A Systematic Approach to Translating Contracts into English

By Rob Lunn

BETA VERSION 2.0

A Systematic Approach to Translating Contracts into English

By Rob Lunn

BETA VERSION 2.0

Copyright © 2017 Rob Lunn. All rights reserved.

Contents

About this version (beta 2.0) ... vii

Acknowledgments ... vii

Preface — where this book came from ... viii

Part I. Introduction ... 1

1. About this book ... 2

- Purpose and what we cover ... 2
- How to read this book ... 2
- Who the book is for ... 3
- Languages ... 3
- What is a contract, anyway? ... 4
- A practical focus — not about the law ... 4

Part II. Principles for translating contracts into English ... 5

2. Introduction to the principles ... 6

3. A useful distinction: formulaic language vs contract information ... 7

- What is formulaic language? ... 7
- What is contract information? ... 8
- Where is the formulaic language in contracts? ... 8
  - Beginning of the contract ... 9
  - The middle of the contract ... 10
  - The end of the contract ... 10
- How does this distinction help? ... 10

4. Equivalency versus transparency ... 12

- Translate formulaic language equivalently ... 12
  - Following target-language conventions ... 12
  - 1. Using models ... 12
  - 2. Creating 'authentic concessions' ... 12
- Translate the rest transparently ... 13
- The equivalence–transparency continuum ... 14

5. Audience and purpose ... 15

- Audience ... 15
- Lawyers versus linguists ... 16
- Purpose ... 16

Implications from our default audience and purpose 16
6. The register dilemma 19
What dilemma? 19
The traditional register — our default setting 19
Why we go for as legal sounding as possible 20
A modern register — what the style guides say 21
… and a middle-ground option 22
Why start with the modern register? 22
Tempering your instinct to the degree you want 23
7. Using the macro structure as your compass 24
The beginning of the contract 24
The middle of the contract 24
The end of the contract 25
8. Conclusions about the general principles 26
Main points in Part II 26
Part III. Tips for translating contracts into English 27
9. Introduction to the tips 28
What the tips cover 28
Tenets of English contract drafting 28
10. Tips on replicating English contract style and conventions 29
Tip 1. Do change verbs and tenses 30
Why change verbs and tenses? 30
How do we change verbs and tenses? 30
An example 30
Language categories 31
What verbs and tenses do we use in English for the language categories? 33
Cheat sheet — What tense where 34
At the beginning of the contract (the introductory clause and the recitals) 35
In the middle of the contract (the operative clauses) 35
Remember! 36
Tip 2. Use shall properly (if at all) 37
Why use shall? 37
How to use shall ‘properly’ 37

How to deal with unassigned obligation 37
Policy language and weak obligation 38
The ‘have a duty to’ test 39
Alternatives to shall and other criteria for using it 39
  Use it as much as possible 39
  Not using it at all 39
  The case for will 40
Summary 40
Tip 3. Use hereby properly (if at all) 41
Using hereby correctly 41
Don’t use hereby for language of declaration 41
Don’t use hereby for negative language of performance 41
Don’t use hereby with agree 42
Could you leave hereby out altogether? 42
Summary 42
Tip 4. Recast, a lot, especially to active voice 43
Summary 44
Tip 5. Be specific and consistent (even when the source text isn’t) 45
Summary 46
11. Tips on using legalese purposefully 47
Technical terms versus legalese 47
Tip 6. Use only ‘useful’ legalese 49
Useful legalese 49
Legalese to avoid 50
Borderline cases 51
Be discerning 52
Summary 52
Tip 7. Decide on the register of the noticeable bits 53
Summary 53
Tip 8. Don’t use doublets 54
Avoiding English doublets 54
Don’t replicate source text redundancy 55
Summary 56

Tip 9. Don't use word–number doublets....................57

Tip 10. Steer clear of non-equivalent English terms....................58

Summary....................59

Tip 11. Beware of often confused terms....................60

12. Tips on translating non-equivalent elements and terms....................61

Tip 12. Be brave with term research....................62

How to research terms....................63

Whatever you do, don't sit on the fence!....................64

Summary....................65

Tip 13. Mainly call contracts Agreements (but always look for equivalents) 66

Summary....................66

Tip 14. Transparently reference external sources....................67

Summary....................68

Tip 15. Use models effectively....................69

Perfect models....................69

Everyday models....................70

Authentic concessions....................70

Another example....................71

Summary....................72

13. Making the translation process easier....................73

Tip 16. Decide on questions of style and usage....................74

The pronoun dilemma....................74

That or which for defining relative clauses....................75

Tip 17. Get a drafting guide to fill in the gaps....................77

Tip 18. Create a clause library....................78

Summary....................79

Part IV. The result and goal: useful translations and a practitioner mindset....................81

14. What the translation should look like....................83

Usability....................83

Understandability....................83

Usefulness....................84

Can you improve the original?....................84

15. The legal translator as a practitioner 85
Practitioners versus resource users 85
What the client deserves 86
16. Final words 88
Appendixes 89
Appendix I. Tinkering for different audience types 90
Appendix II. Lists of common doublets and triplets 91
Doublets 91
Triplets 91
Appendix III. How to term research 93
The term research process 93
Understanding the source term in the text 93
Looking for translations 93
Looking for definitions 94
Comparing definitions for the context 94
Deciding 94
Appendix IV. Strategies for translating non-equivalent terms 97
Domesticating versus foreignising 97
What's best for our default audience, the common-law lawyer? 98
The strategies 99
1. Using target-language equivalents 99
Are functional equivalents always the best option? 99
Practical implications for using functional equivalents 100
2. Translating descriptively 100
When should you translate descriptively? 100
3. Translating literally 101
4. Neologisms — the joker in the pack 101
5. Using the source term as it is 101
6. Using translator's notes 101
Summary 102
Appendix V: Glossary 103
Appendix VI: Bibliography 104

About this version (beta 2.0)

This book is a work in progress. You can send any comments on how I might improve it to roblunn@legalspaintrans.com. Your feedback is much appreciated.

Acknowledgments

Thank you to everyone who gave me feedback on the first beta version. I'd especially like to thank Stephen Waller, Richard Lackey, Kate Major, Danaë Hosek-Ugolin and Ondřej Klabal for taking the time to send me specific advice and comments. A very big thank you also to Ailish Maher for her thorough read through of the first version. Ailish, I've incorporated 95% of your suggestions but will have added in some new errors with my subsequent changes!

Preface — where this book came from

Towards the end of 2014, I decided to take a closer look at how I translated contracts. I had a well-grooved system, pieced together from what I'd taught myself, learnt on courses and picked up on the job. And it worked. I whizzed through my translations, and my clients never complained.

However, I started to feel like I was on autopilot too much of the time. The system did its thing. But even though I was the one who'd patched it together, I couldn't say why it did everything it did. Either because I'd forgotten or had never known. At the very least, I had a very narrow register. My well-grooved system always had me running down the same track and translating the same way. I started to notice that not all English contracts looked like my translations, and I suspected I could improve some things.

Around this time, I began seeing more contract translations from other translators, mainly when reviewing them. These translations sufficed. But with a little tinkering, they could be made a lot better — more consistent and more authentic looking. And I suspected more pain than necessary may have been caused to the translator during the process.

So I decided to delve more into the matter. I wanted to (1) assess and improve my system and (2) identify some rules of thumb to make translating contracts easier.

This book is the result of that process. I'm not finished yet. But to date I've done some research, examined my method and changed a few things along the way. I've identified some principles and tips that can take some of the pain out of translating contracts. A systematic approach. But unlike the system I used to follow, this one provides the logic behind the code and not just the code. It tells you why you're doing what you're doing at every point. So you can make changes where you see fit and have more confidence in your translation. This book provides this logic and code for translating contracts. I hope you find it useful.

Part I. Introduction

1. About this book

Purpose and what we cover

This book aims to help you produce better contract translations. To do this, it provides a blueprint for translating contracts into English and an approach so you can adapt the blueprint as you need.

First, in Part II, we look at some general principles. These should be familiar to experienced translators as I've drawn them from things we do intuitively and doubts that can arise when we translate contracts. By drawing them out and assessing them, we can nail down how we want to translate contracts. This makes the translation process easier and us more confident in our work. These principles are the logic behind the code for making decisions at the micro level.

Next, in Part III, we look at the tips or the programming code for translating contracts into English that arise out of our general principles. Most of these tips come from English contract drafting guidelines, although I've adapted them for our purposes.

Thus, the book provides the logic and code for building a translation machine that doesn't require feeding new instructions for each contract we translate. Instead of bouncing from one bilingual resource to another and getting dizzy in the process, we can assess solutions against a reliable yardstick. This yardstick allows us to produce consistent and coherent translations.

You may find you disagree with some of the assumptions I make in the principles or the decisions I make in the tips based on these principles. Or you may find them off the mark for the contracts you translate. That's fine. Change whatever you need to. As we look at both the logic (the why) and the code (the what to do), you will have enough information to create your own blueprint or adapt the one you already use.

This book also aims to champion the idea of a practitioner mindset in translation, which we look at in Part IV. The book aims to demonstrate such a mindset. So you should have a good idea about what I mean by a practitioner mindset by the time you get to the last part of the book.

How to read this book

The tips in Part III are based on the principles in Part II and the book is written to be read straight through. The principles are sort of 'the why' and the tips 'the how'. However, if you are just going to jump into tips, start with Tip 1 as it's the most important tip and the one that will make the biggest difference to how you translate contracts.

Who the book is for

This book is for anyone for who translates contracts into English, in particular, translators, students and lawyers.

If you're a seasoned legal translator, you should find enough food for thought to make the read worthwhile. As the underlying principles come from things we do intuitively when translating, the ideas should resonate. But because in this book we draw out these ideas to an extent you might not have, you may find them taking you places you hadn't thought of before.

On the other hand, novice translators and students will find some new ideas. Perhaps too many. Just apply what you can and come back for another chunk when you're ready.

I also hope to help occasional translators of contracts with this book. Because even if you don't specialise in legal translation, you might translate contracts, either because they seem easy enough or you don't want to say no to a good client. You know what you're doing but may be doing it the long or the hard way. This book should help you build a path to easier and more consistent contract translations.

I also wrote this book with non-English-speaking lawyers in mind. Because even when drafting directly in English, if your mother legal language and system is another, it's like translating. So you can apply the principles and tips in this book. For best results, you'd hire a translator, at least to revise your work. However, if you want or have to do it yourself, this book should help you. And even when working with a translator or proofreader, it may serve as a guide for identifying and specifying what you want.

Languages

This book is about translating contracts into English. It's applicable to translating from any language, particularly languages of civil law countries. Some examples are taken from Spanish, but you don't need to understand Spanish as the examples are explained in English. So regardless of your source language, you will get something out of this book if you translate into English.

Which variant of English, though? And which legal system? Primarily UK English and the English and Welsh legal system. However, it doesn't really matter. The advice is applicable to translating into any variant of English and for any English legal system. I try to use terminology consistent with this English and Welsh system as much as possible, although I use elements from other systems, primarily the US. Indeed, most of the style guides I use are by US authors.

What is a contract, anyway?

In this book, by *contract* I mean any kind of document organising an agreement or relationship between two or more parties. This incomplete definition serves our purposes because this is what we usually mean when we talk about translating contracts.

"ALL CONTRACTS ARE AGREEMENTS BUT ALL AGREEMENTS ARE NOT CONTRACTS."

A practical focus — not about the law

This book is written from a translator's point of view. It aims to help you create a system or improve the system you already use. Our focus is on technique, method and how we translate. It's not about the law. As legal translators, we do need to learn about the law and the legal systems we work with, but that is not what this book is for.

Part II. Principles for translating contracts into English

2. Introduction to the principles

Now let's look at the principles — the logic behind the code we feed our contract translating machine. These principles make our machine smart. We need our machine to be smart so it can deal with the quirks we find in different contracts. We don't want to have to reprogram it each time or have it nosedive into an infinite loop of indecision because it can't work out by itself which solution to use from a range of likely ones.

These principles underlie the tips we look at in Part III. They let us take us a step back and see the bigger picture, which allows us to make decisions at a macro level. By making decisions at the macro level, more decisions make themselves at the micro level. Our translations become more coherent, and we should avoid getting trapped in those infinite loops of indecision.

In practice we can escape infinite loops by choosing randomly or deferring to an external source. But if we have a framework, these apparent dilemmas feel like sticking a round peg in a round hole: we know what to choose, and the square and triangular pegs don't even get a look in.

For those of us with old machines that get the job done on their own but whose logic and code have become a mystery to us, by considering these principles, you can rediscover and reassess the logic you built into the machine long ago.

You can also look at the principles as useful questions to answer when translating contracts. The answers lead to an approach and solutions for resolving challenges at the sentence and word level.

And remember, please assess the principles for yourself and draw your own conclusions. Treat my efforts as a starting point.

3. A useful distinction: formulaic language vs contract information

When translating contracts, it helps to distinguish between form and content. This is because we need to do something different in both cases. We need to adapt the functional parts of the contract so they work in the target language and preserve the content of the contract so it can do its job and remain true to its origins. To make this distinction, we separate formulaic language (form) from contract information (content).

This distinction is the key to translating contracts and other legal documents. And while to some extent you make this distinction intuitively when you translate, by making it explicitly, we can reach conclusions that make translating smoother and the results better.

Making this distinction helps in two ways. First, it helps you to navigate and dissect the source document. Second, it tells you where to focus your translation energies and what you should do in the other places. Thus, we can decode the contract more quickly and get a big hint as to how we should encode it in English.

What is formulaic language?

Formulaic language is anything that doesn't make the contract you're translating essentially different from any other of the same type. Basically, it's what you get when you try to make a distinction between form and content. When you start looking for formulaic language in contracts, you find things like:

- **Set formulas.** Usually phrases laden with legalese.
- **Structural elements.** E.g., clause numbering.
- **Housekeeping/boilerplate clauses**. While these include details of the contract, we can class them as formulaic because they often differ greatly in form from one language to another. They also usually contain more legalese and set phrases than other clauses. (For a description of boilerplate clauses, see *The middle of the contract* on page 10.)
- **Headings** (of clauses, sections and the contract).
- **Style and syntax.** The verbs, tenses and sentence structure in the operative clauses (the clauses setting out the agreement in the main part of the contract). Although less visible, this is the most important element of formulaic language.

Definitions of formulaic legal language usually refer to set legal phrases and the template or format nature of a lot of 'operative' legal documents (i.e., documents that "create or modify legal relations" (Tiersma, 1999, p. 139), e.g., contracts, wills and petitions[1]). We have expanded and sharpened the concept to suit our purposes. For us, formulaic language is what you come up with when you separate language related to style, register and convention — the dressing of the contract — from the details that sculpt the agreement — the meat of the contract.

---

[1] For example, see how Tiersma describes aspects of legal texts as formulaic.

What is contract information?

The information or 'meat' of the contract that we separate from the 'dressing' consists of the details of the contract (the price, term and just about all the information in the operative clauses), including any important non-equivalent terms[2].

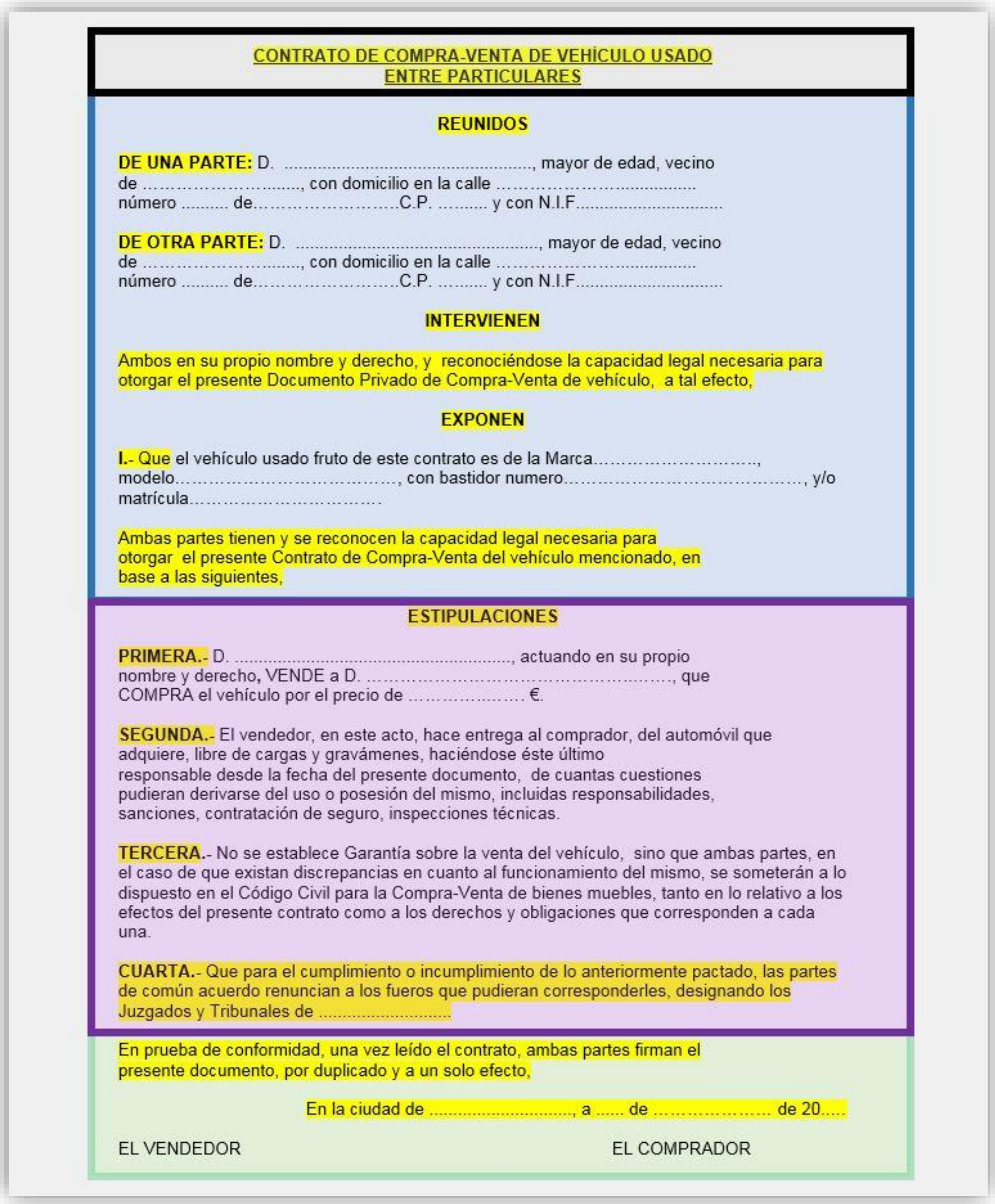
What makes a non-equivalent term important? Usually that it forms part of the details of the contract. I mention non-equivalent terms because of how vital they can be, even though we come across relatively few of them in contracts (compared to other kinds of legal documents). Readers need an accurate rendering of these terms in the translation, just as they do the other details of the contract. However, because they are foreign to the new system, allowing the reader to understand them often requires a special effort from us. *Tip 12. Be brave with term research* on page 62 talks about how we make this special effort.

