

**MODALITY IN LEGAL TEXTS: AN ANALYTIC STUDY IN TRANSLATION  
BETWEEN ENGLISH AND ARABIC**

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## LIST OF ABBREVIATIONS

SL – Source Language

TL – Target Language

SAT - Speech Act Theory

ST - Source text

TT - Target text

TQA - Translation Quality Assessment

DA - Degree of Adequacy

MSA - Modern Standard Arabic

IPA - International Phonetic Alphabet

**LIST OF SYMBOLS**  
**International Phonetic Alphabet (IPA)**

**1- Constants**

Transcription		Phonetic Description
ء	ʔ	glottal stop
ب	b	voiced bilabial stop
ت	t	voiceless dental stop
ث	θ	voiceless interdental
ج	j	voiced palatal affricate
ح	ħ	voiceless pharyngeal fricative
خ	x	voiceless alveolar fricative
د	d	voiced dental stop
ذ	ð	voiced dental stop
ر	r	apical flap of trill
ز	z	voiced alveolar fricative
س	s	voiceless alveolar fricative
ش	ʃ	voiceless palatal fricative
ص	ʂ	voiceless dento-alveolar emphatic fricative
ض	ɗ	voiced dento-alveolar emphatic stop
ط	ɬ	voiceless dento-alveolar emphatic stop
ظ	ɗʰ	Voiced dento-alveolar emphatic fricative
ع	ʕ	voiced pharyngeal fricative
غ	ɣ	voiced alveolar fricative
ف	f	voiceless labio-dental
ق	q	voiced alveolar stop
ك	k	voiced velar stop
ل	l	voiced dento-alveolar lateral

## 1- Constants, continued

Transcription		Phonetic Description
م	m	bilabial nasal
ن	n	dental nasal
هـ	h	voiceless glottal fricative
و	w	labio-velar semi-vowel
ي	y	palatal semi-vowel
ح	ħ	voiceless pharyngeal fricative
خ	x	voiceless alveolar fricative

## 2- Vowels

a	short front low vowel
u	short high back vowel
i	short high front vowel
aa	long front low vowel
uu	long high back vowel
ii	long high front vowel

## **Modaliti Dalam Teks Undang-undang: Satu Kajian Analisis Dalam Penterjemahan Antara Bahasa Inggeris Dan Bahasa Arab**

### **ABSTRAK**

Modaliti dalam bahasa Inggeris dan bahasa Arab perlu dianalisis secara sistematik, terutamanya dalam konteks penterjemahan undang-undang. Kajian ini memenuhi keperluan tersebut. Cara kategori kata ini dizahirkan dalam kedua-dua bahasa merupakan komponen penting dalam proses penterjemahan untuk menghasilkan satu terjemahan yang tinggi nilai atau kualitinya. Tesis ini merupakan satu kajian tentang penterjemahan ungkapan-ungkapan modal yang terdapat dalam teks undang-undang dari bahasa Inggeris ke bahasa Arab dan sebaliknya. Penggunaan kata bantu modal telah diselidiki sebagai satu konsep bahasa yang universal dan juga sebagai satu kategori linguistik dan konseptual dalam bahasa Arab dan bahasa Inggeris dari perspektif semantik, fungsi dan pragmatik. Analisis berkaitan kategori ini adalah berdasarkan kerangka teori yang menjelaskan kategori-kategori utama dan sekunder dan yang digunakan atas kedua-dua bahasa dengan tujuan mencari persamaan dan perbezaan antara bahasa Inggeris dan bahasa Arab. Korpus kajian ini terdiri daripada sampel-sampel yang mewakili teks undang-undang dari kedua-dua bahasa yang digunakan sebagai teks sumber dan juga teks sasaran. Pemilihan teks adalah berpandukan norma-norma yang diterimapakai bagi tipologi dan klasifikasi teks dan juga adalah dari teks yang mengandungi konsep-konsep modal. Dalam kajian ini, didapati kedua-dua bahasa itu menzahirkan ungkapan-ungkapan modal dalam bentuk yang berlainan tetapi, walaupun demikian, kedua-dua bahasa dapat juga menzahirkannya melalui sintaks dan semantik.

