Arabic legal phraseology in positive law and jurisprudence: the historical influence of translation

Halimi Mallem, Ismahene Sonia

How to cite

HALIMI MALLEM, Ismahene Sonia. Arabic legal phraseology in positive law and jurisprudence: the historical influence of translation. In: Comparative Legilinguistics, 2021, vol. 46, n° 1, p. 37–64. doi: 10.2478/cl-2021-0007

This publication URL: https://archive-ouverte.unige.ch/unige:160461
Publication DOI: 10.2478/cl-2021-0007

Comparative Legilinguistics
vol. 46/2021
DOI: http://dx.doi.org/10.2478/cl-2021-0007

ARABIC LEGAL PHRASEOLOGY IN POSITIVE LAW AND JURISPRUDENCE: THE HISTORICAL INFLUENCE OF TRANSLATION

SONIA HALIMI, PhD

Faculty of Translation and Interpreting,
University of Geneva, Geneva, Switzerland
Sonia.Halimi@unige.ch

ORCID: https://orcid.org/0000-0002-2105-7466

Abstract: The present study examines Arabic legal phraseology formation from the standpoint of positive law and jurisprudence. It claims that phraseological constructions in Arabic legislative and statutory texts are largely influenced by the translation process of Roman law texts. However, scholarly literature still relies to some extent on formulae used in the Islamic jurisprudence. To illustrate this, three examples of legal principles anchored in Islamic jurisprundence, known as *legal maxims*, are subjected to a comparative analysis and discussed along with their corresponding expressions in positive law in modern-day Arabic. Ultimately, the purpose of this paper is twofold: firstly, to demonstrate that the phraseology present in many Arabic positive laws is fully adapted to corresponding formulations in the Roman law, steming from a historical translation process that accompanied the codification

movement in the beginning of the 20th century; secondly, to emphasize the significance of textual genre awareness in legal translation. Concretely, the introductory section provides an overview of recent studies that have addressed legal phraseologisms. It is followed by a section on the historical role of translation in the construction of certain phraseologisms. The general legal principles of (a) burden of proof, (b) presumption of innocence, and (c) the pacta sunt servanda principle are then examined in order to shed light on the influence of both the Civilist tradition and Islamic jurisprudence on the use of legal Arabic today, as well as to demonstrate how the translation of phraseologisms is dependent on the parameters of genre. The analysis leads to the conclusion that proper use of phraseologisms, whether in drafting or translation, is closely linked to knowledge of phraseology formation and the historical influence of translation.

Key words: Arabic legal phraseology; Arabic legislation and jurisprudence; burden of proof; presumption of innocence; pacta sunt servanda

الجمل النمطية القانونية في النصوص التشريعية والفقه القانوني: تأثير الترجمة عبر التاريخ

ملخص: تتناول هذه الدراسة بالبحث الجمل النمطية العربية في لغة القانون، وبالتحديد في القانون الوضعي والفقه القانوني. وتحاول أن تبين تأثر أسلوب النصوص التشريعية والتنظيمية من حيث جملها النمطية أو تركيباتها الاصطلاحية بالقالب النصي للقانون الروماني نتيجة الترجمة. إلا أن البحث يبين التي تتخلل الفقه الإسلامي. وتجسيدا لهذه أيضا أن الأدب القانوني لا يزال يعتمد على الجمل النمطية الملاحظة، نستعرض ثلاثة أمثلة من مبادئ الفقه الإسلامي وهي *القواعد الفقهية*، ونقارنها بما يقابلها من جمل نمطية في القوانين الوضعية العربية، فتنتهي عملية المقارنة إلى أن الجمل النمطية أو التركيبات الاصطلاحية في تلك القوانين الوضعية تتواءم اصطلاحا ودلالة مع ما يقابلها في نصوص االقانون الروماني وتعكس آثار حركة الترجمة التي رافقت تدوين القوانين المدنية في مستهل القرن العشرين. ومن ثمّ، تتأكد ضرورة تحديد نمط النص القانوني في اختيار الجملة النمطية المناسبة. وهكذا، تبدأ هذه المقالة بإعطاء لمحة عن الدراسات الحديثة التي تناولت الجمل النمطية أو التركيبات الاصطلاحية القانونية، ثم تعرض الدور التاريخي للترجمة في وضع الجمل النمطية القانونية ورسم ملامح القوانين العربية، وتتناول أخيرا أمثلة تطبيقية لثلاث جمل نمطية متصلة بمبادئ قانونية عامة هي (أ) مبدأ عبء الاثبات، و(ب) مبدأ قرينة البراءة، و(جـ) مبدأ العقد شريعة المتعاقدين. ويهدف البحث في النهاية إلى إبراز أثر القوالب الأسلوبية للتقليد المدني والفقه الإسلامي في الجمل النمطية القانونية في لغة اليوم وتوضيح مدى أهمية المعايير النمطية النصية في حسن اختيار البنية الأسلوبية والجملة النمطية عند الترجمة. ويؤول العمل في الأخير إلى استنتاج مفاده أن الاستخدام المناسب للجمل النمطية القانونية، سواء في الصياغة أو الترجمة، يرتبط ارتباطا وثيقا بمعرفة جذورها ومدى تأثير الترجمة في تكوينها.

كلمات أساسية: التعبير الاصطلاحي القانوني، النصوص التشريعية والفقهية العربية، عبء الاثبات، قرينة البراءة، شريعة المتعاقدين

Introduction

Legal texts abide by linguistic features related to field vocabulary, phraseological patterns and text-typological conventions (Kjaer 2007; Goźdź-Roszkowski 2011; Pontrandolfo 2011; Biel 2014; Ruusila and Lindroos 2016). Such features reflect recognized meanings and forms that draw on a specific field of law, whether regulatory, judicial, jurisprudential, etc. They are dependent on the discourse genre. Phraseological patterns, specifically, constitute a key stylistic feature that illustrates the way in which the substance of legal texts is formulated (Cotterrell 2006; Colson 2008). It can be noted that legal Arabic shares the same genre-dependent features.

From a comparative angle, it is worth mentioning that legal Arabic has fully adapted to French and English lexical and stylistic patterns for particular genres, for example international regulatory instruments or institutional documents (Edzard 1996). The same observation cannot always be made with jurisprudential and scholarly texts. With regard to Arabic legal phraseology, it is worth noting that legal language pays special attention to Islamic jurisprudence, *Fiqh*. Rules of jurisprudence based on Islamic legal maxims, plus the development of legal Islamic reasoning, all contributed to the formation of legal phraseologisms in Arabic. Many jurisprudential texts contain legal phraseologisms that employ a high level of literary language and a sophisticated style. Consequently, many phraseological word combinations that appear in various legal genres reflect both formulae used in positive law and formulae that pertain to jurisprudential language. The same holds for cultural and religious terms in contracts, specifically mariage and divorce (Al-Farahaty 2010; Alaqad 2014).

Compared with recent studies on legal formulaicity and stylistic conventions in European languages, Arabic legal phraseology has not received much attention from linguistic scholars, jurilinguists or translators, whether in terms of the formation of phraseologisms or the translation of phraseological expressions. More research is needed to achieve a thorough understanding of the cultural embedment of Arabic legal phraseology and its effects on the translation approach. There is a real need to go beyond the linguistic surface of systems in order to perceive the specificities of legal thinking and understand the development of legal terminology and phraseology. A first step towards

attaining this knowledge is to open a window into the history of the evolution of Arabic phraseology in legal discourse.