Where is the formulaic language in contracts?

Now let's look at where you find formulaic language in contracts. In Figure 1, the formulaic language is highlighted in yellow, except for the style and syntax because highlighting that would have meant making all the middle part of the document yellow. And while we don't say much about style and syntax here, it is the most important aspect of formulaic language. We cover style and syntax in *Tip 1. Do change verbs and tenses* on page 30.

---

[2] Non-equivalent terms are terms you find in one language that don't appear to exist or have any close equivalents in another language. This occurs relatively frequently in legal translation because legislators, judges and scholars can invent and define terms independently to suit their needs in a legal system.



CONTRATO DE COMPRA-VENTA DE VEHÍCULO USADO
ENTRE PARTICULARES

REUNIDOS

DE UNA PARTE: D. ………………………………………………, mayor de edad, vecino de ………………………., con domicilio en la calle ………………………………… número ………. de……………………C.P. ………. y con N.I.F……………………………

DE OTRA PARTE: D. ………………………………………………, mayor de edad, vecino de ………………………., con domicilio en la calle ………………………………… número ………. de……………………C.P. ………. y con N.I.F……………………………

INTERVIENEN

Ambos en su propio nombre y derecho, y reconociéndose la capacidad legal necesaria para otorgar el presente Documento Privado de Compra-Venta de vehículo, a tal efecto,

EXPONEN

I.- Que el vehículo usado fruto de este contrato es de la Marca………………………., modelo……………………………………, con bastidor numero……………………………………, y/o matrícula……………………………

Ambas partes tienen y se reconocen la capacidad legal necesaria para otorgar el presente Contrato de Compra-Venta del vehículo mencionado, en base a las siguientes,

ESTIPULACIONES

PRIMERA.- D. ……………………………………………………, actuando en su propio nombre y derecho, VENDE a D. ………………………………………………, que COMPRA el vehículo por el precio de ……………….. €.

SEGUNDA.- El vendedor, en este acto, hace entrega al comprador, del automóvil que adquiere, libre de cargas y gravámenes, haciéndose éste último responsable desde la fecha del presente documento, de cuantas cuestiones pudieran derivarse del uso o posesión del mismo, incluidas responsabilidades, sanciones, contratación de seguro, inspecciones técnicas.

TERCERA.- No se establece Garantía sobre la venta del vehículo, sino que ambas partes, en el caso de que existan discrepancias en cuanto al funcionamiento del mismo, se someterán a lo dispuesto en el Código Civil para la Compra-Venta de bienes muebles, tanto en lo relativo a los efectos del presente contrato como a los derechos y obligaciones que corresponden a cada una.

CUARTA.- Que para el cumplimiento o incumplimiento de lo anteriormente pactado, las partes de común acuerdo renuncian a los fueros que pudieran corresponderles, designando los Juzgados y Tribunales de ……………………….

En prueba de conformidad, una vez leído el contrato, ambas partes firman el presente documento, por duplicado y a un solo efecto,

En la ciudad de ………………………., a …… de ………………… de 20…..

EL VENDEDOR EL COMPRADOR

Figure 1. Formulaic language in a Spanish contract.

Beginning of the contract

As you can see, we find a lot of formulaic language at the start of the contract (the part up until *ESTIPULACIONES*). Here you can run into dense patches of legalese. You may also find differences in structure and even different paragraphs for introducing the parties and setting out background information. Just knowing that the beginning is loaded with formulaic language helps because you can learn to waste less time on working out how to translate this language word for word, which, as we'll see, may not be the best option.

The middle of the contract

Aside from style and syntax (not highlighted) most of the formulaic language in the middle of the contract (i.e., the operative clauses) takes the form of boilerplate clauses, which come towards the end of the middle section.

Boilerplate clauses get their name because drafters often cut and paste them from one contract to another. And while boilerplate clauses do contain important details and you'd hamstring the contract by leaving them out, for us they operate like formulaic language in that they often differ dramatically from one language to another and can be quite laden with legalese. So it's helpful to consider them as formulaic language. When translating these clauses, we focus less on translating word for word and look more to their usual target-language versions. More on this when we look at what we do with formulaic language in the next chapter, *Equivalency versus transparency* (page 12).

Other formulaic language you find in the middle of the contract includes headings and structural conventions like clause numbering.

The end of the contract

The end of the contract — the last clause and the signature block — is basically all formulaic language. Much like at the beginning, this formulaic language takes the form of legalese. There may also be differences in structure from language to language.

How does this distinction help?

As we said above, this distinction tells our machine what to faithfully replicate and what it can and should change. Distinguishing between form and content saves you time (in decoding) and tells you how you should translate different parts of the document, which speeds up encoding and helps you produce more authentic translations.

First, particularly for novices, this distinction between form and content helps to navigate and understand the source document. You can make the dense patches of legalese found especially the start of the contract less daunting because you know they concern only function and convention. You don't forget about them, but you don't let them entice you into wasting valuable translating power in trying to work out what each word means, at least not at the outset. So you waste less time upfront on legalese you know matters little for the contract, despite its archaic guise and self-important appearance. You can move down the page and get to the operative clauses, which, given their importance, should get more of your attention. Of course, once you have built your translation machine, and you know what you want to do with this language, you will be able to translate it straight away. Either way, our aim is to waste no time on it.

Second, making this distinction between form and content gives you a big hint about how to translate different parts of the text. You translate the form one way and the content another.

Form or formulaic language evolves from its legal system. Change the system and you may have to change the words used to express a function. When dealing with formulaic language, you concentrate on the function or job being done by the language, not the literal meaning of the words. You need to use English words that do the same job in the legal system you are translating to. Because if the reader doesn't recognise the words as doing a particular job, the words are not doing that job. So we must use words the reader will recognise.

We can call this translating of the functions encoded in formulaic language as 'translating equivalently'. In contrast, we translate the details of the contract, including any important non-equivalent terms, 'transparently'. We look at how exactly how do both these things in the next chapter.

4. Equivalency versus transparency

While the last chapter talked about decoding the source contract, this one discusses how to encode it in the translation.

Translate formulaic language equivalently

Translating formulaic language equivalently means translating the function of the words rather than the words themselves. We translate equivalently in three ways:

Following target-language conventions

We follow target conventions mainly by heeding the advice of drafting experts. We use the words they say we should for doing a specific job in contracts. In this book, I've used drafting style guides to get this advice, but you can get it from other sources, e.g., online resources, other translators and courses. And while we can use target conventions for translating the function of just about all formulaic language, they are very useful for the style and syntax, which we cover in the Tip 1. We use target conventions to piece together our code or criteria for translating contracts.

1. Using models

Using models involves examining authentic contracts to see how the functions we want to translate usually appear in English. Of course, we won't want to use everything we find in a model. Suggestions we identify will have to mesh with our criteria and the target conventions we want to follow. Models can weigh in with suggestions on all the formulaic elements we identified earlier (i.e., set formulas, structural elements, headings and boilerplate clauses). However, we temper any hints on style and syntax with the criteria we adopt from the target conventions. We look more at using models in Tip 15.

2. Creating 'authentic concessions'

Depending on what language you translate from, you may find formulaic elements in the original that you don't find in English contracts. These elements often take the form of phrases or even whole paragraphs that appear particularly at the beginning of the contract. They may or may not contribute some special information about the contract, although they usually wouldn't be required in an English contract. However, in most cases, you'd include them to ensure everyone can agree you've faithfully reproduced the original. Because these elements do identify the contract for what it is — a translation from another legal system.

Thus, we want to keep these extra bits. However, we don't want them to sound awkward, and we want them to be able to do their jobs in English. To achieve this, we can use authentic concessions. You create an authentic concession by translating that extra element found in the original using language found in the English contracts you want to emulate. We look more closely at how to do this in

Tip 15. Indeed, you will see all three strategies described above demonstrated throughout the tips dealing with formulaic language.

Translate the rest transparently

We translate everything else in the contract transparently. Everything else being the details of the contract (e.g., the price, term and any other details relevant to the agreement), including any important non-equivalent terms and elements (‘important’ because they form part of the details).

This information represents the essence of the contract — what makes it different from another contract of the same type.

We find these details in the operative clauses (which set out the agreement) and the recitals (which provide any background information the drafter wants to include). The formulaic elements of style and syntax do, of course, come into play when we translate the details. In practice, we follow target-language conventions to decide what verbs and tenses to use for specific types of contract language in sentences, and we translate the details in the sentences transparently. We look at how to do this in Tip 1.

Translating transparently means making sure, where needed, that the reader can clearly see the contract details and the workings and influence of the source system. We translate meaning rather than function, sometimes but necessarily, translating literally. Above all, we ensure accuracy (vital given the audience and purpose, which we look at in the next chapter, *Audience and purpose* (page 15).

Sometimes these contract details include non-equivalent concepts not known in the target system (e.g., a property law concept). Precisely because such concepts form part of the contract details, we must let them shine through to the reader and never smudge them. We must signpost or describe such terms to get the meaning across to the reader so she can understand the contract in its context. We look at translating non-equivalent terms in Tip 12.

As well as legal terms not found in the target system, we also come across other foreign elements that must not be lost in translation. These include references to statutes or documents forming part of the source legal system. In this case, we translate transparently to leave a trace for the reader — both to signal that the referenced item forms part of the foreign system and to give enough information so the reader may find the document for herself. We look at how to translate references to statutes in Tip 14.

So as well as accurately translating the details of the contract, transparency refers to the extent to which you let the reader see and have access to elements in the original relating either to other documents or the source system. Thus, transparency is about translating accurately and leaving a trace back to the original term[3].

The equivalence–transparency[4] continuum

When encoding in translation, we always find ourselves somewhere along the continuum between equivalency and transparency, depending on how we decode the text. Depending on whether we are translating contract information or formulaic language, we move up and down the continuum. Sometimes we focus wholly on function and almost ignore the words in the original, while on other occasions we may even leave the foreign word in (usually alongside a description). Often we find ourselves doing something in-between. The tips in Part III demonstrate how we move up and down the continuum according to whether we want to translate form or content.

So now we've got a general idea of how to decode a contract in the source language and encode it in English. The next couple of chapters look at fine tuning how we encode the translation.

---

[3] As is probably obvious by now, I'm not using *transparent/ly/cy* as it is used in IT to mean *seamless*. I mean transparent in the sense that you can see through the translations to the original document and legal system.

[4] NB: My use of the terms *equivalency* and *transparency* differs to what you find in translation theory. You often see *fidelity versus transparency* or *formal equivalence versus dynamic equivalence*, where *transparency* and *dynamic equivalence* refers to what I call *equivalency*. Why did I do this? Because I find these definitions intuitive. Also, translators usually understand *equivalency* by itself to mean *dynamic equivalence* or *using functional equivalents*.

5. Audience and purpose

How we want our translation to be perceived and received and the job it must do in English will affect how we translate. Modern translation theory (skopos and functionalism) tells us to take into account the audience and purpose when translating. According to this theory, we may translate a term or text differently depending on the situation — who's going to read the text and what the text is for.

I think most translators would agree that this is a valid idea that reflects what we do instinctively, i.e., tailor the translation for the situation. However, from the perspective of a working translator, this bit of theory can appear hamstrung by the premise that the translator will know for sure the audience and the purpose. Because in the real world, the client doesn't always — or even often — say much about the audience and purpose. Maybe the client assumes we know these things or don't need to know them to do the translation. Even when working closely with clients you can be left none the wiser. You can always ask, and should do so whenever you can. But sometimes asking doesn't get answers much better than your intuition as the client himself may not have given much thought to these factors.

In practice, though, we don't need to be explicitly told who is going to read a document and what it is for. I find it's rarely even a question I think about when translating a document type I'm familiar with. We seem to create, explicitly or instinctively, default audiences and purposes for the types of text we translate. Once we've created these default audiences and purposes, we use them whenever we translate the document type in question, tinkering and adjusting where appropriate.

In any case, in this chapter, we're going to briefly look at what a default audience and purpose might look like for contract translating. Think of this as a starting point, which you can tinker with on the occasions you manage to get a full brief. Take a look at Appendix I for some ideas about how to do this tinkering for other audiences.

Audience

Who might want to read a contract translation? Aside from the parties to the contract, readers might include potential investors, regulatory bodies, salespeople, product users and judges (Kemp, 2012). Some of these people will know the law and be familiar with contracts, others will not.

However, regardless of how much our readers know about the law, we can assume that any non-expert reading a contract will understand that they may need to seek the assistance of a legal professional to understand the finer points. So, legal register aside — which we talk about in the next chapter, *The register dilemma* — we shouldn't shy away from technical terms.

Thus, regardless of who else might read the contract, we can narrow down our default audience in the last instance to lawyers. What kind of lawyers? As we're translating into English, a logical starting point would be common-law lawyers.

So our default audience might be **anyone interested in the contract for some reason who knows she might need to consult with a lawyer at some stage**. Which means we can assume we are ultimately translating for lawyers.

Lawyers versus linguists

Lawyers apparently prefer transparent solutions whereas linguists, i.e., us, usually favour equivalent solutions. Sarcevic (1997, p. 257), for instance, tells us that: "Whereas linguists often believe that borrowings should be used only as a last resort (Weston 1991:26), lawyers strongly favor their use (Sacco 1991:19; Minke 1991:459)". Given that our audience in the last instance are lawyers, we need to keep this in mind, especially when translating non-equivalent terms. For example, you might think a descriptive translation looks ugly, but the lawyer will not care and indeed prefer it if it takes him closer to the action in the source system.

Purpose

Why do people need contract translations? First, just about always to understand the agreement and how it works in the source legal system. As opposed to wanting a translation that will work in another legal system. In such cases, you'd probably hire a lawyer to draft you a new contract.

Furthermore, people need contract translations to make decisions. For instance, parties to the contract and their lawyers need translations:

- Prior to entering into an agreement, to understand what is about to be signed and maybe negotiate the terms, OR;
- After signing, to find out or understand what was signed.

Other types of readers (e.g., investors and salespeople) also need contract translations to make decisions, usually after signing. Maybe they need to find out what was signed to be able to make an informed decision.

So we can say the default purpose is to understand the contract in the context of the source system and ultimately to make decisions.

Implications from our default audience and purpose

Given our default audience and purpose we can say that:

- **Technical language is okay** — because any reader of the translation will understand that they may need to consult a lawyer to understand the ramifications of the contract.
- **Accuracy is vital** — because to make a decision, you need accurate information.

- **Understanding is vital** — because to make a decision, you have to understand what you're reading.

Given these considerations, when translating for our default audience and purpose, we should:

- **Use clear language where possible** so that anyone who has a rough idea about the agreement — which should cover most of our potential readership — can understand what's going on, even though they may need to check some terms with an expert. Even if we know we are translating for legal professionals, keeping things as simple as possible will still aid understanding (more on this in the next chapter on register).
- **Use common-law contract language** for translating 'equivalent' legal terms where you need to use technical terminology.
- **Deal appropriately with non-equivalent source-language/civil-law terms** so that an informed reader (our common-law lawyer) can understood the terms or easily research them. As our readers need to understand the contract in the context of the source system, we must give them the nitty-gritty on these terms. Furthermore, our audience apparently prefers clunky to slick when it comes to non-equivalent terms.
- **Put accuracy first**, at the expense of style. E.g., maybe we repeat a verb in a sentence because it is the most appropriate verb where in other contexts we might go for variety.

Translations for informational purposes only

What does it mean when a client asks for a translation for informational purposes only? If you dig a little deeper, he may just want you to answer a few questions about the original. Otherwise, he probably means that the translation will be less important than the original in some way.

Does this change how we translate our contract? Not really. For one thing, if you think about, most translations get done for informational purposes only. You need the contract in another language, so you get a translation done. Based on the information, someone may make a decision.

The translation may be an ineffectual copy. But as it tells people what the original contains, it needs to be spot on. To get the information to the other language intact, the translator has to do a good job — as, we trust, she always aspires to do.

Thus, when someone asks for a translation for informational purposes only, nothing much changes from the translator's perspective. The reader still has to understand the translation. Thus, the translation must be in a format the reader will understand. And, most importantly, the translation must be accurate. So we still have to translate the document well, which means translating as we normally would.

Of course, sometimes you will know more about the audience and purpose. In these cases, you may need to tinker with the above implications. See Appendix I for some ideas on implications for translation we can draw from different audience types.

For the purposes of this book, we assume the type of audience and purpose spelt out above, which basically boils down to not shying away from technical terms and ensuring accuracy. However, while we should be friends with technical terms, we’re going to frown upon using legalese for the sake of it, as you’ll see in the following chapter on register.

6. The register dilemma

In this chapter on register, we look at how we reconstruct the functional elements of the contract in the target language: everything from the superficial and noticeable (i.e., the headings, lead-in sentences and other signposts) to the more vital but less obvious (i.e., the style and syntax coursing through the document). At some point we may even want to distinguish between these two levels — the superficial and the more vital — and do something different in each case.

What dilemma?

You do have a choice about register. Hence the title of this chapter. However, when you start out translating contracts, you probably won't have any dilemma. Your instincts, translator resources (bilingual dictionaries, online forums but also translation courses) and even the source language will push you down what seems like the only path to take — towards a traditional legal register. As we'll see, this is all well and good, but we can improve our translations and make the process easier by tempering this leaning. We can do this by aiming for what we are going to call a 'modern register'. But first let me explain what I mean by a 'traditional register' so you can see the difference.

The traditional register — our default setting

A traditional register is that formal legal register we all know and love. It's the crustiness we expect from a legal document — **legalese**, **formality** and **redundancy**, which includes things like:

- Typical signpost legalese at the beginning and end of the contract, e.g., *whereas* (to introduce each recitals); *now, therefore* [...] *the parties hereto now agree as follows* (in the lead-in to the operative clauses); *in witness whereof* (start of the signature clause).
- Lots of pronominal adverbs, e.g., *hereby*, *thereof*, *whereby* and *hereinafter*.
- A healthy smattering of words like *same*, *said*, *such*, *notwithstanding*, *pursuant to* and *foregoing*.
- Doublets, e.g., *due and payable*.
- A verbose style.

When we first translate contracts, we tend to lean in this direction and use all of the above as much as possible. We might not get all the above elements in at first, but we can quickly learn to. However, even if you don't seek to emulate this register, you will tend in this direction. For instance, while you may or may not learn to stick *now, therefore* in the lead-in sentence to the operative clauses (as you might have seen done in an English contract), you will probably always prefer *said* and *such* over *this* and *that* because they sound more legal.

Why we go for as legal sounding as possible

Why do we lean towards a traditional register? Basically, for the three reasons mentioned above (our instincts, the resources we use and the fact that the source language may be more formal than English) and possibly a fourth — our isolation from the world of contract drafting.

First, it seems the natural thing to do. We associate this register with legal documents. So, as good translators, we attempt to replicate it, which actually comes quite naturally. Because regardless of our background, we all seem to have a deep repertoire of legalese to dig into. We may not get it right at first, but with some training and tinkering, we can translate into as crusty a register as you'll find. Being able to emulate this register can even become a source of pride. At least I know it did for me.

