

Legal English for Spanish-speaking Lawyers: A Practical Approach to Identifying Spanish-English Functional Equivalents in the Law School Classroom

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Abstract

Teaching Legal English to Spanish-speaking lawyers differs from the training afforded to legal translators. Lawyers may not be familiar with language-acquisition theory, and yet their work with English-speaking clients may benefit from exposure to some of the aspects of linguistics included in legal translator training. This article describes an approach to teaching Spanish-speaking lawyers to identify and use functional equivalents, which has proved useful in the classroom and may possibly be adopted by and adapted to the needs of other Legal English trainers.

Keywords:

Legal English, Spanish-speaking lawyers, functional equivalence

Inglés jurídico para abogados hispanohablantes: un enfoque práctico para identificar equivalentes funcionales entre el español y el inglés en la enseñanza del derecho

Resumen

La enseñanza del inglés jurídico a abogados hispanohablantes difiere de la formación que reciben los traductores jurídicos. Los abogados pueden desconocer la teoría de la adquisición del lenguaje, pero su trabajo con clientes angloparlantes puede beneficiarse del conocimiento de algunos aspectos de la lingüística que se incluyen en la formación de los traductores jurídicos. En este artículo, se describe un método para enseñar a los abogados hispanohablantes a identificar y utilizar equivalentes funcionales, que ha demostrado su utilidad en el aula y que, posiblemente, pueda ser adoptado y adaptado a las necesidades de otros profesores de inglés jurídico.

Palabras clave:

Inglés jurídico, abogados hispanohablantes, equivalencia funcional.

Introduction

During the 20 years that I taught Legal English in a master's program in corporate law at a Spanish university, I developed a course specifically for legal professionals. The students in attendance included approximately 800 young lawyers not only from Spain, but also from every other Spanish-speaking country with the exception of Cuba and Puerto Rico. From the start, it soon became evident that these lawyer-students could benefit from some of the linguistic aspects of legal translator training that are not commonly included in Legal English programs. To that end, I devised a practical approach to help them identify and use functional equivalents that does not presuppose or require any prior knowledge of translation terminology or theory. And although this is not a methodology that can be tested scientifically, it has proved to be useful in the classroom, and may possibly be adopted by and adapted to the needs of other Legal English trainers.

Teaching Spanish-English Legal Translation vs. Teaching Legal English to Spanish-speaking Lawyers

Before examining a possible approach to teaching functional equivalents in the law school classroom, it is perhaps useful to note some of the differences observed between students of legal translation and Spanish-speaking lawyers learning Legal English:

- As future legal translators, students of legal translation may initially have little knowledge of law and, depending on their source and target languages, must often master the concepts and terminology of multiple areas of the law of both civil law and common law systems. Lawyers obviously already have an in-depth knowledge of their own law, but may not necessarily be well-versed in many aspects of their clients' legal culture.
- Students of legal translation should probably be introduced to all of the main areas of law, while lawyer-students of Legal English may only be interested in the law of their specific practice areas. For example, as future corporate counsel, the major interests of students in the corporate law master's program center on contracts and corporate law, in addition to related areas such as compliance, labor law and tax law.
- Students of legal translation are training to be just that: translators. Lawyers do not think of themselves as translators, although in their daily work, I have observed that Spanish lawyers are often required to translate or to draft documents directly into English when there is no time to have them prepared by their in-house staff, or there is no budget to send them out to an agency.
- Students of legal translation are generally trained in translation theory and linguistics, while one cannot assume that lawyers will be familiar with even the basic terminology of language learning. They are most certainly well acquainted with the ideas of Savigny, Kelsen or Alexy, but perhaps not so much with those of Jakobson, Nida or Newmark.

At the beginning of each course lawyer-students must be introduced to several basic concepts (false cognates, polysemy, collocations, etc.) to facilitate their Legal English acquisition.

- The task of legal translators is to accurately convey the information contained in their source legal documents in the target language. The ultimate goal of civil law-trained lawyers studying Legal English is to be able to explain their own law in English to their English-speaking common-law clients. As an example, in our unit on Corporate Law students are required to explain in English the different forms of doing business (*sociedad en comandita*, *sociedad limitada*, *sociedad anónima*, etc.) in their jurisdictions to potentially be able to advise future English-speaking clients who might want to set up a business in their country.
- Legal translators are not often provided with information concerning the precise nature of their target audience, and they may not receive feedback as to whether their translations were effective for the purpose for which they were intended. In contrast, civil-law lawyers explaining aspects of their legal system to a common-law colleague will have the advantage of direct communication, being able to flesh out differences of interpretation to hopefully clear up any misunderstandings that may arise.

Explaining Basic Concepts of Language Acquisition

Before commencing our examination of functional equivalents, I begin by explaining some of the pitfalls inherent in Legal English that inevitably will arise in our discussions.