In order to gain an in-depth understanding of Arabic legal phraseology, the next section aims at examining the development of legal Arabic in the last two centuries in relation to regulatory texts and positive discourse. The third section demonstrates that, despite the jurisprudential origin of the legal phraseology, the formulaic nature of legislative texts is influenced by the French legal system due to legal language interdependence and translation.

1. Phraseology in the Arabic legal discourse

As the Arabic saying goes, '*every context has a different text*' (لكل مقام مقال، ولكل حادث حديث) [li kuli maqâm maqâl, li kuli hâdith hadîth], and recent studies on phraseology behaviour in legal discourses (Tiersma 1999; Kjaer 2007; Cotterrell 2006; Pontrandolfo 2011; Mattila 2013; Biel 2014; Goźdź-Roszkowski and Pontrandolfo 2015; Ruusila and Lindroos 2016) have shown that legal genres have their own phraseological expressions. The language of law not only abides by formalisms and stylistic conventions, but formulaic usage and phraseological construction are also bound to particular legal genres, systems and traditions. Many authors have also underlined the role of genre patterns in determining manifestations of conventionality in legal discourse (Kjaer 2007; Pontrandolfo 2011; Goźdź-Roszkowski 2011; Biel 2014). From a legal culture perspective, phraseologism is considered to be the linguistic repository of the cultural traditions of a given language (Colson 2008).

When addressing Arabic legal phraseology, a distinction must be made between two types of phraseological manifestations. On the one hand, there are fixed expressions that are almost frozen and appear most of the time in recurring law rules and legal acts, that is, legislation and judgments. These texts are considered to be norm-conditioned legal genres (Kjaer 1990 and 2007; Matilla 2013). On the other hand, there is the refined and elegant style of formulaic language that is used in jurisprudential texts and law literature. That language stems from the historical and cultural underpinnings of laws in Arabic. As a matter of fact, referencing jurisprudential formulae that are contingent upon

Islamic legal maxims (القواعد الفقهية) [al-qawa'id al-fiqhiya] is almost natural.

The Islamic legal maxims are general principles derived from *fiqh* and formulated by jurists or *juriconsultes* (Chehata 1985: 840) in relation to specific themes to be used as 'a dynamic tool' (Hashim Kamali 2006: 79) in the field of jurisprudence. In comparison with modern statutory rules, which are characterised by their conciseness, legal maxims are formulated in order to elucidate their subject matter and make it easy to understand (Hashim Kamali 2006: 80), which is why they are considered to be 'comprehensive and inclusive expressions (jawami' al-kalim)' (Zakariya 2015: 25).

With regard to phraseology translation, Islamic legal jurisprudence holds all its importance when striving for phraseological parallelism by recreating the relevant legal style as the primary feature of phraseology. Legal maxims can, therefore, be used in law-related literature, jurisprudence and scholarly analyses. The style of discourse of legislation is culturally neutral and is tailored to a great degree to the lexical and stylistic patterns of French. Indeed, various codes in Arab countries are of Roman law inspiration, as described later, and mostly reflect English or French phraseological patterns. Due to the influence of Roman law and the mechanism of translation of international documents, English and French patterns are reflected in Arabic law texts, whether related to private-law instruments or national legislations. However, literary style and religious references still remain in legal literature and jurisprudential texts.

When training translators, it is, therefore, important to discuss how translation choices should be made according to the relevant text genre and legal culture. Pedagogically, genre awareness is essential during the training phase in order to properly and effectively use legal rhetorics and handle discourse conventions when reformulating (Halimi 2018). The implications of the study are equally as important for legal knowledge-building and documentary research skills. In other words, identifying genre-bound phraseologisms can guide the search for relevant knowledge and appropriate conceptual variants in the right sources. Specifically, this helps students draw the line between norm-conditioned content and jurisprudential content when rendering phraseological constructions into legal Arabic.

1.1. Phraseology in legislative discourse: the historical influence of translation

Any description of Arabic phraseological patterns from the perspectives of genre specificity and jurisdictional origin can contribute to addressing questions related to the process of translating legal formulaicity. By focusing on the linguistic and historical formation of Arabic legal phraseology, there is a clear interest in understanding the origin of linguistic patterns and how the encounter with Roman law influenced legal codes and, consequently, Arabic legal language in the codes being discussed in the present study.

The extensive influence of the 1804 Napoleonic Code throughout the world did not stop at the European frontier but reached all Latin regions that used the French code as a model in the promulgation of their own codes during the period from 1804 to 1896 (Lobingier 1918: 128). However, its significance was 'associated with the French Revolution, and, therefore, with the idea of creating a new world order' (Elgawhary 2014: 7). The codification of law, therefore, aimed first at curbing abuses of the ancient feudal system, as it was 'a deliberate process to demonstrate that man's freedom could only be limited by statute, not by the whim of other men' (Elgawhary 2014: 8).

The codification momentum spread to reach the Middle East region as well. The codification process is 'associated with the final years of the Ottoman rule (1839-1922) and the establishment of Arab independance following the British and French mandates (mid-20th century) (Razai 2019). It also stems from one of its essential functions: making law easier to access and understand (Elgawhary 2014: 7).

The codification movement began in Egypt with the first positive laws drafted in Arabic in the middle of the 19th century, driven by the establishment of a new judiciary organ known as the Commercial tribunal (a merchant's board) in 1855 to settle commercial disputes. The body of laws in Arabic was progressively extended by the introduction of six different codes – Civil code, Commercial code, Maritime commercial code, Code of civil procedure, criminal code and code of criminal procedure – following the creation in 1876 of the Mixed courts of Egypt (*Al-Maḥākim al-Mukhṭaliṭah*), chaired by foreign judges, whose jurisdiction covered '*all civil and commercial litigation between foreigners and natives as well as that between foreigners of different nationalities*' (Brinton 1926: 676). With Khedive Isma'il (1863), the

Code of Napoleon was used as a basis for drafting the code used by the Mixed courts and Native courts. The different codes were largely influenced by French laws (Goldberg 1998). By then, 'the Napoleonic codes and subsequent French codes became synonymous with progress, order, and, most importantly, codification' (Elgawhary 2014: 7).

A natural next step in the judicial organisation after the foundation of the Mixed courts of Egypt, was the establishment of National courts (*Al-Maḥākim al-Ahliyya*) in order to settle all civil, commercial and criminal disputes between Egyptians (Botiveau 1993). As a parallel legal system to the Mixed courts, National courts led to the drafting of Egypt's first civil code in 1883 on the basis of the previously established eclectic legal code. The legal body was first drafted in French, as it was patterned on the Napoleonic Code. The laws were then translated into Arabic (Al-Shalqawi 2013). From 1863 to 1879, Khediwe Isma'il's efforts to reform Egypt's legal system triggered the transfer into Arabic of rules and principles of law from the most recent codifications at the time – essentially Italian, German, French and Swiss (Botiveau 1993). For the newly-established laws to be enacted in the receptive State, linguists and legal practioners, notably Qadrī Pasha and Rifa'at al-Tahtawi, undertook the translation of the Napoleonic laws (*Le Code*), as they were mastering French under the rule of Muḥammad 'Ali (Al-Jabburi 2005). A rigorous comparison between French law and Shari'a was carried out at that time, paying close attention to the Ottoman Majalla and Islamic jurisprudence (Al-Shayel 1951). Building on Islamic jurisprudence terminology in his comparative work with the corresponding French texts, Al-Tahtawi translated and published volumes of legal codes: the Arabic Translation of the French Civil Code (1866), Arabic Translation of French Trade Law (1868), and Translation of the Code of Napoleon alongside the Ottoman Constitution (Published with Qadrī Pasha in 1866 and again in 1868) (Al-Shayel 1951: 46).

