practices he endorsed and the precedents he set, although for the early schools of law it signified the generally accepted doctrines of the school (Coulson 1964; p. 240).

3. *Ijma'*, which literally and jurisprudentially means 'consensus of opinion', based on a saying by Prophet Mohammad that the Muslim community would never unanimously agree on anything that is false.
4. *Ijtihad*, which literally means 'effort', is the fourth root of jurisprudence, with a well defined course to be followed by the *mujtahidin* (theologians who apply *ijtihad*). It is there in response to the ever ubiquitous problems of a nature that simply had not existed, and as such there is nothing to deal with them explicitly by the Holy Quran or *Sunnah*, and had not been settled by *ijma*.

Another root, *taqlid* (literally means imitation), was started, according to Coulson, in the early part of the tenth century, after it had been decided to "close the door of *ijtihad*". This date is important because it rebuts claims that *taqlid* arose out of the peculiar circumstances of the Mongol invasions in the thirteenth century, when as an effort to safeguard the treasured heritage of shari'ah law from the marauding conquerors, that heritage was embalmed and hidden (Watt 1961; pp. 207,243), thus leaving Muslim jurists no choice but to imitate their predecessors.

Under normal circumstances, one would have thought that *taqlid* was to develop in Islamic jurisprudence to something similar to Common Law in the English speaking countries. This, however, did not happen, as jurisprudential activities were then confined to the elaboration and detailed analysis of established rules and jurists thus became commentators upon the works of the past masters; their energies were then expended "in a scholasticism which on occasions attained a remarkable degree of casuistry" (Coulson 1964; p. 81).
5.3 Islamic schools of law

A natural result of the inclusion of *ijma*, *ijtihad* and then *taqlid* as sources of jurisprudence in the four schools of law in Sunnite Islam emerged from an early date and has continued until these days. Although many Muslims would not be able to tell whether they belong to the Hanafi, Shafi'i, Maliki or Hanbali schools (named after well established and highly respected theologians), the division in the past caused a large amount of dispute among followers of these schools not unlike the competition witnessed earlier between the Arabic grammarian schools of Basra and Kufah in Iraq. The competition in this case was in the name of God, as each of the four schools struggled for recognition as the superior expression of God's law.

Although there was no dispute in relation to the main principles that governed Islamic law, the great extent of details and conditions that were laid down by each school in almost all areas of Islamic jurisprudence have meant deep differences not only at the theoretical level, but also in application. The resulting complications and restrictions are incalculable. In corporate law in Islam, for instance, each of the four schools has clear definitions of what a company is allowed to be in Islam and the form it can take without contravening the roots of jurisprudence. Furthermore, they also specify the manner in which partners are allowed to dispose of the assets of a company, with detailed stipulations of what should be closely followed and what should be avoided (Abdo 1976; pp.73-79). Another interesting example is related to the question of using interpreters in Islamic courts. While it is
"desirable that a judge use an interpreter to interpret the allegations, statements and matters put in defence, especially if the claimant is non-Arab and cannot speak in Arabic or if the witnesses are fluent only in their foreign tongue, then the need arises for an interpreter" (Abou Fares 1978; p. 58),

and while the qualifications of the interpreters are beyond dispute (all four schools require that interpreters be legally competent and pious), the number of interpreters in each case is in dispute. The Hanafis, for instance, contend that it suffices to have one competent interpreter, while the Shafi'is maintain the interpreting can be accepted only if it is provided by two such competent interpreters. The Malikis, on the other hand, adopt a middle-of-the-road approach: one Muslim interpreter is acceptable, but two interpreters are more desirable. Should a male interpreter be not available, and the subject under discussion is such that interpretation by a female is acceptable, then a female interpreter can be used; however it is more desirable to have a man and two women (Abou Fares 197; p. 59).

5.4 The Holy Quran as a source of law

Muslim writers and intellectuals are unanimous in their agreement that the Holy Quran encompasses a whole, undiminished doctrine for the Muslim community. Upon the death of the Prophet (p.b.u.h.), the whole message of Allah had been revealed to him, and no additions, deletions or amendments were or will ever be necessary. They maintain that the Holy Quran cannot be simply a creation of the Arab society, given its content of matters beyond the conception or imagination not only of the Arabs in the sixth century, but of all the human race ever (Hawwa 1976; p. 262).
The infallibility of the Holy Quran as well as its uniqueness in matters of style and choice of words, notwithstanding the fact that the Arabs were then a very eloquent and well spoken people, were complemented by another fact, namely the logical sequence of its suras which provided for its solidly knit structure (Hawwa 1976; p. 230).

Despite its unity of structure, style and imagery, its content of legal topics, in the strict sense of the term, are expressed in "no more than approximately eighty verses ... couched in brief and simple terms - as was the case with the Twelve Tables of Roman Law (Coulson 1964; p. 12). Coulson argues that the Holy Quran does not attempt to cover in any way all the basic elements of a given legal relationship, and that this piecemeal nature of the Quranic legislation follows perhaps from the circumstances in which the Holy Quran was revealed. It has been argued by many people, Muslims and non-Muslims alike, that the Holy Quran is aptly self-contradictory, claiming equal treatment to all and yet allowing a man to have four wives at the same time and restricting the share of women from their parents' inheritance to half that of their brothers. Another example is the contradiction in the verses prohibiting the consumption of intoxicating liquor by Muslims, where in one verse the prohibition is only for those about to go for their prayers, in another drinking is attributed to the hideous work of the Devil and Muslims are encouraged to shun it, and yet in another verse the prohibition is complete. The counter argument put forward by Muslim theologians and writers relies in principle on the fact that verses of the Holy Quran were revealed not as a whole but on a 'need-to-know' basis, to use the vernacular; the Prophet (p.b.u.h.) received these verses to deal with
situations as they arose. The second part of the counter argument has to do with the psychological 'tactics', as it were, of the Holy Quran to encourage Arabs to espouse Islam. Hence the gradual prohibition of alcohol, or the many qualifications that restrict the choice of men contemplating having more than one wife, and so on.

5.5 Jurisdiction and Islamic law

Whether we admit that the Holy Quran contains verses that have universal application in all matters past, present and future, or whether, on the contrary, we agree that it provided guidance only in matters that arose during the life of the Prophet (p.b.u.h.), and despite the large volume of literature by Islamic theologians and jurists, the application of the Word of Allah in the Muslim societies has never been complete and universal. This is a fact that is readily admitted, although lamented by Muslim scholars who pine for the rekindling of Islamic law:

"Darkness will certainly come to an end, and light will inevitably shine bright with the rebirth of the light of Islam which will engulf the whole world. Humanity will thus enjoy the fairness and integrity of the judiciary in Islam, in which believers will rejoice Allah's victory."

(Abou Fares 1978; p. 11) (My translation.)

To understand why it has not been possible to apply Islam as an all-encompassing law after the Prophet (p.b.u.h.) and the four Caliphs, we have to discuss the question of jurisdiction. The Umayyads were overtly inclined to strengthen at any cost their military position and maintain a firm grip on the populace of the lands they conquered. It was more suitable for them to maintain the task of applying the law as they saw fit.
Accordingly, the Umayyad caliph himself assumed the role of the supreme judge, and likewise the rulers he appointed to the various regions exercised the same role under his authority and name. Disputes of a private nature were left to the qādis (judges), and this situation continued to the end of the Umayyad era, but the decisions of these qādis were not final by any standard.

"their judgements were subject to review by the political superior who had appointed them, and upon his support they were entirely dependent for the enforcement of their decisions."

(Coulson 1964; pp. 120-121)

This had also been the case during the rule of the Four Caliphs, when qādis were entrusted with settling civil disputes while offences which necessitated the hadd (fixed penalties specified by Islam) were relegated to the Caliphs themselves or their appointed governors (Abou Fares 1978; p. 70).

Abou Fares argues that during the Abbasid rule it was due to the preoccupation of the caliphs with serious matters that the mandate of judges was expanded to include three jurisdictions, although he lists only two:

1. Al-Hisbah, which is equivalent to the continued practice of 'urging good deeds and prohibiting wrongdoings' currently undertaken by the Mutawwā's (religious police) in Saudi Arabia;

2. Madhalim (complaints or grievances) courts, whose work
covered serious offences and whose penalties could include imprisonment (Abou Fares 1978; pp. 70-72).

Coulson, on the other hand, argues that from the beginning qadis were left with only matters of individual concern, that their role in the Umayyad era was one of regulating the relationship between individuals and their creator, and that in the Abbasid era their role was theoretically strengthened initially but then weakened with the rise of parallel positions to settle other disputes of more serious implication on the life of the state. Qadis, for instance, did not have the power to deal effectively with claims against high officials of the state. On other occasions their judgements were simply overturned by the sovereign. Summarising Coulson, we can identify three areas or competence of Islamic law courts in the Muslim state during the Abbasid dynasty:

1. The qadi courts, with competence in matters of individual nature and at the lower scale of seriousness;

2. Madhalim courts, the jurisdiction of which was more expansive, and covered the equivalent of appeals from the qadi courts, but also included complaints against qadis themselves; and

3. Al-hisbah.

Of interest is that Abou Fares classified madhalim courts as qadi courts although he admits, perhaps inadvertently, that they are presided over by the caliph or his appointees, that is people who are more powerful.
than the *qaḍis*. (p. 71). On the other hand, there was no clear distinction between civil and criminal jurisdictions in the Islamic state, and the criminal law, if it then existed, concerned itself with the six specific offences for which Allah prescribed specific punishment, namely illicit sexual relations, *qaṭf* (slanderous allegations of unchastity), theft, alcohol drinking, armed robbery and apostasy.

It is interesting to note that homicide is not included in this short list and that it was treated as a private offence, rather than an offence against the people or the state in the modern sense (Coulson 1964; p. 124). The background lies not in the Islamic legal doctrine or practice but rather in the tribal self-made legal traditions of the Era of *Jahiliyyah*, or Era of Ignorance (before Islam), when the tribe of a deceased person became in charge of the homicide case, and where the murderer was allowed to be free if a suitable *diyyah* (blood money for compensation) was paid by the murderer or his tribe and accepted by the tribe of the deceased. More interesting is the fact that the tradition continues in some parts of the Arab world. When in 1995, a Filipino maid in the United Arab Emirates charged with murdering her employer while trying to rape her was sentenced to death and the sentence sparked a political row between the Emirates and the Philippines, the Arab ruler offered the family of the deceased blood money to buy their approval to quash the sentence and substitute it with a lesser punishment.

According to Coulson (1964; p. 155), the Sudanese penal code of 1899, despite its adopting large sections from the Indian penal code, itself modelled on Western codes, retained the Islamic institution of blood
money, which was payable "in cases of accidental homicide among communities still organised on a tribal basis". A similar situation was prevailing in Saudi Arabia in the mid-1970s, and it is assumed it is still the case now, given that that country along with Yemen and the Gulf states continued to apply the full Islamic shari‘ah law until the mid-1960s. Later only Yemen and Kuwait started to amend their laws in accordance with Western applications through other Arab countries. This was mainly due to political reasons, including the war and change of the form of government in Yemen, and also to economic changes, including Kuwait's extensive commercial dealings with the West, coupled with a drive for democratising the political life in that country.

The following observations are made on the situation of jurisdiction in the Islamic state:

1. There was no clear distinction between the criminal and civil jurisdictions in the Islamic state. The qadiş (judges), for instance, dealt with matters from both domains provided they were of minor, personal nature. Likewise, in serious matters of criminal offences which required the hadd, as well as in cases of breach of the shari'ah law pertaining to zakat (legal tax or alms), it was the caliph or his appointees (madhalim courts) who decided them. Although it appears at first glance that the qadi courts and the madhalim courts represented respectively what we may call these days 'lower courts' (local courts, courts of petty sessions, magistrates' courts and similar names) and 'higher courts' (county courts, district or supreme courts or similar names), the distinction even at that time was neither clear
nor meant to be.

In fact, the *qaḍis* sometimes "exercised *shari'ah* and *Madhalim* jurisdictions concurrently, but as a general rule their province was that of private laws - family law, inheritance; civil transactions and injuries, and *waqf* endowments" (Coulson 1964; p. 132). Besides, as well as these two levels, so to speak, of courts there also existed auxiliary bodies, which we may also call courts: *wali al-jaraim* (official in charge of criminal offences), the Master of Treasury, and the *sahib al-radd* (official in charge of rejected cases). The three courts actually existed to deal with matters which were outside the scope of shari'ah law: non-*hadd* matters were referred to *wali al-jaraim*, ordinary matters of fiscal litigation were brought before the Master of Treasury, while cases initially heard by the *qaḍis* but whose evidence did not satisfy shari'ah requirements were referred to *sahib al-radd*. The latter may be likened to a modern court of appeal.

The intricate system of courts and officials was laid down, however, to serve one principle which has no application in the Western World, and that is the shari'ah law, and the competence of courts was decided on the basis of whether a particular case fell within or outside the shari'ah.

2. The clear difference that exists in the level of proof needed for the two jurisdictions in contemporary laws did not exist in the Islamic state. Civil claims which are now decided on the balance of
probabilities were simply decided in accordance with shari'ah law by providing two male witnesses to support the claims of either litigant. The same applied in criminal matters, except in the case of the offence of zina (fornication, adultery) which required four eye witnesses to prove.

3. The references are silent about the right or desirability to have legal representatives for offenders or litigants, matters which are these days stipulated in laws or in the constitution (Sixth Amendment of the US Constitution). The application of shari'ah law seems to have followed what is known in modern terms as 'the inquisitorial system', where the judge or presiding official conducts the hearing, including asking questions, interrogating, deciding the facts, and determining what shari'ah rule applies in each case.

There is similarity, however, between the shari'ah legal practice and modern laws in the area of the onus of proof. As a matter of general principle in contemporary laws, the defendant is presumed to be innocent until the prosecution has successfully proved the offence against him or her. Likewise, a claimant in the civil jurisdiction bringing a matter before a court of law has the onus to prove his or her claim. This was also the case according to shari'ah law and in its application under the Abbasid dynasty. Furthermore, according to Islamic legal practice then, once a defendant had put anything as a counter-claim, the onus of proof shifted to the claimant, who thus became a defendant. This would go on and on, in a manner that can be likened to what the Common Law system would refer to as
'evidence in chief', 'cross examination', and 're-examination'.

4. A direct evidence of the distinction between the jurisdiction of the qaḍi as a dispenser of justice strictly according to shari'ah law and that of the wali al-madhalim as an appointee and delegate of the ruler's law can be seen from a practice in Egypt in the ninth century, when in the absence of a qaḍi the latter was appointed temporarily as a qadi. In those cases, wali al-madhalim held his court not in the mosque as the qaḍis did but rather in a private building (Coulson 1964; p. 129). In fact, the Maliki, Hanafi and Hanbali schools of Islamic jurisprudence are clear about this point, as they maintain that the best place for the qadi to hold his court is the mosque (Abou Fares 1978; pp. 67-68).

5.6 Development of the modern Arabic laws

Coulson makes the point that during

"the Middle Ages the structure of Muslim states and society had remained basically static, and for this reason shari'ah law had proved able to accommodate itself successfully to such internal requirements as the passage of time had produced"
(Coulson 1964; p.149).

This is a true contention, given the wide, although divided powers given to the qaḍis and other officials empowered to dispense justice. According to Al-Farra (Al-Faqi 1966; pp. 65-66) and other Muslim theologians the duties of qadis included settling disputes; securing the rights for their correct claimants; declaring mentally or otherwise incompetent people as
wards; executing wills; marrying off competent female persons who have no custodians; uttering the hadd against perpetrators of offences against the Word of Allah or against fellow beings; dealing with encroachments upon roads, buildings, canals and so on; as well as attending to administrative matters, such as examining witnesses and determining their competence (Abou Fares 1978; pp. 73-74).

This list seems to cover a wide range of matters, and the need for widening the scope of judges did not appear until the Arabs came in direct contact with the Western civilisation, namely through the French invasion of Egypt towards the end of the eighteenth century. In many ways the defeat of Egypt by the French had been eclipsed by the tremendous advances that were made in the Arab world, through Egypt, in almost all aspects of life as a result of this defeat and the efforts by Mohammad Ali to modernise the state. Schools of higher education were established in Egypt, the first printing press was built, and many Egyptians were sent to Europe not only to study, but also with a mandate to transfer the product of centuries of Western scientific and cultural advances to Egypt (Al-Fahham 1984; p. 692).

Arabs soon realised that the Western civilisation was based on principles and institutions not previously experienced in the Islamic state. It should be remembered that Continental Europe had then just witnessed a major shake up towards democracy which found its ideal expressions in the French Revolution, which followed a similarly significant change over three centuries earlier when the authority of the Church was challenged in Europe and then reduced to a subservient role in the State with Henry
VIII declaring the Church of England as an entity outside the traditional authority of Rome. The effect of all these changes had been the introduction of such principles as equality, freedom and democracy as viably applicable doctrines, through coded laws, rather than theoretical slogans. Coupled with all this was also the reorganisation of the political institutions, with emphasis on regulating relationships between the state and citizens.

Coulson summarises the legislative needs of the Muslim countries in the following terms:

"In the relationships between Muslim and Western states it was naturally the fields of public law (constitutional and criminal law) and of civil and commercial transactions which proved particularly prominent. And it was precisely here that the deficiencies of the traditional Islamic system, from the standpoint of modern conditions, were most apparent."
(Coulson 1964; p. 150)

An unchallenged theory is that the conquered are usually readily influenced by the conquerors, except when the conquerors have nothing to offer, such as in the case of the Mongol invasion of the Arab countries. Although this latter statement may be construed by some readers as an instance of Arab chauvinism, the fact is that it would be very hard for any researcher to prove any contribution of value to Arabic by the Mongols. Europeans had just gone through a significant process of transformation which generated the principles of human rights and civil liberties, and which consequently made any interaction between the West and the Islamic Arab states possible only if the Arabs changed some of
their practices inherited either from their tribal heritage or from the shari'ah. Some penalties imposed by the Islamic law, for instance, were considered barbaric by Western standards. Besides, the growing commercial transactions between the Arab states and the West had meant that the Arabs needed to adopt the commercial codes of the West, due to the conquered-conqueror theory and also due to the fact that such transactions all over the world outside the Nation of Islam were obviously done according to substantive, non-shari'ah law.

Thus, as well as the psychological conditions, there was also a real need for the adoption of laws from the Western countries in almost all areas except family law matters, such as marriage, divorce, adoption and probates, which have so far continued to be regulated in accordance with rules established by shari'ah. Interestingly, contemporary Muslim communities in the Western countries still do not recognise the substantive family law acts as legal and binding. In NSW, and possibly other states in Australia, for instance, the imam (Muslim religious leader) readily accepts to conclude and solemnise a marriage contract between a separated man and an unmarried woman, although the man may still be considered married according to the Family Law Act of Australia. In such cases, the imam's view is that while this marriage is considered bigamous according to the Western law, which is the law of the land, it is allowable according to shari'ah based on the Holy Quran:

"If ye fear that ye shall not be able to deal justly with the orphans, marry women of your choice, two, or three, or four: but if ye fear that ye shall not be able to deal justly (with them), then only one, or that which your right hands possess. That will be more suitable, to prevent you from
doing injustice."
(Holy Quran, Surat An-Nisa, 3)

According to Coulson (1964; pp. 152-157), starting from the middle of the
nineteenth century the Arab countries gradually started to adopt Western
laws instead of their own based on Islamic law, albeit sometimes with the
retention of parts of shari'ah principles:

1. In Egypt, penal, commercial, civil and maritime laws modelled on
the French laws were promulgated, starting from 1875, together
with setting up secular courts to apply them. Later on though, in
1937 Egypt directly adopted the Italian criminal law in lieu of the
older French-influenced version. The Egyptian civil law was later
used as a basis for its counterpart in Syria. Even the shari'ah family
laws and courts were abolished in Egypt in 1955, and family law
matters are now administered by the unified national court system.

2. In Lebanon, the existing criminal law has its roots in the
Egyptian criminal law of Italian origin, while its civil law 'Qanun al-
Moujibat wa al-'Uqad' (the Law of Obligations and Contracts) was
adopted from the French law in 1932.

3. Libya's criminal code until the end of the monarchy was an
amalgamation of the Italian and French criminal laws, while its civil
law is derived from the Western-influenced Egyptian law.

4. The Sudan in 1899 promulgated a criminal law largely based on
the Indian Penal Code, which in turn was influenced to a large extent
by the British code.

5. Morocco and Tunisia were late to adopt Western laws despite the fact that they were under colonial rule for long periods. The French laws were later used as a basis for the Moroccian criminal code of 1954, and the Tunisian commercial, civil and maritime laws (1960-1962). Furthermore, in Tunisia the family law courts were abolished in 1956.

5.7 Conclusion

It is obvious that modern laws in the Arab countries are an amalgamation of the Islamic shari'ah and different European laws. Accordingly, the Arabic legal terms are naturally supposed to be a reflection of this amalgamation and to contain items that belong to various legal environments.

1. Caliph: Literally, the word means successor, but a caliph was also called Commander of the Faithful. This is the title of Muslim rulers who succeeded Prophet Mohammad (p.b.u.h.). The Caliph had to be skilled in Arabic, and able to understand Muslim law. The first rule was not always followed, as the Ottoman Turks were not of Arab descent and had almost no association with the family of the Prophet. The office was abolished in 1924, during the Turkish Revolution. The first four Caliphs, usually referred to as the Orthodox Caliphs, were elected, but starting with the Umayyads the office was inherited. (The World Book Encyclopedia 1987; C-Ch 57)
CHAPTER SIX

SITUATION OF ARABIC TERMINOLOGY, WITH FOCUS ON LEGAL TERMS

In this Chapter I shall attempt to study another barrier which hinders the efforts of translators of English legal texts into Arabic. In the first instance, the situation of the English Arabic dictionaries, both general and legal, will be investigated, and an assessment of those dictionaries will be undertaken. This will be followed by a fairly extensive study of the word-forming techniques in Arabic. These techniques are important for translators, especially those who deal with terms for which Arabic equivalents do not exist for a variety of reasons. Admittedly, this section is applicable to both legal as well as other fields, but the discussion is essential because it will alert translators to what they are entitled to do in some instances to create their own terms through the various techniques, and to what the restrictions imposed on them are.

The Arabic language academies are no doubt the staunchest authority on Arabic language these days, and reference has to be made to those academies from time to time in this Thesis, and indeed in any discussion of Arabic lexis. Therefore, this Chapter concludes with a brief overview of the roles, objectives and efforts of the various Arabic academies and related bodies, pinpointing at the same time the lack of efforts of these bodies in the area of legal terminology.

6.1 Dictionaries

It is well established that the best tool that can be effectively used by translators and interpreters is the bilingual dictionary, whether in its
conventional printed form or in the modern electronic version. Translation students as well as practitioners resort to the monolingual dictionary usually to solve problems of a more specific (spelling, grammar, derivatives, usage, etymology, or gender and number in the case of Arabic, etc) rather than purely semantic nature. In the case of Arabic, we have a large number of monolingual dictionaries, many of which deal with the meaning and usage of Arabic words, while only a relatively limited number deal with specialised vocabulary, that is terminology. Al-Qasimi makes the point that the concept of Arabic bilingual dictionary is relatively young, as it was conceived no more than a century ago and, therefore, has not yet acquired the expertise and refinement which have been accumulated for and characterised the Arabic monolingual dictionaries over many centuries of development (1989; p. 41). He mentions two problems as seriously affecting the usability of the Arabic bilingual dictionaries, namely listing near synonyms as equivalents of the one foreign term and using one general term in Arabic to refer to several terms of a more specialised nature within the same semantic field. Al-Qasimi gives as an example of this last problem the Arabic word إتفاق (ittifāq) which is provided by the Arabic/French dictionary as an equivalent for 'accord', 'compromis', 'concordance', 'convention', 'entente', 'pacte' and 'traite' (Al-Qasimi 1989; p. 42).

There are obviously more problems that limit the usability and reliability of the Arabic bilingual dictionaries. In some cases the listing of possible equivalents is not done in any consistent or logical order. Sometimes the less commonly used word is listed first, such as the word 'misty', in
Ba'labaki (1978; p. 584), where the less common بسيم is provided before ضبابي, and where in its metaphorical sense a two-word equivalent, غير جلي, is provided before a more readily usable, one-word equivalent, غامض. It is obvious, in this and many similar cases, that the lexicographer had opted for the more literary but less commonly used alternative in the first instance, and then opted for two words rather than one, as a first preference, to describe 'misty' metaphorically.

Another, perhaps more serious, problem is that of inconsistency across the various English Arabic bilingual dictionaries. Different equivalents are given in different dictionaries for the same term. Thus Ba'labaki (1986; p. 525) lists five equivalents for the English word 'lewd': including *fasiq* (فاسق), *da'er* (تأمر), *muthir li al-shahwa* (مثير للشهوة), *baži* (بذيء) and *khali* (خلع). Karmi (1988; p. 716) similarly lists five equivalents for the same English word; similarity, however, is only numerical. His equivalents are: *da'er* (تأمر), *fajir* (ناجر), *fihi fuhs (or) khana* (فيه فحش) َو–خنا, and *fihi rafath* (فيه رفث).

The first observation to be made is that the example quoted was selected absolutely at random. In fact, there are more differences than similarities in the equivalents provided by the various English Arabic dictionaries for most terms, the main exceptions being words referring to the most basic, physical things. The second observation is that out of the five equivalents provided by each of the two dictionaries for the same term, only one equivalent is identical. One explanation for these differences could be in the fact that different lexicographers have based their dictionaries on
different English glossaries. But it has been found that even in cases where the original glossary adopted was the same, lexical equivalents given in the various English Arabic bilingual dictionaries still differed. Many questions may justifiably be asked here: What does a translator do when confronted with this problem of lack of standardisation at the basic vocabulary level? How reliable is the English Arabic bilingual dictionary as a translation tool? Do these dictionaries have really to be standardised, and if so what is the benefit?

Providing answers to these questions would probably need more space than can be accommodated here. For brevity, however, I would say that the task of Arabic translators is not an easy one. More often than not Arabic translation teachers have an arduous task trying to convince their students why the lexical equivalents provided by some bilingual dictionaries should not be used and why another dictionary - or dictionaries - should rather be consulted. Occasionally, Arabic translation students have to be told to do away with bilingual dictionaries and resort to other strategies to solve their vocabulary problems. In some instances, it appears to translators that a large number of equivalents have been stacked against one English entry, none of which, however, is usable for the task at hand, and probably for any piece of translation. To this extent, one could say that the available English Arabic bilingual dictionaries do not always provide translators with a reliable translation tool.

