A Study of Translated Matrimonial Shar'i Court Documents from Arabic into English: The Case of Palestine

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2023

A Study of Translated Matrimonial Shar'i Court Documents from Arabic into English: The Case of Palestine

by

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**Thesis submitted in fulfillment of the requirements
for the degree of
Doctor of Philosophy**

September 2023

ACKNOWLEDGEMENT

In the name of Allah, most Gracious, most Merciful

First and foremost, I thank Allah for giving me health and patience to do this study. My first and sincere gratitude goes to my great supervisor Dr. Mohamed Abdou Moindjie for his brilliant and constructive supervision throughout the study period. Without his skillful guidance, generous feedback and kind support, this work would not have been possible. Also, I greatly appreciate my co-supervisor, Dr. Ilangko Subraminian for his excellent guidance. Thanks a lot, you both.

Many thanks to all members of staff in the School of Languages, Literacies and Translation (SoLLaT) for their kind support during my PhD study. Also, I extend my thanks to all my colleagues at SoLLaT for their continuous encouragement and support.

My warm and heartfelt thanks go to my family members; my father and my mother who took care of my daughters during my absence in Malaysia, and to my husband who has always been ‘the wind beneath my wing’. Thank you for your endless moral and financial support. Endless love to you all. Without that help and hope, this thesis would not have been possible. Thank you all for the strength you gave me. I love you all!

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LIST OF ABBREVIATIONS

AH	Abel Haleem
NP	Noun Phrase
Prepo.	Prepositional Phrase
SC	Source Culture
ST	Source Text
TC	Target Culture
TT	Target Text
VP	Verb Phrase
YA	Yusuf Ali

LIST OF APPENDICES

Appendix A Divorce contracts - Arabic and English

Appendix B Marriage contracts - Arabic and English

KAJIAN TERJEMAHAN DOKUMEN PERNIKAHAN MAHKAMAH SHARIAH DARI BAHASA ARAB KE BAHASA INGGERIS: KES PALESTIN

ABSTRAK

Menterjemahkan dokumen undang-undang mahkamah syariah merupakan salah satu tugas yang paling mencabar bagi penterjemah kerana usaha yang diperlukan untuk menyampaikan maksud yang betul dan tepat bagi terminologi undang-undang dan Islam. Dalam kajian ini, kaedah deskriptif analisis digunakan untuk menganalisis dokumen pernikahan bagi meneroka masalah yang dihadapi oleh penterjemah tersumpah Palestin dalam dokumen mahkamah syariah, untuk mengenal pasti persamaan dan perbezaan antara sistem perundangan Arab dan sistem perundangan Inggeris, menilai prosedur terjemahan yang digunakan oleh penterjemah dalam menangani terminologi dari segi ketepatan dan penerimaan, dan mencari bagaimana penterjemah menangani keputusan linguistik dan terjemahan dalam menterjemahkan ungkapan keagamaan dalam dokumen undang-undang mahkamah syariah. Untuk melakukan ini, klasifikasi tindak tutur Searle, model Venti, dan model terjemahan Vinay dan Darbelnet digunakan. Dapatan kajian menunjukkan bahawa persamaan dan perbezaan tindak tutur antara sistem undang-undang Arab dan sistem undang-undang Inggeris dalam dokumen mahkamah syariah pernikahan terutama berkaitan dengan penggunaan kata kerja modal, ayat bersyarat, penggunaan suara aktif dan pasif, dan penggunaan kata kerja yang betul. Didapati bahawa kesetaraan, literal, pinjaman, dan modulasi yang lebih tepat dan diterima dalam kebanyakan terjemahan terminologi dokumen pernikahan. Juga didapati bahawa kekuatan tindak tutur dipengaruhi oleh penyalahgunaan norma bahasa dan norma terjemahan oleh penterjemah. Penyelidikan ini terbukti berguna untuk terjemahan mesin, terjemahan teknikal secara umum, dan

dokumen mahkamah shar'i yang khusus; ia menunjukkan bahawa teori tindak tutur Searle dan teori Vinay dan Darbelnet lebih berfungsi dalam mengoptimumkan kualiti terjemahan dokumen mahkamah syariah pernikahan.