Based on the previous undertaking, Abd al-Razzaq Al-Sanhuri elaborated the current Egyptian Civil code, which influenced the codes of many Arab countries (Najjar 2005: 3). By relying on previous mixed codes, the Napoleonic rules remained the first source of legislation. The important influence of French laws on the Egyptian Civil code extended to criminal and administrative codes (Médhat-Lecocq 2010). Al-Sanhuri considered that even if it was legitimate that Islamic law constitute a privileged source of law, its application should be

subordinate to a new format guided by a scientific and legislative phase for immediate practical application (Al-Sanhuri 1926: 579).

The process of legal reception was not conducted without controversy. It was even a source of great concern (Al-Shalqawi 2013). The codification initiative was seen as a borrowing process of laws that stand in opposition to Islamic legal norms (Hussayn's *al-Muqāranāt* 2006 in Elgawhary 2014). Indeed, even when the first draft was discussed, Al-Sanhuri's Civil code was criticized for not drafting new rules, but maintaining old legislation based on French law (Ziadeh 1968: 143 in Hill 1988: 183).

Conservative scholars dismissed foreign law reception with the argument that it downplayed the role of Islamic jurisprudence and doctrine as a source of law. Legal concepts and theories stemming from different contexts and traditions and formed along a specific historical process (as for the family of the French Code) are considered to be inconsistent with the local legal culture. The origin of the civil codes continues to be an issue among conservative movements, with the principle of legal reception still being questioned (Saleh 1993; Al-Jabburi 2005).

The codification movement went on to include Syria (1949), Iraq and Libya (1953), Somalia (1973), Algeria (1975), Jordan (1977), Koweit (1980), UAE (1985), Bahrein (2001), Yemen (2002) Qatar (2004) and Oman (2013) (Bejermi 2018). By entering the civil law family through the codification project, the code-based systems opted for the universality of the rule of law, '*a prevailing feature of law systems in modern Nation-States*' (Botiveau 1993). However, three types of drafting could be identified according to their degree of compliance with the Egyptian code and the French model: an initial drafting of Romano-Germanic inspiration (Egypt, Syria, Algeria, Libya, Bahrain, Qatar and Somalia), a hybrid drafting with reference to Islamic jurisprudence (Iraq, Jordan and Yemen) and a drafting strongly inspired by the *fiqh*, rejecting the civilist footprint (Kuwait, United Arab Emirates and Oman (Bejermi 2018).

Furthermore, to characterize the civilist inspiration in many Arab codes, a central distinction can roughly be drawn between questions of personal status, which are submitted to religious considerations, and legal relations under private law, which are organised according to European, particularly French, legislations (Chehata 1965; Najjar 2005). Rules governing family or inheritance law (marriage, birth, filiation, succession) are generally codified separately

under 'personal status' in the civil codes of Arab countries. The civil codes include only a few provisions relating to persons (personality, status, capacity, etc.) property (assets, ownership, transmission of property, etc.), obligations (contract, tort, etc.) and security interests (Bejermi 2018).

It can also be noted that the same legal classifications and domains encompassed in logical and abstract categories in French law can be found in many Arab codes (Mousseron 1968; Najjar 2005). An illustration of this conceptual representation can be found in bilingual French-Arabic legal dictionaries such as Dictionnaire juridique français-arabe (Najjar, Shalala and Badawi 2006). This conceptual approximation is also illustrated by the French Dalloz *Lexique des termes juridiques*, which has been translated in its entirety into Arabic (Menhem et al. 2010).

1.2. Phraseology in the scholarly discourse: the jurisprudential role

As previously mentioned, legal Arabic does not turn a blind eye to Islamic jurisprudence. Its distinct cultural and historic footprint can substantially be observed in a legal language in which linguistic patterns are embedded in Islamic legal culture and jurisprudence, *fiqh* (Al-Sanhuri 1926; Chehata 1965).

The term *fiqh* الفقه commonly refers to religious knowledge, especially knowledge of Islamic law derived through legal reasoning *(ijtihād)* and the term *faqīh* (pl. *fuqahāʾ*) to someone who possesses such knowledge (Encyclopeadia of Islam 2015). The *fiqh* has generally been developed by leading jurists and *mujtahideen* in relation to particular themes throughout the course of history (Hashim Kamali 2006). The term, which originally meant "knowledge" or "understanding", is construed to be the conceptual framework in which issues of society can be addressed. Jurisprudence is thus applied by making extensive use of the founding sources, the Koran and Sunna, and by exploiting the intellectual means made available by scientists at the origin of this comprehensive science, namely *usûl al-figh*, the foundations of the *fiqh* (Botiveau 1993; Al-Jabburi 2005).

Jurisprudence, therefore, draws on knowledge and legal conclusions derived from legal reasoning.

Part of legal reasoning is actually based on Legal Maxims [al-Qawa'id al-Fiqhiyah] القواعد الفقهية, which are derived from a detailed reading of the rules of *fiqh* (Zakariyah 2015). Legal maxims stand as general principles of law. They 'consist mainly of statements of principles that are derived from the detailed reading of the rules of fiqh on various themes' (Hashim Kamali 2006: 4). They are 'designed primarily for better understanding of their subject matter, rather than for enforcement' (Hashim Kamali 2006: 4). While they are considered to be of general application, they might apply to a particular area, such as transactions (mu'amalat), contracts, litigation and court proceedings, according to the Majalla (Omar 2013).

In our study, the term is referred to as Islamic jurisprudence from the perspective of its linguistic modes of expression.

With regard to the codification process, *fiqh* standards are identified in specific areas of positive law in Arab codes that were examined. They are formally limited to family law, inheritance law and rules relating to *waqf* property. Hence, cultural and religious expressions are also found in binding texts, such as marriage contracts and divorce. However, Arab lawyers still diverge in their assessment of the influence of these standards on other branches of law, which have been reformed over the past century by foreign legal transplants (Botiveau 1993).

With respect to the scholarly literature, jurisprudential formulae are visible in jurists' explanations of specific norms or normative concepts, such as the definitions of legal concepts given by Al-Sanhuri in the volumes he elaborated as an introduction to the new civil law (Al-Sanhuri 1952). Jurisprudential language is also present in reference to the legal grounds provided in the comments of lawyers and judges and court judgments pertaining to Shariia legal systems, such as judgments delivered by Saudi courts.

This study focuses on three legal principles from the standpoint of their linguistic expressions in positive law and jurisprudence, i.e. (1) burden of proof, (2) presumption of innocence, and (3) pacta sunt servanda principle. It aims to shed light on the influence of both the Civilist tradition and Islamic jurisprudence on today's legal Arabic, and the dependency of phraseological choices on genre parameters.

