

## **On the challenges of legal translation**

**Deborah CAO**, Professor

School of Humanities, Languages and Social Science

Griffith University, Australia

[d.cao@griffith.edu.au](mailto:d.cao@griffith.edu.au)

ORCID: <https://orcid.org/0000-0002-0775-8864>

**Abstract:** This short commentary focuses on language and law and legal translation. It stresses the importance of language used in legal texts in the legal context and the complexities when more than one language is involved in interlingual and cross-cultural communication in law. There are age old challenges in legal translation as well as new ones in the digital age with the increasing use of machine translation systems. It is imperative today that human legal translators are familiar with machine translation tools and aware of how computer aided translation technologies process information and their strengths and weaknesses. To be able to effectively use machine translation systems should become a compulsory part of the digital literacy and skill sets of legal translators in the twenty-first century.

**Keywords:** legal language, mistranslation, Chinese legal translation, machine translation.

## 1. Legal disputes involving languages

Some years ago, a legal dispute arose in China. A certain Mr Sun borrowed 20,500 *yuan* from his friend Mr Li. A signed document acknowledging a debt, that is, an IOU, was written for the purpose. Some months later, Mr Li was in need of money and Mr Sun repaid part of the money. A new IOU was drafted: *Li jie Sun 20,500 yuan* (Sun borrowed 20,500 *yuan* from Li). 今还欠款一万八千五百元 *Jin hai qiankuan 18,500 yuan* (Now 18,500 *yuan* is still owing). The two parties fell out later on and could not agree as to how much money was repaid and how much still owing. The written IOU further complicated the matter. The problem was with the character 还 *hai*. The character has two different pronunciations with two different meanings: 还 *hai*, ‘still’ or ‘yet’, and 还 *huan*, ‘to return’, or ‘to repay’. In the above sentence, it is indistinguishable grammatically as to which meaning it refers to. 今还欠款一万八千五百元 *Jin hai qiankuan 18,500 yuan* (Now 18,500 is still owing) can just as well be read as 今还欠款一万八千五百元 *Jin huan qiankuan 18,500 yuan* (Now 18,500 has been repaid). If one chooses to read the first version as Mr Sun did, Mr Li was owed just 3000 *yuan*. If one chooses to read the second version as Mr Li did, it means Mr Sun had repaid 3000 *yuan*, and 10,000 *yuan* was still owing. So they went to court to argue the case. Eventually, the Hongze county court in Jiangsu Province held that the character *hai* should be read as *hai* (still), not *huan* (repay), and the defendant, Mr Sun, still owed 18,500 *yuan* to Mr Li (see Cao 2004: 94)<sup>1</sup>.

There are many old and new stories in Chinese about how people manipulated language and ambiguity to their own advantage. However, linguistic uncertainty remains part of the Chinese language and a source of legal disputes, hence the importance of language, and for our purpose, the importance of language in law. Despite the fast development of society and technologies, challenges created by

---

<sup>1</sup> In this case, there was another linguistic ambiguity. In the first part of the IOU, 孙借李一万四千元 *Sun jie Li 14,000 yuan*, is ambiguous as 借 *jie* means both ‘to borrow’ and ‘to lend’. So, the sentence can mean either ‘Sun borrowed money from Li’ or ‘Sun lent money to Li.’. But this was not part of the actual dispute. For further discussions see Shen Zhengtao, 1999, “Hai zi du liang yin, jiufen shang fating”(With the Two Pronunciations of Hai, the Dispute Goes to Court), *Fazhi Ribao (Legal Daily)*, 14 March, 1999.

language do not go away, and unlikely to ever go away so long as humans use language, any language.

