Some Linguistic Devices in Legal English that Cause Problems to the Translation of Legislative Texts from English to Chinese

Chapter One Introduction

English legal language contains a number of characteristics not commonly found in everyday English. Some of them may give rise to ambiguity in the meaning of the texts, thus causing problems to the comprehension and translation of those texts. As one of the varieties of the legal texts, legislative texts not only share many of those characteristics, but also contain certain others (including some syntactic properties) that may be unique to their genre. As such, problems often arise from one or the other of those characteristics in the translation of legislative texts. This thesis will attempt to study the problems caused by some of such characteristics to the translation of legislative texts from English to Chinese.

1.1 Legislative Texts

Legislative texts are specialized texts of legal nature (Meredith 1979). They are provisions in the statute law, which, as Bennion (1983: 20) puts it, "is the body of enacted law or legislation (as opposed to unwritten law consisting of common law, equity and custom)". They mainly consist of "the primary legislation of a parliament or other legislature, together with subordinate legislative instruments made under powers delegated by the primary legislation" (Bennion 1983:7). In most of the Common Law countries, the primary legislation enacted by the parliament are referred to as Acts.

1.2 Translation of Legislative Texts

Compared with translation of other types of texts, the history of legal translation is relatively short, particularly where Chinese translation is involved. It was not until the last couple of decades that legal texts were translated into Chinese on a larger scale, with the translation of an increasingly large number of contracts in China and the whole set of statute law in Hong Kong.
In cases where the translated texts of the statutes are authentic texts\(^1\), both the original texts and the translated texts become public documents available for public reference. As such, they are extremely useful materials for the study of legal translation between the two languages\(^2\). Hong Kong is one of the very few places in the world, if not the only one, where the statute law comprises both English texts and Chinese texts as authentic texts\(^3\). As the Laws of Hong Kong consist of a large number of chapters\(^4\) and are freely available for public reference\(^5\), the Chinese texts comprised in them provide an enormous source of research materials.

1.3. **Linguistic Features of Legislative Texts**

Legislative writing is highly impersonal and decontextualized, in the sense that its illocutionary force holds independently of whoever is the 'speaker' (originator) or the 'hearer' (reader) of the document (Bhatia 1993). It is distinct from the other genres for its dual characteristics of being precise, clear and unambiguous on the one hand and all-inclusive on the other. As Bhatia (1993) points out, there are two reasons for such dual characteristics of the legislative writing. The first one arises from the communicative purpose of this genre, which generally has a directive function of imposing obligations and conferring rights. As legislative draftsmen are aware of the human capacity to wriggle out of obligations and to stretch rights to unexpected limits, they need to define the model world in their works as precisely, clearly and unambiguously as possible. On the other hand, they also have to refer to every conceivable contingency within their model world so as to make their writings all-inclusive, because they are dealing with a universe of human behaviour, within which it is impossible to predict what will happen.

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\(^1\) There are several countries in the world in which statute law is enacted in more than one language, with each one of them being authentic text (parallel texts). These countries include Canada, Switzerland, and a few others. Meredith's discussions (1979), for example, are related to English/French translation of the statutes in Quebec. See Šarčević (1992: 301-308) for detailed discussions on parallel texts.

\(^2\) Many of the other types of legal texts, such as contracts, are in most cases documents between private parties and are therefore much less freely accessible for research. Some other types of legal texts, for example court judgements, may also be public documents, but they may not be translated into another language as often as the statutes, certainly not on large scale.

\(^3\) Section 10B (1) of the Interpretation and General Clauses Ordinance, Chapter 1, Laws of Hong Kong, provides that "The English language text and the Chinese language text of an Ordinance shall be equally authentic, and the Ordinance shall be construed accordingly".

\(^4\) Primary legislation enacted by the legislature of Hong Kong (known as Legislative Council) are referred to as **Ordinances** rather than **Acts**. They are indexed chronologically by chapter numbers for the sake of identification. As at the date of this paper, there are totally 542 Ordinances in the Laws of Hong Kong, in addition to some 170 private Ordinances of a special nature.

\(^5\) Both the English and the Chinese texts of all the 542 Ordinances of the Laws of Hong Kong are available for public inspection free of charge through the World Wide Web. Hard copies of those Ordinances are available for sale in Hong Kong at the Government Publications Office.
The second reason involves the way in which legislative texts are created. Unlike other genres, the legislative draftsmen are only the writers but not the originators of the legislative texts. As such, they are required in their drafting not only to give justice to the intent of the legislature, but also to facilitate comprehension of the texts by the readers, i.e. the lawyers and the judges. The draftsmen therefore have to make their provisions precise, clear and unambiguous, so as to "box the reader firmly into a corner" (Bhatia 1993: 102 - 103). On the other hand, as legislative provisions are intended to apply to real life situation, they will be subject to interpretation in the context of a particular dispute, which in some cases may not be the same as the one intended by the legislature. The legislative draftsmen therefore need to make their provisions all-inclusive so as to prevent such eventualities (Bhatia 1993: 103).

Whatever are the reasons for the dual characteristics, legislative draftsmen achieve their goals for precision, clarity, unambiguity and all-inclusiveness by various linguistic devices and discoursal strategies, among which are the uses of (i) common words with uncommon meanings; (ii) binomial and multinomial phrases; (iii) nominalization; and (iv) qualifications.

1.4 Aims of the Thesis

The four devices listed at the end of the preceding paragraph are no doubt useful and effective for their intended purpose. They could, however, sometimes cause lexical, semantic, or syntactic ambiguity in the comprehension of the texts. Whilst a legal translator with several years' working experience will be quite familiar with those devices, some of them may still occasionally become a trap or obstacle in his/her work. The aim of this thesis, therefore, is to explore, by analysis of the translated texts of the corpus, which of those devices are more liable to cause problems in translation, the extent of those problems, and the circumstances under which those problems will likely arise.

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6 One obvious example is the problems arising from the use of common words with uncommon meanings. Another example is the syntactic discontinuities caused by the use of qualifications and some binomial and multinomial phrases.
1.5 **The corpus**

A copy of the corpus used for this study is attached as Schedule 1. The corpus consists of twelve bilingual sections of the Conveyancing and Property Ordinance, Chapter 219, Laws of Hong Kong⁷, which is a relatively modern legislation in a specialized field. That Ordinance, which will be referred to as the *Ordinance* throughout this thesis, was enacted in Hong Kong in the 1980s for the purpose of making statutory provisions relating to conveyancing and property law⁸. Its Chinese version became authentic text in or shortly before 1997 together with hundreds of other Ordinances⁹.

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⁷ Those twelve sections are s. 13, s. 14, s. 16, s. 29, s. 31, s. 35, s. 44, s. 50, s. 51, s. 54, s. 56 and ss. 1-4 of s. 58.
⁸ See the Long Title of that Ordinance.
⁹ Ordinances in Hong Kong were not legally required to be bilingual until 1987 when s. 4(1) of the Official Languages Ordinance (Cap. 5) was amended, in the wake of the Sino-British Joint Declaration of 1984, to require that "All Ordinances shall be enacted and published in both official languages". Thereafter, the first bilingual Ordinance was enacted in April 1989. Those original Ordinances which were previously enacted in English language only were dealt with by s. 4B (1) of Cap. 5, which gives the Chief Executive in Council the power to declare the Chinese texts of those Ordinances authentic texts after they have been translated from English. The Law Drafting Division of the then Hong Kong Legal Department (which after 30.6.1997 is known as Department of Justice) was responsible for the preparation of those Chinese texts (i.e. their translation from the English texts). It completed, in May 1997, the preparation of Chinese texts for 494 statutes which were originally enacted in English only, and had all of them duly declared authentic text under s. 4B of Cap. 5. See Law Drafting Division, Department of Justice (1998a: 1 & 2, and 1998b).
Chapter Two  Literature Review

2.1 Nature of the Literature

The literature used for this thesis mainly comprises discussions by specialist legal draftsmen, linguists/jurilinguists and legal translators on the four parameters mentioned in the last paragraph of 1.3 in Chapter One.

For the reason stated in the second paragraph of 2.2, discussion and analysis in this thesis on the use of common words with uncommon meanings will be confined to the use of the word *shall*. Accordingly, literature reviewed for that parameter is related to *shall* only.

2.2 The Use of *Shall*

The distinctive feature of legal English is one of the major factors causing problems to legal translation. According to Mellinkoff (1963:11), there are nine distinctive characteristics in legal English. One of them that often cause problems to legal translation is, as Cao (1997) points out, the frequent use of common words with uncommon meanings.

Cao (1997) and Parr (1997) have both given some examples of such words. The most typical and significant one, however, seems to be the word *shall*. It is significant not only because of its extremely high frequency of use, but also because of the fact that the exact meaning of that word in any particular point of a legal text cannot be worked out from a dictionary, perhaps even a specialist one. In light of such significance, this thesis will solely discuss that word instead of the others in the same category.

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10 For example, Child (1988); Coode (1848); Dickerson (1986); Driedger (1976); Elliott (1990); Piesse (1995) and Thornton (1996).


12 For example, Cao (1997); Meredith (1979); Parr (1997), Šarčević (1985; 1992); and Trosborg (1992).

13 Those nine distinctive characteristics are:
   (a) Frequent use of common words with uncommon meanings.
   (b) Frequent use of old English.
   (c) Frequent use of Latin words and phrases.
   (d) Use of old French and Anglo-Norman words.
   (e) Use of terms of art.
   (f) Use of argot.
   (g) Frequent use of formal words.
   (h) Deliberate use of words and expressions with flexible meanings.
   (i) Attempt at extreme precision of expression.

14 The examples given by Cao (1997) are *shall* and *consideration*, and those given by Parr (1997) include *consideration*, *equity*, and *due diligence*, the last one being in Australian context.
The use of the word *shall* has been widely discussed for many decades by different legal professionals and translators, including Cao (1997), Meredith (1979), Piesse (1995), Thornton (1996), and Trosborg (1992).

In her discussion of translation of contracts, Cao (1997:666) highlights the point that *shall* is a legal performative, meaning *must* as required by the rule of law, and therefore must be translated as *bixu* (禮序) (literally meaning *must*) in Chinese. Her primary intention here is obviously to warn against the danger of overlooking the compulsory element of *shall* where there is such an element in a legal sentence.

By contrast, Trosborg's discussion of the use and translation of *shall* is a more balanced one. Whilst entirely sharing the view that *shall* is the word of legal command and should be saved for orders (Trosborg 1992), she warns about the extensive misuse of that word in legal texts. She notes that "Confusion seems to exist between stating what the law is and directing people to do or not do things". In her view, "when laws and legal statements are not directions but descriptions of the world as it is (or statements of policy)", the statements of law and policy should be "rendered in the indicative mood" (1992: 316). Meredith (1979) also made similar remarks.

Trosborg's comments equally apply to legislative texts. There is repeated specialist advice in textbooks on legislative drafting that legislative statements not containing a compulsory element should be written in present tense\(^{15}\). Nevertheless, it is still extremely common to find in the statutes improper use of *shall* in that context. Thornton (1996: 103 - 104) mentions two types of such improper use. The first one is the use of *shall* for temporal purpose indicating future time (e.g. "If anyone shall give notice, that person may appeal...").\(^{16}\) The second one is using *shall* in a declaratory clause (e.g. "The Agreement *shall* be void"), for which Dickerson (1986: 126) also advises that indicative rather than imperative mood should be used. Such improper uses undoubtedly result in considerable confusion to the comprehension of the texts by the readers, including the translators. Chapter Three of this thesis will examine the extent of ambiguity that arises from such confusion in the translation of *shall* in different contexts.

\(^{15}\) Those who have given such advice include Child (1988: 48 - 49); Dickerson (1986: 185); Elliott (1990: 18 - 21); Piesse (1995: 64 - 71); and Thornton (1996: 103 - 103).

\(^{16}\) It appears that such improper use is mainly intended to refer to those in the initial case descriptions, that is, the qualification preceding the main provisionary clause. See Piesse (1995: 65 & 66).
2.3 The Use of Binomial and Multinomial Expressions

According to Mellinkoff (1963), legal draftsmen attempt at precision both "by choice of particular words and phrases, and by devices of composition such as numbering, lettering, indexing..." (1963: 22). For the first option, he outlines a number of ways by which choice of words and phrases is usually effected in legal drafting. One of such ways is "the use of multiple specifications of legal devices, factual situation, qualifications, applications..." (Mellinkoff 1963: 23), which obviously is referring to the use of binomial and multinomial phrases (as defined in the next paragraph) if we look at the following example given by him (1963: 23):

"To all to whom these presents shall come or may come – Greetings:

Know ye that I, ..., of ..., for and in consideration of ..., dollars, to me in hand paid by ..., do by these presents for myself, my heirs, executors, and administrators, remise, release and forever discharge ..., of ..., his heirs, executors, and administrators, of and from any and all manner of action or actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, trespasses, damages, judgements, executions, claims and demands whatsoever, in law or equity, which against him I have had, now have, or which my heirs, executors, or administrators, hereafter can, shall, or may have, for or by reason of any matter, cause, or thing whatsoever, from the beginning of the world to the day of the date of these presents, excepting a claim as to .......

In witness whereof, etc."\(^{18}\)

\(^{17}\) Those different ways of effecting choice of words and phrases as outlined by Mellinkoff (1963) are:
(a) Use of terms of arts;
(b) Choice of absolutes (e.g. all; none; never; irrevocable; wherever; whatever; whoever);
(c) Phrases designed to keep the restricted restricted (e.g. and no other purpose; shall not constitute a waiver; shall not be deemed a consent);
(d) Phrases designed to keep the broad broad (e.g. including but not limited to; nothing contained herein shall, without prejudice to);
(e) Provisions made against partial invalidity (by specifying all the elements)(e.g. on deposit in the United States mail registered and postage prepaid), and
(f) Use of multiple specification of legal devices, as in the example given by him (1963: 23) and set out on this page.

Bhatia (1993: 108) defines a binomial or multinomial phrase as "a sequence 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.\textsuperscript{19} Such phrases are extensively used in legislative texts because they are highly effective in achieving both of the two essential elements of legal documents, that is, precision and all-inclusiveness, in particular the latter (Bhatia 1993).

Crystal and Davy (1969) remark that the use of binomial and multinomial phrases is extremely common in the English legal language. Gustafsson (1984: 134) describes the use of those phrases as "a distinct style marker" of legal English, noting that their use in legal texts is over "five times more often ... than in other prose styles" (1984: 125). One important syntactic feature of those phrases, as she points out, is that they typically "function as an adverbal in the rhematic part of the sentence".\textsuperscript{20}

The semantic relation between the different constituents of a binomial or multinomial phrase in legal texts is basically either synonymous, antonymous or complementary (Gustafsson 1984), though a more detailed classification is used occasionally.\textsuperscript{21} Some linguists note that sometimes exactly the same thing or almost the same thing is meant by the two terms in the synonymous binomials (Crystal & Davy 1969; Gustafsson 1984; Malkiel 1959). The distinction made by Mellinkoff "between useful binomials and worthless doubling" highlights the significance of leaving out the superfluous constituents in a binomial or multinomial phrase to make the sentences shorter and less complicated. Such significance is well appreciated by many of the specialists in legal drafting (e.g. Child 1988; Thornton 1996), who advocate for a more refrained use of binomial and multinomial phrases.\textsuperscript{22}

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\textsuperscript{19} Some examples of the binomial and multinomial phrases are signed, sealed and delivered; unless and until; for and on behalf of; and sole and exclusive use.

\textsuperscript{20} This makes the binomial and multinomial phrases "a convenient linguistic device for adding weight to the end of the sentence" (Gustafsson 1984: 132 - 133), which is often needed in English legal texts.

\textsuperscript{21} Malkiel (1959: 323 - 326) divides synonymous binomial and multinomial phrases into a number of categories, including:

(a) The constituents are near synonyms, e.g. each and every, fair and square, null and void,

(b) The constituents are mutually complementary, e.g. assaults and battery, cuts and bruises, guns and ammunition, food and drink,

(c) The constituents are opposite to each other, e.g. assets and liabilities, up and down, give or take, win or lose,

(d) One constituent is a subdivision of the other, or vice versa, e.g. months and year; dollar and cents,

(e) One constituent is the consequence of the other, or vice versa, e.g. shoot and kill; married and widowed.

It seems that his Categories (a) and (b) together are what is usually referred to as synonymous, and his Categories (d) and (e) may form part of what is usually referred to as complementary.

\textsuperscript{22} Thornton (1996: 73) reminds the legal draftsmen that care must be taken in using a binomial or multinomial phrase to ensure that each of its constituents "serves a useful purpose" in essence. Since every word in a statute is construed so as to bear a meaning, a superfluous word will become a potential source of contention (Thornton 1996: 66).
As far as translation is concerned, the major problem brought about by those phrases is aptly illustrated by Parr (1997: 18) in her remark that it is sometimes "impossible to find enough synonyms in the target language to accurately reflect each item in a list". Chapter Four of this thesis will analyse the corpus to examine the extent of any such problems arising in the translated texts from the use of binomial and multinomial phrases.

2.4 The Use of Nominalization

It is commonly accepted that the extensive use of nominalization is a marked characteristic of legal English (Bhatia 1997; Crystal & Davy 1969; Maley 1994), particularly in legislative texts.

As Maley (1994) observes, nominalization is most likely to be used in procedural sections in passive clauses with agent deleted (e.g. a recognizance mentioned in subsection (1) shall be conditional upon...). Thematization of the procedural terms in a passive clause (e.g. On the prosecution of a person for bigamy, the first marriage shall not be proved...) is also common.

Crystal and Davy (1969: 205 - 207) identify the following distinctive features regarding the use of nominals in legal English:

(a) There is a marked preference for postmodification in the nominal groups, as in the following examples with the postmodifiers shown in italics:

(i) any instalment then remaining unpaid of the rent;
(ii) the rent hereinbefore reserved;
(iii) the further sum of ten shillings; and
(iv) the payment to the owner of the total amount.

A nominal element is often followed by a non-finite clause as its postmodifier (as in Examples (i) and (ii) above). Some of the postmodifiers (such as those shown in bold in Examples (i) and (iv) above) are inserted at a position that would result in a syntactic sequence not usually seen in other genres.

(b) By contrast, use of premodifications other than determiners is refrained.23

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23 In this respect, it may be worthwhile to note for the purpose of translation that modifiers of nominal groups in Chinese tend to be premodifiers. See the analysis in 5.3.2 of Chapter Five. As far as the determiners are concerned, Crystal and Davy (1969: 206) note the following points in relation to their use in legal English:

(i) The determiner position is filled in almost every nominal (as in Examples (i) to (iv) in Para. 3 (a) on this page), obviously for the sake of specificity.
(ii) Zero determination is largely restricted to such formulae as form part of this policy, on payment of a fee.
(iii) The use of such as a determiner without an indefinite article (e.g. until such time as...) is another distinctive feature of legal English.
(c) Many of the nominals (for example, proposal, declaration, and termination) are themselves either abstract or not referring to some physical object.

Whilst nominalization is extensively used in legal English, it is much less so in everyday English and other languages. As far as Chinese is concerned, it is a verb-oriented language that encodes most ideas by verbs rather than abstract nouns and long attributives (Yip & Rimmington 1997: 29). Such difference between the two languages, coupled with the greater density of information load resulting from the use of nominalization (Bhatia 1984: 142), may cause problems to the translation of legislative texts from English to Chinese. Chapter Five of this thesis will analyse the corpus to examine the extent of any such problem arising in the translated texts.

2.5 The Use of Qualifications

The most important characteristic of legislative texts is the use of qualifications, which serve to provide the essential flesh to the main proposition in a legislative sentence. In the absence of the qualifications, the proposition will only be a mere skeleton of little legal significance and will be taken to be of universal application, which is rarely the case in any rule of law (Bhatia 1993: 111).

There have been numerous discussions on the construction of legislative sentences and the use of qualifications in the legislative genre. Coode (1848) identifies four essential elements in legal statements and places them in the following order\textsuperscript{24}:

Where any Quaker refuses to pay any church rates, (CASE)  
if any church warden complains thereof, (CONDITION)  
one of the next Justices of Peace (SUBJECT)  
may summon such Quaker. (ACTION)

Coode's analysis is considered to be highly valuable in "the attention it pays to the sentence structure and the arrangement of qualifying clauses in the best position" (Bhatia 1993: 114; Thornton 1996: 21). It forms the basis of subsequent discussions by numerous legislative and linguistic specialists (e.g. Bhatia 1984; Driedger 1976; Piesse 1995; and Thornton 1996).

\textsuperscript{24} See Coode (1848), pp. 313 - 376.
Crystal and Davy (1969: 203) claim in their analysis of the legislative genre that most legal sentences have one of the following two forms:

(a) If X, then Z shall do Y.
(b) If X, then Z shall be Y.

In these two forms,
"If X" is the description of case(s) to which the rule of laws applies;
"Z" is the legal subject; and
"Y" is the legal action.

Coode (1848) and Crystal & Davy (1969) seem to share the point that a legislative sentence basically comprises two major parts, viz. (i) a main provisionary clause consisting of a legal subject and a legal action; and (ii) a case description and/or condition. However, as Bhatia (1993) rightly points out, legislative texts in fact have a number of other qualifications in addition to case description and condition.

In the book summarizing his study on legislative qualifications, Bhatia (1983) divides legislative qualifications into ten functional categories falling within three major groups (Preparatory Qualifications; Operational Qualifications; and Referential Qualifications), and providing three different types of information about the rule of law. A table showing all the ten categories of qualifications with illustrative examples is attached as Appendix 1.

Legislative texts are distinct from other genres not only because of the large number of qualifications used, but also because of the positions of the various qualifications in a legislative sentence. If a variety of qualifications were to be inserted in a single sentence, there would need to be as many syntactic points to insert them as possible. For the sake of avoiding ambiguity, qualifications are as far as possible inserted right next to the word to be qualified by them. This often results in syntactic discontinuities\(^\text{25}\), which "add considerably to an already complex syntactic character of the legislative sentence, and cause serious psycholinguistic problems in the processing of such provisions" (Bhatia 1993: 113). Chapter Six of this thesis will analyse the corpus to examine the types of translation problems likely to arise from the use of qualifications and the extent of ambiguity caused by them in the translated texts.

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\(^{25}\) Syntactic discontinuities can occur in a verb phrase, a noun phrase, a binomial phrase, or even a complex prepositional phrase. See Bhatia (1993: 113).
Chapter Three  
\textbf{Shall in Legislative Texts}

3.1 \textbf{The Use of Shall in the Corpus}

\textit{Shall} is the most commonly used word in legal texts that often gives rise to ambiguity in its comprehension and translation. As the functional purpose of the word is not always clear, it is sometimes difficult for a translator to determine whether \textit{shall} in a particular context is intended to mean \textit{must} (imposing an obligation) or just its ordinary meaning in everyday English.

Gunnarsson (1984:84) divides legislative provisions into three categories, viz. Action Rules\textsuperscript{26}, Stipulation Rules\textsuperscript{27}, and Definition Rules\textsuperscript{28}. Such distinction is, however, not extremely useful in establishing whether the use of \textit{shall} in a particular context is intended to be obligatory or non-obligatory, because the Action Rules include not only the provisions that impose duties and obligations, but also those which state the law (Bhatia 1993:104). As such, analysis in this chapter on the meaning and translation of the word \textit{shall} will be based instead on the distinction drawn by Trosborg (1992) and Thornton (1996). That is, whether the word is intended to be "directing people to do or not do things" (imposing obligation or prohibition) or "stating what the law is" (serving a declaratory function)\textsuperscript{29}.

There are totally 49 instances where \textit{shall} is used in the English corpus. They are listed in Appendix 2, and can be divided functionally into three categories as outlined in 3.1.1, 3.1.2 and 3.1.3 respectively.

3.1.1 \textbf{Clauses in which shall is distinctly intended to be of an obligatory nature}

Clauses in Category One clearly carry an element of \textit{must}. The word \textit{shall} is used in them together with a performative verb imposing either an obligation or a requirement on the legal subject, e.g.

"..... the purchaser ..... \textbf{shall assume} ..... that ..... the recital is correct;....."

[Section 13 (3)]

\textsuperscript{26} Action Rules are provisions that impose duties and obligations, give rights, prohibit actions, assign powers, state the law or just the penalties imposed on specified actions. See Gunnarsson (1984) and Bhatia (1993).

\textsuperscript{27} Stipulation Rules are provisions that define the domain of application of a particular act or any section of it. Ibid.

\textsuperscript{28} Definition Rules are provisions that provide definitions and terminological explanations. Ibid.

\textsuperscript{29} In the corpus, there is no instance where \textit{shall} is used for temporal purpose indicating futurity. This is an improvement in legal drafting that would to a large extent reduce problems for translators.
"Any money received by a mortgagee or a receiver from the sale ..... (of) the
mortgaged land ..... shall be applied according to the following priority ....."

[Section 54]

Of the 49 instances in the corpus, there are only four instances that fall within
Category One,30 in which shall is used for meaning must and imposing either an obligation
or requirement on a specific person. In the remaining 45 instances, 35 of them fall within
Category Two and, as analyzed and exemplified in 3.1.2 below, are clearly intended to be of
a declaratory nature, serving the function of either stating the law or conferring rights or
powers.31 Although the word shall in some of them may also appear to carry an obligatory
meaning, it is obligatory in the sense of a command for all and not an obligation on a specific
person. Therefore, the word shall in such instances does not mean must. Such distinction
between the two categories will become apparent if we compare the provision of Section 13
(3) quoted above in this section with the following provision of Section 13 (2):

"..... it shall be sufficient to produce a copy ..... attested ..... or certified ..... 
to be a true copy." [Section 13 (2)]

The provision of Section 13 (3) means the purchaser is obliged to assume that the
recital in question is correct. The provision of Section 13 (2), on the other hand, is a
command for all to accept a copy of the document duly attested or certified in the specified
manner to be sufficient for the purpose of that section. As such, the word shall in the former
is intended to impose an obligation on a specific person, but in the latter is used for
declaratory purpose stating the law.