A STUDY OF TRANSLATED MATRIMONIAL SHAR'I COURT DOCUMENTS FROM ARABIC INTO ENGLISH: THE CASE OF PALESTINE

ABSTRACT

Translating sharia court legal documents is one of the most challenging tasks for translators due to the effort needed to convey accurate and exact meanings of legal and Islam-driven terms. In this study, the analytical descriptive method is used to analyze matrimonial documents in order to explore the problems which confront Palestinian sworn translators in sharia court documents, to identify similarities and differences between Arabic legal system and English legal system, to assess the translation procedures used by the translators in dealing with terminologies in terms of accuracy and acceptability, and to find out how the translators deal with linguistic and translational decision in translating religious expressions in legal documents of sharia court. In doing so, Searle's speech act classifications, Venti's model, and Vinay and Darbelnet's model of translation are used. The findings reveal that speech act similarities and differences between the Arabic legal system and the English legal system in matrimonial Sharia court documents are mainly related to the use of modal verbs, conditional sentences, the use of active and passive voice, and the use of verb tense. It is found that equivalence, literal, borrowing and modulation are found to be more accurate and acceptable in most of the translations of matrimonial documents terminologies. It is also found that the speech acts force is affected by the translators' mishandling of language norms and translation norms. This research reveals itself to be useful for machine translation, technical translation in general, and legal Shari documents in particular; it indicates that Searle's speech acts theory and Vinay and

Darbelnet’s theory are more functional in optimizing the translation quality of matrimonial shar’i court documents.

CHAPTER 1

INTRODUCTION

This study addresses the translation of matrimonial shar'i court documents from Arabic into English in Palestine to identify the speech act similarities and differences between the Arabic legal system and the English legal system, to assess the translation procedures used by the translators to deal with terminologies in terms of accuracy and acceptability, to find out how the translators deal with linguistic and translational choices in terms of meaning gain and meaning loss, and to describe the problems which confront Palestinian sworn translators in sharia court documents in terms of the translation of terminology and different syntactic features of Arabic and English.

1.1 Research Aspects

This chapter provides fundamental information for this research, it embodies problem statement, aims, objectives, research questions, limitations, significance, organization of the study, and the definition of the related terms.

1.2 Background of the Study

Translation is important in facilitating effective communication between languages and cultures (Bernacka, 2012). It goes beyond interlinguistic processes as translators are not only inter-mediators who link different language systems, but mediate intercultural factors simultaneously (El Ghazi & Bnini, 2019). According to Hanrahan et.al (2015), translators face linguistic and cultural challenges related to the context, content, and document translation. Therefore, translators must opt for a proper translation strategy to achieve effective communication.

El-Farahaty (2016) and Ali (2016) who explored the problems commonly encountered by legal text translators suggested that legal translation requires competence, deep knowledge of legal and linguistic system especially when culture-specific and system-based terms are involved since they require knowledge in syntax and semantic rules of the source and target texts. Zidan (2015) and Sa'eed and Nasser (2007) argued that to succeed in transferring the legal effect of the source text, translator should be a good writer acquainted with source and target text terminologies, words usage and sentence structure. Giving redundant equivalents without knowing the historical background of these pairs will result in a defective translation.

El Ghazi and Bnini (2019) added that adopting specific techniques while translating a legal document is viewed as an important step in ensuring accuracy. To do so, translators should focus on integrating functional and pragmatic perspectives on legal translation. This study also recommended using functionalist theories of translation which take the context and the target user of the final product into consideration.

Alwazna and Sidiya (2018) addressed borrowing as a translation technique when translating legal labor terms in Saudi labor law into English. To make them universal and easily understood, translators are suggested to add certain explanations of such terms to help those who are interested in understanding legal texts.

Others like Ghaeb and Jum'aha (2017) and Ali (2016) connected translation with education to bridge the gap between the field of academia and the labor market. They found a smooth transition from the formal approaches which depend on learning ready-made translated legal texts to functional approaches which adopt a flexible strategy that shows translator’s competence and creativeness in dealing with the text without influencing the substance of the text. This triggered the notion of giving more freedom to trainee translators in dealing with such text on the condition that the ST’s fidelity is preserved. Ali (2016) suggested to make translation teaching more interactive where participants take part as active mediators rather than passive agents, and where cooperation between legal translators and legal drafters initiate to familiarize translators with legal systems of both source and target languages, and they receive legal translation courses by experts in translation and law. Ali’s (2016) recommendations on application of pragmatics on legal translation were reflected in Fakhouri (2008) where she posited that the application of pragmatic and functional perspectives to legal translation reinforces the fact that legal translation is essentially an act of communication and provides legal translators with insight on translation techniques.

