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Editor-in-chief

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Problems of Translating Iraqi Marriage Contract into English.

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Luqman Abd-ALKarem Nasser **

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Abstract

The translation of marriage contracts from Arabic into English represents a real problem for the translators. Most translators face the problem of finding a direct equivalence in English for certain lexical items, the differences between the legal systems in Arabic and English as well as the problem of handling the difficulty of the cultural gap between Arabic and English. The current paper assesses and investigates three translations for marriage contract translated by authorized and competent translators. It is worth mentioning that the assessment of the translations involved is based on Nida's (1964) theory of formal and dynamic equivalence as well as the techniques of adjustment, addition, subtraction and alteration. It is concluded that the use of formal equivalence should be the first choice for the translator. Conversely, dynamic equivalence should only be used in case of absence of formal one or when formal equivalence lead to a meaning different from that of the original text .

Key Words: translation, legal, problems, contract.

.1Legal Translation

White (1990:257), defines translation as "the art of impossible of confronting unbridgeable discontinuities between texts, between languages and between people". Subsequently, It is wrong to believe that

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practicing legal translation is an easy and straightforward task because legal translation is a highly sensitive and special type of translation. It is a special and distinguished due to the fact that it involves law and this creates not only linguistic but also legal impacts and consequences. legal translation is not only a process of meaning transference but it is a complex communicative act in its own right. This complexity reflected from the fact that it occurs in different semiotic systems in a context of cultural and socio-cognitive diversity (Trosborg, 1997:204.)

.2Problems of Translating Legal Documents

It is often said that legal Translation is a highly sensitive and complicated process. The critical and most sensitive features of legal language is highlighted in legal translation. This part is going to show some problems of legal translation related to the legal, linguistic and cultural differences between Arabic and English.

2.1Problems of Legal Systems

Law is tied up to certain culture and jurisdiction. More importantly, legal language is technical in nature but it is not universal. It is restricted to the legal system of the nation in which it is being used (weisflog 1987:203). Despite the fact that law is universal in its abstract concept, it is reflected from the cultural norms and habits of each country, Legal systems are special and distinct to the societies in which they have been made. Every legal system has its own social, linguistic and cultural norms formulated in a harmony with the surrounding conditions of that society (Cao, 2007:24.)

According to Husni and Newman (2015:108), Arabic legal system has only one word (محامي) that corresponds to (solicitor, barrister) despite the fact that these two words are not synonyms. A solicitor is responsible for giving advice to people about legal issues. He can also draft documents on behalf of his clients but his job does not involve representing people and defending them in the high court. On the other hand, a barrister can be easily defined as that person who wears the gown and appeals on behalf of his clients inside the court. He receives details about the case from the solicitor and prepare some evidences that can be used to defend his clients in the courtroom. In the opposite direction, Arabic also has

many to one correspondence in certain terms related to divorce. For instance, there are three types of divorce (Talaq) in the Arabic legislation Talaqel-Raj'i – Revocable divorce, Talqel- Bain- Irrevocable divorce and Talaqel- Mughallaz- Absolute Irrevocable divorce. The first type happens when the husband utters the word 'Talaq' less than three times (one or two). In this type the husband has the right to get back his wife before three-menstrual periods 'Idda'. However if he didn't here comes the second type which is the irrevocable divorce. Absolute divorce occurs if the husband utters 'Talaq' for three times. In this case the husband cannot take back his wife unless she marry and has a sexual intercourse with her other husband (Ali, 2003). In fact even the word 'Idda' has no English equivalence and it can pose a challenge to the translator.

2.2 Cultural Problems

The most distinguishing merit of legal translation is that a considerable proportion of text is culture-specific. The differences in legal cultures is one of the leading causes to the differences in legal languages within each national legal order. It is also the main reason to the difference between legal and the ordinary languages (Weston 1983 cited in Cao:32). Mattila (2006) maintains that the concept of law is a metaphysical phenomenon. This means that it is not found in the physical world and it has created and developed as a product of human activities in a given society. Therefore; law is considered as a social phenomenon and that is the reason behind the differences in legal concepts among different societies (Mattila, 2006:122). For example, most Iraqi documents and contracts, such as a marriage contract, power of attorney and lease contract, contain certain words and expressions that carry a reference to Allah Almighty such as the inaugural expression of (بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ \ In the Name of Allah Most Gracious Most Merciful) which is a cultural convention of starting a document. This expression is usually fixed at the mid-top page. Other expressions such as (تم بحمد الله \ accomplished with the help of Allah \ وتوفيقه \ (with Allah's help and guidance والى التوفيق). (Allah is Arbiter of Success) can also be noticed in Arabic documents.