3.1.2 Clauses in which shall is distinctly intended to be of a non-obligatory nature

As mentioned above, there are 35 instances in the corpus that fall within this
category,32 in which the clauses do not contain any element of must and are purely of
declaratory nature, e.g.

30 They are Instances Nos. (1) to (4) in Appendix 2.
31 The other ten instances in the corpus also serve a declaratory function, although the meaning of the word shall
in those clauses may not be immediately clear at first sight. See 3.1.3 for full treatment of those instances.
32 They are Instances Nos. (5) to (39) in Appendix 2.
33 They seem to fall within the meaning of what Driedger (1976) refers to as Divine Ordination, in which shall
"is not intended to impose on any identifiable persons any obligation that can be obeyed or disobeyed" (p.13).
"Any rent ..... mentioned in subsection (1) shall be capable of being recovered.....

by the person ..... entitled ..... to the income ..... of the land ....."

[Section 31 (2)]

These 35 clauses can be divided into four sub-categories on the basis of their specific functional purposes:

**Sub-Category (A)  Declaratory clauses conferring rights or powers**

There are seven clauses falling within this sub-category. They confer rights or powers on the legal subject whilst stating the law, e.g.

"..... the receiver shall have power to demand and recover all the land ....."

[Section 50 (6)]

"..... the mortgagee ..... shall be entitled to possession of the deeds of title ....."

[Section 44 (6)]

**Sub-Category (B)  Declaratory clauses stating the law**

There are 16 clauses falling within this sub-category. They state the legal position of the particular situation or subject matter to which the respective clauses relate. Such clauses mainly comprise two different syntactic patterns in their verb phrases.

(1) *Shall* is used with the verb *operate, empower* or other similar verbs, e.g.

"..... an assignment shall operate to assign with the land all rights, interests ..... in that land ....."

[Section 16 (1)]

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34 See Instances Nos. (5) to (11) in Appendix 2.
35 They are Instances Nos. (12) to (27) in Appendix 2.
36 There may of course be other patterns, but only these two are found in the corpus as far as this sub-category is concerned.
37 See Instances Nos. (12) to (18) in Appendix 2.

There are two exceptional cases in this sub-category, which are in Instance No. (17)[s. 31 (1)] and Instance No. (18)[s. 35 (1B)]. The verbs *go* and *run* in those two clauses are verbs that, when used with *shall*, may in some contexts (e.g. "Party B shall go to the warehouse of Party A for inspection once every two weeks" or "Party B shall run the business with due diligence") be construed to mean a performative act imposing an obligation. However, as the subject NPs in the two clauses in Instances Nos. (17) and (18) are impersonal NPs incapable of performing an act, the intention of those two clauses is obviously to state the law rather than imposing an obligation.
(2) *Shall* is followed by an adjectival phrase or a noun phrase, and preceded by either *it* or an impersonal noun phrase\(^{38}\), e.g.

"..... it *shall be sufficient to produce a copy* ..... attested ..... or certified ..... to be a true copy." \[Section 13 (2)]

"A recital ..... *shall ..... be sufficient evidence of* the truth of that recital ....."

[Section 13 (4)]

**Sub-Category (C) Declaratory clauses specifying the effect of operation of the law**

There are only two clauses in the corpus falling within this sub-category\(^{39}\). In such clauses, *shall* is used together with the verb *become* and is coupled with a complex prepositional phrase (as italicized in the following example) setting out the condition that activates the operation of the law, e.g.

"..... *upon compliance with those conditions*, ..... the equitable interest under that right *shall become* a legal estate in that land ....." \[Section 14 (1)(a)]

**Sub-Category (D) Declaratory clauses specifying the scope of application of the law**

There are 10 clauses falling within this sub-category\(^{40}\), which seem to be what Gunnarsson (1984) refers to as *the Stipulation Rules*\(^{41}\).

*Shall* is used in these clauses with the verb *apply, operate, affect* or other similar verbs, serving a declaratory function of specifying the scope of application of its subject (*this section*), e.g.

"..... this section *shall apply to* each part of that land ....." \[Section 14 (5)]

"Nothing in this section *shall affect* the provisions of the ..... Ordinance"

[Section 29 (5)]

\(^{38}\) See Instances Nos. (19) to (27) in Appendix 2.

\(^{39}\) See Instances Nos. (28) & (29) in Appendix 2. There are some other declaratory clauses in the corpus that specify the effect of operation of the law. They are, however, placed under Category Three, as their functions are not immediately clear at first sight.

\(^{40}\) See Instances Nos. (30) to (39) in Appendix 2.

\(^{41}\) See Bhatia (1993: 104).
3.1.3 **Clauses in which the meaning of shall is not immediately clear at first sight, but the word serves a declaratory function**

There are 10 instances in the corpus that fall within this category\(^{42}\), in which *shall* is used in one form of legal fiction or another.

In terms of legislative texts, a legal fiction is a legal device employed in a legislative sentence. It is "an assumption or supposition of law that something which is or may be false is true, or a state of facts exists which has never really taken place".\(^{43}\) As Maley (1994) puts it, it is "a kind of enabling or facilitating device which enables a lawyer to say, ‘X’ is ‘Y’, or more precisely, ‘For the purposes of this enactment or statute, ‘X’ is deemed to be ‘Y’’" (p.26).

The most commonly used operative phrase in a legal fiction in legislative texts is *shall be deemed, shall be presumed, or shall be implied*. In this regard, the 10 instances falling within Category Three can be divided into two sub-categories:

**Sub-Category (A) Deeming provisions**

There are 6 clauses falling within this sub-category\(^{44}\), in which *shall* is used with *be deemed to*. As Driedger (1976:133) and Thornton (1996: 99) point out, *deemed* is a useful word to establish a legal fiction either:

(a) positively by deeming something to be what it is not\(^{45}\); or

(b) negatively by deeming something not to be what it is\(^{46}\).

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\(^{42}\) They are Instances Nos. (40) to (49) in Appendix 2.

\(^{43}\) See Black (1979: 561)

\(^{44}\) See Instances Nos. (40) to (45) in Appendix 2.

\(^{45}\) For example,

(a) "A person who has received an offer of compensation is deemed to have accepted the offer unless ...

(Thornton 1996:99); and

(b) "A notice that is given to a district inspector is deemed to have been given to the principal inspector...

(ibid.)

\(^{46}\) For example, "For the purpose of this part, a company having more than twenty-five shareholders is deemed not to be a company" (ibid.). There is no instance of such negative fiction in the corpus.
The word *shall* in a legal fiction is used in an authoritative sense and carries an obligatory meaning\(^{47}\). Nevertheless, as in the declaratory clauses referred to in 3.1.2 above, it is obligatory in the sense that it is a command for all but not an obligation on a specific person, e.g.

"...... such a Government lease *shall be deemed to* have been issued upon compliance with those conditions." [Section 14 (1)(b)]

In this example, *deemed* is not an obligation imposed on a specific person. Instead, the clause serves a declaratory function stating the rule of law (i.e. *A* is deemed to be *B*) created by the particular fiction. As such, it seems that *shall* in a legal fiction actually means *is* or *will* rather than *must*. This point will become more evident if we look at the three examples in Footnotes (45) and (46) given by Thornton and many of the examples given by Olivier (1975), where the phrase *deemed to* is preceded by *is* instead of *shall be*\(^{48}\). Even in the corpus itself, there is a clause in Section 50 (2), in which the word *will* rather than *shall* is used with the phrase *be deemed to*, and translated as such. The significance and implication of such difference will be even more conspicuous in the next sub-category, where *shall* is used with a performative verb in a legal fiction.

**Sub-Category (B) Clauses containing the phrase *shall be implied***

There are four clauses in this sub-category\(^{49}\), which can best illustrate the ambiguity that could arise from the word *shall* and the significant consequence caused by it. Such clauses require that certain things (covenant, power, etc.) *shall be implied* in certain documents (assignment, legal charge, etc.), e.g.

\(^{47}\) In explaining what is a legal fiction, Fuller (1967) explains that it sometimes effects its entrance into the law under the cover of such grammatical disguise as the law *presumes, it must be implied*, or the plaintiff *must be deemed*. For further discussion of legislative fictions, see Olivier (1975: 95 - 101)

\(^{48}\) It is of course not impossible that in some cases *shall be deemed to* (as opposed to *is deemed to*) is intentionally used for the sake of meaning *must be deemed to*. However, no such deliberate use of *shall* seems to have been contemplated in any of the examples either in the corpus or in the references.

\(^{49}\) See Instances Nos. (46) to (49) in Appendix 2.
"There shall be implied in any legal charge ... a power ... to appoint a receiver ... of the mortgaged land and the income thereof." [Section 50 (1)]

"There shall be implied -

(a) in any assignment ... the covenant by a person who assigns, and the covenant by a person to whom an assignment is made, mentioned in Part I of the First Schedule; ..." [Section 35 (1)]

In these clauses, the meaning of the phrase *shall be implied* is ambiguous on the face of the letters. As the word *shall* is used with a performative verb (*imply*), it may mean either *will* or *must*. Upon further deliberations, however, it is considered, on the following grounds, that *shall* is intended to mean *will* rather than *must* in this context:

(a) The clauses in this sub-category are legal fictions. As such, their function is, as stated in Sub-category (A) on Pages 16 and 17, to deem something (deem the covenant, power, etc. to be in the documents) to be what it is not (the covenant, power, etc. are in fact not so contained), and not imposing an obligation.

(b) The other provisions in the same Part of the Ordinance indicate that the covenants referred to in Section 35 (1) are actually implied automatically by that subsection itself. If that is the case, there is obviously no need for the parties to perform some act to imply those covenants in the contract, and therefore the function of Section 35 (1) is stating the law rather than imposing an obligation.

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50 If it means *will*, then the clause at s. 50 (1) means "there is implied in any legal charge a power to appoint a receiver", and serves the function of stating the law. On the other hand, if it means *must*, then that clause will serve to impose an obligation on the parties to the contract, requiring them to imply such power in the legal charge, in which case they will have to perform some act for the purpose of so implying. The difference between the two meanings will certainly have significant legal implications and consequences.

51 Section 35 (1) is contained in Part IV of the Conveyancing & Property Ordinance. That Part deals with two types of covenants. The first type are the implied covenants under discussion, that is, those referred to in s. 35 (1) and set out in the First Schedule to the Ordinance. The second type are those referred to in s. 36, which states (inter alia) that "The covenants ... mentioned in the Second Schedule (to the Ordinance) ... may be incorporated into any instrument *by reference*" (emphasis added). If the two sections are read together, it can be fairly safely construed that the covenants under s. 35 (1) need not be incorporated into the instrument *by reference*, and therefore are implied by that subsection itself automatically. This point can be further supported by the provisions of s. 38 (1), which states, among other things, that "... the covenants ... *implied by* or *incorporated by reference under this Ordinance* in any instrument shall be deemed in law proper to be included in the ... instrument." As the Ordinance makes reference to only two types of covenants, it is quite obvious that in s.38 (1) the words *implied by* and the words *incorporated by reference under* refer to s. 35 (1) and s.36 respectively.

52 It is also doubtful whether it is possible to require some one to imply something in the contract and, if so, what means are available for that purpose. This point however is beyond the scope of linguistics.
It can be seen from the foregoing discussions in this chapter that the meaning of the word *shall* in the clauses in Categories One and Two are quite clear cut, either meaning *must* as in Category One (3.1.1) or being purely declaratory as in Category Two (3.1.2). In Category Three, where *shall* is used in two different forms of legal fictions, the word contains ambiguity in its meaning to varying extent, but the word is in fact intended to serve a declaratory function rather than imposing an obligation. In the next section of this chapter, the translation in the Chinese corpus will be examined on the basis of these observations.

The findings of our foregoing analysis of the corpus seem to indicate that contrary to common belief and as distinct from other types of legal documents such as contracts, *shall* is used in legislative texts more often for a non-obligatory function than for the special meaning of *must*. This is a very interesting point that may be considerably valuable to the translation of that word if the point can be further supported by a much larger corpus than the one used in this thesis.

3.2 **Ambiguities arising from the translation of *shall***

In the Chinese corpus, the number of instances of improper translation of the word *shall* vary from category to category.

Category One consists of four clauses clearly carrying an element of *must*. The word *shall* is correctly translated as *Xu* (善), literally meaning *must* in Chinese, in all of them.

Category Two consists of 35 clauses of purely declaratory nature. The word *shall* seems to have been improperly translated as *Xu* (善) in eight of them. Two of these eight clauses (Instances Nos. (17) and (18) in Appendix 2) are the exceptional cases mentioned in Footnote (37). The other four of them (Instances Nos. (20), (24), (25) and (26)) involve the syntactic pattern where *shall* is preceded by an impersonal noun phrase and followed by a subject complement being either another noun phrase or an adjectival phrase, e.g.

"..... a recital ..... shall be sufficient evidence of ....." [Section 13 (4)]

"..... the liabilities of joint parties ..... shall be joint and several ....." [Section 35 (1D)]

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53 They are in s. 13 (3), s. 54, s. 54 (d), and s. 13 (4A). See Instances Nos. (1) to (4) in Appendix 2.

54 They are in s. 31 (1), s. 35 (1B), s. 13 (4), s. 35 (1D), s. 51 (2), s. 31 (1), s. 14 (4)(a), and s. 35 (3). See Instances Nos. (17), (18), (20), (24), (25), (26), (29), and (37) in Appendix 2.
The remaining two instances of improper translation in this category (Instances Nos. (29) and (37)) are isolated cases, each of which has a similar clause in the same sub-category being correctly translated to serve a declaratory rather than obligatory function\footnote{One of them is in s. 14 (4)(a), which states (inter alia) that "..... the equitable interest under that right shall become a legal estate.....". In this clause, \textit{shall} is improperly translated as \textit{Xu (必须)}(must). The same clause appears in s. 14 (1)(a), where \textit{shall} is correctly translated to serve a declaratory function. The other isolated case is in s. 35 (3). That clause is what Driedger (1976:13) calls a \textit{Divine Ordination}, but \textit{shall not} is improperly translated in it to mean \textit{must not}. There are several clauses of similar nature at s. 50 (9), s. 51 (5), and s. 16 (2), where \textit{shall not} is correctly translated to serve a declaratory function. See Instances Nos. (32), (33) and (34) in Appendix 2.}.

Most instances of improper translation of \textit{shall} into Chinese as \textit{Xu (必须)}(must) in this category are obviously due to the translator's failure to differentiate, where there is an obligatory meaning in the clause, \textit{a command for all from an obligation imposed on a specific person}, the difference between which is detailed in 3.1.1 above.

Category Three consists of 12 clauses containing either the phrase \textit{shall be deemed to} or the phrase \textit{shall be implied}. As mentioned in the foregoing discussions, such clauses serve a declaratory function, and are not actually imposing an obligation. However, the word \textit{shall} is translated in the Chinese corpus as \textit{Xu (必须)}(must) in all of them, probably on the basis of the \textit{obligatory} sense of legal fictions\footnote{See discussions in Sub-Category (A) of 3.1.3 on p.17.}, which again is only a command for all.

It is apparent from the foregoing paragraphs that reasonably experienced legal translators are nowadays fully aware of the use of the word \textit{shall} in legislative texts for its special meaning of \textit{must}. They are sometimes even inclined to the other extreme of translating \textit{shall} in most cases as meaning \textit{must}. This tendency can be reflected by the improper translation of \textit{shall} to mean \textit{must} in as many as 18 out of the 45 declaratory clauses in the corpus, or approximately 40% of them. Such figure highlights the need for the translators to exercise extreme care whenever translating the word \textit{shall} in declaratory clauses in legislative texts.

The different functions of the declaratory clauses also seem to have some significance on the number of instances of improper translation of \textit{shall} to mean \textit{must}. Such improper translation is found in eleven of the twenty-eight declaratory clauses that serve the function of stating the law (39.2%), and six of the seven declaratory clauses that specify the effect of operation of the law (85.7%). There is however only one such improper translation in the ten
declaratory clauses that specify the scope of application of the law (10%). It appears that translators are more confident in correctly translating the word shall in this last category than in the other two.

3.3 Concluding remarks

Thornton (1996:104) and others suggest that legislative draftsmen should avoid the unnecessary use of shall and instead use must for imposing obligation and will or a present tense verb for non-obligatory clauses57. Until such unnecessary use completely disappears in legislative texts, legal translators will still need to tackle the problem of the meaning of shall with a high level of proficiency in both legal language and legal concepts.

In case of doubt, the best way for a translator to establish the meaning of shall in any context is to consult the draftsman of the particular legislative text. If such draftsman is for any reason unavailable, it is advisable to consult legal professionals who are specialized in the field to which that legislative text relates.

Where it is impossible to consult the draftsman or a legal professional, one useful way that may help a translator to ascertain the meaning of shall in a legal sentence is to refer to the other provisions of the same legislation, particularly those in the same Part of the enactment. Such provisions often contain useful information for construing the meaning of the clause in question. For example, if a translator is not sure in translating Section 35 (1) whether the words shall be implied contained in the sentence “there shall be implied in any assignment ... the covenants ... mentioned in Part I of the First Schedule” are intended to mean is implied (stating the law) or must be implied (imposing an obligation on the parties to imply the covenants in the contract), he may refer to the other provisions in Part IV of the Ordinance, which is the Part containing Section 35 (1). He will then find a provision in Section 35 (2) to the effect that the covenants implied under Section 35 (1) “may be excluded, varied or extended in the assignment or legal charge”. Such provision obviously

57 In fact, there are a total of 21 instances in the corpus where will or a present tense verb is used for declaratory clauses in lieu of shall. (They are not included in Appendix 2, because they do not contain the word shall.) Such 21 instances refer only to the use of those verbs (will or a present tense verb) in the main provisionary clauses and do not include those used in the qualification clauses, which are numerous.
points to the fact that the covenants under Section 35 (1) are automatically implied by that particular subsection and need not be incorporated into the contract by the parties, unless the covenants are desired to be "varied or extended" under Section 35 (2). If the translator goes further to compare Section 35 (1) with Sections 36 and 38 (1), he will, for reasons detailed in Footnote (51) on Page 18, even more confidently conclude that the words *shall be implied* contained in Section 35 (1) are intended to mean *is implied* and are used for the purpose of stating the law rather than imposing an obligation on the parties to imply the covenants in the contract.
Chapter Four  Binomial and Multinomial Phrases

4.1 The Use of Binomial and Multinomial Phrases in Legislative Texts

According to Bhatia (1993), a binomial or multinomial phrase is "a sequence 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" (p.108).\(^{58}\) As Gustafsson points out, binomial and multinomial phrases are peripheral in nature and are therefore "a convenient linguistic device for adding weight to the end of the sentence" (1984: 133). They are extensively used in legislative texts for achieving both of the two essential elements of legal documents, viz. precision and all-inclusiveness (Bhatia 1993: 108).

Binomial and multinomial phrases include not only sequences of words and phrases, but also sequences of clauses and sentences. For the sake of tidiness, they will all be referred to as "binomials" in this chapter, where they will be discussed in three different parameters, viz. parts of speech distribution, sentence elements, and the semantic relation between the different constituents of a binomial.

Gustafsson (1984) observes that parts of speech distribution of legal binomials is largely the same as that of the ordinary English, except that there is a tendency in legal binomials "to favor parts of speech other than the verb" (p.132). She also notes that there are few adjectival binomials in legal texts and a total absence of adverbs in legal binomials. Instead of using an adverb, legal draftsmen would use a longer structure of an adverbial phrase in the pattern of PREP + ADJ + NOUN (e.g. at a slow speed instead of slowly). This often results in a larger number of prepositional phrases occurring in the legal texts one after another, and is one of the several reasons for the heavy nominal character of legal English, another one being the frequent use of non-finite verbs in legal binomials (Gustafsson 1984: 132 – 133)

Sentence elements are, as Gustafsson (1984) puts it, the syntactic parameter that "describes the functions of binomials in English sentences". According to Quirk et al. (1987: 34 – 35), there are five major categories of sentence elements, viz., subject, verb, object, complement and adverbial.\(^{59}\) Some of these sentence elements are obligatory parts of the sentence and are regarded as central elements, whilst others are considered as peripheral in

\(^{58}\) Gustafsson also remarks that the various words or phrases in a binomial “belong to the same form-class, and ... are syntactically co-ordinated and semantically related” (1984: 123)

\(^{59}\) Object can be further divided into direct object and indirect object, while complement can be further divided into subject complement and object complement. See Quirk et al. (1987: 34 - 35)
the sense that they can be left out without grammatically (but not semantically) affecting the completeness of the sentence.\(^{60}\)

In terms of the semantic relation between the different constituents of a legal binomial, Gustafsson suggests that such relation is “usually either synonymous, antonymous or complementary” (1984: 133).

4.2 The Use of Binomials in the Corpus

There are a total of 118 binomials in the corpus, which will be examined in 4.2.1 to 4.2.4 respectively from the different perspectives of parts of speech, sentence elements, semantic relation between the different constituents, as well as complex construction. Those binomials containing only sequences of words and phrases are listed in Appendix 3.

4.2.1 Parts of Speech

As far as parts of speech distribution is concerned, approximately 65% of the binomials in the corpus are nouns. Among them, about 75% are sequences of simple nouns either functioning as a subject or object\(^{61}\) or forming a part of a prepositional phrase\(^{62}\), and the remaining 25% are noun phrases\(^{63}\) or even noun clauses.\(^{64}\) The heavily predominant occurrence of the binomials in this part of speech well illustrates the highly nominal character of legal English.

The binomials in the corpus also occur, to a substantially lesser extent, in verb (22%), preposition (3.3%), adjective (3.3%), conjunction (1%) and relative adverb (1%). Among the 26 binomials occurring in verb, however, only seven of them are finite verbs. The majority of the remainder is non-finite verbs introducing a relative clause that modifies the object of the main clause.

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\(^{60}\) Gustafsson (1984: 131)

\(^{61}\) For example, validity and priority, discharge and reassignment, re-entry or forfeiture.

\(^{62}\) For example, at his cost and charge; by action, distress or otherwise.

\(^{63}\) For Example: (i) a Government lease or a right to a Government lease;
   (ii) The licence... extends only to
       (a) the permission actually given; or
       (b) the specific breach of any provision ...; or
       (c) any other matter thereby specifically authorized to be done.

\(^{64}\) For example, ... the purchaser ... shall assume ... that ...
   (a) the recital is correct;
   (b) the recital gives all the material contents of the document ...; and
   (c) the document ... was duly executed and perfected.
4.2.2  **Sentence Elements**

As mentioned in the penultimate paragraph of 4.1 above, sentence elements can be divided into central elements and peripheral elements. If we analyse the binomials in the corpus on this basis, it will be seen, as tabulated in Table 1, that some 39% of them fall under the category of central elements, and the remaining 61% are peripherals, mainly being adverbial. This significantly peripheral nature of legal binomials is one of the causes for syntactic discontinuities in legal texts, which, together with the additional information load resulted from the use of the binomials, may cause problems in the comprehension and translation of the texts. Although a simple binomial on its own would not normally give rise to semantic or syntactic ambiguity, a qualification phrase or clause containing one or more binomials, for example, is very likely to lead to such ambiguities. This point will be exemplified in Chapter Six during the discussion of qualifications.

<table>
<thead>
<tr>
<th>Sentence Elements</th>
<th>Central Elements</th>
<th>Peripheral Elements</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No. of Binomials</td>
<td>Percentage</td>
</tr>
<tr>
<td>Subject</td>
<td>8</td>
<td>6.7%</td>
</tr>
<tr>
<td>Verb</td>
<td>9</td>
<td>7.6%</td>
</tr>
<tr>
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<td>18.6%</td>
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<td>5.9%</td>
</tr>
<tr>
<td>Object Complement</td>
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</tr>
<tr>
<td>Others</td>
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<td>8.4%</td>
</tr>
<tr>
<td>Adverbial</td>
<td>57</td>
<td>48.3%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>46</strong></td>
<td><strong>39%</strong></td>
</tr>
</tbody>
</table>

4.2.3  **Semantic Relation between the Different Constituents of a Binomial**

The semantic relation between the different constituents of the binomials in the corpus basically falls into three major categories, namely, synonymous, antonymous, and supplementary.\(^{65}\)

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\(^{65}\) This category of supplementary binomials is not the same as the complementary binomials referred to by Malkiel (1959: 324) and Gustafsson (1984: 133). See 4.2.3.3 below.
4.2.3.1 Synonymous Binomials

This refers to a binomial that contains a list of two or more similar items of the same nature, such as the five binomials underlined in the following example:

“... such a person has not executed or done or knowingly suffered... any deed or thing, whereby or by means whereof the mortgaged property or any part thereof is or may be impeached, charged, affected, incumbered in title ...”

[Section 56 (3)]

Although the different items listed in a synonymous binomial may sometimes appear quite simple on the face of it, in many cases they are actually rather technical in nature and cannot be correctly distinguished from one another without some technical knowledge in the particular field, e.g.

“... an assignment shall operate to assign... all rights, interests, privileges, easements or appurtenances in, over, belonging or appertaining to that land or... used, held, occupied or enjoyed with that land...” [Section 16 (1)]

Approximately 68% of the binomials contained in the corpus are synonymous binomials, which, for reasons to be explained in 4.3.2, are more liable to cause problems in comprehension and translation than the other two categories. As the Ordinance is a relatively modern one, the vast majority of the synonymous binomials in the corpus are what Mellinkoff regards as “useful binomials” rather than “worthless doubling”.

4.2.3.2 Antonymous Binomials

This refers to a binomial that contains a list of different items of opposite meaning or connotation. Owing to its antonymous nature, the list in such a binomial normally contains only two items, e.g.

acts or defaults; [Section 50 (2)]

mortgagor or mortgagee; [Section 44 (2)]

rights or obligations; [Section 44 (4)]

66 For instance, the binomials in the following two examples look quite simple, but during the translation require particular care and some technical knowledge to correctly establish and reflect the actual difference between the two constituents contained in each of them:

“... every document dated or made before the date from which a vendor is required to prove title ...” [Section 13 (3)]

“... on the lessee’s part to be observed and performed...” [Section 31 (1)]
grant or refuse; [Section 58 (2)]
creating or disposing of; [Section 13 (1)(b)]
including ... but excluding ... [Section 44 (2)]
before or after the commencement of this section; [Section 29 (4)]

About 12.5% of the binomials in the corpus fall under this category. As the intention of using such a binomial is to specify antonym, there is no question of any "worthless doubling" in them.