2. Legal principles and their expression in legislation and jurisprudence

2.1. The principle of Burden of proof and corresponding legal provision (charge de la preuve)

The legal term *burden of proof* is one of the figurative formulae in legal language. The phrase itself stems from the Latin rule '*Onus probandi, Beweislast, Fardeau de la preuve*' (Thayer 1890: 54), defined as 'the duty to produce evidence of a certain character and persuasiveness determined by the law' (Fellmeth and Horwitz 2009: 224). It is the obligation of any person to prove or refute a disputed fact. The conventional conception of Burden of proof, derived from the Roman law, is considered to be one of the general principles of law. For Thayer (1890: 55), it is a specificity of the Roman law, 'for that body of law has given us the term onus probandi and a variety of often-quoted maxims about it'. The legislative expression of the principle can be read in the French Code of Civil Procedure that stipulates in the article (9):

> 'Il incombe à chaque partie de prouver conformément à la loi les faits nécessaires au succès de sa prétention'. The phraseological pattern 'Il incombe à chaque partie de prouver…' (it is up to each party to demonstrate…) can be identified in another example of set wording: '***il appartient au demandeur*** *d'****apporter ses preuves***' (it is up to the plaintiff to bring his proofs). The rule can be expressed in a largely fixed construction, '*la* ***règle exige du demandeur*** *en justice qu'il* ***établisse la preuve*** *du* ***bien-fondé de ses prétentions***' (Terre et Lequette 1994: 63),

which means that the rule requires that the plaintiff prove his claims.

Arabic legislations differ in laying down methods of proof, some of which have been placed in Codes of procedure, such as the Algerian or Lebanese civil procedures, which follow the German, French and Swiss legislations. Other legislations have introduced methods of proof in a special independent law under the title of Evidence Law or Rules of evidence, such as the Common law or Egyptian law.

Either way, the same conception of the preponderance of evidence is present in the Arabic civil legislation through the phrase يقع

عبء الاثبات على طالب الحق [yaqa'u 'ibu al-ithbat 'ala talib al-haq], which states that the burden of proof is established by the plaintiff. In this instance as well, the notion is conveyed by the same image of 'burden of proof',

The Lebanese code of civil procedure, for example, expressly employs the figurative formulation of the burden in its article (132):

المادة 132 (قانون اصول المحاكمات المدنية اللبناني): **يقع عبء الاثبات على من يدعي** الواقعة أو العمل.

This literally means that the **burden of proof is established** by **the person who claims** the event or the doing. The phrase is also referred to in the Rules of evidence and explanations given in relevant legislative texts, as follows :

من يدعي خلاف ما هو ثابت فرضا بالقرينة القانونية فعلى عاتقه يقع عبء تقديم الدليل (Kifaji 2020: 7)

In other words, the **burden of proof is on** the person who makes **a claim at odds with a situation** as established by prescription.

In civil cases, where the onus may shift from the plaintiff to the defendant, word combinations occurring in the Arabic texts refer to the burden of proof as '*equally distributed*' **موزعة** يقع عبء الإثبات بصورة **بالتساوي** (Kifaji 2020: 2) or as a '*shared burden*' between parties طرفا الخصومة **يتقاسمان عبء الإثبات** (Abed 2003: 186). When **the issue is found against the plaintiff**, the defendant becomes the plaintiff by establishing the defence **مدعياً بالدفع** ويصير المدعى عليه (Abou Sa'ud 2020: 318).

The duty of proving may then 'shift back and forth during the trial, because each party in turn may set up, in the course of the trial, an affirmative ground of fact, which, if he would win, he must, of course, make good by proof' (Thayer 1890: 45).

In criminal proceedings, the prosecution has the burden of proving the guilt of the defendant beyond any reasonable doubt. The responsibility of the prosecution is, therefore, to establish facts and draw up charges (Schweizer 2016: 219). The rule of estabilishing guilt of the offence being charged is expressed in legal Arabic by the following kind of standardized formulation:

يقع على عاتق سلطة الاتهام عبء إثبات جميع عناصر الجريمة
(Mrouk 2020)

In other words, **it is the responsibility of** the accusing authority **to establish all elements of the offence** charged. The same rule is also rendered in another routine formula:

إن **عبء إثبات التهمة يقع على** النيابة العامة كجهة اتهام
(Mrouk 2020)

The rule is expressed by a formulation containing a different phraseology, which states that the **duty of establishing the proof rests on** the prosecution as the accusing authority.

With reference to legislative language, the formulation stems, as seen, from a literal translation of the French and English phraseological phrases. It is devoid of any cultural allusion. Despite the metaphorical image of '*burden'*, the phrase does not belong to jurisprudential phraseology. One can therefore say that the phraseological expression for this rule is culturally neutral.

Against this background, the principle of *Burden of proof* (Onus probandi) can be traced back to the Arabic legal tradition in Arabic jurisprudence. It derives from the legal maxim: (البينة على من ادعى واليمين على من أنكر) [al-bayina 'ala man idaî wa-l-yamin 'ala man ankar] (*The proof is on the claimant and the oath is on the one who denies*). There is a correspondance between the burden-of-proof rule in the civil codes and the jurisprudential maxim. Still, this phraseological expression is culture-bound and stylistically relevant, but is not used in legislative texts. It is a culture-bound expression, the idiomaticity of which can be traced back to the Arabic legal tradition. Its use depends highly on the legal text genre.

From a contrastive translation perspective, it seems that the principle of norm-conditioned phraseology, extensively discussed by Kjaer (1990; 2007), is manifest in the legislative expression of the principle. The use of non-culture-based expressions in the first examples is therefore bound by the legal rule that fixes them. For the prescriptive genre in international settings, the related phraseology also expresses a codified law and refers to the same norm-conditioned expression in Arabic.

It thus makes sense to determine whether the target text falls within a positive text-genre or pertains to jurisprudential background. The same phrasemes might not be translated by the same formulae. During the training phase, it is important for legal translation practictioners to understand this kind of phraseological variance conditioned by legal genre, whether legislative or jurisprudential.

2.2. Burden of proof in the Obligation Code

This norm is related to many branches of law. With regard to obligations, the principle is clearly *defined in article* 1315 of the French civil code, which stipulates that 'Celui qui **réclame l'exécution d'une obligation** doit **la prouver**. Réciproquement, celui qui **se prétend libéré** doit **justifier le paiement** ou le fait qui a produit l'**extinction de son obligation**' (the party who alleges the execution of an obligation must prove it. Conversely, the party who claims to be released from an obligation must prove the payment or the reason for which the obligation is extinguished).

The notion of burden of proof in relation to obligations is defined in Arabic positive law in relation to debt/contract or tort in general. It appears clearly in Arab Civil Codes, Codes of Civil Procedure or Codes of Obligations that use a neutral formulation, *inter alia*

the Algerian CC (art. 323)

المادة 323 (القانون المدني الجزائري): على الدائن **إثبات الالتزام** وعلى المدين **إثبات التخلص منه**.

the Egyptian C of Evidence (art. 389)

المادة 1 (قانون الاثبات المصري): على الدائن **إثبات الالتزام** وعلى المدين **إثبات التخلص منه**.

the Lebaneese Oblig.& Contracts Law (art. 132)

المادة 362 (قانون الموجبات والعقود اللبناني): من يدعي أنه دائن **تلزمه إقامة البينة** على وجود الحق، وبعد إقامة البينة يجب على من **يدعي سقوط الموجب أن يثبت صحة قوله**.

From a translational perspective, the phraseological variance used to express this principle is again conditioned here by the legal genre, whether legislative or jurisprudential.