# **MODALITY IN LEGAL TEXTS: AN ANALYTIC STUDY IN TRANSLATION BETWEEN ENGLISH AND ARABIC**

## **ABSTRACT**

This study responds to the need of a systematic analysis of modality in both English and Arabic with a particular reference to legal translation. The realization of this category in both languages constitutes a vital component in the translation process in order to achieve a high standard translation. This work presents a thorough study of translating modal expressions exhibited in legal texts from English into Arabic and vice versa. Modality has been explored as both a language universal concept and as a conceptual and linguistic category in Arabic and English with reference to semantic, functional and pragmatic perspectives. The analysis of this peculiar category is based on a theoretical framework explaining the main and secondary categories and applied on both languages in search for areas of similarities and contrast between English and Arabic. The corpus of the study consists of representative samples of legal texts from both languages to serve as both source and target texts. The selection of these texts is mainly guided by the widely accepted norms of text typology and classification and where modal concepts are realized. The study concludes that both languages hold a different type of realization of modal expressions but despite this fact both languages can similarly provide syntactic, semantic and/or means of realization.

## **CHAPTER ONE**

### **1.0 Introduction**

This chapter will be inclusive of statement of the problem, research questions, objectives, scope and limitation, significance and organization of the study. By its very nature, translation is a very complicated activity in which a large number of variables are involved. The type of text to be translated is a prominent one among these variables. It is a common fact that translation practice is closely related to the type of text it works upon. This relation is often realized in terms of various facets at the linguistic, pragmatic, and textual or any level of analysis and description. Evidence to this connection often takes the form of a number of variations and changes that take place at all levels when transforming the Source Text (ST) into the Target Language (TL). These variations can be pointed out vividly by means of systematic comparative-analytic portfolios of both languages i.e. SL and TL. Scholars and researchers in this field often focus on specific aspects of these languages for the sake of broader adequacy of description and comparison. The present study is not an exception. Below a detailed description of its objectives, theoretical background, limitations, significance and other related issues are presented.

### **1.1 Statement of the Problem**

Although 'Modality' is a grammatical and a semantic-grammatical category and exhibited in both languages Arabic and English particularly in legal discourse, in fact it is an important component of all human languages. It is rather a universal aspect that all human languages exhibit. Each language i.e.

Arabic and English has a different mean of expressing and realizing the same concept of modality. Being involved in English-Arabic translation studies and practices for a considerable time, the researcher has developed serious concerns and queries with regard to the intricacies of this activity. One particular aspect of this activity has been considered as a frequent resource of difficulty and challenge for translators involved in this activity, namely the exploitation of 'Modality' in both languages, i.e. English and Arabic. English exhibits an independent class of semi-verbs called 'modals' by which a very large number of primary and subsidiary meanings are expressed. In English, modality is the subject concerning so-called modal auxiliary verbs like *can, must, and should* etc that are customarily used to modify the meaning of other verbs (which in turn tend to take an infinitive form). These modal verbs are used to express a wide range of meanings e.g. 'possibility', 'necessity', 'contingency', 'permissibility' 'obligation', 'proscription', 'probability' etc. Arabic, by contrast, expresses modal meanings by means of a plethora lexical items and other expressions often studied by rhetoricians and semanticists within the field known as "Science of Meanings" '*ilm al-ma'aani*' (علم المعاني). In this sense, it constitutes a semantic category in Arabic rather than a semantic-grammatical one. Based on experience this clear-cut divergence between the two language systems has often worried translators working on these languages, especially those working on legal texts.

Legal texts – by their very nature – exhibit a variety of 'modal' meanings essential to their content and texture. Hence, one would expect that English-

Arabic translation of legal texts exhibit lots of problematic issues, with a particular reference to 'modality' subsystems in both languages.

This study responds to the need of a systematic analytic and comparative study of this peculiar aspect in both languages with a particular reference to legal translation.

## **1.2 Research Questions**

The present research seeks answers to the following questions:

- 1- How modality is explored as a semantic and grammatical language universal concept?
- 2- What are the areas of similarities and contrast between English and Arabic with regard to the realization of this concept?
- 3- What types of modalities are commonly found in legal texts?
- 4- How legal translators handle these prototypes of modality when translating between English and Arabic?
- 5- Would it be possible to establish a scale of match and mismatch between Arabic and English on contrastive bases with special reference to the translating of modality in legal text?
- 6- Are all these types of modality translatable between the two languages in legal texts?