In the Palestinian context, according to Thawabteh and Najjar (2014), Palestinian translators encounter lexical and semantic problems that may impact their translations. Examining the problems encountered by translators who participated in the Ministry of Justice's accreditation examination in Ramallah, they have found that mistakes committed by the translators are related to syntax, structure, and tenor, which Thawabteh and Najjar (2014) ascribe to the insufficient linguistic knowledge and poor training. In some cases, rendering Arabic tensed clauses into English tensed clause give rise to unacceptable translation. For example, the translation of, واذ تعي ان , lit. ‘conscious that’ into a tensed clause in English ‘as it is fully aware of’ results in unnatural translation. Another example of the wrong choice of lexicon as in the translation of واذ تضع في اعتبارها as ‘it puts into consideration. The word اعتبار is translated literally as consideration whereas it should be translated as mind or account as in: ‘bearing in mind’ or ‘taking into account’. In a similar study, Elhajahmed (2017) argues that lack of source text’s comprehension, lack of translation expertise, and the inability to produce more effective target texts may explain the existence of some textual problems, as well as failure to utilize correct procedures needed for producing a coherent and cohesive English target text, which are apparent in the errors identified at the textual level. Even though omission is used by the translators to avoid giving wrong translations, the applicants have ignored accurate strategies in translation since they are highly motivated to translate literally. They also adhere to the word order of the source text without paying attention to the semantic elements of the TL.

To explain sworn translator’s weakness, Thawabteh and Najjar (2014) argue that the three undergraduate translation programs offered by Birzeit University, Bethlehem University, and Arab American University of Jenin are of no common minor-level, whereas the postgraduate Master-level programs which are offered by an-Najah National University and al-Quds University are subsumed under philology departments. They add that all the English language and literature programs in the Palestinian territories include no more than two translation courses in their curricula, a policy which helps to achieve fruitful results in the field of translation.

In the context of this study, problems that confront sworn translators who translate sharia legal documents is of main concern as the contents of the documents include religious terms used for specific purposes. All these and other related problems should be described thoroughly to come up with solutions to assist Palestinian sworn translators to achieve a better performance in this domain.

1.2.1 Background of Arabic Legal Documents

Arabic sharia legal documents are those documents that tackle the cases of personal status, blood-money; the money paid by the killer to the family of the killed person according to the provisions of Islam Sharia, and Islamic Waqf; which is the property donated by its owner for general or specific charitable reasons to be used in socially beneficial matters (Al-Hait, 2012, p.228). Article (101) in the amended basic law of Palestine stipulates that Sharia courts address Sharia and personal status issues, where the concept of ‘personal status’ is concerned with provisions that organizes family issues including engagement, marriage, mahr ‘marriage financial liabilities paid to the wife’, wife’s alimony, wife’s responsibilities toward her husband, divorce, couple’s parting by the judge, parentage, children’s custody and other issues related to inheritance and ‘waqf’ endowment (*AlQada Alshari wa alkanasi fi Falastin*, 2012, p. 28) (researcher’s translation).

Two terms are used in sharia legal courts: Sharia documents which contain the proceedings of Sharia council, contracts, obligations, and wavers; they are recorded according to legal rules and fulfils all conditions set by the jurists to make the document valid. They are defined as “a group of registered Shari contracts that ascertain rights where they belong or rights owing against others, or prove them before judiciary, in case of dispute” (Al-Hait, 2012, p.233). The other is Sharia certificate which is a document issued by Sharia court; it contains a declaration, a will, a waqf, an inheritance or whatever else that a judge has heard and ordered to be registered within the domain of his jurisdiction with his signature and stamp on it (ibid, p.237). Thus, the use of either ‘certificate’ حجة‘hujja’ or ‘document’ وثيقة ’wathiqa’ depends on the Arabic classification and naming of the court.

1.3 Statement of the Problem

Studies on speech acts like Haddad (2022), Khammari (2021), El-Dakhs & Ahmed (2021), Alghazo et al., (2021), Alhusseini, Abbas, & Abed (2017), and George (2018) tackle types and categorization of speech acts in different contexts of request, suggestion, apology, and congratulating in different speech contexts, however, none of them has examined the differences between Arabic and English speech acts in matrimonial shar’i court documents and the influence of translation on conveying the original force of the speech acts in the Palestinian context.

Translation procedures used by translators to deal with terminology are studied by El Ghazi and Bnini (2019) who stressed the importance of familiarity with languages and good knowledge of the legal system to understand the meaning of the source text and convey it to the target language. To do so, translators should focus on integrating functional and pragmatic perspectives on legal translation to achieve the balance between accuracy and acceptability of translation. Nurhasanah, and Wardoyo (2018) who discussed the strategies used in translating Islamic terms into their acceptable English equivalence found that 50% of the translation process was made using equivalence strategy whereas borrowing and calque strategies were used at 47% and 7% respectively. Another approach adopted by translators when translating legal terms is borrowing. This approach was probed by Alwazna and Sidiya (2018) who addressed translation of certain legal labor terms found in Saudi news headlines into Saudi English newspapers and demonstrated how borrowing was used as translation technique when translating legal labor terms into English. They argued that the use of borrowing is proved useful because such terms target special readership to convey the intended meaning. Muta’ali (2014), Agliz (2015) and Dazdarevic, Fijuljanin, & Rastic (2016) stressed the importance of applying the adequate translation technique to fill in the lexical gap in cultural translation. My study will address the procedures used in translating Shaia court matrimonial documents and assess the acceptability and accuracy of such procedures.