As for standardisation, this seems to be an ongoing problem especially in translating technical and scientific texts, although it should be stated at this point that non-standardisation is probably an asset in literary but
not scientific, technical genres. Sager (1990; p. 115) makes the point that "standardisation is a retrospective activity which follows naming after an indeterminate length of time". He concludes that the hope that standardisation will solve the problems caused by alternate designations is not likely to be fulfilled very frequently.

6.2 Arabic Specialised Dictionaries

Haqqi (1975; p. 11) explains that according to some estimates nearly fifty new terms are created by the modern sciences per day and gain a prominent place in the foreign (non-Arabic) languages. He further makes the point that in the case of Arabic, there have been personal efforts by translation practitioners and academics, and that often the same term is given different equivalents by different researchers, hence the multiplicity of equivalents for the one technical term. This leads to what Haqqi calls 'technical dialects', which add to the already anarchic situation of dialectal differences in the Arab world.

Another problem that hinders the process of formulating sound and acceptable terminology in Arabic is the fact that while in many advanced countries there are good scientists and other specialists who are also good linguists, in the Arab world most scientists are very poor linguists and linguists are illiterate in the realm of sciences (Al-Samman 1975; p. 34).

Similar, but less critical, comments were made by Stetkevych (1970; pp. 11-12), according to whom the modern challenge to Arabic was represented by a total onslaught of a highly developed, immensely ramified, extraneous civilisation, a total challenge that could be met
"Fortunately enough, Arabic, with its lexical wealth and its characteristic morphological flexibility as regards derivation, is - in theory at least - well equipped to meet this challenge in several equally promising ways, one of which is the categorical application of the criterion of derivation by analogy."

(Stetkevych 1990; p. 12)

Thus, Stetkevych's main concern is with the ability of the Arabic language to form new lexicon from its already existing stock through the process of analogy. He gives, as an example, the work of Egyptian engineer Hasan Husayn Fahmi who derived some 196 lexical items from the root *sahara* (to melt, liquefy, fuse). Stetkevych concludes that there are innumerable known or anonymous contributors to the modern Arabic lexicon, adding that "this individual, but extemporaneous effort, has its roots in the early movement of translation which began in Egypt under Muhammad Ali, as well as in the rapidly developing periodical press, centred in Egypt and Lebanon" (Stetkevych 1990; p.13).

In this regard, I would like to add an example from my own experience. In 1986, confronted with the translation of the then commonly used term 'greenhouse effect' into Arabic, and given that the available general and specialised bilingual Arabic dictionaries consulted proved to be of no assistance to me in this effort, I decided to use a direct equivalent which retained the meaning of 'greenhouse', in its more common meaning 'glass house' (بيت زجاجي) rather than the less common - perhaps never used - 'warming place' (دفيئة) (Ba'albaki 1978; p. 400) or the least common equivalent (Karmi 1980; p. 531). The result was تأثير البيت
I made a point to keep an eye on any material in Arabic dealing with this topic for the next year or so, until I spotted the same term in an article published by the respected Al-‘Arabi monthly magazine published in Kuwait. In this case what I considered to be my own coinage was perhaps what another writer or translator considered to be his too. There is nothing to indicate that the term is the - or even an - acceptable one in the Arab world, but it was of value to know that sound strategies used by different practitioners could lead to the same result.

It should be stated that significant improvements have taken place in the area of technical, specialised bilingual Arabic dictionaries in the last three decades, although in some instances the Arabic technical terms have been in existence for much longer. In physics and chemistry, for instance, over 6 000 Arabic terms were introduced into each area in the last half century (Al-Samman 1975; p. 34), but this was a direct response to the need to teaching these two topics in Arabic in Syria since 1946. The number of terms quoted by Al-Samman is, however, not great, given the total number of scientific terms in these two sciences. Al-Khatib (1987) listed some 60 000 scientific and technical terms in his English Arabic bilingual dictionary, which is still considered the leading dictionary of its kind in Arabic, as it encompasses entries from the various technical areas based on many English sources, but more importantly on what was also scrutinised and agreed upon by the Arabic language academies. Likewise, Cusic's bilingual Arabic dictionary of computer terms (1988) is primarily based on the Unified Arabic Dictionary for Computer Terminology of the Arab League. In cases where terms were not found in the latter source, Cusic simply referred to general bilingual Arabic dictionaries, namely
Ba'albaki and Wehr.

I have quoted Al-Khatib and Cusic because they provide an interesting background for the discussion of the more comprehensive and more commonly used bilingual, bi-directional, Arabic dictionaries available, namely those of Faruqi (Arabic English 1983, and English Arabic 1991). In Al-Khatib and Cusic the emphasis is on the rendition of a lexical equivalent, based on direct translation, of the English term, although Cusic provides an explanation of the terms as well. This is very important for the technical translators, as they do not have to grope for coinages that may or may not be accurate, acceptable or well derived. Merely providing a definition of a term in the dictionary is of no practical use to translators, because it leaves them with the above task which is fraught with risk.

It can be argued that in the technical and scientific fields coinages are acceptable provided they have been approved by some authority, be it the Arabic academies, the Arab League or its specialised organisations, the United Nations or other international organisations and agencies or even some multinational companies with interests in the Arab world and Arabic language. Hence the large number of specialised glossaries prepared by those organisations for the consistent use of their members. Mention has already been made of an example of such glossaries, the Unified Arabic Dictionary for Computer Terminology of the Arab League. Other examples include a glossary of telecommunications terms, which has been developed by the Arabic Telecommunications Union, the trilingual (French, Arabic and English) Glossary of Conference Terms
developed by UNESCO, and the large number of specialised glossaries prepared by the Arabian American Oil Company (Aramco).

Besides providing the meaning of foreign terms, these glossaries are primarily used for standardisation. It can be generally assumed that the main objective of the various organisations mentioned, and others, is to achieve clarity of expression among their members, and that the best way to do so is by standardising the terms used. Given the chaotic situation of coinages by various individuals as discussed above, the need for standardisation in this case is not only "in the interest of precision, if one term offers markedly greater clarity of reference or less inherent ambiguity than the other" (Sager 1990; p. 115), but also because of the existence of competing terms,

"... perhaps because the associated concept was expressed contemporaneously by different individuals in different terms or because the originally proposed term was not favoured by a substantial number of important users" (Sager 1990; p. 114).

One may give, as an example, the term 'facsimile'. In Al-Khatib (1987; p. 213), the equivalent provided is *nuskhah tibq al-asl* (نسخة طبق الأصل). Yet, this Arabic term is given by Ba'albaki (1978; p. 298) as the equivalent of 'duplicate'. A similar form, namely *nuskhah mutabiqah* (نسخة مطابقة) is given by Karmi (1988; p.370) as also the equivalent of 'duplicate'. In all three cases 'facsimile' is treated simply as 'an identical copy of something'. The relatively modern meaning of facsimile, as in 'facsimile machine', does not exist even in Khatib's dictionary of scientific and
technical terms. It is interesting to note that the 1986 edition of Collins Concise Dictionary of the English Language, notwithstanding its general nature and the fact that it is a year older than Khatib's provides the following entry for 'facsimile':

"1. An exact copy or reproduction.
2. A telegraphic system in which a written or pictorial document is scanned photoelectrically, the resulting signals being transmitted and reproduced photographically".
(Wilkes & Kerbs, eds, 1986; p. 397)

This explanation is not very different from that given in the Australian Concise Oxford Dictionary for facsimile (Hughes et al, eds, 1993; p. 400). One of the observations to be made in this instance, which is by no means isolated or even uncommon, is that Arabic translators, whether generalists or specialists, cannot rely on the available bilingual dictionaries with a great deal of certainty. Another valid observation is that the Arabic bilingual dictionaries are not keeping pace with the fast developments which take place in the realm of science and technology. In this instance, it was just a very natural and realistic choice to arabise the term 'facsimile', that is transliterate it. It should be stated that this word is originally Latin and that it was transliterated into English in about the same way as it has been into Arabic. Today, almost all speakers of Arabic use the arabised form of 'facsimile' in all forms of communication. There is only one exception. In its glossary of telecommunication terms, the Arabic Telecommunication Union had adopted the word tibsalah (طبلة), which is a blend word using as a root the term tibq al-asl (طبل الأصل), to refer to the 'facsimile machine', although the same term could well be
applied to any 'duplicator'. The term *tibsaalah*, however, was not simply the result of blending, it also conformed to the Arabic mould *mif'alah* commonly used for creating a machine name, that is *ism al-alaah*. Despite the conformity of *tibsaalah* to the Arabic methods of derivation, facsimile in its arabised form has continued to be the dominant form used throughout all sections of the Arab community, while the newly derived term has remained the property of those experts working in the field of telecommunications, but only within the organisational confines of the Arabic Telecommunications Union. This example is not unlike that of 'telephone', 'television' or 'radio', where the arabised forms of the foreign terms have gained more popularity than the correctly derived Arabic equivalents, although there is always some restriction on the ability of the user of the arabised term for the formation of usable and acceptable verbal, adjectival or adverbial derivatives. This restriction is interestingly not applicable to the colloquial Arabic, although colloquial here refers more to the spoken Arabic generally, rather than its informal variety. Thus in everyday conversation, even in situations that are not necessarily informal, we may say *yutalfinu* (to phone), *televizionat* (televisions) and *radiowat* (radios), while in writing, or in formal situations where grammaticality is sought, we usually use *ittasala hatifiyyan, ajhizat televizion* and *ajhizat radio* respectively, literally meaning 'make a phone call', 'television sets' and 'radio sets' respectively. 'Sets' has simply been introduced in the last two examples to avoid deriving a plural from an *a'jami* (non-Arabic) noun, while in the first example the amount of change carried out to avoid such derivation is more elaborate and complex.
The above illustrates the unsatisfactory situation of the Arabic dictionaries as a reliable resource for translators. This notion is applicable to both general and specialised dictionaries. The result is this overwhelming body of terms, most of which may be incorrectly derived or coined, or simply unacceptable by the language community, that Arabic translators resort to to satisfy the immediate need for Arabic equivalents of English terms, both old or new.

6.3 Arabic Legal Dictionaries
There are two Arabic bilingual (Faruqi, two volumes, from and into Arabic and Wahhab's English into Arabic) dictionaries that can be used reliably to a large extent. Documenting the linguistic efforts in the Arab World over a whole century (to 1979), 'Abdul Rahman lists 278 dictionaries related works, including monolingual glossaries of existing Arabic terms, as well as bilingual and tri-lingual dictionaries of both general and specialised nature ('Abdul Rahman 1981; pp. 137-175). The law dictionaries and publications are:


The above short list proves that Arabs have so far been more preoccupied with monolingual than bilingual dictionaries. Besides, it shows that they have been more concerned with other areas of activity than with law. Furthermore, on a mere quantitative basis, I shall refer to Faruqi’s English - Arabic work rather than Wahhab’s, as the first contains double the number of entries in the latter.

One can only wonder why this lack of dedication for a field that is considered at least as important as the fields of medicine, science and technology. Since their inception in 1917, the various academies of Arabic language have dedicated a lot of effort and time to produce essays, booklets and glossaries in a variety of topics, and law has certainly been one of them. But the above list shows that the volume of such writing has been marginal, especially in the area of bilingual dictionaries. The oldest academy, Majma’ al-lughah al-‘Arabiyyah in Damascus, which since 1917 helped in promoting the proper usage of Arabic terms, seems to have achieved greatly in many fields, including law. This is only a superficial impression. We know of several bilingual or trilingual dictionaries that the Majma’ has helped in publishing, these being the French - Arabic dictionary of archaeological terms by A Al-Shahabi, published in 1967; the English - Arabic - French dictionary of geological terms published in 1977; the English - French - Arabic dictionary of medical terms by 'Anz, published in 1977; the English - French - Arabic dictionary of arts by Bahansi, published in 1971; and the English - French - Arabic dictionary of chemical terms published in 1977 ('Abdul Rahman 1981; p. 32). The only contribution by the Majma’ in the field of law seems to have been in
the area of monolingual glossaries, as part of collecting the various terms that had been published in the various issues of the *Majallat*, which is the *Majma's* periodical newsletter. Thus, the *Majma* published in 1951 a booklet for civil law terms and another for commercial law terms. Law in this instance was one of seventeen areas of study that the *Majma* dedicated its efforts to around that time. The fact that these glossaries were only in the form of booklets, coupled with the other fact that only civil and commercial law was catered for, indicates that there is still a lot to be done in this area.

The Permanent Office for Coordinating Translation in the Arab World, which was established in 1961, does not seem to have done any better in the area of legal terms, despite its great efforts in other areas. By 1980, the Office had caused a number of dictionaries to be produced in botany, zoology, physics and natural science, chemistry, insects, petroleum, mathematics, geology, blood and bones. These were all trilingual, Arabic-French-English ('Abdul Rahman 1981; pp. 56-57). Furthermore, by 1980 the Office had on the drawing board some forty dictionary projects divided over eighteen different categories of sciences and arts, none of which relates to law in any way ('Abdul Rahman 1981; pp. 58-59).

A factor which may have contributed to the lack of interest in law by the various Arabic bodies in charge of coordinating and regulating terminology could be the perception that the legal terms are almost static, in concepts as well as in number. Another factor may have been the reluctance of Arab scholars and lexicographers to touch upon a sphere of knowledge that was thought to be too sacred to handle. Both
views, if they have existed, are obviously unjustifiable. In the first instance, the language of law does change, albeit much more slowly than the language of other fields of human activity. I have stated earlier in this Thesis that many terms that have become decidedly legal were derived from, and continue to form part of, other sciences, such as economics, finance, medicine, geology, and so forth. Conversely, many terms used in these fields actually exist because they were created, or have acquired new meanings, as a result of becoming legal terms. 'Deeming' and 'negative gearing' are two such terms. As for the notion of the divinity of the laws (and the reference here is to the Islamic Shari‘a law), the previous chapter illustrates quite clearly how the various Arab countries have in the last two centuries have modelled their laws on the European statutes, which are alien to Islam and Shari‘a law.

6.3.1 Rarity of the English - Arabic legal dictionaries
As for the rarity of the bilingual English - Arabic dictionaries of legal terms, here again one can only speculate as to whether this is primarily due to the fact that most Arab countries have modelled their laws on those of the continental European countries rather than those of England, the United States of America or other common law countries. In Lebanon, for instance, all lawyers have traditionally been versed in French and Arabic at the same level, but often in French more than Arabic. It appears, however, that the problems that hinder the work of Arabic translators of English legal texts are shared by their counterparts who are charged with translating French legal texts as well. Al-Qasimi (1989; p. 42) gives as an example the Arabic word إتفاق, which is provided in the French Arabic legal dictionary, Al-Manhal, as an equivalent to nine
different French terms (see 6.1 above). Al-Qasimi makes a valid point:

"It is well known that no French word can be translated into Arabic using one, unchangeable equivalent; rather the meaning of such term changes and varies depending on the context in which it exists and on the terminological usage of the word in the original language."

(Al-Qasimi 1989; p.42)

He explains that lexicographers should be able to cater for these changes and variations by listing all the possible equivalents in one of two ways: that other possible equivalents be listed after the main equivalent of the word (in the case of 'pact', the equivalents would thus be: عهد, ميثاق, عقد, وعد, دستور) with عهد being the main equivalent; or by providing the main equivalent only, followed by the terminological usages of the word. Thus:

<table>
<thead>
<tr>
<th>Pacte</th>
<th>عهد</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pacte de preference (Droit)</td>
<td>وعد بالتفضيل</td>
</tr>
<tr>
<td>Pacte federal (Suisse)</td>
<td>دستور سويسرا الإتحادي</td>
</tr>
<tr>
<td>Pacte de Varsovie</td>
<td>حلف وارسو</td>
</tr>
<tr>
<td>Pacte de la ligue des Etats arabes</td>
<td>ميثاق جامعة الدول العربية</td>
</tr>
</tbody>
</table>

(Al-Qasimi 1989; p.42)

To these, Al-Qasimi adds a third method which combines features from the first two methods: the main equivalent is to be provided first, followed by the other possible equivalents, after which the contextual and terminological meanings and usages of the words are provided. This is the method that has been followed by Ba'albaki (1978) and greatly enhanced by Karmi (1988) to the satisfaction of many Arabic translators and general users. It is also the method followed by Faruqi in his legal dictionary (1991), although not to perfection as will soon be explained.
6.3.2 Incompleteness of Faruqi’s dictionary

In the Preface to his legal dictionary, Faruqi sets out its intentions and usages:

"The fundamental objective sought is to present to the Arab lawyer and student of jurisprudence and to the Arab businessman who, by virtue of his foreign legal and business relations, can all afford indifference to legal terminology, a bilingual dictionary in the pattern of modern English and American dictionaries."
(Faruqi 1991; English Preface pp. 1-2).

One can only hypothesise as to whether Faruqi inadvertently omitted translators and interpreters from the short list of intended users of his dictionary, or whether in fact he did not consider translators to be potential users because of the lack of demand for translations of English legal texts into Arabic. As a confirmation of his intended targets, he further points out that for the benefit of the law students, he has provided ample space for the titles of old English laws and words used in old European and feudal law, as well as for the principal terminology of Roman law (Faruqi 1991; English Preface p. 2). Similar comments are provided in the Arabic preface, albeit with greater detail. He emphasises that law students, lawyers, as well as finance experts and economists have no reliable technical resource they can consult to uncover the complex concepts of legal terms, a need that has been made all more obvious following the demise of French as a dominant international language, having been surpassed by the English language (Faruqi 1991; Arabic Preface p. 1).
A question that ought to be raised here is whether it is justifiable to assess the suitability of this dictionary for translators. The answer is definitely positive, because regardless of whether the lexicographers specify them as users, translators obviously should top the list, especially in an area such as law, where Faruqi's is the main reference. It is perhaps opportune to start my assessment with referring to the example given by Al-Qasimi, that is the word 'pact'. While he lists five Arabic equivalents for the French word 'pacte', Faruqi lists only three equivalents for the English equivalent 'pact', namely ميثاق, إتفاق, صفقة (that is treaty, accord, and deal or conclusion of contract respectively). Perhaps it is useful to reproduce here the format that the term has been dealt with in Faruqi:

\[
\begin{align*}
\text{pact} & \quad \text{ميثاق, إتفاق, صفقة} \\
- \text{nude pact} & \quad \text{ميثاق مجرد لا يقابل عوض} \\
\text{pact de non alienando} & \quad \text{في الرهونات} \text{ اتفاق عدم} \\
\end{align*}
\]

Pact of Paris (Kellog-Briand Pact ميثاق باريس (راجع)
(Faruqi 1991; p. 507)

As an introductory note it should be remembered that in this case the Arabic equivalents provided by Al-Qasimi for the French 'pacte' are also equivalents for the English 'pact'. There is no explanation for not listing all the possible equivalents against the English term in Faruqi, as well as for not listing the possible usages in their contextual meaning as suggested by Al-Qasimi. It is not unjust to note in this instance that Faruqi's dictionary suffers from incompleteness, which limits its usability for translators and interpreters.
Another observation to be made here is that the Arabic word صفة، provided as an equivalent, is used only in the area of Islamic law in the sense of 'conclusion of contract', and as such is of restricted benefit to translators from English, as this term is currently translated almost always as إبرام عقد. The word صفة simply means 'deal', and as such listing it in this entry is meant only for students of jurisprudence, as pointed out by Faruqi in his preface. This notion is strengthened also by the provision of a translation for the Latin term 'pact de non alienando', which again is of a very limited benefit to translators.

The problem that I have referred to in the example of 'pact' is made more acute by the fact that each of the Arabic equivalent terms provided can itself be translated in different ways in English, depending firstly on the subject field and secondly on synonymy. Thus إتفاق (ittifaq), for instance, could be translated as "coincidence, congruence, congruity; agreement, conformity, conformance; accident, chance; covenant, compact, convention, contract; understanding, arrangement, entente; agreement, treaty, pact" (Wehr1979; p. 1272). This is by no means an extreme example:

The recognition that terms occur in various linguistic contexts and that they have variants which are frequently context-conditioned shatters the idealised view that there can or should be only one designation for a concept and vice versa. In order to account for different meanings of the same term as they occur in texts (homonymy), it had always been accepted that a term form could belong to more than one subject field, where it would be differently defined." (Sager 1991; p. 59)
Although Sager continues by explaining that the division into separate vocabularies according to subject fields constitutes a prerequisite for the terminological theory that excluded the existence of homonyms, the problem in the example quoted above, and indeed in a very large number of entries in Faruqi’s law dictionary, is that there are homonyms even within the one subject field. Sager stresses that as soon as the one-to-one correspondence (which is most desired and most useful for translators) is broken in the other direction, in other words when we accept that there can be several contextual or other synonyms for one concept then it becomes the terminologist’s duty to establish “one regular and proper name for a concept to which the others are variants, or alternatively to define the context in which the regular paradigm of the term occurs” (Sager 1991; p. 59). This takes us back to Al-Qasimi’s concept of main equivalent and other possible equivalents (cf. 6.1).

6.3.3 Standardisation as an Impediment and an Advantage
Perhaps I should mention at this stage of the discussion that the translation divisions in the United Nations have agreed on using one-to-one equivalents almost always, presumably out of a desire for standardisation. In discussing the Arabic terms إتفاق and its French equivalent 'pacte', which are fraught with the problems of homonymy and synonymy as we have seen, Al-Qasimi (1989; p. 42) provides the following as a United Nations approved list of one-to-one equivalents (English equivalents provided where they differ from the French spelling):

accord          إتفاق
It should be noted that in some instances the preoccupation with the question of standardisation could be counterproductive. In Aramco, Saudi Arabia, the common practice in the translation unit in the early 1970s was for total standardisation in all translations of the Company's goods and services contracts. 'Water' can be rendered in Arabic as either ماء or مياه, and different writers and users of Arabic opt for one or the other interchangeably. In Aramco, however, only ماء was allowed to be used. Obviously, this would have caused some problems in the case of translating 'underground water', which is known in Arabic only as مياه جوفية but not ماء جوفي. This is a matter of popularised usage, and also of collocation imposed by the fact that given that everything in Arabic has a gender, ماء is classified as masculine and مياه as feminine. I have no recollection as to whether I had to deal with this problem then; I am aware, however, that I always thought about this example and others which would have posed a great challenge to the usefulness of blind, and perhaps pedantic standardisation.
The above discussion, however, is not meant to challenge the viability of standardisation in legal and other specialised translations. It has more benefits than disadvantages. Sager notes that a disadvantage of standardisation is that it fixes the reference of a term and thus undermines the natural creativity of languages, and that "most people do not readily accept normative intervention in their language behaviour, and yet more and more standards are published and used annually" (Sager 1991; p. 122). It should be remembered that unlike in literary writing, where variety is much desired to achieve the artistic objectives sought, in the technical genre consistency of expression is the rule, despite the obvious, and sometimes excessive, repetition encountered in scientific and legal texts. In discussing the efficacy of standards in terminology, Sager describes standards as

"...economical because they establish prior agreement of reference among the participants and therefore assist in the achievement of effective communication among specialists by speeding up the process of communication. Standards are precise because they eliminate misunderstanding by establishing a clear one-to-one equivalence between terms and the region of the conceptual system referred to."

(Sager 1991; p. 122).

Furthermore, Sager provides an interesting insight into the objectives and efficacy of standardisation. He notes, firstly, that it is possible to standardise reference to objects or notions without standardising those objects or notions; and secondly, that it is pointless to standardise objects or concepts without standardising their designations at the same time lest the standardisation of objects or concepts may not be noticed (Sager
1991; p. 118). Although this is a very valid argument, in real life the situation is far from ideal. In many instances we have one notion or object that is referred to not by one standard reference but by a multitude of references that are limited only by the number of the communities in which such object or notion is used, notwithstanding the common functions of such object or notion or the experiential background of those communities. It is a situation that presents itself to translators almost regularly. A direct example can be given from the New South Wales hierarchy of courts, particularly the designations given to the lowest level of courts in this State. Until a few years ago these courts were referred to as 'courts of petty sessions', but now they are called 'local courts', although no changes have been introduced to their jurisdiction or competence. In the other Australian states, the same level of court is referred to as 'magistrate's courts' or 'courts of petty sessions'. However, all these designations can and do fit well under another designation, 'courts of summary jurisdiction', an expression used for brevity to describe courts constituted by magistrates or justices of the peace (Jackson 1987; p. 18). It is a term that can be used in all Australian states.

This is a situation where the objects are standardised but not their designations. Yet, standardisation in this case is not beyond reach, as the name provided by Jackson can fit all various designations, although by the same token any of the other designations can fit as well. The question, from a translation viewpoint, is whether we have to provide a different designation in the target language for each of the designations given in the source language.
Faruqi lists 'court of petty sessions' as one of the lower courts without providing an equivalent in Arabic (1991; p. 176). As for 'magistrate's court', Faruqi provides the following:

[In some eastern countries] A court of the justice of the peace [literally: conciliation]

[American Law] A court of summary jurisdiction with local jurisdiction in contractual claims of no more than twenty dollars.
(Faruqi 1991; p. 436)

As for 'local court', Faruqi provides the following equivalent, coupled with an explanation:

Local court: Its judicial jurisdiction covers a certain territory or region to the exclusion of others, often a state court with competence in only one state, unlike federal courts whose competence cover all the federation's member countries or states."
(Faruqi 1991; p.428) [Translations in the above two quotations are mine]

Starting with the last entry, it should be noted that the rendering into Arabic of 'local court' is acceptable, as it is firstly a loan translation, and is secondly referentially appropriate, given the notion of 'locality'. Although
Arabic translators and interpreters in New South Wales use this Arabic equivalent because it constitutes a direct loan translation, it would be doubtful whether they would continue to use it after reading the explanation provided by Faruqi, as it could be understood to mean that the competence of that court covers the whole state, rather than a specified area within the state, as is actually the case. We know that only the Supreme Court of New South Wales covers the whole State, and as such the above definition would better suit this latter court.

On the other hand, the acceptability by translators and interpreters of the first term given for 'magistrate's court', namely محكمة صلح is likely to be very limited for the following reasons:

A. The direct literal meaning of صلح is conciliation; thus, translators would shun the term because it is deemed to include a concept that is not clearly the function - or the only function - of local courts. In fact, صلح is perhaps more appropriate for tribunals with specific conciliatory role, such as the arbitration tribunals.

B. The statement that the designation is used 'in some eastern countries' means that Arabic translators working in Australia would turn elsewhere for an equivalent, given that Australia is not an eastern country.

C. Although the real reference in the word صلح is to the role of the justice of the peace (given that 'justice of the peace' is translated as قاضي صلح), the term provided by Faruqi would thus exclude the 'magistrate',
which is odd, given that 'magistrate' is the main lexical constituent of the term 'magistrate's court', and also given that 'magistrate' is defined as a judicial officer having a summary jurisdiction in matters of criminal or quasi-criminal nature; a justice of the peace' (Burke 1976; p. 210).