## **1.3 Objectives**

With reference to the problems and questions mentioned above the study intends to achieve the following objectives:

1. Describing 'Modality' first as a language universal concept and second as a conceptual and linguistic category in English and Arabic with reference to semantic, functional and pragmatic perspectives;
2. Carrying out a contrastive analysis of the linguistic realization of this category in both languages;
3. Pointing out the points of contrast and/or similarity between the two languages with particular reference to the translation of a sample of authentic legal texts in both languages; and
4. Postulating some practical and procedural guidelines for translators working on legal text with particular reference to this problematic issue.

#### **1.4 Scope and Limitation of the Study**

This study is restricted to English and Arabic as two subjects of description, analysis and comparison. Also, both languages will serve as SL and TL interchangeably for the sake of translation analysis.

Representative sample of legal texts in both languages will be carefully selected on objective criteria of selection for the purpose of the empirical part of the study. Being a corpus based study, the researcher will select samples of legal texts where modal concepts are realized regardless of the prototype of the legal text in question, i.e. the selection of these texts is guided by whether they exhibit a modal concept or not rather than their subcategory. This selection will be exclusively guided by the widely accepted norms of text typology and classification. Only approved translation of these texts will be referred to as a cross reference.

The method of analysis and comparison between the SL and TL texts will be chosen in light of theoretical part of the study. Criteria of systematization, linearity, comprehensibility, unit of comparison, adequacy and objectivity will be highly attended to in the course of analysis and comparison. In this regard the traditional version of contrastive analysis technique will be adopted.

### **1.5 Significance of the Study**

The importance and value of this study might be self-justified. It goes without saying that this type of study will contribute to comparative linguistics and translation studies all together. Comparatively, the study will shed light on the areas of similarity and difference between English and Arabic with regard to this category, i.e. Modality. To the best knowledge of the researcher, and although quite a great amount of literature is available on it in each language, little work has been done on modality from a contrastive point of view with reference to the two languages in question.

As far as translation is concerned, this study is expected to be of great value in the sub-field of legal translation between English and Arabic as a great deal of modal meanings and expressions are found in both languages.

### **1.6 Organization of the Study**

The study is organized as follows:

**Chapter One** deals with statement of the problem, research questions, objectives, scope and limitation, significance and organization of the study.

**Chapter Two** is a review of related literature, concept and definition of modality, modality as a language universal, characteristics of legal texts and legal translation and translation of legal texts.

**Chapter Three** illustrates methodology and draws up the theoretical framework of the study. A scheme of modal classification, relevance of Speech Act Theory and the interrelation between Speech Act Theory and Legal Theory and Translation Theory.

**Chapter Four** describes modality in English. This description is carried out in the light of the scheme of classification worked out in the preceding chapter. Various modal subcategories are discussed on semantic, functional and pragmatic bases.

**Chapter Five** illustrates modality in Arabic language and its categorization.

**Chapter Six** is the empirical part of the study and planned to be an extensive analysis of carefully-selected samples of English and Arabic legal texts in translation. A contrastive inventory of the areas of match/mismatch between the two languages with reference to this particular category is presented. Criteria of selecting these texts and method of analysis is worked out in the light of the theoretical part of the study. Effort is made to incorporate as many texts as possible with respect to the variety of primary and subsidiary modal meanings.

**Chapter seven** will include, in the light of the extensive comparison in the previous chapter, the conclusions, recommendations and suggestions as the last part of the study. The following chapter is a review of related literature.