Alwazna (2019) reported certain techniques for addressing the untranslatability of terms; those terms are mainly determined by legal, cultural, and linguistic criteria for choosing the appropriate techniques. Dweik and Khaleel (2017) suggested that preserving the texts' accuracy during translation is not an easy task for translators. In their study translators used mainly two strategies, foreignization and domestication. To preserve the accuracy of the translation, translators opted for some additional procedures such as: recognized translation, literal translation, naturalization, and paraphrasing, and sometimes transposition to reflect the original intended the meaning accurately. Miller-Naudé, and Naudé (2016) suggested that absolute equivalent is never possible, therefore, it is necessary to render acceptable translations which are faithful to the source text at the same time. Kaddoura (2009) investigated the methods used in translating Islamic terms using domestication and foreignization. He found that in terms of accuracy and acceptability, total domestication eliminates text's indigenous culture, and foreignization is sometimes attractive; however, it does not have the desired effect in some instances. Some researchers like Chebbo (2006) and Hassan (2016) attempted to develop a procedural guide and a practical framework for religious terms based on some translation theories. However, they do not enable translators to reassess the balance between acceptance and adequacy. The absence of a systematic model incorporating translation process will implicate the process to track meaning gain and loss, consequently, translators may be subjected to misunderstanding and ambiguity. In the above-mentioned studies, the methods that translators use in dealing with linguistic and translational choices in terms of meaning gain and loss in matrimonial sharia court document translated by Palestinian sworn translators are to be discussed in this study.

In specialized fields of translation, translating religious terms in legal documents is difficult as it needs both experience and skills (Byrne, 2014). A translator, who translates religious texts like the Qur’an needs to be linguistically competent in Arabic and English with good knowledge of syntax and terminology to successfully assess religious structures’ complex linguistic patterns. Moreover, issues affecting accuracy in translations are particularly related to documents with religious terminologies, different cultures, different language styles, and difficulty in finding the English equivalent (Khammyseh, 2015). Unlike non-religious documents, errors in translated religious texts should be avoided due to the sensitivity of the texts. Conveying religious meanings accurately in another language is crucial as the translated meaning must carry the intended meaning from the source language. For example, the term ‘dowry’ is not the correct equivalent for the word "مهر" “*Mahr*” since in English, ‘dowry’ means “Money and property brought into a marriage by a bride” (Blackwell, 2008, p.150). The English meaning contradicts the idea behind the Islamic term of “*mahr*" which means "mandatory amount of money paid to the bride by the groom before the wedding ceremony" (Al Aqad, 2014, p.114). Some researchers like El-Farahaty (2016), Ali (2016) and Zidan (2015) tackled the Problems encountered by the translator and found that the problems are mainly culture-related factors, language related factors, and lack of legal background and experience. To overcome these problems, researchers suggested that translators are to be knowledgeable on culture-specific and system-based terms, archaic expressions, legal and linguistic systems of the translation language pair. They must be competent in the relevant terminology and have a basic knowledge of source language and target language legal systems, their relevant terminology as well as the target language-specific writing style. Others like Elhajahmed (2017), and Abdelfattah (2011) studied the mistakes committed and problems encountered by students of translation. For them the main difficulty was to utilize the correct procedures needed for producing a coherent and cohesive English target text. On the other hand, Thawabteh and Najjar (2014) study focused on the translators who set for the accreditation exam in the Palestinian Ministry of Justice (the examinees); they found that mistakes committed by the translators are related to syntax, structure, and tenor, which researchers ascribe to insufficient linguistic knowledge and poor training. Considering the above-mentioned discussion, this study will address the problems encountered by the Palestinian sworn translators due to culture-specific terms and syntactic differences between Arabic and English in Sharia matrimonial court documents.