- **False Cognates**

Although not generally familiar with the term “false cognates” (false friends; *falsos amigos*), lawyer-students immediately understand the concept in nonlegal contexts, readily agreeing that being embarrassed is not the same as *estar embarazada*. Throughout the course they identify and collect legal false cognates encountered in our classroom readings and discussions, classifying them as either “False Friends 1.0” or “False Friends 3.0”. The 1.0 category includes false cognates that lawyers who claim to know Legal English cannot afford to ignore (*magistrado*-magistrate; *sentencia*-sentence; *doctrina*-doctrine; *evicción*-eviction; *asesinato*-assassination), while those classified as 3.0 are perhaps initially not so obvious (*absolución*-absolution; *adjudicación*-adjudication; *retribución*-retribution).

- **Polysemy**

“Polysemy” is another term that lawyer-students do not initially recognize, but the meaning is readily conveyed by explaining that the same term may have multiple meanings, and when the context changes, the meaning (and thus the translation) often does too. The concept is easily illustrated to lawyers using the term *socio*, noting that a *socio* in a *sociedad en comandita* is a “partner”, while *socios* in a *sociedad de responsabilidad limitada* may perhaps be described as “members”, and *socios* in a *sociedad anónima* are shareholders or stockholders.

- **Same Thing, Different Name**

As a subcategory of polysemy, what I call “Same Thing, Different Name” includes different expressions for essentially the same concept that sometime confuse the students. When presented with a simple example, they quickly realize that unless the context dictates otherwise (and it rarely does), *juzgado*, *tribunal*, *audiencia*, *órgano judicial*, *órgano jurisdiccional* and *corte* may all ultimately be rendered in English as “court”. Likewise, in many contexts what appears in Spanish legal texts variously as *culpa*, *negligencia* and *imprudencia* may ultimately refer to “negligence”.

- **Common Words with Uncommon (Legal) Meanings**

An additional aspect of polysemy is the fact that certain terms in everyday language take on unexpected meanings when used in legal contexts. In his 1963 work “The Language of the Law”, the eminent legal linguist David Mellinkoff observed that legal discourse makes frequent use of “common words with uncommon meanings” (Mellinkoff, 1963, p. 11). This is true in both Spanish and English, and is a concept that lawyer-students readily understand when presented in our lessons on contracts with the uncommon legal meanings of nonlegal terms such “consideration” or “performance”.

Ensuring a Minimum Familiarity with Common Law

From the answers that they provide on initial questionnaires, in most cases neither my Spanish nor my Latin American students have formally studied comparative law, although many have studied English or participated in exchange programs in the US or the UK. All of them hold undergraduate law degrees, and some have practiced law several years prior to enrolling in the master’s program and have experience working with English-speaking clients. However, a few indicate that their main source of information concerning common law systems is limited to what is depicted in the novels of Scott Turow and John Grisham, or in US television series such as *The Good Wife*, *Boston Legal* or *Law & Order*.

Thus, the first step is to ensure that students are aware of the main differences between civil law and common law systems. After pointing out some of the major differences, I try to dispel several myths that may be prompted by the oversimplified overview that many seem to have of the common law, such as the assertion that it is exclusively judge-made law. Using criminal law as an example, I underscore that the bulk of English criminal law is now found in a series of statutes (Ashworth & Horder, 2013). Canada consolidated all common law offenses in a criminal code in 1953 (Mewett, 1967), while Australia effectively abolished all common law offenses at the Commonwealth (federal) level in its Criminal Code Act 1995 (Chapter 1, Division 1, §1.1). And in the United States there are 52 criminal codes, since criminal law in all US states, the District of Columbia, and federal law (Title 18, US Code) is codified. Also noted is the fact that all US states and D.C. have at least in part adopted the Uniform Commercial Code (Cornell Law School Legal Information Institute, 2025), while other uniform codes likewise enjoy broad acceptance (Uniform Trust Code, Uniform Trade Secrets

Act, Uniform Anatomical Gift Act, etc.). A healthy discussion often ensues among students, debating whether the US criminal codes or other uniform codes are actual “codes” in the civil law sense of the term.

It is also important that the students not perceive the common law as a monolithic whole. Since around half of my students are from Spain and the other half are from other Spanish-speaking country jurisdictions, they are always quite conscious of the peculiarities of their respective legal systems, and in class openly discuss differences concerning both concepts and terminology. They usually understand that each US state has its own laws, but some are surprised to find that the laws passed in the British Parliament in London are often not applicable throughout the entire United Kingdom, and that there are different laws for England and Wales, Scotland, and Northern Ireland. Presenting them with a chart of some of the differences in the terminology of civil procedure in England and Wales vs. Scotland provides a good illustration of this point.

Defining Functional Equivalence for Use in the Law School Classroom

A first step toward identifying functional equivalents with lawyer-students is to provide them with a simple definition of the term, a task that is clearly not simple at all. But it perhaps suffices to indicate that when comparing legal concepts and institutions in their own legal (source) system with others in a common law (target) system, there may be comparable counterparts capable of appropriately reflecting the meaning of the source system concept. As an illustration I suggest that *matrimonio* and “marriage” may provide an example of functional equivalence, and the students initially enthusiastically agree that these terms can be considered equivalent concepts. Then I ask them to define “marriage” and in our discussions it is inevitably noted that some systems define it as the union of a man and a woman, while others provide for same-sex marriage; the legal age for marriage varies in different jurisdictions; having two wives may constitute a criminal offense in one system, but be legal in another, etc. After considering these diverse marital relationships, the students will then agree that even *matrimonio* and “marriage” are not necessarily equivalent institutions, but that the two may nevertheless still be considered useful functional equivalents.