In a recent court case from the U.S.A. concerning the use of the English language, *O'Connor v. Oakhurst Dairy*, No. 16-1901, (1st Cir. 2017), the U.S. Court of Appeals for the First Circuit made a ruling involving the ambiguous use or lack of comma, which could cost a dairy company in the US city of Portland, Maine an estimated ten million US dollar.<sup>2</sup> “For want of a comma, we have this case,” wrote Judge Barron in delivering the First Circuit’s opinion on a labor dispute. Specifically, in this case, three lorry drivers for a dairy company claimed that they were owed years of unpaid overtime wages, all because of the way commas were used in legislation governing overtime payments. The question arose as to whether overtime was not due for workers involved in the “canning, processing, preserving, freezing, drying, marketing, storing, packing for shipment or distribution of: (1) Agricultural produce; (2) Meat and fish products; and (3) Perishable foods”, as stated in the law in the State of Maine overtime law (26 M.R.S.A. § 664(3)). The drivers had sought overtime pay that had been denied them based on the dairy company’s position that the final activity in the exemption applied to the “distribution” of dairy products independent of the penultimate activity of “packing for shipment”. According to the drivers, the final activity in the exemption only applied to “the single activity of ‘packing,’ whether the ‘packing’ is for ‘shipment’ or for ‘distribution.’”. And it turns out there is a distinction between “shipment” and “distribution” – ‘shipment’ refers to the outsourcing of the delivery of goods to a third party carrier for transportation, while ‘distribution’ refers to a seller’s in-house transportation of products directly to recipients.”<sup>3</sup>

The US Circuit Court ruled in favor of the delivery drivers, finding the lack of a serial comma within a State statute determinative in its decision. The Court found that the lack of a serial comma between “shipment” and “or” within the text of the statute created sufficient ambiguity. The court summarized the dispute over the meaning of the final activities included in the exemption of the Maine statute this way:

---

<sup>2</sup> *O'Connor v. Oakhurst Dairy*, No. 16-1901 (1st Cir. 2017).

<sup>3</sup> *O'Connor v. Oakhurst Dairy*, No. 16-1901 (1st Cir. 2017). See also Daniel Victor, 2017. “Lack of Oxford Comma Could Cost Maine Company Millions in Overtime Dispute”, *New York Times* (Mar. 16, 2017) [https://www.nytimes.com/2017/03/16/us/oxford-comma-lawsuit.html?\\_r=1](https://www.nytimes.com/2017/03/16/us/oxford-comma-lawsuit.html?_r=1).

if that exemption used a serial comma to mark off the last of the activities that it lists, then the exemption would clearly encompass an activity that the drivers perform. In that event, the drivers would fall within the exemption and thus outside the overtime law's protection. But as there is no serial comma in the exemption's list of activities, this led to the dispute over whether the drivers fall within the exemption from the overtime law or not. The court concluded that the last phrase in the exemption was ambiguous as to whether it exempted the activity of "distribution" independently of the activity of "packing". Subsequently, the dairy company settled a court case for five million US dollars because of the missing comma.<sup>4</sup>

## **2. Importance of language in law**

These above two cases are not isolated examples in Chinese or English. They are cited simply to remind us about the importance of language in law, especially language in business related law.

Humans are creative "signifying animals". Through deliberate choice of words and use or abuse of language, linguistic manipulation reveals as much as it conceals. As we are reminded, and as Umberto Eco (1976: 7) famously said, "If something cannot be used to tell a lie, conversely it cannot be used to tell the truth: it cannot in fact be used 'to tell' at all". Language is one such thing, especially when two languages are involved. As we know well, language matters and words have consequences. Many of us know this simple fact intuitively, but some may not have realized its wider ramifications. This realization has long existed in Chinese culture; indeed, it can be traced back to Confucius (551–479 BCE), who said:

"If names be not correct, language is not in accordance with the truth of things. If language be not in accordance with the truth of things, affairs cannot be carried on to success" (Legge 1970: 263–264).

This Confucian teaching has long been internalized by the Chinese people and become part of the Chinese language and way of thinking. The Chinese people know that language – or what one says

---

<sup>4</sup> O'Connor v. Oakhurst Dairy, No. 16-1901 (1st Cir. 2017).

and writes – is vitally important, and that one therefore must speak properly and appropriately. The Chinese people have further learned that if one does not speak properly, one's words may indeed bring calamities 祸从口出 *huo cong kou chu* – as the idiom says, sometimes bringing about one's loss of freedom or life physically and figuratively ending one's career, and social and other relationships – a serious challenge in China today. Words can become hard evidence for alleged or real serious acts of crime throughout Chinese history, including contemporary times, and this is well understood by both the ordinary people as well as the authorities who have always tried and are trying to control what people say, and consequently, what they think and what they do, especially in this digital and social media age of ours.