Due to the lack of study on translating matrimonial sharia court document produced by the sworn translators in Palestine, this study will tackle the translation of Sharia legal documents of divorce and marriage in terms of the differences and differences between Arabic and English legal systems and its impact on conveying the legal force of the Arabic speech acts in the English translation of the documents, translation procedures used by the translators to deal with terminologies in terms of accuracy and acceptability, the way the translators deal with linguistic and translational choices in terms of meaning gain and meaning loss, and to describe the problems, related to the translation of terms, and the different syntactic features) which are encountered by the sworn translators for improving translation performance and providing effective and applicable solutions for the above-mentioned problems. What makes this study different from the above-mentioned studies is that it tackles both legal and religious-term translation by discussing sharia terms in legal documents of marriage and divorce. Problems of sworn translators in Palestine are not given the needed importance in the previous research. All previous studies tackle either students of legal translation at the universities as in Elhajahmed (2017) or translators who set for the exam of Ministry of Justice's Accreditation examination as in Thawabteh and Najjar (2014), sworn translators are not subject of these studies. Therefore, the current study will fill in that gap and add to the current literature in this respect. It will investigate the similarities and differences between Arabic and English speech acts and translation impact on achieving the force of the ST locutionary force, problems encountered by the Palestinian sworn translators in marriage and divorce documents in terms of legal lexis, the different syntactic features of the language pair under study in addition to the translational decision and procedures used by the translators to overcome the encountered problems as detailed in the research’s objectives and questions.

1.4 Objectives of the Study

1. To identify the speech act similarities and differences between the Arabic legal system and the English legal system in matrimonial Sharia court documents.
2. To assess the translation procedures used by the translators to deal with terminologies in terms of accuracy and acceptability in matrimonial Sharia court documents.
3. To investigate how the translators deal with translational choices in terms of meaning gain and meaning loss in matrimonial Sharia court documents.

4. To describe the problems which confront Palestinian sworn translators due to culture-specific terms and syntactic differences between Arabic and English in matrimonial sharia court documents.

1.5 Research Questions

1. What are the speech act similarities and differences between the Arabic legal system and the English legal system in matrimonial Sharia court documents?
2. What are the translational procedures used by the translators to deal with terminologies in terms of accuracy and acceptability?
3. How do the translators deal with translational choices in terms of meaning gain and meaning loss?
4. What are the problems encountered by the Palestinian sworn translators due to culture-specific terms and syntactic differences between Arabic and English in matrimonial sharia court documents?

1.6 Limitation of the Study

Legal texts are of many types; the first category includes civil and commercial contracts, legislative legal texts, such as constitutions, laws, resolutions, contracts, agreements, treaties and legal regulations, and Judicial texts (Al-Hait, 2012). However, this study limits itself, therefore, to matrimonial Sharia Courts documents in Palestine.

1.7 Significance of the Study

This study is intended to provide legal translation students of translation, translation freelancers, and linguists with new perspectives on matrimonial shrai court document translation from Arabic to English. This study is significant because it is related to Islamic legal terms and English legal terms issues which may have impacts on accuracy and acceptability. The findings are hoped to provide Palestinian sworn translators, Palestinian interpreters, and Palestinian translation students specifically with practical solutions to the problems faced when attempting to translate legal documents to improve the quality of future translation. Moreover, the significance of the study reflects the fact that the findings can also be applied to other divorce translations with other language pairs and legal systems having similar contexts. The study could lay the foundations for designing training programs for sworn translators, after they pass the certification exam, to help them to perform well in this field of translation (sharia court documents); it could urge translation departments at Palestinian universities to introduce specialized legal translation courses in their curriculum to make this field easier and more familiar to translation students and translators.

1.8 Justifications for the Choice of the Study

Many studies tackled the subject of religious translation in terms of equivalence, classifications, and strategies. Others like Chebbo (2006) developed a framework for translating sensitive religious texts. However, no study has addressed the problems encountered by sworn translators in the translation of religious terms in a specific legal context such as that of sharia courts in Palestine as explained earlier in section (1.3) Statement of problem.

According to El Haj Ahmed (2009), although English is an international language which is widely studied, little is available on what causes communication distortion between English and Arabic and could impact translation negatively. In

2014 the Ministry of Justice organized a translation examination for sworn translation applicants in Palestine, none of the candidates passed the exam. Being a member of the exam marking committee, El Haj Ahmed (2009) noticed that candidates lacked knowledge and experience in translation techniques, and they adhered to the SL word order without considering TL textual issues. Abdel-Fattah (2011) attributes Palestinian sworn translators' weakness to the fact that most translators have not received the needed training skills which will enable them to translate into other languages like English. This is because the time provided for teaching was insufficient to achieve qualitative translation skills to translate into a foreign language.

This study stresses the need for strategies to prepare translation students for future engagement in legal and certified translation during university years; it could turn the attention of university curriculum designers to the importance of inclusion of specialized courses such as a course on legal and religious translation where students are introduced to the existing problems and the best practices in this type of translation.

From another perspective, lack of previous studies which attempt to figure out if the culture-bound nature of sharia religious terms influences the translation and contributes to the difficulties in translation, and the wrongly adopted equivalents for some Islamic terms without checking the accuracy of their meanings in the Arabic and English legal terminologies are among the reasons behind meaning loss, mistranslation, and translationese.

