VI International Forum on Teacher Education

Legal Translation Teaching Methods in Russian-English Language Pair

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Abstract

The paper presents a comparative research of various legal translation teaching methods within the framework of TBLT approach to TESOL. It aims to suggest the combination of relatively effective teaching methods, which may facilitate the learning of direct and reverse legal translation skill in Legal English ESP courses.

The author of the study periodically assessed the translation skills of learners at the Russian State University of Justice in Moscow until they completed one semester of a Legal English ESP course. The research data shows the progress of students' translating competence formation, exposes the structure of various translation subskills and evaluates the students' readiness for professional cross-cultural communication at the end of the first semester of training.

It is suggested that the optimal combination of methods is the balanced use of grammar-translation method, communicative method and case method, as well as tasks on the overcoming of 15 difficulties of legal translation in Russian-English language pair. Legal translation is defined as a language mediation (Garzone, Viezzi 2002) that creates an equivalent and adequate replacement of the source legal document in the target language. The difficulty of translation in Legal English is a situation of potential communicative failure that arises in the process of interpreting the meaning of a legal text in the source language (S.L.) and creating an adequate and equivalent text in the target language (T.L.).

Keywords: Legal Translation, Legal English, English for Specific Purposes (ESP), task-based approach, TESOL, TBLT.

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Introduction

In the context of English for Specific Purposes (ESP) Legal English programs, written-text translation proficiency is one of the essential professional interaction skills necessary for cross-cultural communication. Generally, students who translate better are more likely to complete their Legal English course successfully. Written assessment is a part of most job interviews in the field of law. The literature shows that such skills as word form recognition, disambiguation of legal terms and language comprehension proficiency significantly contribute to a student's ability to produce an adequate and equivalent (Catford, 1965) translation of a legal document.

Legal translation is developing in the situation of the rapid development of multilingual legal reference systems, algorithmizing of search for optimal translation solutions with the help of big data, computer tools for contextual analysis of legal texts (legal tech), professional services automation. There is a sharp increase in the body of legal texts in English encountered by Law graduates in practice, because Legal English has become a lingua franca of conflict of laws and international commercial arbitration.

However, to date, the number of studies of Legal English in Russian-English language pair concerning terminology, lexicology and syntax of legal documents is relatively small.

Purpose and objectives of the study

In this study, the author periodically assessed the translation skills of learners at the Russian State University of Justice in Moscow until they completed one semester of a Legal English ESP course. The data may increase understanding of the learners' translating competence formation at the point of entry to the ESP program and the end of the first semester. The purpose of the study was to measure the progress in various translation subskills during a task-based ESP program and to analyse the relative effectiveness of applicable teaching methods within the TBLT approach framework (Willis & Edwards, 2005). Besides, some results of the research may also contribute to the improvement of output quality of a machine translation systems and the development of legal tech software.

The study aims to suggest the optimal, scientifically grounded method of teaching legal translation in Russian-English language pair within the framework of the task-based approach, which may facilitate the learning of direct and reverse legal translation skills. One of the suggested TBLT methods is the use of tasks on overcoming the 15 underlying legal translation difficulties in Russian-English direct and reverse translation.

The research questions for the study are:

1)   Which methods of legal translation training and Legal English teaching form and reinforce the skill to translate an authentic legal document of high complexity in Russian-English language pair?

2)   To what extent do the tasks based on overcoming legal translation difficulties contribute to the formation of translating competence?

Literature review

As of today, there are two basic approaches to the definition of Legal English as an ESP. Mellinkoff (2004), for example, fundamentally stated that Legal English contains 'distinctive words, meanings, phrases, and modes of expression'. Numerous later scholars (Bhatia, 1997; Sãrcĕvić, 1997; Haigh, 2004; Schane, 2006; Cao, 2010) describe Legal English as an ESP by discussing its distinctive and unique linguistic features, such as accuracy/precision, implied clarity, ambiguity and the process of disambiguation, specialisation, conservatism, lexical and syntactic complexity. Some valuable observations on the nature of legal English are presented in forensic linguistics studies (Gibbons & Turell, 2008; Cao, 2010) and literature on ESP testing (Davies, 2001).

