

Note

LEGAL TERMINOLOGY: CHALLENGES OF ENGLISH-UKRAINIAN TRANSLATION

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Summary: 1. Introduction. – 2. Legal Terms: Definition, Features, and Classification. – 3. Difficulties in Translating Legal Terminology. – 4. Solutions to Overcome Challenges in Translation. – 5. Conclusions.

Keywords: *term, legal term, legal terminology, legal translation, difficulties of translation.*

ABSTRACT

Background: *Ukraine's decision to choose a pro-western trajectory of development has brought about new challenges, among which are problems in the approximation of a national legal*

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system with EU law. To overcome these challenges, we must develop a well-grounded scientific approach to dealing with the translation of legal terminology, paying special attention to the classification of legal terminology and the difficulties that translators often face. The results of the present study indicate that English-language legal discourse needs further research and development. The process of translating a legal text presents a number of challenges related to the peculiarities of legal language, the linguistic and cultural disparities between the source language and the target language, the divergent legal systems, and different linguistic traditions. A special role is played by difficulties brought on by the legal nature of terms and differences in national legal systems.

Methods: In this article, the authors use a comparative-analytical method, together with continuous sampling of the databases and dictionaries of English-Ukrainian legal terminology via a qualitative method.

Results and Conclusions: Lexical-semantic transformations and methods are proposed to address linguistic challenges. These are techniques such as transcoded borrowing, calquing, analogue replacement, descriptive and explanatory translation, modulation, concretisation, generalisation, addition, and omission. These methods help to preserve the meaning of terminological units with a possible replacement of their structure. From our perspective, the most expedient solutions for translating linguistically challenging terms are calquing, descriptive translation, and addition. These methods preserve the semantic meaning of the original term and reproduce it as clearly as possible in the target language. The article emphasises the necessity for further advancement in a specific direction on the subject of English-language legal discourse and the exploration of novel approaches to the problem of translating English-language legal terminology.

Keywords: term, legal term, legal terminology, legal translation, difficulties of translation.

1 INTRODUCTION

Legal terminology depends not only on the traditions of a state's legal system but on the direction of a state's development and its foreign policy. Due to globalisation processes and ties with foreign partners, it is foreign relations that contribute to the emergence of a large number of various legal texts that require high-quality translation to ensure effective international collaboration. Currently, Ukraine is undergoing rapid development in foreign relations, aiming at becoming a member state of the European Union and joining the NATO alliance in order to gain the support of international partners in the Russian-Ukrainian war. The legal side plays an important role in the development of foreign policy; therefore, high-quality legal translation of legal texts, in particular English-language ones, is gaining momentum. Translation of legal texts was and continues to be an integral part of the interaction between peoples, playing a significant role in today's interconnected world. The legal text of the original and the translated text must maintain the unity of terminology, but there are still differences in many terms, which are caused, in particular, by the legal nature of the terms themselves and differences in national legal systems. Therefore, the topic of legal features and the difficulties of their translation require thorough research.

A number of studies have been conducted in the sphere of English and Ukrainian legal terminology, as evidenced by the works of such scientists as N. Artikutsa, G. Vynokur, S. Holovaty, S. Hrynev, E. Derdi, F. Doner, V. Karaban, and many others. Recent research into the topic is focused on the structural-semantic characteristics of legal terminology in translation (V. Zgurska), the search for the Ukrainian-English equivalents of translation (L. Schvelidze, P. Melnyk, Yu. Baklazhenko), the linguacultural features of the translation of legal terms (N. Sheverun, H. Leitsus, Y. Mozgova), etc.

The relevance of our research lies in the need to study English-language legal terminology and its translation into Ukrainian. Taking into account the rapid strengthening of Ukraine's foreign policy ties and the acute geopolitical situation, the study of the peculiarities of English-language legal documents and the difficulties that might arise when translating terms into Ukrainian is an important aspect of the professional training of a translator.

The purpose of our article is to provide an overview of the definitions, features, and classifications of a legal term as a subject of study, explain the nature of typical difficulties that arise during legal translation from English into Ukrainian, and suggest some of the ways to overcome them.

2 LEGAL TERMS: DEFINITION, FEATURES, AND CLASSIFICATION

Terminological vocabulary occupies a prominent place in the vocabulary of any developed language. It is the result of many years of research, is continuously being replenished with new units, and represents the achievements of intensive development. The basic concepts of terminology help us understand the details of specific vocabulary as a conceptual system that reflects scientific concepts, special names in scientific fields, categories of additional terms, subgroups of the vocabulary of the literary language, and artificially formed vocabulary layers.