4.2.3.3 Supplementary Binomials

This is not the same as the complementary binomials referred to by Malkiel (1959: 324). By supplementary binomial, I mean a binomial in which one of the several constituents is semantically supplementary to the others for the sake of achieving either all-inclusiveness or precision. Apart from the supplementary feature, the constituents of a supplementary binomial are basically synonymous in nature, and seldom antonymous.

Some 19.5% of the binomials in the corpus are supplementary binomials, which consist of the following four sub-categories:

(1) The word other or otherwise is used as one of the constituents to semantically supplement the other constituent(s) in the same binomial, with a view to achieving all-inclusiveness, e.g.

"... the sale or other dealing with the mortgaged land ..." [Section 54]
"... by action or otherwise ..." [Section 58 (1)]
"... costs, expenses, damages, compensation, penalty or otherwise..." [Section 58(2)]

(2) One constituent of the binomial is supplementary to the other(s) in the sense that the former is a semantic expansion of the latter, again for the purpose of achieving all-inclusiveness, e.g.

"The benefit of the covenants ... shall be enforceable by the covenantee and his successors in title and persons deriving title under or through him or them ..."
[Section 35 (1B)]

"... including any second or subsequent mortgage ..." [Section 44 (1)]

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67 Compare the examples for the supplementary binomials given in this section (4.2.3.3) with the following examples given by Malkiel for what he classifies as complementary binomials: assault and battery, cuts and bruises, food and drink.
(3) One of the two constituents in the binomial is, for the sake of precision, semantically supplementary to the other by referring to a portion of that other constituent, so that an action, etc. is applicable not only to the whole of something, but also to a part of that thing, e.g.

"... whereby ... the mortgaged property or any part thereof ... may be impeached ... in title ..."  
[Section 56 (3)]

"... the court may ... make an order vesting, for the whole term of the lease or any less term, the property comprised in the lease or any part thereof in any person ..."  
[Section 58 (4)]

(4) One of the two constituents in the binomial is the plural number of the other, also for the sake of achieving precision, e.g.

"... there shall be implied ... in any legal charge ... a power ... to appoint a receiver or receivers of the mortgaged land ..."  
[Section 50 (1)]

It can be seen from those paragraphs in 4.2.3.1 to 4.2.3.3 above that the semantic relation between the different constituents of a binomial differs from one another among the three major categories of binomials. Consequently, the extent of ambiguity caused in translation by the binomials also varies from category to category. This point will be further addressed in 4.3.2.

4.2.4 The More Complex Binomials

The binomials listed in Appendix 3 are confined to sequences of words and phrases, which are certainly not the only binomials used in English legal language. In addition to words and phrases, "complete clauses and other longer constructions are often placed parallel to one another" in legal English (Gustafsson 1984:133). In the corpus used for the study in this thesis, for instance, there are no less than twenty occurrences of such type of binomials, which are pairs of clauses, sentences or other complex constructions. The following example is one that is relatively simpler in structure among those in this category:

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68 This category is perhaps similar to one of the categories referred to by Malkiel (1959: 323 – 326) where "one constituent is a subdivision of the other".

28
"... it shall be conclusively presumed -
(a) as between the parties to that contract; and
(b) in favour of the purchaser ... as against any other person,
that the power of attorney –
(i) was validly executed;
(ii) was in force at the time of the execution ...; and
(iii) validly authorized the execution of that document.” [Section 13 (4A)]

Other examples in this category are more complex and are set out in Appendix 4 in view of their length. It will be seen from such appendix that the whole of Section 35 (1) is a binomial of a sequence of sentences. Another example is Section 13 (1), in which sub-clauses (a), (b) and (c) together are a sequence of complex constructions placed parallel to one another. Other similar examples include Sections 14 (3) & (4), 29 (2) & (3), 54, 56 (1), and 58 (2) & (4), all in Appendix 4.

4.3 Translation Problems Caused by the Use of Binomials

4.3.1 Lexical Ambiguities

Translation problems arising from the use of binomials in a legal text are basically lexical problems, which, as mentioned in the last paragraph of 2.3 above, mainly lie in the difficulty in finding enough proper synonyms in the target language for each item of the list (Parr 1997:18). Consider the following two examples from Sections 16 (1) and 58 (4) of the Ordinance:

"... an assignment shall operate to assign... all rights, interests, privileges, easements or appurtenances in, over, belonging or appertaining to that land or... used, held, occupied or enjoyed with that land...” [Section 16 (1)]

"... the court may ... make an order vesting ... the property ... in any person... upon such conditions as to ... payment of rents, costs, expenses, damages, compensation ... as the court ... may think fit. [Section 58 (4)]

For a proper translation of those two sections, a translator will need to find different words in the target language to exactly reflect the semantic difference in Section 16 (1) between rights, interests, and privileges and also between used, held, occupied and enjoyed,
and in Section 58 (4) between rents, costs, expenses, damages and compensation. Failure to
do so will result in lexical ambiguities in the translated text, which will confuse the meaning
of the different constituents and consequently compromise or even defeat the element of all-
inclusiveness or precision intended for the particular binomial.

4.3.2 Extent of Lexical Problems in Different Categories of Binomials

Among the three major categories of binomials, synonymous binomials appear to be
the one most liable to cause lexical problems. This is due to the fact that a synonymous
binomial usually enumerates a series of items, some of which may be closely similar to each
other in meaning. As such, a translator will need to correctly understand the exact meaning of
each of the various constituents in the list as well as the actual difference between them and
to accurately translate each of them in the target language accordingly.

Parr (1997: 18) has pointed out that the problem of translating synonymous binomials
mainly lies in the difficulty in finding sufficient and appropriate synonyms in the target
language for each of the various constituents. Owing to the distinct differences between the
characteristics of legal English and the Chinese legal language, Parr's comment is
particularly relevant to the translation of legal binomials from English to Chinese. As
mentioned earlier in this chapter, binomials are used in legal English for the sake of achieving
two of its distinctive characteristics, that is, precision and all-inclusiveness. On the other
hand, however, the Chinese legal language, as pointed out by Cao (1997), tends to be
imprecise and flexible. She gives the example of the different English terms mortgage,
charge, pledge, lien, and hypothecation, which are differentiated in legal English for the sake
of precision. In the absence of other appropriate Chinese terms, all those terms need to be
translated into Chinese as one term diya (抵押) (p.666). Although Cao's example is not
given in the context of a binomial, it can best illustrate how the style of the Chinese legal
language makes it more difficult for the translators to find enough synonyms in Chinese for
each of the constituents of a synonymous binomial.

69 At this point, an exception to Cao's example should perhaps be mentioned. A Chinese term anjie (按揭)
has long been commonly accepted and used in Hong Kong (and possibly in some other areas outside China)
by bilingual members of the legal profession and of the community at large as the Chinese equivalent of
the English term mortgage (see the example discussed in 5.3.3.1 below). Having said that, however, it is
entirely agreed that if several of the terms listed in Cao's example are incorporated in one binomial,
there will be considerable difficulty in finding appropriate different Chinese equivalents for them.
Antonymous binomials are less likely than the synonymous binomials to cause lexical problems in translation, as the semantic difference between the constituents of an antonymous binomial is more distinctly conceivable owing to their antonymous nature. It is obviously much easier to find proper lexical equivalents in the target language for two terms in opposite meaning than for a series of terms the meaning of which are similar to each other.

As regards the supplementary binomials, although some of them are intended to achieve all-inclusiveness, their element of all-inclusiveness is achieved by the use of certain device (such as otherwise) instead of an exhaustive list. They are therefore causing fewer problems in translation than the synonymous binomials.

The extent of problems caused in translation by the different categories of binomials will be further examined in the next section by analysis of the Chinese corpus.

4.4 Analysis of the Chinese Corpus

Since our analysis is exclusively aimed at lexical problems, which primarily arise from the translation of words and phrases, the analysis in this section of the Chinese corpus will be based on the 94 binomials in Appendix 3.

Among those binomials, there are totally ten instances of lexical ambiguities caused in the translation, seven occurring in the synonymous binomials, two in the antonymous binomials, and one in the supplementary binomials.

Other than one isolated case, the lexical ambiguities contained in the Chinese corpus comprise the following three types:

4.4.1 The difference between the constituents in a binomial is not effectively reflected in the target language text.

There are two instances of this type in the corpus. The first one is in Section 13 (3), which refers to a document dated or made before a certain date. The phrase dated or made is improperly translated into Chinese as wenjian de riqi huo qi dingli riqi (文件的日期 或其定立日期), literally meaning document’s date or its signing date. Since the date of a document is by definition the signing date of that document, such translated phrase is ambiguous in that it fails to bring out the intended difference between the two constituents.

The term obligations contained in the binomial rights and obligations in Section 13(5) is incorrectly translated into Chinese as zeren (任), which actually means liabilities in English. This error, however, appears to be only an inadvertent one, as the same term obligations is correctly translated as yiwu (负) in all other sections in the corpus.
dated and made. In fact, the use of the second constituent (made) is intended to cover a situation where the document is not actually signed on the date appearing on it. The above ambiguity, therefore, may perhaps be removed by slightly expanding the Chinese translation to more specifically refer to the document’s date or its actual signing date (wenjian de riqi huo qi queshe dingli riqi) (文件的日期或其確實訂立日期).

The second instance is in Section 13 (2), which refers to a copy of document that is attested ... or certified to be a true copy. The words attested and certified are translated into Chinese as heqian zhengshi (核簽證實) and he zheng (核証) respectively. It will be seen from the Chinese translation that the translated version of the second constituent, he zheng (核証), is nothing but a simplified form of that of the first constituent, heqian zhengshi (核簽證實). In fact, there is no conceivable difference in meaning between those two Chinese terms, which therefore obviously fail to effectively reflect the intended difference between the two constituents of the binomial.

4.4.2 Improper translation of the binomial due to misunderstanding of the intended relation between a certain part of it and another

There are also two instances in this category. The first one is in Section 58 (4), which includes a reference to the property comprised in the lease or any part thereof. The words any part thereof in this phrase are intended to modify the property (the property ... or any part thereof) and not the lease as contemplated in the Chinese translation, in which any part thereof were incorrectly translated to modify the lease rather than the property.

The other instance is in Sections 50 (1) and 51 (1), both of which make a reference to any legal charge or equitable mortgage by deed. The words by deed in this binomial are only intended to modify equitable mortgage and not both of the two constituents. It is therefore not correct for the Chinese translation to have by deed modifying both legal charge and equitable mortgage.

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71 The reason is that among the two constituents, only the latter one (equitable mortgage) is entitled to the option of being effected by way of deed or not. Such option is not available to a legal charge. Under Section 44 of the Ordinance, any mortgage of legal estate after commencement of that section must be effected “by a charge by deed expressed to be a legal charge”. As such, a legal charge is by definition required to be a deed, and it does not make sense to qualify that term by an element (i.e. by deed) that is obligatory to it.
4.4.3 Other improper or inadequate translation of one of the constituents of a binomial

There are five instances in this category. The first and second instances are respectively in Sections 44 (3) and 56 (1), where the terms reassign and reassignment are translated into Chinese as zai zhuanrang (再转讓) literally meaning assign again. Such translation is not quite proper in this context, because the term reassign is not intended in the conveyancing field to mean assigning again to any party. It is used particularly to mean assigning the property back to the mortgagor upon full repayment of the mortgage money and interests. 72 Therefore, translating the terms reassign and reassignment as zai zhuanrang (再轉讓) (assign again) is not only inadequate for the sake of reflecting the actual meaning of those terms, but may even lead to cognitive confusion on the part of the readers in construing the meaning of the whole sentence, as in the following example:

“a mortgage of legal estate ... shall be deemed ... to be reassigned and discharged and replaced by a legal charge ...” [Section 44 (3)]

The other instances in this category are:
(a) the improper translation of the word defaults in the binomial acts and defaults in Section 50 (2) as guoshi (過失), literally meaning faults or errors in Chinese, neither of which carries the connotation of failing to perform one’s duties or obligations;
(b) the improper translation of the word perfected in the binomial duly executed and perfected in Section 13 (3) as zai falu shuang youxiao (在法律上有效), literally meaning legally valid in Chinese, whilst the actual meaning intended in the source language text for that word is rendered legally valid in all other respects; and
(c) the improper translation of the binomial whereby or by means whereof in Section 56 (3) into jiezhuo (藉著), literally meaning by means of in Chinese, thus omitting the element of whereby contained in the first constituent.

72 A couple of decades ago, mortgage of property was effected in most Common Law countries by way of “assignment of legal estate”. In other words, the property would be assigned to the Mortgagee (e.g. the bank) in the Deed of Mortgage until full repayment of the mortgage money and interests, whereupon the property would be reassigned back to the mortgagor (in a deed called Reassignment). Nowadays, mortgage of property is effected by way of legal charge in most Common Law countries and areas, including Hong Kong where the change was exactly introduced by the Ordinance used in this thesis.
4.5 Concluding Remarks

It can be seen in this chapter that most of the translation problems caused by the use of legal binomials are lexical ones, which is due to the highly technical nature of some of the constituents contained in the binomials, particularly those in the more specialized fields. The extent of such problems is, nevertheless, comparatively less serious than that caused by the use of the word *shall*. Whilst the meaning of *shall* in any particular context cannot be ascertained from any legal dictionary, the semantic difference between two constituents of a binomial and their respective equivalents in the target language can normally be established in a good bilingual legal dictionary.

In this respect, the position regarding the lexical problems arising from the translation of legal binomials and other legal terms from English to Chinese has been significantly improved during the last couple of decades following the publication of a considerable number of bilingual legal glossaries, mostly in Hong Kong but some in China, during the course of conversion into a bilingual legal system in Hong Kong and the gradual adaptation of some parts of the Common Law system in China. As many of those glossaries are the joint efforts of senior legal translators and some bilingual members of the judiciary, the legal profession, or the legal academia, they can hopefully help to gradually standardize most legal terms in the Chinese language in the long run. However, until the completion of that most challenging task which is likely to take years if not decades, legal translators will still need to frequently deal with the problem of lexical ambiguities arising from the translation of legal binomials or other legal terms with an excellent level of technical knowledge and the due advice from proper specialists in a particular field.
Chapter Five   Extensive Use of Nominalization

5.1 The Use of Nominalization in the Corpus

There are a total of 101 instances of nominalization in the corpus, out of which 39 are identical duplication of the others. The remaining 62 different instances are listed in Appendix 5. Among them, approximately 88.5% are represented in the pattern of a noun phrase comprising a head noun and an ensuing prepositional phrase (NP1 + PREP + NP2), with the nominal element either in the head noun (NP1) or in the noun (NP2) comprised in the prepositional phrase. Apart from the noun phrases, about 6.5% of the nominal groups in Appendix 5 are in the pattern of PREP1 + NP + PREP2. All the 62 nominal groups in that appendix can, by reference to the syntactic position of the nominal element within them, be divided into four categories as outlined and exemplified in 5.1.1 to 5.1.4 respectively.

5.1.1 Category One – Nominal Groups with Nominal Element in the Head Noun

There are 48 different instances of this category of nominalization in the corpus, which are represented by the pattern NP1 + PREP + NP2, with the nominal element in the head noun (NP1), e.g.

“... the grant of the Government lease...”         [Section 13 (1)(a)(i)]
“... the execution of that document...”           [Section 13 (4A)(ii)]
“... any subsequent breach of covenant, condition or other matter...” [Section 29 (2)(a)]

Nominalizations of this category, which represent some 77.5% of the nominal groups in Appendix 5, support the observation of Crystal and Davy (1996) that in legal English “there is a very marked preference for postmodifications in the nominal groups” (p.205). The head noun (NP1) of each nominal group in this category is followed, within the nominal group itself, by at least one postmodifier, that is, the prepositional phrase comprising NP2. For instance, the head noun grant, execution, and breach in the three examples in the preceding paragraph are respectively followed by the postmodifiers of the Government lease, of that document, and of covenant, condition or other matter.

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73 This would seem to fall within the meaning of the complex noun phrases referred to by Campbell and Hale (1999) in their study of source text difficulty. A complex noun phrase is, in their context, one "where two or more nouns are concatenated", e.g. Methadone treatment (Campbell and Hale 1999:1).
74 For the sake of differentiation, a postmodifier other than the prepositional phrase comprising NP2 will be referred to as additional postmodifier in this chapter.
Apart from the prepositional phrase comprising NP2, a nominal group of this category (but not the other three categories) may sometimes contain *within itself* one or more additional postmodifiers, which are mostly prepositional phrases. For the sake of achieving specificity, these additional postmodifiers within the nominal group are often inserted at a syntactic point immediately following the nominal element (NP1), which results in sequences not usually seen in ordinary English and thus becomes a source of oddity for legal English (Cristal and Davy 1996:205), e.g.

“any acquisition *by assignment or otherwise* of the right to receive or enforce any rent, covenant or provision;” [Section 31 (4)(b)]

“… upon the *endorsement by the Government on the Government lease* of a note …” [Section 14 (3)(b)]

Some of the nominal groups of this category may also contain one or more additional postmodifiers within the same clause but outside the nominal group. Among such additional postmodifiers in the corpus, about 50% of them are prepositional phrases and the other 50% are non-finite clauses, as respectively illustrated in italics in the two examples below:75

“…as if the mortgage had been effected by way of *assignment* of the legal estate *before the commencement of this section.*” [Section 44 (2)]

“… including the *granting of an injunction to restrain any like breach in the future*…” [Section 58 (2)]

5.1.2 **Category Two – Nominal Groups with Nominal Element in the NP2**

Approximately 11% of the 62 nominal groups in Appendix 5 fall under this category. They are in the same pattern as that of Category One (viz. NP1 + PREP + NP2), except that their nominal element is not in the head noun but in the NP2, e.g.

“*any right of re-entry* …” [Section 29 (2)(a)]

“*… the condition of re-entry or forfeiture* …” [Section 31 (3)]

“… the equity of redemption …” [Section 44 (2)]

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75 Some clauses may contain both prepositional phrases and non-finite clauses as postmodifiers outside the nominal group, e.g.

“*a mortgage of a legal estate effected by way of assignment of the legal estate before the commencement of this section.*…” [Section 44 (3)]
Some of the nominal groups in this category are followed by one or more postmodifiers, which are in the form of either a prepositional phrase or a non-finite clause. However, as opposed to those in Category One, all such postmodifiers in this category occur outside the nominal group and none of them is found within the nominal group itself. This is due to the fact that the function of the nominal groups in this category is different from those in Category One, in which the head noun is in most cases a nominalized verb denoting an action performed or to be performed on its object (the NP2). Those additional postmodifiers contained within the nominal groups in Category One (e.g. the phrase by assignment or otherwise in the nominal group any acquisition by assignment or otherwise of the right) are intended to modify the nominalized verb itself. They are therefore inserted immediately next to the nominalized verb to avoid possible ambiguity in the construction of the clause, which may contain a number of different postmodifiers. On the other hand, a nominal group of Category Two is often a hyponym of its head noun (NP1), specifying the specific nature of the head noun intended in that clause. As such, if it is coupled by a postmodifier, such postmodifier modifies the whole of the nominal group (e.g. any right of re-entry) and not just the head noun (any right). It is therefore inserted after the whole nominal group instead of after the head noun.

5.1.3 Category Three - Nominal Groups with the Nominal Element between Two Prepositions

There are four different instances of this category of nominal groups in Appendix 5. They fall within the meaning of what Crystal and Davy (1996: 206) refer to as formulae in legal English, and are represented by a pattern of PREP1 + NP + PREP2, with the nominal element in the noun phrase between the two prepositions, e.g.

"in discharge of that prior incumbrance;" [Section 54 (b)]

"in payment of mortgage money, interest and costs due under the mortgage..." [Section 54 (d)]

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76 For example:
(1) "A right of re-entry or forfeiture under any proviso or stipulation in a lease for a breach of any covenant or condition in the lease shall not be enforceable..." [Section 58 (1)]
(2) "... any right of re-entry contained in the lease remains in full force." [Section 29 (2)(a)]

77 For example, the issue... of a certificate; the endorsement... of a note; any acquisition... of the right.

78 Take Section 29 (2)(a) of the Ordinance for instance. Such section provides (inter alia) that "any right of re-entry contained in the lease remains in full force." The postmodifier contained in the lease modifies any right of re-entry rather than just any right. Those rights contained in the lease that are not related to re-entry are not caught by that section.
As can be seen from these two examples, nominal groups of this category are followed by one or more noun phrases (i.e. their direct object) instead of postmodifiers. Although some of them may occasionally be followed by a postmodifier in the latter part of the same clause, such postmodifier modifies the direct object of the nominal group rather than the nominal group itself. For instance, the postmodifier *due under the mortgage* in the second example above modifies *mortgage money, interest and costs* and not the nominal group itself (*in payment of*) nor any of its constituents.

5.1.4 **Category Four – Nominal Groups with Nominal Element in a Prepositional Phrase at the end of a Clause**

There are only three instances of this category in the corpus, which also seem to be what Crystal and Davy call *formulae*. Their nominal element is in the noun of a prepositional phrase, which is at the end of a clause and is often a subject complement, e.g.  

“... if it is capable of remedy, ...”  
[Section 58 (1)]

“A receipt under this section need not be under seal.” (Sic) [Section 56 (5)]

5.2 **Translation Problems Caused by the use of Nominalization**

As mentioned in 2.4 of Chapter Two above, Chinese is a verb-oriented language that encodes most ideas by verbs rather than abstract nouns (Yip & Rimmington 1997:29), particularly where an idea involves an action. Most English/Chinese translators are well aware that nominalized verbs in the English text can best be handled by translating them into Chinese as verbs (Zhang 1993:50). Although a legislative text in English may contain a large number of nominalization, the very task of translating its nominal elements into verbs in the Chinese text is not a serious problem for the translators. The major problem is more a semantic than a lexical one, mainly arising from the syntactic relationship between the different postmodifiers of a nominal group in the same clause and the heavy information load caused by them.

5.2.1 **Semantic Problems Arising from the Ambiguity in the Syntactic Relationship between the Various Postmodifiers in the Same Clause**

One problem caused by the use of postmodifiers is that when a clause contains a number of postmodifiers, it is sometimes difficult to decide which constituent of that clause is intended to be modified by a certain postmodifier. This problem can well be illustrated by the following example, the first clause of which only contains two postmodifiers:
“This section applies to the discharge of any mortgage by deed, whether that
deed was executed before or after the commencement of this section...”
[Section 56 (6)]

The postmodifier by deed in this example can be construed as modifying either the
discharge (the discharge by deed of any mortgage) or any mortgage (the deed of any
mortgage). This would have been a difficult decision for the translator if Section 56 (6) had
not gone on to say that “but only to discharges effected after the commencement of this
section”. If we read all the three clauses in the section as a whole, it becomes evident that the
deed mentioned in this section refers to a deed of mortgage instead of a deed of discharge.
The reason is that if the deed means a deed of discharge, then by nature such a deed
invariably entails a discharge. If the above section applies to deeds of discharge executed
before its commencement, it does not make sense to say that the section does not apply to the
discharge comprised in those deeds and only applies to discharge effected after its
commencement.

Such type of modification problem is also noted by Campbell and Hale during their
study of source text difficulty. They observe that whilst complex noun phrases often cause
difficulty in translation “in the interpretation and encoding between the head and the other
items in the strings” (1999:1), the extent of such difficulty even “increases exponentially”
when two complex noun phrases are modified by the same modifier, as in the example of
multidisciplinary care planning and case management (Hale and Campbell unpublished: 10).
The extent of such problem is even more serious in the above example of Section 56 (6), as
one of the two noun phrases modified by the postmodifier is the head of the other.

This type of semantic problem caused by the use of multiple postmodifiers in a clause
is not only confined to prepositional phrases. They also arise in non-finite clauses, e.g.

“..... production of any document referred to in the assignment, mortgage or
charge mentioned in paragraph (a) creating or disposing of an interest, power
or obligation ...”
[Section 13 (1)(b)]

As there is no coordinator between the three postmodifiers in this example, the
postmodifier creating or disposing of ... may be construed as modifying either any document
or the assignment, mortgage or charge, if the quoted clause is read on its own.79

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79 By contrast, the relationship between the various postmodifiers in the following example is much clearer with the use of the coordinator and:

“A recital, statement and description of any fact, matter or party contained in any document of title,
mortgage, declaration or power of attorney relating to any land and dated or made not less than
15 years before the contract of sale of that land shall ...”
[Section 13 (4)]
5.2.2 Semantic Problems Caused by Heavy Information Load Arising from the Use of Multiple Postmodifiers in a Clause

Apart from those arising from the syntactic relationship between the various constituents, another semantic problem that may arise from the use of multiple postmodifiers in a clause is the "very high lexical density" (Halliday 1985) caused by the postmodifiers. Such a clause is, as Bhatia puts it, "more dense and ... difficult to interpret", and takes a translator "a lot more time and expertise to unpack" (1994: 142).

Where a nominal group is followed by several prepositional phrases or non-finite clauses or a combination of both, translation problems are particularly likely to arise, because each of those postmodifiers comprises a different semantic unit, which together result in a heavy information load often difficult for the translator to handle. It is a problem for the translator not only in the comprehension of the source language text but also in the syntactic re-arrangement of the various semantic units in the target language text, especially in a target language like Chinese the syntactic structure of which is entirely different from English.

One of the sections in the corpus that contains a large number of postmodifiers is Section 58 (4). Consider the following phrase, which is but a small part of it:

"... on application by any person claiming as underlessee any estate or interest in the property comprised in the lease or any part thereof .."

[Section 58 (4)]

This phrase contains only 23 words but comprises four prepositional phrases and two non-finite clauses. For the sake of effecting a proper translation, a translator will need to properly unpack each of those semantic units, and then accurately incorporate them in the target language text in a manner syntactically acceptable in the target language. This is by no means an easy task, especially if other linguistic features such as passive construction, binomials or qualifications are also involved.