Second, the resources we use push us in this direction, either because of the nature of the resources themselves or inertia. Take bilingual dictionaries. Because they can't provide much context, they give us equivalents in a vacuum. So they will give legalese equivalents even if drafters have stopped using such terms in English contracts for a specific function. Thus, a dictionary may make an archaic term look like one you should use in your translation. You also find this term-for-term translating on online terminology forums as it's pretty much the same situation — words in a vacuum. I'm not saying we should throw away our dictionaries and turn away from online forums, just that we need to temper what they tell us with what we find in drafting style guides and model contracts. Especially with regard to 'signpost' elements of legalese.

Then we have inertia. We all keep going back to the same old terms and thus they get propagated, both in the resources and in translation courses, which may not always be informed by the most recent trends in English contract drafting.

Third, our source language may be more formal than English, which, of course, means the dictionaries respond by providing us with the kind of archaic one-to-one translations we spoke about above. Even our instinct will tell us to look for similar terms in English. However, from a functional point of view (looking for target terms that perform the same function), there are flaws in that approach. For instance, mimicking the source register might hinder doing a particular job on the other side of the language divide if such a register is not expected by target readers.

Lastly, as translators, we may be too many steps removed from the industry. By the industry I mean the people drafting contracts in English today. Many of us operate in isolation. Sometimes people give us feedback on our work, but these often aren't experts or people who regularly draft contracts in English. Indeed, I suspect that any feedback we might get from experts is likely to concern legal terminology and not English contract style, which the expert might ignore in a translation if he understands what's going on despite an inconsistent or archaic style.

We might get feedback from people in the translation industry. However, these people are usually as far back from the action of drafting contracts in English as we are. So we get feedback based on the model most prevalent with translators, i.e., the traditional one based on trying to sound as legal as you can. Under these circumstances, where other translators or linguists review your work, features of a modern contract style might even get revised out of your work.

What our clients want matters. But we can best help intermediary clients by providing them with better contract translations for the end client. Because when we don't have any instructions to the contrary (and even when we do, I'd suggest) we have a duty to provide the best translation possible, which may mean straying from a collection of typical or dictionary translations.

Thus, as a group, translators, reviewers and anyone on the translation side of the fence may be enforcing or propagating an outdated style. And where clients do not even ask for this in the first place, we have no grounds, other than inertia, for giving them translations in this traditional register. Anecdotally, I've found that the closer to the action my clients are (i.e., direct clients and lawyers, mainly in Spain), the more receptive they become to a modern register, sometimes even asking for it before I say anything.

So that is what a traditional register looks like and why we might lean towards it. We're not talking about heading off in a radical new direction, just about tempering our natural tendency to try to sound as legal as possible.

A modern register — what the style guides say

So what does a modern register look like? It basically strips away typical markers of a traditional style when they serve no purpose. I.e., you don't stray too far from standard English for no gain or reason. You either get rid of the traditional hallmarks (when redundant) or use simpler language instead.

We could describe a modern register as:

- containing only 'useful' legalese and;
- being sort of plain English, although it does not avoid technical terms or legalese at any cost (given our audience, plain English is not the goal).

This description sums up the approach of most contract style guides. So in practice, emulating this type of register in translation involves heeding the advice you find in contract drafting style guides, which is the approach of this book. We sometimes diverge from these guidelines, but we always follow them in spirit, in particular with regard to using legalese purposefully — a principle we develop further in Tip 6.

… and a middle-ground option

As translators, we may sometimes want to pay homage to the traditional stereotype, either for certain clients or because it feels safer. Establishing a middle ground entails translating the more visible elements of formulaic language (usually at the start and the end of the contract) in a more traditional style while translating style and syntax in the modern register (mainly in the operative clauses). We talk about how to find this middle ground in Tip 7. But for now, let's look at why we might want to make the modern register our starting point, which, in any case, is compatible with choosing a middle-ground option.

Why start with the modern register?

The distinction we are making here between the traditional and modern is arbitrary and never black and white. However, it does capture a difference in approach. So while clients and other considerations may push or pull us in one direction or another, we can decide which pole we lean towards. Rather than turn away from the traditional register, we tone it down. Here are four reasons why we might choose to lean towards the modern register:

First, it's easier to get right because it's more logical and criteria based. You can more 'think' your way to the solution. Unlike with the traditional register, you don't have to remember as many set phrases. So you less need to refer back to past translations to find the wording you usually use for certain patches of formulaic language.

With a modern register, you don't have this problem as much because it is more criteria based. It's less like keeping up an act. Instead of remembering set phrases, you follow guidelines. Thus, you can more often reason your way out of dilemmas instead of chasing your tail wondering what the most usual traditional wording is. Using a modern register feels like you have more control. It's also easy to justify as you can point to an approach rather than reasons why you chose a particular wording.

Second, clients and readers should find a modern register more helpful. Even specialists may thank you for using a more straightforward style — even if they use a more traditional one. Of course, any reader not used to reading legal documents will be grateful to you for getting rid of the deadwood. Thus, we can make our translations more useful and usable when we use a modern register. Because, as the translations are more accessible, we can assume that people are more likely to read, understand and use them. All of which should benefit whoever commissions the translation.

Third, a modern register appears closer to where contract drafting in English is at. At the very least, all the contract style guides espouse such an approach. I don't know how widespread this model is in practice. However, unless you know that your client (the end client or user of the translation, not the intermediary) really wants a traditional register, the best option is to emulate what the experts suggest. Again, translating into a style that you can point to in a style guide makes it easy to justify your decisions.

Fourth, you can argue that translating contracts into English in a modern register is more faithful, at least in terms of function. Because if your source language favours a traditional style for contracts whereas English leans more to a modern one, then you can say these styles are functional equivalents, i.e., traditional for the source language equals modern for English. To translate in either direction, you should take this difference into account.

Tempering your instinct to the degree you want

We do have a choice about register, even though it may not appear this way when we start out translating contracts. We should choose rather than have the decision made for us by the resources we use, which leads to a patchy style.

We can benefit from tempering our instinct to sound as legal as possible, which we do by heeding the advice of drafting experts. How far away you move from this natural tendency and the traditional register is up to you. In my case at least, seeing what the drafting experts espouse and reflecting on our goals as translators has made me change tack completely. While I used to lay the legalese on as thick as I could, I now use it sparingly. I believe a modern register is better for everybody — the translator, the client and the reader.

Of course, you may not arrive at the same conclusion. But understand that you do have a choice about register and should make a decision. Because making this decision at the macro level makes things a lot easier at the micro level — when deciding how to translate words and sentences. It helps you to more quickly size up the usefulness of resources and solutions and gives you a framework. Knowing which way you lean in terms of register helps make your translations more consistent and coherent than if you just try to translate the contract any old how.

7. Using the macro structure as your compass

To sum up the principles we've looked at so far, this chapter ties the main ideas to the structure of the contract. As contracts are highly structured documents, we can use their structure to tell us how we should translate each part.

The beginning of the contract

We class everything up to and including the lead-in sentence to the operative clauses as the beginning. The beginning of the contract has two key characteristics:

1. **A lot of formulaic language.** As we have seen, it's the function rather than the meaning of formulaic language that matters. And the best way to translate the function is equivalently, using English contract models and conventions. Thus, we look more to what happens in English rather than the precise wording of the source text. And when you start a translation, don't waste time trying to translate this language accurately; save your energy for the more important contract details. You can always come back.

   Deciding to come back later can save you from another trap with this type of language: dithering over slightly different but equally correct options. Because you can find many correct ways to translate formulaic language. It doesn't often matter which one we choose, but we can lose sight of this when we first tackle a translation. However, by coming back, after having translated the whole thing and knowing where the meat of the contract is, it's easier to keep this in perspective.

   Of course, over time you develop a style and an almost automatic response to how you translate formulaic language. This makes things quicker. And because you understand the nature of this language, you won't get thrown when you get a contract that varies this formulaic language. You'll know to go straight for the function underlying it.

2. **A few system/culture-specific terms.** In the clauses identifying the parties and any representatives, you may find (depending on your source language) references to elements only existing in the source system. You need to translate these elements transparently for these details to mean anything. Such elements include things like company registries, notarial instruments and identification details. Quite easy to spot, these terms can be tricky to translate. Research them thoroughly to come up with transparent and understandable solutions. Again, you quickly get to know these terms.

The middle of the contract

The middle of the contract includes all but the last clause. In the middle, you find the details of the agreement, which we must translate accurately but in a format the reader expects and understands. To do this, we may have to change the style and syntax to replicate what happens in English contracts of the kind we want to emulate. We look at how to conjure this authentic English-contract feel in Part III. But basically we just implement current style guidelines and conventions for English contracts (which are what the tips in Part III are based on).

Occasionally, in amongst the details, we find non-equivalent legal terms. So instead of using equivalent terms found in the English legal system, we have to translate transparently so the reader can understand the term in the context of the source system and document. Such terms require extra work from us: first to understand the term correctly; and second to come up with a useful and understandable solution. Because even though non-equivalent terms occur infrequently — you may get one every couple of contracts — you must pay close attention to them. If you don't get it quite right, the reader will not understand your term or, even worse, she will confuse it with another (because you used an English term she knows but that doesn't mean the same thing as the source term). But more about dealing with non-equivalent terms in Tip 12. For now, let's just say that non-equivalent terms matter a lot, despite their infrequency in contracts.

Thus, we translate the details in the middle of the contract accurately while dressing them up in a familiar format.

The end of the contract

The end of the contract consists of the last sentence or clause — usually a formulaic expression about how the parties are signing on a particular date and at a particular place. As with formulaic language, rather than focusing on the source, we look more to what happens in English contracts and pick equivalent chunks from them.

8. Conclusions about the general principles

So now we have a framework and some principles for building our translation machine.

Of these principles, some are ideas and distinctions for decoding the contract. These are the distinctions on formulaic language versus contract information and equivalency versus transparency. The more you understand these principles, the easier you will find it to navigate and digest the source document.

In contrast, the other principles (i.e., those on register and the default audience and purpose) deal with how to encode the contract in the translation. These principles require more input from you because you have a better idea about the context in which you do your translations. So assess them and tinker as needed.

Now, based on this framework and these general principles, we can move on to the specific tips for translating contracts into English.

Main points in Part II

- Making a distinction between formulaic language (form) and the details of the contract (content) can make translating contracts easier as it tells you what you need to translate accurately (transparently) and what you should translate equivalently.
- When translating equivalently, we look more to target (English) conventions and models for inspiration. When translating transparently, we pay more attention to the source text.
- For our default audience (in the last instance, a common-law lawyer), technical language is okay; for our default purpose (i.e., decision-making), understanding and accuracy are vital.
- We should temper our tendency to try to sound as legal as possible by aiming for a modern register, which uses legalese purposefully rather than willy-nilly as our natural leaning can have us do. The modern register is simply what the contract drafting guidelines espouse. It still sounds legal but should make more sense to everyone.

Part III. Tips for translating contracts into English

9. Introduction to the tips

So now we come to the tips for translating contracts into English. These tips are the code our translation machine needs to be able to translate contracts into English. We base this code on the logic developed in Part II. So if you tweak any of the points made there or your situation differs (e.g., a different audience or purpose), make sure to adjust how you apply the tips.

The tips are based on what you find in contract drafting style guides. Aside from a couple of differences, which we will mention, these tips are the bare minimum that all the guides agree on that is relevant for translation. Because we are talking about translating and not drafting, we will sometimes diverge from the advice in the style guides. However, we'll still follow the philosophy behind them.

What the tips cover

The tips cover the following areas, which we'll work through in the following chapters:

- **Replicating English contract style and conventions (Chapter 10).** These tips cover the style and syntax element of formulaic language, i.e., the vital systems that must function effectively in English for readers to understand the contract.
- **Using legalese purposefully (Chapter 11).** Here we apply the general principle gleaned from the style guides of using legalese purposefully. We will also look at the middle-ground option for register we spoke about in Part II.
- **Translating non-equivalent terms and elements (Chapter 12)**. These tips looks at how we slide up and down the transparency–equivalency continuum when researching and translating terms and elements.
- **Making the translation process easier (Chapter 13).** The last couple of tips look at things we can do to make the translation process easier.

Tenets of English contract drafting

Before we start, let's briefly identify some key tenets of English contract drafting.

Contracts should:

- Be clear, precise and consistent.
- Omit redundancy and repetition (Adams, 2013).

In addition to the principles we looked at in Part II, these tenets underlie the following tips and guide how we apply them.

10. Tips on replicating English contract style and conventions

If you recall, when we distinguished between formulaic language and contract information, we said that formulaic language included style and syntax. While this may be the subtlest type of formulaic language, it's the one you need to pay most attention to to make your translations sound authentic. You'll also remember that we find this formulaic style and syntax mainly in the middle of the contract (the operative clauses). We want to translate the details in the operative clauses accurately while replicating the English style and syntax containing these details. As you'll see in the tips, this requires reshuffling and even changing tenses and verbs. Thus, we keep the content (i.e., the details of the contract) while adapting the form (i.e., style and syntax). This will make our translations accurate and effective. Accurate because we faithfully reproduce the details, and effective because our translations will read as English readers expect, which should make the translation more useful and usable.

Tip 1. Do change verbs and tenses

This first tip will make the biggest impact on how you translate contracts. It's also the longest and most complicated. So let me spell out how we're going to work through it.

First, we're going to look at why we should change verbs and tenses (*Why change verbs and tenses?*). Second, we're going to define how we change verbs and tenses (*How do we change verbs and tenses?*). Third, we work through an example to illustrate how we use language categories to change verbs and tenses (*An example*). Next, we define the most important language categories for us (*Language categories*). After that, we identify the verbs, tenses and other elements we use in English for the language categories (*What verbs and tenses do we use in English for the language categories?*). Lastly, there is a cheat sheet which summarises this tip but from the perspective of the elements used in English (as opposed to identifying the language categories first) (*Cheat sheet — What tense where*).

Why change verbs and tenses?

Each legal language has its own conventions on which verbs and tenses do which jobs. Sometimes your source and target languages will use the same verbs and tenses for the same job. Sometimes they won't. So, to follow our idea of translating the formulaic elements equivalently (here we are talking about style and syntax), instead of blindly replicating the verbs and tenses we find in the source text, we use those used in English to do the same job.

How do we change verbs and tenses?

Changing verbs and tenses to replicate English conventions entails two steps:

1. Identifying the type of language (i.e., the language category) in the source (e.g., language of obligation, prohibition or discretion). Don't worry, these categories are explained in the next section.
2. Using our preferred English verb, tense or other element for that type of language in the translation (not necessarily a literal translation of the source element).

Basically, when you can see what job the source sentence does, you use whatever verb and tense we use in English to do that job.

An example

Let's see how this works in an example:

Take the following sentence in Spanish:

> *XX* ***podrá/tiene derecho a/etc.*** *terminar el acuerdo...*

Literally:

> *XX* ***will be able to/has a right to/etc.*** *terminate the agreement…*

What type of language is this? In contracts, we can call this 'language of discretion' i.e., "… language stating that a party has the discretion to take or not take specified action" (Adams, 2013, p.59).

What verb and tense do we use in English for language of discretion? Usually *may*. So, regardless of the verb in the source sentence, our translation will look like this:

> *XX* ***may*** *terminate the agreement*

Furthermore, heeding those tenets of contract drafting about clarity, precision and consistency, we always use the same term (i.e., *may*, in this case) for expressing this function. We never use a synonym (e.g., *reserves the right to*, *has the option to* or *can*).

So that is the process for emulating target verbs and tenses. Now let's look at the other language categories.

Language categories

Contract language can be broken into different categories. We mentioned 'language of discretion', but we can identify more categories. Adams, for instance (in Chapter 3 of *Manual of Style for Contract Drafting*), identifies the following 11 categories of contract language.

Language categories

1. language of obligation
2. language of discretion
3. language of prohibition
4. language of performance
5. language of policy
6. expressing conditions
7. language of declaration
8. language of agreement
9. language of belief
10. language of intention
11. language of recommendation

Listed roughly in order of importance from a translation perspective.

Other authors identify similar categories, but Adams's list is the most complete. He also gives clear guidelines about what verbs and tenses to use in each case. This advice forms the basis for the criteria we are going to use. For more information, I highly recommend reading Chapter 3 of Adams's work.

Don't be overwhelmed by the number of categories. In practice, you just need to keep track of the important few: at first, the ones you understand; with more experience, the first eight in the above list. (These first eight are the most important for us, so we're not going to worry about the last three here.) To start with, just get to know the main ones, and keep in mind that others exist. Little by little, you will come to know them all. Table 1 defines what these eight most important language categories are for.

Language…	**Is for…**
of obligation	what the parties promise they will do.
of discretion	what the parties have an option to do.
of prohibition	what the parties promise they won't do.
of performance	things occurring when and because the contract is being signed.
of policy	the general rules of the contract.
for expressing conditions	expressing conditions (in the linguistic sense — conditional language).
of declaration	statements of fact and acknowledgements.
of agreement	signalling commitment to enter the agreement.

Table 1. Language categories.

Note that these categories are arbitrary. They are useful, but — like grammar — they are just rules pegged after the fact to real language. We only use them to the extent they help. If you can't identify a category or come across a contradiction, leave the categories aside and translate as you normally would in that instance.

To help you identify the language categories when translating, you could list the verbs and tenses normally used for each category in your source language and an example sentence of each (see Table 2).

Language…	**Source verb, tense or element**	**Example sentence in your source language**
of obligation	*debe, future tense, etc.*	*El comprador debe pagar …, El comprador pagará …, etc.*
of discretion		
of prohibition		
of performance		
of policy		
for expressing conditions		
of declaration		
of agreement		

Table 2. Identifying language categories in your source language.

What verbs and tenses do we use in English for the language categories?

Now it's time to identify the verbs, tenses or other element we use in English to express the language categories. Table 3 lists the language categories (the "For language…" column) and our preferred verbs, tenses or elements for doing the job of each category (the "Always use" column). Things to avoid are listed in the "Don't use" column.

In a couple of the trickier cases, the job done by these categories is explained in the following tips (Tip 2 and Tip 3). In these tips, we also look at why we might prefer the elements chosen over other options. Most of my reasoning for these choices comes from Adams, who carefully analyses the options in Chapter 3 of his book, and the other drafting style guides (see Appendix VI: Bibliography).

You may, of course, decide on different preferred elements. Language of obligation, for instance, presents us with a couple of alternatives (discussed in Tip 2). Whatever you choose, make sure you always use it to do the same job in your translations, coming back to that principle of consistency.

For language…	**Always use**	**Don't use**
of obligation	*shall (will, must)*	any synonym
of discretion	*May*	any synonym
of prohibition	*shall not*	any synonym
of performance	*Hereby*	elsewhere
of policy	present and future tense	*shall, shall be*
for expressing conditions	first conditional (present + future)	second or third conditionals
of declaration	*states*, *acknowledges* (without *hereby*)	*represents and warrants*, *represents*
of agreement	*agree* (only in the phrase *parties agree as follows*)	*agree* anywhere else in the contract

Table 3. Language categories.

Let's reiterate how we do this:

1. We identify the job being done in the source sentence (i.e. the language category)
2. We use whatever we put in the "Always use" column in Table 3.