In the monograph *Ukrainian Terminology: Complex Linguistic Analysis*, M.O. Vakulenko describes the basic task of terminology as the study of norms and regularities of the formation and the development and functioning of terminological units in a specific field of human activity. Vakulenko claims that this science uses statistical and analytical research methods.¹ In the context of research, terminology can be understood in different ways:²

- terminology as the science of a term (in this sense, the term 'terminology' is becoming increasingly popular);
- terminology as a professional vocabulary consisting of all the words of a certain language (English terminology, Ukrainian terminology);
- terminology as a special vocabulary that serves a certain direction of activity and development of science or technology (legal terminology, etc.).

The analysis of theoretical concepts of the problem of terminology shows that there is no single and adequate definition of the concept of 'term'. Due to this complexity, in linguistics, there have been many different attempts to define this concept.³ This word was coined in ancient times. In Latin, it meant 'border'. In the Middle Ages, it acquired the meaning of 'designation' or 'definition'. The nomination of the word 'terme' – 'word' – is found in the Old French language as well.⁴

In foreign terminology, 'term' is also interpreted ambiguously. English researchers Greenough and Cartridge compare a term with mathematical signs and formulas that are not included in the vocabulary of the language. The French scientist E. Gilbert wrote about terms as elements of a special scientific language which are not characterised by clarity and logic. J. Vandries and J. Smith equate the terms with jargon.⁵

1 MO Vakulenko, *Ukrainian terminology: complex linguistic analysis* (Foliant 2015).

2 TR Kyyak., AM Naumenko, OD Oguy, *Translation studies* (Kyiv University Publishing and Printing Center 2008).

3 AS Dyakov, TR Kiyak, ZB Kudelkou, *Basics of term formation* (KM Academia House 2000).

4 TI Panko, IM Kochan, HP Matsyuk, *Ukrainian terminology* (Svit 1994).

5 *ibid.*

As part of our research, it is worth considering what exactly is meant by a legal term in the context of legal linguistics. According to N.V. Artikutsa, a *legal term* expresses a concept from the legal sphere of social life and has a definition in legal literature (legislative acts, legal dictionaries, scientific and legal works).⁶

In Ukrainian science, the approach to the study of a term at the theoretical level can be found in the works of T. Secunda, who defines the main features of a term.⁷ It is interesting to compare these features with the features of a legal term, which can be found in L.L. Besedena's research.⁸

Table 1. Comparison of features of a general term and legal term

No	Main features of a term (according to T. Secunda)	Features of a legal term (according to L.L. Besedena)
1	easy-to-understand nature	accuracy and availability of the definition
2	exact correspondence to the essence of the scientific object	use of words and expressions in a narrower or special meaning compared to their meaning when used in general literary language
3	unambiguous nature (only one meaning should be associated with each term)	tendency to unambiguity
4	flexibility, that is, the potential to create terms derived from it	derivative ability
5	'good-sounding' nature	brevity and conciseness
6		systematicity
7		linguistic correctness
8		neutrality
9		stability, well-established nature

We can see from these two approaches to defining the features of a term that a legal term by its nature inherits the features of a scientific term, but the emphasis is placed on such specific aspects as 'availability of the definition', 'systematicity', 'linguistic correctness' (especially preciseness), and 'stability'. This is explained by the features of legal discourse, where a legal term operates, which dictates the necessity to use the term in a very precise meaning with paramount correctness in the established system. Any ambiguity may lead to undesirable consequences that might directly (or indirectly) affect the users of that terminology (say, in court, it might lead to long-lasting litigation, disputes over obligations, types of enforcement measures, etc.)

The large encyclopaedic legal dictionary divides legal terms into three groups according to the 'understandability' feature:⁹

1. General terms, the main feature of which is use in everyday life and comprehensibility for people who speak a certain language, e.g., *a claim, a lawyer, Criminal Investigation Department*.

6 NV Artikutsa, *Language of law and legal terminology: a study guide for students of legal specialties of higher educational institutions* (Stylos 2004).

7 Panko (n 5).

8 LL Besedena, 'To the problems of regulating the terminology of legislation' (2011) 4(7) *Scientific Notes of the Institute of Legislation of the Verkhovna Rada of Ukraine* 162-167.