2.3. The principle of Presumption of innocence and corresponding legal provision (présomption d'innocence)

A defendent's right to be presumed innoncent is universal. It is enshrined in Article 11(1) of the Universal Declaration of Human Rights (1948) (الإعلان العالمي لحقوق الإنسان) [al-I'lan al-'alami li huquq al-insan], which provides that 'Everyone charged with a penal offence has the right to be **presumed innocent until proved guilty** according to law in a public trial at which he has had all the guarantees necessary for his defence.' The Arabic translation of the international provision reads as follows:

المادة 11(1): كلُّ شخص متَّهم بجريمة **يُعتبَر بريئًا إلى أن يثبت ارتكابُه** لها قانونًا في محاكمة علنية تكون قد وُفِّرت له فيها جميعُ الضمانات اللازمة للدفاع عن نفسه.

The right of presumption of innocence is also incorporated in Article 14(2) of the International Covenant on Civil and Political Rights, which provides that 'Everyone charged with a criminal offence shall have the right **to be presumed innocent until proved guilty** according to law.'

The Arab Charter on Human rights (2004) (الميثاق العربي لحقوق الانسان) [al-mithaq al-'arabi li huquq al-insan] reaffirms many of the same principles contained in the UN Charter and incorporates the presumption of innocence in Article 16, stating that:

المادة 16 - **كل متهم بريء حتى تثبت إدانته** بحكم بات وفقا للقانون.

The provision states literally that every accused person is innoncent until proven guilty by a final judgment rendered according to law.

The same principle is present in Article 19(e) of the Cairo Declaration on Human Rights in Islam (1990), which provides that:

المادة 19 (هـ) - **المتهم برئ حتى تثبت إدانته** بمحاكمة عادلة تؤمن له فيها كل الضمانات الكفيلة بالدفاع عنه.

Here again, the provision states clearly that a defendant is innocent until his guilt is proven in a fair trial in which he shall be given all guarantees of defence.

In the French Civil code, the principle of the presumption of innocence, already established in the 1789 Declaration of the Rights of Man and the Citizen[1], is introduced today by Article 9(1) which stipulates: 'Chacun a droit au respect de la présomption d'innocence'. It is also mentioned expressly in the introductory Article (III) of the Code of Criminal procedure, which states that: 'Toute personne suspectée ou poursuivie **est présumée innocente tant que sa culpabilité n'a pas été établie**. Les **atteintes à sa présomption d'innocence sont prévenues**, réparées et réprimées dans les conditions prévues par la loi.' (2019). The article imposes on the prosecution the burden of proving the offence, giving the accused the benefit of doubt.

This constitutional right is also reaffirmed in the Codes of criminal procedure. Indeed, a number of Arab Constitutions and codes examined in this study stipulate that the accused person is presumed innocent until proven guilty in almost identical formulations:

the Algerian Constitution (art. 56)

المادة 56 (الدستور الجزائري): **كل شخص يُعتبر بريئا حتى تثبت إدانته** من جهة قضائية نظامية في إطار محاكمة عادلة تؤّمن له الضمانات اللازمة للدفاع عنه.

the Egyptian Constitution (art. 67)

المادة 67 (الدستور المصري): **المتهم بريء حتى تثبت إدانته** في محاكمة قانونية تكفل له فيها ضمانات الدفاع عن نفسه.

[1] Article 9 of the Declaration reads: 'As all persons are held innocent until they shall have been declared guilty, if arrest shall be deemed indispensable, all harshness not essential to the securing of the prisoner's person shall be severely repressed by law'.

the Syrian Constitution (art. 67)

المادة 51(2) (الدستور السوري):كل **متهم بريء حتى يدان** بحكم قضائي مبرم في محاكمة عادلة.

the Tunisian CCP (art. 7)

المادة 7 (مجلة الإجراءات الجزائية التونسي): **المتهم بريء حتى تثبت إدانته** ويفسر الشك لمصلحة المتهم ولا يقضي بالعقاب إلا بعد محاكمة عادلة وفق أحكام هذا القانون وتصان فيها حرية الدفاع

the Yemeni CCP (art. 4)

المادة 4 (قانون الإجراءات الجزائية اليمني): **المتهم بريء حتى تثبت إدانته** ويفسر الشك لمصلحة المتهم ولا يقضي بالعقاب إلا بعد محاكمة عادلة وفق أحكام هذا القانون وتصان فيها حرية الدفاع

The legal provisions reproduce the standardized wordings used in French and international legislative texts. Additionally, the right of criminal protection of persons is cited in the positive rules as 'the presumption of innocence' قرينة البراءة [qarinat al-baraa] or 'the right to be presumed innocent'الحق في احترام قرينة البراءة .

In an analogous manner, the norm in Islamic jurisprudence is the 'non-liability' in principle الأصل براءة الذمة [al-aslu baraat al-dhimmah], according to which people are not liable in principle unless there is proof attributing guilt with certainty. Therefore, certainty can 'only be overruled by certainty, not by doubt' (Hashim Kamali 2006: 2). In other words, 'Any person is absolved from guilt, blame or responsability for any wrong deed, in principle' (Omar 2013: 30).

As noted, the legal maxim has been reworded in the positive law as 'presumption of innocence' by قرينة البراءة [qarinat al-baraa] instead of the jurisprudential wording الأصل براءة الذمة [al-aslu baraat al-dhimmah].

From a translational perspective, it is important to bear in mind that the right is not expressed by the same formulae in the positive and jurisprudential genres. A clear distinction between both Arabic uses should be made in order to avoid an inaccurate translation.

2.3. The principle of 'pacta sunt servanda' and corresponding legal provision in Obligations

In the multilingual context of international institutional discourse, the translation process abides by drafting guidelines and mechanisms that are defined by institutional bodies such as the United Nations Commission on international trade law (UNCITRAL). The choice of vocabulary can reveal the willingness of writers to implicitly infuse this discourse with metalanguage that strives for the universality of concepts (Vieillard 2014). Metalanguage criteria can be based on two cumulative elements: (1) the coordination of language choices and (2) the acceptance of common concepts as a consequence of the latter coordination (Vieillard 2014: 258).

From a local perspective, the development of the Arabic law of obligations and property law has been carried out through a significant reception of the civil law tradition and French techniques of elaboration and interpretation of the law (Mousseron 1968: 42; Al-Dabbagh 2014: 1) – an observation that can be attributed to the codification movement and other socio-historical factors, as described above. The binding force of contractual relations arises from the general principle of Roman law 'pacta sunt servanda'. العقد شريعة المتعاقدين [al-'aqd shari'at al-muta'aqidin]. The principle is defined in the French code of obligations under the section devoted to Effects of contracts. Indeed, Article 1134 states literally that: 'Les **conventions légalement formées tiennent lieu de loi** à ceux qui les ont faites. Elles ne peuvent être révoquées que de leur consentement mutuel, ou pour les causes que la loi autorise. Elles doivent être exécutées de bonne foi.' In other words, contracts which are lawfully formed have the binding force of legislation for those who have made them.