An example which can perhaps best illustrate the semantic problems that may be caused to translation by heavy information load is Section 29 (3) of the Ordinance, which provides (inter alia) that:
“Where in any lease there is a right of re-entry on the lessee assigning, subletting or doing any other specified act without a licence or permit, and a licence or permit is granted –

(a) to any one of two or more lessees to do any act, or to deal with his share or interest; or

(b) to any lessee, or to any one of two or more lessees to assign or underlet part only of the land, or to do any act in respect of part only of the land,

the licence or permit does not operate to extinguish the right of re-entry in case of any breach of covenant or condition by the co-lessee of another share or interest in the land, or by the lessee of the rest of the land (as the case may be) in respect of such share or interest or remaining land, …..”

[Section 29 (3)]

This section mainly consists of three clauses, viz. the first case description (if any lease contains a right of re-entry upon the lessee doing any specified act without a licence), the second case description (if a licence is granted…) and the main provisionary clause (that licence does not extinguish any right of re-entry arising from any breach of covenant by the other co-lessees of the land), each comprising a separate semantic unit. The syntactic relationship between the three semantic units would have been quite specific and unambiguous if it were not for the numerous prepositional phrases contained in the two sub-clauses in the second case description. The information load of the second case description is substantially elevated by those two sub-clauses to such extent that the translator is confused as to the syntactic function of that semantic unit and its semantic relation with the other two units. Consequently, he misses the point that the clause a licence or permit is granted actually means in that context (if) there is a licence or permit granted (to one of the co-lessees). As such, that clause is translated literally into Chinese as textu huo xuke shi pigei (特许或许可批准) (literally meaning licence or permit is granted for), which becomes an elaboration of the first case description rather than being the second case description of the main provisionary clause.\(^{80}\) This point will be further addressed in Chapter Six, as it also involves

\(^{80}\) Like the linking verbs in English, the word shi (是) (is) is a verb in Chinese that is not used for denoting action. As Yip & Rimmington (1997) point that, that word is used in Chinese either as a copula to define and describe the subject (p. 32) or as an intensifier (e.g. wo shi bu hihuan, meaning I am don’t like) to emphasize the object or the whole predicate (pp. 134 – 136). In either meaning, the use of that word in the Chinese version of the phrase in question gives the false impression that the function of that phrase is to elaborate the licence mentioned in the first case description, which certainly is not the case. One possible way to remove the ambiguity in this phrase is perhaps to translate the phrase as eryou textxu huo xuke pigei (而又特许或许可批准), literally meaning and there is a licence or permit granted. As Yip & Rimmington put it, the Chinese verb you (有) (have) “may express existence, providing the structure for introductory phrase like there is/are in English” (1997: 29)
the function of one type of qualifications. For the sake of the present discussion, it can be seen that excessive information load may give rise to semantic confusion in translation.

In the next section, the Chinese corpus will be analysed to examine how the nominal groups in the corpus and their postmodifiers are translated into Chinese and the problems arising from the translation. It will be seen from the analysis that apart from the semantic problem illustrated in this section, heavy information load may also give rise to lexical ambiguities in the translation of some terms in clauses containing postmodifiers. Such ambiguities are attributable to the translator's complete pre-occupation with the unpacking and syntactic re-arrangement of the various semantic units.

5.3 Analysis of the Corpus
5.3.1 Translation of the Nominal Elements

As mentioned at the outset of 5.2, there is usually no problem in the translation of the nominal elements, which are best translated into Chinese as verbs where syntactically and semantically possible.

Among the 62 nominal elements in Appendix 5, 46 of them or approximately 74% are translated into verbs in Chinese, with the remainder rendered as abstract nouns and in one case as an adjective. No major problem is found in their translation except that the phrase on/before/after the commencement of this section, which appears on 16 occasions in the corpus, may be over-translated in Chinese

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81 The phrase the commencement of this section is translated in the corpus into Chinese as bentiao shengxiaorigi (本條生效日期), literally meaning this section's commencement date. The adding of the words rigi (日期) (date) is a translation supplement, which is a very important linguistic device in translation from English to Chinese. The supplement in this phrase, however, is superfluous if not inappropriate. Without the supplement, the Chinese phrase bentiao shengxiaorigian (本條生效前) (meaning before this section's commencement date) definitely reads better than the phrase bentiao shengxiaorigijian (本條生效及期限) (meaning before this section's commencement date), whilst there is no actual difference in meaning between the two. The disadvantage of including the supplement in this phrase can be highlighted in Sections 14 (2) and 14 (4)(b), where the phrase is introduced by the word upon (upon the commencement of this section). The Chinese translation of the phrase in those two sections, which contains the supplement, reads zai bentiaoshengxiaorigidangri (在本條生效日期當日), literally meaning on this section's commencement date that day (on the day of the commencement date of this section).
5.3.2 **Translation of the Postmodifiers**

As illustrated in 5.2, a series of postmodifiers following a nominal group may often give rise to semantic problems resulting from syntactic complexity as well as heavy information load. It is therefore important that such postmodifiers are properly handled by the translator.

An analysis of the corpus reveals that such postmodifiers are in most cases translated into Chinese as premodifier of the constituent modified by them. Out of the 57 prepositional phrases and non-finite clauses that follow a nominal group in the corpus, approximately 70% of them are translated in such manner. Many of such postmodifiers are translated into Chinese as an adjectival phrase that precedes the constituent they modify, e.g.

"proof of title concerning the parties to the contract..."  [Section 13 (4)]

In this example, the non-finite clause modifies the whole nominal group *(proof of title)*. It is translated into Chinese as a premodifier of the nominal group:

\[
youguan gai heyu shefang de yequang zhengming
\]

(有關分歧各方的業權證明)

*(concerning that contract's various parties’ title proof)*

Where a postmodifier is a prepositional phrase *by somebody* that modifies a noun phrase entailing an action, such prepositional phrase and noun phrase are translated into Chinese respectively as the subject and verb of the sentence, e.g.

"upon issue by the Government of a certificate ..."  [Section 14 (3)(a)]

\[
zhengfu fachu ... zhengmingshu
\]

(政府發出......證明書)

*(Government issue ... certificate)*

---

82 That is, the pattern of the semantic units is converted from NP + PP/NFC in the English text to PP/NFC + NP in the Chinese text.

83 They are of course not all the prepositional phrases and non-finite clauses in the corpus. Our figure here, however, is confined to those postmodifiers which are used with a nominal group. Also excluded from this figure are those prepositional phrases which are adverbials rather than postmodifiers.
Such premodification approach is used in the corpus even where a nominal group is coupled with several postmodifiers. For example, Section 14 (3)(c) contains two prepositional phrases and two non-finite clauses. Other than one prepositional phrase, they are each translated as a premodifier of the constituent modified by it.\(^{84}\)

Where there are too many postmodifiers in a clause, the Chinese text with a whole series of premodifiers each ending with a possessive particle *de* (的) will not syntactically read well.\(^{85}\) In such circumstances, or in cases where a nominal group or postmodifier is a complex one (such as an itemized clause or a non-finite clause embedding or further modified by a finite clause), the relevant constituent or postmodifier is translated into Chinese as a separate clause.\(^{86}\)

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\(^{84}\) The prepositional phrases and non-finite clauses in Section 14 (3)(c) are each translated as a premodifier of the constituent modified by it, except that the prepositional phrase *on the register* is translated as the object of the predicate verb *entry*:

```
“upon the entry on the register kept in the Land Registry under the Land Registration Ordinance...
relating to the land of a note…”
```

\(^{85}\) Whilst some (but not all) of the particles in a row may be omitted for the sake of tidiness during the translation, that may sometimes become yet another source of ambiguity if not properly handled.

\(^{86}\) For instance, the underlined portion of the following examples in the corpus are split into a separate clause in the Chinese translation:

1. “A recital, statement or description of any fact, matter or party contained in any document of title…”

   [Section 13 (4)]

2. “This section does not affect the operation of—
   (a) any severance of reversionary estate, or
   (b) any acquisition … of the right to receive or enforce any rent, covenant or provision; 
   effected before the commencement of this section.”

   [Section 31 (4)]

3. “… a mortgage of a legal estate, including any second or subsequent mortgage of that legal estate, may be effected only by … a legal charge.”

   [Section 44 (1)]

4. “A receipt… shall operate… as a discharge… and reassignment of the mortgaged property from all principal money and interest secured by, and from all claims under, that mortgage.”

   [Section 56 (1)]

5. “… on application by any person claiming as underlessee any estate or interest in the property comprised in the lease or any part thereof, either in the lessor’s action… or in any action brought by such person for that purpose…”

   [Section 58 (4)]
5.3.3 **Ambiguities in the Translation**

There are a total of eight instances of semantic ambiguities in the Chinese corpus that arise from the use of the nominal elements and their postmodifiers. Such ambiguities can be divided into the following two categories:

5.3.3.1 **Semantic Ambiguities Arising from the Syntactic Relationship between the Various Postmodifiers in the Same Clause**

There are three instances of this category in the corpus. The first one is the example given in 5.2.1 relating to Section 56 (6), which contains a clause *this section applies to the discharge of any mortgage by deed*. The phrase *by deed* in this clause is intended to modify *mortgage* and not *discharge*. The clause, however, is translated into Chinese as *bentiao shiyongyu jie qiju suozuo de anjie jiechu* (本條適用於藉契據所作的按揭解除), literally meaning *this section applies to deed-effected mortgage discharge*. As the possessive particle *de* (的) is inserted between *jie qiju suozuo* (deed-effected) and *anjie jiechu* (mortgage discharge), the premodifier *jie qiju suozuo* modifies the whole noun phrase *(anjie jiechu)(mortgage discharge)* and not *anjie* (mortgage) as intended by the source language text.  

The other two instances are the two examples involving Section 58 (4) and Sections 50 (1) & 51 (1), which are fully explained in 4.4.2 in Chapter Four.

5.3.3.2 **Semantic Ambiguities Caused by Heavy Information Load Arising from the Use of Multiple Postmodifiers in a Clause**

Ambiguities of this category can be further divided into two sub-categories, namely, improper translation and inadequate translation.

(A) **Improper Translation**

There are three instances in this sub-category. The first one is the phrase *the licence or permit is granted* in Section 29 (3), which has been discussed in detail in 5.2.2. As pointed out in that discussion, the phrase should be translated into Chinese as *eryou you txu huo xuke pigei*(而且有特許或許可批准) (*and there is a licence or permit granted*) if it were to serve the function of a separate clause of case description.

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87 This ambiguity can be removed by moving the particle *de* (的) from its existing position to a new position between *anjie* (mortgage) and *jiechu* (discharge), so that the clause will read *bentiao shiyongyu jie qiju suozuo anjie de jiechu* (*this section applies to deed-effected mortgage's discharge*).
The second instance is also in Section 29 (3), in which the main provisionary clause (the licence does not extinguish any right of re-entry arising from any breach of covenant by the other co-lessees of the land) is followed by another finite clause “but the right of re-entry remains in full force in respect of the share, interest or land not the subject of the licence or permit”. If the two clauses are read together carefully, it will be seen that the word but in the second clause means on the contrary instead of its ordinary disjunctive meaning of however. As that word is incorrectly translated into Chinese as dan (但)(however), it has led to a complete confusion on the semantic relationship between the main provisionary clause and the second clause mentioned above.

The third example involves Section 31 (3), which refers to “any condition of re-entry ... waived or released before such person is entitled” (to the benefit of the rents and covenants of the land). If we read that subsection carefully, it is clear that waived or released in the above clause is an act by someone other than such person. The clause is however translated into Chinese as ru renhe chongshou tiaojian zai gairen xiangyou gaideng quanli qian yiyou fangqi huo mianchu (如任何重收條件在故人享有該等權利前已予放棄或免除)(if any condition of re-entry before such person becomes entitled to those rights has rendered waived or released), which contains a semantic ambiguity in that it may mean the condition of re-entry is waived or released by such person himself.

(B) Inadequate Translation

There are two instances in this sub-category. The first one is in Section 13 (1)(a)(ii), which requires proof of title under that subsection to be “commencing with an assignment ... dealing with the whole estate and interest in that land”. The second non-finite clause here is intended to serve a restrictive function, meaning the first title document produced must be an assignment, etc. that deals with the whole estate and interest in that land. As the two non-finite clauses are translated into Chinese as two separate clauses instead of embedding the second one into the first one as a premodifier, they fail to sufficiently bring out the restrictive connotation in the Chinese text.

88 In any event, one cannot possibly waives or releases the condition of re-entry (or in fact any other condition) of the land before he becomes entitled to the benefits of the rent and covenant of that land, say, by acquiring the land.
The second instance is, again, in Section 29 (3), which contains the sentence “where there is a right of re-entry on the lessee assigning, subletting or doing any other specified act without a licence ...”. It is obvious from such sentence that the phrase any other specified act means those specified in the lease. This point is however not reflected in the Chinese translation of that phrase, which should have referred to doing any other act that is specified in the lease rather than just doing any other act that is specified.

5.3.3.3 Lexical Ambiguities Caused by Heavy Information Load

Apart from the semantic ambiguities, clauses containing nominal groups and postmodifiers also give rise to some lexical ambiguities, which are often found in ordinary terms that are neither too technical nor particularly complicated in nature. As such, it is obvious that these ambiguities are caused by the heavy information load of the text, while the translator has overlooked the less important points during his complete pre-occupation with the unpacking and syntactic re-arrangement of the various semantic units.

The following are some examples of such ambiguities in the corpus:

(1) The improper translation of the word purports in the phrase purports to have been executed ... under a power of attorney in Section 13 (4A) as kanlai (看來), literally meaning appears to be in Chinese, whilst the word actually means claims to be in that context.

(2) The improper translation of the word like in the phrase to restrain any like breach in the future in Section 58 (2) as xiangtongde (相 同 的) (same), whereas the word in this context means similar or of the same type.

(3) The improper translation of the word injunction in Section 58 (2) as qiangzhiling (強制令), literally meaning mandatory order in Chinese. Although an injunction may be of a mandatory (as opposed to prohibitory) nature in some instances, it is definitely not the case here, because the injunction in Section 58 (2) is issued to restrain any like breach in the future.

(4) The improper translation of the term operation of law in Section 44 (8) as falu de shixing (法律的施行), literally meaning the law’s implementation in Chinese.
5.4 Concluding Remarks

We have seen in this chapter that the problems arising from the translation of the nominal groups and their postmodifiers is primarily a problem of handling the different semantic units in the text. It is a result of (a) the ambiguities in the syntactic relationship between the various constituents; and (b) the heavy information load generated by the use of the nominal groups and their postmodifiers.

Problems arising from Source (a) are largely a matter of comprehension, which can be alleviated if the translator is equipped with some basic legal knowledge in addition to a sufficient level of proficiency in the source language text. In case of any doubt about the syntactic function of a particular constituent or its semantic relationship with the others, it is always useful to refer to the other portion of the same section or even the same legislation for the necessary information.

Problems arising from Source (b), however, are not as simple. We have seen from this chapter that the translation process comprises two stages, viz. the comprehension of the text and its actual rendering.\(^{89}\) The heavy information load generated by the nominal groups and their postmodifiers give rise to translation problems not only in the former during the unpacking of the semantic units, but also in the latter in the syntactic re-arrangement of those units as well as the choice of an appropriate lexicon. On the comprehension side, the cognitive structuring approach of Bhatia (1993 & 1994) may help to facilitate a better understanding and cognitive arrangement of the various semantic units. This will be addressed in the next chapter in the discussion of qualifications. As regards the actual rendering process, which is as important as the comprehension, it requires from the translator not only sufficient basic legal knowledge and a high level of proficiency in the target language text, but also a good common sense and an extraordinary extent of patience and devotion.

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\(^{89}\) This notion is also used by Campbell and Hale (1999) in their project exploring the question of source text difficulty in translation. In the discussion of their empirical findings that English source text difficulties are common to some typologically different target languages, they suggest that there may be two luci of difficulty, the first one in comprehension and the other one in production (Campbell and Hale 1999: 2).
Chapter Six  Qualifications

6.1 Use of Qualifications in Legislative Texts

Every legislative sentence contains a main provisionary clause, which consists of two basic constituents, viz. the legal subject and the legal action. In addition, it also contains certain qualifications, which, as Bhatia puts it, provide the essential flesh to the mere skeleton, which would otherwise become universally applicable to all circumstances. (1993: 111)

Bhatia (1983) divides legislative qualifications into ten functional categories (see Appendix 1), which fall into the following three major groups (pp. 30 – 31):

(a) Preparatory Qualifications – They specify circumstances to which the provision is meant to apply.

(b) Operational Qualifications – They specify the manner in which the provision is required to operate.

(c) Referential Qualifications – They specify a legal relationship between the provision in which they occur and another provision on which they may have legal bearing.

As we can see from the examples in Appendix 1, Operational and Referential Qualifications are relatively simpler than the Preparatory Qualifications, which seem to be causing most syntactic and semantic problems in translation. Our discussion in this chapter, therefore, will be focused on the Preparatory Qualifications, which, according to Bhatia (1983: 30), comprises the following three sub-categories:

(a) Qualifications Describing Case(s);

(b) Qualifications Specifying Condition(s); and

(c) Qualifications Assigning Volitional Control.

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90 In this context, a legal action refers to the whole predicate in the main provisionary clause, and not only the verb phrase itself. Unless otherwise stated, all other references in this chapter to legal action are to be construed in this manner.

91 An exception, perhaps, is the Qualifications Defining Legal Scope, in which some of the "saving clauses" (in particular the clause "subject to ……") often cause ambiguity in their construction and translation.
6.1.1 Qualifications Describing Cases

They are qualifications describing circumstances to which the legal action applies. In the following well-known four-part sentence pattern recommended by Coode (1848), Clause (a) is a case description:

(a) Where the Quaker refuses to pay any church rates,  
(b) if any church warden complains thereof,  
(c) one of the next Justice of Peace  
(d) may summon such Quaker.

(CASE DESCRIPTION)  
(CONDITION)  
(LEGAL SUBJECT)  
(LEGAL ACTION)

Bhatia (1983) observes that Qualifications Describing Cases typically refer to static circumstances, states of affairs, or a closed condition assumed to have been fulfilled. They are generally introduced by the subordinator where, though the subordinator if or a prepositional phrase is also frequently used (pp. 34 – 35). Such qualifications are mostly inserted in the initial position (i.e. the pre-main provisionary clause position)(p. 43), and the verb used in them is in most cases a linking verb be rather than an action verb (p.35).

Qualifications Describing Cases are further divided into the following three subcategories by Bhatia (1983:37):

(a) **Open Case Descriptions** – They are case descriptions “where background circumstances are fully described without any further restrictions or qualified interpretations”(Bhatia 1983: 38).

(b) **Qualified Case Descriptions** – They are case descriptions in which one case description is followed by an additional qualification clause to give it a restricted meaning.  

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92 Bhatia (1983) observes that in a number of case descriptions, the subordinators where and if are interchangeable (p.36). He points out, nevertheless, that whilst if is in some cases used in case descriptions, where is rarely used in Qualifications Specifying conditions (p.39).

93 For example, the underlined portion of the following sentence is an Open Case Description: “Where a secure tenancy is a tenancy for a term certain but with a provision for re-entry or forfeiture, the court shall not ...” [Section 32 (2) of the Housing Act, U.K. quoted in Bhatia (1983: 38)]]

94 The additional qualification clause is underlined by broken line in the following example:

“Where ... a landlord becomes a mortgagee of a dwelling-house whilst a notice ..., then while the notice remains in force-

(a) the Secretary of State may ... receive any sum due to it.”

[Section 23 (4) of Housing Act, U.K. quoted in Bhatia (1983: 40)]
(c) Modifications of Case Descriptions – They are case descriptions where an additional qualification clause is inserted (often after the main provisionary clause) to specify either a pre-requisite to the fulfillment of the provision contained in the main provisionary clause or an exceptional circumstance to which that provision does not apply (Bhatia 1983: 42 & 45).95

6.1.2 Qualifications Specifying Conditions

Qualifications of this category specify the conditions upon the fulfillment of which the legal action in the main provisionary clause becomes operative. They generally refer to an act or omission that triggers off the legal action (Bhatia 1983: 47).96 In Coode’s example mentioned in 6.1.1 above, Clause (b) (if any church warden complains thereof) is such a qualification. Another example is Section 36 (4) of the Housing Act of U.K. quoted in Bhatia (1983: 47), in which the underlined clause is a case description and the two clauses underlined by broken lines are condition specifications:

“Where the tenant has applied in writing for a consent, then

(a) if the landlord refuses to give the consent, it shall give to the tenant a written statement of the reasons why the consent was refused; and

(b) if the landlord neither gives nor refuses to give the consent within a reasonable time, the consent shall be taken to have been withheld.”

95 The specified pre-requisite and exceptional circumstances are respectively illustrated in the following two examples, in which the additional qualification clause is underlined in broken line.

“Where a secure tenancy is a joint tenancy, the right to buy... belong... to such one... of them as may be validly agreed between them; and the agreement is not valid unless the person... to whom the right to buy is to belong occupies the dwelling-house as his only or principal home.”

[Section 4 (1) of the Housing Act, U.K. quoted in Bhatia (1983: 42)]

“The price payable for a minor superior tenancy shall be calculated (except where it has been determined... before this paragraph comes into force) by applying the formula set out in subprovision (5)...”


The original case description is not present in this second example, as it is contained in a preceding subsection. See Bhatia (1983: 42).

96 As opposed to the case descriptions, Qualifications Specifying Conditions refer to an open condition, which leaves the question of fulfilment or non-fulfilment unresolved. Hence, the role of an actor in the condition assumes a greater importance than in a closed condition (Bhatia 1983: 47).
Qualifications Specifying Conditions normally contain a non-stative verb and, as Bhatia (1983: 47 – 48) points out, generally use an “if-clause” in a positive condition, such as sub-clauses (a) and (b) in the above second example. They are usually inserted in an initial position after any case description. In the case of a negative condition, a “unless-clause” is used, which occurs in the final position (i.e. the post-main provisionary clause position).

6.1.3 Qualifications Assigning Volitional Control

Qualifications of this category indicate certain volitional control that the legal subject has over the legal action, and where applicable the extent of such control. They are further divided by Bhatia (1983: 50 – 51) into three different sub-categories:

(a) Qualifications Assigning Absolute Volitional Control – Depending on different circumstances, such qualifications are realized by either the pattern in Para. (i) below or one of the patterns in Para. (ii):

(i) “… the court may, if it thinks fit, make an order…”
(ii) “…if it appears to (the authorities) that…”

“…if the court is of the opinion that…”
“…if he is satisfied that…”
“…unless they are satisfied that…”

Qualifications Assigning Absolute Volitional Control tend to occur in the initial position yet after any case description and/or condition specification. As this would give rise to an unsatisfactory situation of three different types of qualifications occurring in a row before the legal subject, qualifications of this sub-category are often moved to the post-operator position of the main provisionary clause to avoid such undesirable situation (Bhatia 1983: 55).

97 In some cases, the Qualification Specifying Condition is not preceded by a case description, e.g.

“If any person fails to perform any duty imposed on him by this Schedule, he shall be guilty of an offence…”


98 The “unless clause” in the following example is a Qualification Specifying Condition occurring in the final position:

“Where a notice of variation is served on a tenant and the tenant … give a valid notice to quit, the notice of variation does not take effect unless the tenant … withdraws the notice to quit before that date.”

[Section 40 (8) of the Housing Act, U.K. quoted in Bhatia (1983: 48)]
(b) **Qualifications Assigning Shared Volitional Control** – The legal subject is specifically required, under one of the following prepositional phrases, to consult or get approval from someone else before taking the legal action:

- "... with the consent of..."
- "... without the approval of..."
- "... except with the consent of..."
- "... if the tenant consents..."

Qualifications of this sub-category tend to occur in the medial position (i.e. at the intra-main provisionary clause position), because a prepositional phrase is more mobile and can be easily inserted in the main provisionary clause (Bhatia 1983: 56).

(c) **Qualifications Specifying the Extent/Nature of Volitional Control** – Apart from assigning volitional control to the legal subject, these qualifications also specify the nature or extent of the volition. They are often in one of the following two patterns, but overwhelmingly in the first one:

- "... such ...... as he considers necessary..."
- "... to ... the extent they think fit"

Qualifications of this sub-category mostly occur in the final position. As their function is to qualify the content of the main provisionary clause, they can only occur after the content is stated.\(^99\)

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\(^99\) For example, the qualification specifying the period of adjournment in the following sentence cannot be stated until a reference is made to the action of adjourning:

"... the county court may adjourn the proceedings for such period or periods as the court thinks reasonable..." [Section 112 (6) of Housing Act, U.K. quoted in Bhatia (1983:57)]
6.2 **Use of Preparatory Qualifications in the Corpus**

There are a total of 58 different instances of Preparatory Qualifications in the corpus, which are listed in Appendix 6. Out of them, 36 instances are Open Case Descriptions, 8 are Modifications of Case Descriptions, 11 are Qualifications Specifying Conditions, and 3 are Qualifications Specifying Volitional Control. There is no instance of Qualified Case Description in the corpus.

The textual pattern and syntactic position of all the 58 Preparatory Qualifications are set out in Table 2 on the next page. It can be seen from such table that out of the 36 instances of Open Case Descriptions, 21 of them are introduced by the subordinator *where*, 18 of which occur in the initial position. The other three occur either medially or finally for special reasons.

Apart from the vast majority of the *where*-clauses, the *unless*-clauses in the corpus also occur initially when they are used as open case description. There are two such clauses in the corpus.

Compared with the corpus used in Bhatia (1983), the subordinator *if* is extremely sparingly used in our corpus, in which there are only two *if*-clauses used for case

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100 This figure does not include the repeated identical occurrences of some of them in the corpus. For example, the clause "unless the contrary intention is expressed" occurs in five different sections.

101 For example,

"Where this section requires the production of any document, it shall be sufficient to produce a copy..."