We all but ignore the source tense and verb and forget about English synonyms of our preferred term — we always use the same verb, tense or element for a given type of contract language.

You will sometimes struggle to identify language categories, especially at first. Aside from your learning curve, remember that not everyone drafts perfectly unambiguous originals. In any case, you don't have to always identify the language type and apply your preferred option. Just doing so most of the time and when you can removes doubt when translating and helps you produce more consistent translations. You should find the most important and common types of language, like the languages of discretion, obligation and prohibition, easy to identify. With practice, you will find yourself identifying more of the categories.

Cheat sheet — What tense where

This section explains the information in Table 3 but from a slightly different angle — starting with the verb, tense or element we use in English. Again, most of the points mirror Adams's recommendations[5].

---

[5] Also see Adams's Quick Reference sheet available here: http://www.adamsdrafting.com/first-draft-categories-of-contract-language-quick-reference/

At the beginning of the contract (the introductory clause and the recitals)

- Mainly use past and present tense.

In the middle of the contract (the operative clauses)

1. **Use *shall* for language of obligation,** i.e., for strong obligations or promises of the parties to the contract. Always use *shall* in the active voice. (See Tip 2 for how to use *shall* properly and some alternatives).
    a. You may want to choose some other option for obligation (e.g., *must* or *will*).
    b. DON'T use *shall* for policy language (see Point 3) or in the passive.
2. **Use *may* for language of discretion,** i.e., for what parties have an option to do (but are not required to do).
3. **Use *shall not* for language of prohibition,** i.e., for what parties are prohibited from doing/promise not to do. You would change this if you decided to use something different for language of obligation (e.g., *must not* if you end up using *must* for language of obligation).
4. **Use *hereby* for language of performance,** i.e., for things occurring at the time of signing and because of it, except for statements and acknowledgements (see Point 5), which don't usually use *hereby*.
    a. BUT don't use *hereby* for negative language of performance (not doing something). Instead, use present (continuous). E.g.: *The seller is not assuming liability for…*
    b. ALSO, be aware of statements like *XXXX hereby grants YYYY the right to…*, which might be language of discretion in disguise (i.e., it should be *YYYY may…*).
    c. AND don't use *hereby agree* (this is language of agreement, see Point 8).
    d. We look at these points in detail in Tip 3.
5. **Use *states* or *acknowledges* for declarations** the parties effectively make when signing the contract (i.e., for either stating or acknowledging something).
    a. DON'T use *states* or *acknowledges* with *hereby* (see Tip 3).
6. **Use the first conditional to express all conditions (i.e., present + future tense).** This is important when translating from languages that use second and third conditionals in contracts. English contracts don't usually express degrees of possibility, which is what these other conditionals signify.
7. **Use present and future tense for policy language,** i.e., for general terms and conditions of the contract that don't require any action from either party (e.g., the term or duration of the contract and the governing law). Try to use present tense first.

8. **Use *agree* only in the lead-in to the operative clauses** to signpost the commitment of the parties to enter into the agreement. E.g., … *the parties agree as follows*. Adams (2013, p. 39) says language of agreement expresses "state of mind", which distinguishes it from language of performance and is why we don't use *hereby* with it.

Remember!

- Don't use synonyms for any of the above preferred terms (e.g., only use *may* for language of discretion.)
- Don't literally translate source verbs or follow source conventions.
- Nuance as necessary.

Some of the points on the language categories may seem arbitrary. But our aim is to apply the most common, current conventions as correctly as possible. The next four tips deal with aspects of applying these language categories and conventions.

Tip 2. Use *shall* properly (if at all)

Shall gets its own tip because it's special — although potentially useful, it's widely used and misused, depending on your point of view. Some even say we shouldn't use *shall* at all. In this tip, we look at how to use it sensibly and some alternatives. We also address problems we can run into with language of obligation.

Why use shall?

Shall is a recognisable feature of legalese. Most contract drafting guides suggest using it. Mainly because it's useful for expressing one thing: strong obligations of the parties, what we referred to above as language of obligation.

As we've seen, reserving a verb or term for one job fits right in with the objective of clarity in contract drafting. Of course, only using *shall* for strong obligation also means not using it for anything else, which is the hard part and where most of us fall into the trap of overuse.

How to use shall 'properly'

Using *shall* properly, or at least purposefully, in contract translations requires two things:

1. Only using it for expressing obligations of the parties.
2. Only using it in the active voice (in which the party with the obligation is the subject of the sentence). We'll talk more about the active voice in Tip 4. For now, just accept using the active voice as part of our *shall* convention.

For example:

a) *Peter shall pay Paul €10 every month.*

And not:

b) *Paul shall receive €10 every month (from Peter).* Receiving the payment is not the obligation.
c) *€10 shall be paid to Paul every month.* Whose obligation is it?

In b) and c), *shall* does not explicitly express an obligation of a party.

So while we may come across a source sentence that literally translates to b) or c), to use *shall* purposefully in the translation, we should recast to the active voice and sometimes even add the subject in, like we would for sentence c). In this case, we'd come up with something like example a) by adding in the other party, Peter, and making him the subject of the sentence as the obligation is his.

How to deal with unassigned obligation

If we have a passive sentence like c) in the original (common in languages like Spanish), to follow our criteria on *shall*, we must know who the obligation belongs to. In contracts, where you have a limited number of actors, the context usually tells you which party the obligation belongs to (like it would in example c)). But what if it doesn't? One option is to use something other than *shall*, like *must*. For example, imagine you find a sentence like the following in your source contract where the context doesn't tell you anything more:

d) A report must be drafted every month.

Here *must* is a good option. Doubly so because as well as being unassigned, this obligation doesn't appear to be especially strong (more on the strength of the obligations later). In any case, using *must* here lets us reserve *shall* for strong obligations that we can assign.

Our contract experts might tell us sentences like d) leave something to desire because they don't tell us exactly who should do what. But from the translator's perspective (especially if you don't have access to the drafter), it will be our best bet. We're not misusing *shall* (as per our criteria), and we're accurately translating the original. We make trade-offs like all the time when translating less than perfect originals (which is most of the time in the real world).

You also might want to use *must* for obligations assigned to non-signing entities and individuals named in the contract (e.g., employees of the parties). Again, this keeps *shall* for just what we want to use it for.

Policy language and weak obligation

Another piece in the puzzle to using *shall* properly is to not use it for policy language or weak obligation. Adams (2013) defines policies as contract rules and details that don't require the parties to do anything directly for them to be observed, e.g., the term and scope of the contract. Rutledge uses the term "descriptive statements", which describe "a status, condition, or policy" (2012, p.87).

As we saw in Tip 1, we reserve present and future tense for policy language, e.g.:

e) The term of the agreement is two years.
f) This agreement terminates on April 30.
g) This contract is governed by Spanish law.

The trick, then, is to not use *shall* in sentences like e), f) and g).

Nor should we use *shall* for weak obligations in contracts, which are often not assigned to either party. Here again *must* or some other structure of obligation works well. Take meetings, for instance. Contracts often require holding meetings but don't always specify how often and who must call them. In many cases, the holding of meetings seems like a weak obligation, the non-performance of which would not constitute a breach of contract (as would occur with not performing a strong obligation). So in these cases of weak and usually unassigned obligation, we avoid *shall* and write something like:

h) Meetings must/are to be held annually.

In a perfect world, drafters would always break down and designate these weak obligations, but they often don't, so we can only do the best we can. And don't worry too much about what constitutes weak or strong obligation. In most cases, it's obvious; and in the last instance, a judge would decide the matter, regardless of what term is used in sentences like these.

The 'have a duty to' test

You can check your use of *shall* by applying the 'have a duty to' test (Adams, 2013, p. 44):

If you can replace *shall* with 'have a duty to' in a sentence and it still makes sense (grammatically and logically), you've used it correctly, e.g.:

i) *Peter 'has a duty to' send Paul a report every month.* (OK!)
j) *Paul 'has a duty to' receive a report every month.* (Doesn't make sense.)
k) *A report 'has a duty to' be sent to Paul every month.* (No way!)

So this is a quick test you can apply when in doubt.

Alternatives to *shall* and other criteria for using it

Use it as much as possible

Overuse of *shall* is rife. EU documents, for instance, are littered with *shall*, where you find it in the passive and at the slightest and every inkling of any possible obligation. Such use occurs even though many sources — like the legislation drafting guidelines of other jurisdictions (United Kingdom. Office of the Parliamentary Counsel, 2015) — advise against using *shall* in legislation. In contrast, as we've seen, contract drafting experts do often recommend using *shall*.

You can use *shall* following this *EU approach*. Given how widespread it is, it's unlikely anyone will pull you up on such use of it. When I first translated legal documents and contracts — falling victim of my translator's intuition to sound as legal as possible — I certainly threw it in everywhere I could, and no one ever berated me for doing so. However, after doing some research, I see more sense in reserving *shall* for just one thing. I hardly ever use *shall* outside of contracts (i.e., not in legislation).

Not using it at all

Some experts, Bryan Garner (2013) for instance, tell us we shouldn't use *shall* in contracts. They say this for two reasons.

First, while these experts might see the use in reserving *shall* for strong obligation in contracts, they say we can't be trusted to use it properly and therefore should just forget about it altogether. As examples of *shall* misuse abound, they might have a point. Everyone, it seems, can fall into the trap of sprinkling *shall* a tad to liberally in their legal documents. However, if we learn how to use *shall* properly, I think we can cast this argument aside as it won't apply to us.

Second, some say *shall* is useless legalese, impenetrable to some at worst, and not plain English enough at best. This argument might hold for legislation (although I think most people would understand *shall* in statutes). However, even if *shall* were impenetrable to many people, we can still argue for its place in contracts given that — in the last instance, for our default audience — we are translating for an expert reader.

Of course, if you agree with either of these arguments, you'll want to avoid using *shall* in contracts. Instead you can use *must* or *will*. While this is preferable to using *shall* willy-nilly, you still miss out on the clarity of reserving one term for strong obligations.

The case for *will*

Apart from using *will* just to avoid *shall*, some argue for *will* on its own merits. For instance, Rutledge (2012) points out that a contract is a list of promises parties make to each other in the context of an agreement. So instead of language of obligation, she talks about promissory language and suggests avoiding the imperative tone and verbs of obligation like *must* and *shall*. So Rutledge believes *will* is the best and most logical option for the promises made in contracts.

I find this argument for *will* more persuasive than just using it to avoid *shall*, although for now I'm sticking with *shall*. If you decide to use *will* for the obligation/promises of the parties, most of the advice above still applies. You still need to distinguish between different types of obligation and policy and descriptive language. And you also need to recast the promissory phrases to the active voice, but more on that in Tip 4.

Summary

- Only use *shall* in the active voice to directly express the strong obligation of a party (the subject of the sentence).
- Recast the original as needed to make the sentence active and include the party whose obligation it is.
- For unassigned or weak obligation or requirements placed on non-signing parties, use *must* or some other structure of obligation.
- Don't use *shall* for policy or descriptive language (i.e., status, details or conditions of the contract like its term or termination date).

Tip 3. Use *hereby* properly (if at all)

Using *hereby* correctly

Like *shall*, *hereby* deserves its own tip. Because we associate *hereby* with a legal register, we can fall into the trap of sprinkling it too liberally in our translations:

> Frequently misspelled ('herby'!), it is littered throughout contracts and legal documents with abandon lending them a pleasantly (or unpleasantly, depending on your taste) legalistic flavour. (Kemp, p.48)

Given Kemp refers here to authentic documents drafted in English, you could argue that by overusing *hereby*, we are just being good translators by replicating what we find on the ground. But, as Kemp says, *hereby* is very useful for "documenting obligations that are fulfilled immediately upon the execution of the contract." (p. 48). So, in the name of clarity, it makes sense to use *hereby* only in this way. As we saw in Tip 1, to use *hereby* properly, we should to reserve it for signposting language of performance, e.g.:

a) *John hereby grants a royalty-free license to Peter.*
b) *Peter hereby purchases the software from Wayne.*

However, you will stumble across examples of what looks like language of performance for which we don't use *hereby*. All the explanations below come from Adams (2013, Chapter 3).

Don't use *hereby* for language of declaration

E.g.:

c) *The seller ~~hereby~~ states that the car is in good working order.*

While the stating appears to happen when the parties sign the contract, according to Adams, these types of statements and the "speaking verbs" used in them don't usually go with *hereby*.

So we don't use *hereby* with verbs like *states* or *acknowledges*— our preferred verbs for language of declaration — or any others you may want to use for this purpose, like *represents* or *warrants*.

Don't use *hereby* for negative language of performance

So nothing like:

d) *Peter does not ~~hereby~~ assume liability.*

Don’t use *hereby* with *agree*

As we saw in Tip 1, we only use *agree* once in the contract for language of agreement in the lead-in sentence to the operative clauses. By convention, *hereby* is not used in this sentence:

e) The parties ~~hereby~~ agree as follows:

Why not? Because language of agreement expresses state of mind (Adams, 2013, p. 39). Again, this sounds like an after-the-fact rule created to explain usual convention. In any case, this is convention according to the experts. Indeed, I had found some of these rules stated indirectly in other style guides but without any explanation. For instance, I had read or observed somewhere that we shouldn’t use *hereby* with *warrants*, but I couldn’t work out why given that the *warranting* seemed to happen at the time of signing. It remained a mystery until I came across Adams’s explanations, which defines how to use *hereby* with rules you can remember.

Could you leave *hereby* out altogether?

If you left *hereby* out, readers probably wouldn’t miss it. Because while it designates language of performance, this function is obvious and doesn’t need *hereby* to be understood. By taking it out, you don’t change the meaning. I use *hereby* because the drafting guides suggest doing so. However, if you wanted to tone down the legalese in your contract translations as much as possible, you could remove it altogether.

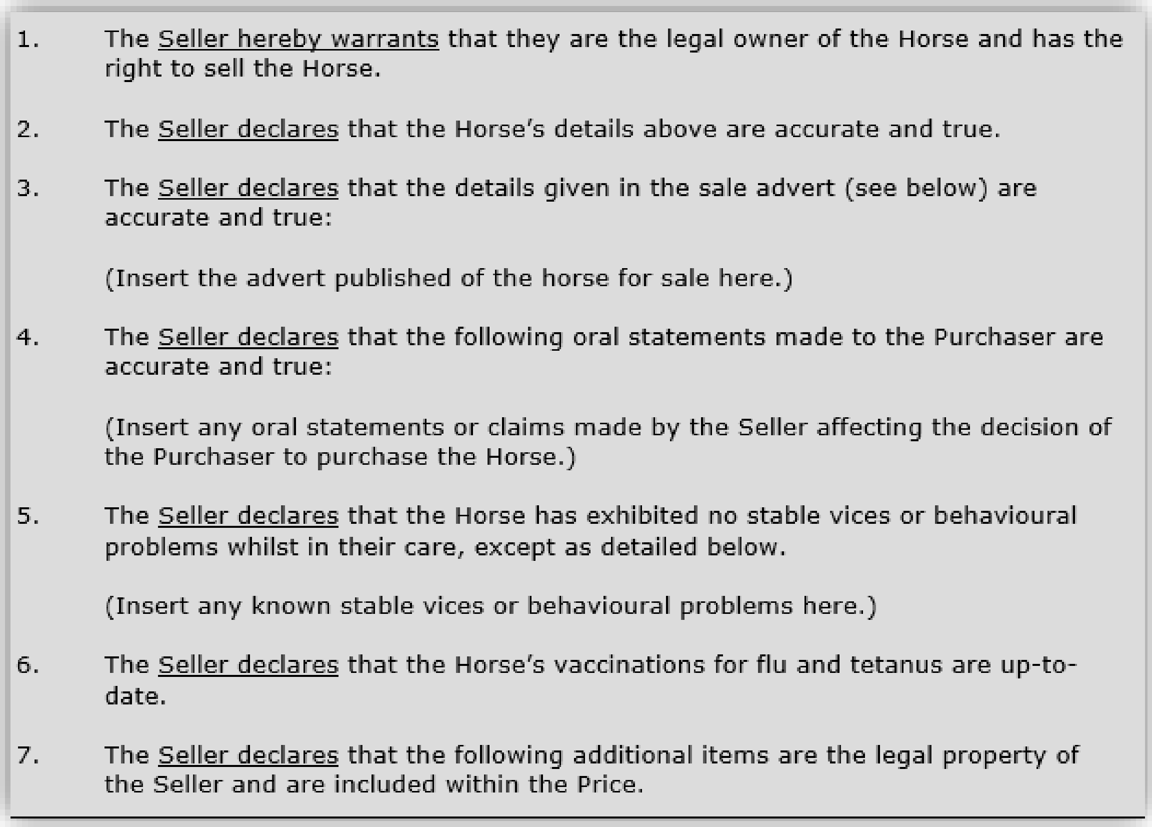
Summary

- Only use *hereby* for language of performance.
- Don’t use *hereby* with speaking verbs (i.e., *states*, *acknowledges*, *represents* or any others you may use).
- Don’t use *hereby* in the negative.
- Don’t use *hereby* with *agree*.

Tip 4. Recast, a lot, especially to active voice

Using the active voice — an oft-touted and perhaps overstated tenet of good writing in general — matters even more in contracts. All the drafting style guides say to use the active voice. Mainly for clarity. Because, by using the active voice, you clearly state who owns the obligation, prohibition, statement, option etc.

And you do actually see a lot of active sentences in English contracts. For instance, it's not uncommon to see a stream of sentences like those in Figure 2, each listing a commitment of the parties in the active voice:



1. The Seller hereby warrants that they are the legal owner of the Horse and has the right to sell the Horse.
2. The Seller declares that the Horse's details above are accurate and true.
3. The Seller declares that the details given in the sale advert (see below) are accurate and true:

   (Insert the advert published of the horse for sale here.)
4. The Seller declares that the following oral statements made to the Purchaser are accurate and true:

   (Insert any oral statements or claims made by the Seller affecting the decision of the Purchaser to purchase the Horse.)
5. The Seller declares that the Horse has exhibited no stable vices or behavioural problems whilst in their care, except as detailed below.

   (Insert any known stable vices or behavioural problems here.)
6. The Seller declares that the Horse's vaccinations for flu and tetanus are up-to-date.
7. The Seller declares that the following additional items are the legal property of the Seller and are included within the Price.

Figure 2. Clauses in active voice in an English contract (Horse Purchase Contract). Underlining, mine.

Thus, to emulate English contract style in our translations, we should use the active voice. We should also try to mimic the above sentence structure of having only one element (e.g., of obligation, prohibition or policy) per sentence. Remember, we're still talking about style and syntax — that less notable but vital part of contracts — so we're still talking about a formulaic element we should translate equivalently.

Depending on your source language, you may have a lot of recasting to do. Some languages may have less stricter conventions on the use of the active voice and may lump elements, like multiple obligations, in long sentences. So as well as recasting to the active voice, you may need to cut sentences. You may even need to join them on occasions. Some languages even tolerate omitting the subject from the sentence. This rarely occurs in English, so you may also find yourself adding in the subject (i.e., the party with the obligation, prohibition, etc.) into sentences. Remember, because we are talking about a formulaic element (style and syntax), we can make all these changes. It's just the dressing that wraps up the details.