## CHAPTER TWO

### REVIEW OF RELATED LITERATURE

*Whenever speakers or writers say anything, they encode their point or view towards it: whether they think it is a reasonable thing to say, or might be found to be obvious, questionable, tentative, provisional, controversial, contradictory, irrelevant, impolite or whatever. The expression of each speaker's attitudes is pervasive in all uses of language. All utterances encode such appoint view, and the description of the markers of such point of view and their meanings is a central topic in linguistics.*

(Michael Stubbs, 1996: 202)

#### **2.0 Modality: Concept and Definition**

This chapter is a review of related literature, concept and definition of modality, modality as a language universal, characteristics of legal texts and legal translation and translation of legal texts. Stubbs' statement above makes it clear that modality as a concept refers to the way that languages indicate a speaker's evaluation of the state of affairs in a given utterance, i.e. the expression of a speaker's degree of belief in or commitment to a proposition. In this sense, modality is considered as a signal of the speaker's/writer's involvement in what s/he says or writes. This involvement takes various forms realized linguistically in various categories of meanings or semantic roles known as modal categories. These categories have been approached from different perspectives: philosophical, semantic and linguistic. However, and following Hoey (1997:1) there is a considerable interpenetration between these approaches, as researchers have fundamentally different research aims and

proceed at different levels of abstraction. For instance, Palmer's (1990:1) description of modality as an essentially 'semantic-grammatical' category is potentially paradoxical unless modality refers to a very restricted set of modal auxiliary verbs. Even within this set, there are cases where semantic and grammatical criteria are of conflicting rather than complementary nature. Trying to account for modality within both the semantic and syntactic frames creates a dilemma. Kiefer (1994:2514) holds a philosophical perspective when he talks about modality as "the relativization of the validity of sentence meanings to a set of possible worlds. Talk about possible worlds can thus be construed as talk about the ways in which people could conceive the world to be different". For this reason modality is perceived as a universal linguistic phenomenon despite the different means in which it is realized. This notion of universality will be discussed later in this chapter.

In order to understand the philosophical point of view made by Kiefer towards modality we need to distinguish between two aspects of this category as illustrated in the Encyclopedia of language and linguistics: what is actually said, i.e. the 'dictum' and how it is said, i.e. the speaker's/writer's cognitive, emotive and/or volitive attitude towards what is said, i.e. 'modus' or what is traditionally called 'mood of expression'. A sentence such as:

**1- It is hot outside.**

May be paired with the following moods:

- 1.a. I think that it is hot outside.
- 1.b. I believe that it is hot outside.

- 1.c. I know that it is hot outside.
- 1.d. I hope that it is hot outside.
- 1.f. I doubt that it is hot outside.
- 1.g. It must be hot outside.
- 1.h. It might be hot outside.
- 1.i. It could be hot outside.
- 1.g. It needn't be hot outside.
- 1.k. It shouldn't be hot outside.
- 1.l. It is probably hot outside.
- 1.m. Perhaps it is hot outside.
- 1.n. It is possible that it is hot outside.
- 1.o. It is certain that it is hot outside.
- 1.p. It is likely that it is hot outside.

The philosophical attitude towards modality correlates with one major type of modality known as 'Epistemic', which refers to logical/belief modality and "the status of the proposition in terms of the speaker's commitment to it" (Palmer, 1986:54-5). This commitment often is derived from a situational source of information for the speaker's utterance called 'evidence'. This evidence takes the form of situational signal which the speaker perceives as such and reflects his judgment towards what he says.

From a linguistic point of view, modality is treated as a 'semantic' term that is realized as "a grammatical category, similar to aspect, tense, number, gender, etc." (Palmer, 1986:1). Others such as Hoey uses the term 'modality' to

refer to "the entire semantic field of modal contrasts whether these be realized lexically, grammatically, or prosodically", (Hoey, 1997:38). This particular trend in defining modality is of special importance to the present work as it links modality to a range of semantic and pragmatic criteria which are considered relevant to its definition. This importance is derived from the fact that translation in general and legal translation in particular has to account for these criteria so as to establish the 'dynamic equivalence' required for maximum assurance of translation quality. In this particular regard, Speech Act Theory (SAT) seems of special interest for the purpose of analysis proposed in the present work. The relevance of this theory to the present work will be discussed later in the third chapter of the study.