[Section 13 (2)]

102 In two of them, the case description is contained in an itemized paragraph and is meant to qualify only the provisions of that paragraph. These two case descriptions (as shown in italics) are respectively in s.13 (1)(a)(i) and s.13 (1)(c) set out below, occurring medially in the former and finally in the latter:

"13. (1) ... a purchaser... shall be entitled to require from the vendor...

(a) proof of title to that land –

(i) *where the grant of the Government lease was less than 15 years before the sale of that land, extending for the period since that grant;*

(ii) ........

(b) ........

(c) *production of any power of attorney under which any document produced is executed where that document was executed less than 15 years before the contract of sale of that land.*

[Section 13 (1)]

In the other one, the case description is related to the relative clause of the object noun phrase of the sentence, and therefore needs to be inserted medially right before that object noun phrase. It is in s.50 (1), which provides (inter alia) that:

"(1) There shall be implied in any legal charge or equitable mortgage by deed, where the mortgage money becomes due, a power exercisable in writing by the mortgagee..."

103 The first one is the clause "unless the contrary intention is expressed" which is Instance No. (21) in Appendix 6 and occurs in five different sections, all in initial position other than one exceptional case where the clause occurs medially. The other one is the clause "unless the contrary intention is expressed in the assignment" in s.16 (1), which is Instance No. (22) in Appendix 6.

104 The corpus used in Bhatia (1983) contains 354 instances of open case descriptions, in which there are 139 *where*-clauses and 153 *if*-clauses (p. 37). That may be the reason for his remark (1983: 36) that the subordinator *where* and *if* are interchangeable in a number of open case descriptions.
Table 2
Textual Pattern and Syntactic Position of the Preparatory Qualifications in the Corpus

<table>
<thead>
<tr>
<th>Categories</th>
<th>Textual Pattern</th>
<th>Syntactic Position</th>
<th>Number of Instances</th>
</tr>
</thead>
<tbody>
<tr>
<td>(A) Open Case Descriptions</td>
<td><em>where</em>-clause</td>
<td>Initial</td>
<td>18</td>
</tr>
<tr>
<td></td>
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<tr>
<td></td>
<td></td>
<td>Final</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td><em>if</em>-clause</td>
<td>Medial</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Final</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td><em>unless</em>-clause</td>
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<td>Other prepositional phrases</td>
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<td>1</td>
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<td></td>
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<td>(B) Modifications of Case Descriptions</td>
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<td><em>unless</em>-clause</td>
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<td><em>Except</em>-clause</td>
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<td>(C) Qualifications Specifying Conditions</td>
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<td>Initial</td>
<td>3</td>
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<td></td>
<td>Medial</td>
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<td></td>
<td></td>
<td>Final</td>
<td>5</td>
</tr>
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<td></td>
<td><em>unless and until - clause</em></td>
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</tr>
<tr>
<td></td>
<td><strong>Total</strong></td>
<td></td>
<td>11</td>
</tr>
<tr>
<td>(D) Qualifications Assigning Volitional Control</td>
<td><em>“as the court thinks fit”</em></td>
<td>Final</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td><em>(up)on such terms /conditions as the court may think fit</em></td>
<td>Final</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td><strong>Total</strong></td>
<td></td>
<td>3</td>
</tr>
<tr>
<td><strong>Total of (A) + (B) + (C) + (D):</strong></td>
<td></td>
<td></td>
<td>58</td>
</tr>
</tbody>
</table>
description, one in the medial position and the other in the final position. Obviously, the
draftsman of the Ordinance has, for the sake of consistency, endeavoured to avoid using any
if-clause for case description unless it is absolutely needed for its better mobility when the
case description is in the medial or final position.

Another type of open case description that also enjoys a better mobility is those
introduced by in case of. There are two such instances in the corpus, one occurring initially
and the other finally.\(^{105}\)

Those open case descriptions introduced by such prepositional phrases as
notwithstanding, without prejudice to... and whether specify the relationship between the
provision of the main provisionary clause and the circumstance specified in the particular
case description. There are five such instances in the corpus,\(^{106}\) which all occur in the final
position.

With the exception of the two subject to – clauses,\(^{107}\) all other Modifications of Case
Descriptions in the corpus function to specify an exceptional circumstance to which the
provision in the main provisionary clause does not apply.\(^{108}\) Other than one exceptional
case,\(^{109}\) they occur either medially or finally in the sentence as a result of their modification
nature.

\(^{105}\) The first one is “in case of relief” which occurs initially in s.58 (2)(Instance No. (26) in Appendix 6). The
other one is the long qualification “in case of any breach of covenant or condition by the co-lessee of any
other share...” occurring finally in s.29 (3)(Instance No. (27) in Appendix 6).

\(^{106}\) They are Instances Nos. (24), (25), (18), (19) and (17) in Appendix 6.

\(^{107}\) They are the qualification “Subject to any agreement between the mortgagor and the mortgagee” in
s.44 (5) and the other one “subject to the term granted by the lease” in s.31 (2), both of which tend to
specify pre-requisite. These subject to – clauses should not be confused with those classified by Bhatia
(1983) as Qualifications Defining Scope of Legal Provisions (see Appendix 1). The former refers to some
other circumstances or things to which the provision in the main provisionary clause is subject, whereas the
latter refers to other provision(s) of the same legislation (or some other legislation) to which the provision in
the main provisionary clause is, as Thornton (1996: 101) puts it, “subservient”.

\(^{108}\) Both of the following two examples specify an exceptional circumstance:
(i) “unless the mortgaged land is sold subject to a prior incumbrance” [s.54 (b)]
(ii) “except in respect of the particular matter authorized to be done” [s.29 (2)]

\(^{109}\) The exceptional case involves one of the two subject to – clause. It occurs in an initial position in s.44 (5),
which specifies (inter alia) that:

“Subject to any agreement between the mortgagor and the mortgagee, where the mortgaged land is
mortgaged by way of legal charge, the mortgagor may...”

The subject to - clause in this example precedes the case description. This is perhaps one of the very few
exceptions to Bhatia’s remark that “it is not always easy to put a modification before what is modified”
The eleven Qualifications Specifying Conditions contained in the corpus characterize themselves in the use of upon instead of the conventional if in a positive condition, and the use of a nominalized verb for specifying condition. Nine of them are introduced by upon or in one case by on\textsuperscript{110} and the remaining two by unless and until.\textsuperscript{111}

As mentioned in 6.1.2 above, a Qualification Specifying Condition usually occurs initially if it is a positive condition. Five of the nine upon–clauses in the corpus, however, occur in the final position.\textsuperscript{112} That is because they are contained in some itemized paragraphs each of which is preceded by the main provisionary clause and is meant to specify a different condition in each different paragraph.

Among the three Qualifications Specifying Volitional Control contained in the corpus, one of them functions to assign absolute volitional control (as the court thinks fit in Section 58 (2)), and the other two specify the extent and/or nature of volitional control ((upon) such terms/conditions as the court may think fit in Sections 58 (2) and (4)). Although they occur in the final position and as such do not cause any syntactic discontinuity, they all comprise syntactic discontinuity within themselves, which is caused by the other qualifications further qualifying them.

### 6.3 Translation Problems Caused by the Use of Qualifications

Translation problems caused by the use of qualifications in legislative texts mainly arise from:

(a) the heavy information load generated by the use of qualifications; and

(b) the syntactic discontinuity caused by the syntactic positions at which the qualifications are inserted in a legislative sentence.

\textsuperscript{110} They are Instances Nos. (45) to (52) in Appendix 6, and the one introduced by on is Instance No. (55).

Note that not all qualifications introduced by upon are condition specifications. The phrase upon the commencement of this section in s.32 (1), for example, is a case description.

\textsuperscript{111} They are in s.58 (1), which stipulates (inter alia) that:

"(1) A right of re-entry... shall not be enforceable, unless and until the lessor serves on the lessee a notice –

(a) ....; and

(b) ....; and

(c) ....;

and the lessee fails... to remedy the breach..."

\textsuperscript{112} They are Instances Nos. (48) to (51) in Appendix 6. The other one in Instance No. (46)
6.3.1 Semantic Problems Caused by Heavy Information Load Arising from the Use of Qualifications

As mentioned earlier in this chapter, the legal action in a legislative sentence cannot stand on its own. It needs to be qualified by a number of qualifications specifying a variety of information, which for the sake of clarity and avoidance of ambiguity will all have to be incorporated within one same sentence.\textsuperscript{113} This inevitably results in a tightly packed character of the legal sentence, which may often contain a large number of semantic units and consequently give rise to psycholinguistic problems for the readers (Bhatia 1983: 27; Maley 1994: 25). As far as the translators are concerned, they will have to face the challenging task of not only properly unpacking those semantic units, but also accurately rendering them in the target language text in a manner syntactically acceptable in that language.

Semantic problems resulting from heavy information load are particularly likely to arise where more than one qualification is used at or around the same syntactic point or where a qualification is a complex one or is further qualified by another one. Section 29 (3) of the Ordinance is the best example in this regard. As explained in 5.2.2 of Chapter Five, the second case description and a licence or permit is granted contained in that section gives rise to a semantic problem in translation, as its actual meaning is confused by the two sub-clauses qualifying it.

Whilst the semantic problem illustrated by Section 29 (3) lies in the construing of the source language text, a semantic problem may also arise in the actual rendering process during the syntactic re-arrangement of the various semantic units in the target language text. Again, this is particularly likely to occur where a qualification is further qualified by one or more other qualifications. In the following example, a Qualification Specifying Volitional Control is further modified by several postmodifiers and one adverbial, as respectively underlined and italicized in it:

“in case of relief may grant it on such terms, if any, as to costs, expenses, damages, compensation, penalty or otherwise, including the granting of an injunction to restrain any like breach in the future, as the court, in the circumstances of each case, thinks fit.” [Section 58 (2)]

\textsuperscript{113} Maley (1994) and Bhatia (1983) observe that in fact it is sometimes not impossible to place these qualifications under separate subsections instead of within one sentence, though it is not generally preferred. Such qualifications are in most cases included in one single sentence, because “lawyers believe that it is easier to construe a single sentence than a series of sentence…” and “there is less potential for uncertainty” (Maley 1994: 24 – 25; Bhatia 1983: 27).
In a case like this, it is by no means an easy task to properly lay out in Chinese the various semantic units comprised in each of the underlined postmodifiers in a manner syntactically acceptable in that language.\footnote{114}

\section*{6.3.2 Syntactic Discontinuity Arising from the Use of Qualifications}

We have seen in 6.3.1 above that the main provisionary clause of a legislative sentence invariably needs to be qualified by a number of qualifications. As such, numerous insertion points are required in a main provisionary clause to include in one single sentence all of its qualifications, which for the sake of avoiding ambiguity are best inserted right next to the word meant to be qualified by them. Consequently, qualifications in a legislative sentence are often inserted at syntactic points that would create syntactic discontinuity rarely encountered in any other genre, resulting in discontinued verb phrase, noun phrase, binominal phrase or even complex prepositional phrase (Bhatia 1993: 112).

Out of the 58 Preparatory Qualifications in our corpus, twelve of them have caused a syntactic discontinuity,\footnote{115} with 7 instances of discontinued noun phrase and 5 instances of discontinued verb phrase.\footnote{116} In addition, although the three Qualifications Specifying Volitional Control are not causing any syntactic discontinuity, they each comprise one or more syntactic discontinuities, which are caused by the further qualifications qualifying them.\footnote{117}

\footnote{114}{In fact, in the Chinese translation of s.58 (2), two of the three underlined postmodifiers (i.e. \textit{if any and including the grant of an injunction to restrain any like breach in the future}) are put under brackets, which is a last resort when a clause in Chinese cannot be syntactically linked to the others in a more satisfactory manner.}

\footnote{115}{This figure relates to those caused by the Preparatory Qualifications only. There are quite a number of other syntactic discontinuities in the corpus caused by the other types of qualifications.}

\footnote{116}{The discontinued noun phrases are in Instances Nos. (4), (9), (14), (21), (28), (29), and (41) in Appendix 6. The discontinued verb phrases are in instances Nos. (37), (38), (39), (43) and (55) in Appendix 6.}

\footnote{117}{Those three Qualifications Specifying Volitional Control are in Instances Nos. (56), (57) and (58) in Appendix 6. An example of the syntactic discontinuity comprised in them is in s.58 (2) quoted in the penultimate paragraph of 6.3.1.}
All the various instances of syntactic discontinuity mentioned in the preceding paragraph occur at the intra-main provisionary clause position.\textsuperscript{118} This would seem to indicate a tendency that syntactic discontinuities caused by qualifications generally occur in the medial position.\textsuperscript{119}

As in the case of heavy information load, semantic problems arising from syntactic discontinuity may also occur in both the comprehension stage and the actual rendering stage of the translation process. In the comprehension stage, such problems lie in the translator’s cognitive difficulty in construing the provisions of the main provisionary clause,\textsuperscript{120} the syntax of which is unexpectedly interrupted by a qualification at an unusual point. As a general rule, the longer a qualification is, the more severe such a problem is likely to become. Consider the following two examples, in each of which the qualification is shown in italics:

(1) “Any money received ... shall be applied according to the following priority –

(a) ........

(b) unless the mortgaged land is sold subject to a prior incumbrance, in discharge of that prior incumbrance,”

[Section 54 (b)]

(2) “… the court may, on application by any person claiming as underlessee any estate or interest in the property comprised in the lease or any part thereof, either in the lessor’s action (if any) or in any action brought by such person for that purpose, make an order…”

[Section 58 (4)]

\textsuperscript{118} The three Qualifications Specifying Volitional Control mentioned in the preceding footnote occur in a final position, but the qualifications further qualifying them and causing syntactic discontinuity to them are in a medial position.

\textsuperscript{119} An exception to this tendency is where a qualification in either the initial or final position comprises a syntactic discontinuity caused by another qualification qualifying it. As far as the general tendency is concerned, there are some instances in which the same qualification that is causing syntactic discontinuity in the medial position does not give rise to such discontinuity when it is used initially or finally. An obvious example is the qualification unless the contrary intention is expressed (Instance No. (21) in Appendix 6), which occurs in five different sections in the corpus. Whilst it is causing a syntactic discontinuity when it occurs medially in s.56 (3), no such discontinuity is caused when it is used initially in the other four sections.

\textsuperscript{120} This equally applies to the construing of the provisions of a qualification if it comprises any syntactic discontinuity caused by another qualification further qualifying it.
In these two examples, the qualification in the second one is considerably lengthier than that of the first one. As such, it is more difficult for the translator to link up the first part of the discontinued constituent with the second part in the second example than in the first one.

The number of syntactic discontinuities contained in a sentence is another important factor that determines the extent of any semantic problem. This point is well illustrated if we compare the second example mentioned in the preceding paragraph with the one quoted at the end of this Section 6.3.2, which consists of one single sentence but comprises four syntactic discontinuities at different points.

Another noteworthy point in this area is that comprehension problems caused by a discontinued verb phrase containing a modal verb are usually less severe than those caused by other types of discontinued constituents (e.g. a discontinued noun phrase). That is because a reader seeing a modal verb immediately followed by a qualification would naturally identify it as a discontinued verb phrase and would accordingly proceed to locate the remaining part of the verb phrase somewhere down the sentence. A good example in this regard is the clause the court may... make an order appearing in the above second example.

One other point that is noteworthy in this area is that, as mentioned in 4.2.2 of Chapter Four, a qualification containing a number of binomials or any complex binomial is more liable to give rise to semantic problems, as those binomials will lead to both syntactic discontinuity and additional information load. A paradigmatic example is the two sub-clauses contained in the second case description in Section 29 (3)\(^{121}\), which contain a series of binomials. The syntactic discontinuity and additional information load generated by those binomials have together resulted in a significant confusion on the actual meaning of the second case description, and accordingly led to a semantic problem in the translation.

As far as the actual rendering process is concerned, it is basically a matter of linguistic handling of the semantic units. The difficulty lies in the requirement of properly laying out in the target language text the discontinued main provisionary clause\(^ {122}\) with all the semantic

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\(^{121}\) Section 29 (3) provides (inter alia) that:

"Where in any lease there is a right of re-entry on the lessee assigning... without a licence or permit, and a licence or permit is granted —

(a) to any of two or more lessees to do any act, or to deal with his share or interest; or

(b) to any lessee, or to any of two or more lessees to assign or underlet part only of the land, or to do any act in respect of part only of the land,

the licence or permit does not operate to extinguish the right of re-entry ...."

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\(^{122}\) Again, this equally applies to the laying out of a qualification if it comprises any syntactic discontinuity caused by another qualification further qualifying it.
units of any qualification duly incorporated in it strictly in accordance with the semantic relationship intended by the source language text. For instance, in translating the second example mentioned above, a translator will need to know, and render as such, that (a) the court may ... make an order is the main provisionary clause; (b) the semantic unit upon application by any person claiming ... any estate or interest is the "main clause" in the qualification that activates the legal action (may make an order); and (c) the other semantic units in the qualification are ancillary to the one referred to in (b) above and function to provide information about it. Laying out all such semantic units in the target language text in a structure syntactically acceptable in that language without missing any of the various intended semantic relationships is obviously not an easy task by any means. This is particularly so where a legislative sentence comprises several syntactic discontinuities as in the following example, in which the qualifications are shown in italics:

"Where a lessor is proceeding ... to enforce a right of re-entry..., the court may, on application by any person claiming ... any estate or interest in the property comprised in the lease or any part thereof..., make an order vesting, for the whole term of the lease or any less term, the property comprised in the lease or any part thereof in any person entitled ... to any estate or interest in such property upon such conditions as to execution of any deed or other document, payment of rent, costs, expenses, damages, compensation, giving security, or otherwise, as the court in the circumstances of each case may think fit,..." [Section 58 (4)]

6.3.3 The Cognitive Structuring Approach

Bhatia is well aware of the difficulty in the comprehension of legislative texts resulting from the heavy information load and syntactic discontinuity caused by the qualifications. As such, he recommends (1994) the use of a particular "cognitive structuring" approach for the handling of the semantic units of a legislative sentence during the comprehension process.

As Bhatia (1994) explains, "most legislative provisions can be written and understood in terms of a two-part interactive move-structure, consisting of the main provisionary clause and the attendant qualifications of various kinds" (p. 151). In such interactive move-structure, each of the qualifications inserted at various points of the sentence serves a typical legal function of answering legal questions and doubts and offering clarifications about various aspects of the main provisionary clause (p. 152). Cognitive structuring, therefore, displays a characteristic interplay of the main provisionary clause and its various qualifications (p. 151).
To illustrate Bhatia's cognitive structuring approach, the example quoted at the end of 6.3.2 above is set out in Figure 1 below as a two-part interactive move-structure, the pattern of which is based on an example given in Bhatia (1994: 152):

**Figure 1: A Two-part Interactive Move-Structure of the First Sentence of Section 58 (4)**

**Provisionary Clauses**
- the court may
- make an order vesting
- the property comprised in the lease or any part thereof in any person entitled... to any estate or interest in such property
- upon such conditions
- as the court
- may think fit.

**Qualifications**
- Where a lessor is proceeding... to enforce a right of re-entry,
- on application by any person claiming... any estate or interest in the property comprised in the lease or any part thereof...
- for the whole term of the lease or any less term
- as to execution of any deed or other document, payment of rent, costs, expenses, damages, compensation, giving security, or otherwise,
- in the circumstances of each case
As can be seen from Figure 1, the two-part interactive move-structure significantly helps to identify each part of the “skeleton” and the “flesh” of a legislative sentence and highlights the semantic relationship among them. It appears, therefore, that the “cognitive structuring” approach of Bhatia is a considerably useful tool for a translator in the comprehension of legislative text, particularly if s/he manages to develop it as part of his reflexive mental process instead of merely having a theoretical knowledge of it.

6.4 Analysis of the Corpus

There are a total of nine instances of semantic ambiguities in the Chinese corpus caused by the use of qualifications. Except two of them that arise in the comprehension stage, all the others occur in the actual rendering process of the translation.

The two instances of comprehension problem are in Section 29 (3). The first one is related to the phrase and a licence or permit is granted in the second case description of that section. That has been fully discussed in 5.2.2 and also in 6.3.1 above. The other one is at the end of the same section in its second finite clause “but the right of re-entry remains in force...”. As pointed out in 5.3.3.2 (A) above, the word but in that clause is incorrectly construed and translated to mean its ordinary disjunctive meaning of however although it actually means on the contrary in that context.

The seven instances of semantic problem occurring during the actual rendering process can be divided into the following three sub-categories according to the nature of the problems:

(A) Unsatisfactory rendering resulting in the translated text not strictly complying with the usual Chinese syntactic pattern

There are two instances in this sub-category. The first one, again, involves the second case description of Section 29 (3), which states that:

“... and a licence or permit is granted-

(a) to any one of the two ... lessees to do any act, or to deal with his share or interest; or

(b) ...."
The above sub-clause (a) is translated into Chinese as (pigei) liangming...

chenguze de qizhong yiren, zhunwu zuochu renhe zuowei, meaning, (granted to) one of the two
lessees, permit to do any act. Here, an indirect object (i.e. the lessee concerned) is
required in Chinese between the words zhunwu (permit) and the words zuochu
(作 出) (to do), but it is overlooked by the translator. In fact, the Chinese version of
the second clause of this sub-clause (or to deal with his share or interest), which has a
parallel pattern as the one in question, does contain such an indirect object (gaiREN)
(that person). This problem also occurs in sub-clause (b) of the same section.

The second instance involves the qualification upon the issue by the Government
of a certificate that those conditions have been complied with in Section 14 (3)(a). The
manner in which the semantic units of that qualification are syntactically laid out in the
Chinese version is not highly satisfactory. The qualification is translated in the corpus as
zhengfu fazhui zhengming gaideng tiaojian yihuofu de zhengmingshu (政府發出,
證明該等條件已獲得符合的證明書), literally meaning, Government issue
certifying-those-conditions-have-been-complied-with certificate. The Chinese version of
that qualification would read better syntactically if the qualification were translated as
zhengfu fazhui zhengmingshu, zhengming gaideng tiaojian yihuofu (政府發出證明書,
證明該等條件已獲得符合), literally meaning, Government issue
certificate, certifying those conditions have been complied with. This instance highlights a
point that the premodification approach mentioned in 5.3.2 in Chapter Five must be used
with particular care and skill.

(B) Unsatisfactory rendering with unnecessary repetition of some phrases in the translated
text

There are two instances in this sub-category. The first one involves the second
case description of Section 13 (4A), which reads “and that document purports to have
been executed, not less than 15 years before the contract of sale of that land, under a
power of attorney”. This qualification is translated in the corpus into Chinese as two
separate clauses: er gai wanjian kanli shi genju shouquanshu qianli, qie gai wanjian shi
zai gai tudi shoumai houxue rigi qian bu shaoyu shiu nian qianli zhe (而該文件看來
是根據授權書簽立，且該文件是在該土地售賣合約
日期前不少於十五年簽立者), literally meaning, and that document
appears to be under power of attorney executed, and that document is executed not less

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than 15 years before the contract of sale of that land.\textsuperscript{123} In this respect, Zhang (1993: 93) has pointed out that if two consecutive clauses in a sentence share the same subject, such subject should be omitted in the second clause during the translation into Chinese. As such, the words \emph{gai wenjian (該文件)} (that document) should not be repeated in the second clause mentioned above. The unnecessary repetition of them not only affects the coherence and elegance of the clauses, but as a result of lexical complexity may also give rise to confusion on the semantic role of those two clauses and their syntactic relationship with the others.

The second instance in this sub-category is in Section 58 (2), where a further qualification is comprised in a Qualification Specifying Volitional Control as the court… thinks fit. Such further qualification reads “having regard to the proceedings and conduct of the parties under the foregoing provisions of this section”. The translator obviously thinks, not unreasonably, that the words \emph{of the parties} in this qualification qualify only \emph{conduct} and not \emph{proceedings}. Hence, the qualification is translated into Chinese as two separate clauses, one meaning \emph{(having regard to) the proceedings under the foregoing provisions of this section}, and the other meaning \emph{(having regard to) the conduct of the various parties under those provisions}. Again, such repetition is actually unnecessary. If we refer back to “the foregoing provisions of this section” (i.e. Section 58 (1) and the first part of Section 58 (2)), it will be seen that the proceedings under those provisions are in fact the proceedings of the parties concerned (i.e. the lessor and the lessee). In other words, the word \emph{proceedings} in the above qualification also refers to proceedings of the parties.

(C) Unsatisfactory rendering resulting in the translated text not accurately or adequately reflecting the meaning of the source language text

There are three instances in this sub-category. The first one is in the main provisionary clause of Section 35 (1D), which specifies that “the liabilities of joint parties to any assignment… shall be joint and several”. This clause is translated into Chinese as

\textsuperscript{123} It has already been explained in 5.3.3.3 (1) of Chapter Five that the translation of the word \emph{purports} in this context into Chinese as \emph{kanlai (來来)} (appears to be) is an improper translation.
renho zhuanrangqi ... de gefang gongtong liyue ren ... fuyou gongtong ji gebie de falu zeren (任何转让契...的各方共同立约人...负有共同及各自的法律责任), literally meaning, any assignment's various parties' joint parties... have joint and several liabilities. The translation of the phrase underlined above is likely to give rise to a semantic ambiguity and may lead the readers to think that the expression joint parties means the joint parties of the various parties to the contract. To avoid such ambiguity, the underlined phrase should preferably be translated to read qizhong yifang de gongtong liyue ren (其中一方的共同立约人), meaning the joint parties of either party to the contract.

The second instance in this sub-category is in Section 58 (2), which contains a Qualification Specifying Volitional Control for the court to grant an application “on such terms as to costs, expenses... as the court thinks fit”. This qualification contains two essential semantic constituents, viz. (a) such terms as the court thinks fit, and (b) as to costs, expenses.... Here, Constituent (b) is as important as Constituent (a), as it functions to restrict the nature of the terms the court can impose. This qualification is translated into Chinese as kean fayuan ... renwei shidang de, youguan songfei, kaizhi ... de tiaokuan (可按法院...认为適當的,有關公費開支...的條款), literally meaning, as the court... thinks fit, relating to costs, expenses,... terms. It can be seen that the qualification is translated into two consecutive premodifiers (as the court thinks fit + as to costs, expenses...), with the second one preceding the word tiaokuan (條 款) (terms). Whilst the use of two consecutive premodifiers to modify one noun phrase is not uncommon in the Chinese syntax, the two Chinese premodifiers in this case are not linked by any coordinator or subordinator. As such, the restrictive function intended for the second premodifier is missed. To remedy such ambiguity, perhaps the words eryou (而 又) (and) can be inserted between the two premodiers to signify that the noun phrase terms is governed by and needs to comply with both of the two premodifiers.