And, certainly, at this point and in view of the above, I underscore that when dealing with different legal systems, there are rarely, if ever, any true equivalents. I note that in medicine there are terms in Spanish and English for all organs of the body. In science, geology for example, all rocks have equivalent names in both Spanish and English. But the same cannot be said of legal concepts and institutions. (For that reason, I have often preferred to use the self-coined term “kindred concepts”, rather than “functional equivalents”).

Returning to *matrimonio*–marriage, I also indicate that we will examine similar term-pairs that may likewise be considered near equivalents, while others may be only partial equivalents, or even non-equivalent. When learning and using Legal English, it will be useful for them to be able to identify such functional equivalent pairs.

An Initial Exercise: Identifying a Functional Equivalent for *Saneamiento por evicción*

As an introduction to identifying Spanish-English legal functional equivalents, students are asked to find a reasonable expression in English for the patently civil law concept *saneamiento por evicción*. As lawyers trained in the civil law, they obviously already understand the concept, but I suggest that they may require a succinct definition to later be able to correlate it with a possible common law counterpart.

As a first possible step (which students inevitably perceive as the “old way”), I propose checking standard definitions in monolingual legal dictionaries:

- *saneamiento–garantía de que el vendedor responderá al comprador de la posesión legal y pacífica de la cosa vendida* (Fernández Martínez, 2004),
- *evicción–privación al comprador por sentencia firme de todo o parte de la cosa comprada* (Fernández Martínez, 2004), and
- *saneamiento por evicción–obligación del vendedor de indemnizar al comprador por la privación de la cosa pagada* (Villa-Real & del Arco Torres, 2002).

A second possible step (the “new way”?) involves conducting an Internet search for *saneamiento por evicción* on translation sites that the students admit they use frequently:

- Google translate–sanitation by eviction,
- DeepL–write-off by eviction, and
- ProZ.com–sanitation improvement by eviction; compensation in the event of eviction; disencumbrance by eviction; cleaning of the premises in case of eviction.

And a third step (the “new, new way”?) is of course to check AI:

- ChatGPT–warranty against eviction,
- Gemini–eviction warranty; warranty against eviction,
- Copilot–warranty of title (the only source at that moment that recognized eviction and *evicción* as being false cognates)

Based on the information gathered above, the students conclude that the legal meaning of *saneamiento* is *garantía* or “warranty” in English, while *evicción* involves a loss of rights in property. *Saneamiento por evicción*, thus, requires providing compensation for that loss. Looking at examples of how “warranty” is used in relation to property rights then enables us to suggest possible English renderings for several common expressions with *saneamiento*:

- *obligación de saneamiento*–warranty obligation,
- *saneamiento por evicción* (in a *compraventa de bienes inmuebles*)–warranty of title, warranty of good title, or warranty against loss of title,
- *saneamiento por evicción* (in an *arrendamiento*)–warranty of quiet enjoyment,
- *saneamiento por cargas o gravámenes ocultos*–warranty against hidden charges, liens or other encumbrances, and
- *saneamiento por vicios ocultos*–warranty against hidden or latent defects.

Moreover, students discover that there are additional legal meanings of *saneamiento* in other areas of law, including:

- *saneamiento contable*—write-down (of the value of an asset); write-off (of losses or a debt),
- *saneamiento financiero*—financial restructuring, streamlining,
- *saneamiento monetario*—monetary reform, and
- *saneamiento ambiental*—environmental remediation, environmental clean-up.

Near Equivalence: Functional Equivalents that “Work”

To continue our examination of civil law-common law “equivalents”, I present students with six examples of legal term-pairs that can probably be considered near equivalents, that “work”, that “fit”, and that lawyers will likely be able to confidently use with their clients. These include expressions drawn from five areas of Spanish law (*Derecho civil*, *Derecho mercantil*, *Derecho de los contratos*, *Derecho procesal [general]*, and *Derecho procesal penal*) with which the students are all obviously quite familiar.

- **Near Equivalence: *Buen padre de familia* (*Derecho civil*)**

Buen padre de familia is a civil law concept for which there is clearly a functional equivalent in Anglo-American law. In Spanish-speaking jurisdictions, the ordinary standard of care is described as *la diligencia de un buen padre de familia*. As an example, concerning the fulfillment of obligations, article 1104.2 of the Spanish Civil Code provides that *cuando la obligación no exprese la diligencia con la que ha de prestarse en su cumplimiento, se exigirá la que correspondería a un buen padre de familia*. Likewise, article 1094 underscores that *el obligado a dar una cosa lo está también a conservarla con la diligencia propia de un buen padre de familia*.