NB! The contract in Figure 2 uses *declares* and *warrants* for language of declaration. Following the criteria in Tip 1, we would use *states* in each of these cases.

When you start looking to recast to the active voice, you may feel you're changing the document too much and doubt whether you should. I sometimes feel this doubt gnawing at me when I find I've wandered into a long stretch of passive sentences, many of which don't even state the party. However, I usually end up recasting most of the sentences. At the very least, I change the most important ones, especially when the subject (the doer of the verb) is in the sentence or is obvious. And in contracts, the subject usually is obvious. As the only people who can be bound by anything in a contract are the parties, you normally only have a choice of two and the context should make it clear. So things like:

- *Three payments must be made by bank transfer.*

Can easily be recast to:

- *The buyer shall make three payments by bank transfer.*

You don't have to recast every passive sentence you find, particularly if there are a lot of them, but try to recast the important sentences (e.g., strong obligations versus weak obligations), at least to some extent to get a bit of that English contract style going.

Summary

- Always look to recast contract language to the active voice.
- Cut and join sentences as needed.

Tip 5. Be specific and consistent (even when the source text isn't)

The principles of clarity and consistency in English contract drafting require us to be specific and consistent with things like the party names, defined terms, legal terms and even verbs, which we dealt with in Tip 1. So we always use the same term for the same purpose. English, particularly in contracts, is happy to use the same term again and again throughout a document. However, while contract English tolerates this kind of repetition well, some languages (e.g., Spanish) favour variety. For such languages, the style appears to dictate avoiding repetition, even at the expense of clarity. Thus, depending on where your source language sits on this clarity–variety continuum, you may need to pay special attention to making sure your translations use specific and consistent language.

Being specific and consistent entails removing elements of variety and using the same term for the same thing all the time. In practice, when translating, this means doing two things:

1. Replacing synonyms and pronouns with the party names and defined terms.

By defined terms, I mean any term that is defined or designated in any way in the contract, usually at the beginning somewhere but not necessarily in a definitions section. Often terms are defined by putting them in brackets following what they refer to (e.g., John Smith (the "Seller")).

Some languages often use synonyms and pronouns to refer to the parties and defined terms. To replicate English contract style, you will need to replace a lot of these synonyms and pronouns with the designated party names or the defined terms.

Synonyms include obvious ones like using *Vendor* when the party was designated to be referred to as *Seller* but also longer expressions like *the party selling the car*. We replace any of these with the designated term. As for pronouns, we will often want to replace personal and possessive pronouns (*he* and *his*) and adjective pronouns (*former*, *latter*, *this*, *that*) with the party names or defined terms. You also need to be specific and consistent with legal terms, so don't use synonyms or variants in your translation for these either.

2. Making the defined term or party name appear uniform throughout the translation.

We also need to make sure that defined terms always appear with the same formatting (e.g., first letter capitalised, italics or no formatting), which often gets overlooked in the drafting process and is easy enough for us to fix up. Just make sure you don't apply this formatting where the defined term is not being referred to. For example, while *Application* (with the first letter capitalised) might be a defined term in an IT service contract, the term *application* may also be used in the contract to refer to another application. This will be apparent from the context.

Summary

- Don’t be afraid to use the party names and defined terms more often in your translation than is used in the original.
- English favours repetition and clarity over variety, so replace synonyms and pronouns with the term they refer to.
- Make sure all terms are uniform (e.g., all capitalised in the same way).

11. Tips on using legalese purposefully

While the first five tips looked at how to translate the more vital elements of style and syntax, the following tips deal with a more superficial element: legalese. However, while it may be more superficial, legalese is still important for authenticity and clarity.

To make sure our translation reads authentically and is understood by English readers, we need an up-to-date model of what contracts look like in English, which will tell us how legalese is currently used in English contracts. For this model and information, we can turn to the drafting experts.

While most contract drafting guides suggest we avoid legalese, they do see a point to what you could call 'useful legalese' — hence the principle we introduced in *The register dilemma* (page 19) for avoiding legalese except where there is a point to it and it's not too obscure. So we shouldn't, as a rule, use legalese just to make our translations sound more legal. I say 'as a rule' because sometimes we might want to use legalese to turn up the legal tone, at least to a certain extent. We touch on this in Tip 7. However, the overall approach we glean from the drafting style guides is to use legalese usefully or purposefully. Useful legalese is either more efficient than alternatives or it adds clarity. Take, for example, *shall* (see Tip 2), which is legalese that designates strong obligations of the parties.

Technical terms versus legalese

Of course, as well as adding efficiency or clarity, the legalese we use must be understood by our default audience — in the last instance, a common-law lawyer. Lawyers should understand any legalese we can throw at them.

At this point, though, we need to make a distinction between legalese and technical terms. Whereas legalese is just genre-expected jargon that can be expressed by other language, technical terms have specialised legal definitions. Technical terms mean something special and are usually difficult to express in other words, i.e., they serve a purpose. A technical term can turn out to be non-equivalent, or it might become so if its meaning changes in one of the jurisdictions. You can also think of legalese as convention and technical terms as the detail, i.e., part of the meat of the contract.

We can't and shouldn't try to get rid of technical terms. Remember, non-lawyers reading a contract know they may have to turn to an expert to understand the document's effect, including the meaning of technical terms. Technical terms are unavoidable. However, we shouldn't force anyone to slog through pointless legalese. Both non-lawyers and lawyers will want to extract the important information as fast as possible. And both will thank us for anything we do to make the text easier to read.

So, excepting technical terms, we should aim to get rid of useless legalese — anything that doesn't save time or serve a purpose or is too obscure for non-expert readers. Thus:

Only use legalese if it's useful, adds something and is understandable.

Over the next few tips, we look at how to apply this principle when translating contracts.

Tip 6. Use only 'useful' legalese

You probably get the message by now: translating contracts into a modern register (i.e., what the drafting experts recommend) doesn't involve totally eradicating legalese but only using this jargon when it's useful and understandable. Like technical language, legalese has a place in our contract translations when it does something general language cannot or it does something more efficiently.

In this tip, we are going to look at three categories of legalese: 1) useful legalese; 2) legalese to avoid and 3) borderline cases (i.e., when you'd avoid the legalese if you were drafting the contract but might use it in a translation). The following sections give examples in each case, but you may need to adjust and extend each category. To do this, you apply the useful legalese principle to decide whether something is useful, to be avoided or is a borderline case. For the most part, the examples below follow the suggestions of the drafting style guides. However, we do look at a couple of terms that we might class as useful or borderline cases and use even though the style guides tell us to avoid them. So nothing is written in stone. Adjust as you see fit.

Useful legalese

Examples of useful legalese include:

- The verbs and other elements we decided to use for our language categories (see Tip 1), i.e.:
    - *may, shall, hereby,* etc.
- Useful legalese found in the style guides, e.g.:
    - *reasonable effort (US)/endeavours (UK),* which means something specific (i.e., the party will do all they can to make something happen without promising, which would make it an obligation). The thing to know about this term is to only use it and not any variant as apparently all variants can only mean this anyway (Adams, 2013).

So here we have a term that most readers will understand and that means something specific. It is also borders between legalese and a technical term. Just make sure a term like this doesn't add or subtract any meaning from the source term (see Tip 10).

We may also decide to use terms that the style guides frown upon but that we find useful. For example*, herein.*

As we'll see below, most of the style guides say not to use the *here/there* adverbs. However, I make an exception for *herein*. Most people understand what *herein* means, and it saves a few words on occasions (i.e., instead of *in this agreement/document*). Thus, while making sure not to add ambiguity (one of the arguments against *herein*), I use it. This is an example of going against the advice in the style guides.

Legalese to avoid

Now we look at some examples of legalese to avoid.

First, we have what you could call ‘formal legalese’, i.e., formal language typical of a legal register that could be expressed in more straightforward terms or left out.

Formal legalese to avoid

- *here/there adverbs* (e.g., *thereby, thereof, thereto).*
- *pursuant to.*
- *said, same, such* (when used as articles, e.g., *said statute*).
- *without limitation/not limited to* (just use *includes*).
- *duly* (when redundant, e.g., *duly authorised*).

Just about all the style guides tell us to get rid of these terms. You might argue that expert readers may think something is amiss if we don’t use language like this. However, because we aren’t talking about technical terms, and because we can do the exact same job just as efficiently — usually more so — with other words, expert readers probably won’t miss this language, especially in a translation, even if they use it themselves. They will surely have read legal documents that *don’t* use it.

Why should we get rid of these terms? The style guides say to avoid terms like these because they can be redundant or confusing — either because a reader might not understand them or they are vague. Thus, at the very least, by removing this formal legalese, we get rid of some deadwood.

For the purposes of translating, we can define another category of legalese to avoid: ‘signpost legalese’, which includes the following terms.

Signpost legalese to avoid

- *hereinafter* (to designate party names). Instead, just put the defined term in inverted commas and brackets (e.g., *Peter Wang (“Buyer”)*).
- *of the one/first part* (in the introductory clause).
- *whereas* (at the beginning of each recital).
- *now, therefore* (in the lead-in sentence at the end of the recitals).
- *in witness whereof* (in the last clause of the contract).

You can leave these terms out of your translations. They are not part of the modern register (i.e., the drafting style guides say not to use them). Even if our source language uses equivalents, we don’t have to and probably shouldn’t translate them if we want to translate into a modern register. In most cases, you would simply leave the term out and use whatever phrase or element is suggested by the drafting experts for doing the same job.

For example, instead of starting the final clause of the contract with *In witness where of*, you'd just use a formula like *The parties are signing…*, which is all you need in English. *In witness where of* is not required and doesn't mean anything special.

However, in a translation, you may want to keep some or all of these signposts, either to keep a client happy or because you think it should be translated that way. Based on my research, I have stopped using both formal and signpost legalese in all my contract translations. As a middle ground option (which we spoke about in *The register dilemma,* page 19), you could stop using the formal legalese and keep using the signpost legalese. Thus, the signpost bits will make your translation look noticeably 'legal', but because you got rid of some deadwood, readers will find it easier to digest.

Borderline cases

We need to keep in mind that drafting a contract is different to translating one. Even though the advice from English contract guidelines can be extremely helpful, we sometimes need to diverge from it when translating. As we recognised at the beginning of this book, we usually diverge when it comes to structure (i.e., a translated contract's structure will never be identical to that of an authentic English contract). However, we may also diverge regarding legalese.

Sometimes the drafting guides put forward good reasons for not using certain terms. For instance, a term may be vague. However, we might want to use such a term in translation because it perfectly renders an equally vague term in the source text. In these cases, probably few and far between, we need to go against what the drafting guides say. Examples include:

- *subject to*
- *notwithstanding*
- *without prejudice to*
- *and/or*

For instance, what exactly does *notwithstanding the foregoing* refer to when 45 clauses proceed it? Maybe the 45 clauses and maybe just the previous one. Thus, the style guides suggest avoiding this phrase and being more precise. Likewise, they say *subject to Clause 41* is not as specific as *except as provided in Clause 41* (Adams, 2013, p. 316).

When translating, though, we may want to ignore this advice when we need to translate source terms that are just as vague. As we aren't drafting the document, we can't make the text as precise as the drafting experts would like.

A good rule of thumb for borderline terms is to get rid of them where you can do so easily. Otherwise, if it takes too much work to get rid of them, use them. For instance, when translating from Spanish, I find terms like *without prejudice to* and *subject to* often work themselves out of the translation, even when the source text uses their literal equivalents. On other occasions, I can't avoid them and don't bother trying.

And/or can be a tricky one. While style guides and dictionaries assure us that *or* by itself means the same thing, you may on occasions feel better leaving it in. Adams gives the alternative of *X or Y or both*, which I don't think is much better than *and/or*. However, following our rule of thumb, I often find that the context tells me I can get rid of the *and* or *or* from the expression. You may even have to replace *and* with *or* or vice versa, depending on how your source language uses them to end incomplete lists. For instance, while English usually ends incomplete lists of examples with *and*, Spanish and some other Latin language end these lists with *or*.

Be discerning

So we've looked at some examples of the three categories (i.e., useful legalese, legalese to avoid and borderline cases). In practice, you'd extend and adjust these categories based on your preferences or circumstances and any research you do along the way. Think about how you use legalese and look at style guides and online resources to work out if a piece of legalese really is necessary.

In any case, following the principle of using legalese usefully gives you a sensible standard to aim for. Without such a target, we can fall into the trap of either dumbing down the language to the plainest of the plain or amping the legalese up to the max, depending on which pole we are more attracted to. A measured approach makes more sense.

Summary

- Distinguish between useful legalese, legalese to avoid and borderline cases.
- Break the legalese to avoid into formal legalese and signpost legalese. Whether you get rid of both types of legalese or just formal legalese will depend on your aim (see also Tip 7).
- Follow the style guides regarding legalese but keep in mind that because you are translating and not drafting, you will on occasions need to diverge from their advice.

Tip 7. Decide on the register of the noticeable bits

In *The register dilemma* (page 19), I mentioned a middle-ground option in which you translate the meat of the contract using a modern register but some of the more noticeable formulaic elements in a traditional style. You might do this to conform to the tastes of a client. Maybe you just want to allay fears about changing things too much.

Either way, this middle ground option entails getting rid of the formal legalese described in Tip 6 while keeping — or even starting to use if you haven't up until now — signpost legalese, also described in Tip 6.

So we can tinker with the blueprint we give our translation machine depending on how we think the translation should look to best do its job.

However, I'd recommend not using this middle ground option. Unless a client indicates they want a more traditional style by telling you they want XYZ in their translations, I'd always aim for the modern register. As we have seen, this is where the drafting experts are pointing us. If a client asks you why you've suddenly changed how you translate contracts, simply explain your reasons for changing.

Summary

- Use signpost legalese if you need to but make your default option to not use it.

Tip 8. Don't use doublets

Doublets are well known combinations of two or more synonyms (e.g., *aid and abet*). Just about all the drafting guides frown upon using them in contracts. Garner (2013) says they are standardised examples of redundancy that can lead to confusion. What kind of confusion? First, your reader may misinterpret you by attaching an element of meaning to each of the synonyms in your doublet — something, apparently, the courts like to do. Second, doublets often mix category levels (e.g., roses, flowers and daisies). An example of this is *liens and encumbrances*. *Liens* are just financial *encumbrances*. So *encumbrances* will do.

For translators, this second area of confusion can be frustrating. Keep in mind the possibility of category mixing to avoid chasing your tail when researching doublets. I say this from experience. I remember tying myself into a knot researching the doublet *liens, charges and encumbrances* and its Spanish equivalent, which, as luck would have it, also mixes categories but in a different way (*cargas y gravámenes*). I only realised what the problem was years later when reading in Bryan Garner's *Legal Writing in Plain English* about how doublets sometimes mix categories. Again, *encumbrances* alone will suffice.

Doublets are not legally required in any sort of magic formula/performance sense. They don't mean anything special. If you want reassurance on this, just look at any of the long lists of English doublets on the Internet. Also remind yourself that your translations will be clearer and more precise without this element of redundancy.

When translating, avoiding doublets means doing two things:

1. Not using English doublets you may have identified as possible translations for source terms.
2. Not replicating redundancy (doublets or otherwise) found in the source text.

Avoiding English doublets

Avoiding English doublets involves researching them as they come up as likely translations for source terms. We can either refer to the lists on the Internet and in style guides or whittle them down ourselves. Whittling down doublets requires using the most appropriate of the synonyms. As Garner (2013) puts it: "[…] if one word swallows the meaning of the other words, use that word alone" (p. 56). He gives the following examples of "time-honoured" doublets and the word they can be knocked down to:

Doublet	**Just use**
alienate, transfer, and convey	Transfer
due and payable	Due
give, devise, and bequeath	Give
indemnify and hold harmless	Indemnify
last will and testament	will

Source: Garner (2013, p. 55).

Here are some other doublets you see in contracts:

Doublet	**Just use**
make and enter into	enter into
by and between	between
covenant and agree	agree

Typical contract doublets.

See Appendix II for more doublets (a list taken from the website www.translegal.com). Just remember to take these lists as suggestions and not the Holy Grail. Research the meaning of each word to decide which best fits your context. While most of the resources usually whittle doublets down to the same term, Garner points out that some contexts may require using a different term from the doublet. So research doublets with your context in mind.

Don’t replicate source text redundancy

Although the phenomenon of doublets may not be as well documented for some languages as it is for English, legal languages typically contain lots of redundancy. Thus, as well as avoiding standardised examples of redundancy in English (i.e., doublets), we also need to make sure we don’t blindly add in redundancy from the source language.

To do this we can apply Garner’s rule of using only the word that swallows the other(s) and just aim to avoid redundancy. Again, don’t worry about removing any magical meaning contained in any string of terms in the source text. Even if the source language did require the use of precise magic formulas (highly unlikely), those magic formulas are not going to mean anything in English, which doesn’t recognise such things, whether homegrown or foreign. Thus, no magical effect can be transferred and protected by literally translating redundancy. It can only worsen our translation and may cause confusion.

Summary

- Don't reproduce any redundancy in the source text.
- Don't use English doublets in your translations.
- Whittle doublets down to the most appropriate term for your context.

Tip 9. Don't use word–number doublets

Word–number doublets (e.g., *100 (one hundred)*) are another familiar aspect of legalese. They feel right in legal documents, including contracts. However, just about any contract drafting or legal style guide will tell you not to use them:

So instead of:

> *He left €800,056 (eight hundred thousand and fifty-six euros) to his cat.*

Just use:

> *He left €800,056 to his cat.*

The experts say that although the first version may feel safer and more legal, it leaves room for someone to inadvertently add in ambiguity in the form of a transcription error between the two forms of the figure — if not at the drafting stage, somewhere down the line when changes are made. It also adds redundancy — a pet hate of the drafting style guides and something we want to avoid.

According to Garner, the doublet was originally a safeguard against fraud. As the numerals by themselves could more easily be changed, you wrote the figure out as well, as you still might do on cheques. It was also useful when carbon copies were used a lot, with the written-out numbers being easier to read on the copies. Nowadays, unless you're writing out a cheque or making carbon copies, there is little reason for using word–number doublets.

In the case of translations, using this doublet increases the risk of inconsistencies because there is at least one more person in the process, the translator, who may also introduce a transcription error between the numeral and word.

So what do you do when translating a document that has word–number doublets? Simple. Just use the number and omit the word. This is in line with current drafting guidelines, which is what we are following to provide our clients and readers with the most usable and authentic translations possible. If someone asks why you took the words out, explain that you are following current recommended guidelines in English. You could also explain why it is preferred. Of course, by the time you get the contract, a transcription error between a numeral and word may have already worked its way into the document. In this case, if you can't tell which number is wrong and fix it, you'll just have to leave it as is in the translation (with the numeral and word) or check with the client. Either way, you'd usually leave a note in the translation flagging the error or your correction of it.

Tip 10. Steer clear of non-equivalent English terms

Just as we come across non-equivalent legal terms in the source language, we also can find, while looking for translations, non-equivalent terms in the target language (i.e., English terms that don't have a readily usable equivalent in the source system). But while we must deal with the non-equivalent source terms — translate them somehow — all we have to do with non-equivalent English terms is avoid them. Why avoid them? Because a non-equivalent term will either not cover all the meaning of a source term or attach extra meaning.