This same problem also arises in Section 58 (4), which contains a similar qualification. Another semantic ambiguity in that section is caused by the improper translation in it of the phrase giving security as zuochu diya (作出抵押) (effecting a charge), whilst that phrase actually means in Chinese zuochu danbao (作出担保) (giving guarantee).

124 It is missed in the sense that the terms imposed by the court are not expressly required in the Chinese version to comply with both the first and the second premodifiers.
6.5 Concluding Remarks

We have seen in this chapter that translation problems related to the use of qualifications are primarily semantic problems, which are the result of:

(a) the heavy information load generated by the use of qualifications; and
(b) the syntactic discontinuities caused by the qualifications.

Semantic problems generated by heavy information load are basically a matter of handling the various tightly packed semantic units. Such a problem is more likely to arise where more than one qualification is used at or around the same syntactic point or where a qualification is further qualified by another one.

As far as syntactic discontinuity is concerned, the extent of semantic problems caused by it varies with the length and complexity of each qualification, the number of binomials contained in it, as well as the number of syntactic discontinuities contained in each sentence. The vast majority of syntactic discontinuities occur at the intra-main provisionary clause position, though some qualifications that occur initially or finally may also comprise a syntactic discontinuity caused by another qualification further qualifying it.

Semantic problems caused by the use of qualifications may arise in both the comprehension stage and the actual rendering stage of the translation process. In the comprehension stage, the problem mainly lies in the translator’s difficulty in unpacking the different semantic units while construing the provisions of the various clauses, the syntax of which is from time to time unexpectedly interrupted at an unusual point. In the actual rendering stage, the problem lies in the translator’s difficulty in properly laying out those clauses in the target language text strictly in accordance with each semantic relationship intended by the source language text, and notwithstanding the semantic complexity and syntactic discontinuities comprised in the clauses.

We have also seen in this chapter that the “cognitive structuring” approach recommended by Bhatia is highly useful in facilitating the comprehension and cognitive arrangement of legislative texts. As far as the actual rendering is concerned, the translator’s proficiency in the target language plays an important role. It is observed during the study for this chapter that semantic problems caused by the use of qualifications not only give rise to unsatisfactory syntactic layout of the semantic units in the target language text, but also result
in some lexical problems in either the choice of proper lexicon\textsuperscript{125} or the use of appropriate collocation.\textsuperscript{126} As such, it is manifestly essential for a translator of legislative texts to have an excellent command of the target language, so that after the difficult task of unpacking the various semantic units of the source language text, he can properly handle those units syntactically, semantically as well as lexically in the target language text.

\textsuperscript{125} For example, the improper translation of the word \textit{solicitor} as \textit{lushi} (律师)(lawyer) in s.13 (2), which has the unintended effect of also accepting a document certified by a barrister.

\textsuperscript{126} For example, the improper translation of the word \textit{impose} in s.14 (6) as \textit{shijia} (施加)(exert). A more appropriate Chinese translation for the word \textit{impose} in the context of \textit{imposing further conditions} would be \textit{fujia} (附加)(add). Likewise, the translation of the word \textit{remedy} in s. 58 (1) as \textit{bujiu} (救救)(save) is also an improper translation. A more appropriate translation for that word in the context of \textit{remedy a breach} appears to be \textit{jiaozheng} (纠正)(rectify).
Chapter Seven  Conclusion

We have seen from the foregoing chapters that the four linguistic devices discussed in this thesis are all liable to cause problems in translation largely to the same extent. The problems caused by some of them are lexical in nature, whilst the others are of syntactic or semantic nature or both.

Translation problems caused by the use of common words with uncommon meanings (e.g. the verb *shall*) are purely of a lexical nature. This, however, by no means follows that the extent of problem caused by, for example, the improper translation of the word *shall* is lesser than that arising from the other three linguistic devices. On the contrary, it may in some instances have an even more serious effect than that caused by those other devices because, as illustrated in Chapter Three, the mistranslation of one such word may result in a complete distortion of the original meaning and semantic function of a sentence.

Translation problems caused by the use of binomials are primarily lexical in nature, lying in the difficulty in finding enough synonyms in the target language for the various constituents of a binomial. However, binomials contained in or relating to the use of qualifications are sometimes also likely to lead to semantic ambiguity, as they are one of the causes for heavy information load of a qualification.

As far as nominalization is concerned, problems arising from the translation of the nominalized groups and their postmodifiers are basically a problem of handling the different semantic units involved, which is a result of:

(a) the ambiguities in the syntactic relationship between the various constituents; and/or

(b) the heavy information load generated by the use of the nominal groups and their postmodifiers.

Whilst any translation problem arising from Source (a) is largely a matter of comprehension, those arising from Source (b) occur not only during the comprehension stage but also the actual rendering stage of the translation process. In the former, the problem arises in the unpacking of the various semantic units. In the latter, it arises in the syntactic rearrangement of those units in the target language text and the choice of appropriate lexicon. As such, the translation problem involved in the use of nominalization is a semantic as well as a lexical one.
Translation problems related to the use of qualifications are also semantic in nature, resulting from:

(a) the heavy information load generated by the use of qualifications; and/or
(b) the syntactic discontinuities caused by the qualifications.

As in the case of nominalization, such problems may also arise in both the comprehension process and the actual rendering process. In the former, the problem mainly lies in the difficulty of unpacking the tightly packed semantic units of the various syntactically interrupted clauses. In the latter, it mainly lies in the difficulty of properly laying out those clauses in the target language text strictly in accordance with each semantic relationship intended by the source language text. Besides, the use of qualifications also gives rise to some lexical problems in either the choice of proper lexicon or the use of appropriate collocation.

Apart from the different nature of the problems respectively caused by the four linguistic devices, the analyses in the foregoing chapters have also highlighted some of the linguistic and extra-linguistic pre-requisites for a translator of legislative texts.

The first one involves language competence. Owing to all the distinctive characteristics of legislative texts, the translation of such texts demands from the translator an extremely high level of proficiency in both the source language and the target language. The former is required in the comprehension process for the unpacking of the numerous semantic units and the construing of the syntactically complex and interrupted clauses. The latter is required in the actual rendering process for the proper syntactic re-arrangement of those semantic units in the target language as well as the choice of proper lexicon and the use of appropriate collocation. In this latter respect, we have seen in the last couple of chapters a number of lexical ambiguities arising during the actual rendering process. As Lang (1992) points out in her discussion of the growing problem of mother tongue competence among the translation students, target language proficiency is as important as source language proficiency in professional translation, the standards of which “require an impeccable level of competence in the target language” (p. 399). Although her remark is not specifically related to the translation of legislative texts, it is particularly relevant to it.

127 Here, Lang is referring to some of her students in the undergraduate translation course in the Heriot-Watt University in Britain, and the mother tongue in question is English. However, Lang’s discussions with her counter-parts in other countries indicate that the same problem exists in other countries and other languages (Lang 1992: 396).
The importance of language competence of the translators of legislative texts is also elaborated in Šarčević (1992). She explains that for the sake of avoiding mechanical translation, a legal translator must “possess top language competence”, so that s/he is able to determine how far s/he can depart from the source language text and still produce a target language text that leads to the same legal effects. As she aptly points out, “the challenge of legal translation is to strike a balance between linguistic purity and legal equivalence” (Šarčević 1992: 306).

The second pre-requisite highlighted by the analyses in the foregoing chapters is an extra-linguistic one, that is, the possession of a good common sense. Basically, this quality is essential to every translator, as all translation work invariably involves some extent of decision making, for which a good common sense is imperative. Owing to the technicality as well as semantic and syntactic complexity of the legislative texts, the translation of those texts involves an even larger number of decision making of a more complex nature, and accordingly demands from the translators a particularly strong common sense and sound judgement. Translation students used to be reminded of this pre-requisite in the past. They should perhaps continue to be so reminded and encouraged to develop a good common sense for the sake of becoming a competent legal translator. Campbell (1999: 34) has identified translator’s competence as one of the three origins of translation difficulty.128 Language proficiency and common sense are undoubtedly two of the pivotal contributing factors in that respect.

Another significant extra-linguistic pre-requisite for a translator of legislative texts is the possession of sufficient basic legal knowledge, not only in terminology but also in basic legal concepts and theories. As Hale and Campbell (unpublished: 3) observe, the translator’s knowledge of the subject matter is one of the factors to which translation difficulty relates. In this regard, it is most ideal for legal translation to be performed by bilingual qualified lawyers with sufficient translation training, as is the case in the European Commission.129 Where that is impossible for any reason (such as financial considerations), lay translators engaged in legal translation should be required to undergo some formal and in-depth training in law. It appears that some universities in Australia offer a four year undergraduate program similar in

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128 The other two are text types and translation task types. See Campbell (1999: 34).
nature to the *interdisciplinary programs* recommended in Šarčević (1992).\(^{130}\) For those who do not have the opportunity of taking that undergraduate program, a one-year intensive course in law consisting of such fundamental legal subjects as Contract Law, English Legal System, and Administrative Law could certainly provide them with the basic legal concepts and theories needed for their work, and will definitely be very useful in facilitating them to perform their most challenging task.

\(^{130}\) In her article outlining the need of interdisciplinary training for legal translators, Šarčević suggests that “translation schools should be encouraged to offer interdisciplinary programs that combine translation skills with in-depth legal knowledge” (1992: 305). According to her, the Ottawa School of Translation and Interpreting in Canada is the first one to offer such a “graduate program in legal translation for candidates already holding a degree in law or translation”. The program is designed to bring the law and translation students to the same level of proficiency by offering intensive training in the other discipline, before a further training together in the field of legal translation. The course can be completed one-year full time or two or three year part time. A similar but “drastically modified” program is also offered by the University of Limburg and the State School of Translation and Interpreting in Maastricht (Netherlands) (Šarčević 1992: 305).
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Hale, Sandra and Stuart Campbell (unpublished) "The Interaction Between Text Difficulty and Translation Accuracy".


Law Drafting Division, Department of Justice, Hong Kong Special Administrative Region (1998a) *A Paper Discussing Cases Where the Two Language Texts of an Enactment are Alleged to be Different*. Retrieved 25 April 1999 from the World Wide Web: http://www.justice.gov.hk/inprmain.htm


Zhang, Peiji et al. (1993) *Yinghan Fanyi Jiaocheng (On English/Chinese Translation)*. Hong Kong: Sanlian Shudian.
### Appendix 1

**Ten Functional Categories of Qualifications outlined by Bhatia (1983)**

<table>
<thead>
<tr>
<th>Major Groups of Qualifications</th>
<th>Functional Categories</th>
<th>Functions</th>
<th>Examples</th>
<th>Further Sub-Categories</th>
</tr>
</thead>
<tbody>
<tr>
<td>(A) Preparatory qualifications</td>
<td>(1) Qualifications describing case(s)</td>
<td>Specify circumstances to which the legal action in the main provisionary clause is meant to apply.</td>
<td>&quot;Where a secure tenant has claimed to exercise the right to buy, the landlord shall ...&quot;</td>
<td>(a) <strong>Open case description</strong> - Background circumstances fully described without further descriptions or qualified interpretations, e.g. &quot;Where a secure tenancy is a tenancy for a term certain but with a provision for re-entry or forfeiture, the court shall not ...&quot;</td>
</tr>
<tr>
<td></td>
<td></td>
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<td></td>
<td>(b) <strong>Qualified case description</strong> - Cases are described first but then given a restricted meaning by an additional qualification, e.g. &quot;Where ... a landlord becomes a mortgagee ... whilst a notice is still in force ..., then while the notice is still in force, the Secretary of State may ...&quot;</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>(c) <strong>Modification of case description</strong> - The case description is restricted by a further clause specifying a pre-requisite to the fulfilment of the provision or exceptional circumstances to which the provision does not apply, e.g. &quot;Where a secure tenancy is a joint tenant, the right to buy ... belong ... to such one ... of them as may be validly agreed between them; and the agreement is not valid unless the person ... to whom the right to buy is to belong occupies the dwelling-house as his only or principal home.&quot;</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Major Groups of Qualifications</th>
<th>Functional Categories</th>
<th>Functions</th>
<th>Examples</th>
<th>Further Sub-Categories</th>
</tr>
</thead>
<tbody>
<tr>
<td>(A) Preparatory qualifications</td>
<td>(2) Qualifications specifying conditions</td>
<td>Specify the condition upon the fulfilment of which the legal action in the main provisionary clause becomes operative.</td>
<td>(1) &quot;If any person ... fails to perform any duty imposed on him by this Schedule, he shall be guilty of an offence ....&quot;&lt;br&gt;(2) &quot;Where the tenant has applied in writing for the consent, then (a) if the landlord refuses to give the consent, it shall give to the tenant ...&quot;</td>
<td>Nil</td>
</tr>
<tr>
<td>(A) Preparatory qualifications (Cont'd)</td>
<td>(3) Qualifications assigning volitional control</td>
<td>Indicate certain volitional control the legal subject has over the legal action, and the extent of such control.</td>
<td>&quot;... the court may, if it thinks fit, ...&quot;</td>
<td>Nil</td>
</tr>
<tr>
<td>(A) Preparatory qualifications (Cont'd)</td>
<td>(a) Assigning absolute volitional control&lt;br&gt;(i) Assigning full absolute control, e.g. &quot;... the local authority may, if they think fit, agree to the price ...&quot;&lt;br&gt;(ii) Assigning conditional absolute control, e.g. &quot;... if it appears to (the authority) that ...&quot; &quot;... if the court is of the opinion that ...&quot; &quot;... if he is satisfied that ...&quot; &quot;... unless they are satisfied that ...&quot;</td>
<td>Nil</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(A) Preparatory qualifications (Cont'd)</td>
<td>(b) Assigning shared volitional control, e.g. &quot;with the consent of (another authority/party) ...&quot; &quot;without the approval of ...&quot; &quot;except with the consent of ...&quot; &quot;except after consultation with ...&quot; &quot;if the tenant consents ...&quot;</td>
<td>Nil</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(A) Preparatory qualifications (Cont'd)</td>
<td>(c) Specifying the extent/nature of volitional control, e.g. &quot;such ... as he considers necessary&quot; &quot;... to the extent they think fit ...&quot;</td>
<td>Nil</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(B) Operational qualifications</td>
<td>(1) Qualifications specifying legal means</td>
<td>Specify the manner in which the legal action is required to be taken.</td>
<td>&quot;... by notice in writing ...&quot;</td>
<td>Nil</td>
</tr>
<tr>
<td>(B) Operational qualifications</td>
<td>(2) Qualifications ascribing legal purposes</td>
<td>Ascribe legal purpose to an legal action.</td>
<td>&quot;... for the purpose of registration ...&quot;</td>
<td>Nil</td>
</tr>
<tr>
<td>(B) Operational qualifications</td>
<td>(3) Qualifications giving temporal instruction or expressing temporal relations</td>
<td>Specify temporal instructions and relations in respect of the legal action</td>
<td>&quot;at any time before the service on him of a notice ...&quot;</td>
<td>Nil</td>
</tr>
<tr>
<td>Major Groups of Qualifications</td>
<td>Functional Categories</td>
<td>Functions</td>
<td>Examples</td>
<td>Further Sub-Categories</td>
</tr>
<tr>
<td>-------------------------------</td>
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<td>----------</td>
<td>-----------------------</td>
</tr>
<tr>
<td>(C) Referential qualifications</td>
<td>(1) Qualifications indicating textual authority for various actions</td>
<td>Referring to either the other sections of the same legislation or the provisions of some other legislation to indicate textual authority</td>
<td>&quot;under (the provisions of) section 8 of this Act...&quot; &quot;in accordance with (the provisions of) section 8 of this Act...&quot; &quot;in pursuance of (the provisions of) section 8 of this Act...&quot; &quot;by virtue of (the provisions of) section 8 of this Act&quot;</td>
<td>Each of the four example phrases may be a sub-category.</td>
</tr>
<tr>
<td></td>
<td>(2) Qualifications referring to terminological explanations</td>
<td>Referring to either the other sections of the legislation or the provisions of some other legislation for terminological explanations</td>
<td>(a) &quot;... which falls within s. 12 (8)(d) of this Act&quot; (b) &quot;... falling within s. 12(8)(d) of the 1977 Act&quot; (c) &quot;... within the meaning of the 1977 Act&quot;</td>
<td>- ditto -</td>
</tr>
<tr>
<td></td>
<td>(3) Qualifications providing textual mappings</td>
<td>Providing textual mappings by referring to either the other sections of the legislation or the provisions of some other legislation</td>
<td>(a) &quot;... mentioned in s. 8 above...&quot; (b) &quot;... referred to in ss. 8 (2) above...&quot; (c) &quot;... set out in para. (3) hereof...&quot; (d) &quot;... specified in Schedule 1 of this Act...&quot; (e) &quot;... stated in Act ... below ...&quot;</td>
<td>Nil</td>
</tr>
<tr>
<td></td>
<td>(4) Qualifications defining legal scope of the legal provisions</td>
<td>Defining the legal scope of the legal provision by referring to either the other sections of the same legislation or the provisions of some other legislation</td>
<td>(a) &quot;... subject to the provisions of ......&quot; (b) &quot;... notwithstanding the provisions of ...&quot; (c) &quot;... without prejudice to (the generality of) the provisions of...&quot; (d) &quot;... for the purposes of this Act/Section/Subsection...&quot; (e) &quot;... in place of (the provisions of)......&quot; (f) &quot;... instead of ...&quot;</td>
<td>- ditto -</td>
</tr>
</tbody>
</table>

1 See Bhatia (1983: 85 & 86) for differences between the four example phrases of this category.
2 See Bhatia (1983: 92 - 94) for differences between the three example phrases of this category.
3 See Bhatia (1983: 96) for discussion of this category of qualifications.
4 See Bhatia (1983: 99 - 109) for discussion of this category of qualifications.
## Appendix 2 - List of Use of *Shall* in the Corpus

<table>
<thead>
<tr>
<th>Instance Number</th>
<th>Category</th>
<th>Section Number</th>
<th>Legislative Provisions</th>
<th>Function of the Clause</th>
<th>Mistranslation of <em>shall</em></th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td><strong>Category One</strong></td>
<td>13(3)</td>
<td>&quot;..... where any document..... contains a recital....., the purchaser ..... shall assume..... the recital is correct.....&quot;</td>
<td>Imposing duty or obligation</td>
<td>No</td>
</tr>
<tr>
<td>(2)</td>
<td></td>
<td>54</td>
<td>&quot;Any money received by a mortgagee or a receiver from the sale..... (of) the mortgaged land..... shall be applied according to the following priority.....&quot;</td>
<td>Imposing duty or obligation</td>
<td>No</td>
</tr>
<tr>
<td>(3)</td>
<td></td>
<td>54(d)</td>
<td>&quot;..... any residue shall be paid to the person who..... was entitled to the mortgaged land.....&quot;</td>
<td>Imposing duty or obligation</td>
<td>No</td>
</tr>
<tr>
<td>(4)</td>
<td></td>
<td>13(4A)</td>
<td>&quot;..... where any document ..... purports to be executed ..... under a power of attorney, it shall ..... be conclusively presumed,..... as between the parties..... that the power of attorney..... was validly executed.&quot;</td>
<td>Imposing duty or obligation</td>
<td>No</td>
</tr>
<tr>
<td>(5)</td>
<td><strong>Category Two</strong> (Sub-Category (A))</td>
<td>50(6)</td>
<td>&quot;..... the receiver shall have power to demand and recover all the land.....&quot;</td>
<td>Declaratory clause stating the law (confering right)</td>
<td>No</td>
</tr>
<tr>
<td>(6)</td>
<td></td>
<td>13(1)</td>
<td>&quot;..... a purchaser of land shall be entitled to require from the vendor .....&quot;</td>
<td>- ditto -</td>
<td>No</td>
</tr>
<tr>
<td>(7)</td>
<td></td>
<td>44(6)</td>
<td>&quot;..... the mortgagee..... shall be entitled to possession of the deeds of titles.....&quot;</td>
<td>- ditto -</td>
<td>No</td>
</tr>
<tr>
<td>(8)</td>
<td></td>
<td>50(5)</td>
<td>&quot;..... the receiver shall be entitled to retain out of any money received by him that remuneration.....&quot;</td>
<td>- ditto -</td>
<td>No</td>
</tr>
<tr>
<td>(9)</td>
<td></td>
<td>56(2)</td>
<td>&quot;..... a mortgagor shall be entitled..... to a receipt mentioned in subsection (1).&quot;</td>
<td>- ditto -</td>
<td>No</td>
</tr>
<tr>
<td>Instance Number</td>
<td>Category Two (Sub-Category (A))</td>
<td>Section Number</td>
<td>Legislative Provisions</td>
<td>Function of the Clause</td>
<td>Mistranslation of shall</td>
</tr>
<tr>
<td>-----------------</td>
<td>---------------------------------</td>
<td>----------------</td>
<td>----------------------------------------------------------------------------------------</td>
<td>-----------------------------------------------------------------</td>
<td>------------------------</td>
</tr>
</tbody>
</table>
| (10)            |                                 | 58(3)          | "A lessor shall be entitled to recover .... from a lessee..... all reasonable costs and expenses....."
<p>|                 |                                 |                |                                                                                       | Declaratory clause stating the law (conferring right or power)  | No                     |
| (11)            |                                 | 58(4)          | ..... in no case shall any such under-lessee be entitled to require a lease .... for any longer term than he had under his original sub-lease.&quot; | Declaratory clause stating the law (specifying right)            | No                     |
| (12)            | Category Two (Sub-Category (B)(1)) | 44(2)          | ..... the mortgagor and the mortgagee shall ..... have the same protection..... as if the mortgage mortgage ..... had been effected..... before the commencement of this section.&quot; | Declaratory clause stating the law                               | No                     |
| (13)            |                                 | 16(1)          | ..... an assignment shall operate to assign with the land all rights, interests ..... in that land.....&quot; | - ditto -                                                       | No                     |
| (14)            |                                 | 56(1)          | A receipt ..... for all money secured by that mortgage ..... shall operate ..... as a discharge ..... of the mortgaged property.&quot; | - ditto -                                                       | No                     |
| (15)            |                                 | 51(3)          | No power of sale shall empower a mortgagee ..... under an equitable mortgage ..... to assign the legal estate in the mortgaged land.&quot; | - ditto -                                                       | No                     |
| (16)            |                                 | 50(7)          | Any person paying money to the receiver shall not be concerned to inquire .....&quot; | - ditto -                                                       | No                     |
| (17)            |                                 | 31(1)          | ..... the benefit of every covenant shall go with the reversionary estate in the land.....&quot; | - ditto -                                                       | Yes                    |
| (18)            |                                 | 35(1B)         | ..... the benefit of the covenants shall run with the land.....&quot; | - ditto -                                                       | Yes                    |
| (19)            | Category Two (Sub-Category (B)(2)) | 13(2)          | ..... it shall be sufficient to produce a copy ..... attested ..... or certified ..... to be a true copy.&quot; | Declaratory clause stating the law                               | No                     |
| (20)            |                                 | 13(4)          | A recital ..... shall ..... be sufficient evidence of the truth of that recital .....&quot; | - ditto -                                                       | Yes                    |</p>
<table>
<thead>
<tr>
<th>Instance Number</th>
<th>Category</th>
<th>Section Number</th>
<th>Legislative Provisions</th>
<th>Function of the Clause</th>
<th>Mistranslation of shall</th>
</tr>
</thead>
<tbody>
<tr>
<td>(21)</td>
<td><strong>Category Two</strong>&lt;br&gt;(Sub-Category (B)(2))&lt;br&gt;(Cont'd)</td>
<td>31(2)</td>
<td>&quot;Any rent..... mentioned in subsection (1) shall be capable of being recovered..... by the person ..... entitled..... to the income..... of the land.....&quot;</td>
<td>Declaratory clause stating the law</td>
<td>No</td>
</tr>
<tr>
<td>(22)</td>
<td></td>
<td>35(1B)</td>
<td>&quot;The benefit of the covenants..... shall be enforceable by the covenantee.....&quot;</td>
<td>- ditto -</td>
<td>No</td>
</tr>
<tr>
<td>(23)</td>
<td></td>
<td>58(1)</td>
<td>&quot;A right of re-entry ..... shall not be enforceable..... unless and until.....&quot;</td>
<td>- ditto -</td>
<td>No</td>
</tr>
<tr>
<td>(24)</td>
<td></td>
<td>35(1D)</td>
<td>..... the liability of joint parties to any assignment or legal charge..... shall be joint and several.&quot;</td>
<td>- ditto -</td>
<td>Yes</td>
</tr>
<tr>
<td>(25)</td>
<td></td>
<td>51(2)</td>
<td>&quot;Any power exercisable under a mortgage shall be subject to any prior estates, interests and rights...&quot;</td>
<td>- ditto -</td>
<td>Yes</td>
</tr>
<tr>
<td>(26)</td>
<td></td>
<td>31(1)</td>
<td>.....the benefit of every covenant..... shall be annexed and incidental to.....&quot;</td>
<td>- ditto -</td>
<td>Yes</td>
</tr>
<tr>
<td>(27)</td>
<td></td>
<td>35(1A)</td>
<td>&quot;The covenants implied under subsection (1)(a) shall be covenants to which section 41 applies.&quot;</td>
<td>- ditto -</td>
<td>No</td>
</tr>
<tr>
<td>(28)</td>
<td><strong>Category Two</strong>&lt;br&gt;(Sub-Category (C))</td>
<td>14(1)(a)</td>
<td>&quot;..... upon compliance with those conditions, ..... the equitable interest under that right shall become a legal estate in that land...&quot;</td>
<td>Declaratory clause specifying the effect of operation of law</td>
<td>No</td>
</tr>
<tr>
<td>(29)</td>
<td></td>
<td>14(4)</td>
<td>&quot;..... the equitable interest under that right shall become legal estate in that land.....&quot;</td>
<td>- ditto -</td>
<td>Yes</td>
</tr>
<tr>
<td>(30)</td>
<td><strong>Category Two</strong>&lt;br&gt;(Sub-Category (D))</td>
<td>14(5)</td>
<td>&quot;..... this section shall apply to each part of that land.....&quot;</td>
<td>Declaratory clause specifying the scope of application of the law</td>
<td>No</td>
</tr>
<tr>
<td>(31)</td>
<td></td>
<td>14(6)</td>
<td>&quot;..... this section shall apply to that additional land as if that additional land were part of the land originally leased.....&quot;</td>
<td>- ditto -</td>
<td>No</td>
</tr>
<tr>
<td>Instance Number</td>
<td>Category</td>
<td>Section Number</td>
<td>Legislative Provisions</td>
<td>Function of the Clause</td>
<td>Mistranslation of shall</td>
</tr>
<tr>
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<td>------------------------</td>
<td>-------------------------</td>
</tr>
<tr>
<td>(32)</td>
<td>Two</td>
<td>50(9)</td>
<td>&quot;This section shall not apply to any mortgage executed before the commencement of this section.&quot;</td>
<td>Declaratory clause specifying the scope of application of the law</td>
<td>No</td>
</tr>
<tr>
<td>(33)</td>
<td>Two</td>
<td>51(5)</td>
<td>&quot;This section shall not apply to any mortgage executed before the commencement of this section.&quot;</td>
<td>- ditto -</td>
<td>No</td>
</tr>
<tr>
<td>(34)</td>
<td></td>
<td>16(2)</td>
<td>&quot;This section shall not operate to give any person a better title than that assigned......&quot;</td>
<td>- ditto -</td>
<td>No</td>
</tr>
<tr>
<td>(35)</td>
<td></td>
<td>29(5)</td>
<td>&quot;Nothing in this section shall affect the provisions of the ....Ordinance&quot;</td>
<td>- ditto -</td>
<td>No</td>
</tr>
<tr>
<td>(36)</td>
<td></td>
<td>31(5)</td>
<td>&quot;Nothing in this section shall affect the provisions of the ....Ordinance&quot;</td>
<td>- ditto -</td>
<td>No</td>
</tr>
<tr>
<td>(37)</td>
<td></td>
<td>35(3)</td>
<td>&quot;This section shall not affect any assignment or legal mortgage executed before the commencement of this section.&quot;</td>
<td>- ditto -</td>
<td>Yes</td>
</tr>
<tr>
<td>(38)</td>
<td></td>
<td>50(8)</td>
<td>&quot;The provisions of this section ..... shall have effect as if .....&quot;</td>
<td>- ditto -</td>
<td>No</td>
</tr>
<tr>
<td>(39)</td>
<td></td>
<td>51(4)</td>
<td>&quot;The powers ..... and the provisions ..... shall have effect as if contained in this Ordinance.&quot;</td>
<td>- ditto -</td>
<td>No</td>
</tr>
<tr>
<td>(40)</td>
<td>Three</td>
<td>14(2)</td>
<td>&quot;..... he shall be deemed ..... to have complied with those conditions on the commencement of this section.....&quot;</td>
<td>Not immediately clear-cut at first sight, but actually a declaratory clause (deeming provision).</td>
<td>Yes</td>
</tr>
<tr>
<td>(41)</td>
<td></td>
<td>14(3)</td>
<td>&quot;.....he shall be deemed..... to have complied with those conditions.....&quot;</td>
<td>- ditto -</td>
<td>Yes</td>
</tr>
<tr>
<td>(42)</td>
<td>Three</td>
<td>14(1)(b)</td>
<td>&quot;..... such a Government lease shall be deemed to have been issued upon compliance with those conditions.&quot;</td>
<td>- ditto -</td>
<td>Yes</td>
</tr>
<tr>
<td>(43)</td>
<td>Three</td>
<td>14(4)(b)</td>
<td>&quot;..... such a Government lease shall be deemed to have been issued on the commencement of the Conveyancing and Property (Amendment) Ordinance 1988 .....&quot;</td>
<td>- ditto -</td>
<td>Yes</td>
</tr>
<tr>
<td>Instance Number</td>
<td>Category</td>
<td>Section Number</td>
<td>Legislative Provisions</td>
<td>Function of the Clause</td>
<td>Mistranslation of shall</td>
</tr>
<tr>
<td>-----------------</td>
<td>----------</td>
<td>----------------</td>
<td>----------------------------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------------------------</td>
<td>------------------------</td>
</tr>
<tr>
<td>(44)</td>
<td>Category Three (Sub-Category (A)(2)) (Cont'd)</td>
<td>44(3)</td>
<td>&quot;Upon the commencement of this section, a mortgage of a legal estate effected...... before the commencement of this section shall be deemed...... to be reassigned and discharged......&quot;</td>
<td>Not immediately clear-cut at first sight, but actually a declaratory clause (deeming provision)</td>
<td>Yes</td>
</tr>
<tr>
<td>(45)</td>
<td></td>
<td>50(4)</td>
<td>&quot;...... the appointment shall be deemed to be a joint and several appointment.&quot;</td>
<td>- ditto -</td>
<td>Yes</td>
</tr>
<tr>
<td>(46)</td>
<td>Category Three (Sub-Category (B))</td>
<td>35(1)(a)</td>
<td>&quot;There shall be implied ..... in any assignment ..... the covenant ..... mentioned in Part I of the First Schedule;&quot;</td>
<td>Not immediately clear-cut at first sight, but actually a declaratory clause (there shall be implied)</td>
<td>Yes</td>
</tr>
<tr>
<td>(47)</td>
<td></td>
<td>50(1)</td>
<td>&quot;There shall be implied in any legal charge or equitable mortgage by deed......a power......to appoint a receiver......&quot;</td>
<td>- ditto -</td>
<td>Yes</td>
</tr>
<tr>
<td>(48)</td>
<td></td>
<td>51(1)</td>
<td>&quot;...... there shall be implied in any legal charge or equitable mortgage by deed, the powers...... mentioned in the Fourth Schedule.&quot;</td>
<td>- ditto -</td>
<td>Yes</td>
</tr>
<tr>
<td>(49)</td>
<td></td>
<td>56(3)</td>
<td>&quot;In a receipt mentioned in subsection (1), there shall be implied ...... a covenant by the person who executes the receipt.&quot;</td>
<td>- ditto -</td>
<td>Yes</td>
</tr>
</tbody>
</table>
Appendix 3 - Binomial and Multinomial Phrases