The common law counterpart of this *buen padre de familia* is the reasonable person in the US, or the reasonably-prudent person in the UK. This standard of care is based on the conduct that may be expected of a reasonable person taking into account all foreseeable circumstances and consequences (Martin & Law, 2006). Thus, “reasonable person” and “reasonably-prudent person” provide useful renderings for *buen padre de familia*, and students inevitably discuss whether, in effect, *buen padre de familia* is an antiquated and perhaps sexist concept that should be replaced with the reasonable person or some other standard¹. They are likewise quite aware that they should avoid the literal translations encountered in several online sources such as

¹ It should perhaps be noted that a 2014 legislative reform in France replaced the traditional *soins d’un bon père de famille* standard of care with *soins raisonnables* (Tomás Martínez, 2015). Argentina’s 2014 Código Civil y Comercial de la Nación that went into effect in 2015 also replaced the *buen padre de familia* standard with a contextual analysis of due diligence based on the nature and circumstances of the obligation. In that regard, article 1724 defines *culpa* as *la omisión de la diligencia debida según la naturaleza de la obligación y las circunstancias de las personas, el tiempo y el lugar*. In 2022 Spain’s Minister of Justice likewise announced the executive’s intention to eliminate *buen padre de familia* from the much-amended Código Civil of 1889, calling it *una reminiscencia arcaica que exige una adecuación improrrogable* (Martínez Ortega, 2022), but no action has yet been taken in that regard at the time of this writing.

“good father”, “good family man”, “good head of family”, “good *pater familias*”, “*bonus pater familias*”, or “benign father figure²”.

- **Near Equivalence: *Ordenado empresario (Derecho mercantil)***

If the standard of care required in Spanish-speaking jurisdictions in everyday matters is that of a *buen padre de familia*, the business standard of care is *la diligencia de un ordenado empresario*. In that regard, article 225 of the Spanish *Ley de Sociedades de Capital* provides that directors *deberán desempeñar el cargo y cumplir los deberes impuestos por las leyes y los estatutos con la diligencia de un ordenado empresario, teniendo en cuenta la naturaleza del cargo y las funciones atribuidas a cada uno de ellos*.

In common law jurisdictions the *ordenado empresario* is the “reasonable business person” (or “reasonably-prudent business person” in the UK). This reasonable business person standard of care is evident, for example, in Canada where directors of non-profit organizations “must exercise a degree of skill and prudence comparable to a reasonable business person caring for his or her own affairs” (Broder, 2002, p. 31). To determine whether directors have acted with negligence, courts apply the reasonable business person test, comparing their actions to what could be expected of a reasonable business person in similar circumstances.

Students readily agree that this precludes using any of the all-too-literal renderings for *ordenado empresario* found in both print and online sources, such as “orderly businessman”, “respectable businessman”, “methodical businessperson” or “orderly entrepreneur”.

- **Near Equivalence: *Acuerdo de voluntades (Derecho de los contratos)***

In the contract law of Spanish-speaking jurisdictions *acuerdo de voluntades* denotes *el asentimiento mutuo de las partes dirigido a crear obligaciones entre ellas* (Díez-Picazo, 1994, p. 133). This expression has been translated in several ways that fail to reflect its true meaning, such as “voluntary agreement” and “agreement of intent”, or has been confused with “memorandum of understanding”. But there is a useful functional equivalent for *acuerdo de voluntades* in Anglo-American contract law: “meeting of the minds”, which describes “the actual assent by both parties to the formation of a contract, meaning that they agree on the same terms, conditions, and subject matter” (Garner, 2004). Another term sometimes used in English for “meeting of the minds” is precisely *assentio mentium*, the Latin expression for *acuerdo de voluntades*.

- **Near Equivalence: *Vicios del consentimiento (Derecho de los contratos)***

Also a common concept in the contract law of Spain and Latin America, the expression *vicios del consentimiento* denotes “*consentimiento contractual prestado por error, violencia,*

² The literal and perhaps not-so-appropriate translations that I suggest should be avoided are from my own collection or have been extracted from translation terminology websites, principally ProZ.com and Linguee. Linguee’s “External Sources” section contains a bilingual text collection that links to outside websites, indicating that they are “not reviewed”.

intimidación o dolo, o el prestado por el menor o incapaz, que hace nulo el contrato” (Lasarte, 2003, p. 27). It has often been translated literally as “defects of consent”, and may perhaps be described accurately as “vitiating contractual assent” or more generally as “vitiating factors in contracts”. But in Anglo-American contract law there is a concept that adequately reflects the meaning of *vicios del consentimiento*: “defenses to contract formation” (also known as “defenses to contract enforcement”), which include grounds for voiding a contract such as misrepresentation, mistake, duress, undue influence, fraud, or the lack of contractual capacity of minors and incompetents.

In discussions with students, I point out that the definitions of each element of a term-pair will rarely be identical, and that they do not necessarily have to exactly “match up” in order for the terms to be considered useful functional equivalents. And in this *vicios del consentimiento* example, students generally consider that the parallels among the elements of each (*dolo*–fraud, *error*–mistake, *violencia/intimidación*–duress, and *falta de capacidad de menores o incapaces*–lack of contractual capacity of minors or incompetents) are certainly sufficient to be able to consider *vicios del consentimiento* and “defenses to contract formation” as comparable concepts.