Would there ever be any need to add in non-equivalent English terms in a translation? Perhaps if you were adapting a contract to operate in the English legal system and wanted it to do everything typical English contracts can do. However, that sounds more like a drafting job you'd get a lawyer to do. People usually need a translation to see how a contract works in the context of the original legal system.

In any case, it's easy enough to avoid such terms in English. You just need to tend towards a more transparent style of translation when faced with non-equivalent terms and use source-oriented solutions and descriptions when in doubt. Of course, knowing which terms to avoid involves knowing the terms. So term research is important. Indeed, it all boils down to term research. After all, you won't even know you're up against a non-equivalent term until you do some research, but more on that in Tip 12.

In any case, we need to dig deep enough to assure ourselves that any English term we are thinking of using doesn't add any meaning or connotation that doesn't exist in the source language.

A good example of a technical term that might add meaning that the source language doesn't include is *time is of the essence*. This term means that if a party doesn't perform what it promises to, the other party may rescind the contract. It is defined as follows:

> (Of a contractual requirement) so important that if the requirement is not met, the promisor will be held to have breached the contract and a rescission by the promisee will be justified ... Garner, B. A., Black's Law Dictionary, p. 3448.

So unless your source language has a term meaning this, you'll probably never need to use this term, even if the wording of a source text may lend itself to such a translation. Spanish, for instance, does not, as far as I'm aware, have a term that means *time is of the essence*.

Also look out for terms people like to disagree about. For instance, if you research *time is of the essence*, you'll find people arguing about how enforceable it is in practice. People disagree on its practical meaning. In such cases, you might want to use a more straightforward alternative if you can find one.

However, don't confuse other people's differences of opinion with your confusion, which you can usually dispel by doing enough research. For instance, I had come to think of *materially* (which means, at the very least, *significantly*) and *representations* (i.e., statements of a party that may influence another party's decision to enter into the contract) as divisive terms to be avoided because people often argue about what they mean in English. But after doing enough research in the hope of writing them off forever, I found I knew these terms well enough to use them on certain occasions. Sometimes they just seem to fit. However, if you're still confused after researching, avoid the divisive term if you can use another that gets the meaning across just as well.

Summary

- Don't use what appear to be non-equivalent English terms. Translate transparently or descriptively.
- Be wary of 'divisive' terms — ones that everyone seems to have a different meaning for. Research thoroughly and consider using more straightforward alternatives.

Tip 11. Beware of often confused terms

If you translate contracts on a regular basis, you need to get straight legal terms people often confuse.

For instance, *damages* versus *damage*. Don't use *damages* (which means compensation for some loss or damage) when you mean *damage* (harm that may give rise to compensation or damages).

Liability versus *responsibility* is another example. *Liability* basically means *legal responsibility*, so you will often use *liability* in your translation, even if your source language uses *responsibility*.

Your source language can muddy the waters even more. Take *damage/s*. In Spanish, the equivalent term in plural (*daños*) means *damage*. When translating, because we connect a word like *damages* to a legal context, we may use it automatically when we mean *damage*. Like we saw with *shall* and *hereby*, getting it wrong may not be such a big deal because so many people do it. (Although in the case of *damage/s*, we can more emphatically state there is a right way.) But of course, if you do translate contracts often, you need to get these terms straight.

12. Tips on translating non-equivalent elements and terms

The following tips deal with how we move up and down the transparency–equivalency continuum when translating non-equivalent elements in a contract, particularly non-equivalent terms. A non-equivalent term has no counterpart in the other legal system that does the same job. So you have a non-equivalent term when you can't find a functional equivalent (for your context) in English. Thus, we're not talking about the formulaic dressing that most of the preceding tips have dealt with. To faithfully show how the contract works in the source legal system, you need to make sure non-equivalent terms shine through and are understood in the translation.

Tip 12. Be brave with term research

The gravity of legal translation can overwhelm. Sometimes, as mere translators, we may feel unqualified to translate tricky, non-equivalent terms. Instead of trusting our well-honed ability to research terms, we might too quickly defer to other people's solutions. However, using a solution just because it's in a dictionary or comes from a seemingly authoritative source when you suspect that it may not fit your context hamstrings your translation and short changes both client and reader. In some cases, your only choice is to be creative or wrong — wrong at least for not providing your reader with a usable and understandable translation of the tricky term. Our readers need us to get this right. If we don't do our job properly, others can't do theirs.

This is where the bravery comes in. Instead of looking for someone else to save us with the perfect translation, we need to understand that we are the ones on the front line. We are the ones at the interface between the two legal languages and systems. Thus, we are in the best position to research and translate the tricky, non-equivalent terms. (We talk more about our unique position when we look at our role as a practitioner in Part IV.)

To research terms properly, we often need to reach past our favourite bilingual dictionary. Because, given the swirling nature of legal systems, you won't find definitive answers to all your doubts in translator resources like dictionaries and online term bases. And any answers you do find may be out of date or not correct for your context. Treat these resources as a starting point. You need to understand the term in its legal system and then work out how to most usefully render it for your translation. This requires researching the term properly.

In contracts, non-equivalent terms lurk in the operative clauses and have to do with the area of law governing the contract in question. For instance, in a conveyancing contract, you may find terms rooted in ancient regional customs or rules.

Truly non-equivalent terms occur infrequently in contracts. At the most, you might get one per contract. But for us they matter a lot. Because regardless of how you translate the formulaic language at the beginning of the contract (transparently or functionally, well or otherwise), our audience should manage to wade through it. However, for terms foreign to our audience's legal world, we must get it right. Our readers will notice when we get it wrong (unless we get it really wrong and we totally mislead them!), and they will care. This is when they most need our help. This is when we earn our money.

Think about it. A practising lawyer will see far more contracts than us and will know better what one should look like in English. Provided we don't totally mess up any important structural differences, they should have no problem mapping the equivalent parts of a translation to their model. For these formulaic bits, we just need to make sure they get the information in a recognisable format. For foreign terms, though, they need our help. At the very least they need us to signpost that there is a foreign term.

So what do you do when faced with a non-equivalent term? Simple, you research the term properly and **use whatever solution best gets the meaning across and is most likely to be understood.**

We briefly look at how to research terms below. Appendix III contains a detailed explanation of the five steps outlined in the next section (*How to research terms*). Appendix IV then describes strategies for translating non-equivalent terms. However, particularly for experienced translators, these are nearly beside the point. The process outlined below and described in the Appendix III is just an observation of what we do. I've extracted the process from how I think I research terms. But this may not be what I actually do, at least not exactly. Even if it is, it may not apply to you.

The strategies in Appendix IV come from the translation literature. Knowing them helps. They can give us more options and may tell us we can go further than we thought. However, committing yourself to using whatever translation works to transfer meaning in an understandable way should get you to the same place, as long as you have the confidence to do so. You probably also need some experience at trying to translate in this way. If you don't have this experience, you will need some practice. The strategies from the literature might help speed up the learning process.

How to research terms

When you suspect you're up against a non-equivalent term, how do you research? I think the process looks something like this:

1. **Understand the source term in the text.** You get the meaning from the context, subtext, a dictionary, other similar texts you find on the Internet or your head (i.e., you know what the term means but not its translation).
2. **Look for translations,** usually in bilingual resources.
3. **Look for definitions,** usually in monolingual sources.
4. **Compare definitions.** You look for holes in possible translations.
5. **Decide.** Either 1) use one of the translations you found 2), create a new one or adapt one found or 3) do further research (go back to a previous step).

This is at best an approximation of what happens when we research any technical term (not just non-equivalent ones). We may do different things on different occasions, but I think we follow the above process most of the time, although we may skip some steps or do them so quickly we don't notice them. I say 'technical term' because I think there is more scope for translating general words intuitively and thus diverging from this process.

In any case, I include the process here for completeness more than anything else. As I said above, when you have some experience, just researching with the right intention should take you through this process (or whatever it is we actually do). For even more completeness, see Appendix III for a description of each stage.

Whatever you do, don't sit on the fence!

Sometimes it's hard to work out what a term means in a context. Especially if you see two likely options. The worst thing you can do in this case is to go for a 'safe-bet' solution — a linguistic invention[6] that sits on the fence. Such solutions may appeal to translators, who, as we saw earlier, have a penchant for tidy, linguistic solutions. We may not intend to sit on the fence, but we may end up there if we try to cover all possibilities with one term. Sometimes using one cover-all term works. But beware. Even without resorting to linguistic inventions, we can slip into safe-bet territory. Make sure any cover-all term is not too high up the category tree. For example, don't use a broader term like *flower* because you can't work out whether the source term means *daisy* or *rose*. Of course, in contexts where the type of flower doesn't matter, *flower* might be the best solution, particularly if English doesn't neatly distinguish between the types of flowers in question.

Also remember that while we, as translators, tend towards more elegant solutions, our audience, lawyers, prefer clunkier but accurate translations. Thus, for this audience, the safe bet is actually to foreignise[7] non-equivalent terms. Again, **use whatever solution best gets the meaning across and is most likely to be understood**. So while you can experiment with the strategies in Appendix IV, which summarises strategies for dealing with non-equivalent terms found in the literature, just aiming for your readers to understand what you understand about a non-equivalent term should get you 90% there. This will often require using a description, maybe alongside a functional equivalent or a literal rendering of the source term, or even the source term itself.

The worst that can happen when you translate transparently or descriptively is that someone may come back to you and say, "You meant to say YYYY". *YYYY* being the functional equivalent that evaded you in your term research. No problem. You just learnt something. But you still provided the reader with a good translation because if they can tell what term you meant. They got the message. Just make sure to check that the suggested term doesn't miss out or add in any detail that might rule out the solution as a functional equivalent.

Of course, even though a close functional equivalent exists, we may still prefer a descriptive or more neutral translation that doesn't tie the translation too much to the target legal system. We may also prefer such terms to make it easier for an international audience to understand (although this is not applicable for our default audience). For more on issues like these, see the strategies for translating non-equivalent terms in Appendix IV.

---

[6] Linguistic inventions make sense linguistically (e.g., the target term may look similar to the source term), particularly if you understand the two languages in question. However, they may leave the reader in the dark as to what the term means in the source language and system.

[7] See *Domesticating versus foreignising* in Appendix IV on page 93 for what foreignising means.

The main point of this tip is that you must trust your ability to research terms and to come up with appropriate translations for non-equivalent terms. Don't automatically defer to external sources. Our job is to bridge the gap between legal systems. And although you may sometimes feel otherwise, we are usually in the best position to translate the non-equivalent terms we find in our source texts. Assuming, of course, aside from having the necessary experience, we are in the habit of doing our job diligently.

Summary

- Research terms thoroughly and be prepared to reach past your favourite bilingual dictionary.
- Don't use a term just because someone else has used it before. Assess whether it fits your context. Sometimes you need to be bold and creative to adequately render non-equivalent terms.
- Tend towards foreignising and transparent solutions to help our default audience get as close as they can to the source legal system.
- You may want to overlook a functional equivalent for a more neutral option to make sure the reader gets a nuanced understanding of the term in the context.

Tip 13. Mainly call contracts *Agreements* (but always look for equivalents)

It can be surprisingly difficult to work out what to call the title of the contract, which you'd think would be the easy part. In straightforward cases, you'll find an obvious equivalent (e.g., *supply agreement* or *agency agreement*). However, you won't always find an English counterpart for a foreign contract. This happens because some jurisdictions more tightly regulate the structure and content of certain types of contracts than English-speaking jurisdictions, which can lead to long and convoluted titles (e.g., some Spanish employment contracts). These contracts don't exist in English, so you won't find any equivalent. In these cases, the reader may need to know exactly which contract we are talking about in the source legal system. Thus, we need to translate transparently. The best option is usually to translate the title literally and then stick *agreement* on the end (or at the beginning, depending on which works best). *Agreement* is the best default term to use because that's what contracts are most often called in English.

Of course, sometimes contracts go by other names in English (e.g., *contract* or *form*). So always check for equivalents. One way to check for the titles of equivalent contracts in English is to do an Internet search for *legal form books* (Alvarado, 2004), which returns links with examples of contract names in English (e.g.: http://www.lectlaw.com/form.html).

Knowing what a contract is usually called in English will help you decide on whether *agreement* is the best term for some of those non-equivalent contracts. For instance, as employment contracts are often called *contracts* and not *agreements*, when translating employment contracts specific to your source system, you'd translate the title transparently and stick *contract* on the end (or maybe at the beginning) instead of *agreement*.

Summary

- Some contracts will be unique to your source legal system. Translate the titles of these contracts transparently so readers can find them in the source legal system.
- Mainly call contracts *agreements*.
- Check for equivalent titles in English.

Tip 14. Transparently reference external sources

External sources are any documents referred to in the contract, e.g., one of those specific employment contracts you find in Spanish law mentioned in the previous tip. So the reader knows what document you are referring to, you should translate the name transparently. The first time it comes up in the document, you may even want to leave in the name in the source language, maybe in brackets following the translation.

Other examples of external sources you should translate transparently include legislation, forms, certificates and licences, i.e., anything specific to the source legal system. For generic, EU or international documents, you'll find functional equivalents in English (e.g., *driver's license* and *certificate of acceptance*). However, for anything that appears unique to the source system, you need to translate transparently.

Why translate these external references transparently? For the same reason we translate titles transparently: because the reader needs to know which document we are referring to in the source system. She may need to find and use this document. We don't want to obscure the name of an external source by using a target-language equivalent that may lead the reader astray. And we especially don't want to do this when the source system has multiple similar documents that the reader could confuse with the document we mean. Again, employment contracts are a good example of this. When I read English resources on Spanish employment law, I sometimes find it difficult to tell which contract is being referred to if the source title is not also provided. On the other hand, when we refer to sources like the Spanish Civil Code or the Spanish Constitution — for which the reader has next to no chance of confusing — we don't need to leave in the source term.

Below is an example of how you might translate a reference to a Spanish statute into English:

- Article 35.1 of Spanish Law 14/2007, of 3 July, on Biomedical Research (*Ley de Investigación Biomédica)*

I've left the Spanish name in, although this is probably not necessary here because we have the other details of the statute (its number and date). If you do leave in the source name, you only need to do it the first time the statute is mentioned in the document.

Note also the transparent translation of *artículo* (*article*) and *ley* (*law*). You could use the functional equivalents *section* and *act*. However, I prefer the transparent translations because it should make it easier for readers to find whatever is being referred to in the source legislation if they need to. For acts and sections, things seem clear, but when you go further down the line to things like paragraphs and points, it can be tricky to map out all the equivalent terms without tripping over terms already used.

For instance, if you use *section* for *artículo*, what do you do if you come across the Spanish word for *section* (*apartado*) somewhere else? Obviously, you can work this out by finding an equivalent in English legislation. But this will take more effort than translating transparently. And, more importantly, it won't be obvious, so the reader will also need to spend extra effort to unravel your equivalence map if he needs to track down the element in the statute.

Of course, you only run into these problems when you get further down than the first two levels of *section* and *act*, which may not occur often. However, in the name of consistency, it makes sense to translate all the elements in the same way — in the one document and over time if you can. So I suggest translating transparently both to help the reader find what you're talking about in the source document if they need to and to help you be more consistent.

Summary

- Translate transparently so the reader can track down the element in the source document.
- When in doubt, leave in the source name.

Tip 15. Use models effectively

To translate contracts into English, we need to know what contracts usually look like in English. Most of what we've been talking about is based on this assumption, which is why we have paid so much attention to English style guides — sort of extracting information from authentic models by proxy.

Up until now, we have used models pre-translation to program our translation machine. What I mean by this is that we have identified things in English contracts we might want to use in our translations. We have done this somewhat abstractly as we have just been talking in general. However, we can also use models when translating. In fact, we can distinguish between two types of models: perfect models and everyday models. Perfect models help us pre-translation to establish more general elements; everyday models can help when translating and with specific types of contracts.

Perfect models

Perfect models are ideal templates of the style that you want to translate your contracts into. The best place to get perfect models is the drafting style guides, although you can find them elsewhere. Just make sure anything you want to use as a perfect model is a good model of the kind of style and register you want to emulate, i.e., the modern register (if you decide to follow the advice given in this book, that is).

We use perfect models to decide on general criteria for translating contracts, like the language categories covered in Tip 1. We can also use them for working out how to translate formulaic phrases. Take, for instance, the signature clause. Most drafting style guides tell us to get rid of archaic formulas starting with *In witness where of* and just end with:

> The parties are signing this agreement on the date and at the place stated in the introductory clause (Adams, 2013, p. 121).

So this is an example of using a perfect model to translate a formulaic element. Perfect models can also help you with headings and boilerplate clauses.

However, in practice, you probably won't find yourself using perfect models as much as you might think especially when translating. Because once you sort out the language categories and stock translations for formulaic phrases, you might not find much more in them to mine. Furthermore, you're unlikely to have a perfect model for every type of contract you translate. To know what different types of contracts look like, we need everyday models.

Everyday models

Everyday models are authentic contracts you can find anywhere. By authentic I mean originally drafted in English (i.e., not a translation). Everyday models won't use all the style and language we want to implement (e.g., the verbs and elements we've decided to use for things like language of obligation, discretion, etc.), but they can still help us translate specific types of contract. The advantage of everyday models is that you can usually find one that fits the kind of contract you're translating (e.g., employment contract, supply agreement or agency agreement). This means we can mine the everyday models for technical language used in certain types of contracts — exactly the type of terminology you won't find in perfect models because they are too generic or not of the type you're translating. For instance, by looking at a couple of agency agreements in English, you'll quickly pick out key terms you could use in a translation. The structure of the document, especially things like headings, can also help you make your translation read more authentically.

Be suspicious, however, if you find an English version of a contract type only found in your source system. It's sure to be a translation. You still might find it useful, but the fact that it is a translation negates the reason for using everyday models, which is to find typical technical language used in English. You can still use a translation in this way, but bear in mind that you are just looking at another translator's solution to your problem, not necessarily authentic language.

For an example of an everyday model, see Figure 2 in Tip 4, which is an extract from a horse purchase contract. While this model doesn't demonstrate exactly the kind of language we might want to use in a contract, the sentence structure is useful.

Authentic concessions

As we saw in the Part I, your source contract may have elements of formulaic language not usually found in English. In this case, we can create authentic concessions. The best place to look for inspiration for authentic concessions are the models, both perfect and everyday. To illustrate this, let's have a look at an example from Spanish.

In the introductory clauses, Spanish contracts (unlike their English counterparts) state both the representatives or agents of the parties and the parties themselves (even if they are one and the same), sometimes in separate sections, sometimes together and sometimes in a different order. If you understand what's going on and how this aspect differs from English contracts, these paragraphs are straightforward to translate. The headings to the paragraphs, though, can be trickier, depending on what information gets put in the paragraphs and in which order.

If you use the functional equivalent of *between […] and* or something similar to introduce the parties, you must make sure that it is the parties and not the representatives you are introducing (so that no one mistakes the representatives for the parties). If you find both the parties and representatives in the same paragraph but the representatives come first, you might want to change the order so that the parties come first.