(1) a better title than that assigned or any better title than that enjoyed by the assignor;
(2) a Government lease or a right to a Government lease;
(3) a mortgagee or a receiver;
(4) a receiver or receivers;
(5) a recital, statement or description of any fact, matter or party;
(6) acts and defaults;
(7) all rights, interests, privileges, easements, or appurtenances in the land;
(8) all rights .... in, over, belonging or appertaining to that land;
(9) an assignment, a mortgage by assignment, or a legal charge;
(10) annexed and incident to;
(11) any document of title, mortgage, declaration, or power of attorney;
(12) any legal charge or equitable mortgage by deed;
(13) any prior estates, interests and rights;
(14) any term or other interest;
(15) appoint and remove;
(16) arising out of consequent on;
(17) assign or underlet;
(18) assignment or legal charge;
(19) assignment, mortgage or charge;
(20) at his cost and charge;
(21) attested .... or certified;
(22) breach of covenant, condition or other matter;
(23) by action or otherwise;
(24) by action, distress or otherwise;
(25) by assignment or otherwise by deed;
(26) ceased or expired;
(27) costs, charges and expenses;
(28) costs, expenses, damages, compensation, penalty, or otherwise;
(29) covenant or condition;
(30) covenant or provision;
(31) covenant, proviso or stipulation;
(32) creating or disposing of an interest;
dated or made;
deed or thing;
demand and recover;
deriving title under or through him or them;
discharge and reassignment;
estate and interest;
estate or interest;
excluded, varied or extended;
executed and perfected;
executed or done or knowingly suffered ... any deed or thing;
for the whole term of the lease or any less term;
grant or refuse;
having regard to the proceedings and conduct of the parties ... and to all other circumstances;
impeached, charged, affected or incumbered in title;
in the employment of a solicitor and surveyor or valuer, or otherwise;
in the lessor's action ... or in any action brought by himself (the lessee);
in the name either of the mortgagor or the mortgagee;
in title, estate or otherwise;
including ... but excluding ...
interest, power or obligation;
is or has been;
is or may be;
joint and several;
licence or permit;
mortgage money, interest and costs;
mortgage, charge or lien;
mortgagor and mortgagee;
observed or performed;
principle money and interest;
proceedings and conduct;
protection, powers and remedies;
reassigned and discharged and replaced;
(65) recovered, received, enforced and taken advantage of;
(66) re-entry or forfeiture;
(67) remuneration, costs, charges and expenses;
(68) rents, costs, expenses, damages, compensation;
(69) rents, taxes, rates, and other outgoings;
(70) rights or interest;
(71) rights and obligations;
(72) rights or obligations;
(73) second or subsequent;
(74) share or interest;
(75) share, interest or land;
(76) surrender or release;
(77) the covenant by a person who assigns, and the covenant by a person to whom an assignment is made;
(78) the covenantee and his successors in title and persons deriving title under or through him or them;
(79) the mortgaged land or any security comprised in the mortgage;
(80) the mortgaged property or any part thereof;
(81) the property comprised in the lease or any part thereof;
(82) the sale or other dealing with the mortgaged land;
(83) to assign as trustee, confirmor, mortgagee, legal chargee, personal representative of a deceased person, or under an order of court;
(84) to remedy the breach and to make reasonable compensation for the breach;
(85) under any guarantee, suretyship or otherwise;
(86) under any Ordinance or by operation of law;
(87) unless and until;
(88) upon the lessee assigning, subletting or doing any other specified act;
(89) used, held, occupied or enjoyed with that land;
(90) validity and priority;
(91) varied or extended;
(92) waived or released;
(93) whereby or by means whereof;
(94) written on or annexed to;
Appendix 4

Some Examples of Complex Binomials Contained in Certain Sections of the Ordinance and Referred to in 4.2.4

Example 1 (Section 13(1))
"... a purchaser ... shall be entitled to ... require from the vendor, as proof of title to that land, only production of the Government lease relating to the land sold and-

(a) proof of title to that land-

(i) where the grant of the Government lease was less than 15 years before the contract of sale of that land, extending for the period since that grant; or

(ii) in any other case, extending not less than 15 years before the contract of sale of that land commencing with an assignment, a mortgage by assignment or a legal charge, each dealing with the whole estate and interest in that land;

(b) production of any document referred to in the assignment, mortgage or charge mentioned in paragraph (a) creating or disposing of an interest, power or obligation, which is not shown to have ceased or expired and subject to which any part of that land is disposed of; and

(c) production of any power of attorney under which any document produced is executed where that document was executed less than 15 years before the contract of sale of that land."

Example 2 (Section 14(3))
"Where ... a person has a right to a Government lease upon compliance with any conditions precedent, he shall be deemed ... to have complied with those conditions-

(a) upon the issue by the Government of a certificate that those conditions have been complied with and the registration of that certificate in the Land Registry under the Land Registration Ordinance (Cap 128); or

(b) upon the endorsement by the Government on the Government lease of a note to the effect that those conditions have been complied with and the registration of a copy of that endorsement in the Land Registry under the Land Registration Ordinance (Cap. 128); or

(c) upon the entry on the register kept in the Land Registry under the Land Registration Ordinance (Cap 128) relating to the land of a note to the effect that those conditions have been complied with."

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Example 3 (Section 14 (4))

"Where a person has a right to a Government lease of any land and that right is not subject to any conditions precedent-

(a) the equitable interest under that right shall become a legal estate in that land as if held under a Government lease issued in accordance with that right; and

(b) for the purposes of section 42 and any other law, such a Government lease shall be deemed to have been issued on the commencement of the Conveyancing and Property (Amendment) Ordinance 1988 (31 of 1988) or on the date of the grant of that right, whichever is the later."

Example 4 (Section 29(2))

"Notwithstanding any such licence or permit-

(a) any right of re-entry contained in the lease remains in full force and is available as against any subsequent breach of covenant, condition or other matter not specifically authorized or waived, in the same manner as if no licence or permit had been granted; and

(b) any right of re-entry remains in force in all respects as if the licence or permit has not been granted, except in respect of the particular matter authorized to be done."

Example 5 (Section 29(3))

"Where in any lease there is a right of re-entry on the lessee assigning, subletting or doing any other specified act without a licence or permit, and a licence or permit is granted -

(a) to any one of 2 or more lessees to do any act, or to deal with his share or interest; or

(b) to any lessee, or to any one of 2 or more lessees to assign or underlet part only of the land, or to do any act in respect of part only of the land,

the licence or permit does not operate to extinguish the right of re-entry in case of any breach of covenant or condition by the co-lessee of another share or interest in the land, or by the lessee of the rest of the land (as the case may be) in respect of such share or interest or remaining land, ...”

Example 6 (Section 35(1))

"There shall be implied-

(a) in any assignment of the whole of the interest in land held under a Government lease, the covenant by a person who assigns, and the covenant by a person to whom an assignment is made, mentioned in Part I of the First Schedule;"
(b) in an assignment to a purchaser for valuable consideration, the covenants, by a person who is expressed to assign as beneficial owner, mentioned in Part II of the First Schedule;

(c) in an assignment by way of voluntary disposition, the covenant, by a person who is expressed to assign as donor, mentioned in Part III of the First Schedule;

(d) in any assignment, the covenant, by a person who is expressed to assign as trustee, confirmor, mortgagee, legal chargee, personal representative of a deceased person or under an order of court, mentioned in Part IV of the First Schedule; and

(e) in a legal charge, the covenants, by a person who is expressed to charge as beneficial owner, mentioned in Part V of the First Schedule."

Example 7 (Section 54)
“Any money received ... from the sale or other dealing with the mortgaged land ... shall be applied according to the following priority-

(a) in discharge of all rent, taxes, rates and other outgoings due and affecting the mortgaged land;

(b) unless the mortgaged land is sold subject to a prior incumbrance, in discharge of that prior incumbrance;

(c) in payment of the receiver's lawful remuneration, costs, charges and expenses and all lawful costs and expenses properly incurred in the sale or other dealing;

(d) in payment of mortgage money, interest and costs due under the mortgage, ...”

Example 8 (Section 56(1))
“A receipt, written on or annexed to a mortgage deed, for all money secured by that mortgage, which is executed by the mortgagee or the person in whom the mortgage is vested and who is legally entitled to give a receipt for the mortgage money, shall operate, without any surrender or release as a discharge and, where applicable, reassignment of the mortgaged property from all principal money and interest secured by, and from all claims under, that mortgage, but without prejudice to any term or other interest which is paramount to the estate or interest of the mortgagee or other person in whom the mortgage is vested.”

Example 9 (Section 58(1))
“A right of re-entry or forfeiture ... shall not be enforceable ... unless and until the lessor serves on the lessee a notice-

(a) specifying the particular breach complained of; and

(b) if the breach is capable of remedy, requiring the lessee to remedy the breach; and
(c) specifying the compensation, if any, which the lessor requires in respect of the breach, and the lessee fails, within a reasonable time thereafter, to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money, to the satisfaction of the lessor, for the breach.”

Example 10 (Section 58(2))
“Where a lessor is proceeding ... to enforce such a right of re-entry or forfeiture, the lessee may, in the lessor's action ... or in any action brought by himself, apply to the court for relief; and the court may grant or refuse relief, as the court, having regard to the proceedings and conduct of the parties under the foregoing provisions of this section, and to all the other circumstances, thinks fit; and in case of relief may grant it on such terms, if any, as to costs, expenses, damages, compensation, penalty, or otherwise, including the granting of an injunction to restrain any like breach in the future, as the court, in the circumstances of each case, thinks fit.”

Example 11 (Section 58(4))
“Where a lessor is proceeding ... to enforce a right of re-entry or forfeiture under any covenant, proviso, or stipulation in a lease, or for non-payment of rent, the court may ... either in the lessor's action (if any) or in any action brought by such person for that purpose, make an order vesting, for the whole term of the lease or any less term, the property comprised in the lease or any part thereof in any person entitled as under-lessee to any estate or interest in such property upon such conditions as to execution of any deed or other document, payment of rent, costs, expenses, damages, compensation, giving security, or otherwise, as the court in the circumstances of each case may think fit ...”
Appendix 5 - Use of Nominalization in the Corpus

a breach of any covenant or condition; (1): s.58 (1)

a discharge and reassignment of the mortgaged property; (1): s.56 (1)

a mortgage of a legal estate; (2): s.44 (1) & s. 44 (3)

a recital, statement and description of any fact, matter or party...; (1): s.13 (4)

a right of re-entry...; (2): s.29 (3)

a right of re-entry or forfeiture ...; (4): s.58 (1), 58 (2), 58 (3) & 58 (4)

an assignment to a purchaser for valuable consideration; (1): s.35 (1)(b)

any acquisition by assignment or otherwise of the right...; (1): s.31 (4)

any assignment by way of voluntary disposition; (1): s.35 (1)(c)

any assignment of the whole of the interest in land; (1): s.35 (1)(a)

any breach of covenant or condition...; (1): s. 29 (3)

any default by the mortgagor; (1): 44 (2)

any right of re-entry...; (3): s.29 (2)(a), 29 (2)(b) and 29 (3)

any severance of the reversionary estate; (1): s. 31 (4)

any subsequent breach of covenant, condition or other matter; (1): s. 29 (2)(a)

assignment of the legal estate; (2): s.44 (2) & 44 (3)

by operation of law; (1): s.44 (8)

capable of remedy; (2): s.58 (1)

compliance with those conditions; (5): s.14 (1)(twice), 14 (2), 14 (3) and 14 (1)(b)

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1 Please note the following use of symbols in this appendix:
(a) **Underlined:** The nominal element in each nominal group;
(b) *Italics* (for nominal groups of Category One only): The prepositional phrase that is part of the nominal group and comprises the NP2.
(c) *In bold italics* (for nominal groups of Category One only): A postmodifier within a nominal group inserted between NP1 and the prepositional phrase comprising NP2.
(d) **Figures in bold and in brackets:** The number of identical entries of that particular nominal group in the corpus.
(e) **The section number appearing after the figure in bold:** The relevant section(s) of the Ordinance in which that particular nominal group appears in the Ordinance.
every condition of re-entry; (1): s. 31 (1)

execution of any deed or other documents; (1): s.58 (4)

in case of relief; (1): s.58 (2)

in discharge of; (2): s.54 (a) & (b)

in payment of; (2): s.54 (c) & (d)

non-payment of rent; (1): s.58 (4)

on application by any person...; (1): s.58 (4)

on its repayment (= on the repayment of the mortgage money); (2): s.50 (1) & 51 (1)

payment of rents, costs, ... or otherwise; (1): s.58 (4)

performance of the terms of a mortgage; (1): s.56 (2)

production of any document...; (1): s.13 (1)(b)

production of any power of attorney; (1): s.13 (1)(c)

production of the Government lease; (1): s.13 (1)

proof of title concerning the parties to that contract; (1): s.13 (4)

proof of title to any land; (2): s. 13 (3) & s. 13 (4A)

proof of title to that land; (2): s.13 (1)

severance of that reversionary estate; (1): s.31 (1)

the commencement of the ... Ordinance 1988; (1): s. 14 (4)(b)

the commencement of this section; (16): s. 13 (5), 14(2), 14 (4)(b), 29(4), 31 (4)(twice), 35 (3), 44 (1), 44 (2), 44 (3)(twice), 44 (7), 50 (9), 51 (5), 56 (6)(twice)

the condition of re-entry or forfeiture ...; (2): s.31 (3)

the discharge of any mortgage; (1): s. 56 (6)

the employment of a solicitor...; (1): s.58 (3)

the endorsement by the Government on the Government lease of a note; (1): s.14 (3)(b)

the entry on the register kept in the Land Registry under the Land Registration Ordinance relating to the land of a note ...; (1): s.14 (3)(c)
the equity of redemption; (1): s.44 (2)

the execution of that document; (2): s.13 (4A)(ii) & s.13 (4A)(iii)

the exercise of those powers; (1): s. 51 (4)

the grant of that right; (1): s. 14 (4)(b)

the grant of the Government lease…; (1): s.13 (1)(a)(i)

the granting of an injunction ; (1): s.58 (2)

the issue by the Government of a certificate; (1): s.14 (3)(a)

the operation of any severance of the reversionary estate; (1): s.31 (4)

the possession by him of any document…; (2): s. 44 (9)

the possession of any documents; (1): 44 (4)(a)

the possession of the deeds of title; (1): s.44 (6)

the powers … relating to foreclosure; (1): s.44 (2)

the production of any document; (1): s.13 (2)

the registration of a copy of that endorsement; (2): s.14 (3)(a) & s.14 (3)(b)

the request of the lessee; (1): s.58 (3)

the sale or other dealing with the mortgaged land; (3): s.54, 54 (c) & 54 (d)

the truth of that recital, statement or description; (1): s.13 (4)

to the satisfaction of…; (1): s.58 (1)

under seal; (1): s.56 (5)
Appendix 6 - Preparatory Qualifications in the Corpus

(A) Qualifications Describing Cases
(1) "where this section requires the production of any document," (1): s 13 (2)

(2) "where any document produced... contains ...."); (1): s.13 (3)

(3) "Where any document is or has been produced by a vendor..."; (1): s.13 (4A)

(4) "where the grant of the Government lease was less than 15 years before the contract of sale of that land," (1): s.13 (1)(a)(i)

(5) "where that document was executed less than 15 years before the contract of sale of that land." (1): s.13 (1)(c)

(6) "Where a person has a right to a Government lease of any land upon compliance with any conditions precedent,“ (1): s.14 (1)

(7) "Where ... a person has a right to a Government lease upon compliance with any conditions precedent,” (2): s.14 (2) & 14 (3)

(8) "Where a person has a right to a Government lease of any land,”
   (2): s.14 (4) & 14 (5)

(9) “where a person has a Government lease, or a right to a Government lease, of any land,” (1): s.14 (6)

(10) “Where a licence or permit is granted to a lessee to do any act,” (1): s.29 (1)

(11) “Where in any lease there is a right of re-entry on the lessee assigning.....without a licence or permit,” (1): s.29 (3)

(12) “Where the person ... becomes entitled ... by assignment or otherwise,”
   (1): s.31 (3)

(13) “where the mortgaged land is mortgaged by way of legal charge,” (1): s.44 (5)

(14) “where the mortgage money has become due,” (1): s.50 (1)

(15) “Where the mortgage is contained in more than one deed,” (1): s.56 (4)

(16) “Where a lessor is proceeding ... to enforce such a right of re-entry or forfeiture,”
   (2): s.58 (2) & 58 (4)

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2 Please note the following use of symbols in this appendix:
(a) The number preceding each qualification: The instance number.
(b) Figures in bold and in brackets: The total number of identical entries of that particular qualification in the corpus.
(C) The section number(s) appearing after the figure in bold: The relevant section(s) of the Ordinance in which that particular qualification appears in the Ordinance.
(17) “whether that deed was executed before or after the commencement of this section,” (1): s.56 (6)

(18) “without prejudice to any liability affecting a covenanter or his estate.” (1): s.31 (1)

(19) “without prejudice to any term or other interest...” (1): s.56 (1)

(20) “Upon the commencement of this section,” (1): s.44 (3)

(21) “Unless the contrary intention is expressed, ....” (5): s.13 (1), 35 (1D), 44 (6), 51 (1) and 56 (3)

(22) “Unless the contrary intention is expressed in the assignment,” (1): s.16 (1)

(23) “Under a mortgage effected by a legal charge,” (1): s.44 (2)

(24) “notwithstanding that he becomes so entitled after the condition of re-entry ... has become enforceable,” (1): s.31 (3)

(25) “notwithstanding severance of that reversionary estate,” (1): s.31 (1)

(26) “in case of relief” (1): s.58 (2)

(27) “in case of any breach of covenant or condition by the co-lessee of any other share...” (1): s.29 (3)

(28) “in any other case,” (1): s.13 (1)(a)(ii)

(29) “if the breach is capable of remedy,” (1): s.58 (1)

(30) “if it is capable of remedy,” (1): s.58 (1)

(31) “and that right is not subject to any conditions precedent,” (1): s.14 (4)

(32) “and that land is partitioned by assignment or otherwise by deed,” (1): s.14 (5)

(33) “and that document purports to have been executed... under a power of attorney,” (1): s.13 (4A)

(34) “and additional land is granted to that person...” (1): s.14 (6)

(35) “and a licence or permit is granted .....” (1): s.29 (3)

(36) “After the commencement of this section,” (1): s.44 (1)

(37) “unless the contrary is proved,” (1): s.13 (3)

(38) “… and unless the contrary is proved,” (1): s.13 (4)
(39) “unless otherwise expressed,” (1): s.29 (1)

(40) “unless otherwise specified in the licence or permit.” (1): s.29 (1)

(41) “unless the mortgaged land is sold subject to a prior incumbrance,” (1): s.54 (b)

(42) “except in respect of the particular matter authorized to be done.” (1): s.29 (2)(b)

(43) “subject to the term granted by the lease,” (1): s.31 (2)

(44) “Subject to any agreement between the mortgagor and the mortgagee,” (1): s.44 (5)

(B) Qualifications Specifying Conditions

(45) “then, upon compliance with those conditions —” (1): s.14 (1)

(46) “upon compliance with those conditions.” (1): s.14 (1)(b)

(47) “upon compliance with any conditions precedent,” (1): s.14 (3)

(48) “upon the issue by the Government of a certificate that …” (1): s.14 (3)(a)

(49) “(upon) the registration of …” (2): s. 14 (3)(a) & (b)