In discussing modality from a linguistic perspective, linguists also refer to other linguistic and semantic categories, e.g. mood, aspect, tense, etc., (cf. Lyons, 1977; Palmer, 1986; Huddleston, 1984). However, and although the researcher do believe in the reality of this relation, still holds the view that it is of little importance to the present work. This is simply because this study is solely directed towards the realization of modality in terms of series of notional logical constructs such as *subjectivity vs. objectivity*, *factuality vs. non-factuality*, *proposition vs. event* and *possibility vs. necessity*, and *permission vs. obligation*, which are embedded in legal texts and which represent the core dimensions of these texts. All these notions will be discussed within the framework of Speech Act Theory (SAT) in relation to three basic parameters, namely 'authority', 'knowledge' and 'power'. For this reason, and for the purpose of the present work, modality is treated as a notional and conceptual category

besides its being a syntactic one. The only revenue for the syntactic dimension to be injected in the present work is the realization of these notional constructs in the source text (ST) and target text (TT).

One further reason for the exclusion of the syntactic dimension refers to the fact that modality as a syntactic (grammatical) category as is the case with mood is found in some but not all languages" (Lyons, 1977: 848). With particular reference to English and Arabic, modality exists as a syntactic as well as a semantic category in the former, but solely as a semantic category in the latter; hence, the exclusion of the syntactic dimension. Otherwise, this will deprive the comparative analysis of the constant element which is mandatory for the comparison between the two languages. English and Arabic represent a good example for this case. It is this conceptualization of modality that the researcher is going to adopt for the purpose of this work. Based on the above discussion it is essential to emphasize a clear-cut procedural assumption for the purpose of this work: modality is taken to mean as a notional universal concept common to all human languages regardless of their means of realizing it. Evidence to this universality is provided in the following section.

## **2.1 Modality as a Language Universal**

One basic assumption which underlies the present work is that modality is a universal linguistic category with different realization. This notion of universality constitutes the constant required for the analysis and comparison the researcher intends to carry out later in this work. On the other hand, the variation of realization would serve as the variable needed to trace in search for

instances of loss and mismatch between SL legal texts and their TL translations with regard to modal expressions. In my opinion, the reason that can be brought up to justify this assumption is that both logical and semantic modal concepts and notions are common to human thought and communication.

Therefore, these concepts should be expressed in one way or another in any language. One caution that needs to be stated here relates to the adequacy with which similar notions and concepts are expressed in different languages. Thus the researcher holds the view that the translation of modality between English and Arabic - especially in legal texts - demands a special attention which justifies the present work. In this regard, Lyons' (1977: 791) statement serves this argument: "The ambiguity found in sentences containing 'must' and 'may' is also found in comparable sentences, in other languages. This suggests the existence of modality, together with its accompanying difficulties, in most languages. Arabic is not an exception".

In more specific terms, Arabic, like English has modal qualified expressions although the two languages differ in the realization of this category. This assumption is based on two other assumptions. First, semantic modal concepts are common to human discourse in general and legal one in particular. Second, these concepts should find one way or another in the language.

Having the divergence modality realization between English and Arabic in mind, the subject is bound to be a source of difficulty to those who translate

between English and Arabic, especially to those working on legal texts in these languages. Mere presentation of the different uses and meaning of modal expression in each of the two languages seems of little help. Instead, a clear conceptual understanding which tries to relate them to the situational and pragmatic meaning is required. This requirement - I strongly believe - would be fulfilled when a juxtaposition of representative sample of English legal texts and their Arabic translation is made (cf. Chapter 6).

## **2.2 Types and Characteristics of Legal Texts**

Legal texts vary on a wide range of classifications depending on its nature of function. Legal English can be seen as consisting of several kinds of writing, depending on their communicative function. As suggested in Risto Hiltunen's book (1990: 81), there are three different types of legal writing to be distinguished: (a) academic texts which consist of academic research journals and legal textbooks, (b) juridical texts covering court judgements or law reports and (c) legislative or statutory writings consisting of Acts of Parliament, contracts, treaties, etc.

Despite the external similarity between ordinary language on one hand and legal discourse and the language of law on the other, there are some crucial differences that need to be highlighted (Tiersma, 1999). Legal language is often treated as a distinctive type of language for special purposes (Taylor 1998). Two eye-capturing characteristics of legal language are the high degree of formality and extended register. Formality is derived from the fact that legal documents are always produced in official settings and legal discourse is

practiced in very formal situations with very strict rules of role taking and participation. The rules and restrictions are identical with those of "felicity conditions" required for validity of speech act. A sentence to death, for example, can not be interpreted as such unless it is performed in a court of law by a judge or authority liable to pass this act. This is a genuine reminder of the relevance of Speech Act Theory to the analysis and interpretation of legal discourse.