As for the definition quoted by Faruqi as applicable to the American Law, the reference to the monetary limit is useless and anachronistic, given that levels of monetary values of claims heard by magistrates and judges as well as, but to a lesser extent, the penalties they are empowered to impose are reviewed periodically. The question that remains unanswered is: do terminologists and translators have to provide a different equivalent for each of the four variants of this type of court? And if the answer is yes, what purpose does this serve?

If we were to apply Sager's recommendation that it is pointless to standardise objects, which in this case are the courts at the lowest level, without at the same time standardising their designations (1991; p.118), then we should have only one equivalent in Arabic for the four terms in English, notwithstanding the non-standardisation in English. This becomes more important, and also more convenient, given that we do not have an acceptable term in Arabic for 'courts of petty sessions' and a standard term for 'magistrate's court'. Needless to say that standardisation at this level would not disturb the Arabic terms applicable to the hierarchy of courts in the Arab world, as the two systems are not similar. But having said that, part of the definition given by Faruqi for 'magistrate's court', namely محكمة جزئية is perhaps the most suitable equivalent as it covers the duties performed by magistrates and justices of the peace in the
various common law countries. It is a designation given for 'courts of summary jurisdiction', which as we saw is the umbrella term quoted by Jackson.

The equivalent provided by Faruqi for 'local court' as محكمة محلية is not appropriate for a reason other than quoted in discussing this term above: the Arabic term is also provided by Faruqi as an equivalent for 'district court'.

"District courts: محكمة محلية ذات اختصاص مكاني يقتصر على المنطقة التابعة لها.
[Local courts with spatial competence limited to the area where it is located.]
(Faruqi 1991; p. 224)

For the Arabic translators working in New South Wales it is absolutely inappropriate to use one term, محكمة محلية, to signify two completely different entities as far as competence and jurisdiction are concerned. Besides, the definitions given by Faruqi for local courts and district courts seem to be at odds with the usage of these two terms in New South Wales and Australia in general (although the second level of courts are also referred to as 'county courts' in Victoria). As a matter of fact, it is the 'local court' which has local competence, more restricted than that of the 'district court', which is the second level in the court hierarchy in New South Wales. We cannot apply in this case Sager's notion that references to objects can be standardised without standardising the objects or notions (1991; p. 118), because although this is the underlying principle of thesauri we should remember that thesauri are meant for vocabulary
not for terminology, that is they are meant for the use of general readers rather than subject specialists who need not only standard, but very specific and conceptually accurate terms for reference.

Before I move to another topic, I will mention a similar example, that of 'accused' and 'defendant'. It is customary for Arabic translators to use one equivalent, *muttaham*، invariably for both English terms. We know, however, that in the Australian courts of criminal jurisdiction 'defendant' is used in the lower courts, collectively called 'courts of summary jurisdiction', while 'accused' is used in the higher courts, namely the 'district court' and the 'supreme court', and that in both cases they are used to refer to the same person, against whom charges have been preferred, and who is before the court to answer to the charges, so preferred. The legal status of such person is often misunderstood, and conclusions are made on the basis of his or her physical appearance in court. Translators into Arabic (and most probably in other languages as well) thus attribute one equivalent for both English terms, and hence 'accused' and 'defendant' are treated as synonyms. The fact, however, is that these terms have to do with the powers given to magistrates in lower courts and to juries in the higher courts. Magistrates can only *dismiss* information against a *defendant*, but only juries can *acquit* the *accused*. In this case, standardisation in the target language is obviously counterproductive, and readers would not know whether the text refers to the lower or a higher court if *muttaham* is used for both, as the case has been so far.

6.3.4 The Problem of Definitions as Equivalents
Terms are not general vocabulary words. This is not identical to saying that terms of a special subject are different than words of general meaning; rather, some of them are borrowed from the general language, and others are borrowed perhaps from other languages or moulded in certain ways to signify objects or concepts that are peculiar to the special subject. Yet, all of them have special reference to notions that belong to that subject. Thus, 'competence' of courts is not equivalent to the 'competence' of the athletes or to language 'competence'. Besides, we know that, in general,

'since most transmission of knowledge uses the discrete medium of language, we have become accustomed to accepting the constraints of approximation imposed by linguistic communication'. (Sager 1991; p. 15).

Terms of special subjects, on the other hand, are there to provide a direct and specific relation between concepts and objects and their lexical symbols. It follows that these symbols can gain acceptance only if they are publicised in one form or another. In science and technology, where journals and conferences abound, the newly created terms can be transmitted easily and thus gain popularity among the special subject fraternity because they serve the purpose of economy and precision and, consequently, facilitate communication. Sager notes that even in a special language there are items of general reference which do not usually seem to be specific to any discipline or disciplines and whose referential properties are vague or generalised (1991; p. 19). He concludes that only items which are characterised by special reference within the discipline are called terms, the total of which is called terminology, while those items which function in general reference over a variety of sublanguages
are called words, the total of which is called vocabulary (Sager 1991; p. 19). As an extension of Sager’s notion I will call the first category of legal terms ‘legal terminology’ and the second category as ‘quasi-legal terminology’. A note that should follow this distinction is that a quick glance at any glossary of legal terms would readily reveal the relative abundance of quasi-legal terminology. A valid argument is that, whether legal or quasi-legal, terms have to be defined as a first step towards gaining recognition. It is pointless to use a term, either from the general domain of lexicon or from the legal terminology, if such term has not been first explained and well defined.

Sager specifies the methods by which the terminologist describes the concepts of any discipline, namely by definition, by their relationship to other concepts and by the linguistic forms themselves (1991; pp. 21-22). Later, he provides an explanation of the method of description by definition:

"Definitions provide the link between concepts and terms by means of an equation in which the definiendum is the term. A terminological definition provides a unique identification of a concept only with reference to the conceptual system of which it forms part and classifies the concept within that system."

(Sager 1991; p. 39).

But within the scope of the definition method, Sager identifies two sub-methods, lexicographic and encyclopaedic, and notes that the difference between the two is one of method rather than purpose, but both are nominal definitions of the classical word-thing type of philosophy, with the "word-word definition can be said to exist in bilingual dictionaries in
which equivalences are established between the lexical items of two languages, i.e. two symbol systems" (Sager 1991; p. 40). To this discussion, I would add that, from a translation viewpoint, the encyclopaedic definition method is least suitable and useful, although it may be essential in a monolingual glossary or even in the bilingual dictionaries, but only for the purpose of explanation and fitting the term in its exact conceptual domain.

While Faruqi lists a large number of terms which he deals with in accordance with the word-word method, there are others, mainly compound terms, for which he uses the encyclopaedic definition (that is explanation) method, which as foreshadowed is of least benefit to translators.

"Suing and labouring clause: This clause refers to the following provision in any maritime insurance document: 'In case of any loss or misfortune, it shall be lawful for the assured, their factors, servants and assigns, to sue, labour, and travel for, in, and about the defence, safeguard, and recovery of the "property insured", without prejudice to this insurance; to the charges whereof we, the assureds will contribute. (Maritime Insurance Act, 1906, s. 78) (Faruqi 1991; pp. 671-672) [Italicised text is my translation.]

Arabic translators would obviously not benefit from the above entry in any way, as it does not provide any Arabic equivalent. Besides, the quoted clause would help them with creating Arabic equivalents only with difficulty, as both 'suing' and 'labouring' are provided in English. The motive for non-provision of an Arabic equivalent is not known.

A similar example is to be found in Faruqi for the term voire dire. Most
court interpreters are well aware of this term, which is used as a 'hearing within a hearing' to determine the appropriateness, that is admissibility, of the evidence of certain witnesses. General bilingual Arabic dictionaries are of no or little use to professional translators in this respect. Ba'albaki (1978; p. 1035) provides the following as an equivalent: اليمين يؤديها الشاهد أو الحلف, (An oath: An oath given by the witness or juror). Karmi (1988; p. 1591) provides a more accurate explanation of the term, yet no direct equivalent: فحص أولي للشاهد يقوم به القاضي بعد القسم. يمين الشاهد (أو) قسمه (Preliminary examination of a witness by the judge after taking the oath. Oath of the witness). In both cases there is emphasis on the oath, although all evidence is given under oath or some other form of affirmation to say the truth. Of interest is that Karmi has opted for the word فحص for examine, rather than استجواب. The former belongs to a much wider domain of special languages, including science, medicine, mechanics etc, and , therefore, should not have been used, while the latter is taken direct from the legal domain. Faruqi provides the following explanation for the French term:

"voire dire: استجواب القاضي للشاهد تمهيديًا والتزامه - ين يقول الحق - فإذا بدأ على الشاهد في هذه المرحلة بوارد اعتماد الأهمية لخلل في عقله، رفض القاضي شهادته."

[A preliminary examination of a witness by the judge in which he is required to "speak the truth". If signs of incompetency due to lack of sound mind appear on the witness at this stage the judge rejects his evidence.]

(Faruqi 1991; p.736) [Translation into English is mine]

Besides its uselessness for interpreters, but mainly for translators, due to the lack of a direct equivalent, the definition given by Faruqi is seriously flawed. From my experience as a court interpreter and as a witness in
criminal matters, I am confident that witnesses are called upon by way of subpoena to give evidence in a *voie dire* not exclusively to assess their mental competence, but rather to assess their reliability and the admissibility of the evidence they will be giving later in the trial. In fact, mental competence is one of a large number of matters that judges are interested in when they conduct a *voie dire*; Faruqi's restricting the term to mental competence would create unthinkable problems to translators and interpreters. Following is the definition given by Burke for this term:

"voie dire. A preliminary examination of a witness by the judge in which he is required to 'speak the truth' with respect to the questions put to him; if his incompetency appears, *e.g.* on the ground that he is not of sound mind, he is rejected."
(Burke 1976; p. 343)

It appears from the great similarity between the explanations given by Faruqi and Burke that the former had borrowed from the latter, although Burke does not appear on Faruqi's list of references. It would appear that a slight deviation, that being the omission of *e.g.*, that has led to a definition that, from a translator's perspective, I would not hesitate to describe as catastrophic. This, in turn, would cast huge shadows of doubt as to the reliability of Faruqi's dictionary as an aide for translators. Given that defining concepts is useful for "translators to check the equivalence of a term as well as to the subject specialist who has to identify a new process or product" (Sager 1991; p. 42), the above example clearly undermines the reliability of the quoted dictionary for both categories of users.
Before moving to another discussion, it is perhaps of value to list the full range of definitions currently being used in lexicography and terminology, these being definition by analysis, synonyms, paraphrase, synthesis, implication, denotation, demonstration, and by a mixture of analysis and description or synonym and description (Sager 1991; pp. 42-43). Interestingly, examples quoted by Sager under the various definition methods had examples of word - word, or definition by synonyms, only for 'software = logiciel' and 'daisy = bellis perennis'. This confirms the idea that word - word equivalence is best established in bilingual dictionaries. Any other explanation would obviously be an asset, provided the explanation is authentic and, hence, reliable.

6.3.5 The Question of Compound Terms

Arabic is an explicit language, and as such it shares more features with languages such as Hebrew than with English. Explicitness in this context means the tendency of the language to explicate the intention by means of lexical rather than non-lexical items. Earlier I gave as an example of this difference the situation of punctuation in Arabic and English and the repetitive use of ج "wa", (and), instead of the all-ubiquitous comma in English, which is also a feature of Hebrew, a method that is 'almost childish' according to Wilson (1958; p. 56).

Another example of this difference is manifested in the frequent use in English of the hyphen to serve important and complex conceptual links in a fashion of which Arabic can only be envious. A 'file-to-file utility program', for instance, is a condensed form of a very complex process -
despite its common use these days - which enables a computer operator to copy data from one file to another (Cusic 1988; p. 102). Similarly, 'fixed-block architecture' is the 'organisation of data in blocks of fixed, equal size' (Cusic 1988; p. 103). While the concept of the first example is quite clear from the term used, in the second example the concept is much deeper and loan translation into Arabic, which would perform well enough in the first example, would be quite difficult to achieve if conceptual equivalence is to be achieved. Other examples include 'fail-safe', 'fail-soft' and 'emitter-coupled logic'. Although the corpus of purely legal terms that are hyphenated is extremely small (such as 'cross-examination' and 'court-martial'), we should not lose sight of the fact that quasi-legal terminology that is encountered regularly in legal texts could well contain a large number of hyphenated terms.

The same applies to the slash "/", which plays a formidable role in facilitating the efforts of terminologists and writers of technical texts in English, especially when this feature is coupled with the equally useful abbreviation or acronym technique. Thus, ACF/VTAM is a very concise term which encapsulates a description of the work of an IBM software product which establishes a type of data communications network (Advanced Communications Function for the Virtual Telecommunications Access Method) (Cusic 1988; p. 3). It should be stated that the slash is a very versatile device utilised in English with great success. In Arabic, however, its role is still not fully accepted, and can be misinterpreted even in the simplest references. In checking Arabic translations over the years I have become aware of a very common mistranslation of the 'slash' in year designations such as '1995/96'. More often than not this
has been rendered as 1995 و 1996 or similar grammatical structures with the same meaning rather than putting it in terms of one financial year that covers two halves of two consecutive calendar years.

Another method of compounding makes use of lexical additions or manipulations. Lexical additions can be in the form of phonemes that cannot exist independently or words that combine with other words to form terms, either separately or through the use of hyphens or slashes as explained above. Examples of lexical additions that cannot exist independently include anti (in anti-discrimination), ex (in ex warehouse) and tele (in telecommunications). As for the second category of compound terms which are created by a simple arrangement of lexical items, English is so rich that the phenomenon seems to be the main term building technique. Users of English seem to constantly use this method to come up with new terms, not necessarily in special subject languages, but in general conversational and written language as well. The problem with this technique, however, is that while it links two objects, notions or concepts, it does not explain the nature of such a link. Thus, 'Crown debt' can be interpreted as 'debt owed by the Crown' or 'debt due to the Crown', although this term is well known in the legal profession to signify the latter. Another example is to be found in 'diamond drilling' and 'concrete drilling', where the former refers to drilling using a diamond bit while the latter refers to drilling in concrete using jack hammers. While reasonably informed readers would find no great difficulty in realising the difference, or to readily accept it by merely providing a very short explanation of each term, in legal matters the meaning can often be much
deeper than what one could gather or infer from the words used, but more importantly understanding the term usually needs a more detailed explanation. Thus, an even well informed reader would be baffled by such terms as 'fabric lands', where definition by synonyms would be of little or no use, and where definition by explanation seems to be the optimal way: Lands given to provide for the repair of, or to maintain the fabric or structure, of, a church. (Burke 1976; p. 142). It would not help in this and many other cases to look for the meaning of each constituent word of such terms and then simply string them up together. This is true for both compound terms and texts in general.

"... it is erroneous to assume that the meaning of a sentence or text is composed of the sum of the meanings of the individual lexical items, so that any attempt to translate at this level is bound to miss important elements of meaning".

(Hatim and Mason 1990; pp. 5-6)

Whilst context is supposed to determine the meaning of many terms, this is unfortunately not the case in the legal arena, perhaps due to the complex nature of the laws which necessitated the formulation of such terms (as in the above example), or to the borrowing into legal texts of a large number of words from the general vocabulary which are then combined and given a new function. 'Industrial instrument' seems to be a very suitable term for discussing scientific or technical matters, given the collocational feature of joining two words both of which belong the technical field. It is, therefore, no surprise to see the term listed in a bilingual technical dictionary as an engineering term to mean the sum total of its constituent words: جهاز قياس صناعي (an industrial gauge)
(Khatib 1987; 301). But 'industrial' also means, *inter alia*, 'relating to or concerned with workers in industry', and 'instrument' means, also *inter alia*, 'a formal legal document'. The synthetic formulation of an equivalent in Arabic of the English term, using "عمالي" for industrial and "وثيقة" for instrument, is "وثيقة عمالية" which in this case happens to be correct. A loan translation of the English term is also a conceptual translation. It should be remembered, however, that a loan translation which is quite acceptable as an umbrella term in Arabic in general or quasi-legal texts may not be acceptable in more decidedly legal texts. The Companies (New South Wales) Code defines an 'industrial instrument' as:

(a) a contract of employment; or

(b) a law, award, determination or agreement relating to terms or conditions of employment.

Thus, within the same legal text, a simple word, 'instrument', whose meaning as a 'document' is only one among seven different possibilities (The Australian Concise Oxford Dictionary 1993; p. 584), could also mean one of five different possibilities in the legal field, in the area of the law of contract. It could well also mean other things in other legal areas. The meaning is determined, among other things, by knowledge of what area of law the text is about and by collocational factors. Of interest, though, is that 'industrial instrument' is not listed in Faruqi as a term, although 'instrument' is. Earlier, in Text 1.3, I gave the example of 'using a false instrument', which was reported in the Sydney based Arabic newspaper, *El-Telegraph*, 23 January 1995, as "استخدام جهاز غير حقيقي" 'using an unreal apparatus'. Despite the translator's knowledge that the text was a legal report dealing with criminal charges, he or she opted for the more
common meaning of 'instrument', that is 'apparatus' or 'gauge'. What followed was a straightforward exercise in collocation which in Arabic would not accept 'forged' for 'apparatus', and as a result 'unreal' was erroneously thought to be a better solution.

Faruqi does not list 'false instrument' as a discrete entry. There are so many similar compound terms which he ignores altogether, although in some instances the meaning of the constituent lexical items are provided. Of note is that, contrary to what Hatim and Mason warn against, namely that the meaning of a sentence or text should not be assumed to be composed of the sum of the meanings of the individual lexical items, Faruqi on the other hand is of the view that users of his legal dictionary have to arrive at the meaning of a compound term by combining the meanings of its constituent words (Faruqi 1972; Preface). Interestingly, to illustrate his point he gives as an example the term 'electrical power'. One can only wonder as to why no example was given from the legal field, which is the subject of his dictionary. 'Forge and utter' is another example from the legal area which is not listed in Faruqi, although it constitutes a criminal charge not only in Australia and other English speaking countries, but also in Lebanon and perhaps elsewhere in the Arab World. In this instance, Faruqi's omission of a term commonly used in original Arabic as equivalent to an English term has meant that Arabic translators have to struggle with alternatives which can never be perfect if they have not seen the correct term in original Arabic legal texts, but it has also meant that Arabic translators would never be able to formulate the known Arabic equivalent through applying Faruqi's principle of combining the meanings of the constituent words. 'Forge and utter' means
التزوير واستعمال المزور (that is forging and using the forged instrument).

This is an accepted term in Arabic, but the word 'using the forged instrument' is not one of the meanings of 'utter' provided by Faruqi. Hence the difficulty.

Another difficulty with compound terms stems from the explicitness of the Arabic language as compared to English, a point that triggered discussion under the current heading. Arabic translators usually find it absurd to provide literal translations, that is loan translations along the lines suggested by Faruqi, because in some cases the final product could give an equivalent that is opposite to the intended meaning, or an equivalent that is meaningless. Thus, The Cancer Foundation cannot simply be translated as مؤسسة السرطان because this would attribute to the Foundation a role of promoting cancer itself rather than promoting awareness of cancer or of ways to curb its occurrence. On the other hand, Arabic translators would not hesitate to translate the Wheat Board as مجلس القمح, because the term in Arabic would signify, as it does in English, a board that is concerned with various matters pertaining to the production, marketing and promoting of wheat. But why is Arabic different from English in this respect? Or, is it different? In fact, I can as easily say that Cancer Foundation, in English, seems to promote cancer too. What blocks such an interpretation in English is both common sense and, more importantly, common usage. Such names have not yet become a feature of Arabic. English affixes sometimes help translators in their efforts to come up with acceptable equivalents. Thus the Anti-Discrimination Board becomes مجلس مكافحة التمييز, that is, literally, 'the board of combating discrimination', which is quite acceptable. It would be
very safe to assume that even in the absence of the prefix 'anti-' the Arabic equivalent would still have to be the same, namely مجلس مكافحة التمييز. This is so because opting for مجلس التمييز as a direct loan translation of 'discrimination board' would be as unacceptable as 'cancer foundation'. It is common practice in Arabic translation to insert additional lexical items which would explicate the English term, the number of such items being subject to the level of complexity of the idea embedded in the English term on the one hand and of the availability of Arabic lexical items that can encapsulate a large part of such idea. Thus, 'cancer foundation' becomes 'anti-cancer foundation'. Admittedly, extra lexicalisation is in some cases more restrictive of the intended role of the main constituent entity. In this instance, the cancer foundation deals with awareness and care issues besides combatting cancer, but the Arabic equivalent refers only to combatting the disease.

Explication can be done also by the extensive use of derivation to solve an instantaneous translation problem rather than as an orchestrated effort to deal with a recurrent problem in a consistent manner. But this method often leads to problems, which could well be more serious than those that translators attempted to avoid in the first place. Consider the following example:

"يذكر أن المفوضية الجنائية جمدت بأمر من مفوضية الشرطة الملكية، ممتلكات….. لكن علم أنه بعد أسبوع واحد كان يفاوض للاستدانة مبلغ 85 ألف دولار…"

"It is to be mentioned that the Criminal Commission has frozen, under orders from the Police Royal Commission, the property of ….. but it was learnt that one week
It appears that the translator, in this instance, has opted for a derivational form that is well established in such collocations as المحكمة الجنائية and القانون الجنائي, for 'criminal court' and 'criminal law' respectively. It appears, however, that applying the principle of analogy, qiyas, in Arabic, has failed because, firstly, the term as it appears in Arabic is not common to say the least, and, secondly, because both 'criminal court' and 'criminal law' are more often referred to as محكمة قانون الجنايات and قانون الجنايات, that is 'crime court' and crimes law' respectively.

6.3.6 Derivations

Closely linked to compound terms are those terms which are formed through a process of affixation (suffixing, prefixing and infixing). They can be grouped comfortably with the compound terms for discussion purposes, but I will deal with them separately to facilitate discussion. Besides, compounding is an analytical method of designation which combines independent lexical units into larger units, while affixation is a synthetic method used to modify lexical items by means of affixes, which are lexically meaningful items which in English cannot stand on their own (Sager 1991; p. 57). Furthermore, in this section I shall deal only with grammatical affixation, as distinct from the affixation process that was discussed in the preceding section.

The first observation to be made here is that while many derivations
occupy a seat of legitimacy in the English language for anyone to use, the fact is that the actual use of some of these derivations is voluntarily restricted to texts of legal function. Thus we have 'assignee', 'payee', 'chargee', as well as 'reasonableness', 'officialdom', 'contractor', but also 'interstate', 'extraterritoriality' and 'subinfeudation'. From this short list it is both easy and safe to assume that while some terms have wandered away from the purely legal area and have become part of the ordinary lexicon (payee, interstate) , some others continue to be the property of the legal profession and judiciary. In both cases, however, usage is determined by the special subject matter, that is law. Besides, given the ease with which new words are created by derivation from other established ones, the possibility of regular influx to the language of law of such derivations is not small by any measure. 'Chargee' is not a term to be found in either the Burke (1976) English monolingual legal dictionary or in Faruqi (1991). It is also not listed in the monolingual general Collins Concise English Dictionary, The Australian Concise Oxford Dictionary, The World Book Dictionary, or in the many general bilingual English Arabic dictionaries I have consulted. The Company (New South Wales) Code, however, defines the term as

'\text{the holder of a charge and includes a person in whose favour a charge is to be given or executed, whether upon demand or otherwise, pursuant to an agreement}'.

Another similar term is 'asylee' which has been in use by the Australian Department of Immigration and Multicultural Affairs, to refer to a person who has been granted the status of political or other form of asylum. Admittedly the derivation in the above two cases may not be grammatically sound. However, such terms continue to be introduced to
the English general usage, and some gain more popularity than others, thus becoming part of the English lexicon. New derivations recently encountered in general texts include 'do-it-yourselfers' and 'guineapigging'. Despite the ease with which these terms are created and also the clear meaning of the term roots, in translation into Arabic they have been found to pose a great challenge, as can be evidenced from the translations produced by students and practitioners alike. Part of the difficulty lies in the fact that there is, for instance, no consistent way to deal with the English suffix '-ee'. One would assume that a direct lexical item له (to him, or in his favour) should suffice. The fact is that this is not always the case: 'Assignee' is محدود له (that is 'assigned to'), but payee is more often translated as مستفيد (that is 'beneficiary'), and 'asylee' would probably be translated as الشخص الممنوح حق اللجوء ('the person who has been granted the right to asylum').

Besides the inconsistency in rendering one English suffix into Arabic, which is quite normal considering the differences between the two languages insofar as word forming techniques are concerned, the conversion of one word into two or more words in Arabic is quite problematic for translators of English legal texts, not only in terms of economy, but far more importantly in the fact that since all Arabic nouns and adjectives are grammatically marked for gender as well as number, and since qualifiers in legal texts are best placed next to the entities they qualify, Arabic translators have to go through an intricate process of adjusting their product, syntactically, which might damage the legal value of their translation. Furthermore, some of these derivations encapsulate large amounts of information that anyone who is faced with the
translation task will, in the absence of adequate bilingual glossaries, take to either literal, that is loan, translation, which could be meaningless, or to definition by explanation, which would certainly mar the Arabic translation for the reason just stated. Following is a definition of yet another derivation, 'extraterritoriality', which shows the amount of information compacted into a string of joined morphemes:

"A legal fiction by which certain persons and things are deemed for the purpose of jurisdiction and control to be outside the territory of the State in which they really are, and within that of other State. Its principal applications are:
(1) Sovereigns, whilst travelling or resident in foreign countries.
(2) Ambassadors and other diplomatic agents while in the country to which they are accredited.
(3) Public vessels whilst in foreign ports or territorial waters.
(4) The armed forces of a State when passing through foreign territory.
(Burke 1976; p. 142)

Of note is that Faruqi provides for *extra territorium* (but not extraterritoriality) the Arabic equivalent خارج الدولة: خارج حدود البلاد الإقليمية (that is 'outside the State'; 'outside the State's territorial boundaries'). These equivalents assume only physical existence outside the State or its territorial borders, without taking into account the finer legal implications involved, such as the status of diplomats and so on.

6.4 Enrichment and Development Methods of the Arabic Language
As is the case in all other languages, Arabic has its own methods to enrich
and develop itself. It has done so over the centuries, notwithstanding the fact that "it has lived for one millennium and a half essentially unchanged" (Stetkevych 1970; p. 1). It is important at this stage of developing this Thesis to study briefly the main enrichment and development methods of Arabic, as a step towards understanding how Arabic can cope firstly with those legal terms for which no equivalents have been yet formulated and, secondly, with new terms, including English derivations, originally or consequentially legal, which present themselves in future for translation.