- **Near Equivalence: *Tutela judicial efectiva (Derecho procesal)***

There are also functional equivalents in Anglo-American law for some of the basic Spanish procedural law concepts. A prime example is the *tutela judicial efectiva* of article 24.1 of the Spanish Constitution, defined in article 24.2 as including among other fundamental rights, *el derecho al juez predeterminado por la ley, el derecho a la asistencia letrada, el derecho a la presunción de inocencia, el derecho a utilizar los medios de prueba pertinentes y el derecho a un proceso público sin dilaciones*. *Tutela judicial efectiva* has been translated perhaps all too literally as “judicial tutelage”, “effective legal (or) judicial protection”, “effective judicial review” and “effective remedy”, as well as being confused as meaning “actual legal custody”. And perhaps an acceptable literal translation would be “right to the effective protection of the courts.”

But “*tutela judicial efectiva*” is also substantially akin to what is known in Anglo-American jurisdictions as “due process of law”. In fact, due process includes many of the rights guaranteed under the *tutela judicial efectiva* definition provided above, such as the right to an impartial arbiter, the right to counsel, the right to the presumption of innocence, the right to present relevant evidence at hearings, the right to a public trial, and the right to a speedy trial (Garner, 2004; Wood, 1996; Martin & Law, 2006).

Once again, students typically perform a match-up of the elements of *tutela judicial efectiva* with due process (*derecho a la asistencia letrada*–right to counsel, *derecho a la presunción de inocencia*–right to the presumption of innocence, *derecho a un proceso sin dilaciones*–right to a speedy trial, etc.), concluding that these are indeed useful functional equivalents. And although the literal rendering *debido proceso* is also used in scholarly writing (*doctrina*) in Spain, many of the Latin American students invariably note that *debido proceso* is actually the

formal term used in their constitutions or other legislative texts, sometimes together with *tutela judicial efectiva*.³

- **Near Equivalence: *Indicios racionales de criminalidad* (Derecho procesal penal)**

And a final Spanish legal principle that has a reasonable natural equivalent in Anglo-American law is the *indicios racionales (de criminalidad)* of the Spanish Criminal Procedure Act (*Ley de Enjuiciamiento Criminal*) (articles 383, 783 and others) that provides that criminal suspects may only be prosecuted if there are *indicios racionales* that they are criminally liable for the acts in question and that those actions constitute offenses defined in the Criminal Code. *Indicios racionales (de criminalidad)* has been translated variously as “reasonable circumstantial evidence”, “prima facie case”, “prima facie evidence of a crime”, “suspicion of a crime” and, more literally, as “rational indications of criminality”.

But this concept closely resembles what in US criminal law is known as “probable cause (that a crime has been committed)”, defined as “a reasonable ground to suspect that a person has committed or is committing a crime or that a place contains specific items connected with a crime” (Garner, 2004). This Fourth Amendment constitutional guarantee provides that the authorities must have probable cause (*indicios racionales*) for arresting a suspect or for conducting a search. Moreover, in UK criminal procedure there is also a kindred concept for *indicios racionales de criminalidad* in the “reasonable grounds (for suspecting that an offence has been committed)” of the Police and Criminal Evidence Act 1984.

- **Near Equivalence (A Final Exercise): Is There a Possible English Functional Equivalent for the Spanish Contract Law Expression *Los contratos son lo que son, no lo que las partes dicen que son?***

To conclude our work on near equivalence, I claim that, if we look hard enough, we may eventually find an acceptable common law functional equivalent for even the least-likely civil law concept. The expression I offer as an example is *los contratos son lo que son, no lo que las partes dicen que son*, which means that in the event of a dispute, the courts must interpret a contract based on its content, and not on how a party may claim it should be interpreted *a posteriori*. After much research and discussion among the students, I then suggest that (*salvando las distancias*), *los contratos son lo que son, no lo que las partes dicen que son* perhaps shares elements with two Anglo-American common law rules of contract interpretation: the four corners rule (the principle that no extraneous evidence should be used to interpret an unambiguous document) (Garner, 2004) and the parol evidence rule (the rule that extrinsic evidence cannot be used to vary the terms of a written contract) (Thomson Reuters Practical Law Glossary, 2005).

³ For example, *debido proceso* appears in the constitutions of Colombia (art. 29), Peru (art. 139.3) and Ecuador (art. 76).

Partial Equivalence (1): Functional Equivalents That Are Only “Half-right”

We then examine three generally-accepted functional equivalent term-pairs that actually may only be considered partial equivalents because they fail to convey the whole source concept or omit a significant aspect of the original.

- **Partial Equivalence: Is *Uso y disfrute* Really “Quiet Enjoyment”?**

Quiet enjoyment is the right to undisturbed possession, defined as the “possession of real property with the assurance that the possession will not be disturbed by a superior title” (Garner, 2004). When referring to land or other real estate, it is often considered an appropriate functional equivalent of the Spanish expression *uso y disfrute*, failing to recognize that possession (*uso*) is only a part of the rights in real property that *uso y disfrute* conveys. In that regard, *el derecho de disfrute* entitles the possessor the right to enjoy the *frutos* (proceeds) from property, *el derecho de hacer suyos los frutos que la cosa produzca* (Lasarte, 2002, p. 287).