9 DS Azarov, VI Akulenko, YA Aleksanrov, *Big encyclopedic legal dictionary* (Legal Opinion 2012).

2. Special legal terms with a special legal meaning and which are understandable only to specialists in legal professions, e.g., *prosecution, allegation, testimony*.

3. Special technical terms reflecting a special field of science – economics, linguistics, jurisprudence, etc. (these terms should be understandable to a lawyer who is also a specialist in another field), e.g., *the manufacturing costs, supranational law*.

A.Y. Kovalenko offers a classification based on the division of terms by structure:¹⁰

1. Simple words consisting of one word: *the infringement, the law, the legislation*;
2. Complex words consisting of two or more words written together or with a hyphen: *wage-earner, fact-finding, cross-border*.
3. Phrasal terms consisting of several components: *the Great Powers, separation of powers, unrestricted authority*.

O.A. Lysenko also divides legal terms according to linguistic indicators. This refers to the nature of semantic relations between lexemes:¹¹

- genus and species relations (*a lawyer – an attorney*);
- synonymous (*legislation – law – jurisprudence*);
- antonymous (*prosecution – defence; licit – illicit*).

Before starting work on legal translation, one should pay attention to features of legal discourse, which has its own peculiarities apart from the general features of scientific discourse.

In legal discourse, it is typical to use proper names to accurately name organisations, places, documents, other objects, etc. Proper names can, in turn, be divided into toponyms (*the Hellenic Republic; the Federal Republic of Germany*), ergonyms as names of international agreements (*Helsinki Final Act*), and ergonyms as names of institutions, organisations and representative bodies (*the Council of Europe*).

Legal discourse also demonstrates widespread use of the Latin language, which for a long time was the main source of terms used in documents (for example, *mutatis mutandis* – with the necessary changes; *inter alia* – among other things; *in absentia* – in one's absence).

The language of international law is official, which requires the use of complex adverbs (words with affixes -at, -in, -after, -before, -with, -by, -above, -on) to avoid the repetition of names of things in the document (e.g., *hereinafter, thereafter*, etc.).

The use of linguistic clichés is one of the features of the language of the law. It consists of the fact that in the language of a lawyer, there are constituent legal terms that act as a single whole: *in accordance with, in compliance with, in line with, in pursuit of, in conformity with, in keeping with*.

In legal English, there is a historical tendency to combine two or three synonyms (such combinations of words are called doublets or triplets) to convey what is usually a single legal concept: *the terms and conditions, law and order, legal and valid*.

These features of legal discourse, along with the characteristics of a legal term, should be taken into account when translating legal terms. However, even with that knowledge, translators face many difficulties, which will be explained in the next section.

¹⁰ AY Kovalenko, *General course of scientific and technical translation* (Inkos 2001).

¹¹ OA Lysenko, VM Pyvovarov, LM Sidak, *Ukrainian language (for legal studies)* (National Law University named after Yaroslav the Wise 2014).

3 DIFFICULTIES OF LEGAL TERMINOLOGY TRANSLATION

Difficulties in the translation of legal terminology are determined by a complex set of reasons, which can be attributed to the following factors.

One of the most difficult challenges, and, unfortunately, the one a translator most often faces, is the absence of equivalents of a terminological unit in the language of translation. For example, the terms *felony* and *misdemeanour* have no equivalents in Ukrainian criminal law. These categories of crime are translated as фелонія, місдмінор (i.e., as calques from the English words). However, we often come across other variants (typically outside the scope of legal discourse, for example, when rendering legal terms in literary discourse). For example, Context Reverso proposes such variants of translation as злочин (*crime*), тяжкий злочин (*severe crime*), and кримінальний злочин (*criminal crime*).

Another challenge that needs to be addressed is the polysemy of the original term, when a terminological unit of legal discourse has several meanings and not always similar ones, e.g.:

evidence –

1. information that gives a reason for believing something or proves something: *There was not enough evidence to prove him guilty*;
2. an indication or trace which can make a person come to the conclusion that something may have happened: *The room bore evidence (i.e., showed signs) of a struggle*.¹²

Sometimes the ambiguity of a terminological unit or terminological phrase of a particular branch of law appears not only within the wide limits of this branch of law but also within the same text, which means there is contextual dependence in the translation of a terminological unit or phrase. Ideally, neither the meaning of the term nor its translation should depend on the context.