A good example of an authentic concession is how you translate the heading for the paragraph containing the representatives when these representatives are introduced in separate paragraphs. As English contracts don't introduce the representatives or agents in the introductory clause (they are implicitly the persons signing the contract), you won't find any headings in English contracts that do the same job. What do you do? You create an authentic concession by translating the heading with likely English terms that get the meaning across. Something like *representation*, *representatives* or *acting herein* should do, depending on which paragraph comes first. For example, if the parties come first, you can use the traditional *between/and* combination for the parties and then use *representatives* or *representation* as the heading for the next paragraph. However, if the representatives come first, you could use *acting herein* as the heading for the first paragraph and something like *on behalf of* as the heading for the second paragraph containing the parties. (NB! These are only suggestions. If you translate from Spanish, don't follow them blindly. Understand what's going on in the contract and apply your translations thoughtfully).

This example also demonstrates why we need to think of this type of language as formulaic and translate it functionally. In practice, this means being flexible when translating terms and elements that might come up every day in contracts. Because Spanish contracts can mix up the order and content of these paragraphs from one document to the next, you will run into trouble if you think you have definitive translations for these headings and paragraphs. You may end up using a misleading heading if you don't think about whether your stock translation fits the current contract (even if the source term is the same). When you concentrate on the function and on making sure the reader understands what is going on, you don't run into this kind of trouble.

Another example

Another sort of example of an authentic concession is the lead-in sentence from the recitals to the operative part. I say 'sort of' because you usually find a lead-in in English contracts, so it's not a truly non-equivalent element, although this element can take a different format and be placed somewhere else in English (e.g., tagged onto the first clause in the operative part of the contract instead of as the last sentence of the recitals, or as a separate sentence stranded between the recitals and the operative clauses). This example also demonstrates how to use both perfect and everyday models.

The standard and most straightforward English lead-in to the operative clauses is *the parties agree as follows*. So we should always stick *agree as follows* in somewhere. While your source language lead-in sentence might not say exactly that, it will mean that. We use *agree as follows* because it is the signpost everyone recognises in English.

Your source language may not use a lead-in sentence from the recitals to the operative clauses. However, even in this case, you might want to wangle in *agree as follows* somewhere just because it usually appears in English contracts.

Up until now in this example we've just been talking about translating functionally. The true authentic concessions come in if your source lead-in sentence is elaborate — maybe like traditional English lead-ins but with different language. So here, instead of omitting the rest of the sentence and just putting *agree as follows* (albeit a good solution), you could pay homage to the source text and translate it using the type of language you find in English contracts. For this you can use both perfect and everyday models. You'd take *agree as follows* from your perfect model and then maybe look to everyday models for inspiration on how to translate the rest of the sentence in an authentic way. Just be sure not to violate any of the criteria you set for yourself for translating into a modern register. Don't, for instance, add in any superfluous *herebys* or *heretos* or use long-winded phrases like *In consideration of the mutual promises and other valuable consideration exchanged by the Parties as set forth herein* (found in an everyday model (Vehicle Sale Agreement)).

Summary

- Use both perfect and everyday models.
- Use perfect models:
  - to inform choices about criteria on style and usage and
  - to create a base of translations for typical formulaic elements of the contract.
- Use everyday models for finding technical language and headings in different types of contracts. Also use everyday models for inspiration for translating formulaic elements.
- Use models to create authentic concessions.

13. Making the translation process easier

The last group of tips cover practical things we can do to improve the translation process, both to produce better translations and to make the process easier.

Tip 16. Decide on questions of style and usage

When translating contracts, as well as being consistent with legal terms, we also need to worry about general style and usage. Some questions of general usage are unavoidable. You have to decide on these questions, one way or another. Whatever you choose, someone will want to say you're wrong. However, the only thing you can do is decide and be consistent. At least within a particular document; we all, of course, tinker and adjust over time.

Below I give a couple of examples of these unavoidable questions. I say what I usually do, but I'm not saying what I do is best, right or the only way to do it. These are just the decisions I've come to after reading the main arguments you hear on these questions. You probably already know which way you swing on these questions. If not, decide.

The pronoun dilemma

This question involves whether to use the singular *they* (and *their*) as a gender-neutral singular pronoun instead of *he*, *she* or *he/she*, e.g.:

a) The employee will not park their car in the customer car park.

There are strategies for avoiding this decision, like putting the sentence in plural, which would work here:

b) Employees will not park their cars in the customer car park.

You can also recast to get rid of the pronoun:

c) The employee will not park in the customer car park.

You may even be able to recast to the second person, if, say, the document is written for the person in question:

d) You will not park your car in the customer car park. / You will not park in the customer car park.

As well as helping you dodge the pronoun dilemma, the second-person option (example d)) can make your translations more authentic and easier to recast to the active voice. So look out for the kind of contracts that often use the second person in English. Your source language may not use the second person, but you can — and maybe should — use it in your translation.

However, sometimes you won't be able to use any of the above solutions because they all make the sentence ambiguous or awkward. Thus, sometimes you have to decide whether you want to use the singular *they* or some version of *he/she*.

This issue comes up less in contracts than other types of documents because we often know the sex of the parties and can use *he* or *she* (or *it*). If you're translating a template (and don't know who the parties are), you can use square brackets (e.g., *[his/her]*) to indicate to the person using the contract to choose either *his* or *her*. In any case, the issue still comes up in contracts, if not for the parties, then maybe for other people mentioned in the contract. So you need to decide on this question.

For the moment, I do the following in contracts:

- Avoid the question as much as I can by:
    - changing to plural
    - recasting the sentence
    - using *[his/her]* in templates
    - using *you/yours* wherever I can (especially in things like consumer contracts and terms of service)
- Use *they* when I can't do any of the above.

You may have noted that in this book I've used *he* and *she* alternatively. I decided on this option because it's used often in non-fiction books. However, I'd wouldn't recommend this strategy for contracts.

That or *which* for defining relative clauses

Another question you must decide on is whether to use *that* or *which* for defining relative causes (for things). Defining relative clauses (as opposed to non-defining relative clauses) are those you can't remove without changing the meaning of the sentence. They don't go between commas:

e) *His company that is based in Texas wants to hire you.* This is an example of a defining clause: he has more than one company; *that is based in Texas* defines which one we are talking about.

f) *His company, which is based in Texas, wants to hire you.* This is an example of a non-defining clause: he probably doesn't have one more than one company; *which is based in Texas* is extra information.

In UK English, you can use *which* or *that* for defining clauses whereas in US English the advice is usually to only use *that*. Both US and UK English use *which* (or *who*, *where* or *whose*) after a comma for non-defining clauses.

In contracts, I follow the US rule (of only using *that* for defining clauses, example e) above) because I think it's clearer. As I'm not trying to convince you to do the same, I won't argue the case. You've surely come across and thought about this issue before. If not, look into it. I mention it here as an example of something you need to get straight and be consistent with.

However, I will mention one doubt I have with using the US-English rule. As I went to school in Australia and learnt mostly UK English, I occasionally find myself wanting to throw *whiches* into defining clauses. In contracts and other legal translation, I resist the urge. However, I suspect this urge means — unless it's an idiosyncrasy of mine — that UK readers expect to see a *which* instead of *that* in certain ingrained chunks of language.

This is speculation. Although I did once have an English proofreader change my *that* in a defining clause to a *which*. I gathered he'd done this on instinct as I could see no grammatical reason for the change (given that you can use both *that* and *which* in UK English to introduce defining clauses). So maybe there is an underlying question of register, which you might want to consider before deciding which way you want to go on this question.

Tip 17. Get a drafting guide to fill in the gaps

If you translate contracts on a regular basis, you should think about getting a drafting style guide. Having a style guide at your fingertips lets you become far more familiar with the philosophy behind the advice than if you just get snippets off the Internet or from courses. If you know the philosophy, you can apply it to questions not dealt with in the style guide. Basically, you get to know in detail the modern register we talked about in Part II. So a style guide can help you fill in the gaps.

And if ever you need to justify your decisions or approach, in addition to saying you are following the spirit of current drafting guidelines, you can also point to a particular style guide. Furthermore, if you understand why a drafting style guide tells you to do one thing or another, you'll know when to diverge from its advice.

Having a drafting style guide is like feeding our translation machine with algorithms so it can fend for itself, regardless of the dilemmas it may come across in the source contract.

Which style guide should you get? The more comprehensive the better, e.g., Ken Adams's *Manual of Style for Contract Drafting*, which I have cited here often. I've found useful points in the other style guides I have (all cited in Appendix VI: Bibliography), but Adams's is by far the most comprehensive. However, reading just about any will at least give you a feel for the modern drafting approach.

Tip 18. Create a clause library

In *Essential Contract Drafting Skills*, Kemp suggests that drafters keep a clause library or database, which is basically a file for keeping your preferred or most up-to-date versions of clauses. I've found a clause library helps for translating, too, even if you use a computer-aided translation (CAT) tool.

For a long time, I'd kept a sort of library of boilerplate clauses. But after reading Kemp's advice, I extended it to include formulaic parts of the contract, i.e., sentences usually found at the beginning of contracts and the final clause. I use Microsoft Excel, but you could store the information in any similar tool. You just need to index the entries, either by the source text or maybe by description or heading (e.g., lead-in sentence to the operative clauses, arbitration clause and final clause).

The main benefit to keeping a clause library is that you can quickly access your latest or preferred version of each element. The clause library works differently from the translation memory (TM) in your CAT tool, which provides you with a translation based on source-text match. With a TM match, you can't be sure the match you're getting is your preferred version. Because these formulaic sentences are so frequent, your TM will have a lot of matches to choose from, especially if you've been translating for some time and may have changed how you translate over the years. Sometimes you might not even get a match back. Of course, there are ways to find the match you want in a CAT tool. For instance, if you suspect the match you get is not your preferred version, you can explicitly run a search on the TM for the phrase you want. However, these workarounds take longer than simply looking at your clause library, where you can have all your standard translations at a glance.

Trying out a clause library doesn't mean giving up your CAT tool as you can use it alongside your CAT tool. I imagine you could even create a library as a glossary in your CAT tool. In any case, it's easy to set up to see if it helps for re-occurring elements that vary slightly from one source text to another for which you can use the same phrase in English.

Clause libraries are also good for keeping notes on how to translate formulaic elements. You can note when to use different versions according to either register or contract type. You may find a clause library useful to help apply the ideas in this book. Particularly if doing so means a radical change from how you translate contracts now. You may only find a clause library useful when you're learning to translate in a different way. After a while, you'll get to know most of the typical phrases by heart. Even so, it's good to have a resource to back up your memory.

However, going for the modern register espoused in the style guides and this book may mean that you don't need to rely on standard phrasings as much as when you're emulating a traditional register. This is especially true for boilerplate clauses. As I said above, I previously kept a library of boilerplate clauses. I'd found that the typical English wording of these clauses (e.g., the severability clause) differed quite a bit from the Spanish structure, so I collected authentic English clauses to use in my translations. Thus, I was translating the Spanish boilerplate clauses functionally or equivalently with chunks from authentic English contracts. Of course, most of these chunks contained quite a bit of unnecessary legalese. So now, because I want to avoid such legalese, I don't use those chunks, at least not without editing them. Because, as we stated in *The register dilemma* (page 19), when you aim for a modern register, you don't need to remember the exact wording of legalese chunks — you will usually be able to work it out logically. You can still make it sound authentic, but you don't need to remember everything word for word.

Thus, translating into a modern register may negate using a clause library to some extent. However, I think it's good to create one to get straight how you want to translate different parts of the contract. For instance, if you do choose to apply the advice in this book, creating one might be a practical way to help you implement the ideas you find useful from it. After a while, you will refer to the library less and less, but you'll have it on hand when you need it — maybe after a long break from translating contracts or when you want to reassess your approach.

Summary

- Decide on questions of general style and usage.
- If you translate contracts on a regular basis, get a drafting style guide to learn the philosophy behind modern drafting guidelines so you can fill in the gaps yourself.
- Try keeping a clause library for elements you can translate the same way every time they come up.

Part IV. The result and goal: useful translations and a practitioner mindset

Now that we've covered all the principles and tips, our translation machine is programmed and ready to go. You just need to try it out and tinker as necessary so your translations fit your preferences and circumstances. Of course, if you're an experienced contract translator, you'll probably just use anything you find useful here to tinker with machine you already use. Either way, it's about applying the tips when translating and then reprogramming the machine when you get new information, insights or feedback.

In the next two chapters, we sum up what kind of translations we are after and look at what it means to have a practitioner mindset.

14. What the translation should look like

In our contract translations, we want to accurately reflect all the nuances of the source text and the legal system it comes from in a format the reader understands and expects. One way to break this goal down is to say we are looking for usable, understandable and useful translations, where:

- Usable means fit for purpose, i.e., the right type of translation for the purpose.
- Understandable means readable and easily comprehensible for our target audience.
- Useful means of use to the readers. In our case, usually for making a decision.

While these terms overlap, the following paragraphs spell out what they mean when translating contracts against the backdrop of what we have looked at throughout this book.

Usability

When it comes to usability, we want readers — in the last instance our common-law lawyer and, to the extent possible, anyone who needs to read the contract — to be able to use the translation to make whatever decisions they need to make. To do this, we use the most straightforward language a lawyer would expect in a contract and signpost and reveal the meaning of non-equivalent terms and elements. So usability leans on understandability.

Understandability

To make our translations understandable, we should never aim to show people how well we can use legalese. We should avoid legalese unless it serves a purpose, i.e., saves some words or says something more efficiently while still being understandable to the non-expert reader. We should aim to express the information as straightforwardly and elegantly as possible. However, we shouldn't shy away from technical language. We don't want to dumb the document down. We just want to make it understandable while presenting it in a format and style the reader would expect of an authentic document.

We should also aim for consistency, which basically means using the same term for the same purpose throughout the contract. Because while you can find much variety and inconsistency in legal English, if we are precise and always use the same verbs and tenses for doing particular jobs in our translations (i.e., the language categories in Tip 1), the reader will quickly catch onto our criteria. And our criteria should make the document easier to understand. Thus, consistency should also make our translations more understandable and usable.

Usefulness

For our translations to be useful, we need to take a lot of care with how we translate non-equivalent terms and elements. We need to put ourselves in the shoes of our readers and do everything we can to make sure they 1) know they have come across a foreign term and 2) understand what it means. We can't assume the reader knows anything about foreign terms. We need to translate them transparently, which will often involve describing in some way. This is probably the most important way we can make sure our translations are useful, because a misleading translation of just one non-equivalent term can give quite a big push in the direction of making our translation useless.

Can you improve the original?

Should we try to improve the original? No. Setting out to improve a text is at best a bad idea and at worst presumptuous bordering on arrogant. Such an attitude sets you up for missing something in the source text. When you find yourself thinking the source text is badly written, first suspect that you may be missing something, either at the word or document level. We don't need to think about whether we are improving the text or even if we should. We need only to aim at rendering the translation in a format the reader expects and understands. When we do that, we sidestep the pretentiousness involved in worrying about whether we are improving the text.

Thus, think usable, understandable and useful. Be cautious in judging the quality of the source text and, above all, put yourself in the place of the reader. Translating along these lines should help you provide your client and reader with a translation you and they will be happy with.

15. The legal translator as a practitioner

I first came across the idea of being a practitioner in a blog post by Lloyd Bingham (2015) about a presentation given by Juliette Scott. As part of Scott's 12-step plan for professionalising legal translation, she says we should "change terminology" and move from being a "resource[user]/freelancer" to a "practitioner/professional". (The addition of 'user' is mine.) So when translating, we can take either a practitioner or a resource-user approach.

Even though I didn't see the presentation, the resource-user versus practitioner idea struck a chord with me, so I'm going to run with it. At the very least, Scott's invitation to "change terminology" fits right in with this book's approach to term research (see Tip 12). Let me be clear. I'm not trying to explain what Scott meant (as I don't know, exactly). I just want to say where the idea takes me. I wanted to credit the source as it's a great idea. 'Practitioner' is the perfect label for an approach I've long tried to follow. It both describes and inspires.

This book follows such an approach. So if you're not a practitioner already, maybe what you've read here will help you become one. Just apply the principles and tips. And don't blindly follow any one piece of advice, particularly at the micro level and about word choice, which would push you back into the resource-user camp. Be critical and apply the information to your situation. Then tinker and adjust as you see fit.

Practitioners versus resource users

How do practitioners differ from resource users? First, practitioners get their hands dirty. They research, they carefully assess the options and then they decide. They are both willing and able to change terminology by applying the approach and strategies talked about in Tip 12 (and explained more in detail in Appendix III and Appendix IV). Practitioners develop their own criteria and have a yardstick against which to compare competing options.

When it comes to terminology, the practitioner's main aim is to help the reader understand the term as clearly as she does. For this to occur, the practitioner must obviously first understand the term herself, which is why practitioners are very much in the habit of reaching past their bilingual dictionaries to look in other sources.

For questions of style, register and usage, practitioners use authentic models and target-language style guides, as we have done to work out our criteria for translating contracts. Once they have a framework, practitioners use it to assess suggestions found in the resources. So they use the resources as part of a system.

In contrast, resource users bounce from dictionary to dictionary. This happens because they are shallow diggers. They place all their trust in the resources and automatically defer to external authorities like dictionaries, Internet sources and other translators without delving any deeper. They are lost when they can't find the solution in a dictionary, and confused when they find competing solutions in multiple sources. Without the practitioner's framework to guide them, and without doing proper research, resource users have little safeguard against choosing haphazardly and wrongly.

When you follow a resource-user approach, you never really get the matter straight in your own head and never make the document you're translating — let alone the field you're translating in — your own.

We've all been resource users at some point, either when starting out as translators or maybe when venturing into new areas. In these cases, we may not know the subject matter and the typical target documents well enough. And when we're novice translators, even if we do know the field, we probably also lack the confidence for a practitioner's mindset. This confidence comes with practice and experience.

However, even when venturing into uncharted terrain, we don't have to resort to a resource-user approach. With a practitioner's mindset, we can soon feel competent in a new field. Doing so takes more work, but this work will pay off both in the short term, by helping you to produce a better translation, and in the long term, by enabling you to translate faster and produce far better results than if you start out with and continue to take the resource-user approach. And in both the short and long-term, you'll feel more confident about your work and be able to justify your decisions soundly.

Sometimes we're resource users because we find ourselves, by accident or bad management, on terrain we'd rather not have visited. We can chalk these misadventures up to experience. It's hard to have a practitioner's mindset if the subject matter bores you silly. But for areas we do like and do want to make our own, putting in the work reaps rewards.

What the client deserves

Taking on a practitioner's mindset can be daunting in complicated and changeable fields like law. But precisely such fields make the role of the practitioner vital. Our clients may be experts in one or more legal systems, but they usually need us to provide a nuanced interface between two legal languages. This is our job. We should aim to become experts at providing this interface. As diligent practitioners, we stand on firm ground for providing expert and nuanced translations and for justifying our decisions. Of course, we can only do this with confidence if we actually do have a habit of working diligently as a practitioner. Following such an approach, we come to the translation knowing the subject matter and what the target language and documents looks like. Then, once translating, we research terms using this expertise. When you put in the work to know your field, you are less likely to shy away from creating solutions or to feel lost because you can’t find the answer in a dictionary.