6.4.1 Al-Qiyas

Qiyas (that is analogy) is the clearest language development method, as well as the most sought after and cherished by past linguists (Anis 1978; p. 7). Yet, it is probably playing its most important role during the philological revival that is taking place in our own days (Stetkevych 1970; p. 3). It is the analogical method which has played a major role in the configuration of the Arabic language, and is the basis on which we build all grammar rules, word moulds, and meanings of some Arabic terms (Anis 1978; p. 8). Basically, it enables the creation of new words based on existing ones, by studying the existing lexical items and then deriving from them other lexical items that are morphologically similar to the lexical items of the first group. It also means studying the existing words and their derivatives, then trying to formulate rules on that basis to enable similar derivation from other existing roots that so far have no derivatives. Thus, if we have A and B, but also A1 as an existing derivative of A, then the process of creating B1 that is similar to A1 in structure is based on qiyas. This method is well established as a reliable
tool to meet the demands placed on Arabic especially these days as a result of the constant development which is taking place in the various areas in the Western World and the need to come up with referential lexical items therefor. But this is only a secondary stage of proper *Qiyas*, which is the process of formulating the Arabic grammar based on the linguistic behaviour of Arabs in the past, given the alleged grammaticality of their speech in the olden times, in sharp contrast with the spoken Arabic of today.

The study of the history of *Qiyas*, especially during the Abbasid era, is a fascinating one, as each of the two schools of grammarians in Basra and Kufa tried to establish their rules for *Qiyas* as the more valid ones, and where each school tried to discredit words established by the other school. The Kufa grammarians were more liberal in their quest for new words, and as such they accepted analogy on the basis of little similarity or rare prior usage. It should be remembered that for any words established by the *Qiyas* method to succeed approval of the masses should be obtained through accepted and prolonged usage.

It is important to mention that grammarians have classified words for the sake of acceptance into four categories:

a. words that are consistent analogically and by prior usage,
b. words that are consistent analogically but not by prior usage,
c. words that are consistent by prior usage but not analogically, and
d. words that are consistent neither analogically nor by prior usage.
Anis (1978; pp. 22-27) explains that the first category is definitely acceptable, and that the fourth category is definitely unacceptable, neither by the old grammarians of Basra and Kufa nor by the contemporary grammarians and linguists. Furthermore, words of the third category will have to be acceptable because to say that they had been used but are against the rules of Qiyas is paradoxical, given that the rules of Qiyas themselves were modelled on the speech of those Arabs who had been heard to utter them. So the crux of the question really is only to what extent we can accept words that only conform to the rules of Qiyas although they had never been used by Arabs. This is an important question for translators faced with the problem of lack of appropriate terminology.

But regardless of the linguistic rivalry between Basra and Kufa, the work accomplished by such grammarians like Al-Farisi (died A.H. 377) and Ibn Jinni (died A.H. 392) had the merit of

'having placed the language under the creative and moulding authority of reason, delivering it from the exclusive domain of tradition where the attitude of man to his language could only be that of blind submission and pious reverence'

(Stetkevych 1970; p. 5)

Stetkevych notes that it is thanks to those grammarians that figures of the Nahda (Renaissance) in the Arab World have discussed and applied the analogical method in its different aspects (1970; p. 5). It is also that in their path translators, terminologists and linguists these days should
continue to walk in search for appropriateness of expression and meaning.

6.4.2. Al-Ishtiqaq

Al-Ishtiqaq (derivation) is the second method of language development and is closely related to Qiyas, in the sense that Qiyas is a prerequisite for Ishtiqaq, for Ishtiqaq is the process of creating a term from another as explained above, while Qiyas is the grammatical basis which enables this process and makes the derived words acceptable by linguists. It is the main language enriching method in Arabic:

"Derivation from existing Arabic roots has always been considered the most natural way of growth for the language. Arabic has been called the language of ishtiqaq, and this ability to grow from its own essence has given the language its rare homogeneity, which is the pride of Arab writers and philologists and which they are zealous to protect."

(Stetkevych 1970; p. 7)

Al-Maghribi notes that in some ways the language is like a sociological organism whose growth and evolution are similar to those of a people or nation; in the Arabic case, the nation formed itself out of two elements and along two paths: al-tawalud and al-tajannus, the former being the natural increase of the Arabic ethnic group and the latter being the assimilation of non-Arabic elements. Likewise, the Arabic language has emerged and grown through the growth of originally Arabic words (tawalud) and the latter being the assimilation of non-Arabic elements, tajannus, a term that refers to ishtiqaq, subject of this section, and ta'rib, that is arabisation (Al-Maghribi 1947; pp. 6-7).
Ishtiqaq started as a result of the awareness by the old Arabic grammarians of the relation between lexical items which have similar phonetic and semantic qualities (Anis 1978; p. 62). Anis explains that the relations thus gathered explained to them what constituted the root and what constituted the additions, a notion that was emphasised when orientalists started to study Semitic languages and found great similarities in both roots of words and the additions, that is derivational tools, across those languages. Here I should briefly explain the different categories of Ishtiqaq (derivation):

a. The small derivation, where the radical consonants are not changed but are retained and built upon, thus the radical consonants of the original lexical item and the derived item are still in the same order. An example is: متحتم --- جامد --- جمد (jamuda, jamid, mutajammid). The three main, or radical consonants, namely م، ج، and د (that is j, m and d) continue to be in the same order, but other letters, either consonant or vowels or both, are introduced to new words with different meanings.

b. The large derivation: This is the category referred to by Stetkevych (1970; p. 7) as metathesis (qalb), although Anis (1976; pp. 62-69) considers the large derivation and qalb as two separate categories. He defines qalb as being in reference to what some linguists claim that some lexical clusters of three sounds can acquire one meaning regardless of the order of these sounds in that cluster. An example is the word نجد (najd, but only three letters in Arabic, namely n, j and d, with a being a tashkil symbol, that is accentuation), which is claimed to maintain the same
meaning, namely strength, valour and similar traits, regardless of the way these letters are arranged or of whether they are interspersed with other letters or accentuations.

**c. The largest derivation:** Also called *ibdal*, which means root transformation, this category deals with words that have the same meaning but differ in only one letter.

Of special significance to the development of this Thesis and to Arabic translators is the simple derivation which is instrumental in building up the Arabic lexicon. I have earlier given as an example of how profuse the product of derivation can be the work of Hasan Fahmi (cf. 6.2), who derived 196 lexical items from the root *sahara* (to melt, liquefy, fuse). Derivation, however, has to meet several criteria before it can be successfully executed. The suitability of the root and conformity to established moulds are the two main criteria.

'Such vast possibilities of derivation, however, are limited in one way which reflects upon the substance and nature of Arabic, since, according to classical rules, derivations should be made from verbal roots only. Thus the verb lies formally at the basis of the Arabic ishtiqaq.'

(Stetkevych 1970; p. 9)

Yet, these have been subject to change or relaxation due firstly to the need for new lexicon in Arabic that cannot conform to the strict rules of derivation, and secondly due to the strong influence of newspapers and periodicals which do not hesitate to coin their own derivations, many of which are not grammatically sound but continue to be used and thus gain
legitimacy. One such term is خصمة (khaskhasah), for 'privatisation'. This word does not exist in the Arabic lexicon. Yet, a small number of journalists have been consistently using the word, either believing that it is a correctly derived term, or hoping that regular use over time might legitimise it as a term of economics.

Although derivation has to be based on verbs, this rule has been breached - and continues to be breached - for the two reasons mentioned in the preceding paragraph. For example, Rajulun mudarham (man with many dirhams, that is a rich man), and durhima al-raju (the man has become flush with dirhams, that is rich), are adjectival and verbal derivatives from the noun dirham (currency unit) (Anis 1978; p. 65).

Another example is provided by Stetkevych (1970; p. 8) as an instance of derivations that have overstepped the classical limits of Qiyas. He points out that tamazhaba is a secondary verbal derivation from the primarily derived noun mazhab. This means that mazhab was primarily correctly derived from a verbal root zahaba ('to go' etc). This verb, however, acquires a different meaning when followed by its primarily derived noun. Thus zahaba mazhaba means 'to follow, adopt, embrace a teaching, a religion, etc; to be a disciple of s.o., follow s.o.'s teachings (Wehr 1979; p. 361), with mazhab being the 'religion' or 'teaching'. Tamazhaba actually encapsulates the concept conveyed by zahaba mazhaba and is based on a noun root, in a secondary derivation process.

Correctly analysed, however, the term can be said to have been ultimately derived from a verb, zahaba. This is so because it is the view
of Arabic philologists that

'Abstract nouns which implicitly refer to verbal ideas of action or state are derived from ground verbs containing these ideas. The same is true of concrete nouns denoting the agent or the effect of an act. Even onomatopoeic concrete nouns would have to be excluded from the non-derived category. All the verbal derivations referring to such nouns are not recognised as stemming from them but rather as sharing one common root.'
(Stetkevych 1970; p. 9)

Thus we have a situation where the purists among Arabic philologists maintain a 'closed door' policy for derivation from non-verbal roots. They are prepared to accept such derivations only if they can be traced back to a verb. This is a very restrictive attitude. But even accepting this restriction, it is clear that the possibilities of noun derivation through a secondary process are much more numerous and diversified than those of verbal derivation. Stetkevych notes that derivations of the latter category are theoretically limited to the standard fifteen moulds (1970; p. 10). It is this restriction that compels users of Arabic, especially when faced with new complex concepts, to venture into derivations from concrete nouns. A lot of work has been done by several Arabic linguists, including Al-Iskandari, whose findings were published in the Majallat Majma' al-Lughah al-'Arabiyyah (Journal of the Royal Academy of Arabic Language 1934; 1:236-268), but the official philological attitude represented by the Academy remained none the less reluctant: analogical derivation from concrete nouns became sanctioned in scientific language only' (Stetkevych 1970; p. 10).
When we move to the restrictions placed on the possibilities of deriving specific moulds from verb or noun roots we find a similar situation. Here again purists maintain that derivations could be modelled only after what was heard by Arabs in the past, thus disallowing not only new moulds but also derivations according to the existing moulds if such derivations do not already exist. Anis notes that there are many derivations which can theoretically be formed according to established moulds but which do not exist in authentic Arabic texts, that there is a big difference between what we are allowed to derive and what have actually been derived and used by Arabs in the past (1978; p. 63). He explains that some verbs may not have ism fa’il (present participle) or ism maf’ouli (past participle) in existence now, but this does not mean that we cannot derive them at some latter stage when we may have a need for them. He adds that one should not be under the impression that verbs or masdars (verbal nouns) were coined contemporaneously with their derivational forms, and that the language may continue for centuries to have a verb or masdar only until the need arises for some derivatives.

'Simple derivation is simply a means of expanding the language to suit the need of writers; it is used by language academies to express new ideas, thus enabling the language to keep abreast with the development that takes place in society.'

(Anis 1978; p. 63.) (Translation is mine.)

Examples of existing derivations based on established moulds include the following:

<table>
<thead>
<tr>
<th>Root (verb)</th>
<th>mould</th>
<th>Derivation (noun, adjective)</th>
</tr>
</thead>
<tbody>
<tr>
<td>ḍaraba (struck)</td>
<td>fa’il</td>
<td>ḍārib (striker)</td>
</tr>
</tbody>
</table>

Page 240
waqafa (stopped)  maf'il  mawqif (stop, station)
jahara (spoke loudly)  mif'āal  mījār (loudspeaker)
nasaba (attributed to)  maf'oul  mansoub (attributed to)
thallaja (froze)  fa'allah  thallājah (freezer)
istakhraja (extracted)  mustaf'al  mustakhraj (extracted document, material, etc)
intasara (scored victory)  mufta'il  muntasir (victorious)
intahaza (took opportunity)  ifti'aliyyah  intihāziyyah (opportunism)
qassama (divided)  fi'lah  qismah (division)
qarana (coupled, joined)  fa'ilah  qarina (coupler)
haraqa (burnt)  mif'alah  mihrājah (incinerator)
qatta'a (cut up)  mufa'āal  muqatta' (cut up)
ishtaraka (participated)  ifti'aliyyah  ishtirākiyyah (socialism)
nashata (activated)  taf'il  tantshit (activation)
bayyana (give information)  istif'al  istibyan (questionnaire)
aqsa (ousted)  if'al  iqsa (ousting)
qatta'a (cut up)  taf'il  taqti' (cutting up to small pieces)
'abada (worshipped)  istaf'al  ista'bad (made s.o. worship him; enslaved)

The above table illustrates the great potential that Arabic has, as a built-in mechanism, to derive new terms based on existing ones. If we were to take advantage of this potential translators would be able to solve a great deal of their problems. It is important to bear in mind Anis' argument, namely that derivations on the basis of existing moulds can be created to meet a need (1978; p. 63). It is also important to realise that despite the
work of the Arabic language academies since the beginning of this century, which in the main have tried to maintain the purity of the Arabic language besides approving neologisms, according to Stetkevych (1970; pp. 13-14) 'translators and journalists, taken together, have thus far produced and fixed in live usage many more neologisms than the academies'. He predicts that with the continuation of the healthy growth of modern Arabic, the time should come when the Arab academies will be able to assume only a natural normative role, 'one of watchfulness over the purity of a language which will not be of their making in the narrow sense' (Stetkevych 1970; p. 140).

The question to be asked here is: At what stage are translators allowed to form derivations that have not been heard of in the Arabic language? To answer this question a few points have to be taken into consideration:

1. The Academy of Arabic Language has sanctioned derivation from concrete nouns in scientific language (Majallat Majma' al-Lughah al-'Arabiyyah 1934; I.235). One may wonder whether under pressure from translators and other influential language users the academies will be prepared to sanction such derivations in other special subject languages.

2. A bold attempt has been made in dealing with affixes when translating English terms into Arabic. In translating the names of chemical compounds into Arabic from English in Egypt, the suffixes have been retained as in the English equivalents but in an arabised form. Thus sulphuric is kabritik and sulphurous is kabritoz, with
-ik and -oz being the arabised forms of -ic and -ous respectively. The same applies to ferrous and ferric (hadidoz and hadidik). The same principle has been adopted also in Iraq, given that in both countries translation was made from English. This was not adopted by other Arab countries, such as Syria, perhaps because the translation was from French rather than English (Al-Samman 1975; p. 37).

3. As explained earlier in this Chapter, the existing English - Arabic legal dictionary is still inadequate. It does not contain all the terms which are innately legal or used in a legal sense. There is thus a need to look elsewhere for solutions.

4. The Arabic and English legal environments are different despite the similarity of the general principles that govern them. Accordingly, legal terms in one environment may not necessarily be applicable or relevant to the other. Hence, it is not always possible to look for help in the Arabic legal terms regardless of whether they were developed before and after Islam. Referring to this point, Faruqi makes the following statement:

'many terms of the Islamic Doctrine which have no equivalent in English, have been omitted [from several famous English law dictionaries]. Examples are: 'awl, bainunah, gharouka, ghilab, hadd, mohatarah, mufawwidah, mukhala'ah, and nashizah. For the benefit of Arab law students, I have entered these ... in their original Arabic form and ... have supplied adequate definitions for them...'

(Faruqi 1991; Preface to English Arabic Law Dictionary)
5. Translators who are driven by a need for derived terms due to the lack of existing ones should be very familiar with the Arabic morphological rules. The table of moulds given above is not an exclusive one. But at the same time, not all verbs can form any of the derived noun moulds. Derivation is strictly regulated by several factors, including the number of the original verb letters, compliance with the acceptable noun moulds, and compliance of the meaning intended with the built-in meaning of the mould itself. Thus for nouns made up of three original letters there are ten moulds, while nouns made up of four original letters can take the form of any of six moulds, those made up of five original letters can have four moulds and so on (Ghalayini 1974; pp. 6-8). Besides, a mould like *taf’il* has the embedded meaning of exaggeration or deliberate action, while *istif’al* suggests an act of creation or extraction or similar, and *mif’alah* and *mif’aal* are used for machine or tool names (hence *tibsalah* for a facsimile machine based on *mif’alah*).

As an example of translators' efforts to generate new terms through the principles of *ishtiqaq* (derivation) and *qiyaq* (analogy), based on an existing root, I will refer to a personal experience. *Deeming* is a term that was introduced a few years ago by the Australian Department of Social Security. In simple terms, it means that for the purposes of assessing of people's eligibility to certain types of pensions the Department *deems* that those people's funds deposited in banks earn a specific interest rate, notwithstanding the fact that these funds may have been deposited in
non-interest-bearing accounts. If we were to apply the derivational method we would have: *i'tabara* (deemed) (conforms with the *ifta'ala* mould) leads by analogical derivation to the noun *i'tibār* (deeming) (conforms with the *ifti'āl* derivational mould). *I'tibār*, however, is more widely used as a direct equivalent of 'considering' or 'consideration'. It is perhaps more advisable to arrive at another term that is not so common to provide a referential meaning to an English term that encapsulates a new concept. Another derivational process is thus utilised: *i'tabara* (deemed) (conforms with the *ifta'ala* mould) leads by analogical derivation to the noun *i'tibāriyyah* (deeming) (conforms with the *ifti'āliyyah* derivational mould, like in *intihāziyyah* in the above table).

Although the derivation is grammatically sound, it was initially believed that, because it has not been heard of and because of its difference to the commonly used word *i'tibār*, the term should be discounted as inappropriate. This was the opinion of several Arabic translation practitioners and students. *I'tibāriyyah* does not exist in the Arabic English bilingual dictionaries, either general or specialised (economics, finance, legal). It exists, however, in the highly respected monolingual Arabic dictionary *Muhit-ul-Muhit*, and is defined thus:

>'i'tibāriyyah, in the language of philosophers, refers to something that does not exist outside the mind, and may be used to refer to hypotheses, thus called holistic matters.'

(Ul-Bustani 1987; p. 572)

What makes *i'tibāriyyah* well qualified as a legal term in Arabic, apart from the perfectly suited definition provided by Ul-Bustani, is its state of
low-usage or no-usage which, ironically, initially triggered opposition to its use. This is so because the term, if consistently used by all Arabic translators, will eventually become a term of what Sager calls a 'special subject language' (1990; p. 18). In this respect, translators may have to assume the role of terminologists as well. But according to Sager (1990; p. 60) terminologists must also be aware of the gradual evolution of terms.

The evolution of concepts is accompanied by stages of naming, a process which is called terminologisation. In the development of knowledge the concepts of science and technology like those of other disciplines undergo changes; accordingly their linguistic forms are flexible until a concept is fully formed and incorporated in the knowledge structure.'
(Sager 1990; p. 60)

In the case of 'deeming', however, the concept seems to have been set in a final form, the only possible development being in the extent of its application, which may be expanded to include bank accounts for all taxpayers and not only for pensioners. Accordingly, the linguistic form can be said to have attained its final stage. Terminologisation is a term that can also perhaps be applied to the time taken and process needed to fix term usage. Just like journalists make possible the use of certain terms that are initially thought of as 'odd' or 'daring' but which eventually become acceptable as part of the language lexicon, translators can have a similar role but with more regard to the grammatical integrity of the language. I used the word *Itibāriyyah* first about four years ago in a newsletter for pensioners called 'Age Pension News'. After some opposition, other Arabic translators also started to use it. At the same time, the term was suggested to translation students as a possibly
appropriate equivalent for 'deeming'. Lately, I have also used the term in a conference which was attended by representatives of the Arabic media in Sydney. The event was reported on television, and the word *i'tibāriyyah* was mentioned. The word also appeared in the Arabic newspapers published in Sydney. The consistent use of this term, occasionally followed by the English term, or initially used with a footnote explaining the concept, is very likely to fix its usage in Arabic in Australia for as long as the concept remains applicable.

### 6.4.3 *Al-Naht*

*Naht* (or blending) is a word building method in Arabic that in a way has an effect opposite to that of derivation. While the latter aims at building new, longer lexical items from existing ones, blending tries to compound and compact two or more existing lexical items. The phenomenon is well known in English and has been discussed earlier in this Chapter. From Anis' discussion of blending (1978; pp. 86-94), the following observations can be made:

1. Blending was more used by Arabs in the past than it is now. It was mainly followed to shorten long segments of speech, mainly of religious nature. Thus *basmalah* (بسم الله) instead of *Bism Allah al-Rahmān al-Rahim* (بسم الله الرحمن الرحيم) (In the Name of God the Merciful, the Compassionate); *sal'am* (صلعم) for *Sala Allahu 'Alayhi wa Sallam* (صلى الله عليه وسلم) (Peace be Upon Him); and so on.

2. Arab linguists who have discussed blending have provided as
examples too many words that they mistakenly believed were formed through blending. Blending remains a very restricted rule for word building. The majority of philologists prohibit Arabs to blend words these days. In this respect, they follow what can be called a 'closed door' policy. Even the Academy of the Arabic Language has not been keen to allow blending, notwithstanding the fact that a few of its members have demonstrated the need for blends especially for medical terminology.

3. Most blends are either verbs or verbal nouns (masdars). Besides, they are often made of four original letters (tashkil signs are not counted). Thus, حمَّال (hamdala, but only four letters written in Arabic, these being the consonants, with all the vowels implied as accentuation diacritics, that is tashkil) for قول الحمد لله (qawl al-hamdu lillah', that is 'saying thanks be to Allah').

4. Due to the confusion that has accompanied the study of this linguistic phenomenon in Arabic there are no clear rules for blending, although some linguists suggest it can be executed on the basis of analogy.

5. Anis himself believes that blending is sometimes necessary, because it helps in enriching the language lexicon. Thus Anis allows it with moderation provided it is done in accordance with old tradition (analogy). He gives as an example of what he believes to be an acceptable blend the word 'anfami' (derived
from *anfi*, that is nasal and *fammi*, that is oral).

6. Blending in Arabic is not unlike hapology in the 'European languages', which prefer clipped rather than the original, longer forms of words, such as *van* for *caravan*, or *cab* for *cabriolet*. Anis notes that more developed languages have succeeded in shortening their words, while those still in a primitive state tend to use longer words.

Although the last statement cannot be substantiated (German has many long words, but German cannot be said to be a primitive language) the fact is that there has been a very strong trend in many languages to use blending. Another observation is that while blends abound in Arabic mainly in the area of religion, in English (and perhaps other European languages) they are mainly in the other special subject languages, especially those of science and technology. This can be due to the preoccupation of Arabs with the study and interpretation of the Holy Quran and sunnah (Prophet Mohammad's -P.B.U.H.- sayings and traditions), as can be evidenced by the large amount of literature written on both subjects, and in contrast by the huge amount of technical and scientific literature produced in English. In both cases there has been a need for shorter lexical forms of existing terms.

Translators should be aware of the existence of a possibility, albeit limited, to form new words in Arabic by blending. Ba'albaki (1978) seems to have translators most in mind when he compiled his general English - Arabic dictionary, *Al-Mawrid*. His emphasis was on providing equivalents
made of single words rather than definitions by explanation or groups of words that make it difficult for translators to use. To this end, he did not hesitate to use the blending method, especially for the English compound terms in the technical fields. Let us look at these examples provided by Ba'albaki:

**hydrolyze**

يحلل بالماء

(Two words, a verb and a noun, *analyse* and *water*, have been blended and shortened).

**hydrolysis**

الحلماه: التحليل بالماء

التحمله: التحليل بالماء

(Both equivalents are generated by blending two nouns, analysis and water. The first, however, is formed according to the mould *fa'lalah*, which suggests doing by inducement by someone or something, thus we have 'subjecting to hydrolysis'. The second equivalent, however, is formed according to the mould *tamaful*, which is used to indicate self-change or self-doing, thus we have 'undergo hydrolysis').

**electromagnetic**

كهرطيسي

(Here two longer Arabic words, a noun and an adjective, namely *electricity* and *magnetic*, have been blended and shortened, leaving out seven of the original letters.)

**electromotive**

حركيكهربائي

(In this example two words have been blended but not
shortened. The resultant term is odd for several reasons: it is longer than either constituent; it is equal in length to the two constituents combined; it simply represents two words joined together which is simply not Arabic. English compound terms such as workforce, overcharge or upstream, where two (or more) words are simply joined together without any further modification, are alien to Arabic. Blending is more similar to the frequent and highly productive method of clipping or shortening used in English, a particular case of which is that of compounding and simultaneous clipping, such as stagflation from stagnation plus inflation, and bionic from biological plus electronic (Sager 1991; p. 79).

Ba'albaki (1978; Preface) concedes that despite his reliance on several existing English Arabic dictionaries and on the glossaries produced by the Academy of the Arabic Language in Cairo, the demand to find equivalents for an increasing influx of English terms remained overwhelming. He had to resort to *ijtiham*, that is individual effort and discretion, and in doing so had to employ the methods of transliteration, translation, derivation and blending.

Of note is that, in his dictionary of scientific and technical terms, Khatib (1987) uses the above blend words (although he uses کهرمانگنهناتیسی, kahramagnatasi, instead of Ba'albaki's more daring کهرتریسی, kahratisi, for electromagnetic), but refrains from joining the constituent words of electromotive. This is obviously in line with the argument provided above. But like in the case of *i'tibariyyah*, for deeming, discussed earlier
in this Chapter, these blend words would have to be consistently used by users in the particular fields in order to gain popularity and become part of the special subject language terminology. This should not be a difficult task, given the small corpus of users of such languages.

The implication of blending on legal terminology, however, is not great, and judging by the behaviour of laws and legal terminology over the centuries there is nothing to suggest that the situation will change. I have reviewed both Osborn's Concise Law Dictionary (Burke 1976) and Faruqi's Law Dictionary English - Arabic (1991) for blends. It can be safely stated that no blends (compounding and clipping simultaneously) exist in the latter dictionary, and that the blends in the former are not many by any standard. It is always possible, however, that new areas of knowledge or human activity that might become subject of legislation may introduce some blends to the language of law. But even assuming this is a possibility in English, Arabic translators cannot safely and confidently create new blends because of the almost 'closed door' policy on blends, the attitude of the Academy of Arabic Language in Cairo, but more importantly because of the unnatural look and form of some of the blends notwithstanding the fact that they have been part of the Arabic language for a long time. Writers and translators are often hesitant to use them, and in fact they do so for syntactic more than semantic or terminological reasons. This is so because compound terms in Arabic are often interspersed with prepositions; this impedes the flow of the sentence especially when there are many modifiers around the term. For instance, حلما، halmaah (blend word for hydrolysis), which otherwise would be تحليل بالماء tahli li bi alma', ('chemical reaction with water'), where the two nouns are separated by a
preposition.