In Arabic statutory texts, a common provision appears with the same wording as the French provision in a number of Arab codes that have been reviewed in this study, that is the Algerian (art. 106 and art. 107), Egyptian (art. 147), Libyan (art. 147), Qatari (art. 171) and Syrian (art. 148/1) civil Codes.

the Algerian Civil code (art. 106)

المادة 106 (القانون المدني الجزائري): **العقد شريعة المتعاقدين،** فلا يجوز نقضه ولا تعديله إلا باتفاق الطرفين، أو للأسباب التي يقررها القانون.

the Egyptian Civil code (art. 147)

المادة 147 (القانون المدني المصري): **العقد شريعة المتعاقدين،** فلا يجوز نقضه ولا تعديله إلا باتفاق الطرفين، أو للأسباب التي يقررها القانون.

the Syrian Civil code (art. 148)

المادة 148 (القانون المدني السوري): **العقد شريعة المتعاقدين،** فلا يجوز نقضه ولا تعديله إلا باتفاق الطرفين أو للأسباب التي يقررها القانون.

the Qatari Civil code (art. 171)

المادة 171 (القانون المدني القطري): **العقد شريعة المتعاقدين** فلا يجوز نقضه ولا تعديله إلا باتفاق الطرفين أو للأسباب التي يقررها القانون.

In addition to the binding nature of the contract, the principle of good faith shares the same phraseology in the Arab codes explored, following the statutory text on good faith of Article 1104 of the French Civil code: 'Les **contrats doivent être** négociés, formés et **exécutés de bonne foi'**. (Contracts must be negotiated, formed and performed in good faith).

the Algerian Civil code (art. 107)
المادة 107(القانون المدني الجزائري): **يجب تنفيذ العقد** طبقاً لما اشتمل عليه وبطريقة تتفق **مع ما يوجبه حسن النية**.

the Egyptian Civil code (art. 148)
المادة 148(القانون المدني المصري): **يجب تنفيذ العقد** طبقاً لما اشتمل عليه وبطريقة تتفق **مع ما يوجبه حسن النية**.

the Qatari Civil code (art. 172)
المادة 172(القانون المدني القطري): **يجب تنفيذ العقد** طبقاً لما اشتمل عليه وبطريقة تتفق **مع ما يوجبه حسن النية**.

The analysis suggests that there is a common body of law from which stem many legal concepts related to contractual matters. The drafting of laws is similar to the formulation of the French code. A strong civilist footprint and the romano-germanic inspiration behind the initial drafting can be observed (Chehata 1965). English and French patterns are reflected in the Arabic rules. This observation has also been reaffirmed in recent comparative work (Najjar 2005; Al-Dabbagh 2015; Abu-Sahlieh 2016). Indeed, statutory texts related to obligations and contracts are imbued with citations from French legal doctrine established by legal practioners who may find legal Arabic expressions and terminology to be perfectly familiar (Al-Dabbagh 2014).

In Arabic jurisprudence, the binding force of contractual relations is laid down in the general principle that states ' المسلمون على شروطهم' [al-Muslimun 'alaa shuritihim] (*Muslims are bound by the conditions they determine*). In other words, all the conditions agreed upon by Muslims are upheld. This jurisprudential principle has its roots in the prophetic citation المسلمون على شروطهم الا شرطا أحل حراما أو حرم حلالا. It means that Muslims are bound by their mutual agreements unless they hold a permissible thing as prohibited or a prohibited thing as permissible (Usmani 2002: 26).

The principle is rarely referred to as is in legal Arabic. However, formulae evoking contractors or parties instead of Muslims are used to refer to the binding force of the contract, such as المتعاقدون على شروطهم (Contractors are bound by the conditions they determine) or الأطراف ثابتون على الشروط التي تقع بينهم (Parties are consistent in respecting their mutual agreements). These phrasemes are common in the jurisprudence.

It can therefore be stated that a phraseology used in legislative language is not a reproduction of the phraseology of jurisprudential texts.

Conclusion

The approach to legal translation promoted by this study goes beyond the scope of an in-depth knowledge of legal terminology. It focuses on learning phraseology, as driven by legal genres. This paper has demonstrated that it is essential to do a thorough historical reading of

the origins of their formation in order to understand phraseological constructions and their proper use in translation. Just as accuracy guides terminological choices in various settings, genre constraints dictate the use of phraseological constructions. A failure to choose the appropriate genre-related phraseology may compromise the relevance of the translation for inconsistency in genre-specific stylistic conventions. In addition to that, a phraseology-based approach can help in gaining in-depth understanding of the origin of phraseological regularities and shed light on the significance of cultural-bound formulae in legal content.

The idiomatic nature of legal Arabic is different depending on whether the text is set within a legislative and statutory framework, where expressions are a mere flat translation of the original content, or contains idiomatic word chunks that are related to the jurisprudential background. When it comes to this particular issue, Arabic legal discourse has a particular regard for Islamic jurisprudence *(fiqh)*, despite its receptiveness to Roman law.

In positive law, whether at the national or international level, the prevailing practice is to go beyond jurisprudential references in legal drafting. By extension, that practice is valid in translation as well. The legislative text has adapted to the French lexical and stylistic formulation of rules. It relies on culturally-neutral formulations as an established usage. In the multilingual international setting, it can also be observed that Arabic has adapted to French and English lexical and stylistic patterns, '[A] high percentage of Arabic documents hardly reveal any Islamic background and could just as well be translations from English or French' (Edzard 1996: 55).

It is also worth noting that a significant number of historical and cultural expressions are reflected in legal Arabic. Many legal phrasemes that have emerged from the Islamic legal tradition still stand in legal literature and scholarly writings, however, some of them have been reworded or refined to apply to a specific case. Despite the accuracy of traditional legal phraseology, they remain comprehensive and inclusive expressions (jawami' al-kalim) (Zakariya 2015: 25).

The analysis of a number of legal principles has shown that they have different phraseological expressions in legal Arabic, depending on whether they are inspired by legislative or jurisprudential language. When rendering phraseological units into legal Arabic, a distinction must be made between norm-conditioned content and jurisprudential content in order to make the proper choices.

Bibliography

Abed, Abdel Hafiz. 2003. *Al-ithbat al-jinaii bi al-qaraiin.* Al-Qahira: Al-Hayaa al-masriya al-‘ama li al-kitab.

عابد عبد الحافظ عبد الهادي. 2003 . *الاثبات الجنائي بالقرائن*. القاهرة، الهيئة المصرية العامة للكتاب.

Abu-Sahlieh, Sami A. Aldeeb. 2016. *L'alliage entre le droit positif et le droit musulman dans les pays arabes, notamment en Égypte*. https://l.21-bal.com/law/3039/index.html (accessed April 4, 2019).

Al-Aqad, Mohammed H. 2014. Translation of legal texts between Arabic and English: the case study of marriage contracts. *Arab World English Journal* 5, no. 2: 110-121. https://awej.org/translation-of-legal-texts-between-arabic-and-english-the-case-study-of-marriage-contracts/ (accessed December 12, 2020).

Al-Dabbagh, Harith. 2014. Quelques aspects de l’imprégnation du droit des obligations des pays arabes par la culture juridique civiliste. *Revue de l’ERSUMA : Droit des affaires – Pratique professionnelle, N° Spécial IDEF, Les systèmes de droit civil des pays du Sud.* https://revue.ersuma.org/no-special-idef-mars-2014/les-systemes-de-droit-civil-des/ (accessed April 21, 2019).

Al-Farahaty, Hanem. 2010. Lexical and syntax features of English and Arabic legal discourse: a comparative study. *Comparative Legilinguistics* 4: 61-80. DOI: https://doi.org/10.14746/cl.2010.4.6 (accessed July 5, 2019).