2.3 Linguistic Problems

Linguistic problems are the outcome of the differences in legal systems and legal cultures of the languages involved in the translation.

2.3.1 The Absence of Equivalence

Sarcevic (2000:235) points out that legal translation can be affected by the lack of the match in terminology between different legal systems. She maintains that differences in legal systems, cultural norms and linguistic nature can bring about difficulties in translation. Reiss(1995 as cited in Sarcevic,2000:234) points out that the relation of one- to- one correspondence can only be achieved in technical translation if the two terms indicate the same notion and have the same definition. Hence, it can be said that the relation of (X) and (Y) implies that (X) and (Y) are equivalents and (X) of ST can be translated into (Y) in TT and vice versa .

This dilemma can be seen in translating some Arabic documents that contain certain terms that have no equivalent in target language. For instance, some terms derived from Sharia law can also be seen in the legislations of marriage and divorce contracts such as such as خلع (Khula'), (Idda مهر عدة), (Mahr or dowry) and others. Altarabani (2018) argues that the main concern for the translator is how to find the closest equivalent that can best match in both texts regardless of the text type. However such a goal is not easy to achieve in translating legal documents especially if the languages involved are fundamentally different as in the case between English and Arabic .

2.3.2 Legal Homonymy

Yule (2014:116) clarifies homonymy as the case in which "one form refers to two or more unrelated meaning". Mattila (2016:100) asserts that a large number of ordinary words are used in legal language. These words may have a completely different meaning from their ordinary one when they are used in legal context. The fact that legal messages address problems that are in direct link to everyday lives of people (marriage, death, work,...etc.), the receiver of the message may think that the meaning intended by the word is that one which is common and familiar to him. But in fact these words have a different meaning in legal context and this may lead to the ambiguity and misunderstanding of the text. Semi- technical terms are group of common words that are used in ordinary language with a common meaning while they denote an unfamiliar and uncommon meaning when they are used in legal context

(Mellinkoff:11). Such words are confusing and sometimes misleading for non-specialists who may think they have understood the right meaning when they are not. Table (1-1) explains some of these words which have been described by (Tiersma,1999:111) as 'legal homonymy' with their ordinary and legal meanings.

| The word | Ordinary meaning | Legal meaning |
|---------------|---------------------------|---|
| Action | An act | Law suit |
| Avoid | To keep away from | Cancel |
| Consideration | Careful thought | Recompense |
| Construction | To construct a building | Interpretation |
| Distress | Pain, anxiety | Seizure of goods |
| File | To Arrange in Order | TO Initiate a law suite |
| Hand | A part of human body | Signature |
| Instrument | Musical instrument | Document |
| Letter | Written or printed speech | Authorizing document |
| Redemption | Salvation | Repossession of property |
| Tender | Gentle or kind | An offer for supplying service or goods |

Table (1-1) Legal Homonymy

2.3.3 Legal Synonymy

Synonymy refers to the case in which two or more different lexical items have the same meaning. Tiersma (1999:113) argues that legal English as well as lawyers have a great passion or 'schizophrenic' tendency towards the use of synonyms or at least near synonyms. He maintains that sometimes there is no reason to justify the use of this phenomenon as in the case of (save and except, residue and remainder) and they are treated as a worthless redundancy. However, some of these synonymous phrases have become idioms or permanent expressions and have acquired a certain meaning as in the case of null and void which is more emphatic than using void alone.