In literature on translation studies, there is a decades-long discussion about the nature of legal translation (Northcott, 2013). Some authors (Harvey, 2002) believe that statutory language is a form of ESP and, therefore, ESP methodology applies to it. Others (Sãrcĕvić, 1997) claim that legal translation is so challenging that only legally qualified translators may have a necessary level of translation competence. For example, Engberg (2010) presents empirical evidence of vast differences between continental and Common law systems in crucial terminological aspects of legal language.

This research follows the approach of Sãrcĕvić and Engberg, as legal translation is the subject intrinsically bound to the practice of law. Professional background knowledge is an integral part of a quality legal translation in Russian-English language pair. The legal systems of the two jurisdictions are unrelated, have different sources of law, traditions of interpreting the law, as well as the structure of legal proceeding (Williams, 2005). Moreover, some difficulties of legal translation require a comparative law analysis of various institutions of law.

Legal translation is a language mediation (Garzone & Viezzi, 2002) that creates an equivalent and adequate replacement of the source legal document in the target language.

Methodology

Research context.

For this research project, the student work analysis method, student interviewing and statistical method were adopted. The primary forms of training organisation were classroom classes (lectures and seminars) and independent project work of students to acquire legal translation skills.

For this research, teaching Legal English as an ESP is viewed within the TESOL/TBLT framework with all its limitations and capabilities. A 'task' is a learning tool 'directed at achieving some outcome, where language is the means but not the end' (Thornbury, 2017). This 'end goal' in Legal English translation training should be the effective professional cross-cultural communication. In this research, the author implemented three teaching methods of legal translation training.

1. Grammar-Translation Method (Cook, 2010) has been traditionally used in European universities to teach ancient languages. In case of legal English, it implies the learning of the following legal translation proficiency components:

1.   Compilation and studying of bilingual glossaries of legal terms;

2.   Reading and translation of authentic legal documents;

3.   Translation tasks containing excerpts from authentic legal documents;

4.   Analysis of legal translation difficulties in typical professional contexts;

5.   Formation of grammatical and textual parsing skills;

6.   Drafting skills in legal English.

In the field of legal translation training Grammar-Translation has several advantages, as it allows the students to accumulate vocabulary simultaneously with the analysis of the main difficulties of legal translation; develops the skill of intuitive translation comparisons; introduces the student to the linguistic features of legal documents within the target jurisdiction (the form, details and structure of a sample legal document).

The critics of Grammar-Translation usually point out insufficient speaking and oral translation practice. However, before any oral translation, it is vital to lay the foundation of the basic translation competence -

the ability to understand and translate into Legal English the 'legal terms of art' (Haigh, 2004). Students may acquire all necessary listening skills later, thanks to the distance learning methods (online lectures, ESOL listening exercises).

At the same time, further oral translation practice may start during the second semester of learning. If a training program does not have a "Grammar-Translation stage", students with a relatively low level of foreign language proficiency (B1 and lower) must simultaneously overcome two barriers – a general language barrier and an ESP barrier. As a result, they may develop a lower motivation for learning activities – a problem that has been a bane of Grammar Translation for centuries.

2. Communicative method (Brown & Rice, 2007) is an integral part of oral legal translation training and TBLT in general. Historically, TBLT is an 'offspring' of Communicative method. In teaching legal English, it encourages the use of active vocabulary in typical communicative situations that a lawyer may face in legal practice. Cases of client negotiation, contract agreement, drafting of a memorandum or speaking in a court of law are suitable for an ESP course program as pre-communicative and communicative activities. Communicative method combined with case study method helps to explain the grammar and syntactical difficulties of oral legal translation in a professional setting.

A 'weak' form of TBLT (Prabhu, 1987; Ellis, 2003; Willis & Edwards, 2005) may be a productive method of teaching legal English. In 'weak' TBLT activities, the teacher may prime the students with 'core' legal vocabulary or grammatical constructions to overcome the 15 difficulties of legal translation.