6.4.4 Al-Irtijal

Irtijal (or coining) is very closely associated with borrowing and arabisation. This makes dealing with this topic quite an extensive task. Anis notes that Arabic philologists in the past were confused and undecided as to the true meaning of irtijal, and that often it meant simply the invention of words that are new either in meaning or in form, and thus different to the existing Arabic lexical items and do not coincide with the forms, or moulds, of such items (Anis 1978; p. 95). He adds that on rare occasions philologists called inventions terms that were in fact formed through the accepted derivational processes in Arabic. In some other cases, words were believed to be invented but in fact were formed through other word-forming techniques, such as blending or borrowing. Furthermore, a large number of assumed coined words were in fact not coinages, but rather original Arabic words that had been adopted by other language communities then re-introduced into Arabic with slight differences. But there is no doubt that some words were actually invented, but their usage was restricted temporally or spatially, although some of them gained more popularity but remained the domain of what can be called slang. Only a limited number of slang words actually find their way to the proper lexicon (Anis 1978; p. 107).

The totality of Anis' argument can be summed up by saying that he undermines the notion that irtijal has enriched the Arabic language. His conclusion is that in Arabic lexis is not subject to a disorderly development process, it rather enjoys an immunity that was imposed by
previous Arabic philologists, as a result of which coined words have no hope of acceding to the pedestal of classical Arabic lexicon. Due to the rarity of coinages in all languages, and due to the scant influence coining plays in the development of languages, most temporary researchers believe that coining is the least important method of language enrichment (Anis 1978; p. 108).

6.4.5 *Al-Ta'rib* (Arabisation)

This term refers to the adoption by the Arabic language of foreign terms after subjecting them to various processes that Arabic philologists have formulated. This method is also known as borrowing and assimilation, and is one of the most important tools that have contributed to the rapid modernisation of the Arabic language (Stetkevych 1970; p. 56). *Ta'rib*, however, as a solution to the urgent need for adequate modern terms in science, literature and everyday life has at no stage gained unanimous acceptance.

"Even though the translators of the school established by Muhammad Ali of Egypt used foreign terminology with great profusion, it was clear almost from the beginning that many of those crude neologisms were bound to disappear, and that *ta'rib* as such was not going to be the main source of the growth of the language."

(Stetkevych 1970; p. 56)

Most Arabic philologists have exhaustively discussed arabisation, but most of them actually took a middle-of-the-road stand as to whether to give arabisation their undiminished support or to reject it outright. All of them, however, have conceded that arabisation, as a word-formation tool, is as important as analogy and derivation. On the first end of the scale
there is the opinion that arabisation is a process which has its roots in the
very origins of the Arabic language, in some of its best poetry and even in
the Holy Quran, and that it, therefore, "neither contaminates nor degrades
the language, and arabised words should be recognised and treated as
permanent values" (Stetkevych 1970; p. 57). In modern times, the need
for arabisation has been explained and defended in terms of maintaining
the Arabic language as a medium of education, especially of technical and
scientific education, rather than resorting to foreign languages as a
medium for instruction. The purity of the language, in some instances, did
not rank prominently in discussing arabisation; the main driving force
was to keep the foreign languages away from the Arab schools and
universities.

'What is important is that the Arabic language should
maintain its status as a medium of scientific thought and
expression, and that no foreign language should replace it
in education, learning and research. The foreign language
should rather be a support, a back up tool for the Arabic
language'.
(Khoury 1964; p. 7)

Sibawayh, one of the most famous Arabic philologists, is a representative
of a very liberal view of arabisation, perhaps because he was of non-
Arabic origin. For him, arabisation is a very broad concept, and "comprises
all the foreign vocabulary used by the Arabs, however distant from the
original morphological moulds of the Arabic language some of it might be"
(Stetkevych 1970; p. 60).

Sibawayh and many others talk about the transformation process that
borrowed words should be subjected to before they can be assimilated, or
arabised (Anis 1978; pp. 126-127 and Stetkevych 1970; pp. 59-60). The great support for arabisation has also led to a more daring attitude towards the concept, especially when some notable Arabic philologists have even tried to do away with the adaptation process as a necessary step for the acceptance of arabised terms. Al-Maghribi made it clear that his position with respect to *ta’rib* was the reverse of that of the Arabs whereas they seldom let a foreign word retain its original form, he would rarely change it in accordance with the patterns of the Arabic language:

'Thus, we pronounce telegraph, telephone, phonograph, automobile, theatre, program and many similar words, almost as they come down in their pronunciation, yet we term them as arabicised.'

(Al-Maghribi 1947; p. 43)

It should be noted that arabisation started well before Islam, and that even the Holy Quran contains a number of words of non-Arabic origins (Anis 1978; p. 109). Arabisation then acquired a greater impetus during the Abbasid era, when the translation movement intensified (Hassan 1966; pp. 10-11). Then at the beginning of the nineteenth century, in the aftermath of the French occupation of Egypt, Arab intellectuals made huge efforts to develop and enrich the Arabic language. They considered it to be instrumental to exit the situation of cultural and educational decadence in the Arab World, and found that arabisation was one of the best methods to attain their objective (Mourad 1978; pp. 19-37). It was against this background that Al-Maghribi showed this great enthusiasm for the principle of arabisation almost without restrictions.

Some Arabic philologists have adopted a more rigid and discriminating
approach to the assimilation of foreign vocabulary. They believe that the purity of the language demands a strict observance of the moulds, that is *qawalib*, as only these moulds can actually arabise a foreign word. This is the view of Al-Hariri, according to whom "the Arabic criterion is that, whenever a foreign noun is arabicised, it is referred in type and form to similar Arabic words" (Al-Hariri 1871; p. 131).

But against the liberal views of Sibawayh, the moderate views of Al-Maghribi and slightly more restrictive views of Al-Hariri, there have also been some Arabic grammarians and philologists who have criticised the arabisation movement, or at least limited its role to a temporary one. According to Stetkevych, some Arabic philologists have maintained that "these neologisms should be eliminated from the language in the same way as alien substances are eliminated from the organism as soon as there were created or derived Arabic terms capable of replacing them" (Stetkevych 1970; p. 57). Accordingly, the hierarchical position and literary value of such temporary neologisms would be the lowest possible. It is important to note that analogy, or *qiyas*, represents a challenge to arabisation, in the sense that purists have maintained that as long as borrowed words do not conform to one of the *qiyas* moulds they were doomed either to a temporary acceptance or to no acceptance at all. Stetkevych notes that "even though many foreign words entered the Arabic language, the number of words which do not adhere to the *qiyas* of the philological moulds is insignificant", and that "[t]he construction of derived forms from such foreign moulds is generally considered as illicit" (1970; pp. 60-61). Al-Najm and Al-Rawi (1989; p. 90) further note that the speed with which new terms are being coined
[in the foreign languages] for new concepts and inventions necessitates the utilisation of arabisation, because the urgency of the matter does not make waiting for the language specialised committees to meet and decide on these terms a viable solution. Accordingly, arabisation should be allowed as a temporary step in the process of creating terms to enable the Arabic language to keep abreast with the scientific development. In other words, "arabisation of terms is sometimes a temporary step employed by translators driven by the necessity of quickly translating foreign scientific publications" (Al-Najm et al 1983; p. 26).

Of interest is that borrowing of foreign terms through arabisation has always been a by-product of translation requirements. This happened during the translation boom during the reign of Muhammad Ali of Egypt, then more recently following the independence of most of the Arab countries and their attempt to reform their educational systems and re-introduce Arabic as a medium of instruction (Khoury 1964; p. 7), or to find equivalents for the huge influx of the new inventions in the technical and scientific fields (Al-Najm & Al-Rawi 1989, p. 89).

Anis (1978; pp. 117-131) provides an extensive discussion of arabisation. He firstly notes that borrowing terms is an activity that can be either individual or collective. Borrowings effected by individuals, however, do not remain the domain of only those individuals but may later become the property of a larger group and, consequently, the whole language group. He also notes that it is not easy to determine who was the first person or group who borrowed and used a foreign term. Only rarely can we tell who was the first person to use a borrowed term.
Anis also notes that, in most cases, borrowed terms undergo a transformation process to make them easier for pronunciation and for acceptance by the borrowing language. In some instances, however, borrowed terms maintain their foreign form, mainly when they can easily be pronounced by members of the receiving language community or when people are inclined to use terms in their foreign form as a symbol of power or simply out of admiration. In the latter cases, the foreign terms may coexist with terms of the same meaning in the receiving language but only temporarily. At the end only one of them usually dominates and pushes the other term into disuse.

The gist of Anis' argument is that he supports the attitude of the Arabic Language Academy which allows the use of some foreign words only when necessary and provided that such use is done according to the classical arabisation methods. He explains that the restriction is essential for the preservation of the purity of the Arabic language from a deluge of foreign words, and for the maintenance of the literary heritage of Arabs and of their Holy Book which was revealed in pure Arabic language (Anis 1978; p. 131).

Apart from the question of arabisation as a process, there is also the question of acceptance of individual terms derived through that process, especially in comparison with terms created through the process of *ishtiqaq* (analogy) or even direct translation. Stetkevych notes that most Arab writers prefer the method of *ishtiqaq*. He makes the point that the decisive factor in the configuration of the modern Arabic language, as far
as its vocabulary is concerned, is the acceptance that neologisms attain (1970; p. 63). To Taymur, this acceptance is determined not by the broad masses of the Arabic-speaking peoples, but by the educated sector of society, which he describes as the true depository of the modern Arabic language (Taymur 1956; pp. 11-14). This view is not shared by other Arab linguists, however. Al-Najm and Al-Rawi, for instance, observe that the repeated use of terms by the masses is the criterion which would dictate whether such terms gain validity or not, regardless of whether they are arabised or translated. While ‘telephone’ has been assimilated into Arabic in its foreign form without any transformation and is more popular than the translated word هاتيف (hatif), the foreign word 'automobile' has failed to achieve similar popularity and the translated equivalent سيارة (sayyarah) is the accepted term in classical and slang Arabic. The choice in both cases is dictated by ‘usage, time, and the development of the linguistic taste of the nation” (Al-Khatib 1972; p. 7).

Al-Najm and Al-Rawi (1989; pp. 91-98) report on the results of a study they conducted to prove the high level of acceptance of arabisation as opposed to translation. In the study, 300 Iraqis were asked to indicate their preference for arabisation or translation in relation to 120 terms used for car parts. The results indicated that 85% of those surveyed, mainly representing people involved in the car maintenance and related trades, preferred and did actually use the arabised terms, and that the 15% of people who used the translated terms were actually bureaucrats. Al-Najm and Al-Rawi provide an interesting explanation for the results. Cars and car parts were introduced to Iraq in the 1920s along with the English terms for these parts. Arabic language committees and academies
were not quick enough to provide Arabic equivalents for these terms, and as a result the English terms gained popularity instead in the absence of any competition. When the Arabic terms were produced it was too late for the masses to change their attitudes to usage, and the newly arabised terms became the domain of bureaucrats only.

Transliteration, of which arabisation is an example, is thus an important tool to enrich languages, although some languages are more tolerant towards this principle than others. Most words in Turkish and over fifty percent of words in Persian are of Arabic origin (Anis 1978, p. 120). English and French have borrowed many words from a large number of languages. In the realm of science, Arabic has borrowed a large number of words from the various languages too, and in many cases they have been fully adapted into Arabic and become fully accepted through inflections, derivation and other grammatical processes. 'Galvanised', for instance, is مغلفن (mugalvan), and thus 'to galvanise' is يغلفن (yugalvin) and 'galvanising' is غلفنه (galvanah).

The question is: Can we adopt this method in solving our legal terminology problems? To answer this question we have to navigate very carefully through the views presented in the above discussion, especially through the rule laid down by the Cairo Arabic Academy as explained by Anis, namely that arabisation may be employed only when necessary. According to the Academy, Arabic scientific terms can be produced firstly with preference to old Arabic terms to new ones, unless the new terms have become popular, and secondly by accepting some foreign terms when necessary (Muhammad 1988; p. 153). The English legal lexicon is
rich with a host of foreign terms, including Latin and French. The same
cannot be said about Arabic, although it should be stated that the
transformation process which borrowed terms undergo in Arabic makes
their origin almost always obscure. It perhaps suffices to say that the
word قانون (qanun), that is law, is derived from the Greek 'Kanon', for
canon law. One can assume that at some stage Arabs borrowed a Greek
word when they thought there was a need to do so. Several questions can
be posed at the conclusion of this discussion:

1. Are Arabs, or Arabic speakers in any country, not justified in
doing what their ancestors did many centuries ago, given that the
circumstances insofar as need is concerned are the same?

2. Besides, given that the first users of borrowed, transliterated
terms, are rarely known, and that such terms gain popularity by
general usage and acceptance, are translators in Australia, for
instance, not allowed to employ the method of arabisation to solve
their translation needs for their local community?

3. Using the arabised terms 'telefon', 'galvana' and 'qanun' (for
telephone, galvanised and canon respectively) as precedents, can a
translator use 'kavit', 'fawadir' or 'solistur' (for caveat, voire dire and
solicitor respectively), given that the Arabic academies may not be
fully aware of the difficulties encountered by translators of legal
texts in Australia and perhaps in other English-speaking countries
with Arabic-speaking communities?
4. Is it possible for a group of prominent, experienced Arabic translators to assume the role of a limited-scope, limited-mandate Arabic academy in Australia to provide solutions for translation problems and for the Arabic-speaking community living in Australia?

5. Are the Arabic translators and teachers in Australia allowed to build on the Arabic legal terminology used by the majority of the Arabic-speaking community, which is mostly arabised, to create 'temporary' equivalents for some legal terms pending a more permanent solution by the Arabic academies in the Arab World?

It is hard to answer any of these questions without triggering strong opposition from language 'purists'. Excluding the third question and, to a lesser extent the last question, however, I would not hesitate to endorse positive answers. Translators in Australia have special problems and should have specific solutions. As for the examples set in the third question, they are meant only to serve as far-fetched possibilities, or rather some sort of 'shock tactic', as it were.

6.5 The Arabic Academies and Similar Bodies

It is relevant to conclude this Chapter with a brief description of the history, mission and achievements of the various Arabic language academies. The idea of establishing an Arabic academy appeared first in 1870, fuelled by the linguistic needs as a result of the widening technical and scientific gap between Europe and the Arab World. Many Arabs were sent to the European colleges, and came back to report on their studies
and research, but were met with the difficulty posed by the lack of appropriate scientific terms ('Abdul Rahman 1981; p. 21). Faced with this deficiency, those students as well as journalist did not refrain from using whatever foreign terms were appropriate. This led to a chaotic situation which prompted ardent linguists to get together to put an end to that situation and set the rules for an orderly transfer of modern civilisation. Ad hoc meetings were held in Egypt, but an Arabic academy was not formed until 1917, only to be dissolved in 1919 due to political problems and armed struggle in Egypt.

6.5.1 The Arabic Language Academy of Damascus

'Abdul Rahman (1981; pp. 22-32) outlines the objectives of the Damascus Academy, which was formed in 1919, including the arabisation from the various European languages of whatever was lacking in the areas of science, industry and arts. A recurrent theme in the Majallah, the Academy's newsletter, was that arabisation was a difficult task to achieve, but the Academy spared no effort in attempting to remove from the Arabic language all the blemishes of the dark ages. Directly related to this task was the question of compiling a comprehensive glossary that contained terms of modern civilisation and science. Work on the glossary started in 1924, and the criteria for inclusion were need for the terms and the necessity to liaise with other linguists to attain standardisation. The Majallah, which is a notable achievement of the Academy, covered articles on a variety of language related topics, including law. But the question of legal terminology for translation purposes was not tackled. Furthermore, the Damascus Academy produced or auspiced thirty-three books on linguistics and ten dictionaries, mono-, bi- and tri-lingual. Again,
none of these books or dictionaries dealt with legal terminology.

6.5.2 Arabic Language Academy of Cairo

Established in 1932, the objectives of the Cairo Academy were "to maintain the wellbeing of the Arabic language, to make it adequate for the requirements of arts and sciences, and appropriate for the needs of modern life" (Madkour, 1971; p.17). To achieve its objectives, the Academy specified its methodology, namely investigating which terms should be used and which should be discarded, studying all means through which the Arabic language could be developed by considering the etymologies and changing references of terms, compiling glossaries, publishing a Majallah, and conducting public debates and receiving recommendations ('Abdul Rahman 1981; p. 33).

The Cairo Academy dedicated special efforts to scientific terminology and, to this end, established several specialised committees for the various fields, including committees for medicine, biology, agriculture, chemistry, pharmacy, petroleum, geology, mathematics, humanities, but not law. The Academy tackled the question of whether to coin or just list whatever was in existence, whether to arabise (or transliterate) or to resort to old Arabic words instead, and whether to use slang or just classical Arabic. Following some hesitant discussions the Academy decided to accept all terms agreed upon by the specialists provided they adhered to established language rules, and to make little use of blending lest a large body of terms that had more unusual structures than those of arabised terms could invade Arabic. The Academy also decided to use new moulds for analogy that had been hitherto unknown. In relation to arabisation
the Academy laid down clear and strict rules. It stipulated that arabised terms should be made of lexical items that can yield to inflection and derivation. It did not approve of providing two translated equivalents for the one foreign term. It, however, allowed that the one Arabic term could have different meanings in different fields.

The Cairo Academy was instrumental in standardising many terms. Several dictionaries, mostly monolingual, were produced by the Academy, in which over fifty thousand terms were listed in the various fields. In 1951, the Academy published the Civil Code Terms and the Commercial Code Terms, both in Arabic only.

6.5.3 The Iraqi Arabic Language Academy
The Iraqi Academy was set up in 1947, following several unsuccessful attempts. Its objectives were not unlike those of the Damascus and Cairo academies, but like the other academies too it did not produce any bilingual dictionaries of legal terms. Then in 1963 a second Iraqi academy, the Iraqi Arabic Language Academy II, was established with wider terms of reference, only to be superseded by the Iraqi Arabic Language Academy III in 1979 ('Abdul Rahman 1981; pp. 42-46). A monolingual glossary of constitutional law terminology was produced by the Iraqi academies.

6.5.4 The Jordanian Arabic Language Academy
This is the youngest Arabic language academy. It was established in 1976 and has set three objectives for its activities: discussing the causes of weakness in the Arabic language, arabising the foreign terms that were
still being used in the various public and private organisations, and arabising tertiary education in the Arab universities. In its bid to refute arguments that tertiary education can best be delivered in foreign languages, the Jordanian Academy started its translation drive soon after it was established. Several books were translated into Arabic and made ready for use in the academic year 1979/80. The only work in the area of law that the Jordanian Academy had completed by 1981 was a translation of the international code (41 pages). To-date, there is no evidence that it has produced any glossaries of legal terms.

6.5.5 The Permanent Office for the Co-ordination of Translation in the Arab World

The Office was established in 1961. It administratively follows the Education Department of the Arab League, and is an active instrumentality of that Department. The main tasks of the Office can be summarised as follows:

1. Acting as a repository for all research and work done by the Arabic language academies, writers and translators, for the sake of following up, coordination, classification and comparison, and consequently for extracting all significant translation-related issues.

2. Implementing the recommendations of the translation meetings, conveying these recommendations to the Arab governments and following up implementation.

3. Cooperating with the translation services in the Arab countries and
obtaining from them the translation-related observations.

4. Promoting the agreed terms in all fields of scientific and cultural activities.

5. Monitoring the translation efforts outside the Arab World, participating in these efforts, and pinpointing the flaws in these translations and endeavouring to correct same and provide advice.

('Translation' refers to translation into Arabic.)

Until 1981, the Office had produced ten tri-lingual glossaries, none of them on legal terminology. Another eighteen dictionaries were proposed for completion by the office in the early 1980s, but again none of them on legal terms. However, at the current rate it is assumed that the Office will be better equipped than any of the Arabic academies to tackle a project of the magnitude of a comprehensive bi-lingual legal dictionary.
CHAPTER SEVEN
A Limited Empirical Study

INTRODUCTION
The purpose of this Chapter is to report the results of a limited empirical study which I have conducted to assess the validity of the claims I have so far made in this Thesis, especially the notion that terminology constitutes the main difficulty in translating English legal texts into Arabic. Other observations made throughout this Thesis include the assertion that legal texts constitute a sub-genre of technical material, that translating legal texts is a more daunting task than translating general, and perhaps even literary texts, and that the main problem that Arabic translators face in translating legal texts into Arabic is the lack of reliable and adequate bilingual legal dictionaries. In Chapter 6, I also discussed the problem of derivation of new lexical items from existing roots in Arabic and the negative attitude of the Arabic academies - and users of Arabic generally - towards derivation of new items unless a number of conditions have been first satisfied. The omnipresent problem in translating legal, and indeed all other technical, texts from English into Arabic or any other language remains the limited knowledge of translators in technical areas, which consequently limits their ability to use the appropriate technical terms used by experts in the particular field and forces them to provide terms that may or may not be correct, adequate or acceptable. There are, therefore, a few issues to be dealt with in any research aimed at proving the validity of these observations. The research had obviously to make use of Arabic translators and, to a
limited extent, also students of Arabic translation as subjects.

It was my intention initially to conduct a more elaborate study consisting of selecting a corpus of subjects that constitutes 50% of all practising Arabic translators in Australia, and asking them to provide translations into Arabic of two English texts each, one legal and one literary. That, however, would have meant that the legal text chosen would have to be artificially saturated with complex legal terminology to enable me gauge the competence of subjects to deal with such terms. Such an exercise would have given me an insight also into the problems encountered by Arabic translators at the textual level as well. I was always apprehensive, however, that such an approach, although sound, would probably not progress to fruition primarily because of perceived lack of cooperation of subjects. Although my apprehension may not be justified, I nevertheless opted for another method which provided me with the data needed from subjects, as well as a large portion of the substantiating evidence required.

7.1 Research Design

A questionnaire was prepared with the intention of extracting the views of Arabic translators regarding the various aspects of translating legal texts. The questionnaire was followed by a list of one hundred English terms, a large number of which were decidedly legal, others taken from legislations that dealt with other fields, such as finance and economics. Other terms in the list are less 'legal', yet they were added because members of the judiciary and legal profession as well as statute drafters tend to make the most use of them. These are the compound English
terms with suffixes and prefixes, included to measure the translation and linguistic competence of Arabic translators in Australia as well as their 'risk taking' attitude, that is their willingness to coin and derive rather than paraphrase and explain.

7.2 Validity of Research

The translation profession in Australia is regulated by the National Accreditation Authority for Translators and Interpreters (NAATI), but only in relation to conducting examinations for accreditation purposes and publishing an annual directory of accredited and recognised translators and interpreters. There is, however, no national register of translators and interpreters, and translation practitioners need not necessarily be accredited or recognised by NAATI to work as translators, although many employers, especially in the public sector, demand such accreditation/recognition as a requirement for employment. For research purposes, it is appropriate to use NAATI accredited Arabic translators as subjects.

There are five levels of accreditation (by examination, as opposed to recognition which does not rely on examinations), ranging from Level 1 to Level 5, the latter being the most advanced. Translation practitioners are supposed to be accredited either at Level 3 or Level 4, which are now referred to by NAATI as Translators and Advanced Translators respectively. There is supposedly a big difference in translating competence between the two levels, and NAATI clearly emphasises this difference through its stringent marking code for the Advanced Translator Test as compared to the Translator Test.
'The overall aim of the Translator Test is to determine whether the candidate has demonstrated competence sufficient to justify his accreditation by NAATI as a reliable and competent translator of the standard expected at this level. This, in effect, means that NAATI would be recommending the public to hire the candidate for professional work.'

(NAATI Manual for I/T Examiners 1996; p. F-16)

NAATI explains that the Translator Test aims at assessing the candidate's ability to comprehend fully non-specialist texts of average difficulty in the source language, to translate such texts with a degree of accuracy, and to command the ability for idiomatic usage expected of translators at the basic professional level (NAATI Manual for I/T Examiners 1996; p. F-16). It is assumed here that these three criteria are equivalent to the reliability and competence mentioned in the quoted statement.

The Advanced Translator, on the other hand, is expected to have writing and reading proficiency equivalent to that of a native speaker, educated to graduate level, which means that such translators should have an excellent command of all registers of the target language, including specialist terminology. Furthermore, such translators are expected to have a good working knowledge of the general principles involved in at least two of a number of technical areas, including legal, medical and scientific, and 'are expected to be capable of translating highly complex economic, scientific, legal and political documents' (NAATI Manual for I/T Examiners 1996; p. E-44).

The above description of requirements and expectations clearly indicates
that for the purpose of this research only Advanced Translators should have been used as subjects. This, however, would have created many difficulties, including the very small number of Arabic translators at this level (only four are listed in the Directory of Accredited and Recognised Practitioners of Interpreting and Translating, 1996, for all Australia), compared with 64 Arabic Translators listed in the Directory. Another point is that in the Australian translation market, there is nothing to indicate that employers seek Advanced Translators for more complex translations, and all indications are that employers are more motivated by the availability of translators and, to a larger extent, by economic considerations. Employers of translators are often willing to sacrifice quality to cut their expenses, assuming here that NAATT's examination requirements for the Advanced Translator Test are valid and hence that the quality of Advanced Translators' work is superior to that of Translators. This raises many questions as to whether, from an economic viewpoint, attaining a higher level of translation competence is a blessing for translators or whether it is rather an earning-capacity reducer. This, however, is a different matter.

In addition to the numerical and market-reality factors, there is another consideration that ultimately narrows the gap between Translators and Advanced Translators for research purposes. In a study of translation proficiency assessment, Judy Wakabayashi and Royce Sadler, of the University of Queensland, in commenting on the NAATT examination standards and examiners' guidelines, have found that there were 'some serious problems with the present marking guidelines and that a revision or clarification of current practices is desirable' (Wakabayashi and Royce
Sadler n.d.; p.32). According to the authors, the study presented evidence suggesting that markers of NAATI Advanced Translator Tests who followed NAATI marking guidelines and failed some candidates accordingly have expressed the opinion that those candidates were nevertheless quite competent.

'Thus the examiners were faced with the dilemma of having to decide whether to unofficially 'adjust' the marks to reflect their assessment of the candidate's proficiency, or whether to adhere strictly to the guidelines and fail a candidate whom they deemed sufficiently proficient.'
(Wakabayashi and Royce Sadler n.d.; p.12)

This would mean, according to the examiners quoted, that at least some candidates for the Advanced Translator Test should subjectively pass the Test, although on the basis of the marking criteria set by NAATI their failure was a fait accompli. It can be counterargued, of course, that the essence of guidelines is to minimise subjectivity and create a standardised approach for marking. The study by Wakabayashi and Royce Sadler, however, is an important one because it indicates that there may be some Translators who, but for technicalities, would now be Advanced Translators. This is important for this research, because it allows us to use Translators (besides Advanced translators) as subjects with more reliability.