Being a practitioner basically entails being in the position — because of your preparation and approach — to offer clients a professional service. And you can’t cop out and say “but I’m just a translator” when you encounter a tricky term or many seemingly equivalent solutions to a problem. Our job is to detect and map out the uncharted areas. We should eagerly encounter such terrain. If we can’t do it, who can?

16. Final words

So that is that. Happy translating! I hope you find this book useful. Please send me any comments via the content form on my blog (http://legalspaintrans.com/contact/) or to roblunn@legalspaintrans.com. Thank you!

Appendixes

Appendix I. Tinkering for different audience types

The following table contains three distinctions that you may find useful when thinking about how to translate for different audiences.

Useful distinctions about audiences	
Near versus far	Near audiences have “a relatively good knowledge of the” source culture; far audiences do not (Kierzkowska’s, cited in Biel, 2009, p. 7).
Specialised versus general	E.g., lawyers versus non-lawyers or civil-law versus common-law lawyers (in our case, the common-law lawyer would be less specialised for a translation from a civil-law system).
International versus common law	Audiences from common-law countries versus other places.

Table 4. Useful distinctions about audiences.

For instance, for near audiences (e.g., those who know something about the source legal system, maybe because they live in the country), you may want to leave a non-equivalent term untranslated if that is how your audience refers to it when speaking English.

If, on the other hand, you have an international rather than a common-law audience, be mindful of the common-law terms you use, regardless of how equivalent they are. For international audiences, you might want to use literal or civil-law sounding terms, provided they are understandable and, preferably, used in a jurisdiction somewhere. Thus, you might want to tend towards transparency.

One good source for such terms is European law, in which you can find many terms settled in what you could call ‘international’ legal English. These terms are often less opaque than their common-law counterparts, which makes them good candidates for international audiences. However, favour common-law terms where international alternatives of a civil term seem obscure. Also, make sure they actually mean something for someone somewhere in English. If you suspect they don’t, stick with the common-law term. Otherwise you run the risk of using a linguistic invention.

Appendix II. Lists of common doublets and triplets

The following is a list taken from the website www.translegal.com .

Doublets

- aid and abet
- by and between
- cease and desist
- covenant and agree
- deem and consider
- due and payable
- final and conclusive
- full faith and credit
- have and hold
- indemnify and hold harmless
- legal and valid
- liens and encumbrances
- make and enter into
- null and void
- over and above
- part and parcel
- perform and discharge
- power and authority
- sole and exclusive
- successors and assigns
- terms and conditions

Triplets

- cancel, annul and set aside
- give, devise, bequeath
- name, constitute and appoint
- rest, residue and remainder
- right, title and interest

Source: https://www.translegal.com/grammar-and-writing/doublets

Appendix III. How to term research

This appendix explains in detail the term research process outlined in Tip 12.

The term research process

1. Understand the source term in the text.
2. Look for translations.
3. Look for definitions.
4. Compare definitions.
5. Decide.

Understanding the source term in the text

This step often happens quickly and with little conscious effort. Sometimes you may stop to think, maybe even to look the word up. Often, though, you understand the term in the context but just don't know what it is in English. This occurs particularly with words you've heard a lot but have never had to translate.

Context is vital. You must understand the context to know what a term means. Context helps especially when you can't find a definition or translation for a term. In such cases, you can still come up with a good translation based solely on your understanding of the context.

Thus, this stage may happen so quickly that you don't even realise it happened. On other occasions, you might have to look the word up or maybe even read the whole document before you can move on to the rest of the stages of finding and testing potential solutions. (In practice, you probably wouldn't stop translating to read the whole text. You'd just leave the term until you've run through your first draft and come back to it when you better understand the document.)

Looking for translations

This stage entails finding likely translations to test. And while you'll often turn to bilingual resources for this (e.g., dictionaries, glossaries, aligned texts and online terminology forums), you can also find potential solutions in your head — another fantastic resource, depending maybe on how awake you are and definitely on how much experience you have with the type of translation at hand.

If you have a good feel for the term in the context, you'll quickly know whether any potential solution is a real candidate as an equivalent or whether you might be up against a non-equivalent term that will need more research and maybe a new solution. One sign that you're up against a non-equivalent term is that the bilingual resources provide conflicting translations, which shows people may have used different solutions for different contexts or that they don't agree with each other even for the same contexts.

Often you find the exact term you need in a bilingual resource, which you can confirm in the following steps by checking that its meaning matches the source term's closely enough. On other occasions, you find translations that don't seem to quite fit your context, or you don't find any at all. When you don't find any potential translations in bilingual resources, you have to come up with likely candidates yourself.

Sometimes you won't need to go to dictionaries or other resources because the source term itself will give you all the information you need to suggest probable translations. In this case, this stage and any referring to bilingual resources that you do is more about jogging your memory.

In any case, this stage is necessary. As you're ultimately looking for a translation, you need a pool of target-language candidates to test. Thus, the key to this stage is to get some target terms to research.

Looking for definitions

This step is about collecting, mentally or otherwise, the definitions for the source terms and possible translations. You'll often use monolingual dictionaries for this. You may even consult with experts (e.g., a lawyer, your client or someone you know who works at a bank). Sometimes you'll know the definitions for the terms well enough to not have to look them up.

Comparing definitions for the context

In this stage, we try to confirm or discard possible solutions for the context — both in terms of meaning but also for our audience and purpose.

When it comes to meaning, try to find holes in the equivalencies of possible translations. Nitpick. The differences may turn out to be insignificant for your audience and purpose, but first you need to identify them so you can then make that judgement. Next you assess the term for your audience and purpose. For some audiences, certain differences — or holes in meaning — won't matter; for others, they will mean you must discard a term.

Thus, this stage involves testing and discarding the candidates we collected in stage 2.

Deciding

Now you're ready to decide whether you've found a good solution for your context or you have more work to do: either researching (cycling back through some of the above steps) or creating a new solution. If, for instance, you suspect an equivalent term is still lurking out there that you haven't managed to track down, or for any other reason you think there are still some stones left to turn, you need to do more research.

However, if you've researched extensively and none of the solutions found or thought of seem to work as a translation for the term in your context, you can assume you're in uncharted or at least poorly charted waters. In this case, you need to come up with your own solution, for which you'll probably use one or a combination of the strategies in Appendix IV.

Appendix IV. Strategies for translating non-equivalent terms

In this appendix, as with the previous one, the aim is to identify what we do in practice, in this case, when translating non-equivalent terms. However, unlike the previous appendix, this one is a list rather than a process. You won't necessarily apply the strategies in the order they appear. And you won't necessarily apply them systematically at any given point in the term research process. Of course, if you do reach the end of the term research process without finding anything useful, you may invoke them more consciously.

However, before we look at the strategies individually, let's put them on a continuum that will tell us when we might want to use one or another.

Domesticating versus foreignising

We can classify the strategies in terms of whether they are domesticating or foreignising, also referred to as source-language orientation versus target-language orientation, which Biel (2008) defines as follows:

> In general, translation strategies range from foreignising (SL-oriented equivalents) to domesticating (TL-oriented equivalents) where the former "seeks to evoke a sense of the foreign" while the latter involves assimilation to the TL culture and is intended to ensure immediate comprehension (Venuti 1998). (Biel, 2008, p. 24)

So at one end of the continuum you emphasise differentness, while at the other you gloss it out. The table below shows how these concepts map on to the equivalency versus transparency distinction and some of the notions on audience we looked at in Appendix I. Please note, the correspondence is not exact; it's more about tendency and preference, which way you need to lean, so to speak. Sometimes you would choose a strategy regardless of where it sits on the continuum. This table is just a starting point. Remember also that we are talking about non-equivalent terms.

Ends of the continuum		Audience	Purpose	Strategies
Domesticating/target-language orientation	Equivalency	Far, non-expert, e.g., readers in the UK with little legal knowledge	Entertainment, fiction, general interest	Use an approximate target-language term; not necessarily an equivalent Translate descriptively Translate literally Invent a new term (+ maybe a description)
Foreignising/ source-language orientation	Transparency	Close, specialised, e.g., foreign nationals in the source-system country, lawyers, international civil-law audience	Informational, for decision making	Use the source term (+ maybe a description)

Table 5. Translation strategies for different audiences and purposes.

What’s best for our default audience, the common-law lawyer?

In the *Audience and purpose* chapter (page 15), we established that a good default audience for our English translations of contracts was a common-law lawyer, probably not one versed in the civil-law tradition. We also said a realistic default purpose might be for decision-making and information, which always requires translating the contract details accurately.

As you can see in the table above, lawyers in general (trained in the source or target legal system) fall at the foreignising/source-language orientation/transparency end of the continuum. Both because they are an expert audience, in line with the near and far distinction, and because they usually need and prefer solutions that stay as close to the source system as possible. They need this ‘closeness’ to understand contract details in the context of the source system. So when we’re talking about important non-equivalent terms, our default audience and purpose will be better served by source-system focused and transparent solutions.

To signpost and translate non-equivalent terms, we can use the strategies below. Our aim is to make the important term or nuance clear, understandable and, most importantly, visible to the reader. We don’t always need to explain every nuance and detail. Adequate signposting of non-equivalence is often enough as it tells readers that they may need to do some extra work if they want the full story. This is okay for our default audience, who know such non-equivalence exists and expect it.

The strategies

1. Using target-language equivalents

This strategy is closest to the domesticating end of the continuum. By definition, we can't use target-language equivalents for non-equivalent terms. However, we need to talk about this strategy because it's usually our starting point. After all, how do you know you're up against a non-equivalent term if you haven't looked for equivalents? Although sometimes you will know you have a non-equivalent term from the outset.

This strategy involves looking for a functional equivalent to use as a translation. This means we use a target term that does the same job as the source term in a context. The context matters because it can lead to using a target term with a different meaning to the source term if compared in isolation. However, if both terms have equivalent or similar functions in a particular document, they might be the best match for your context. I.e., if the functions match sufficiently, the term is a candidate, despite other differences in meaning and function.

A good example of this in contracts is the formulaic language. The actual meaning of the language, which may vary greatly, matters little in this context. What we are interested in is the function, so we use the language in English contracts that does the same job. Often, though, functional equivalents are similar in meaning and function.

Thus, to some extent, the term research process entails finding, testing and discarding functional equivalents and then trying other strategies.

Are functional equivalents always the best option?

Even though functional equivalents are usually the best option if available and are necessarily the starting point, they do have their limitations. In some cases you'll want to skip over any available ones and use solutions arising from the strategies we talk about below. Why? Because too much domesticating may not suit our default audience (who likes 'seeing' the source system in the translation) or our purpose (accuracy).

Remember, lawyers like solutions closer to the foreignising end of the continuum. Indeed, anyone with anything at stake in a contract would probably want us to err on the side of showing the bare bones of the contract in the context of the source system over choosing familiar terms that may not quite fit and could lead to misunderstanding.

Furthermore, functional equivalents can tie concepts too closely to the target legal system (Biel, 2009). Keep in mind that we are dealing with different systems and not just different languages. Sometimes an authentic equivalent may be too authentic, especially if the reader would easily understand a more neutral option. A very authentic English term will make you think of the English system and maybe also connotations not associated to the source term; this won't happen with a more neutral solution. Particularly with more obscure terms less familiar to you, you may unwittingly associate additional connotation or elements of meaning by using a functional equivalent. An example of this is the Spanish term *reserva de ley*. While in certain contexts the authentic translation of *matter for primary legislation* may be sufficient, in others it does not cover all the elements of meaning of the source term. See this article on my blog for more on this term.

Practical implications for using functional equivalents

When translating contracts, functional equivalents generally end up being your first option. Most legal terms in contracts do have functional equivalents. But, especially for less familiar non-equivalent legal terms, more neutral options found with other strategies may better serve your purpose and audience. Such strategies allow you to signpost that the element in question is specific to the source system. This will sometimes be better than smoothing out a term and risking that the reader confuses it as being exactly the same as the functional equivalent. So while functional equivalents will be out first port of call, they will not always be the best option.

2. Translating descriptively

A useful strategy for translating non-equivalent terms, particularly less common ones, is to translate the term descriptively (also known as paraphrasing, glossing or defining (Harvey, 2003; Sarcevic, 1997)). You can use this strategy in combination with others, such as preserving the source term, creating a new term or using a definition in a note. Indeed, short descriptions sometimes become like new terms.

When should you translate descriptively?

This strategy works well for less-common non-equivalent terms. Descriptions explain what the term means. So they are ideal for when we need to be accurate and take our reader as close as possible to the source system. As our purpose requires accuracy and audience likes transparency, descriptions are useful and often the safest option. At the very least, you use them to support other strategies and make sure the reader doesn't misunderstand the term.

Of course, translating something descriptively means that you have to fully understand what the term means. You might think this is a shortcoming, but, in line with the practitioner mindset described in Part IV, we should always aim to understand the term. And you will if you do enough of the right research.

In any case, one rule of thumb could be: when in doubt about a functional equivalent or some other strategy, use a description, either on its own or to support another solution.

3. Translating literally

Translating terms literally, aka using literal equivalents, can also be a useful technique as it enables providing a transparent translation. The literal translation might not mean much in English, but the reader will be able to trace it back to the culture-specific source term. Again, this is another option you might want to use in combination with other techniques (e.g., description).

4. Neologisms — the joker in the pack

Neologisms (i.e., creating a new term in English) is, in practice, similar to translating literally or using the source term. It's another option for providing a transparent translation. But so we don't lose meaning and to make sure the translation is useful, a neologism may require the use of some other technique as well, at least the first time it appears in a document.

English-speaking mixed civil and common law jurisdictions, like Louisiana and Scotland, can be good sources of neologisms. This was the subject of the dissertation I did for my master's in legal translation. I looked at property terms and the Louisiana civil code. And I did find English neologisms (from a common-law perspective) for non-equivalent Spanish legal terms. However, apart from the term that sparked the idea to turn to the Louisiana civil code, I've rarely used it in practice. In any case, it's another resource worth knowing about, especially for typically non-equivalent areas such as property law.

One big advantage of using terms from these systems is that their definitions often closely match the Spanish terms. This gives you an authoritative translation in English. By this I mean you can point to a bona fide English definition of the term in a legal dictionary or a civil code. Of course, as the translation is a neologism for common-law English, you may have to help the reader by providing them some insight to its definition, maybe by adding a description.

A final option is to create your own neologisms. However, you might not ever find this more useful than just keeping the source term and providing a description.

5. Using the source term as it is

This strategy involves using the source term in the translation. You might put it in italics the first time it appears along with a description, gloss or translation note, and then just use the term in italics after that. Again, the advantage is transparency and keeping the reader close to the source system.

6. Using translator's notes

We can also use translator's notes, either as footnotes or comments in the document, to provide extra information. However, you might end up deciding a note is unnecessary. I, at least, just about always do. I think this is because in legal documents and contracts you can usually find a way to incorporate the extra information into the text. Usually with a description and making use of connotation you know is attached to a term that will save words. In practice, I usually only use translator's notes to make meta comments about the translation to the client (e.g., highlighting an error in the text). Having said that, translator's notes are great if you want to provide full definitions and background information.

Summary

Translating non-equivalent terms is an intuitive process. We instinctively employ the above strategies just by trying to translate with the audience and purpose in mind.

We usually start by looking for functional equivalents. We will probably use any functional equivalent we find as these are the most frictionless way of getting the message across. Unless, of course, we specifically want to create some friction, usually to remind the audience that they are reading about a foreign legal system. In this case, we might use a more neutral term, even when a functional equivalent exists.

When we do find ourselves drifting into areas of non-equivalence, we tend towards transparent and foreignising solutions to provide the reader with the most information possible to understand the contract in the context of the source system, which our default audience will usually appreciate and even require.

Thus, for truly non-equivalent terms that mean something in the contract (i.e., not formulaic language), be wary of using functional equivalents by themselves. When in doubt, use one or more of the other, more transparent, strategies. Most of the time you'll probably end up describing, maybe to support some other transparent solution like using the source term or a literal translation.

Appendix V: Glossary

Foreignise: A source-language focused translation strategy that means to try “to evoke a sense of the foreign” (Venuti, 199, in Biel, 2008, p. 24).

Non-equivalent terms: Terms you find in one language that don’t appear to exist or have any close equivalents in another language. This occurs relatively frequently in legal translation because legislators, judges and scholars can invent and define terms independently to suit their needs in a legal system.

Appendix VI: Bibliography

Adams, K.A., (2013) *A Manual of Style for Contract Drafting.* 3rd edn. Chicago: ABA Publishing.

Asensio, R.M., (2007) 'Comparación de los contratos en inglés y en español como ayuda al traductoror', *Papers Lextra*, 3, pp. 55–61, [Online]. Available in PDF here

Alvarado, I., (2004) *Guía para la traducción de contratos de arrendamiento.* Master's dissertation Universidad Nacional. Available in PDF here

Biel, L. (2009) 'Organization of background knowledge structures in legal language and related translation problems', *Comparative Legilinguistics. International Journal for Legal Communication.* 1, pp. 176-189.

Bingham, L., (2015) 'Becoming a Legal Translator', Capital Translations, 19 May, available here

Ferran, E., (2006) 'El traductor jurídico y la intertextualidad: El ordenamiento jurídico como contexto comunicativo-documental del documento de partida' Quaderns. Revista de traducció 13, pp. 155–168. [Online]. Available in PDF here

Garner, B.A., (2013) *Legal Writing in Plain English.* 2nd edn. Chicago: The University of Chicago Press

Harvey, M. (2003) 'A Beginner's Course in Legal Translation: the Case of Culture-bound Terms', [Online]. Available at: http://ow.ly/d7KZp (Accessed: 18/08/12).

"Horse Purchase Contract", available in Word here

Kemp, T., (2012) Essential Contract Drafting Skills. Leipzig: Amazon Distribution

Kaplan, D., (2011) 'Some tips for improving Spanish-to-English legal translations', *Mutatis Mutandis.* Vol. 4, No. 2. pp. 287–293, [Online]. Available in PDF here

Lassaque, L., (2006) *La traducción de los contratos : inglés-castellano/castellano-inglés : elementos teóricos y traducciones comentadas*, 1st ed. Buenos Aires : self-published. Available in PDF here

Moya, I.A., (2004) *Guía para la Traducción de Contratos de Arrendamiento.* Coursework. Universidad Nacional, [Online]. Available in PDF here

Nebot, A., (2006) 'Comparación de los contratos de arrendamiento ingleses con los españoles', *Fòrum de recerca nº 12,2006-2007 Jornades de Foment de la Investigació Univeritat Jaume I* [Online]. Available in PDF here

Great Britain. Office of the Parliamentary Counsel (2015) *Drafting Guidance.* Available in PDF here

Rutledge, A., (2012) *Basic Legal Drafting: Litigation Documents, Contracts, Legislative Documents.* Createspace.

Sarcevic, S. (1997) *New Approach to Legal Translation*. London: Kluwer Law International.

Tiersma, P.M., (1999) Legal Language. Chicago: University Of Chicago Press.

“Vehicle Sale Agreement”, available in Word here