The difficulty of translation in Legal English is a situation of potential communicative failure that arises in the process of interpreting the meaning of a legal text in the source language (S.L.) and creating an adequate and equivalent text in the target language (T.L.).

3. Case study method for teaching legal translation involves reproducing in classroom training a typical situation of professional cross-cultural communication in a foreign language. As a rule, case analysis should precede all business simulation games. Current case law of a target jurisdiction woven into case materials selected for training contributes significantly to the background knowledge building in a classroom environment. Using a pre-designed training scenario, a teacher acts as a game master and participant of a business simulation game based on frame modelling (Fillmore, 1982) and situation analysis (Van Dijk, 1985) methodologies. The purpose of a business game is to find the optimal solution for a relevant case, which simultaneously becomes a translation case, thus developing students' foreign language competency (speaking, listening, production of the written text and reading).

The rules of a business simulation game and the distribution of roles should be in strict accordance with legal practice and current legislation of a relevant jurisdiction. Videos of trials, widely available now on the Internet today, are particularly helpful for this purpose. Post-game discussions of legal cases follow the classical 'Socratic method', allowing for an in-depth analysis of all potential case outcomes.

Participants

In this research data is drawn from a three-year-long study of a one-year (two-semester) Legal English (Common law of England and Wales) program offered at the Russian State University of Justice, a large institution of higher education located in Moscow, Russia, affiliated with the Supreme Court of Russia. Legal English is an elective course for public international law students in both the fall and spring semesters. It is available to all LLB students who meet basic entry requirements (B1 general English and basic training in law). Legal English is taught with an emphasis on legal translation competence by two ESOL-certified (C2) lecturers who have expertise in linguistics and law.

The experimental part of the study consisted of 2 stages:

1)　　　Teaching the written-text translation of non-adapted legal documents in Russian-English language pair.

2)　　　Evaluation of the suggested combination of methods.

The effectiveness of the suggested combination of methods was tested experimentally with the use of a direct and reverse translation task given to students at the end of the first semester of legal translation training. The control task was carried out in writing by ten groups of students with Intermediate (B1) and Advanced (C1) levels of general English proficiency. All groups were trained in 2018-2020 using the identical ESP teaching material for the 4th year of study. The average IELTS scores of students were between 5.5 and 7.5.

The first semester of training was chosen for the control task, because the teaching materials for the first-semester cover principal branches of Common law of England and Wales, as well as the main types of legal documents and the 15 difficulties of legal translation, thus laying a cornerstone to the professional knowledge of a legal translator. However, the absence of background knowledge available to students during the second semester is a methodological advantage. Early testing allows for early assessment and conclusions about the formation of legal translation competence and the relative effectiveness of a suggested combination of methods.

Teaching materials were a compilation of advanced Legal English courses in England and Wales (TOLES Higher tasks, Day & Krois-Lindner, 2011; Mason & Atkins 2008; Brown & Rice 2007). The tasks for legal translation teaching involved selected training materials containing 15 fundamental lexical, grammatical and semantic-syntactical difficulties of legal translation.

Instruments

The control task (Annex I) contained excerpts from authentic legal documents of two jurisdictions: the Russian Federation and the United Kingdom (with all relevant and applicable amendments and additions 2018-2020). In order to measure the translation skills of the participants, each sentence in the task encompassed at least one lexical, grammatical and semantic-syntactical difficulty of legal translation. Ten variants of tasks covered ten branches of law.

The students were asked to translate the task as close to the original text as possible. Task instructions prohibited any form of rendering the control task using non-ESP vocabulary or in students' own words.