As stated, NAATI's 1996 Directory of Accredited and Recognised Practitioners of Interpreting and Translating lists 64 Arabic Translators and 4 Advanced Translators in Australia. It is well known, however, that not all translators and interpreters are listed in this Directory (a fee is
paid for listing). The real number of accredited and/or recognised Arabic translators could be somewhere between 80 and 90, although this is just a liberal guess. Some of those, however, are not practising, and this perhaps explains the non-existence of some names in the Directory. This research relies on data obtained from 20 Arabic translators (including 2 Advanced Translators), that is between 22.2% and 29.4% of all Arabic translators in Australia (percentages are based on NAATTI's published figures and the higher liberal guess indicated above respectively). It can be reasonably assumed that findings of this research, based on this relatively high percentage, would be both valid and reliable.

7.3 Limitation of the Research

This research has several limitations, some of which are only perceived. The first limitation is one that is applicable to any research of this nature. Ideally, in order to reach fully justifiable results all Arabic translators in Australia would have to be included in the study. The second limitation is that the extent of experience of the subjects in translating legal texts is not known, and as such the results of any study of this nature may never be fully valid. It was assumed that given the wide spectrum of texts which may be called legal (cf. Chapter 1), translators surveyed would at least have had some experience in this area.

A third limitation is that the results of the research are strictly speaking based on the responses provided by the subjects. It is assumed - and hoped - that the responses were seriously based on the experience of the subjects. This is another limitation that applies to the majority of research work.
7.4 The Questionnaire

Thirteen questions were sent to the twenty translators and translation students. There was a 100% response. Ten subjects were later interviewed in relation to some of the questions for clarification. The corpus included 16 practising translators (80%) and 4 students (20%). The following table indicates their years of experience as translators as provided in response to the questionnaire:

<table>
<thead>
<tr>
<th>Range</th>
<th>Number of Subjects</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 - 3 years</td>
<td>8</td>
<td>40%</td>
</tr>
<tr>
<td>4 - 10 years</td>
<td>2</td>
<td>10%</td>
</tr>
<tr>
<td>11 - 15 years</td>
<td>2</td>
<td>10%</td>
</tr>
<tr>
<td>16 - 20 years</td>
<td>4</td>
<td>20%</td>
</tr>
<tr>
<td>N/A (students)</td>
<td>4</td>
<td>20%</td>
</tr>
<tr>
<td>TOTAL</td>
<td>20</td>
<td>100%</td>
</tr>
</tbody>
</table>

Subjects were asked to indicate the features which, in their opinion, contribute to the main difficulty in translating legal texts. They were also asked to indicate with numbers the levels of difficulty if they selected more than one feature. The responses to this question (only the two highest levels of difficulty) can be numerically summarised in the following table:

<table>
<thead>
<tr>
<th>Feature</th>
<th>Difficulty 1</th>
<th>Percentage</th>
<th>Difficulty 2</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sentence structure</td>
<td>4</td>
<td>20%</td>
<td>6</td>
<td>30%</td>
</tr>
<tr>
<td>Sentence length</td>
<td>3</td>
<td>15%</td>
<td>4</td>
<td>20%</td>
</tr>
<tr>
<td>Punctuation</td>
<td>2</td>
<td>10%</td>
<td>Nil</td>
<td>Nil</td>
</tr>
<tr>
<td>Terminology</td>
<td>10</td>
<td>50%</td>
<td>10</td>
<td>50%</td>
</tr>
<tr>
<td>Metaphors, puns etc</td>
<td>1</td>
<td>5%</td>
<td>Nil</td>
<td>Nil</td>
</tr>
<tr>
<td>TOTAL</td>
<td>20</td>
<td>100%</td>
<td>20</td>
<td>100%</td>
</tr>
</tbody>
</table>

This question provided for subjects to add any other features that have not been listed. Only two responded. The first relates to the difficulty that arises from cultural differences, and the Islamic Shari'ah terms have
been quoted as an example. The other response pointed to the 'air of profundity' that legal writers and members of the legal profession and judiciary try to create as a substitute for simple, everyday language. Both elements of difficulty have been discussed in several places throughout this Thesis. I was initially hesitant to add the last feature listed, namely 'metaphors, puns, etc'. It is a common knowledge that the language of the law does not resort to such figures of speech, as they are at odds with the precision, seriousness and formality intended. It was surprising to see that a subject (5%) has reported this feature as a source of difficulty in legal texts. In a follow-up interview, it became clear that the subject was actually referring to the language of court room and legal conference. The totality of the responses indicates that all subjects consider terminology as a very important aspect of difficulty involved in translating English legal texts into Arabic, although half of them believe that it comes second in the scale of translating difficulties.

The study has found that all subjects used general bilingual dictionaries for the formulation of Arabic equivalents of the English terms listed, with Ba'albaki's Al-Mawrid rating as a first choice (18 subjects - 90%) followed by the Oxford English-Arabic dictionary (only 2 subjects - 10%). Only 50% of the subjects have used specialised bilingual dictionaries, with Faruqi rating as a first choice (8 subjects - 40% of total corpus) followed by Al-Wahhab (2 subjects - 10%). Other dictionaries reported as having been consulted by the subjects include the monolingual Macquarie dictionary (8 subjects - 40%), Webster's dictionary and the Concise Oxford Dictionary (2 subjects each - 10%). Only two subjects (10%) have reported using other sources, including William Burton's Legal Thesaurus, John Bishop's
These responses indicate either that general bilingual dictionaries are still considered by Arabic translators the best translation tools even when translating highly technical (including legal) texts, or that those translators are not aware of the existence of the bilingual legal dictionaries or for some reason do not have access to them. Responses to another question indicate that more subjects have benefited from general bilingual dictionaries than from specialised dictionaries - both monolingual and bilingual - (12 v.s 8 subjects, or 60% v.s 40%).

All subjects have reported that some of the terms given to them for translation were not found in any of the dictionaries consulted, although the number of such terms varied widely. Six subjects (30%) stated they could not find 1-5% of the terms, 8 subjects (40%) gave a rate of 6-10% of the terms, 2 subjects (10%) gave a rate of 11-20%, and 4 subjects (20%) quoted a rate of 41-50%. Additional comments were provided by four subjects on the lack of equivalents for the terms listed. One subject pointed out that 'the market here and overseas is ready for a smart dictionary', while another indicated that it was hard to say how many terms were not found in those dictionaries 'mainly because of the way the given items have been constructed in English'. This comment is very valid, because it seems that that particular subject was aware that an equivalent for a compound term cannot simply be created by 'mixing' the equivalents of its constituent lexical items. This point was clarified in
Chapter 1 and later in Chapter 6. It has been found through comparing the responses to the questionnaire with the list of translated terms that most of those subjects who indicated that only a small number of terms could not be found in the dictionaries consulted were actually relying on the 'mixing' method. In other words, they were consulting dictionaries for equivalents of the lexical items that constitute the term given to them, then adding all the components found together to make the final equivalent of the term. Needless to say most of the equivalents provided by the subjects using this method were inadequate. Examples will be provided later in this Chapter.

All subjects surveyed have indicated that if equivalent legal terms in Arabic were more readily available/accessible, then translating legal texts from English would be much easier. One subject, however, has added that translators should also be aware of the legal register and stylistic features as a prerequisite for making proper choices that are 'legally justifiable'.

The subjects were also asked about the problem-solving strategies they use in order to overcome the lack of Arabic equivalents of English legal terms. Seven possible methods were suggested to the subjects, who were asked to indicate the method/s they would follow. The responses can be summarised in the following table. The last two items in the table were suggested by the subjects.

<table>
<thead>
<tr>
<th>Suggested Method</th>
<th>Used by</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Check with colleagues</td>
<td>9</td>
<td>45%</td>
</tr>
<tr>
<td>Provide an explanation plus leave the term</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Page 279
Try to read publications in Arabic about the technical field involved, hoping you would find in them the terms sought

Try to coin a term in Arabic that you think would be acceptable by resorting to Arabic word-forming methods

Provide Arabic transliterations of the English terms

Leave the term in English only

Consider declining the translation job

Check with specialists in the field who are educated in the Arab World, if possible

Check with experts in the field, e.g. solicitors

The above table is very interesting. It shows that Arabic translators are least inclined to transliterate, that is arabise, English legal terms, and that they are also most reluctant to leave the legal terms in English only. The first response can be explained in terms of the general attitude of users of Arabic and, more importantly, of Arabic grammarians and linguists, who have constantly argued against transliteration as a recommended or commendable method to enrich the Arabic language (cf. 6. 4. 5). The second response, on the other hand, can be explained in terms of typographic features of Arabic (non-Latin based alphabet) which make any English items in the text stand out as decidedly foreign, and also by a logical assumption by translators that leaving a term in English is equivalent to admitting translation incompetence. Besides, leaving a term in English would be against the essence of translation, that is communication, because it would benefit only Arabic readers who can understand English - readers who do not need the translation anyway.
The above table also shows that most Arabic translators surveyed would resort to checking with colleagues for equivalents of English legal terms. Whilst this is a commendable method, the reality is that Arabic translators are restricted in their knowledge of Arabic terms due to the availability of only a small number of bilingual legal dictionaries and reference books as outlined earlier in this section. Besides, I am not sure that there is any Arabic translator in Australia with formal legal training, either in Australia or in any Arab country. It can, therefore, be assumed that this method is unlikely to be effective in solving the problem. The same can be said about the third suggestion in the above table. Naturally, reading references on the subject matter is one of the best methods of enriching translators' knowledge of that particular subject and, consequently, enhancing their translating competence, provided such references are available.

As for providing explanations plus leaving the terms in English, a method that is favoured by 35% of the subjects, it should be remembered that the essence of this study is to demonstrate the lack of readily usable terms in translation, rather than providing explanations which render any piece of translation cumbersome, especially if the original text is of a complex nature, which is the case in almost all legal texts. Twenty percent of the subjects have indicated that they would try to coin Arabic equivalents on the basis of the known word-forming strategy. Although this appears on the surface to be a viable possibility, it should be remembered that coining is the least important method of language enrichment due to the scant influence coining plays in the development of languages (Anis 1978; p. 108). It is for this reason, perhaps, that 80% did not consider
coining (irtijal) as a preferred method. This part of the Questionnaire, however, was not aimed at refuting the claims or choices made by Arabic translators; it was rather meant to gauge the consensus among them as to the most preferred methods to solve the problem of lack of Arabic equivalents of English legal terms.

The last two questions relate to the level of difficulty subjects perceived in translating English legal texts into Arabic as compared with general texts and other technical texts. The following table summarises the responses.

**Translation of Legal Texts vs General Texts**

<table>
<thead>
<tr>
<th>More difficult</th>
<th>As difficult</th>
<th>Less difficult</th>
</tr>
</thead>
<tbody>
<tr>
<td>14 (70%)</td>
<td>6 (30%)</td>
<td>0 (0%)</td>
</tr>
</tbody>
</table>

**Translation of Legal Texts vs Other Technical Texts**

<table>
<thead>
<tr>
<th>More difficult</th>
<th>As difficult</th>
<th>Less difficult</th>
</tr>
</thead>
<tbody>
<tr>
<td>6 (30%)</td>
<td>12 (60%)</td>
<td>2 (10%)</td>
</tr>
</tbody>
</table>

7.5 The List of Terms

A list of one hundred English legal terms was compiled, and the subjects were requested to provide Arabic equivalents using any dictionaries or reference material available to them. Furthermore, the subjects were requested to take into account when looking up or working out equivalents that such equivalents must be capable of being easily used in translations. Some additional explanatory information was added between brackets for some terms to facilitate the work of the subjects,
but they were not intended for translation.

The English terms were selected to enable the formulation of

- Firstly, a proper assessment of the translators' access to
  dictionaries and references;
- Secondly, an assessment of their ability to interpret some
  compound terms on the basis of their knowledge of the legal field
  in Australia;
- Thirdly, an evaluation of their preparedness to utilise the proper
  word-building methods in Arabic, especially *ishtiqaq* and *qiyaq*;
- Fourthly, an assessment of their translation competence in the
  legal area based on all the above.

In reporting the results of this exercise, I will refer only to a number of
terms from each sub-group provided on the list. This is inevitable for
brevity, and therefore this study is a qualitative one. The first sub-group
consists of terms formed by affixation. Although not legal terms as such,
the frequent use of some of these terms in legal texts makes them
eligible to be treated as at least quasi-legal terms. Others have become
legal terms in their own right, as they have become the subject of
legislation. Legal and quasi-legal terms of this type include *deeming*,
*practicability*, *reasonableness*, *appealable*, *cross-examination* and *non-
citizen*. I will commence discussion of the results with these terms and
then proceed with terms in the other categories without further
introduction.

7.5.1 Deeming
I have earlier referred to this term and pointed out that the adoption of i’tibāriyyah as a possible equivalent could in fact be a very sound one based on the two principles of analogy (qiyas) and derivation (ishtiqaq) (cf. 6.4.2). Besides, the term is a proper Arabic word that was listed in Muhit ul-Muhit (Ul-Bustani 1987; p. 572). It was interesting to see that eight subjects (40%) have opted for this Arabic equivalent, which is a high percentage given the recent adoption of this English term in the Australian Social Security Act and the absence of this term from the bilingual English Arabic dictionaries, both general and specialised (and assumingly from the Arabic legislations in all Arab countries, given the less complex nature of social security systems in those countries ). I can only assume that due to the relatively frequent use of this Arabic term in the last few months in the Arabic media in Australia, and possibly also due to my involvement in teaching translation and interpreting, that the term is gaining popularity among Arabic translators. It is of interest to provide at this juncture examples of the equivalents provided by other subjects for this term.

<table>
<thead>
<tr>
<th>Arabic term</th>
<th>Transliteration</th>
<th>Meaning</th>
</tr>
</thead>
<tbody>
<tr>
<td>إعتبار</td>
<td>i’tibar</td>
<td>consideration</td>
</tr>
<tr>
<td>إعتقاد</td>
<td>i’tiqad</td>
<td>belief</td>
</tr>
<tr>
<td>حكم</td>
<td>hukm</td>
<td>judgment</td>
</tr>
<tr>
<td>رأي</td>
<td>ra’y</td>
<td>opinion</td>
</tr>
<tr>
<td>معتبرين</td>
<td>mu’tabirin</td>
<td>considered</td>
</tr>
<tr>
<td>مقبول</td>
<td>maqbul</td>
<td>acceptable</td>
</tr>
<tr>
<td>تقدير</td>
<td>taqdir</td>
<td>appreciation, evaluation.</td>
</tr>
</tbody>
</table>
Of interest is that many of the alternative equivalents proposed do not even have the root *i’tabara*, for deem. More importantly, the large number of proposed alternatives, most of which are obviously incorrect, suggests that in the absence of an approved term there is no limit to the number of such alternatives. Another observation to be made in this case is that those subjects who have used the correct equivalent *i’tibāriyyah* did not provide any other equivalents by way of synonyms, while those who have opted for another equivalent have mostly done so, either synonyms or terms with different meanings. Admittedly, the word is considered out of context, which may have caused the confusion.

7.5.2 Practicability

This is a noun that is formed by a process of suffixing and blending:

\[
\text{practical} + \text{able} = \text{practicable} + \text{ity} = \text{practicability}
\]

The direct meaning of *practical* in Arabic is عملي (‘amali), and the suffix -able usually means ممكن (mumkin). The compound term *practicable* is thus translated as ممكن عمليًا (mumkin ‘amaliyyan), that is 'practically capable to being done' or 'practically doable'. In Arabic, the term is an adjectival qualifier, just as it is in English. The role of the suffix -ity is to derive a noun from this adjective, and it is this meaning that the resultant Arabic equivalent of *practicability* should encapsulate, thus الإمكانية العملية (al-imkaniyyah al-‘amaliyyah). It is a noun that can be readily used in translation without the need to make any syntactic changes to the text for the sake of accommodating it. None of the subjects has suggested this result as an equivalent. It is obvious that their responses have been shaped by the available general English Arabic dictionaries, given that the term is not listed in the legal dictionaries. The
'out of context' problem does not apply in this case.

Ba'albaki provides the following as equivalents (1993; p. 714):

العملية، الإجراءية، الاستخدامية، كون الشيء مكتملاً عمله أو إجرازه أو استخدامه (al-'amaliyyah; al-ijraiyyah; al-istikhdamiyah; kawnu al-shayi mumkinan 'amaluhu aw ijrahu aw istikhdamuhu). The last of the four equivalents provided by Ba'albaki is of no use to translators as it is just an explanation of the term, although in an awkward structure. On the other hand, the first three equivalents suggested are, in this sense, derivations which may cause additional problems. This is so because the terms suggested are otherwise commonly used to indicate other meanings, and hence attributing new meanings to them would hardly be recognised by the reader. In other words, the use of those terms would probably indicate the meaning of practicability only to the translator himself, but definitely not to any of the readers. Thus al-'amaliyyah usually means process or operation, and al-ijraiyyah usually refers to procedural. Besides, the third equivalent suggested, al-istikhdamiyah, is definitely wrong, as it simply means usability and hence fails to serve the best cause of translation - accuracy.

Karmi provides another assortment of possible equivalents for practicability (1988; p. 1036). He introduces يَعْمَليَّة (yu'maliyyah), hitherto unheard of, obviously derived from the verb يَعْمِل (yu'mal), that is can be done. This derivation, however, is most odd because it can neither be justified by the principle of qiyas nor accepted by users of Arabic. There is no other noun in Arabic that starts with the simple present tense marker يِ. It appears that Karmi has sensed such an
opposition, hence he follows the term with an explanation: قابلية الشيء لأن يُعمل (أو) يُجري, that is the 'ability of doing something'. Other equivalents listed in Karmi are إمكانية (imkanîyyah) and إمكان الاستعمال (imkan al-isti’mal), that is possibility and ability to be used respectively. The deviation from and narrowing down of the precise meaning of practicability is obvious. It is pointless to reproduce here the equivalents provided by the subjects, as they are simply those provided in the various general bilingual dictionaries.

7.5.3 Reasonableness

This noun is derived from an adjective which in turn is derived from a smaller noun root: reason + able = reasonable + -ness = reasonableness. Ba’albaki’s general bilingual dictionary (1993; p. 763) and Faruqi’s law dictionary (1991; p. 584) list both 'reason' and 'reasonable', but not 'reasonableness'. Only Karmi’s general bilingual dictionary (1988; p. 1117) lists all three terms: 'aql (عقل), ma’qoul (معقول) and ma’qouliyyah (معقولية). The adjective and second noun are correctly based on the grammatically acceptable moulds maf’oul (مفعول) and maf’ouliyyah (مفعولية). The reason for the absence of the latter term from Faruqi’s is odd, given the legal tone of the term. Karmi, however, provides alternative equivalents:

سيرة حكمة عقلانية رشيدة تفكير رشيد إعتدال في الطلب إعتدال في السعر

the reasonable being of something
judiciousness; sound judgment
consciousness; sensible conduct
sound thinking
moderation in requesting
moderation in pricing.

Six subjects (30%) have opted for the correct derivation ma’qouliyyah,
while the other 70% have adopted the various forms provided in Karmi or perhaps in other bilingual dictionaries (unidentifiable). These include the following:

<table>
<thead>
<tr>
<th>Arabic</th>
<th>English</th>
</tr>
</thead>
<tbody>
<tr>
<td>إعتدال مقبولية</td>
<td>moderation; acceptability;</td>
</tr>
<tr>
<td>تصوبع</td>
<td>correcting, aiming;</td>
</tr>
<tr>
<td>عقلانية إتزان</td>
<td>rationalism; stability,</td>
</tr>
<tr>
<td></td>
<td>balanced thinking.</td>
</tr>
<tr>
<td>عقلانية عقلانيّة</td>
<td>reasoning</td>
</tr>
<tr>
<td>عقلانيّة عقلانيّة</td>
<td>wise</td>
</tr>
<tr>
<td>عقلانيّة عقلانيّة</td>
<td>judicial</td>
</tr>
<tr>
<td>عقلانيّة عقلانيّة</td>
<td>probability</td>
</tr>
</tbody>
</table>

The word عقلانية (aqlaniyyah) is a correctly derived term from the same noun root. It is better assigned though to 'rationalism' as suggested in the English equivalent above, simply because it is a secondary derivation: عقل ('aql) عقلاني ('aqlani) عقلانية (aqlaniyyah); that is reason, rational, rationalism.

7.5.4 Appealable

This is an adjective that is listed in Karmi and Ba'albaki as well as in Faruqi's law dictionary. It is a simple term formed by a simple process of primary derivation both in English and Arabic, thus قابل للاستئناف. Nineteen of the twenty subjects surveyed reported only this equivalent. This is very interesting, from a standardisation viewpoint, because both general bilingual dictionaries (Karmi and Ba'albaki) list this same equivalent, although Faruqi lists it along with two others. Only one subject provided two equivalents, including قابل للاستئناف. It can be reasonably concluded that consistency in the bilingual dictionaries would inevitably lead to a similar consistency in general usage by translators.

7.5.5 Informations

Contrary to the 'information' that takes only the singular form in English
(but only the plural form in Arabic, معلومات - *ma’loumat*), this term is
decidedly legal, although its semantic root still lies in the general
meaning of 'information' - something told, knowledge, news etc. In the
legal sense, it means

'[a] pleading, a step by which certain civil and criminal
proceedings are commenced. In Chancery proceedings on
behalf of the Crown the information was the statement of
facts offered by the Attorney-General to the court ... Informations are the normal method of instituting
criminal proceedings before justices of the peace. They
need not be on oath unless so required by some particular
statute, or unless a warrant for arrest is required ...'
(Burke 1976; p. 178).

'Informations' is used in the Australian statutes, including the Crimes Act 1900, where in Part XI Section 359 states that "In all indictments and
informations, and all criminal pleadings and proceedings ...". An
interesting observation is that 60% of the subjects surveyed (12 subjects)
either circled the 's' of 'informations' or simply crossed it out and put
instead a big question mark, indicating that a typological or other mistake
may have been made. Needless to say those subjects have given the
generic meaning of information in its broadest sense, namely معلومات
(*ma’loumat*). Considering that most translators are also interpreters, and
given that interpreters doubtlessly have to interpret in local courts and
that in many instances magistrates 'dismiss the information' at the end of
hearings or committal proceedings, it is quite interesting to know what
those interpreters tell the defendants when they hear this concluding
statement by magistrates.
Faruqi defines an information as 'a sworn written charge preferred by a relevant public officer. It is different from an indictment...' (1991; p. 364). This definition partly concurs with the provision of the New South Wales Crimes Act 1900 as to the distinction between 'informations' and 'indictments', but it differs from Burke's statement that informations need not be always under oath (1976; p. 178). The conclusion is that an information has to incorporate the facts and the charge preferred against defendants in local courts. Accordingly, Faruqi's 'written charge' would have to be adjusted. I have not seen an Arabic equivalent of 'informations' used in any original Arabic text, and it is in such cases that translators might have to 'take risks', as calculated and informed as possible. The Arabic word ٍالإتهامات (إدعائات) (iddi'aat) could mean claims, allegations or charges, and I believe that such term is temporarily appropriate until further research has proven more fruitful. In accordance with this equivalent, a magistrate pronouncing that the 'information is dismissed' could safely and adequately be translated as 'the allegations are rejected' (أقرر رد الإتهامات), where allegations refer both to the facts alleged as well as the charge (that is the allegation).

Apart from the general equivalent provided by the subjects, other equivalents used include the following:

<table>
<thead>
<tr>
<th>Arabic</th>
<th>English</th>
</tr>
</thead>
<tbody>
<tr>
<td>التهمة تحريرية</td>
<td>written charge</td>
</tr>
<tr>
<td>بلاغ</td>
<td>report</td>
</tr>
<tr>
<td>إتهام رسمي صادر عن النيابة العامة</td>
<td>formal charge laid by the public prosecution</td>
</tr>
<tr>
<td>حقائق</td>
<td>facts</td>
</tr>
<tr>
<td>إتهامات وشكوى ضد شخص فعلي</td>
<td>allegations and complaints against somebody</td>
</tr>
<tr>
<td>أية معلومات</td>
<td>any information</td>
</tr>
<tr>
<td>بيان شفهي أو كتابي لتوجيه محضر استدعاء</td>
<td>verbal or written statement to issue a subpoena</td>
</tr>
</tbody>
</table>

Needless to say that none of the above equivalents satisfy the totality of
the definitions of 'informations' as provided by Burke and Faruqi.

7.5.6 Statement

In this case sixteen subjects (80%) have opted for the correct equivalent Arabic term, namely *ifadah* (إفادَة). It is assumed that the popularity of the term among interpreters and translators, and more importantly the interpreting/translating undergraduate course offered by the University of Western Sydney, have contributed to this result. Besides, this term is so common in the legal literature that using anything else would be absurd. Salamah (1994; p. 30), in reporting a murder case talks about the *ifadatihi al-ula* (his first statement). Likewise, in the case of Ali and Moustafa (Charge No 200, Mount Lebanon, Lebanon) the facts sheet states the following:

إلا أن الخذين يوصف بإفادته أمام قاضي التحقيق أنكر أنه يتعاطى المخدرات أو يشترتها من المتهمين.

[Transliteration: *illa anna al-dhanin Yousuf bi-ifadatihi amama qaذي al-tahqiq ankara annahu yata'ata al-mukhaddarat aw yashhtariha min al-muttahamain.*]

[Translation: Defendant Yousuf, however, in his *statement* to the investigating judge denied that he was using or buying drugs from the two accused.]

It was initially assumed that the three bilingual dictionaries so far quoted in this Chapter were in agreement about the use of this term. This, however, is surprisingly not the case. In fact, Faruqi lists four possible equivalents (1991; p. 658), none of which can satisfactorily be used in legal texts for legal matters. *Bayan* (بيان) cannot be used to refer to a
witness' (whether a victim, suspect or eyewitness) statement, and hence is ruled out. *Kashf* (كشف) refers to a statement in banking or other accounting environments. *Iddi'a* (إدِماء) is better left for 'allegation' or 'prosecution' or 'claim'. And *taqrij waqai* (تقرير وقائع) should be better left for the 'facts sheet'. This is another evidence about the inadequacy of Faruqi's dictionary for legal translators. Likewise, Karmi (1988; p. 1363) provides eight possible equivalents for 'statement', but, again, not including *ifadah*. As for Ba'albaki (1993; p. 902), he lists five equivalents, including *ifadah* as a fourth choice and without specifying its legal usage. This supports the claim made in the previous chapter that the general bilingual dictionaries cannot be relied upon with a reasonable level of certainty, and that they cause confusion and inconsistency.