Synonymy is an Arabic linguistic phenomenon which has been examined by many Arabic linguists such as (Ar-Razi (undated); Ibn-Jeni, (1971)) and others. Ar-Razi defines synonymy as different singular items which refer to one thing with same concept (Aş-Şuyuti,undated:194). Legal language usually borrows words from other languages, therefore; some of these synonyms that are mutual and common between English and Arabic can be seen in table (1-2):(

English Arabic

| | |
|---------------------------|----------------------------|
| Keep and maintain | يصون ويحفظ |
| Fit and proper | مناسب و ملائم |
| Power and authority | السلطة و الصلاحية |
| Null and void | لاغ و باطل |
| Acknowledge and confess | يقر ويعترف |
| Change and alter | يغير ويبدل |
| Terms and conditions | الاحكام والشروط |
| Lawful, valid and binding | قانوني وملزم وساري المفعول |

Table (1-2) Doublet synonymy in legal Language

2.3.4 Legal polysemy

Polysemy is the linguistic phenomenon that exists in legal texts and by which a single term within a single culture can express many concepts. The occurrence of polysemy in legal language is due to the unstable nature of legal systems which are in a continuous state of change and they also affect each other (Tiersma & Solan, 2012:30.)

At the opposite of synonymy which occurs in two or more lexical units, polysemy reflects different meanings associated with the use of a single lexical unit. This indicates that polysemy is close to homonymy but from terminological perspective they differ mainly in the etymological basis or root. It seems that polysemy has formed and evolved into different modified meanings whereas homonymy has no etymological origin. The most crucial issue that is faced by translators as well as lawyers is the tendency of most languages to allocate new meanings (or shades of meanings) to already existed vocabularies. Without a good knowledge and a clear reasonable context, it is very difficult, or may be even impossible, to determine the appropriate meaning of the polysemic words in legal setting (Chroma, 2011). Table (1-3) explains some of the polysemic expressions within their legal context;

| The word | Polysemic meanings | Examples |
|----------|--------------------|----------|
|----------|--------------------|----------|

| | | |
|-----------|--|--|
| Discharge | | |
|-----------|--|--|

| | | |
|----|-------------------|---|
| -1 | To perform a duty | He discharged his duties before he had left the company |
|----|-------------------|---|

| | | |
|----|---------|--------------------------------------|
| -2 | Dismiss | We need to discharge some employees. |
|----|---------|--------------------------------------|

| | | |
|----|-----------------|--|
| -3 | Pay back a debt | Ali will discharge all his debts before he leaves. |
|----|-----------------|--|

| | | |
|---------|--|--|
| Execute | | |
|---------|--|--|

-1To complete or finish something as required He executed all his obligations.

-2to sign or complete a document The agreement will be valid after its execution.

Good -1Legally sufficient Passing the red light is a good reason to get a fine.

-2effective The good evidences helped the court to convict the criminal.

-3Honest or fair The jury dealt with a good faith and positive attitude

Table (1-3) Some Polysemic Expression in Legal English

.3Analysis the Translation of Marriage contract

The analysis of marriage contract is going to be based on the Nida's (1964) theory of formal and Dynamic equivalence, in which he distinguishes two types of equivalence Formal and Dynamic (Nida, 1964:159.)

(1Formal equivalence focuses attention on the message itself, in both form and content. A translator task is to create a message in the TL that match as closely as possible the different elements of the SL. Formal equivalence is intended to achieve sameness between SL and TL in term of grammatical units (verb by verb, noun by noun), words order and meaning (Nida;156 .)

(2Dynamic Equivalence is based on the effect of the message rather than its form. The translator uses dynamic equivalent when the translation is desired to create the same effect in TL reader similar to that effect experienced by the receptor of the ST. The main aim is to produce a translation that sounds natural and smooth in the receptor culture without imposing the cultural patterns of the SL

Nida (1964:226-240) also provides what he calls "techniques of adjustment" which are certain methods usually adopted by translators in producing the TL message. The aim of these techniques is to help the translator to select the best equivalent and they are not intended to distort the message or manipulate the meaning. The techniques involve three main methods (addition, subtraction and alteration). Each one of these techniques includes several minor techniques which are , together with the main three ones, supposed to achieve the principles of dynamic equivalence.