As a simple example discussed with students, having *uso y disfrute* of a parking space in a garage includes not only the right to park a car there (*uso*), but also the right to rent it out to another to make a profit (*disfrute*). Then I note that there doesn’t appear to be a common law equivalent that reflects this dual meaning of *uso y disfrute*. If “quiet enjoyment” is as close as we can get, the meaning of *disfrute* (the missing part) must somehow be communicated in a definitional translation or directly by the students when dealing with their clients. In bilingual dictionaries this can be achieved with definitions such as the following: “*uso y disfrute*—quiet enjoyment (includes the use of a given property as well as any proceeds [*frutos*] that it may produce)” (Jowers, 2023). And in conclusion and in other respects, rather than as *uso y disfrute*, I suggest that “quiet enjoyment” is probably more accurately rendered in English as *posesión pacífica*.

- **Partial Equivalence: *Usufructo* isn’t Always a “Life Estate”**

As a second example of partial equivalence, *usufructo* is often equated with a “life estate”, “life tenancy” or a “lifetime interest”, and appears as such in several bilingual sources. But as lawyer-students readily recognize, these expressions more accurately describe a specific type of *usufructo*: *usufructo vitalicio*. In contrast, *usufructo (a secas)* is broader in meaning, being defined as the right to use and enjoy another’s property and any income or any benefit it produces, with the obligation to preserve its form and substance (*derecho a disfrutar los bienes ajenos con la obligación de conservar su forma y sustancia*) (Lasarte, 2002, p. 287). And rather than being equated solely with a life estate, *usufructo* is often compared to (and translated as) “beneficial ownership” or “beneficial interest”, being understood as the right to enjoy the benefits of ownership while title or legal ownership remains in another’s name (Thomson Reuters Practical Law Glossary, 2005).

As with *uso y disfrute*, students observe that there actually may be no common law near equivalent for *usufructo*, and I note that it is often translated directly as “usufruct”, a rendering that appears in several legal dictionaries (Garner, 2004; Wood, 1996) and is certainly the term

used in Louisiana and in the official English versions of the civil codes of Malta and the Philippines. Admitting that *usufructo* may correlate with beneficial ownership and that “usufruct” may likewise provide a possible rendering, after consulting outside sources (including several Louisiana law firm websites) the students then propose translations for the diverse types of *usufructo*:

- *Usufructo vitalicio*—life estate, life tenancy, lifetime interest, lifetime usufruct, usufruct for life,
 - *Usufructo viudal*—beneficial ownership/interest/usufruct in a deceased spouse’s property, surviving spouse’s rights in a deceased spouse’s property, spousal usufruct,
 - *Usufructo a plazo*—beneficial ownership/usufruct for a specific term,
 - *Usufructo condicional*—beneficial ownership/usufruct subject to a condition, and
 - *Usufructo testamentario*—beneficial ownership/usufruct created by will.
- **Partial Equivalence: *Estado civil* Isn’t Just “Marital Status”**

And as a third example of partial equivalence, “marital status” is the functional equivalent offered for *estado civil* in countless bilingual sources, and this rendering is undoubtedly accurate when referring to whether one is *soltero/a*, *casado/a*; *separado/a*, *divorciado/a* or *viudo/a*, or whether a marriage has been annulled (*nulidad matrimonial*). But lawyer-students certainly recognize that *estado civil* is actually a much broader concept, being defined as *la condición de una persona en relación con su nacimiento, nacionalidad, filiación o matrimonio, que se hacen constar en el Registro Civil* (Real Academia Española. (n.d.). Similar data kept in common law jurisdictions are often known as “vital statistics,” and may likewise be described as records of “key life events.”

Students are asked to explain how civil registries work in their countries, to list the categories of data they contain, and to find acceptable English counterparts for those data. The results of this exercise generally include:

- *Nacimiento* (births, adoptions) and *Filiación*, defined as the “parent-child relationship” (acknowledgements of paternity, judicial determinations of paternity),
- *Emancipación, tutela y patria potestad* (emancipation, guardianship and legal custody of/parental responsibility for minors),
- *Defunciones* (deaths),
- *Declaración de incapacidad, ausencia y fallecimiento* (adjudications of incompetence and declarations that persons are missing or declared legally dead),
- *Nacionalidad* (acquisition of citizenship), and
- *Vecindad civil* (regional domicile—Spain only).

Regarding the latter, the Spanish students are asked to explain to their Latin American colleagues the significance of *vecindad civil*. They respond that *vecindad civil* (“regional domicile”, i.e., the *comunidad autónoma* where one lives) determines Spanish citizens’ submission to general civil legislation (the *Código Civil*) or to specific regional law (*Derecho*

foral in País Vasco and Navarra, or *Derecho especial* in Cataluña, Baleares, Galicia and Aragón).

Partial Equivalence (2): Functional Equivalents That May Prove Useful in One Jurisdiction but Prompt a Miscue in Another

As a second aspect of partial equivalence, I underscore that what may appear to be useful term-pairs in certain contexts, may not be in others. In that regard, when working with clients from both the US and UK, lawyers may encounter that a functional equivalent that accurately conveys the meaning of a given legal concept in one jurisdiction actually prompts a miscue or is misleading in another. Among my students working in law firms, the Latin Americans say their clients are mainly from the US, while the Spanish students often indicate that their English-speaking clients are mostly British. They immediately relate to this aspect of possible partial equivalence, readily admitting that they would likely be unaware of differences in both US and UK legal terminology and concepts. (And this principle certainly applies in Spanish: a functional equivalent that proves useful in one Spanish-speaking jurisdiction might invite a misunderstanding in another.)