E.g., *There are two types of criminal law: substantive and procedural. Substantive law is the body of law that defines criminal offences and their penalties. Substantive laws which are found in the various penal codes, govern what people legally may or may not do. Examples of substantive laws are those that prohibit and penalize murder, rape, robbery, and other crimes*.¹³

In this example, 'substantive law' – матеріальне право (Ukr.) – is to be understood as a system of laws, and 'a substantive law' – матеріально-правовий закон (Ukr.) – as a rule or formulation that prescribes what a person may or may not do.

The next kind of difficulty is related to the belonging of terminological units to different national legal systems and therefore to different legal terminological systems. Generally, taking into account the degree of proximity of legal systems and languages, it is possible to identify four situations that may affect translation difficulties:

- 1) legal systems and languages are closely related, for example, in Spain, France, Denmark, and Norway – the problem of translation in this case is solved quite simply;
- 2) legal systems are closely related, but the languages are not – special difficulties during translation do not arise, for example, when translating Dutch laws in the Netherlands and French laws;
- 3) legal systems are different, but the languages are related; the difficulties of translation are more significant, and the main difficulty is the translation of 'false

12 AS Hornby, *Oxford advanced learner's dictionary of current English* (Oxford University Press 1992).

13 RM Bohm, KN Haley, *Introduction to criminal justice* (McGraw-Hill Companies 2002).

friends of the translator' – *faux amis* – for example, when translating German legal texts into Dutch and vice versa;

- 4) the two legal systems and languages are unrelated; the difficulties increase significantly, for example, when translating English common law texts into Chinese.

A translator should bear in mind that English-Ukrainian legal translation falls within the last, most difficult category. Thus, in the countries of the Anglo-American legal family (the UK, the USA, and others), the main source of law is the rule formulated by judges and expressed in court precedents, i.e., the Anglo-American legal family belongs to precedential law. The modern legal system of Ukraine, on the contrary, was based on legal concepts and principles characteristic of the Romano-Germanic type of legal system, and therefore it relies on a codified system of rules and principles. These differences between the two systems and languages cause difficulties in the translation of concepts used in them.

Differences in the cultures of countries and peoples are another source of difficulties that arise during the translation of legal texts. Culture is defined as a 'semiotic system' and a 'system of meanings' or information encoded in the behavioural potential of members of society and includes knowledge, beliefs, morals, art, laws, and customs acquired by a person as a member of society. The translator must take into account all the details of culture during the translation of legal literature. One of the related challenges is the problem of conveying the content of legal realities (e.g., *King's clemency (UK)*, *Lord Chief Justice (UK)*).

The challenge of choosing the right variant from the suggested translations requires deep knowledge on the translator's part. For example, the translation of the word *delinquency* accounts for 11 variants: – порушення (угоди, закону); проступок, правопорушення, злочин; злочинність, делінквентність (особливо неповнолітнього); акт делінквентної поведінки; невиконання обов'язків; прострочення; затримка погашення; заборгованість. It is the translator's understanding of the original term and the context of its use that will contribute to its correct translation. Another lexical difficulty is a differentiation of the broad and narrow meaning of the word within one terminological field (for example, the word 'body' acquires highly specialised meanings – *corpse; contingent; corpus; collection (of evidence); complex (of materials, documents, etc.); the main part (of a document)*).

Since English is an analytical language and Ukrainian is a synthetic language, translation includes using a variety of transformational constructions for the translation of phrases, which is also a significant challenge from the point of view of both rendering the meaning and the form of utterance (as, in some cases, it is very important to maintain a relatively similar length of text),

E.g., *crime figures* – статистичні дані про злочинність; *assassination attempt* – замах на вбивство з політичних мотивів; *court of judiciary* – суд.

There are also the peculiarities of the formation of terms-phrases which should be taken into account during translation. The most difficult ones are terms based on metaphor, metonymy and euphemism, or metaphoric expression, e.g., 'to attack confession' means not to physically attack but try to refute the defendant's confession of guilt.