(50) “upon the endorsement by the Government on the Government lease of a note to the effect that…” (1): s.14 (3)(b)

(51) “upon the entry on the register kept on the Land Registry … relating to the land of a note to the effect that…” (1): s.14 (3)(c)

(52) “Upon performance of the terms of a mortgage,” (1): s.56 (2)

(53) “unless and until the lessor serves on the lessee a notice….” (1): s.58 (1)

(54) “and the lessee fails … to remedy the breach…” (1): s.58 (1)

(55) “on any application by any person claiming as underlessee any estate or interest in the property comprised in the lease or any part thereof, either in the lessor’s action (if any) or in any action brought by such person for that purpose” (1): s.58 (4)

(C) Qualifications Specifying Volitional Control

(56) “as the court... thinks fit,” (1): s.58 (2)

(57) “the court may grant it on such terms… as the court... thinks fit,” (1): s.58 (2)

(58) “the court may... make an order... upon such conditions... as the court... may think fit,” (1): s.58 (4)
Schedule 1 — The Bilingual Corpus

Conveyancing and Property Ordinance, Cap. 219, Laws of Hong Kong

13. (1) Unless the contrary intention is expressed, a purchaser of land shall be entitled to
require from the vendor, as proof of title to that land, only production of the Government
lease relating to the land sold and—

土地業權的證明，以及—

(a) proof of title to that land—

(i) where the grant of the Government lease was less than 15 years before the
如該土地的政府租契在售賣合約日期前15年內批出，
contract of sale of that land, extending for the period since that grant; or
則由該政府租契批出日期起，至該土地售賣合約日起止的整段期間，或
(ii) in any other case, extending not less than 15 years before the contract of sale of
如屬其他情況，則延及該土地售賣合約日期前不少於15年的期間，
that land commencing with an assignment, a mortgage by assignment or a legal
若有關業權證明文件必須為持據契、以轉讓方式作出的按揭文件
charge, each dealing with the whole estate and interest in that land;
或法定押記文件, 每份該等文件須為關於該土地的全部業權和權益

(b) production of any document referred to in the assignment, mortgage or charge

(a) 段所述的契據契、按揭文件或押記文件及提述的任何用以
mentioned in paragraph (a) creating or disposing of an interest, power or obligation,
設定或處置某項權益、權力或棄置的文件，而該項權益、權力或棄置並
which is not shown to have ceased or expired and subject to which any part of that
顯示已經終止或期滿，而該上地任何部分的處置是
land is disposed of; and
受其規限者；及

(c) production of any power of attorney under which any document produced is

如所出示的任何文件是在售賣合約日期前
executed where that document was executed less than 15 years before the contract of
15年內根據授權書簽立者，則須出示有關授權書。
sale of that land.
(2) Where this section requires the production of any document, it shall be sufficient to
produce a copy—
即已足夠一

(a) attested, before 1 November 1984, by 2 solicitors' clerks; or
在1984年11月1日前經2名律師助理證明文件為真正副本者；或
(b) certified by a public officer or a solicitor,
經公職人員或律師核證為真正副本者。

(3) Subject to subsection (1), where any document produced as proof of title to any land
在符合第(1)款的規定下，如出示作為土地業權證明的文件載有
contains a recital of any document dated or made before the date from which a vendor is
與任何文件有關的敘文，而所述文件的日期或其訂立日期，是發買方必須
required to prove title, the purchaser of that land shall assume, unless the contrary is proved,
證明業權的日期為早，則除非相反證明成立，否則該土地買方須假定一
that—

(a) the recital is correct;
該敘文正確；
(b) the recital gives all the material contents of the document recited; and
該敘文已載舉所述文件的一切關鍵性內容；及
(c) the document recited was duly executed and perfected.
所述文件已妥為簽立及在法律上有效。

(4) A recital, statement, and description of any fact, matter or party contained in any
任何與土地有關的業權文件、抵押文件撥付書或授權書，
document of title, mortgage, declaration or power of attorney relating to any land and dated
或載有關任何事實或項或任何一方有關的敘文、陳述及說明，
or made not less than 15 years before the contract of sale of that land shall, for the purpose of
或在出售該土地的合同前不少于
any question as to proof of title concerning the parties to that contract and unless the contrary
於15年內，則除非相反證明成立，否則就有關該合同各方的業權證明
is proved, be sufficient evidence of the truth of that recital, statement and description.
所述敘文、陳述及說明須作為其真實性的充分證據。
(4A) Where any document is or has been produced by a vendor as proof of title to any
land and that document purports to have been executed, not less than 15 years before the
contract of sale of that land, under a power of attorney, it shall for the purposes of any
question as to the title to that land be conclusively presumed —

(a) as between the parties to that contract; and

(b) in favour of the purchaser under that contract as against any other person,

that the power of attorney—

(i) was validly executed;

(ii) was in force at the time of the execution of that document; and

(iii) validly authorized the execution of that document. (Added 31 of 1988 s.6)

(5) This section affects only the rights and obligations of the parties to a contract for the
sale of land entered into after the commencement of this section.

14. (1) Where a person has a right to a Government lease of any land upon compliance with
any conditions precedent, then, upon compliance with those conditions —

(a) the equitable interest under that right shall become a legal estate in that land as if

held under a Government lease issued in accordance with that right; and

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(b) for the purposes of section 42 and any other law, such a Government lease shall be deemed to have been issued upon compliance with those conditions.

(2) Where, under an agreement for a Government lease entered into before 1 January 1970, a person has a right to a Government lease upon compliance with any conditions precedent he shall be deemed, for the purposes of this section, to have complied with those conditions on the commencement of this section.

(3) Where under an agreement for a Government lease entered into on or after 1 January 1970, a person has a right to a Government lease upon compliance with any conditions precedent, he shall be deemed, for the purposes of this section, to have complied with those conditions—

(a) upon the issue by the Government of a certificate that those conditions have been complied with and the registration of that certificate in the Land Registry under the Land Registration Ordinance (Cap. 128); or

(b) upon the endorsement by the Government on the Government lease of a note to the effect that those conditions have been complied with and the registration of a copy of that endorsement in the Land Registry under the Land Registration Ordinance (Cap. 128); or
(c) upon the entry on the register kept in the Land Registry under the Land Registration Ordinance (Cap 128) relating to the land of a note to the effect that those conditions have been complied with.

(4) Where a person has a right to a Government lease of any land and that right is not subject to any conditions precedent, subject to any conditions precedent, the equitable interest under that right shall become a legal estate in that land as if

held under a Government lease issued in accordance with that right; and

(a) the equitable interest under that right shall become a legal estate in that land as if

(b) for the purposes of section 42 and any other law, such a Government lease shall be deemed to have been issued on the commencement of the Conveyancing and Property (Amendment) Ordinance 1988 (31 of 1988) or on the date of the grant of that right, whichever is the later.

(5) Where a person has a right to a Government lease of any land and that land is partitioned by assignment or otherwise by deed, this section shall apply to each part of that land constituted by that partition, as it applies to the whole of that land, as if there were a right to a Government lease of each such part.

(6) Where a person has a Government lease, or a right to a Government lease, of any land and additional land is granted to that person with the intent that he should hold it as part of the land under the same Government lease, the rights under that lease apply to the additional land as if it had been granted by the same grantee under a different Government lease.
the land leased, this section shall apply to that additional land as if that additional land were
part of the land originally leased and held subject to any further conditions precedent imposed
when that additional land was granted.

16. (1) Unless the contrary intention is expressed in the assignment, an assignment shall
operate to assign, with the land, all rights, interests, privileges, easements or appurtenances
in, over, belonging or appertaining to that land or at the time of the assignment used, held,
occupied or enjoyed with that land and things attached to the land or permanently fastened to
anything attached to the land.

(2) This section shall not operate to give to any person a better title than that assigned or
any better title than that enjoyed by the assignor.

29. (1) Where a licence or permit is granted to a lessee to do any act, the licence or permit,
unless otherwise expressed, extends only to—

(a) the permission actually given; or

(b) the specific breach of any provision or covenant referred to; or

(c) any other matter thereby specifically authorized to be done,

and the licence or permit does not prevent any proceeding for any subsequent breach unless
otherwise specified in the licence or permit.
(2) Notwithstanding any such licence or permit—

(a) any right of re-entry contained in the lease remains in full force and is available as

against any subsequent breach of covenant, condition or other matter not

specifically authorized or waived, in the same manner as if no licence or permit had

other than the licence, permit or other matter had been granted; and

(b) any right of re-entry remains in force in all respects as if the licence or permit has

not been granted, except in respect of the particular matter authorized to be done,

but such licence or permit is subject to such other or additional matters as may be

consistent with the licence or permit granted.

(3) Where in any lease there is a right of re-entry on the lessee assigning, subletting or
doing any other specified act without a licence or permit, and a licence or permit is granted—

(a) to any one of 2 or more lessees to do any act, or to deal with his share or interest; or

(b) to any lessee, or to any one of 2 or more lessees to assign or underlet part only of the

land, or to do any act in respect of part only of the land,

the licence or permit does not operate to extinguish the right of re-entry in case of any breach

of covenant or condition by the co-lessee of another share or interest in the land, or by the

lessee of the rest of the land (as the case may be) in respect of such share or interest or

remaining land, but the right of re-entry remains in force in respect of the share, interest or

land not the subject of the licence or permit.
(4) This section applies to a licence or permit granted before or after the commencement
of this section.

(5) Nothing in this section shall affect the provisions of the Government Rights (Re-entry
and Vesting Remedies) Ordinance (Cap 126).

31. (1) Rent reserved by a lease, and the benefit of every covenant or provision therein
contained, having reference to the subject-matter thereof, and on the lessee's part to be
observed or performed, and every condition of re-entry and other condition therein contained,
shall be annexed and incident to and shall go with the reversionary estate in the land, or in
any part thereof, immediately on the term granted by the lease, notwithstanding
severance of that reversionary estate, and without prejudice to any liability affecting a
covenantor or his estate.

(2) Any rent, covenant or provision mentioned in subsection (1) shall be capable of being
recovered, received, enforced, and taken advantage of, by the person from time to time
entitled, subject to the term granted by the lease, to the income of the whole or any part, as
the case may require, of the land leased.

(3) Where the person mentioned in subsection (2) becomes entitled as mentioned in that
subsection by assignment or otherwise, the rent, covenant or provision mentioned in
such a manner that the person is entitled to the same, subject to the terms of the lease,
and to the extent of any provision therein.
subsection (1) may be recovered, received, enforced or taken advantage of by him.

notwithstanding that he becomes so entitled after the condition of re-entry or forfeiture has become enforceable, but this subsection does not render enforceable any condition of re-entry or other condition waived or released before such person becomes entitled as aforesaid.

(4) This section applies to leases made before or after the commencement of this section, but does not affect the operation of-

(a) any severance of the reversionary estate; or

(b) any acquisition by assignment or otherwise of the right to receive or enforce any rent covenant or provision,

effect before the commencement of this section.

(5) Nothing in this section shall affect the provisions of the Government Rights (Re-entry and Vesting Remedies) Ordinance (Cap 126).

35. (1) There shall be implied-

(a) in any assignment of the whole of the interest in land held under a Government lease, the covenant by a person who assigns, and the covenant by a person to whom an assignment is made, mentioned in Part I of the First Schedule;
(b) in an assignment to a purchaser for valuable consideration, the covenants, by a person who is expressed to assign as beneficial owner, mentioned in Part II of the First Schedule;

(c) in an assignment by way of voluntary disposition, the covenant, by a person who is expressed to assign as donor, mentioned in Part III of the First Schedule;

(d) in any assignment, the covenant, by a person who is expressed to assign as trustee, confirmor, mortgagee, legal chargee, personal representative of a deceased person, or under an order of court, mentioned in Part IV of the First Schedule; and

(e) in a legal charge, the covenants, by a person who is expressed to charge as beneficial owner, mentioned in Part V of the First Schedule.

(1A) The covenants implied under subsection (1)(a) shall be covenants to which section 41 applies.

(1B) The benefit of the covenants implied under this section shall run with the land and shall be enforceable by the covenantee and his successors in title and persons deriving title under or through him or them.

(1C) In paragraphs (a) to (d) of subsection (1), "assignment" (轉讓) does not include a legal charge.
(1D) Unless the contrary intention is expressed, the liability of joint parties to any
assignment or legal charge in respect of the covenants mentioned in subsection (1) shall be
joint and several.

(2) The covenants implied under this section may be excluded, varied or extended in the
assignment or legal charge.

(3) This section shall not affect any assignment or legal mortgage executed before the
commencement of this section.

44. (1) After the commencement of this section, a mortgage of a legal estate, including any
second or subsequent mortgage of that legal estate, may be effected at law only by a charge
by deed expressed to be a legal charge.

(2) Under a mortgage effected by a legal charge, the mortgagor and the mortgagee shall,
subject to this Ordinance, have the same protection, powers and remedies (including but not
limited to those relating to foreclosure and the equity of redemption but excluding the power
of the mortgagee to enter into possession before any default by the mortgagor) as if the
mortgage had been effected by way of assignment of the legal estate before the
commencement of this section.

様。
(3) Upon the commencement of this section, a mortgage of a legal estate effected by way of assignment of the legal estate before the commencement of this section shall be deemed, for the purposes of this Ordinance, to be reassigned and discharged and replaced by a legal charge in the same terms and having the same validity and priority, subject to this Ordinance, as the mortgage which it replaces.

(4) Subsection (3) does not affect the mortgagee's right to the possession of any documents, or the rights or obligations, under any guarantee, suretyship or otherwise, ancillary to the mortgage replaced under that subsection.

(5) Subject to any agreement between the mortgagor and the mortgagee, where the mortgaged land is mortgaged by way of legal charge, the mortgagor may execute a second or subsequent charge against the mortgaged land by a legal charge.

(6) Unless the contrary intention is expressed, the mortgagee under the first mortgage of a legal estate shall be entitled to possession of the deeds of title relating to the mortgaged land.

(7) This section does not affect any mortgage, including a mortgage by sub-demise, effected before the commencement of this section which is not replaced under subsection (3).
(8) This section does not affect any mortgage, charge or lien arising under any Ordinance or by operation of law.

(9) This section does not affect the right or interest of any person arising out of or consequent on the possession by him of any documents relating to a legal estate in land.

50. (1) There shall be implied in any legal charge or equitable mortgage by deed, where the mortgage money has become due, a power exercisable in writing by the mortgagee and by any person entitled to give a receipt for the mortgage money on the repayment to appoint a receiver or receivers of the mortgaged land and the income thereof, to remove any receiver, appointed and appoint another in his place.

(2) Any receiver so appointed will be deemed the agent of the mortgagor and the mortgagor will be solely responsible for the receiver's acts and defaults.

(3) Any receiver so appointed may act in his own name or the name of the mortgagor.

(4) Where 2 or more receivers are appointed, the appointment shall be deemed to be a joint and several appointment.

(5) The mortgagee may, from time to time, fix the remuneration of the receiver and the receiver shall be entitled to retain out of any money received by him that remuneration and all costs, charges and expenses properly incurred by him as a receiver.
(6) Without prejudice to the powers mentioned in the Fourth Schedule, the receiver shall have power to demand and recover all the land of which he is appointed receiver and the income thereof, by action, distress, or otherwise, in the name either of the mortgagor or of the mortgagee, to the full extent of the estate or interest which the mortgagor could dispose of, and to give effectual receipts accordingly for the same.

(7) A person paying money to the receiver shall not be concerned to inquire whether any event has happened to authorize the receiver to act.

(8) The provisions of this section are subject to contrary intention expressed in the mortgage deed and may be varied or extended by the mortgage deed, and, as so varied or extended, shall have effect as if contained in this Ordinance.

(9) This section shall not apply to any mortgage executed before the commencement of this section.

51. (1) Unless the contrary intention is expressed, there shall be implied in any legal charge or equitable mortgage by deed, the powers, exercisable by the mortgagee, a receiver (acting personally or through their agents) and any person entitled to give a receipt for the mortgage money on its repayment, mentioned in the Fourth Schedule.
(2) Any power exercisable under a mortgage shall be subject to any prior estates,

根據任何按揭而可行使的任何權力均須受任何規限按揭土地

interests and rights to which the mortgaged land is subject.  

而又具優先權的產業權、權益及權利所規限。

(3) No power of sale shall empower a mortgagee or a receiver under an equitable

售賣權力並不使街平法按揭的承批人或接管人有權

mortgage, by virtue of that mortgage only, to assign the legal estate in the mortgaged land.

只憑循該按揭而將按揭土地的法定產業權轉讓。

(4) The powers implied by subsection (1), and the provisions of the Fourth Schedule

藉第(1)款隱含的權力，以及附表4與行使該等權力有關的

relating to the exercise of those powers may be varied or extended by the mortgage deed and,

條文均可由按揭契據予以更改或擴大，而經如此更改或擴大的

as so varied or extended, shall have effect as if contained in this Ordinance.

該等權力及條文，其效力猶如載於本條例者一様。

(5) This section shall not apply to any mortgage executed before the commencement of

本條不適用於在本條生效日期前簽立的任何按揭。

this section.

54. Any money received by a mortgagee or a receiver from the sale or other dealing with the

承批人或接管人售賣或以其他方式處理按揭土地或按揭

mortgaged land or any security comprised in the mortgage shall be applied according to the

所包括的任何抵押品而收到的款項，須按照下述優先次序

following priority—

(a) in discharge of all rent, taxes, rates and other outgoings due and affecting the

償還按揭土地有關的一切應，包括租金、稅項、差餉

mortgaged land;

及其他開支；

(b) unless the mortgaged land is sold subject to a prior incumbrance, in discharge of that

除非按揭土地的售賣受某項具優先權的產權負擔規限，

prior incumbrance;

否則須用於解除該項具優先權的產權負擔。
(c) in payment of the receiver's lawful remuneration, costs, charges and expenses and all
支付接管人的合法報酬、費用、收費及開支，以及用於賣貴或其他
lawful costs and expenses properly incurred in the sale or other dealing;
交易而通常招致的一切合法費用及開支。

(d) in payment of mortgage money, interest and costs due under the mortgage,
支付根據按揭應償付的按揭金、利息及費用，
and any residue shall be paid to the person who, immediately before any sale or
而任何餘餘款項須付給在緊接按揭或其他交易前有權利保有
other dealing, was entitled to the mortgaged land or authorized to give a receipt for
按揭土地的業權的人，或獲授權就售賣按揭土地的
the proceeds of the sale of that land.
得益發出收據的人。

56. (1) A receipt, written on or annexed to a mortgage deed, for all money secured by that
某宗按揭的承按人，或某宗按揭所屬，而又在法律上有關就按揭金發出
mortgage, which is executed by the mortgagee or the person in whom the mortgage is vested
收據的人，如在按揭契據上就以該按揭為保證的全部款項簽發收據，或將
and who is legally entitled to give a receipt for the mortgage money, shall operate, without
和誰是法律上可發出收據的抵押物，將不論在何種情況下，
any surrender or release as a discharge and, where applicable, reassignment of the mortgaged
具解除按揭的效用，如情況適合，則具有將按揭財產再轉讓的效用；
property from all principal money and interest secured by, and from all claims under, that
property from all principal money and interest secured by, and from all claims under, that
mortgage, but without prejudice to any term or other interest which is paramount to the estate
抵押，但未有違反任何條款或其他利益，必須先於該抵押
or interest of the mortgagor or other person in whom the mortgage is vested.
或該按揭所屬的人所擁有之抵押物或利益；

(2) Upon performance of the terms of a mortgage, a mortgagor shall be entitled, at his
按揭人在履行按揭條款後，有權獲發給第(1)款所述的收據；
cost and charge, to a receipt mentioned in subsection (1).
但所需的費用及收費，概由按揭人負貴。
(3) In a receipt mentioned in subsection (1), there shall be implied, unless the contrary
intention is expressed, a covenant by the person who executes the receipt that such person has
not executed or done, or knowingly suffered, or been party or privy to, any deed or thing,
whereby or by means whereof the mortgaged property or any part thereof is or may be
impeached, charged, affected or incumbered in title, estate or otherwise.

(4) Where the mortgage is contained in more than one deed, a receipt may, for the
purposes of this section, refer to all those deeds and be written on or annexed to one of those
deeds.

(5) A receipt under this section need not be under seal.

(6) This section applies to the discharge of any mortgage by deed, whether that deed was
executed before or after the commencement of this section, but only to discharges effected
after the commencement of this section.

58. (1) A right of re-entry or forfeiture under any proviso or stipulation in a lease for a breach
of any covenant or condition in the lease shall not be enforceable, by action or otherwise,
unless and until the lessor serves on the lessee a notice—

除非及至承租人向承租人送達以下的通知——
(a) specifying the particular breach complained of; and

指明某被投诉的违反事项；及

(b) if the breach is capable of remedy, requiring the lessee to remedy the breach; and

如该违反事项可予补救，则要求承租人就该违反事项作出补救；及

(c) specifying the compensation, if any, which the lessor requires in respect of the

指明承租人就该违反事项而要求的赔偿（如有的话），

breach,

and the lessee fails, within a reasonable time thereafter, to remedy the breach, if it is capable

並且承租人在其后一段合理时间内，亦没有对可予补救的违反事项

of remedy, and to make reasonable compensation in money, to the satisfaction of the lessor,

作出补救，亦没有就违反事项作出令承租人满意的合理金钱

for the breach.

赔偿。

(2) Where a lessor is proceeding, by action or otherwise, to enforce such a right of

承租人正以诉讼或其他方式强制执行收租权或收回租赁权的权力

re-entry or forfeiture, the lessee may, in the lessor’s action, if any, or in any action brought by

承租人可在承租人提出的诉讼（如有的话）中或在其自行提出的诉讼中向法院

himself, apply to the court for relief; and the court may grant or refuse relief, as the court,

申请宽免；法院可准予或拒绝宽免，按法院在考虑根据本条前述各项

having regard to the proceedings and conduct of the parties under the foregoing provisions of

having regard to the proceedings and conduct of the parties under the foregoing provisions of

this section, and to all the other circumstances, thinks fit; and in case of relief may grant it on

按系条所载情况而认为可能，并认为有关费用，开支，赔偿，赔偿，罚款或其他方面（包括发出

such terms, if any, as to costs, expenses, damages, compensation, penalty, or otherwise,

包括法院在每一具体情况下认为

including the granting of an injunction to restrain any like breach in the future, as the court, in

就有关命令及制定任何相同的违反事项（如有的话）的条款（如有的话）而

the circumstances of each case, thinks fit.

准予宽免。
(3) A lessor shall be entitled to recover as a debt due to him from a lessee, and in addition to damages (if any), all reasonable costs and expenses properly incurred by the lessor in the employment of a solicitor and surveyor or valuer, or otherwise, in reference to any breach giving rise to a right of re-entry or forfeiture which, at the request of the lessee, is waived by the lessor, or from which the lessee is relieved, under the provisions of this section.

(4) Where a lessor is proceeding by action or otherwise to enforce a right of re-entry or forfeiture under any covenant, proviso, or stipulation in a lease, or for non-payment of rent, or for breach of any condition or covenant, or for violation of any agreement contained in the lease, the court may, on application by any person claiming as under-lessee any estate or interest in the property comprised in the lease or any part thereof, either in the lessor's action (if any) or in any action brought by such person for that purpose, make an order vesting, for the whole term of the lease or any part thereof, the property comprised in the lease or any part thereof in any person entitled as under-lessee to any estate or interest in such property upon such terms as to execution of any deed or other document, payment of rent, costs, expenses, damages, compensation, giving security, or otherwise, as the court in the circumstances of each case may think fit, but in no case shall any such under-lessee be entitled to require a lease to be granted to him for any longer term than he had under his original sub-lease.
UNIVERSITY OF WESTERN SYDNEY
MACARTHUR

FACULTY OF EDUCATION AND LANGUAGES

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Student No. 98477281
SOME LINGUISTIC DEVICES IN LEGAL ENGLISH
THAT CAUSE PROBLEMS TO THE TRANSLATION OF
LEGISLATIVE TEXTS FROM ENGLISH TO CHINESE

Wai Hung KWOK
B.A., GradDip (I. & T.), NATTI 3

UNIVERSITY OF WESTERN SYDNEY, MACARTHUR
Faculty of Education and Languages
Spring 2000

Thesis submitted as part requirement for Master of Arts (Translation & Linguistics)
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Summary

Legal draftsmen achieve the dual characteristics of the legislative genre, viz. precision and all-inclusiveness, by the use of various linguistic devices, among which are (i) common words with uncommon meanings; (ii) binomial and multinomial expressions; (iii) nominalization; and (iv) qualifications. Whilst these four devices are very effective for their intended purpose, they often cause lexical, semantic or syntactic problem in the comprehension and translation of the texts. This thesis explores, by analysis of the corpus, the different nature and extent of such problems caused by the above four devices in the translation of legislative texts from English to Chinese.

Analyses in the thesis reveal that translation problems caused by the first two of the four devices mentioned above are mainly lexical in nature, though binomials contained in qualifications may sometimes also lead to semantic ambiguity. Translation problems arising from the use of nominalization or the use of qualifications are primarily semantic in nature, and are basically a problem of handling the various semantic units in the clauses. They can occur in both the comprehension stage and the actual rendering stage of the translation process. In the former, the problem lies in the difficulty in unpacking the various semantic units in the clauses, especially in the syntactically interrupted clauses where syntactic discontinuities are caused by the use of qualifications. In the latter, the difficulty lies in the syntactic re-arrangement of those units in the target language text in a manner syntactically acceptable to the target language while strictly in accordance with each semantic relationship intended by the source language text. Both the use of nominalization and the use of qualifications also give rise to some lexical problems.

The analyses in the thesis also highlight some of the linguistic and extra-linguistic pre-requisites for a translator of legislative texts, for whom a good common sense and sufficient basic legal knowledge are as important as an extremely high level of proficiency in both the source language and the target language.
CERTIFICATE

I, Wai Hung KWOK, hereby certify that this thesis is entirely my own work and has not been submitted for a higher degree to any other university or institution.

Signed: Wai Hung KWOK

Wai Hung KWOK

November 2000
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