- **Functional Equivalents That May Prove Useful in England and Wales but Not in the US: Can “Indictment” Serve as a Functional Equivalent for *Auto de procesamiento*?**

As an example from Spain of a term-pair that might be considered functional equivalents in England and Wales but not in the US, “indictment” has sometimes been offered as a possible rendering for *auto de procesamiento* (which is an order to prosecute or to proceed to trial issued by a *juez de instrucción* in criminal proceedings for serious felonies—*proceso ordinario por delitos graves*). In England and Wales, indictment might prove to be a viable rendering for *auto de procesamiento*, since an indictment is simply the formal accusation of a serious felony (an indictable offence) issued by the Crown Prosecution Service. In contrast, in the US the term “indictment” denotes and is undoubtedly universally associated with the accusation of a grand jury that has determined that the prosecution has sufficient evidence to proceed to trial. Thus, translating *auto de procesamiento* as “indictment” for US audiences would most certainly prompt a miscue, suggesting that the grand jury system exists in Spain, which is obviously not the case.

In that regard, I underscore to my students that although they continue to play a prominent role in criminal proceedings in the United States, grand juries were abolished in England and Wales in 1933.⁴ Thus, as noted above, for British audiences “indictment” might serve as an appropriate functional equivalent for *auto de procesamiento*, given that the term simply denotes a formal felony charge. But, since translating *auto de procesamiento* as indictment might incorrectly suggest that grand juries also form a part of Spanish criminal procedure, the students decide to completely exclude these terms as possible functional equivalents and to render *auto de procesamiento* simply as defined above “order to prosecute” or “order to proceed to trial”.

⁴ Administration of Justice (Miscellaneous Provisions) Act 1933.

- **Functional Equivalents That May Prove Useful in the US but Not in the UK: Can “Community Property Marriage” Serve as a Functional Equivalent for *Sociedad de gananciales*?**

To provide students with the opposite US vs. UK view, I indicate that for US audiences “community property marriage” may provide an appropriate functional equivalent for the marital property systems present in their countries (*sociedad de gananciales*, *sociedad conyugal*, *comunidad de gananciales*, etc.). Many of them are surprised to know that this is indeed the case, and that the institution of community property marriage in the US is directly descended from the Spanish *sociedad de gananciales*. In that regard, it is the default marital property system in Arizona, California, Idaho, Nevada, New Mexico, Texas, Washington and Wisconsin (as well as in Louisiana where, due also to French influence, the community property system is known as “community of acquests and gains”). In community property states, spouses generally own equal one-half interests in all assets acquired during the marriage, excluding any assets received by gift or inheritance. Thus, students see that spouses’ jointly-owned *bienes gananciales* can be rendered as “community property,” while their *bienes privativos* can be termed “separate property.”

Unfortunately, the equivalences that can be drawn between *sociedad de gananciales*, *sociedad conyugal*, or *comunidad de gananciales* and community property marriage in the United States may not be useful for non-US audiences. In the UK, community property marriages do not exist and, thus, students who work primarily with UK or British Commonwealth clients realize that they will most likely not be able to use the terminology of the US community property marriage when explaining the nature of the Spanish *gananciales* marital property system.

Non-equivalence: Functional Equivalents that Don Not Work

In my work with lawyers who are learning Legal English, I have observed that they do not easily accept the fact that certain legal concepts may not have a useful functional equivalent. They often have trouble imagining that major aspects of their own legal systems simply do not exist in others. To illustrate non-equivalence, we discuss the following three examples:

- **Non-equivalence: Can the Spanish *Unión de hecho*, Argentine *Unión convivencial* or Mexican *Concubinatio* be Translated as “Common Law Marriage”?**

Although I have actually encountered an instance in which *unión de hecho estable* and *unión concubinaria* are translated as “common law marriage” (Domínguez Guillén, 2019, p. 352), when questioned whether *unión de hecho*, *unión convivencial* or *concubinatio* might be equated with common law marriage, most students unhesitatingly identify these as non-equivalents⁵. Moreover, since Spanish-speaking countries are obviously not common law jurisdictions, students reason that the term “common law marriage” can never be used to describe a civil law

⁵ In that regard, only a few US states currently fully recognize new common law marriages, each with their specific regulations and requirements, including Colorado, the District of Columbia, Iowa, Kansas, Montana, Oklahoma, Rhode Island and Texas. (Selinas, 2025).

marital institution. This is especially true in Spain where the expression “*Derecho común*” is actually a reference to the Civil Code, Spain’s “common law”, as opposed to the previously mentioned *Derecho foral* and *Derecho especial* present in certain regions of the country. After discussing options, students generally reject “common law marriage”, indicating that “nonmarital union” or “nonmarital cohabitation” provide appropriate translations for *unión de hecho*, *unión convivencial*, *concubinato*, and similar institutions.