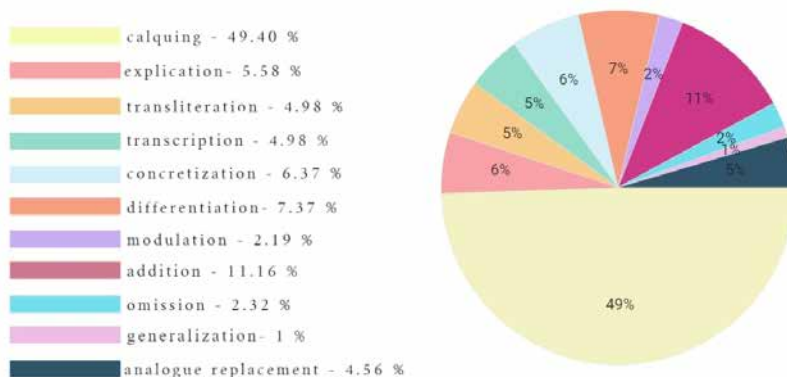
The significant influence of the Latin language on the formation of English legal terminology and the loss of the connection between legal and general language is another challenge, which sometimes requires consulting a Latin dictionary (e.g., *malum in se* – an offence that is evil or wrong due to its own nature irrespective of statute)

The next difficulty is the presence of a significant number of abbreviations. When translating these, it is necessary to know how they are deciphered: *A/O (arresting officer)* – a police officer

who made an arrest; L.K.A. – the last known address, ECtHR – European Court of Human Rights; ECHR – European Convention on Human Rights.

It has been established that when translating, a translator should strive for equivalence, bearing in mind the harmonisation and approximation of terminologies.¹⁴ Translating legal terms is a challenging task that requires deep insight into the problem and the consolidation of previously applied methods and approaches.

Transformation in translation



On the basis of the analysis of databases and scientific literature, we suggest the following methods for translating legal terms and legal terminology.

1. Use the methods of transliteration or calquing if the lexical unit of the source language is not available in the translation language – transcription (e.g., *know-how* – *ноу-хау*), calquing (e.g., *credit limit* – *кредитний ліміт*, *corporation tax* – *корпоративний податок*, *legitivism* – *легітимізм*). Calquing of legal terms can be complete or partial, often accompanied by elements of transcription or transliteration combined with the transformation of complex composites. According to our research, 49.4% of legal terms were translated using this method.

2. Convey the meaning of the term via descriptive translation (explication). When using a descriptive translation, it is necessary to ensure that the word combination in the translated language clearly and thoroughly reproduces all the main features of the term that is denoted by the word in the original language. Before using this method of translating neologisms, it is necessary to fulfil the preliminary condition of correctness during the translation of neologisms – to make sure that there is no translated counterpart in the translated language so as not to produce terminological doublets in the translated language. It was found that 5.58% of the analysed terms were translated using this method – e.g., *franchisee* – *франчайзі (набуває права використання торгової марки)*; *franchiser* – *франчайзер (продає право використання торгової марки)*; *reversion* – *зворотний перехід прав до попереднього власника*; *право викупу закладеної або відчуженої за борги нерухомості*.

14 Yu Baklazhenko, 'Ukrainian-English Translation of Legal Terms: A Case Study of Insignificant Cases and Small Claims' 2021 1(9) Access to Justice in Eastern Europe 232-242. DOI: 10.33327/AJEE-18-4.1-n000055

3. Use an analogue replacement, i.e., translating with understandable words for the target language in cases where the term does not exist in the target language – e.g., *predatory pricing* – демпінг (штучне заниження цін); *retailer* – ритейлер/підприємство роздрібно́ї торгівлі. An important feature of this method of translation is comprehensibility since the term is translated using words that are actively used in the target language. However, there are also disadvantages to this method. In particular, as L.K. Latyshev points out, there is a risk of ‘national-cultural assimilation’ of legal systems, which is considered an unacceptable phenomenon for legal translation. This method was used in the translation of 4.56 % of the terms.

4. Specify the meaning of the term so that the recipient understands it – e.g., *right of derogation* – the right to withdraw from one’s obligations. In this case, the method of specification is used to precisely outline the tasks of one of the parties in the event of release or waiver of obligations. Therefore, the phrase ‘*right of derogation*’ was translated not simply as the right to cancel but as the right to withdraw from one’s obligations; that is, when translating, it is specified which cancellation is referred to in the translated term. Application of the concretisation method will help to reproduce the semantics of the English term during translation into Ukrainian. This method occurred in 6.37 % of the translations; e.g., *settlement* – мирна угода; *fee simple* – Право успадкування без обмежень; *environmental law* – Правові норми з охорони навколишнього середовища.