As we know, law is expressed in language and performs its functions through language: “Law would not exist without language” (Danet 1980: 448). Similarly, “Language plays a central role in the operation of law that is different from, even if not necessarily greater than, the role it plays in facilitating many other forms of human interaction” (Schauer, 1993: xii). Interestingly and relevantly, such acknowledgment, commonly pronounced in relation to law and Western legal studies in Western cultures, is not part of the Chinese legal culture or tradition. To the Chinese, as we said above, language is always important; however, the language used in law was not and is not distinguished or singled out for any special attention in Chinese legal culture and law. It is all regarded as part of the official language from authorities. Analyzing the language used in law is a very recent academic interest in China that has emerged only in the last couple of decades. Perhaps this is because law never enjoyed a high status in the evolution of Chinese society and culture, and never attracted extensive reflection, scrutiny and probing by philosophers in Chinese history – unlike the situation in Western civilization (Cao, 2018). Nevertheless, more laws are being promulgated in China as it has been in the last four decades or so, more Chinese people now go to court for various reasons, more individuals and companies are involved legal disputes as there are far more business activities than ever before, law has become much more important and occupies a far more significant place in Chinese society and people's life, and inevitably, language has also become much more significant in law and the legal process (for discussions of translation and modern Chinese legal language, see Qu 2015).

### 3. Legal translation in a digital age

As we know, issues involving language often become more complicated in cross-cultural communication concerning two languages, as in Chinese and English or another language. Thankfully, in the digital age, the availability and affordability of automated or machine translation software, apps, and other machine or computer aided translation (CAT) technologies have increased exponentially along with their popularity during the past ten years or so in our age of artificial intelligence (AI). They are now frequently utilized by both professional and amateur translators, as well as by random users who occasionally require bilingual assistance with foreign language challenges in daily activities for leisure or for work. As pointed out by various scholars,

“the ready availability of machine translation (MT) systems such as Google Translate has profoundly changed how society engages with multilingual communication practices. In addition to private use situations, this technology is now used to overcome language barriers in high-risk settings such as hospitals and courts” (Vieira, O’Hagan, and O’Sullivan, 2021).

Similarly, for language users in China, the development of automatic translation apps and services in China has made huge progress in recent years. Such CATs are being rapidly enhanced and refined with historically high number of users, especially with the rise and development of AI, and for the Chinese, this is even so given the large number of users in Chinese.

However, in the area of Chinese/English automated translation software, with the increasing use of automated translation, translation errors have also become much more prominent in everyday life involving Chinese and English translation. For this short essay not going into detailed studies, a simple example here, for instance, one such translation error is a sign collected on a Chinese internet site, of a Chinese neighborhood community notice board with English translation. A bilingual sign reads: 普法驿站 *pufa yizhan* and the English underneath says: Franco-Prussian Station. The sign was a literal translation or mistranslation, most likely the product of automated Chinese/English translation software. The Chinese phrase *pufa* means “general information on law” or “information to popularize law”,

usually general information about law for laypeople. However, the phrase *pu fa* does also have the meaning of “Franco-Prussian”. If one uses Google translate and inputs 普法 (*pufa*) as the Chinese source language, the English translation is shown to be “popular law”, which is not accurate either. If one inputs “Franco-Prussian” in English as the source language, the Google translate has 普法 (*pufa*) as the Chinese translation. A few other Chinese automated translation software also has the same translation.

For some of the reasons of such or similar mistranslation made by machine translation tools, it is explained,

“Machine translation systems such as Google Translate, Microsoft Translator, and those embedded in platforms like Skype and Twitter are some of the most challenging tasks in data processing. Training a big model can produce as much CO2 as a trans-Atlantic flight. For the training, an algorithm or a combination of algorithms is fed a specific dataset of translations. The algorithms save words and their relative positions as probabilities that they may occur together, creating a statistical estimate as to what other translations of similar sentences might be. The algorithmic system, therefore, doesn’t interpret the meaning, context, and intention of words, like a human translator would. It takes an educated guess—one that isn’t necessarily accurate.”<sup>5</sup>