One further aspect of the legal genre refers to the style in which legal transactions are documented. This style can best be described as being straightforward, unambiguous and distant from multiple interpretations. Clarity is sought in this type of text because legal texts such as statutes, treaties, contracts, etc. are supposed to defend the rights of a person or a group or impose obligations beside many other functions collectively known as 'legislations'. Hence, these documents should be worded with the highest possible degree of clarity and adequacy.

Another feature of legal language is derived from the fact that the rule of law regulates the behavior of individuals in relation to each other and in relation to the society as a whole. In other words legal discourse is situated and practiced in specialized institutions. However, it must be stated that a rule of law always exists as a logical proposition, even if not set forth formally in a statute. Therefore, it must be clearly formulated, categorically stated and accessible in form; it must be based on up-to-date, reliable and sufficient information). Sarcevic (1997:167) rightly refers to this characteristic when she

states that the drafting of law tends "towards more direct expression, frequent repetition and more detail, in order to limit judicial discretion."

Another noticeable feature of legal texts is that they are mostly culture-specific and culture-sensitive. This cultural specification and sensitivity is imposed by the legal system which legal language stands for as a means of encoding. Nations and even smaller communities within the same nation vary in the legal traditions and regulations imposed on the members of the community. This is particularly true for the civil laws and national legislations which control the social, financial, religious and commercial and all life activities of the people of that nation or group. Consequently, the language that encodes these regulations has to be nation-specific.

A fourth feature that contributes to the peculiarity of legal texts is derived from the fact that the people involved in a legal interaction pursue various roles, each with its sub-type of legal discourse. Judges, for example, perform roles that differ from those performed by lawyers, juries, contractors, laymen, etc. These different interactive roles impose various liabilities, rights, responsibilities and authorities conjoined with particular styles and modes of interaction at the linguistic level of the legal discourse. It is this particular feature of legal discourse that necessitated the injection of SAT to account for these roles and the language used by their performers.

Linguistically speaking, modality is another noticeable feature of legal texts, the fact that justifies the carry out of this study. In fact, it is one of the

most prominent and distinctive characteristic inherited in these texts because of their very nature as directive and expository instances of language use. In other words, legal texts – in addition to their structural and contextual variation – display a variety of modal meanings such as 'obligation', 'prohibition', 'recommendation', 'advice', 'authorization', etc., to mention some but not all of these meanings. On the linguistic level, the methods of encoding macro and micro (broad and narrow) modal meanings vary in accord with the linguistic system of the language in which they are encoded as well as the legal system in which they operate. Legal English, for example, employs modal verbs beside other structural devices such as adverbs (e.g. perhaps, probably, possibly, etc) and conditionals to express these meanings. Arabic, by contrast – and because of its lack of such a grammatical category of modal verbs – uses some other linguistic means to do the same functions (cf. Chapters Four and Five).

However, it must be stated that even if similar means of linguistic expressions are shared between two languages, one still has to account for the variation in the legal systems practiced in the two communities. It has already been said that legal discourse is culturally sensitive to the social, legal and even political restrictions of the community practicing it. Each legal language has its own specific conventions governing the formulation of legal norms, which should be among the first topics taught to students of legal translation.

All the above-mentioned characteristics of legal texts have contributed to the difficulty as well as to the peculiarity of legal translation. The following section will account for this aspect of the study.

### **2.3 Aspects of Legal Translation**

Legal translation is a subtype of specialized translation, the outcome of which should be documents in the target language with the same legal validity and effect as the documents in the source language. As a matter of fact, this criterion of legal translation falls into the heart of this kind of translation. A legal document valid and operative in its SL must be turned as such in the TL. Like other types of specialized translation, this sometimes raises the main debate whether legal translators should be experts of the law. It seems that current theoreticians (Alcaraz & Hughes 2002) agree that legal translators need not necessarily be experts of law but must nevertheless be highly competent in legal conventions of the SL and TL texts (Sarcevic, 2001). Needless to say, the consequences otherwise might be disastrous. Therefore, and even if translators cannot "produce parallel texts that are identical in meaning, they do expect them to produce parallel texts that are identical in their legal effect" (Altay, 2002:1).