7.5.7 Committal Proceedings

Also known as 'committal for trial', the term refers to

>'the order made by the examining justices upon charges of indictable crime where they decide there is a strong enough case or sufficient evidence against the accused to warrant his being tried by jury.' (Burke 1976; p. 81).

It should be noted that such proceedings do not exist in the judicial systems in the Arab countries, hence an equivalent based on semantic and referential aspects should be created. From the above definition it is clear that 'committal' means 'referral' to a higher court. Thus the Arabic equivalent is *إحالة* (ihalah). By a simple synthetic process the term should thus become *إجراءات الإحالة* (ijraat al-ihalah). The term is not listed in Faruqi (1991), although its constituent elements are. The synthetic
process is justifiably safe and correct in this instance because the resultant term is referentially and semantically correct. Only two subjects (10%) have provided this equivalent. Other renditions include the following:

- a sitting for decision or order;
- a preliminary hearing of the case to find out whether there is enough basis to proceed with the trial of somebody;
- an undertaking to conduct the proceedings of a case;
- a preliminary hearing;
- preliminary deliberations;
- proceedings to convict the accused.

Some of these renditions are outright wrong (e.g. the last entry), while others cannot be used in translations as they belong to the 'definition by explanation' category.

7.5.8 Forge and Utter

This is a criminal charge which means the forgining of a document or thing and using it, where both elements have to be proven to satisfy the conviction requirements. Hence it has nothing to do with the actual physical aspect of uttering in the sense of pronouncing. As a matter of fact, Burke defines *utter* as an 'attempt to pass off a forged document, die or seal, etc., or counterfeit coin, as genuine when it is known to be forged' (1976; p. 338). Faruqi (1991) lists *forge* and *utter* separately, and for the latter states 'promote (a forged deed) or present it for acceptance', as well as the physical uttering (1991; 725). The same criminal charge exists in the Lebanese Criminal Code, namely التزوير والاستعمال المزوير (al-tazwir wa...
isti'mal al-muzawwar), literally 'forging and using the forged thing'. It can only be assumed at this stage that the same charge, in similar terms, exist in the criminal codes of at least some other Arab countries. Due to the absence of the charge as an entry in Faruqi or the other bilingual dictionaries, Arabic translators are bound to follow the same synthetic process suggested ad hoc by Faruqi (cf. 7.5.7). The rate of success here is obviously extremely restricted, due to the incorrect, or at least confined, meaning of utter suggested in Faruqi. It remains to be said that those who use the correct Arabic equivalent as used in the Lebanese Criminal Code would have either to be familiar with the legal environment in Lebanon or some other Arab country, or to have read extensively in the field of law. Here again, only 2 subjects (10%) provided the correct equivalent. Two other subjects did not provide an equivalent. Other renditions, which bear the influence of Faruqi's meaning of utter, include the following:

- forging and promoting (a forged deed);
- forging and untruthfully referring;
- forging and uttering [saying];
- falsifying and forging;
- promoting and forging;
- utter untruthfully.

7.5.9 Witness Box

This is a very simple term that was included in the list only to gauge the level of standardisation among Arabic translators. The term is very popular in Arabic as it is in English, and can often be read or heard in news reports, novels and short stories as well as movies and general
conversations. In Arabic, the term is منصة الشهداء (minassat al-shuhud), literally 'the witnesses' platform', 'dais' or 'podium'. Faruqi provides only a definition by description (1991; p. 749), and hence it is of little use for translators. Ba'albaki (1993; p. 1070), on the other hand, provides a direct equivalent of the term: مواقف الشاهد (mawqaf al-shahid), literally the witness' stand, which is acceptable in its back translated English form although in Arabic it evokes connotations of a taxi or bus stand and should be avoided. Karmi (1988; p. 1648) provides a direct equivalent, based on a literal translation of the English term, plus an explanation by description. He suggests قفاس الشاهد (qafas al-shahid). It appears that Karmi was influenced by another term, charge dock in the police stations, in Arabic qafas al-ittiham. Despite the physical similarities, however, they are referentially and procedurally different, and hence the difference should be obvious in Arabic as it is in English. Only two subjects (10%) have provided the correct equivalent, while all the others have opted for either a description or an equivalent based on Faruqi, Karmi or Ba'albaki.

Besides the lack of the correct equivalent in the three references, the lack of consistency among them is most alarming. This inconsistency is inevitably transferred to the translators. Another observation to be made at this point is that the two subjects who have provided the correct equivalents for the last three terms are the same. This indicates that they have good knowledge or background of the legal environments in English and Arabic speaking countries.

7.5.10 Money Laundering
This is a criminal offence that in Australia carries a jail sentence of up to twenty years. It basically refers to a process whereby people try to 'legitimise' funds that have been illegitimately obtained, usually by avoiding tax or excise, but more often from illegal drug sales. The process often involves transferring the money overseas then having it sent back to the offenders by accomplices overseas. This is a criminal offence in other English speaking countries as well, including the United States and England. In conversations recorded by means of telephone intercepts and listending devices by New South Wales Police and replayed in courts, offenders have been heard to talk about white money and black money, both in Arabic and English (*Regina V Siryani*, District Court, 1996, for instance). They have also been heard to talk in Arabic about تبييض المصريات (*tabiyid al-masriyyat*), literally 'bleaching' or 'whitening the money'.

Early in 1995, a money laundering legislation was introduced in Lebanon, the first in the Arab World, and the term was referred to as تبييض الأموال (*tabiyid al-amwal*). Given the recent introduction of the term, it is hardly surprising that it cannot be found in any of the three English Arabic dictionaries quoted in this Chapter, although 'launder' in English is known to have the meaning suggested in the legislation. The Australian Concise Oxford Dictionary (1993; p. 639) thus defines 'launder' as a colloquial word that means 'transfer (funds) to conceal a dubious or illegal origin'. Similar explanation is given by Collins Concise English Dictionary (1987; p. 636). It is not known why Ba'albaki (1993) and Karmi (1988) have neglected to provide this meaning to 'laundering', especially that claims of comprehensiveness were made in their prefaces. It is more of a
mystery that Faruqi (1991) failed also to refer to this term altogether despite its criminal connotations.

Given this situation, Arabic translators who are not aware of the new code in Lebanon are left no choice but to coin 'an equivalent based on their understanding of the term, although in many ways the supporting evidence they have is mostly anecdotal, including news reports. It is, therefore, least surprising to know that most subjects have suggested equivalents that either refer to a part of the money laundering process or are altogether incorrect, and that only two subjects have opted for *tabyid al-amwal*.

Six subjects have suggested غسل الأموال (*ghasl al-amwal*), literally 'money washing'. One subject has made the claim that this term was used in the widely circulated and highly respected Egyptian Arabic newspaper *Al-Ahram*. This equivalent is quite acceptable, especially that English speaking offenders also talk about 'washing their monies'. At this stage, however, this Arabic term should be avoided in favour of the term used in the Lebanese code. This is only a temporary measure, because if a similar code is passed in Egypt or some other Arab country some time in the future and the term used by *Al-Ahram* is preferred for such code, then it would be a matter for either the Arabic academies to decide which term should prevail, or - more importantly - for the language community to decide. It should be noted that the Arabic newspapers published in Sydney also invariably use *ghasl al-amwal* for money laundering, which indirectly supports the subject's claim. This also explains the relatively large number of subjects who have opted for this
equivalent. It supports the notion of the importance of newspapers in promoting coinages or new meanings for existing terms.

Following are examples of the responses of other subjects:
- money smuggling (tahrib 'umlah);
- embezzlement (ibtizaz al-mal);
- washing illegitimate money to make it legitimate (ghaslu al-amwali li ga'liha shar'iyyah).

7.5.11 Defendant, Accused and Respondent

Precision of terminology in the legal system is as important as it is in some other technical areas. Terms usually indicate not only their direct meaning, but also the background as well, whether that background is a particular process, a distinctive species, or a court level. In the Australian court system there are terms which, prima facie, can be said to be identical, as they refer to the same persons, concepts or processes. Yet they are primarily there to serve another purpose, and that is clarity of reference. Examples are charge and indictment, defendant and accused. If I am told that the charge was read, then I should automatically understand that the conversation is about a local (or magistrate or petty sessions) court. I should get the same understanding if I hear someone say "and I said to him: Your Worship, I am not guilty". This is so because I know that charge and Your Worship are terms that are used only in the lower courts, and because in the higher courts the terms should be indictment and Your Honour respectively.

A clear understanding of the terminology is therefore important not only
for the sake of the terms per se, but also to facilitate the general understanding of the legal text or conversation as a whole. Confusion is the result of mixing up of terms, as it were, or attributing the same Arabic equivalent to two or more English terms. In the list of terms presented to the subjects, the words accused and defendant were listed one after the other. This was calculated to produce two distinctive equivalents in Arabic as well. We know that in Australia, a defendant is a person charged with a criminal offence that can be dealt with summarily by a magistrate in a local court, while an accused is a person who is on trial by jury for an indictable offence in a higher court.

A similar distinction exists in other legal environments, including that of Lebanon. The Lebanese Code of Criminal Proceedings 1948 (Amended 1984), having differentiated between law suits instituted by persons and by the State, makes another differentiation:

المادة 7 – كل شخص تقام عليه دعوى الحق العام فهو مدعى عليه ويسمى ظنيًّا إذا ظن فيه بجنحة ومنتمًا إذا اتهم بجنایة.

Article 7: Any person against whom a law suit by the State has been instituted shall be a respondent, and shall be called a defendant if he is suspected of a misdemeanour and an accused if he is accused of a felony. [Translation and emphasis mine.]

I should point out at this juncture that I have used 'defendant' in the above translation, although the literal translation of the term is 'suspect'. One reason is that in fact all people appearing before courts remain innocent unless they are found eventually otherwise. As such, they continue to be suspects up to the time of their conviction or acquittal,
regardless whether they are before a local or a district or supreme court. Besides, suspicion is an informal stage that precedes charging, which is a formal procedure which puts a suspect one step higher in the ladder of perceived, or alleged criminality. There is nothing to indicate that the two terms are not being used referentially as required by the Code. In the case of Ali and Moustafa (Case No 200/94, Mount Lebanon, Lebanon), the court concluded its decision as follows:

"تقرر المحكمة بالإجماع:
أولاً: تجريم المتهمين علي ومصطفى بالأنشطة المنسوبة إليها بالمادة ...\nثانيًا: إدانة المتهمين يوسف بالأنشطة المنسوبة إليها في المادة ...
[My translation: The Court unanimously decides as follows:
First: The accused Ali and Moustafa are hereby indicted for the felony provided in Article ...
Third: The defendant Yousuf is hereby convicted for the misdemeanour provided for in Article ...]

*Muttaham* (متهم) and *dhanin* (طنين) for 'accused' and 'defendant' respectively are thus well established in the Lebanese legal doctrine and practice. Arabic, however, is one language that has marked differences between its written and spoken forms. The preference of a term over another in the spoken form remains the prerogative of the masses. Thus, in movies and second hand, or edited press reports it is *muttaham* that is commonly used, although unauthentic law reports reproduced (unedited) by the same newspapers the *two* words are used, as dictated by the Code. Differentiation is very important for the production of accurate translations, not only because of the translators' responsibility to be accurate and precise, especially when they deal with such important fields as law, but also because they have a duty that is not unlike that of journalists, namely to educate their readers (cf. 6.4.2).
If we turn to the English Arabic dictionaries we first find that Faruqi lists both terms. However, instead of ascribing *dhānīn* for 'defendant' and *muttaḥam* for 'accused', he provides both Arabic terms as equivalents to 'accused' (1991; p. 12), a very confusing and 'unhelpful situation for translators, while for 'defendant' he provides the following three equivalents (1991; p. 204):

مدعى عليه  
*mudda‘a ’alayh*  [respondent]

ملاحق (قانونًا)  
*mulahaq (qanunan)*  [a prosecuted person]

طالب بامر معيّن  
*mualalab bi-amrin mu’ayyan*  [facing a claim]

There is no doubt that these equivalents serve only to describe certain aspects of what a 'defendant' is, but neither is concise enough or precisely correct enough to be used in a translation. In fact, a 'defendant' is *mudda‘a ’alayh* (respondent) only in limited situations, namely civil claims, and hence we cannot and should not apply a legal term whose function and reference are well delineated to another entity who neither performs that function nor has that particular reference. Accordingly, if I were to hear Arab lawyers talk about a *mudda‘a ’alayh* then I should automatically assume that the centre of discussion is some civil claim as opposed to criminal prosecution. Indeed, Faruqi himself (1991; p. 607) states that 'respondent' is *mudda‘a ’alayh* (especially in divorce matters). Furthermore, he lists the branches of law where this term is applied: civil law, equity proceedings, admiralty proceedings, appeals. This obviously eliminates the criminal branch of law, which takes us back to our objection to using *mudda‘a ’alayh* as an equivalent to 'defendant'.
Ba'albaki (1993; p. 24) almost copies the problem when he provides both muttaham and mudda'a 'alayh as equivalents to 'accused', while he opts only for the second alternative as an equivalent to 'defendant' (1993; p. 256). To add to the state of confusion, he also provides the same alternative, mudda'a 'alayh, as an equivalent of 'respondent' (1993; p. 781).

Karmi, on the other hand, provides the following for 'accused' (1988; p. 10): متهم في قضية جنائية (muttaham fi qadiyyah jinaiyyah), literally 'accused in a criminal matter'; مدعى عليه (mudda'a 'alayh), which as explained above means respondent; and مظنون (zanin), which is wrong in this case and is better suited for 'defendant' as explained earlier. As for 'defendant', Karmi provides two alternatives (1988; p. 316): mudda'a 'alayh and مظنون (maznoun). As for maznoun I would unhesitatingly say that Karmi just opted for a term that is derived from the same verb root, zanna, but a bit different from zanin which he incorrectly used as an equivalent for 'accused'. In other words, it appears that Karmi was motivated by a desire to change the derivation just to create a distinction between zanin and maznoun. The difficulty is that while the first is a correct term in the legal sense, as in reference to the Lebanese Code of Criminal Procedures, the second is not used in the legal field and the only meaning that can safely be ascribed linguistically to this term is to be found in Ul-Bustani (1987; p. 568), where the term is provided only in its plural inanimate form and explained as a term of logic. The only support that Karmi gets in using the term maznoun is found in Wehr's Dictionary of Modern Written Arabic, where the equivalents given are 'supposed', 'presumed', 'assumed', 'suspicious' and 'suspect(ed)' (1979; p. 682). But as
discussed earlier under the current heading, a 'suspect' is a person who has not yet been formally charged and hence he is still not a 'defendant'.

Before proceeding to the answers provided by the subjects perhaps it is useful to chart the above discussion, with the Arabic equivalents of each of the three English terms as provided in the three references are listed, along with the correct term.

<table>
<thead>
<tr>
<th>Term</th>
<th>Ba'albaki</th>
<th>Faruqi</th>
<th>Karmi</th>
<th>Correct</th>
</tr>
</thead>
<tbody>
<tr>
<td>accused</td>
<td>muttaham mudda'a 'alayh</td>
<td>muttaham zanin</td>
<td>muttaham mudda'a 'alayh zanin</td>
<td>muttaham</td>
</tr>
<tr>
<td>defendant</td>
<td>mudda'a 'alayh</td>
<td>mudda'a 'alayh mulahaq</td>
<td>mudda'a 'alayh maznoun</td>
<td>zanin</td>
</tr>
<tr>
<td>respondent</td>
<td>mudda'a 'alayh mujib mustajib</td>
<td>mudda'a 'alayh mujib</td>
<td>mudda'a 'alayh mujib</td>
<td>mudda'a 'alayh</td>
</tr>
</tbody>
</table>

The responses of the subjects, on the other hand, can be charted as follows:

<table>
<thead>
<tr>
<th>Term</th>
<th>Equivalent</th>
<th>Equivalent</th>
</tr>
</thead>
<tbody>
<tr>
<td>accused</td>
<td>muttaham (16 subject; 80%)</td>
<td>mudda'a 'alayh (4 subjects; 20%)</td>
</tr>
<tr>
<td>defendant</td>
<td>muttaham (4 subjects; 20%)</td>
<td>mudda'a 'alayh (16 subjects; 80%)</td>
</tr>
<tr>
<td>respondent</td>
<td>mustanaf diddah (4; 20%)</td>
<td>mudda'a 'alayh (16 subjects; 80%)</td>
</tr>
</tbody>
</table>

The above table shows that the responses of the subjects have been influenced to a large extent by the bilingual dictionaries they have consulted, hence the overlapping mudda'a 'alayh as an equivalent to both 'defendant' and 'respondent'. Of note is that none of the subjects has provided zanin for 'defendant', and it is only assumed here that they avoided it because it is not so common in general reports and discussions.

Page 303
although it is the term still used in courts and in court reports (see the citation at the beginning of this section).

**7.5.12 Culpable driving**

Culpable driving is a criminal offence, and therefore contrary to the initial impression that it should be covered by the traffic legislation, in New South Wales this offence is covered by the Crimes Act, 1900, No 40. The situation is the same in the other Australian states and in other Common Law countries. This is emphatically so because culpable driving ranks high on the list of penalties. In New South Wales, for instance, where culpable driving leads to death there is a maximum sentence of five years imprisonment (Section 52A of the Crimes Act 1900).

In the New South Wales Motor Traffic Act, 1909, No 5, however, there are two other offences which rank lower in the scale of criminality, and hence their existence in the Traffic Act rather than the Crimes Act. These are:

1. driving furiously, recklessly, or in a speed or manner dangerous to the public; and

2. Negligent driving.

These two offences carry relatively light sentences. The first charge is punishable by a fine or a short term, while the second is punishable by a fine only. Thus it is of extreme importance for translators to be able to differentiate between 'culpable', 'furious', 'reckless', 'dangerous' and 'negligent'.

Page 304
The above background information is necessary for a good understanding of the term 'culpable', as it significantly narrows down any list of possible equivalents. Linguistically, the term is derived from the Latin *culpa*, which in the Roman Law means 'wrongful default' (Burke 1976; p. 107). In Karmi (1988) and Ba'albaki (1993) the term is explained as 'deserving censure' and 'blameworthy'. Faruqi however provides a fairly comprehensive explanation of *culpa* and its derivatives, defining 'culpable' as 'blameworthy', 'accountable', 'criminal', 'default'. Logically speaking, a traffic accident that, through default on the part of the driver, leads to death or serious injury should obviously make the driver accountable for his default. He should be blamed for it. But this does not mean much at law. If, on the other hand, I ascribe a level of criminality to the act of driving, or rather the wrongful default (hence *culpa*), then I am moving the offence out from the ordinary traffic regulations to the arena of criminal law, which is the case as explained above, something that Faruqi has not encapsulated in any of his suggested equivalents. The equivalent that we are after for 'culpable driving' is thus 'criminal driving', (السياق الجرمية = *al-siyaqah al-jurmiyyah*).

Following are examples of the responses given by the subjects as equivalents to 'culpable driving'. Only the English translation [mine] of the examples will be provided.

1. blameworthy driving;
2. driving in a manner that calls for blame;
3. default in driving;
4. reckless driving (punishable by the law);
5. guilty of driving a motor vehicle;
6. negligent driving;
7. driving a motor vehicle in a guilty manner;
8. failure to take precaution and safety measures whilst driving; &
9. criminal driving (2 subjects; 10%).

Two observations are to be made at this point. Firstly, the large number of equivalents provided by the subjects indicates the low level of standardisation. Secondly, two qualifiers that have been used by the subjects for 'driving' - reckless and negligent - are actually modifiers for two other offences, but a a lower level of criminality, as explained above. The fact that only 10% of the subjects have managed to arrive at the correct equivalent, perhaps through following the same reasoning used in this section, supports the view that the absence of a valid and 'smart' law dictionary that provides useful and usable Arabic equivalents ultimately leads to chaos and gross errors in translations.

7.5.13 Proceedings in camera
This was initially thought of as a simple term that probably should not have been included in the list. However, the responses have proven that a serious problem does exist, primarily due as it seems to Faruqi, considering that he states that 'in camera' means 'in the consultation room' (1991; p. 352), which could also mean the judge's chambers. He stops short of providing any other meanings. Although the same rendition of 'in camera' is provided in Ba'albaki and Karmi, they also explain that it means 'in private' as well. There is no doubt that this is the intended meaning, and thus 'proceedings in camera' means
'the hearing of a case in private; e.g. in court, the public being excluded; or in the judge’s private room. Criminal cases must be heard in public, but divorce cases and civil cases may be heard in camera if necessary to secure due administration of justice. (Burke 1976; p. 173)

Accordingly, a direct equivalent that is semantically functional but referentially leaves it unnecessarily restricted to the judge's chambers (as such proceedings can also take place in the court room itself) is simply الإجراءات سريئة (al-ijraat sirriyah). Declaratorily and performatively, this equivalent would have the exact function as its English counterpart, as a sign in either language placed outside the court would invariably discourage all but those directly concerned to enter the court room. I will below list the English translations [mine] of some samples of the responses of the subjects, some of which can be related back to Faruqi's restrictive and not altogether correct equivalent, while the majority have surprisingly to do with mistranslating the word camera and using it as to mean an optical device (camera and even video).

1. proceedings are taking place in the consultation room;
2. continuing proceedings in the consultation room (either in judge's chambers or in a closed court);
3. a court 'without public';
4. a video recorded hearing;
5. deliberations in private;
6. transmitting by camera of court proceedings;
7. photographed legal proceedings;
8. shooting by camera; and
9. negotiations that take place in the judge's chambers.
Only 2 subjects (10%) have opted for the fifth alternative, which is the closest to the correct equivalent.

7.5.14 Crime commission rate

In the preceding chapter I discussed the formation of some legal terms through a simple process of stringing together lexical items that are not necessarily legal. The above is one such term, where three items taken from lay persons' everyday language are joined together and made a term used in legal discourse, although it is also used in ordinary news reports and commentaries by persons with no legal training. Although 50% of the subjects have returned accurate responses (معدل ارتكاب الجريمة mu'addal irtikab al-jarimah), 3 subjects (15%) did not suggest any equivalent, while the other seven subjects provided other alternatives, examples of which are below, obviously all wrong:

1. السعر المقبول لارتكاب جريمة بالتفويض
   [My back translation: The price received to commit a crime by delegation.]

2. لجنة تقدير معدل الجريمة
   [My back translation: Committee on Assessment of the Crime Rate.]

3. منافع هيئة الجريمة
   [My back translation: The Commission (as an agency) of Crime Benefits.]

7.5.15 Summary jurisdiction

The term 'summary', in a legal sense, is an interesting one, because it alerts interlocutors or readers to the fact that the criminal offence in question is not of a serious nature and that it can be dealt with in a local court (or its equivalent). In this respect, it is not unlike 'defendant' or '...
your worship’. It is a term that all interpreters are undoubtedly aware of, especially that in some cases, and by application by either the prosecution or the defence, a magistrate may decide that he or she has the discretion to deal with the matter ‘summarily’. This means that the case is capable of being decided there and then, without referring it to a higher court for trial or sentence as the case may be. Jurisdiction is, therefore, the authority or powers of a certain court to deal with cases at a certain level (determined on the severity of penalties in criminal cases and the amount of damages sought in civil claims).

Faruqi (1991; p. 673) provides two alternative equivalents for the term 'summary jurisdiction': ikhtisas juziy; wilayah juziyyah. Both equivalents have the juziy component, that is 'limited'. The two lexical items corresponding to 'jurisdiction' are correct, although wilayah is more related to a historical era in the development of Shari’ah law, when the caliphs used to send jurists to the various countries conquered by Islam to decide cases according to the new religious law. Either equivalent should suffice; for the sake of standardisation, however, only one or the other should be consistently used. For the same reason, the first alternative (ikhtisas) should be adopted as this word rather than wilayah recurs in other situations to refer to the same English word. Thus when the magistrate says: this court has jurisdiction, the translation should be إن لهذه المحكمة إختصاص (inna lihazihi al-mahkamah ikhtisas).

Given that the term in its totality is in Faruqi, it was initially thought that a high level of accuracy, if not standardisation, would obtain in the responses of the candidates. The fact is different. The following list
provides the equivalents suggested by the subjects together with the frequencies.

1. ikhtisas juziy, as in Faruqi (4 subjects; 20%);
2. a court that is competent to deal with summary matters (1 subject; 5%);
3. the right of lower courts to determine small matters without a jury (1 subject; 5%);
4. salahiyyat juziyyah (summary or partial powers) (2 subjects; 10%);
5. sultah mahdoudah (limited authority or power) (1 subject; 5%);
6. wilayah juziyyah, as in Faruqi (5 subjects; 25%);
7. qawanin (laws) (1 subject1; 5%);
8. the right of a court to determine cases without jury (1 subject1; 5%);
9. no response (4 subjects; 20%).

7.5.16 Cumulative and concurrent sentences

Sentences are served either concurrently or cumulatively. The latter means that the separate sentences will have to be added up, and the convicted offender will have to serve the sum total of these sentences. The former means that if a convicted person has been punished by two or more imprisonment sentences (or other forms of penalties) then he or she need serve only the longer of the two (or longest if more than two sentences), or be sentenced to the severest punishment (like when there are jail sentences and a death sentence), although given that high level of precision is a norm and that no uncertainty is allowed in legal texts judges usually specify which sentence is to be applied.

Admittedly, I have not yet seen the Arabic form of 'cumulative' in any
original Arabic legal text. Accordingly, a decision will have to be made as to which of four alternatives that Faruqi (1991; p. 187) provides for this term, namely *jam'i* (cumulative), *jam'i* (comprehensive), *idhafi* (additional), and *ta'zizi* (supportive). I would exclude the last two because each implies reference to that part of something that is over and above something else rather than the sum total of the two parts. This leaves us with *jam'i* and *jam'i*, and given the direct equivalence obtained in the second it ought to be the choice, although the first would not be wrong.

As for 'concurrent' Faruqi provides twelve equivalents (1991; p. 150). This makes our task of deciding on one rather than the other eleven quite more cumbersome. The list that Faruqi suggests, however, is not comprehensive, as it does not include the direct Arabic equivalent of 'concurrent' in the legal sense. There is no doubt that 'concurrent sentences' means *'uqubat mudaghamah* (عقوبات مدغضة). The conclusion is based on the fact that this term is commonly used equally in Arabic novels as well as court reports in the Arab world. Consider the following from a modern novel:

[Transliteration: wa awdhahat anna al-mahkamata qādat bi-habsi Ibrahim thalathata ashhuhrin li-iqtinaihi khinjaraq mamnu'an lam yu'thar 'alayh, wa bimusa'darati sikkinaq ghayr mamnu'ayn dubita fi shiqqatihi, wa bi-tadhmihi al-rusumi wa al-masariq kamilatan, wa bi-idghami al-'uqubati wa tanfizi al-'uqubati al-ashad.]

page 311
[Translation: It explained that the court has decided to have Ibrahim imprisoned for three months for possessing a prohibited dagger that has not been located, to seize two unprohibited knives that have been located in his flat, to make him liable for all the fees and costs, and to make all the penalties concurrent and enforce the severest penalty, namely execution.] (Salamah 1994; p. 134).