As reported, the good news is that Big Tech companies are aware of their mistranslation problems, and their algorithms are constantly improving<sup>6</sup>. Evidence shows that Chinese/English machine translation systems are learning in the process of being used. For instance, a few years ago, Google Translate could not distinguish the ordinary and legal meanings of the Chinese word *ying*. It would invariably render the Chinese word as ‘should’ without regard to the context of use. *Ying* means ‘should’ in ordinary context, but when used in a legal text, it is the equivalent to the English legal meaning of ‘shall’ used in legislation and contract. It is a special legal usage. Now Google Translate is able to make the distinction and seems to be able to detect the contextual clues to correctly translate the legal meaning of *ying* when it is used in a legal text.

---

<sup>5</sup> <https://slate.com/technology/2022/09/machine-translation-accuracy-government-danger.html>

<sup>6</sup> <https://slate.com/technology/2022/09/machine-translation-accuracy-government-danger.html>

Also importantly, given the globalized communications medium and tools and AI, and social media, and sharing of such information, it is also much easier to detect mistranslation or language related errors than ever before, which can only be a good thing.

In conclusion, as we can see, for legal translation, there are age old challenges as well as new ones in the digital age with machine translation systems increasingly gaining popularity and refinement. It is imperative today that human legal translators are familiar with machine translation tools and aware of how computer aided translation technologies process information and their strengths and weaknesses. To be able to effectively use machine translation systems should become a compulsory part of the digital literacy and skill sets of legal translators in the twenty-first century.

Finally, as the above discussion tries to illustrate, translation, especially in legal contexts, can carry significant consequences. After all, one may never know whether the translation of the Chinese word 夷 *yi* or 蛮夷 *manyi* as ‘barbarians’ or ‘foreign barbarians’, as opposed to ‘foreigners’, contributed to the start of the Opium Wars (1839–1860) between China and Western countries all those years ago (Liu 1999).<sup>7</sup>

**Conflict of interest statement:** The Author declares that there is no conflict of interest.

## References

- Cao, Deborah. 2004. *Chinese Law: A Language Perspective*. Aldershot: Ashgate.
- Cao, Deborah. 2018. *Chinese Language in Law: Code Red*. Lanham: Lexington Books.
- Danet, Brenda. 1980. Language in the Legal Process. *Law and Society*, 14(3): 447–563. DOI: <https://doi.org/10.2307/3053192>.
- Eco, Umberto. 1976. *A Theory of Semiotics*. Bloomington: Indiana University Press.

---

<sup>7</sup>For studies of the history of Chinese translation in the eighteenth and nineteenth centuries, see Wong and Fuehrer (2016) and Wong (2017).

- Legge, James. 1970. *The Chinese Classics: With a Translation, Critical and Exegetical Notes, Prolegomena, and Copious Indexes*. Hong Kong: Hong Kong University Press.
- Liu, Lydia H. (ed.). 1999. *Tokens of Exchange: The Problem of Translation in Global Circulations*. Durham/London: Duke University Press.
- Qu, Wensheng. 2015. Compilations of Law Dictionaries in New China and Their Roles on Standardization of Translated Legal Terms. *International Journal for the Semiotics of Law*, 28(3): 449–467. DOI: <https://doi.org/10.1007/s11196-015-9408-y>.
- Schauer, Frederic. 1993. *Law and Language*. Aldershot: Dartmouth Publishing Co Ltd .
- Vieira, Lucas Nunes, O'Hagan, Minako, O'Sullivan, Carol. 2021. Understanding the Societal Impacts of Machine Translation: A Critical Review of the Literature on Medical and Legal Use Cases. *Information, Communication and Society*, 24(11):1515–1532. DOI: <https://doi.org/10.1080/1369118X.2020.1776370>.
- Wong, Lawrence Wang-chi. (ed.). 2017. *Translation and Modernization in East Asia in the Nineteenth and Early Twentieth Centuries*. Hong Kong: The Chinese University of Hong Kong Press.
- Wong, Lawrence Wang-chi, Fuehrer, Bernhard. (eds.). 2016. *Sinologists as Translators in the Seventeenth to Nineteenth Centuries*. Hong Kong: The Chinese University of Hong Kong Press.