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**LEGAL ENGLISH. A COMPARISON OF BRITISH AND AMERICAN**  
**LEGAL SYSTEMS**

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**Abstract**

*Each legal system has its own vocabulary. It is the translator's job to search for terms that often do not fully correspond to the meaning of the word in the source language, or which may not even exist in the target language. Nevertheless, using the appropriate word does not only depend on a good dictionary. It also depends on the translator's technical knowledge.*

*Key words: Legal English, American law terms, British law terms.*

**Introduction**

A legal background contributes significantly to the translator's and interpreter's professional success, as such knowledge will be crucial for avoiding erroneous translations which have no equivalents in the Romanian system.

Each legal system has its own vocabulary. It is the translator's job to search for terms that often do not fully correspond to the meaning of the word in the source language, or which may not even exist in the target language. Nevertheless, using the appropriate word does not only depend on a good dictionary. It also depends on the translator's technical knowledge.

**Backgrounds**

We surely have seen movies and television programs depicting both American court trials as well as those in England and perhaps we tend to think of English courts as judges and barristers wearing wigs, such as in "Rumpole of the Bailey"<sup>1</sup> while we think of American courts as dominated either by Perry Mason<sup>1</sup>

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<sup>1</sup> *Rumpole of the Bailey* is a British television series created and written by British writer and barrister Sir John Mortimer, QC and starring Leo McKern as Horace Rumpole, an

or Johnnie Cochran<sup>2</sup>. In U.S. law, there are lawyers who may call themselves "trial lawyers" - they could be defense attorneys, lawyers in civil cases, as well as prosecutors working for the government or state. In Britain, there are solicitors - who basically represent people's legal needs, and barristers who are the ones with the wigs, taking cases to civil or criminal courts. Defendants in both legal systems have the right to face their accusers and are presumed innocent until proven guilty (the Napoleonic Code is not quite that liberal about innocence or presumed guilt).

Yet, while there are many similarities between English Common Law and the American legal system, there are a number of major differences. It is not so much that, from the very outset, there was an American system and a British system, going back to the 1700s.

The development of English Common Law, on which much of Anglo-Saxon laws are based, is dim as to its actual historical origins, unlike the law in France, for example, which is most definitely based on the Napoleonic Code of 1803. What was (and still is) certain is that, in many cases, British common law is based on very strict precedents.

Great Britain does not have a Supreme Court, in other words, a totally separate entity of government. Instead, the House of Lords is the court of highest appeal. Unlike America's legal system which separates state from federal courts

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aging London barrister who defends any and all clients. It has been spun off into a series of short stories, novels, and radio programmes.

<sup>1</sup> **Perry Mason** is a fictional defense attorney who originally appeared in detective fiction by Erle Stanley Gardner. He appeared in over 80 novels and short stories, most of which involved his client being put on trial for murder. Typically, he was able to establish his client's innocence by demonstrating the guilt of another character.

<sup>2</sup> **Johnnie L. Cochran, Jr.** (October 2, 1937 - March 29, 2005) was an African American lawyer perhaps best known for his leadership in the legal defense of O. J. Simpson, charged with murder of his former wife Nicole Simpson and her friend Ronald Goldman. Cochran also represented Sean Combs (during his trial on gun and bribery charges), Michael Jackson, actor Todd Bridges, football player Jim Brown, rappers Tupac Shakur and Snoop Dogg, and Reginald Oliver Denny, the trucker beaten by a mob during the 1992 Los Angeles riots. Cochran was known for his skill in the courtroom and his prominence as an early advocate for victims of alleged police abuse.

(and legal systems including judges), Britain includes the lowest criminal courts, called Magistrate's Courts, which deal with minor offenses. When one says that the House of Lords is more or less the equal of The U.S. Supreme Court, it has to be stated that the House's judicial functions are quite separate from its legislative work.

It is also interesting to note that Scotland and Northern Ireland have different legal systems, separate from that of England and Wales. Whereas the U.S. has an Attorney-General in charge of the legal system in the Executive branch, and the Supreme Court and Federal courts serving in the balance of power structure of the U.S. Constitution, in Britain it is the Home Secretary. Under the U.S. Constitution, the President has pardon power, and some of that was clearly demonstrated in some of the Presidential pardons that were handed out shortly before Clinton left office. Some of these pardons, in American jurisprudence, are political, of course.

While so-called "colonial law" in the decades before the American colonies decided to become the United States of America had some major differences from the laws of the motherland, in fact varying from state to state.

Trial by jury is different, as well. In the U.S., there is a jury composed of one's peers, and the jurors are chosen, not by the court or by the prosecution or defense, but by a willingness to agree on who shall serve and who shall be eliminated (or excused). The jury is not chosen by the Crown, or the Queen's Counsel, or any government-affiliated entity in the U.S. However, the idea of what we now know as a "grand jury" was actually developed by Henry II in the twelfth century.