Difficulties facing legal translators do not stem from the specific nature of legal discourse in terms of style, structure and vocabulary only. Legal translators are expected to convey the meaning not just of words but of the legal system that dictates the writer's choice of those words. This is not an easy task. One definition of a good translation is one that has the same impact on the target-language audience as the original text has on the source-language audience, what Nida and Taber (1974) call "dynamic equivalence." Thus, the translator/interpreter must ask the same question: Who is the intended audience? A related question is: what is the purpose of the text? Following

Hammond (1995: 235), "this means that what a translated text is going to be used for has much more bearing on how translators should approach the translation than does the foreign-language original". Consequently, when a translator is given a text to translate, s/he must find out who is going to be reading the translation and for what purpose it is to be used. Is the translation for informational purposes only, or will it be legally binding on the target-language receptor? Is it going to be submitted as evidence in a court of law, or is the translation merely a formality to comply with legal requirements?

As mentioned above, the specific features of SL and TL legal systems often pose considerable difficulties to legal translators. A legal system of a particular nation or a speech community is a reflection of its culture and its institutional traditions and regularities. Because of this close interaction between the legal system and the culture of a nation, legal translation between two languages becomes more difficult. Following Weston (1983:207), "the basic translation difficulty of overcoming conceptual differences between languages becomes particularly acute due to cultural and more specifically institutional reasons". This perception of the importance of the cultural variable in all kinds of translation in general and legal translation in particular has caused the majority scholars to emphasize the importance of cultural awareness on behalf of the legal translator beside his ability to manipulate over the linguistic barriers of the two languages. This is particularly true for legal translation between English and Arabic due to the large amount of differences between English and Arabic legal systems.

The specific nature of legal discourse has led to the emergence of a variety of theories and approaches with regard to legal translation. Both linguists and lawyers have attempted to apply theories of general translation to legal texts, such as Catford's concept of situation equivalence (Kiefer,1977:33), Nida's theory of formal correspondence (Weisflog,1987:17-26), and Vermeer's(1996) Skopos theory. On the other hand, others questioned the usefulness of applying theories of general translation to legal translation and argued in favor of a theory specific to this type of translation (cf. Weston, 1991 and Sarcevic, 1997). As an alternative, these scholars sought a theory of legal translation by analyzing legal translation as an act of communication in the mechanism of law in order to establish a theoretical basis for this kind of translation within the framework of modern translation theory. Hammond (1995: 235) refers to the same idea as he states: "Modern translation theory, like communication theory, cognitive psychology, and reading theory, recognizes the importance, or even supremacy, of the purpose of a translation as a guiding factor in the creation of the target text. [...] This means that what a translated text is going to be used for has much more bearing on how translators should approach the translation than does the foreign-language original".

In summery, this study is self-evident: legal translators from English into Arabic are expected to account for the functions of the translated English legal text in the TL, i.e. Arabic. With particular reference to modal meanings, this means that a legal translator from English into Arabic does not only need to diagnose the specific modal meaning being expressed but also to decide on what this meaning is going to be used for in Arabic. The comparison and

analysis of legal texts translated between the two languages will account for this requirement by applying Speech Act Theory (SAT) parameters for two major purposes. First, it intends to identify the potential function of the SL modal meaning as being performed by the original text producer. Second, it enables us to measure the degree of adequacy with which this meaning has been transformed into the TL on one hand and what function it will do in that language on the other. The following chapter will include methodology and theoretical framework of the study.

## **CHAPTER THREE**

### **METHODOLOGY AND FRAMEWORK**

#### **3.0 Introduction**

This chapter will illustrate the methodology to be adopted in the exploring modality and draws up the theatrical framework of the study. Human language is a fairly complicated system. This complexity is furnished within all linguistic levels of description and analysis. One plausible interpretation of this complexity might be the fact that language itself is used to do enormous functions and to express highly complicated meanings and abstract ideas conjoined in various conditions and situations. In this regard, one has to mention that human languages differ among themselves in the amount of complexity of their subsystems and layers of their linguistic realization, but not in the meanings and functions they express or do. Quite often, the same language realizes the same function and expresses the same meaning in different ways following the situation and the conditions in which it is used and the individuals using it.