It is apparent that the death sentence was mentioned earlier in the text and hence making it the resultant, severest penalty. Users of Arabic are familiar with idgham as a grammar term that means contracting by compressing one letter or sound into another. It is rarely used outside the Arabic grammar domain, although it also means 'assimilation', 'incorporation', 'merging', 'amalgamation', 'contraction'. Accordingly, a sentence of ten years incorporates any lesser sentence, of three or any number of years under ten. The term is extensively used in law reports. Following is an example:

... تجريم المتهم عزيز حنا الرياشي بالجنية المنصوص عنها في المادة 456 عقوبات وإنزال عقوبة الأشغال الشاقة بعدة سبع سنوات وتجريمه بالجنية المنصوص عنها في المادة 352 عقوبات وإنزال عقوبة الأشغال الشاقة بعدة أربع سنوات وإدامة العقوبيتين على أن تنفذ بحق العقوبة الأولى لأنها الأشد.


[Translation: ... to indict the accused 'Aziz Hanna al-Riyashi with the felony provided for in Article 456 Crimes and
sentence him to seven years of penal servitude, to indict him with the felony provided for in Article 352 Crimes and sentence him to four years of penal servitude, and to make the two sentences served concurrently provided that the first sentence is to be enforced against him because it is the heavier sentence.]

The subjects were asked about cumulative but not concurrent sentencing. Following are the responses:

1. hukm mutarakim
2. 'uqubah muta'aqibah (muta'addidah)
3. hukm muta'addid (bi ta'addudi al-jaraim)
4. 'uqubah aw hukm mutarakim
5. 'uqubah tarakumiyyah
6. hukm ijmali
7. al-'uqubah al-mutarakimah
8. ahkam muta'addidah (bi-ta'addudi al-jaraim)
9. hukm bi'uqubat tarakumiyyah
10. hukm idhafi.

Although some are wrong (10 for instance) the majority of suggested alternatives include the main components: hukm or 'uqubah for 'sentence' and mutarakim or a derivation thereof for 'cumulative'. Although some of these alternatives can be better defended or justified than others, the obvious shortcoming of the multiplicity of responses is the lack of standardisation.

7.6 Conclusion
Although very limited, this study has clearly proven beyond doubt a few
points of major importance. They are made also on the basis of a comparison between the answers given in the questionnaire and the equivalents provided by each subject. In some cases discrepancies have been found between the two elements of the study and conclusions had to be made accordingly. It should be stated that the above examples are representative of the great majority of responses gained from the subjects, and accordingly whatever conclusions derived from the above examples could easily be applied to the other terms not covered here.

1. Subjects who have returned a larger number of more accurate equivalents are those who have reported in the Questionnaire that they could not find in the dictionaries a large number of terms listed. Conversely, subjects who have returned a larger number of less accurate or wrong equivalents have been found to be in the majority those who have reported in the Questionnaire that they could not find only a very small number of those terms in the dictionaries. The possible conclusion to be drawn here, and which is supported by analyses of the equivalents suggested, is that those who have used the synthetic process for formulating Arabic equivalents have failed because as discussed in Chapter One this method can succeed only rarely.

2. It has also been found that there has been a great degree of consistency in the performance of subjects. Thus, if we were to measure the responses on a right-wrong scale (although this has not been done methodically) we would find a high level of right answers in a small core of subjects (10%), including correct renditions for some exceptionally difficult terms. It can only be inferred that 10% of subjects have had a
good knowledge of the legal environment in both cultures, or that they have researched the topic appropriately before they provided their answers. Whichever the case may be, the observation should suffice to suggest that linguistic competence on its own is not sufficient to produce proper justifiable equivalents in special subject areas. First hand, or alternatively a deep knowledge of those areas remains a prerequisite.

3. A very high percentage of Arabic translators are reluctant to derive or coin terms.

4. Neither the general bilingual dictionaries nor the bilingual legal dictionaries are of any significant assistance to translators. It should be stated here that the responses of subjects in the Questionnaire were thought initially to be rash or unjustifiable, as many of them stated that they relied more on the general bilingual dictionaries. Having reviewed the terms and compared the various dictionaries for viable equivalents, I tend to support my subjects' view. More alternatives are usually provided in the general bilingual dictionaries. This should be a blessing for translators who, when turning to a specialised dictionary, should find only the term used in the particular field that dictionary covers. My experience - and obviously that of the subjects - is that this is not the case, and that the equivalents provided in the specialised dictionary were often amazingly confusing, inadequate or simply were not in common usage in the Arabic legal jargon.

5. There is no conclusive direct relation between the length of experience and the level of accuracy in performance. The two subjects that have
returned a larger number of correct equivalents are from the 1 - 3 year and 4 - 10 year age brackets. Besides, there is no evidence, in the study, that longer periods of experience mean better performance. This can be explained in terms of whether or not the experience is relevant, that is whether it is done under supervision. A translator who continues to commit the same mistake for twenty years, without becoming aware of any any criticism, or without presenting his or her work for assessment by a senior translator or translation authority, cannot be said to have twenty years of relevant experience. Perpetuating the error seems to be the problem in most translations and a large number of translators. This is inevitable because there is no work place in Australia that employs more than one Arabic translator at any one given time. Part time translators working for the same agency do occasionally checking work in what may be called peer checking, but this is done either cursorily or under a very restrictive mandate that makes the exercise rather futile.

6. There is an extremely low level of standardisation among the various subjects. This ultimately means that if more than one translator are asked to translate different portions of one legal text (or if different interpreters are employed during a hearing or a trial) confusion will be inevitable, as the 'defendant' may be rendered 'accused' and 'witness box' may be rendered 'dock', or where worse still the same translator might use different equivalents for the same English term.
CHAPTER EIGHT
Conclusions and Recommendations

8.1 Summary of Main Points

It is beyond doubt that translating legal texts is a difficult, complex and important task. Law governs the lives of nations and individuals alike, and it is important that all are clearly aware of their rights and responsibilities. Arab communities living in English speaking countries are obviously important consumers of translated legal texts. Arab governments and officials also need to be fully cognisant of the word and spirit of legal documents presented to them for ratification, given the long term importance of such documents and their impacts on bilateral or international relationships between the signatory Arab countries and other parties.

It is clear from Chapter Two and Chapter Three that there are more similarities than differences between the English and Arabic legal texts and documents. The similarities can be found at both macro-structure and micro-structure, as well as in the level of formality, and even syntax.

Legal texts constitute a technical genre, despite the argument to the contrary discussed and refuted in Chapter Three. The example given of whether the tobacco 'licensing fees' imposed by the Office of State Revenue in New South Wales constitute 'excise' as defined by the Australian Constitution suffices to prove the point. The fine differentiation and demarcation between the two terms is significant
because it firstly allows the State to impose taxes otherwise considered
the prerogative of the Commonwealth in accordance with the
Constitution, and secondly because if there was no differentiation then
the State's 'licensing fees' would be considered unconstitutional, and
consequently offenders charged with defrauding the State by evading
payment of such licensing fees would likewise be considered unjustified
and hence illegally laid. Whilst an apple remains an apple regardless of
the method used for planting, harvesting, fumigating and so forth, an
excise may acquire a different name by merely changing the collection
process. Thus in *Dennis Hotels Pty Ltd v Victoria* (1960, 104 CLR 529),
the High Court of Australia established that a State tax will escape
validity under Section 90 of the Australian constitution if it is structured
as a fee for the privilege of conducting a business and quantified by
reference to turnover in a prior period. Thus by making the tax, which
would otherwise be considered excise, collectable for a prior period a
new name was given: 'franchise fees' and 'licensing fees'. A name is then
a symbol, the full meaning of which includes a process, and at the same
time encapsulates all those decisions made by the courts over the years
and perhaps centuries. The technical nature of legal terminology is
therefore beyond doubt.

Translating such terms into Arabic is not easy. There are firstly the big
differences in which the legal environment has grown and changed or
developed in the English and Arabic speaking countries. One such
difference is the judicial system, another is the litigation system
(adversarial versus inquisitorial). There is also the all ubiquitous effect of
Islam on the Arabic laws, notwithstanding the fact that many modern
laws in the Arab countries have been either adapted or greatly influenced by those of several European countries, mainly France and Italy, although recently other Arab countries, such as the Gulf states are modelling their laws on those of England (the social security and superannuation acts for instance).

Secondly, the lack of a reliable English Arabic law dictionary, where Arabic equivalents provided can be easily used in translations, is a major obstacle facing translating English legal texts into Arabic. Faruqi's dictionary is the more widely used (the other being Wahhab); but Faruqi, despite the large number of entries, is still incomplete, and the Arabic equivalents provided are sometimes misleading or even incorrect altogether (examples in Chapter Six and Chapter Seven), and often an explanation is provided rather than a direct easy-to-use equivalent.

Thirdly, given that the best translators in a particular field are those who also have proper training or significant knowledge in that field, and given that in many advanced countries there are good scientists and other specialists who are also good linguists while in the Arab world most scientists are very poor linguists and linguists are illiterate in the realm of science (Al-Samman 1975; p. 34), the result is obviously poor translations of English legal texts as well. Neither Arab writers nor the Arabic academies have tried to solve this problem. Chapter Six describes the poor output of legal dictionaries. Besides, a review of the efforts of Arab linguists in the 14th century Hejira ('Abd Al-Rahman 1981), shows that no comparative studies between the English and Arabic laws, constitutions or legal environments have been undertaken by Arab
writers, philologists, jurists or lawyers, despite the importance of such literature for translators, among others.

Fourthly, there is the restrictive effect of the various Arabic academies, which act like watchdogs over the 'purity' of the Arabic language. In this respect, there is a big difference between English and Arabic. Wilson notes that whilst 'A French writer obeys the Academy rules which govern the employment of the French language, but a typically English writer like Shakespeare is always ready to make language do mad things, to invent new words' (1858; p. 31). There is more than just one Arabic academy, although it is a tedious task trying to 'please' just one of them. And whilst it is true that English writers - and indeed most users of English - make language do mad things, no Arabic writer or user can deviate from the norms without inviting the wrath of the Arabic academies and the majority of Arab writers. The task of translators is thus made difficult by such restrictive attitude of Arabic language authorities, although as it has been already mentioned the output of the Academies in some fields, law for instance, has not been significant by any standard. This leaves Arabic translators in a no-win situation.

8.2 Objectives Achieved and Recommendations

Whilst the emphasis in translation studies has recently been a text based one, this Thesis has focused again on the word itself as an important building block of good translations in the legal field. This assertion has been proven in both discussion and empirical study.

As a by-product of discussion, the textual features of English legal texts
and, more importantly, of Arabic legal texts have been compared and
described. This would be useful for Arabic translators of legal texts.

The obvious lack of literature on English and Arabic legal environments
should be corrected. This is obviously a difficult task that can be
undertaken by the Academies or under their auspices. It is a necessary
step for trying to reach viable equivalents for English legal terms. This,
however, could be a too far fetched recommendation, or hope. The
immediate needs of Arabic translators can be met by the following:

1. An Arabic linguist should firstly endeavour to secure a collection
   of Arabic codes in the various fields of law and from several Arab
countries. Reading and analysis, with an eye for terminology used, should
   then be undertaken, and a glossary for each field, or area, formed.
   Consultation with Arab lawyers should be also had whenever necessary.

2. A similar exercise should be undertaken in English. This is
   supposedly a relatively easier task, although no less time consuming.

3. The above steps should result in glossaries in the area of criminal
   jurisdiction, civil claims, court system, insurance law, superannuation,
   maritime law, etc. It is inevitable that some overlapping may occur.

4. Equivalents should be drawn for the English terms from the
   existing corresponding Arabic terms, if available. Otherwise, a special list
   of those remaining terms should be drawn and set aside for each area.
   These would then have to be discussed by a panel of highly experienced
Arabic translators, in cooperation with the Permanent Office for the Coordination of Translations in the Arab World. The Office is keen to participate in such efforts, and has strong lines of communication with the Arabic academies. The Office, being administratively linked to the Education Department of the Arabic League, would be in a position to advise on and co-ordinate any similar efforts undertaken by other translating bodies in the Arab world or abroad.

5. It is important that for each glossary (one for each field of law as opposed to one comprehensive law dictionary) an introduction in Arabic and English be prepared explaining the act or acts from which the terms have been derived and the differences or similarities between the Arabic and English acts in that particular field. Relevant charts would also be useful in such an approach.

6. Prioritisation should be done on a need basis, with the Australian environment and its Arab community in focus.

7. Arabic translators should consider declining translations where legal texts are involved, if they lack the experience or proper terminology. As demonstrated in Chapter Seven, many Arabic translators surveyed suffer a drawback as a result of the lack of Arabic equivalents. Yet none of them has indicated that he or she would decline any such translation work if faced with any terminological problem.

*****

Page 322
APPENDIX 1

Steve Karakira
PO Box 134
Regents Park
NSW 2143

8 October 1996

Dear friend/colleague,

I am writing a research on the difficulties encountered by Arabic translators when translating legal texts from English into Arabic. I have my views on this matter, having worked in this field for over twenty years. In order, however, to formulate more objective and justifiable conclusions about the real nature of these difficulties, I would appreciate your assistance in two matters:

1. I am enclosing with this letter a list of legal terms for which I would like you to provide Arabic equivalents that are usable in translations. You are free to consult dictionaries, glossaries, or any other resources, or to coin equivalent terms that you think appropriate. You are free to make comments on how best to deal with any or all of these terms.

2. Also enclosed is a short questionnaire which I would like you to answer.

I appreciate that we, translators, are usually very busy and probably cannot afford the time to even respond to such a request. I believe, however, that there is a lot to be gained from translation research done by translators themselves.

The time taken to attend to the list of terms and answer the questionnaire will be less than two hours. I assure you that from a translation perspective this time will be well rewarded. But even if you cannot complete the term list, I would still like to have back the list with any terms for which you have provided equivalents, even if they were in a basic draft form, plus the completed questionnaire.

Page 323
You do not have to state your name anywhere on the material you send to me, but I am sure this should not be an issue, as we are all professionals and trust that this is a worthwhile exercise.

I have included a stamped, self-addressed envelope for your convenience.

Thank you very much for your assistance.

Yours sincerely,

Steve Karakira

Encl.
QUESTIONNAIRE

1. Are you a translation student [ ] Practitioner [ ]?

2. If practitioner, how long have you been working as a translator? [ ]

3. Which of the following, in your opinion, contribute/s to the main difficulty in translating legal texts? If more than one, please provide numbers to indicate levels of difficulty, with 1 being the highest.
   a. sentence structure [ ]
   b. sentence length [ ]
   c. punctuation [ ]
   d. terminology [ ]
   e. metaphors, pun, etc [ ]
   f. other [ ]

   If 'other' please specify:
   ........................................................................................................................................................................
   ........................................................................................................................................................................
   ........................................................................................................................................................................

4. For the terms provided what are the dictionaries you have consulted for equivalents or to work out equivalents?
   ........................................................................................................................................................................
   ........................................................................................................................................................................
   ........................................................................................................................................................................
   ........................................................................................................................................................................
   ........................................................................................................................................................................

5. Which dictionaries did you find more useful? If more than one, please provide numbers to indicate levels of difficulty, with 1 being the most useful.

   Monolingual [ ] Bilingual [ ]
   Specialised [ ] General [ ]

6. Were there any terms in the text that you could not find in any of the dictionaries you consulted?
   Yes [ ] No [ ]
7. If yes, how many?

[ ]

8. Did you find that, for the terms provided on the list, some equivalents you have found in these dictionaries were not helpful as far as your translation work is concerned?

Yes [ ] No [ ]

9. If yes, how many?

[ ]

10. Do you feel that if equivalent legal terms in Arabic were more readily available/accessible, translating legal texts would be much easier?

Yes [ ] No [ ]

11. What do you normally do if the dictionaries provide no real help when trying to look up technical, including legal terms? You can tick more than one box:

a. check with colleagues [ ]
b. provide explanations plus leave the term in English [ ]
c. try to get/read publications in Arabic about the technical field involved, hoping you would find in them the terms you are seeking [ ]
d. try to 'coin' a term in Arabic that you think would be acceptable by resorting to Arabic word-forming methods [ ]
e. provide transliteration in Arabic of the English [ ]
f. leave the term in English only [ ]
g. consider declining the job [ ]

12. Do you find legal texts usually more difficult, as difficult or less difficult to translate than general texts?

More difficult [ ] As difficult [ ] Less difficult [ ]

13. Do you find legal texts usually more difficult, as difficult or less difficult to translate than other technical texts?

More difficult [ ] As difficult [ ] Less difficult [ ]

THANK YOU FOR YOUR ASSISTANCE.
### APPENDIX 2

#### LIST OF TERMS

(Do not translate material between brackets)

<table>
<thead>
<tr>
<th>English Term</th>
<th>Arabic Equivalent</th>
</tr>
</thead>
<tbody>
<tr>
<td>surrogate</td>
<td></td>
</tr>
<tr>
<td>deeming</td>
<td></td>
</tr>
<tr>
<td>practicability</td>
<td></td>
</tr>
<tr>
<td>reasonableness</td>
<td></td>
</tr>
<tr>
<td>chargee</td>
<td></td>
</tr>
<tr>
<td>appealable</td>
<td></td>
</tr>
<tr>
<td>non-citizen</td>
<td></td>
</tr>
<tr>
<td>cross-examination</td>
<td></td>
</tr>
<tr>
<td>informations</td>
<td></td>
</tr>
<tr>
<td>recognizance</td>
<td></td>
</tr>
<tr>
<td>executrix</td>
<td></td>
</tr>
<tr>
<td>surety</td>
<td></td>
</tr>
<tr>
<td>deposition</td>
<td></td>
</tr>
<tr>
<td>bailee</td>
<td></td>
</tr>
<tr>
<td>statement</td>
<td></td>
</tr>
<tr>
<td>superannuation</td>
<td></td>
</tr>
<tr>
<td>cross-action</td>
<td></td>
</tr>
<tr>
<td>subcontractor</td>
<td></td>
</tr>
<tr>
<td>negative gearing</td>
<td></td>
</tr>
<tr>
<td>imprest</td>
<td></td>
</tr>
<tr>
<td>committal proceedings</td>
<td></td>
</tr>
<tr>
<td>coroner</td>
<td></td>
</tr>
<tr>
<td>euthanasia</td>
<td></td>
</tr>
<tr>
<td>arraignment</td>
<td></td>
</tr>
<tr>
<td>summary jurisdiction</td>
<td></td>
</tr>
<tr>
<td>forge and utter</td>
<td></td>
</tr>
<tr>
<td>make a false instrument</td>
<td></td>
</tr>
<tr>
<td>voire dire</td>
<td></td>
</tr>
<tr>
<td>district court</td>
<td></td>
</tr>
<tr>
<td>evidence in chief</td>
<td></td>
</tr>
<tr>
<td>justice of the peace</td>
<td></td>
</tr>
<tr>
<td>tribunal</td>
<td></td>
</tr>
<tr>
<td>the information is dismissed</td>
<td></td>
</tr>
<tr>
<td>fabric land</td>
<td></td>
</tr>
<tr>
<td>crown land</td>
<td></td>
</tr>
<tr>
<td>commission of a crime</td>
<td></td>
</tr>
</tbody>
</table>
witness box
in witness whereof
induced statement
money laundering
custodial sentence
quash a conviction
apprehended violence
apprehension order
superfluous
caution
encumbrance
vexatious prosecution
false pretence of title
adversary system
aiding and abetting
cumulative sentence
remissions (for prisoners)
fraudulent appropriation
framing a false invoice
peeping and prying
terms and conditions
indecent exposure
blasphemous libel
probation officer
solemn affirmation
suicide pact
proceedings in camera
affray
malicious damage
codicil
prima facie case
evidence
conviction
demand money with menace
taking a conveyance without consent
rules of conveyancing
fraudulent abstraction of power
franked dividends
adjourn sine die
decree nisi
equity division
pervert the course of justice  
presumption of bail  
fraudulent bankruptcy  
fraudulent sale  
irredeemable bonds  
jointly and severally liable  
muniment  
protest (as a noun)  
summons  
defendant  
accused  
plaintiff  
respondent  
service of notice  
execution of a search warrant  
crime commission rate  
NSW Crime Commission  
passing (of a bill in Parliament)  
misconduct with corpses (criminal offence)  
culpable driving  
balance of probabilities  
Industry Stabilisation Act
APPENDIX 3

Key to transliteration system used in the study

Different writers use different transliteration systems. The transliteration system of Arabic used in this study is a hybrid one, adapted from several systems to facilitate the reading process and to use a concise method as close as possible to Arabic pronunciation.

- The 'I' of the definite article is not elided with sun letters, eg al-sha'bu al'tha'ir (الشعب الثائر). In both words 'I' is not pronounced, yet it is written. This system, although flawed, is very commonly used.

- Germinated consonants, that is those with the shaddah (ّ), are doubled. Thus المنذكر is transliterated as al-muzakk kar. Even تحضّن, according to this system, would be written as tamakhkhadha.

- Morpheme boundaries are not marked, but the coordination particle و (wa) and prepositions such as في (fi) are marked and written as separate words. Thus wa kana fi al-bustan.

- Long vowels are written as a, eg هذة (hazhi); i, eg تأجيل (ta'jil); u, eg موضوع (mawdu').

- Tha ta' marbutah in either dotted (unless accentuated) or undotted form (ة - ه) at word end is transliterated invariably as h. Thus همزة (ِهمزة), and 'illah (عنة).

<table>
<thead>
<tr>
<th>Arabic letters</th>
<th>Their names</th>
<th>Transcription</th>
</tr>
</thead>
<tbody>
<tr>
<td>ح</td>
<td>hamzah</td>
<td>'</td>
</tr>
<tr>
<td>أ</td>
<td>alif</td>
<td>a</td>
</tr>
<tr>
<td>ب</td>
<td>ba'</td>
<td>b</td>
</tr>
<tr>
<td>ض</td>
<td>ta'</td>
<td>t</td>
</tr>
<tr>
<td>ث</td>
<td>tha'</td>
<td>th</td>
</tr>
<tr>
<td>ء</td>
<td>ta' marbutah (accentuated)</td>
<td>t</td>
</tr>
<tr>
<td>ج</td>
<td>jim</td>
<td>j</td>
</tr>
<tr>
<td>ح</td>
<td>ha</td>
<td>h</td>
</tr>
<tr>
<td>خ</td>
<td>kha</td>
<td>k h</td>
</tr>
</tbody>
</table>

Page 330
<table>
<thead>
<tr>
<th></th>
<th>dal</th>
<th>d</th>
</tr>
</thead>
<tbody>
<tr>
<td>N</td>
<td>zal</td>
<td>ţ</td>
</tr>
<tr>
<td>N</td>
<td>ra</td>
<td>r</td>
</tr>
<tr>
<td>N</td>
<td>zayn</td>
<td>z</td>
</tr>
<tr>
<td>S</td>
<td>sin</td>
<td>s</td>
</tr>
<tr>
<td>S</td>
<td>shin</td>
<td>sh</td>
</tr>
<tr>
<td>S</td>
<td>sad</td>
<td>š</td>
</tr>
<tr>
<td>S</td>
<td>dad</td>
<td>d</td>
</tr>
<tr>
<td>T</td>
<td>ta'</td>
<td>t</td>
</tr>
<tr>
<td>T</td>
<td>dha</td>
<td>dh</td>
</tr>
<tr>
<td>A</td>
<td>'ayn</td>
<td>'</td>
</tr>
<tr>
<td>G</td>
<td>ghayn</td>
<td>gh</td>
</tr>
<tr>
<td>F</td>
<td>fa'</td>
<td>f</td>
</tr>
<tr>
<td>Q</td>
<td>qaf</td>
<td>q</td>
</tr>
<tr>
<td>K</td>
<td>kaf</td>
<td>k</td>
</tr>
<tr>
<td>L</td>
<td>lam</td>
<td>l</td>
</tr>
<tr>
<td>M</td>
<td>mim</td>
<td>l</td>
</tr>
<tr>
<td>N</td>
<td>nun</td>
<td>n</td>
</tr>
<tr>
<td>H</td>
<td>ha</td>
<td>h</td>
</tr>
<tr>
<td>W</td>
<td>waw</td>
<td>w</td>
</tr>
<tr>
<td>Y</td>
<td>ya'</td>
<td>y</td>
</tr>
<tr>
<td>I</td>
<td>'alif maqsurah</td>
<td>ә</td>
</tr>
</tbody>
</table>

Vowels and diphthongs

<table>
<thead>
<tr>
<th></th>
<th>fathah</th>
<th>a</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>dammah</td>
<td>u</td>
</tr>
<tr>
<td></td>
<td>kasrah</td>
<td>i</td>
</tr>
<tr>
<td></td>
<td>ә</td>
<td>a</td>
</tr>
<tr>
<td></td>
<td>ү</td>
<td>ү</td>
</tr>
<tr>
<td></td>
<td>ı</td>
<td>ı</td>
</tr>
<tr>
<td></td>
<td>ay</td>
<td>aw</td>
</tr>
</tbody>
</table>
BIBLIOGRAPHY


Al-Qasimi, A. (1989) Mashakil al-Mutarjim al-'Arabi fi al-


al-Tarjamah wa al-Ta'rib'. In Al-Lisan al-'Arabi, 32, p. 85-100.

Mashakil Haza al-Ta'rib. In Majallat Al-Adab 2, Beirut.


Barber, C. L. (1962) Some measurable characteristics of modern
scientific prose. In Behre, F. (ed.) Contributions to English
Syntax and Philology, Gotesburg: Almqvist and Wiksell, pp. 41
- 43.

Sydney, Melbourne, Brisbane, Perth: The Law Book Company
Ltd.

Writing. A Language Studies Unit Research Report.
Birmingham: University of Acton.

John Gibbons (Ed.) Language and the Law. New York:
Longmans.


Madkour, I. (1971) *The Achievements of the Arabic Language*
Academy in Thirty Years (2nd ed). Cairo: Majma' al-Lughah al-'Arabiyyah.


Studies in Modern Languages, p.137-164.


Beirut: Libraire du Liban.