ST

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حضر كل من السيد و الانسة و المؤيد سلامتهما من الامراض
بالتقريرين الطبيين المقدمين وبعد التثبت من هويتهما ووقوع الايجاب والقبول بينهما فقد تم
عقد الزواج بينهما عل مهر معجله مقبوض ومؤجله باق بذمة الزوج عند
اقرب الاجلين وعليه تم العقد وسجل في

A lot of differences and unstable choices can be clearly seen in three samples although they indicate the same ST. The following table contains some expressions and lexical items posed a difficulty for the translators with their analyses and the proposed translation for each one of them.

| SL | Translation | Procedure | Technique | Appropriatness |
|---|-------------------|-------------------------|-----------|----------------|
| Proposed translation | | | | |
| 1-عقد زواج | -1Marriage bond | | Dynamic | Alteration |
|)Semantic problem) | — | Marriage Contract | | |
| Formal | | | | |
| -2Certificate of Marriage | | Dynamic | | Alteration |
|)Semantic problem(| — | | | |
| -3Marriage contract | Formal | // | + | |
| 1-Affirmation and acceptance | 2-الايجاب والقبول | | Formal | // + |
| Offer and acceptance | | | | |
| Formal | | | | |
| -2On consent of both | | Dynamic | | Alteration |
|)Amplification(+ | | | | |
| -3Positive and acceptance | | Formal | // | + |
| 1-The marriage bond has been contracted | 3-تم عقد الزواج | | Dynamic | |
| Addition | | | | |
|)Amplification) | + | Marriage was contracted | | Dynamic |
| Alteration | | | | |

-)clause and sentence structure(
 -2Certificate of marriage between them was concluded Dynamic
 Alteration
-)Semantic problem(_
 -3The contract was completed Dynamic Alteration
-)Semantic problem(_
 -4-1باق بذمة الزوج Dynamic
 Alteration
-)Semantic problem) _ Owed by the husband
 -2Owed by the husband Formal // +
 -3Remaining guarantee by the husband Dynamic Alteration
-)Semantic problem(_
 -5-1اقرب الاجلين Formal_//Before death or
 divorce Dynamic) Amplification(
 -2Until death or divorce Dynamic Addition
-)Amplification(+
 -3Demand and Easy Dynamic Alteration
-)Semantic problem(_
 -6-مهر Dowry Dynamic Alteration)Semantic problem) _
 Dowry + A footnote Or Mahr
 Dowry Dynamic Alteration
-)Semantic problem(_ Dowry Dynamic Alteration)Semantic
 problem(_ Table (1-5) Analysis of Marriage Contract

Discussion

- 1- The first point to be discussed here is the title of the document "عقد" which has been translated differently by each translator into (marriage bond , a certificate of marriage and marriage contract). The translation requires understanding the difference among certificates, bonds and contracts. A certificate is a document used to prove a fact, skill or ability related to somebody. A 'bond' refers to an abstract emotional relationship between two or more people such as "a feeling of friendship" but it also legally used to indicate those types of agreements which include a long time debt that obliged the borrower to pay an amount of interest to the lender, i.e. we can say that the word 'bond' has more to do with financial issues rather than social ones. A 'contract' is an agreement between two or more parties. This

agreement is usually governed by a law and a legally binding contract must contain at least one promise. Base on this discussion we can say that the word 'contract' is the most accurate equivalent for the Arabic word "عقد" in a context relevant to marriage.

- 2-The Arabic expression "الايجاب و القبول" is used in most marriage contracts in many Arabic countries not only Iraq. These two terms represent the basic of any contract and the main constituents for it. The word "الايجاب" means a speech or an offer to be said by the first party on which the contract is to be made if it is 'accepted' by the second one. Legal English holds "offer and acceptance" as the main constituents of any contract too. An offer is a proposal by the first party "offeror" and if this proposal is accepted by the second party "offeree" the contract emerges. The three translations adopted by the translators are fine and touched the required meaning but as far as this document has a fixed form and this expression is found in most marriage contracts it is better to find an equivalence that sound natural to TL receivers and to translate this Arabic expression into English as "offer and acceptance ."
- 3-(contracted, concluded and completed) are used by the three translators as a translation for the Arabic verbal phrase "تم عقد". However, each one of these three words has certain reference and it can be used in specific context. For example the word contract, which has been used by the first translator, is usually used in official agreements and it is the most suitable equivalent for "تم عقد" in this context. The second and third translators have chosen "concluded and completed" subsequently. 'concluded' is usually used when somebody believes or decides something as a result to what he has seen or heard and it does not serve as an equivalent for "تم عقد" in this context. This choice of 'completed' in the third translation may be reflected from the desire to avoid repetition that can be made by using the verb and the noun of the same lexical item 'contract' in one sentence since it is used previously as a noun in translating 'marriage contract' and the translator lost the chance to use it as a verb in the same sentence. However, this repetition can be avoided by translating the whole sentence as "marriage was contracted" without the need to employ the noun of 'contract .'