1.9 Organization of the study

Chapter 1: Focuses on the components of the research including the introduction, statement of the research problem, objectives, research questions, limitation of the study, significance, and organization of the study.

Chapter 2: Reviews related theories and discusses studies carried out on religious and legal text translation in order to set a direction for the present study. This chapter takes the form of a critical discussion, which sheds light on latest studies, theories, and approaches concerned with translation of religious and legal terms and expressions, equivalences and the factors which influence the choices of specific equivalences and the difference between source language and target language cultures.

Chapter 3: sets the research methodology to describe the difficulties which sworn translators face in Palestine to assess Arabic – English translation of religious terms in Palestine's sharia court divorce and marriage documents on the basis of a suggested theoretical framework. Corpus, justification of the choice of the corpus, justification of the choice of the research methodology.

Chapter 4: this chapter critically analyzes the different translations to identify the speech act similarities and differences between Arabic legal system and the English legal system in matrimonial Sharia court documents, to assess the translation procedures used by the translators to deal with terminologies in terms of accuracy and acceptability through the use of Vinay and Darbelnet's model, to investigate how the translators deal with linguistic and translational choices in terms of meaning gain and meaning loss using domestication and foreignization, and to describe the problems which confront Palestinian sworn translators due to culture-specific terms and syntactic differences between Arabic and English in matrimonial Shrai court documents. This chapter presents the findings of the study as well.

Chapter 5: this chapter sets the discussion of the findings, the conclusions of the different aspects of the analysis done in chapter 4. It also demonstrates the contribution and the recommendations of the study.

1.10 Definitions of the Terms

The study’s definitions are as follows:

1.10.1 Divorce

The legal dissolution of a marriage by a court or other competent body (Concise dictionary, 2006, p. 284).

1.10.2 Legal Documents

Legal documents refer to formal written documents or records such as contracts or agreements. These documents contain legal terms that normally explain meanings of certain terms explicitly under statute laws (Mommers & Voermans, 2005).

1.10.3 Meaning gain

The enrichment or clarification of the source language text during the process of translation (McGuire 1980, p.30)

1.10.4 Meaning loss

Disappearance of certain source language text features from the target language text (Tiwiyanti& Retnomurti, 2016, p.2).

1.10.5 Religious Terms

According to Allen and Allen (2016), religious terms are transcendental words or phrases that carry meanings beyond normal comprehension and mean more than their literal meanings. In this study, religious terms are the shar’i -based terms used in divorce documents of shar’i courts.

1.10.6 Shar'i Courts

Shari' courts are the courts mainly responsible for settling all issues related to Muslims' personal status, such as marriages, divorce, dowry, alimony, kinship and custody, and all issues that stem from the contract of marriage. In addition, they are responsible for appointing shares of inheritances to heirs, and some other issues related to blood-money, and Waqf (Islamic endowment) (Al-Hait,2012).

1.10.7 Marriage

A legally recognized union between a man and a woman as husband and wife (Blackwell, 2008, p.309).

1.10.8 Translation procedure

A term coined by Vinay and Darbelnet in 1958; it means all those processes that come into play when shifting between two languages (Bardaji, 2009, p.162).

1.10.9 Translation strategy

Translation strategy is a mental process when treating a text. In other words, it is the process of deciding the most appropriate translation technique (Bardaji, 2009, p.162).

CHAPTER 2

LITERATURE REVIEW AND THEORETICAL FRAMEWORK

2.1 Introduction

This study will explore the problems of religious terms in shar’i legal documents, it is necessary in this chapter to review the related literature on intercultural translation, translation theories, culture-specific terms, characteristics of legal Arabic and English language, and characteristics of religious translation. Previous studies on the difficulties of religious term translation, equivalence, and the applied translation strategies are also reviewed. As explained at the end of this chapter, this chapter helps in identifying the research gap and identifying suggested strategies for building the theoretical framework of this study.

2.2 The Concept of Translation

Translation as a term has been tackled by several scholars over time. For Catford (1995) translation is a mental activity where the textual material and linguistic entities in one language are transferred to their equivalents in the target language. Newmark (1991) defines translation as " replacing a message or a text in one language by a message or a text in another language" (p.27). Murici (2016) envisages it as the process of transferring the meaning from the source language into the target language; it is also a connection between authors and receivers of the texts where translator plays the role of a mediator between them.