5. Generalise the meaning of the term for the sake of its comprehensibility by the recipient. For example, the name of the body, the ‘Grand Chamber’, when translated, is usually reproduced as the ‘Great Chamber’; thus, we observe the generalisation of the meaning of the adjective ‘grand’ – important, majestic, grandiose –, which, when translated, is transferred to the more general ‘great’, which does not add expression to the name of the judicial body. Since the legal text should not allow for inaccuracies in interpretation, generalisation is used only in certain cases (in our set of analysed terms, it appears in only 1% of the translations). However, such a transformation is appropriate when transferring terminological units that have both a borrowed equivalent in the target language and a concept close in content in the native language – e.g., *nonjusticiable dispute* – судовий розгляд; *creeping nationalisation* – темпи націоналізації.

6. Add translation of implicit elements of the content of the original. Often, this transformation is used during translation to prevent distortion of the content in the translation language – e.g., *non-members of the organisation are invited to the conference as observers* – Країни, що не є членами організації, запрошуються для участі в конференції в якості спостерігачів. The method of addition is used in 11.16% of the translations.

7. Omit grammatical constructions or lexical units in order to avoid phenomena that are not characteristic of the target language but, at the same time, preserve the meaning of the term. Omission is used to eliminate redundancy; the desire to avoid phenomena that are not inherent in the language of translation; the intention to avoid stylistic load; the ability to compress the text to eliminate excessive ‘inflating’.¹⁵ The method is used only in 2.32% of the translations – e.g., *to set aside* – знехтувати; *to give evidence* – свідчити; *the right to authorise the communication to the public of the work* – право дозволяти оприлюднення твору.

8. Use modulation, i.e., the replacement of a word or phrase of the original language with a word or phrase of the translation language, the meaning of which can be derived logically from the original meaning. In practice, we are talking about substitutions within the framework of relations: cause – effect, process – result, part – whole, subject of activity – tool – product of activity, subject – its function – its property, etc. Thus, changing the structure of the term

15 OM Volchenko, VV Nikishyna, ‘Grammatical transformations in English-Ukrainian artistic translation’ (2015) 54 Scientific notes of the National University ‘Ostroh Academy’ 252-254.

becomes quite possible, as modulation is often used for composites of legal terminology. This method was observed in 2.19% of terms translations – e.g., *bread-and-butter* – дохід, заробіток; *destruction* – скасування; *drug trafficking* – контрабанда наркотиків.

9. Differentiate individual units of special vocabulary that can mean both broader and narrower concepts when rendering in Ukrainian – e.g., *the custody and other legal measures shall be as provided in the law of that state* – *Взяття під варту та інші подібні заходи здійснюються згідно із законодавством даної держави*. In the translation of the sentence, the word 'law' was translated as 'законодавство' (Eng. equivalent – 'legislation') since the sentence refers to a set of laws, not to one law as a regulatory legal act, which has a narrower meaning. In the same case, 'law' means a system of laws and other legal acts adopted by the highest bodies of the state and regulating the relations of society. Therefore, the choice of the translator was very successful.

10. Use various resources for translation, for example, official literature where the required terms have already been used.

11. Constantly improve and replenish knowledge of the topic on which the translator works, pay attention to legal phenomena and peculiarities of the English-language legal discourse, and explore ways of their reproduction in the Ukrainian language.

5 CONCLUSIONS

In the course of our research, the lexical-semantic features of English-language legal terminology were determined, which included the wide use of proper names, a large number of borrowed expressions from the Latin language, the use of complex adverbs and archaisms, and a tendency to clichés and stereotypes, as well as the use of triplets and doublets. The study outlined the most common groups of difficulties in the translation of legal English-language terminology: the lack of an analogue of terms in the language of translation, the ambiguity of the terms, difficulties associated with the legal features of countries and cultural differences, and the dependence of terms on legal systems, as well as difficulties caused by differences in linguistic systems and individual features of language development, for example, the significant influence of the Latin language on English. During the research, ways to overcome translation difficulties using lexical-semantic methods and transformations were proposed. The most appropriate of them are calquing, descriptive translation, and addition. These methods help preserve the semantic meaning of the source language and reproduce it as clearly as possible in the target language. A promising direction of research is the search for new ways to overcome lexical difficulties during the translation of legal texts from English into Ukrainian.

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