4-The other expression "باق في ذمة الزوج" has also been differently translated by each translator. The word "ذمة" has many meanings in Arabic. It may mean a conscience, a covenant or a right but it is legally used to indicate somebody's rights and obligations which have financial and economic value. The first translator uses "pact" which actually refers to an official agreement between people, groups or countries, for example 'non- aggressive pact'. The word "guarantee" does not reflect exactly the same meaning. The second translator may be succeeded in transmitting the sense of the SL by employing the verb 'owed by' which refers to a payment that somebody must do for receiving something.

-5The Arabic expression "اقرب الاجلين" actually means the 'death and divorce'. This expression is cultural specific and the attempts that are made by the first and third translator failed to convey this meaning. However, the second one has dismantled the real meaning intended by this expression by explaining and translating the sense of it in order to achieve the equivalence effect and the highest level of understandability on TL readers as well.

-6It is worthy to note that marriage contracts involve many cultural-bound terms that are related to Islamic concepts. One of these terms is the Arabic word "مهر" "mahr" which has been translated as "dowry" in the three translations despite the difference between the two terms in both Arabic and English. The word "dowry" refers to the money that a wife should bring to her husband when they get married in contrast with "mahr" which refers to the money or jewelry that is given to the bride by her groom. This "mahr" is obligatory and legally required to accomplish the marriage in Islamic societies as well as it includes a specific amount of money. It also consists of two types the first is called "معجل" "mua'jal" which is paid before marriage ceremony and the second is called "مؤجل" "mua'jal" which is paid before the marriage ends by divorce or death. Based on these differences, there is a big cultural difference between these two concepts and the TL word "dowry" may produce anomalies in failing to keep the cultural distance between English and Arabic. Accordingly, (Nida,1964:238) argues that a foot note is one of the necessary adjustments that a translator can rely on when literal or close rendering can produce a meaningless or wrong translation .

Conclusion

The translation of marriage contract from Arabic into English poses a real challenge for translators due to the differences in legal systems, legal cultures and the linguistic differences between Arabic and English. Legal translation involves many obstacles that can only be overcome by well practice, intensive exercise and experience. However, the inappropriate translation is reflected from the lack of legal, linguistic and cultural knowledge by the side of the translator. Subsequently, It is very necessary to deal with each item in legal texts with maximum degree of attention otherwise wrong translation may appear and which this can lead to a wrong application of the law itself.

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مشكلات ترجمة عقد الزواج العراقي الى اللغة الانكليزية

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المستخلص :

تشكل ترجمة عقود الزواج من العربية إلى الانكليزية تحدياً حقيقياً للمترجمين نظراً لما يحتويه هذا النص من مفردات قد يصعب ايجاد مكافئ لغوي مباشر لها فضلاً عن الاختلاف في الانظمة القانونية والاختلاف الثقافي بين اللغة العربية واللغة الانكليزية. وتتضمن ترجمة النصوص القانونية العديد من العقبات التي لا يمكن التغلب عليها الا من خلال الممارسة المكثفة والتمرين والخبرة الجيدة. و تعزى الترجمة غير الجيدة الى نقص المعرفة القانونية والثقافية واللغوية من جانب المترجم. إذ إن من الضروري للغاية التعامل مع كل نص قانوني بأقصى قدر من الاهتمام وإلا قد ينتج عن ذلك ترجمة غير صحيحة قد يترتب عليها تطبيق خاطئ للقانون نفسه..

الكلمات المفتاحية: ترجمة , قانوني, مشكلات, عقد

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