Translation is one of the human activities that man has known since ancient times. It aims to interpret the meanings of the texts and convert them from one language (source language) to another (target language). For El-dali (2011) translation is the transfer of speech or text from the original language in which it was written to another language with the obligation to transfer words correctly to resemble their original meanings without any distortion for them. Yousofi (2014) argues that each person has his or her own style of translation, however, sometimes in some texts, translators must move away from the literal translation because it will lead to failure in conveying the intended meaning of the text as Hatim and Munday (2004) considers translation as a purpose-driven, result-oriented human interaction, and describes the translation process as' message-transmitter compounds’ (p.8)

The English term translation first was tackled in around 1340, originated either from the Old French version or more specifically from the Latin translation of the word ‘transporting’ which itself comes from the participle of the Latin verb ‘transferre’ which means ‘to carry over’ (Munday, 2016)**.**

The standard source text (ST)- target text (TT) structure is the most prototypical of ‘interlingual translation,' one of the three language types defined by Jakobson (2012) who classified translation into the following categories: First, intralingual translation, or ‘rewording’ – “an interpretation of verbal signs by means of other signs of the same language”. (p.127). It would happen if we created a description or otherwise rewrote a document in the same language, such as the children's version of the encyclopaedia. Second, intersemiotic translation is defined as “an interpretation of verbal signs by means of signs of non-verbal sign systems” (p.127). According to Munday (2016), this happens when a written text is translated into a different mode, for example, music, film, or painting. The third type is the interlingual translation, or ‘translation proper’ – ‘an interpretation of verbal signs by means of some other language’ (Jakobson, 2012, p.127). Interlingual translation is defined as translation from a source text and a communicative process involving a set of roles and players which are: the initiator which is the company or individual who needs the translation; the commissioner: any person or organization requesting a translator; the ST producer**:** individuals within the business who compose the ST and do not actually share in the production of TT; the TT producer: the translator(s) and the translation agency or department; the TT user**:** the individual using the TT–for instance, an instructor using a translated textbook or a writer using advertising brochures; and the TT receiver**:** the eventual beneficiary of the TT–for example, students reading the translated promotional brochures using the teacher's classroom textbook or clients (Wendland, 2012).

Over time, translation as a discipline developed to cover specialized areas of knowledge, such as media, law, religion, and technology. In accordance with this development, specialized translation genres and dictionaries developed to satisfy this demand [researcher’s translation] (Shwaiti, 2016).

Despite the development in this regard, translation of the Islamic terms in legal documents is still a complex process that demands a full knowledge of linguistic, religious, and legislative meanings so the translator can render linguistic meanings and cultural connotations (Zidan, 2015). Translators cannot render such terms without acquainting themselves with the necessary knowledge of the legal and religious contexts of such terms. This can be accomplished through consulting reliable and well-known references in addition to Islamic and legal specialized books including mono and bi-lingual specialized dictionaries [researcher’s translation] (Shwaiti, 2016).

For Mahmoud (2008) and Hassan (2016) cultural asymmetry is another source of difficulty in legal and religious term translation. Although there are commonalities between languages and legal systems, reality shows some differences when it comes to cultural items derived from social habits, community customs, or religion. Incongruent cultural and religious systems cause a lexical gap between the source and target languages due to the absence of such concepts in one of them making it hard for the translator to find the suitable equivalent. For example, ‘zakat, and Mufti’ which respectively mean “the obligatory poor dues that a Muslim should pay to certain categories of people in the community including the poor, the needy, the way-farer” (Saleh, 2002, p.260) and “a religious authority officially assigned the job of expounding the laws of Islam and giving official opinion on various religious and legal matters” (ibid, p.144) are good examples of the absence of one-to-one correspondence translation of religion-specific terms. For example, ‘تعدد الزوجات" which literally means marrying more than one woman is usually translated into English as “polygamy”. Yet, (Concise Oxford American dictionary, 2006) defines it as: “the practice or custom of having more than one wife or husband at the same time” (p.658), which indicates that the equivalent is wrong and doesn’t provide the Islamic meaning carried by the original term.

2.3 Translation Theories

This section reviews several translation theories that help understanding the different viewpoints on the process of translation and the theoretical development of the translation domain.

According to Newmark (1981), translation theory is all about utilizing suitable methods of translation for the largest range of texts. It also provides a framework of principles for translating texts and criticizing translations. It is a problem-solving framework that provides the basis for translating texts and providing critiques on the translation.

The following are some translation theories which explain the nature of the translation process and its focus.

2.3.1 Functional Theories of Translation

Ghaeb and Juma'ha (2017) argue that before the nineteenth century, approaches to legal translation tended to opt for the formal or static translation, and legal documents were treated as authoritative documents whose wordings should be preserved, and that made it very difficult for the layman to deal with them. However, after the plain movement, in the 1970s and 1980s, the focus became the communicative value and the function of the text, rather than the legal wording. Plain language movement gave rise to legal equivalence and legal effect.