The 15 difficulties of legal translation in Russian-English language pair, included in the written task for assessment purposes, were:

	Legal translation difficulty	**Examples**
1.	Ambiguity and disambiguation	There are four groups of polysemic lexical units: a) words having a different meaning in general and Legal English (security, equity, remedy interest, estate, effect, issue, settlement, redemption, construction, consideration); b) legal terms (royalty, corporate veil); c) legal jargon («poison pill», lemon law); d) false cognates in Russian-English translation (tribunal, arbitration, instrument, damages).
2.	Latinisms, French terms, archaisms	ultra vires / in lieu of / devise and bequeath

	Legal translation difficulty	Examples
3.	Synonymic chains, doublets and triplets	Rules and regulations/terms and conditions
4.	Multiword prepositional structures	subject to / pursuant to / provided that
5.	Negative conditionals	Unless / except for / save as
6.	Adverbials following a here-, there-, where- pattern	Herein / thereto / whereby
7.	Negative parenthetical words	No / none / without prejudice to
8.	Formal parenthetical and linking words	(No) waiver / Notwithstanding
9.	Patterns used to stipulate the duration of a contract	Until / prior to / no sooner/later than
10.	Legal formulae	Whereas / to represent and warrant
11.	Standard abbreviations	plc / Ltd / LLP
12.	Boilerplate clauses in contracts	Severability / Entire Agreement
13.	Complex syntactic structures	Ellipsis / double negation / inversion
14.	Specific phrasal verbs and verbal patterns	to wind up (a company) / to be due / to deem
15.	Excessive use of passive voice	Reverse word order in passive voice

Results

It is suggested that an adequate professional level of legal translation proficiency may be reached by the combination of methods based on the balanced use of grammar-translation method, communicative method and case method, including the elements of lexical method and text-based instruction, as well as tasks on the overcoming of the 15 difficulties of legal translation in Russian-English language pair.

The purpose of the pilot training and experimental testing of the control groups was to research the hypothesis that studying the methods of overcoming the 15 difficulties of legal translation during special seminars accelerates the formation of the necessary legal translation skills.

The questions answered in the experiment:

1.   Does the suggested combination of methods contribute to the formation of legal translation skills?

2.   Is it possible to assess the qualitative impact of these methods on the formation of translation competence components?

In order to find an answer to the questions, the students of Legal English performed a written task in two control groups. One hundred four students of 10 groups completed a direct and reverse translation written task of 800 words at the end of the first semester. Half of them (Control group A) took part in legal translation seminars based on the suggested combination of methods during the first semester of training (November and December 2018-2020).

The second group of students (Control group B) translated the task containing 15 difficulties of legal translation while the suggested combination of methods was available to them only at the beginning of the second semester of training (January and February). For the sake of purity of the experiment, the results of the control task did not count towards the current academic performance.

All works were checked manually and then re-checked using algorithm-based grammar and syntax checking software ('Grammarly').

Two scales were the benchmarks for the task assessment:

(a) Equivalent, adequate translation of each of the 15 significant difficulties in legal translation; completeness and accuracy of legal translation (0-15 points);

(b) Translation quality of lexical, grammatical and syntactical structures (100 points scale).

Table 1 shows the average score of control groups A and B for each of the four ratings:

Groups	Adequate and equivalent translation of difficulties (0/15)	Translation of legal terms of art (0/100)	Total grammar score (0/100)	Total syntax score (0/100)
Control group A	12	85	81	90
Control group B	4	75	80	68

Table 2 shows the statistics for the five typical errors in the legal translation task for control groups A and B (0-100% for each control group, where 100% - multiple errors, unsatisfactory translation, and 0% - no errors, excellent translation):

	Translation mistakes in legal terms	Mistakes in linking words and collocations	Mistakes in style and legal formulae	Distortion of legal meaning	Mistakes due to the lack of background knowledge
Control group A	20%	15%	30%	30%	15%
Control group B	20%	20%	60%	50%	25%

The most significant differences in translation quality between control groups A and B were found in the translation of legal terms and legal formulae, as well as in the translation of boilerplate clauses. There was a comparable number of errors in sentences, the correct translation of which required professional background knowledge. The most frequent mistakes are syntactical errors and distortions of meaning, wrong translation of 'hard' collocations and verbal patterns and distortion of word order when translating into English.

Word order may be a problem for students because of the peculiarities of the syntax of the Slavic language (relatively flexible word order) and the average difficulty of legalese syntax in authentic legal documents. At the same time, while there were many errors in legal translation grammar, the proposed method has no significant impact on the grammar aspects of the general (non-ESP) English language due to students' compensatory language skills.