Al-Jabburi, Sajir Naser. 2005. *Al-tashri’ al-islami wa al-ghazw al-gharbi li al-bilad al-islamiya*. Beirut: Dar al-kutub al-‘ilmiya.

الجبوري ساجر ناصر. 2005 . *التشريع الإسلامي والغزو القانوني الغربي للبلاد الإسلامية*، بيروت، دار الكتب العلمية.

Al-Sanhuri, Abd al-Razzaq Ahmad. 1926. *Le califat: son évolution vers une société des nations orientale. Travaux du Séminaire oriental d’études juridiques et sociales*. Paris: P. Geuthner.

Al-Sanhuri, Abd al-Razzaq Ahmad. 1952. *Al-Wasit fi sharh al-qanun al-madani al-jadid*. 1. Al-Qahira: Dar al-Nahdha al-‘arabiya.

السنهوري، عبد الرزاق. 1952. *الوسيط في شرح القانون المدني الجديد 1. مصادر الالتزام*، القاهرة، دار النهضة العربية.

Al-Shalqawi, Omro. 2013. *Izdihar wa inhiyar al-nukhba al-qanuniya al-misriya 1805-2005*. Al-Qahira: Al-Shuruq

الشلقاوي عمرو. 2013 . *ازدهار وانهيار النخبة القانونية المصرية 1805-2005*، القاهرة، الشروق.

Al-Shayel, Jamal al-Diin. 1951. *Tarikh al-tarjama wa al-haraka al-thaqafiya fi 'asr Muhamad 'ali*. Al-Qahira: Dar al-Fikr al-Arabi.)

الشيال جمال الدين .1951 . *تاريخ الترجمة والحركة الثقافية في عصر محمد علي*، القاهرة، دار الفكر العربي.
https://archive.org/details/tarikh.al.tarjmah/page/n173 (accessed November 12, 2020).

Bejermi, Aya. 2018. Les sources du droit civil des pays arabes. *Cercle des chercheurs sur le Moyen-Orient.* https://cerclechercheursmoyenorient.wordpress.com/?s=Bejermi (accessed April 23, 2019).

Biel, Łucja. 2014. Phraseology in legal translation: A corpus-based analysis of textual mapping in EU law. In *The Ashgate handbook of legal translation,* eds. Le Chen King, Kui Sin and Anne Wagner, 178-192. Surrey: Ashgate Publishing Limited.

Botiveau, Bernard. 1993. *Loi islamique et droit dans les sociétés arabes. Mutations des systèmes juridiques du Moyen-Orient*. Paris: Karthala.

Brinton, Jasper Y. 1926. The Mixed Courts of Egypt. *The American Journal of International Law* 20, no. 4 : 670-688. DOI : https://doi.org/10.2307/2188689 (accessed March 31, 2019).

Chehata, Chafik. 1965. Les survivances musulmanes dans la codification de droit civil égyptien. *Revue internationale de Droit comparé* 17: 839-53. https://www.persee.fr/doc/ridc_0035-3337_1965_num_17_4_14398 (accessed August 14, 2019)

Cotterrell, Roger. 2006. *Law, culture and society. Legal ideas in the mirror of social theory*. Aldershot: Ashgate.

Elgawhary, Tarek. 2014. *Restructuring Islamic law: the opinions of the 'Ulama towards codification of personal status law in Egypt.* PhD dissertation, Princeton University. https://pqdtopen.proquest.com/doc/1640769548.html?FMT=ABS (accessed August 7, 2019).

El-Shamsy, Ahmed. 2015. 'Fiqh, faqih, fuqaha'. In *Encyclopedia of Islam, THREE,* eds. Fleet, Kate, Gudrun Krämer, Denis Matringe, John Nawas and Everett Rowson. Brill. DOI:

http://dx.doi.org/10.1163/1573-3912_ei3_COM_27135 (accessed November 10, 2020).

Fellmeth, Aaron and Horwitz Maurice. 2009. *Guide to Latin in international law*. Oxford Publication Press.

Goldberg, Jan. 1998. Réception du droit français sous les britanniques en Egypte : un paradoxe ? *Egypte/Monde arabe, Première série 34*: 67-80. http://ema.revues.org/1493 (accessed April 23, 2019).

Goźdź-Roszkowski, Stanisław. 2011. *Patterns of linguistic variation in American legal English. A corpus-based study*. Frankfurt am Main: Peter Lang.

Halimi, Sonia. 2018. Rethinking the English-Arabic legal translation course: restructuring for specific competence acquisition. *International Journal for The Semiotics of Law – Revue Internationale De Sémiotique Juridique* 32: 117-134. DOI: https://doi.org/10.1007/s11196-018-9568-7 (accessed August 19, 2019).

Hashim Kamali, Mohammed. 2006. Qawa'id al-Fiqh: The legal maxims of Islamic law. In *The Association of Muslim Lawyers, UK*. http://www.iais.org.my/e/index.php/publications-sp-1447159098/selections/item/49-qawa%E2%80%98id-al-fiqh-the-legal-maxims-of-islamic-law.html (accessed May 28, 2017).

Hill, Enid. 1988. Al-Sanhuri and Islamic law: the place and significance of Islamic law in the life and work of 'Abd al-Razzaq Ahmad al-Sanhuri, Egyptian jurist and scholar, 1895-1971, [Part II]. *Arab Law Quarterly* 3, no. 2: 182-218. https://doi.org/10.2307/3381872 (accessed August 9, 2019).

Kifagi, al-Dayf. 2020. Dawr qa'idat 'ibi al-ithbat fi hasm al-khusumat bayna al-qanun al-madani wa al-fiqh al-islami. *AL Mi'yar 18*, no. 35: 263-290.

كيفاجي الضيف. 2020. دور قاعدة عبء الاثبات في حسم الخصومات بين القانون المدني والفقه الإسلامي، *المعيار*، المجلد 18، العدد 35: 263-290. https://www.asjp.cerist.dz/en/article/17632 (accessed December 21, 2020).

Kjaer, Anne Lise. 1990. Phraseology research – state-of-the-art. Methods of describing word combinations in language for specific purposes. *Terminology Science and Research 1*, no. 1-2: 3-32.

Kjaer, Anne Lise. 2007. Phrasemes in legal texts. In *Praseologie/Phraseology: Ein internationales Handbuch zeitgenössischer Forschung/An International handbook of contemporary research 2*, eds. Harald Burger, Dmitri Dobrovol'skij, Peter Kühn and Neil R. Norrick, 506-515. Berlin: de Gruyter.

Lobingier, Charles Sumner. 1918. Napoleon and His Code. *Harvard Law Review* vol. 32, no. 2: 114-34. DOI: https://doi.org/10.2307/1327640 (accessed July 5, 2019).

Mattila, Heikki. 2013. *Comparative legal linguistics: Language of law, Latin and modern lingua francas*. (2e Ed) Farnham: Ashgate.

Médhat-Lecocq, Héba. 2010. De la nécessité pour le traducteur de maîtrise les domaines spécialisés : le cas des systèmes juridictionnels. *Meta* 55, no. 2: 251-265. DOI: https://doi.org/10.7202/044238ar (accessed August 20, 2019)

Menhem, Lena, Bassil Chamel, Bechara Claire and Rahmé Romy. 2010. *Lexique des termes juridiques : français, arabe, anglais*. Paris-Liban: Dalloz Hachette-Antoine.