Christiane Nord, a prominent functionalist, suggests that functionality is the most outstanding criterion for translation, nonetheless, it does not grant an absolute license to the translator. The relationship between ST and TT should be calculated based on the intent or the skopos. Therefore, the concept of ‘functionality plus commitment’ forms the basis of Nord’s pattern. Nord distinguishes between obligation of translators to their partners in translational contact and thus links the translator bilaterally to the source and the target. She stresses that this notion must not be mixed up with fidelity or loyalty; the terms which usually refer to the relationship between the source and the target texts (Nord, 2005).

2.3.2 A Philosophical Approach to Translation

George Steiner, whose book ‘After Babel’ in 1975, is claimed to be the first comprehensive theoretical and practical study of translation since the eighteenth century, is reported to be the most influential proponent of philosophical theories. He envisages translation as a process of semantic transfer from the source language into the target language (Steiner,1998).

In Steiner’s hermeneutic motion Steiner (1998) defines the hermeneutic approach as the investigation of what it means to comprehend oral or written speech and the attempt to analyse that process in terms of a general model of meaning. Steiner’s basic focus is on the internal and mental workings of the translator's mind, and he continues to explore the mechanism of interpretation and comprehension underpinning the translation process. His paradigm conceives conversion as a large context where it shares characteristics with communication, however, these characteristics are not restricted to interlingual communication.

Steiner’s (1998) description of translation hermeneutics is based on the notion of translation not as a science but as an art with intense but unsystematic precisions. The hermeneutic notion that forms the core of Steiner's description consists of four moves as follows: the first move is by the translator; it presupposes that there is something in the ST that can be understood. Steiner considered this as a reflective consolidation of the human way of looking at the world. In the case of translation, the translator considers that the ST stands for something in the world, a coherent' something' that can be translated even if the meaning is not immediately apparent. The second move is the aggression move which is described as an incursive, extractive, invasive move where Steiner describes the translator’s capture of the ST as invading a place, stealing from it and bringing the stolen thing home. Steiner believes that some of the texts and styles have been destroyed by translation, others, on the contrary, have been translated so well that they are still read-only in English (Munday,2016). The third movement in Steiner's hermeneutics is incorporation; it refers to the way in which the ST meaning, which is extracted by the translator in the second movement, is incorporated into the TL. This results in either complete domestication where the TT takes a full place in the TL canon, or permanent strangeness and marginality, which happens when translation is literal with more footnotes than text, and the import of the meaning of the foreign text may potentially dislocate or relocate the entire native structure (Steiner, 1998). The fourth is compensation which means that the meaning loss which happens to the ST is compensated through the resulting transition to another society because it broadens and enlarges the original. The ST ventures into several complex relationships with its corresponding TT where TT is described as' echo' and' mirror' all of which enrich the ST (Munday, 2016).

2.3.3 The Linguistic Theory

According to Nida (1976) as cited in As-Safi (2011), linguistic translation theory focuses on comparing ST's to the TT's linguistic structure instead of comparing literary genres and the stylistic characteristics. Two factors triggered the emergence of linguistic theory: first, the introduction of scientific language study into several fields such as pragmatics, semiotics, anthropology, and translation skills teaching. Second, machine translation which helped using linguistic analysis in translation procedures. These theories are best represented by some prominent figures, such as Eugene Nida, Roger Bell, and Catford. Nida’s (1976) model consists of three stages in which the elements of the surface structure in the source language (grammar, meaning, and connotations) are decoded and transferred into target language where they are recoded into target language surface structure again.

Newmark’s semantic and communicative classification is relevant to linguistic theories. While semantic translation renders as closely as possible to the semantic and syntactic structure of the original, the communicative translation attempts to create on the readers the closest possible effect the source text creates on its readers (Newmark,1981).

The above-mentioned translation theories show that translation is an interdependent and multi-disciplinary process which incorporates different elements of languages including culture. As the core of this study is related to problems of religious terms translation, culture cannot be eliminated from the discussion. The following part of this research will tackle this issue.

2.4 Intercultural Translation

Language and culture are closely integrated and interdependent. In Bassnett (2014) culture is defined as a semiotic system and a system of meanings or information that is stored in the probable behaviour of people. She argues that in the field of translation, language should not be considered as an abstract entity floating around in space, but as part of society, and that text is rooted in a certain situation and has an influential social and cultural background. The concept of culture as a combination of knowledge, competence, and perception is essential to the incorporated approach to translation.

Faiq (2004) argues that culture includes the sum of attitudes towards the world, activities and other cultures and peoples. It refers to the shared beliefs and value systems of specific social groups and to the positions taken by producers and recipients of texts, throughout the mediation process. In this sense, Zidan (2015) suggests that Law is a cultural aspect which is expressed by legal language. Hence, legal translators need linguistic competence in both source and target languages; they need to be aware of the cultures and legal systems of the respective languages as well. He suggests that