A Latin legal term, *stare decisis* - "to stand by things decided" is used in common law systems expressing the notion that, according to case law, prior court decisions must be recognized as precedent. Though the term is the same in both British English and American English, its application, as a rule of law, has little differences.

Application to the U.S. legal system: In the United States Supreme Court, the principle of *stare decisis* is most flexible in constitutional cases; the U.S. Supreme Court reversed itself in about 130 cases.

Application to the English legal system: The doctrine of binding precedent or stare decisis is central to the English legal system, and to the legal systems that derived from it. A precedent is a statement made of the law by a Judge in deciding a case. The doctrine, states that within the hierarchy of the English courts a decision by a higher court will be binding on lower courts. This means that when judges try cases they will check to see if similar cases have come before a court previously. If there was a precedent set by an equal or higher court, then a judge should follow that precedent. If there is a precedent set in a lower court, a judge does not have to follow it, but may consider it. The House of Lords however does not have to follow its own precedents.

### **British vs. American**

George Bernard Shaw famously said that the British and the Americans were "two nations separated by a common language".

When the source text is in Romanian, and it is translated into English, it makes a difference whether the target text is directed to American or English culture, because the terms and institutions of different cultures using the same language may be different. For example, a **Prison** in the British System is a **Penitentiary** in the American system, while in Romanian they are both translation, **închisoare**, respectively **penitenciar**. A **Magistrate's Court** in the British legal system is **Civil Court of Peace** in the American legal system, and they are both translated as **Judecătorie** into Romanian.

There are some differences between legal English usage in the United States and England arising from various branches of law that need to be highlight.

Any **Act of Parliament** or statute begins life as draft called **Bill**. This is the case of United Kingdom, when speaking of primary legislation, as the predominant sources of law. But in American English an **Act** is a **Bill**, and a **Bill** is a **Draft of Bill or Proposal**. Thus, Romanian **Lege** is translated in English **Act or Bill**, while **proiect de lege** - **Bill or Draft/ Proposal**.

There are differences within the legal profession as well. A **Barrister** in British English is an **Advocate** in Scottish English and a **Trial lawyer** or **Appellate attorney** in American English. All these terms are translated in Romanian **avocat**.

When a company is incorporated, in England, it must adopt **Memorandum of Articles of Association**, also known as the "**Mem and Arts**"; the American term used instead is **Articles of Incorporation**. The **Articles of Association** set out the relationship between the company and its shareholders, while in American usage of Legal English they are called **Bylaws**.

**Competition law** regulates anti-competitive conduct that harms the market. In Great Britain, the Competition Act follows Article 81 and 82 of the European Community Treaty. In United States, the branch is called **antitrust law**. In Romanian the branch is named **dreptul concurenței**, but when referring to its legislative acts **legislație antitrust** is frequently used. It also covers **abuse of dominant position**, other legal term that differs from the US legal use of English - **abuse of monopoly power** must be used when talking about the American antitrust law. When dealing with **anti-competitive practices and agreements** one should that the US legal term for it is **restraint of trade**.

Employment law usually involves a mixture of contractual provisions and legislation regulating the relationship between employer and employee, and governing **labour** relations between employers and **trade unions**. American spelling for **labour** is **labor**; **trade unions** in US are called **labor unions**.

A **compulsory purchase** in United Kingdom is an **eminent domain** in United States, while the Romanian term for it is more or less the same with the term Canadian common law uses for the inherent power of the state to seize, without the owner's consent, the citizen's private property - **expropriere**.

### **Conclusion**

Legal systems differ from one state to another. Every state (sometimes even regions within a state) has developed independent legal terminologies, whereas a multilingual international legal terminology is being only gradually created within supranational legal systems.

There is no direct correlation between legal language and legal systems. One legal system may use different legal languages (Canada, Switzerland, bilingual areas in Slovenia, Austria, Italy, Belgium, etc.), while one language area may be divided into different legal systems, as is the case in the United Kingdom or in the USA.

If the legal systems are analyzed as to their sources, their historical background, the extent of codification and the specific legal institutes applied within them, some legal families show a greater relatedness than others. Within the Anglo-American legal family, common law is the legal system in force in England, Wales and with some differences in the USA, whereas Scotland and Ireland have substantially different legal systems related to the continental law, similarly to the legal system of Louisiana, which has its foundations in the French law.

As we have said before every legal system has its own vocabulary, thus we should draw our students' attention on producing parallel texts that are identical in their legal effect, selecting carefully terms that are proper to the target legal culture.

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