The present Chapter of the study has two basic objectives. First, and because this study is concerned with the translation of modal expressions exhibited in legal texts from English into Arabic and vice versa, it explores some major theoretical issues related to the category of modality with special reference to legal texts. The discussion of these issues is needed to help in drawing the theoretical framework required for the future analysis of a sample of English legal texts and their Arabic counterparts. This analysis will be carried

out in search for the points of match or mismatch between the two languages with regards to modal expressions. Further, the researcher intends to point out the degree of adequacy in which these expressions are rendered in the target language (henceforth TL), i.e. Arabic. The measurement of the translation adequacy will be achieved within the scope of an objective scale of measurement known as Translation Quality Assessment (TQA). Construction of such a tool of measurement is the second objective of this Chapter. In the light of the discussion of the theoretical issues to be raised in this Chapter, the researcher intends to arrive at a neat and somewhat exhaustive categorization of modal meanings and concepts. It is this categorization that will be taken as the scale of measurement of TQA and Degree of Adequacy (DA) in sample texts analyzed later in this work.

### **3.1 Scheme of Classification.**

Away from the complexities of definition and conceptualization, there is another significant issue to be solved in the treatment of modality. This is the issue of categorization and classification. This issue is of crucial importance to this work because it is essential to arrive at a clear-cut categorization of modal meanings and trace their transference from English to Arabic. It must be stated here that the researcher does not intend to criticize or evaluate any of the existing models of classification. However, it must be declared that models of classification seemed likely to serve all our purposes. After an extensive survey of these models, the conclusion that can be drawn is that linguists give different categorizations of modality, although they agree on the concepts that make up modal expressions (cf. Householder, 1971; Halliday; 1976, Lyons, 1977; Coats,

1983; Palmer,1990 and 2001). As a result, it has been difficult to find an all agreed-upon classification of these modal meanings and functions. Modal concepts rarely appear in their same places or categories across these models of classification. One key reason for this variation is the fact that modal concepts themselves hold a close relation among themselves with common overlaps between the modal expressions that are used to express these meanings. Consider the following simple examples where one English modal expresses many different concepts:

1. She can run for quite a long distance without feeling tired. (Ability)
2. You can leave class. You look exhausted. (Permission)

Overlap and interchange would be considerably apparent in more complicated situations and with the presence of many situational and contextual dimensions. One further reason for this variation in modal concepts classification lies in the fact that each of those who tried to do so approaches the topic from a certain point of view, depending on a certain mono-dimensional criteria.

Therefore, the researcher will try to argue in favor of a hybrid eclectic model, of classification which incorporates the specific dimensions involved in notion of modality as applicable to both English and Arabic. Eclecticism of such a model derives from numerous factors and reasons related partly to the complexity of modality itself and also to the nature of the present work.

On one hand, it has already been argued that modality is too complicated to be approached from one dimension. This resulted in a large number of approaches and categorizations, each of which focuses on a particular aspect of the subject rather than being suffice to all purposes. However, the following caution must be made. This is not to say that these models of classification have no relevance to the scheme to be proposed. Instead, they can be utilized to develop a set of categories applicable to the objectives of this study. Therefore - and guided by its eclecticism - the scheme of modal concepts classification developed by the researcher owes much to two existing approaches, namely Abdul Wahid's (1982) and Palmer's (2001). The reason behind the incorporation of those two schemes of modal concepts classification - in very simple terms - is that the former is a purely logic-based scheme that distinguishes between two broad categories of modality: personal and objective while the latter is semantically oriented as Palmer (ibid. 1) believes that "modality is concerned with the status of the proposition that describes the event".

On the other hand, eclecticism of classification is imposed by the nature of the present work as it is confined to the analysis of written legal discourse rather than spoken. It has been noticed that most of the existing modals and schemes of classification views modality from spoken discourse perspective. Therefore they classify modal concepts in terms of the speaker's commitment with what he says and of his position to the listener. This implies that all contextual parameters observable in face to face oral interaction, and injected into most of the previous models do not apply to our case, especially for legal