Mousseron, Jean Marc. 1968. La réception au Proche-Orient du droit français des obligations. *Revue internationale de droit comparé* 20, no.1: 37-78. https://www.persee.fr/doc/ridc_0035-3337_1968_num_20_1_19007 (accessed April 23, 2019)

Mrouk, Naser. 2020. 'ibu al-ithbat fi al-masail al-jinaiya. *Al-Majalla al-Jazaiiriya li al-'ulum al-qanuniya wa al-siyassiya 38*, no. 3: 47-122.

مروك نصر الدين. (2020). عبء الاثبات في المواد الجنائية. *المجلة الجزائرية للعلوم القانونية والسياسية*، المجلد 38، العدد 3: 47-122. https://www.asjp.cerist.dz/en/article/96713 (accessed December 3, 2020).

Najjar, I. 2005. Le code civil et les droits des pays du Proche-Orient. *Revue du droit des affaires en Afrique.* Institut international de Droit d'espression et d'inspiration fançaises. http://www.institut-idef.org/Le-code-civil-et-les-droits-des.html (accessed November 11, 2020).

Najjar, Ibrahim, Shalala Youssef, and Badawi Ahmad Zaki. 1983. *Dictionnaire juridique français-arabe*. Beyrouth: Librairie du Liban.

Najjar, Ibrahim, Shalala Youssef, and Badawi Ahmad Zaki. 2006. *Nouveau dictionnaire juridique français-arabe: suivi d'un index arabe-français.* Beyrouth: Librairie du Liban.

Nelken, David. 2001. Towards a Sociology of Legal Adaptation. In *Adapting Legal Cultures 4,* eds. David Nelken and Johannes Feest, 7-54. Oxford: Hart Publishing. DOI: https://doi.org/10.5040/9781472559166.ch-001.

Omar, Faridh. 2013. Al-Qawa'id al-Fiqhiyyah. Legal maxims of Islamic jurisprudence. A translated compilation. *Mishkâh*. Islamic University of North America. http://www.muslim-library.com/dl/books/English_Legal_Maxims_of_Islamic_Jurisprudence.pdf (accessed July 5, 2020).

Pontrandolfo, Gianluca. 2011. Phraseology in criminal judgements: A corpus study of original vs. translated Italian. *Sendebar* 22: 209-234. http://revistaseug.ugr.es/index.php/sendebar/article/view/352/384 (accessed July 11, 2017).

Razai, Sara. 2019. Law and legal systems in the Arab Middle East : beyond binary terms of traditionalism and modernity. The institute of Law and Justice in Arab countries. https://iedja.org/en/law-and-legal-systems-in-the-arab-middle-east-beyond-binary-terms-of-traditionalism-and-modernity/ (accessed August 10, 2020).

Ruusila, Anna and Lindroos Emilia. 2016. Conditio sine qua non: On phraseology in legal language and its translation. *Language and Law/Lunguagem e Direito 3,* no. 1: 120-140. http://ojs.letras.up.pt/index.php/LLLD/article/view/1659/1470 (accessed May 15, 2017).

Saleh, Nabil. 1993. Civil codes of Arab countries: the Sanhuri codes. *Arab Law Quarterly* vol. 8, no. 2: 161-167. Brill. DOI: https://doi.org/10.2307/3381555 (accessed August 14, 2019).

Schweizer, Mark. 2016. The civil standard of proof – what is it, actually? *The International Journal of Evidence & Proof 20,* no. 3: 217-234. https://www.markschweizer.ch/wp-content/uploads/2017/09/schweizer_civil_standard_proof.pdf (accessed July 15, 2020).

Terre, François and Lequette Yves. 1994. *Les grands arrêts de la jurisprudence civile*. Paris: Dalloz.

Thayer, James B. 1890. The Burden of proof. *Harvard Law Review* vol. 4, no. 2: 45-70. DOI: https://doi.org/10.2307/1321112 (accessed December 21, 2020).

Tiersma, Peter. 1999. *Legal language*. Chicago: University of Chicago Press.

Usmani, Muhammad Taqi. 2002. *An introduction to Islamic finance*. The Hague/London/New York: Kluwer Law International.

Vieillard, Guillaume. 2014. La contribution de la Commission des Nations unies pour le droit commercial international (CNUDCI) à l'harmonisation et l'uniformisation du droit commercial international. *Centre de recherche sur le droit des marchés et des investissements internationaux.* Université de Bourgogne. UFR Droit et Science politique. https://tel.archives-ouvertes.fr/tel-01139936 (accessed December 18, 2020).

Zakariyah, Luqman. 2015. Legal maxims in Islamic criminal law. Theory and application. *Brill's Arab and Islamic Laws Series* 9: 24-59. DOI: https://doi.org/10.1163/9789004304871_003 (accessed July 10, 2019).

National and international instruments in Arabic (last accessed for verification):

Algerian Civil Code, 2007. Official Journal. https://www.joradp.dz/trv/acivil.pdf (accessed January 14, 2021).

Algerian Constitution, 1996. Official Journal. https://www.joradp.dz/har/consti.htm (accessed January 14, 2021).

Arab Charter on Human rights, 2004. http://hrlibrary.umn.edu/arab/a003-2.html (accessed, January 14, 2021).

Cairo Declaration on Human Rights in Islam, 1990. http://hrlibrary.umn.edu/arab/a004.html (accessed January 14, 2021).

Egyptian Civil Code, 1948. http://arbooks.tk/ (accessed January 14, 2021).

Egyptian Code of Evidence, 1968. https://www.egyptlawfirm.net (accessed January 14, 2021).

Egyptian Constitution, 2011. http://www.egypt.gov.eg/arabic/laws/constitution/ (accessed January 14, 2021).

Lebaneese Obligations and Contracts Law, 1932. http://legiliban.ul.edu.lb/Law.aspx?lawId=244226 (accessed, January 14, 2021).

Libyan Civil Code, 2016. https://aladel.gov.ly/home/?p=3950 (accessed January 14, 2021).

Qatari Civil Code, 2004. https://www.almeezan.qa/LawPage.aspx?id=2559&language=ar (accessed January 14, 2021).

Syrian Civil Code, 2018. https://pedia.svuonline.org/ (accessed January 14, 2021).

Syrian Constitution, 2012. https://www.wipo.int/edocs/lexdocs/laws/ar/sy/sy014ar.pdf (accessed January 14, 2021).

Tunisian Code of Criminal Procedure, 1968. http://www.legislation.tn/affich-code/Code-de-proc%C3%A9dure-p%C3%A9nale__91 (accessed January 14, 2021).

Universal Declaration of Human Rights, 1948. https://www.un.org/ar/universal-declaration-human-rights/index.html (accessed January 14, 2021).

Yemeni Code of Criminal Procedure, 1994. https://yemen-nic.info/db/laws_ye/detail.php?ID=11425 (accessed January 14, 2021).

National instruments in French (last accessed for verification)

French Code of Civil Procedure, 2007. https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006070716/ (accessed January 14, 2021).

French Code of Criminal Procedure, 2019. https://www.legifrance.gouv.fr/codes/id/LEGISCTA000006098229/2021-01-14/ (accessed January 14, 2021).

Declaration of the Rights of Man and the Citizen, 1789. https://www.education.gouv.fr/declaration-des-droits-de-l-homme-et-du-citoyen-du-26-aout-1789-10544 (accessed January 14, 2021).