Discussions

As an ESP, Legal English has its lexical, grammatical and semantic-syntactical features. The distinctive features of the 'legalese' vocabulary are:

1)   'Hard' collocations;

2)   Specific rules of word-formation caused by different sources of linguistic borrowings;

3)   Archaisms that do not always have a clear logical or etymological definition;

4)   A relatively high level of semantic abstraction;

5)   Legal terms of art may change their meaning because of legislation amendments;

6)   Invariability and the lack of synonyms.

The analysis of the lexical and terminological components of authentic legal documents as a training material revealed the problem: although terms are 'special words limited by their special meaning; words that should be unambiguous' (Reformatsky, 1961), ambiguity has become the norm rather than the exception in the practice of legal translation. Disambiguation is simplified by the etymological method (explaining the origin and meaning of the 'core' legal terms) along with three well-known methods - chained add-up method, chained sequencing method and synonymic clustering method (Giltrow & Stein, 2017).

The grammatical aspects of legal English are characteristic of official style: excessive use of passive voice and nominalisation, postpositive adjectives, limited variety of tenses, impersonal verb forms. Although in modern communicative methods of teaching (ESOL) grammar is often seen as a means rather than an end, the quality of legal translation is directly related to the correct use of legal grammar patterns in translation. Therefore, legal translation teaching materials and examination tasks should encompass grammatical aspects, and the limited use of Grammar Translation method is well-grounded.

The syntax of legal English is the most challenging aspect of legal translation in Russian-English language pair because of reverse world order, formal linking words, multiword prepositional structures, synonymic chains, ellipsis, and legal formulae. Translation techniques for the complex syntax of legal documents may include the analysis of sentence deep structures, bridging techniques and in-depth interpretation of legalese based on professional background knowledge.

These methods are especially useful if paired with the following translation shifts: transliteration, sentence splitting (or integration), grammatical transformation, antonymous translation, omissions of word combinations. Training in translation of legal documents requires students to master the translation shifts as well as at least three types of pragmatic adaptation of the translation: filling in lexical gaps (lacunae), text sentiment analysis, translation comments.

An essential element of preparation for legal translation practice is training in the algorithm of foreign legal document analysis: firstly, the translator determines the jurisdiction of the document, branch of law, type of the document; secondly, analyses the structure and content of the document; thirdly, chooses a suitable translation strategy and a set of translation tools to overcome translation difficulties.

Conclusion

The results of the experiment show that the total average score for legal translation in the group of experienced students increases, and the percentage of syntactical errors in translation of legal documents decreases if students know the technique of overcoming the difficulties of legal translation and apply it in the control task.

Analysis of error statistics of the results in both control groups reveals additional factors of effective TBLT in Legal English. First, systematisation of the translation difficulties in the most widely used legal documents facilitates their memorisation and reduces the number of errors in subsequent oral translation practice. Secondly, understanding the deep structure of the most complex provisions of standard documents

allows students of Legal English to acquire the professional background knowledge in law relatively seamlessly. Finally, it adds value to students' professional translation competence.

The difference in the formation of legal translation competence is at least 20-25% between control groups A and B in several parameters of translation quality. Therefore, the methodology of teaching the difficulties of legal translation at special seminars contributes to the accelerated formation of legal translation skills of authentic texts by the end of the first semester of training.

Acknowledgements

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Annex 1. Sample variant of control task – Translate the sentences paying attention to the difficulties of legal translation (Variant 1 – Civil law and procedure):

1.	Part 6 of the Civil Procedure Rules. CPR 6.3 provides for service by the court unless the Claimant elects to effect the service (e.g., of a notice or a writ) himself. It considerably broadens the permissible modes of service along lines recommended by Lord Woolf's reports on civil justice and procedure.
2.	The Defendant denies that he is liable to the Claimant either as alleged in the Particulars of Claim or at all. Save where otherwise admitted, each and every allegation in the Particulars of Claim is denied.
3.	Notwithstanding anything in this Section to the contrary, Party A is obliged to comply in good faith with the provisions of this agreement pertaining to personal liability.
4.	In criminal cases, the burden is throughout on the prosecution to establish the case against the accused beyond reasonable doubt. If the jury or magistrates have such doubt, then they should acquit (Woolmington, 1935).
5.	Consideration is something of value that is given in exchange for getting something in return. Often referred to as "quid pro quo". To constitute consideration, each party in a contract must receive a benefit or right but must also have an obligation or detriment from their respective promises.
6.	The multi-track is the normal track for any claim not allocated to the small claims track or the fast track. Claims on the small claims or fast track will be in the County Court whilst claims on the multi-track will be in either the County Court or the High Court.
7.	Subdivision (a) provides for automatic disclosure, which requires parties to share their own supporting evidence without being requested to by the other party. Failure to do so can preclude that evidence from being used at trial. This applies only to evidence that supports their case, not anything that would harm their case.
8.	The Seller is the owner in the clear title of the Shares, and the Shares are free of any lien, encumbrance, security interests, charges, mortgages, pledges, or adverse claim or other restriction that would prevent the transfer of clear title to the Purchaser. If the Purchaser fails to pay any invoice by the due date, the Seller may charge interest without prejudice to any other right or remedy available to it.
9.	Save as otherwise expressly provided in the contract this copy shall be deemed the Entire Agreement between Party A and Party B (hereinafter referred to as 'Parties').
10.	Subject always to the aggregate limitation on our liability in clause 24.5 above, the following provisions shall govern the extent of our vicarious liability to any other beneficiaries for any loss, harm or damage suffered by any such other party arising from or in connection with the services provided hereunder.
11.	С даты направления (предъявления к исполнению) исполнительного листа в службу судебных приставов и его копии должнику прошло более 30 дней, в связи с чем, кредитор вправе обратится в суд с заявлением о банкротстве должника.
12.	Не нарушившая договор сторона вправе расторгнуть договор в одностороннем порядке и потребовать возмещения прямых и косвенных убытков, упущенной выгоды, морального вреда и затрат на судопроизводство, включая гонорар адвоката.
13.	Каждая из Сторон соглашается и обязуется подписать и согласовать любые акты, подать (без ограничения) любые документы, получить любые одобрения, разрешения и лицензии и выполнить

	любые иные формальности в целях осуществления перехода права собственности на Акции.
14.	Некоторые типовые положения коммерческого договора включают в себя договорную неустойку, удержание права собственности, освобождение от ответственности, автономность положений договора, исчерпывающий характер договора, уступка права требования, конфиденциальность, форс-мажорные обстоятельства.
15.	Если договором явно не указано иное, настоящим сторона договора заявляет и гарантирует, что она принимает на себя все права в отношении имущества, предусмотренные в тексте настоящего договора, а также обязанности по настоящему договору, включая обязательства по оплате подоходного налога, НДС, таможенных пошлин и иных сборов.
16.	Заемщик обязуется погасить кредит незамедлительно после наступления срока платежа, включая основную сумму и все проценты и пени, начисленные на дату перевода денежных средств на счет Кредитора.
17.	Данные документы являются допустимым доказательством, свидетельствующим о том, что ответчик заведомо знал, что сделку от его имени совершило ненадлежащим образом уполномоченное лицо. Совершая эту сделку, данное лицо выходило за пределы ограничений, установленных в интересах истца в отношении распоряжения его недвижимостью, действуя в нарушение принципа добросовестности и своих фидуциарных обязанностей
18.	В соответствии со статьями 309, 310 ГК РФ обязательства должны исполняться надлежащим образом в соответствии с условиями обязательства и требованиями закона, а односторонний отказ от их исполнения не допускается за исключением случаев, предусмотренных законом.
19.	Суд по данному делу вправе на свое усмотрение вынести решение о ликвидации компании, а также оставить иск без рассмотрения. Если сторону не устраивает решение, она вправе составить и подать апелляционную жалобу. Вышестоящая инстанция либо пересматривает дело, либо оставляет решение в силе.
20.	Прошу суд принять во внимание свидетельские показания, результаты заключения эксперта, а также оценку имущества компании, и вынести судебное решение, понуждающее нашего контрагента к исполнению договора между сторонами.