- **Non-equivalence: As Used in Spain, Can the Expression “*Me acojo a mi derecho a no declarar*” Be Translated as “I Plead the Fifth?”**

Students immediately recognize this expression from watching US legal and crime television series and initially agree that for US audiences “I plead the Fifth” would certainly appear to be a valid counterpart of the Spanish expression *me acojo a mi derecho a no declarar*. It would immediately be understood that the party is simply invoking their right to decline to testify. But, unfortunately, and from a Spanish perspective, rendering *me acojo a mi derecho a no declarar* as “I plead the Fifth” may also imply that there are at least five amendments to the Spanish Constitution that, in fact, has only been reformed three times. Thus, this term-pair is also best considered as non-equivalent, and *me acojo a mi derecho a no declarar* translated as suggested above: “I invoke my right not to testify”.

- **(Absolute) Non-equivalence: *Procurador* (as Used in Spain)**

One of the idiosyncrasies of Spanish procedure is that in most proceedings it is mandatory that a party be defended by an *abogado* (or) *letrado* (lawyer, attorney) and represented by a *procurador* who serves as a liaison between the lawyer, client and the court, filing pleadings and other documents, receiving court orders, and generally checking up on the status of the cases assigned to them. In class discussions of non-equivalence, I underscore that no party plays a similar role in Anglo-American courts, and suggest that, as the term is used in Spain, *procurador* has been mistranslated variously as “lawyer,” “attorney,” “barrister,” “solicitor,” “legal representative,” and even “paralegal”. Then we must determine why none of these offerings provides a valid equivalence.

Procurador cannot be accurately rendered as either “lawyer” or “attorney,” since although *procuradores* hold law degrees, as noted above, they do not defend clients in court as do attorneys in the US. Students familiar with the judicial system of England and Wales often equate the role of Spanish *abogados* with that of barristers, thus assuming that *procuradores* provide the services of a solicitor. But this idea is easily dispelled by asking students a few questions concerning the work that solicitors actually do: If you want a lawyer to draw up a will or to draft a contract of sale, do you go to a *procurador*? No? Then *procuradores* are not solicitors. If you have a problem with your neighbor and want to consult with a lawyer to see if the conflict can be resolved out of court, do you call a *procurador*? No? Then *procuradores* are not solicitors; they provide no such services. In fact, *procuradores* are usually hired by the lawyers themselves and rarely have direct contact with the clients they represent in court.

“Legal representative” is also a poor choice when describing a *procurador*, since the expression may denote any person who has been empowered to act on behalf of another, and is not necessarily a lawyer. Persons holding power of attorney (*poder de representación*) or appointed as executors (*albaceas*) of a will are legal representatives. And as fully qualified lawyers, *procuradores* certainly cannot be characterized as paralegals.

Other possible renderings such as “court representative” or “court agent” might suggest that *procuradores* are actually court employees, which is certainly not the case. I admit to having used “party agent,” (*procuradores* being agents who represent parties at court), but I underscore to my students that I am certainly aware that this expression doesn’t really convey the meaning of the term.

Opening the matter up for discussion, I then ask students for additional ideas as to how to translate *procurador*. And, of course, those from Argentina, Mexico, Colombia, Peru and other Spanish-speaking countries all contribute to the conversation, underscoring the different meanings of *procurador* in their legal systems, which adds another layer of difficulty when rendering the term. We finally have to admit that there is really no functional equivalent for the Spanish *procurador* and that a definitional translation will have to suffice. I remind them of the definition provided above that they may use when explaining the role of *procuradores* to their clients (“persons who serve as a liaison between the lawyer, client and the court, filing pleadings and other documents, receiving court orders and generally checking up on the status of the cases assigned to them”). And for a shorter definition that might satisfy a client’s initial question as to what *procuradores* do, I also offer a colleague’s Translator’s Note that explains that “*procuradores* are a feature of the Spanish judicial system and serve as intermediaries between lawyers and the court”.

Common All-Too-Literal Translations That May Actually Have a Reasonable Functional Equivalent

It is also important to convey to students that there are a few perhaps all-too-literal translations that may actually have reasonable functional equivalents that they may discover and use instead. It is certainly legitimate to question established translations and to possibly propose alternatives that may prove closer in meaning or may simply be more appropriate in the context in which they are used. Here are two examples discussed in class:

- **All-Too-Literal Translations That May Have a Reasonable Functional Equivalent (1): *Indefensión***

Indefensión is a procedural term that is often rendered literally as “defenselessness,” but also as “unfairness” and “injustice.” It is defined as *denegación a la parte de los medios legales de actuación procesal* (Fonseca-Herrero & Sánchez Iglesias, 2003). In that regard, article 24.1 of the Spanish Constitution provides that *todas las personas tienen derecho a obtener la tutela efectiva de los jueces y tribunales en el ejercicio de sus derechos e intereses legítimos, sin que, en ningún caso, pueda producirse indefensión*. Thus, *indefensión* denotes any circumstance

that deprives a party of the possibility of defending themselves at any time and in any way during a judicial proceeding.

In discussing this term with students, they note that a party is considered to be in a state of *indefensión* precisely when deprived of the procedural guarantees that we examined when reviewing *tutela judicial efectiva*, which they equated with due process. Thus, rather than the literal “defenselessness”, or definitional renderings such as “denial of a means of defense” or “denial of justice”, students agree that *indefensión* is perhaps best rendered as “denial of due process”.

- **All-too-literal translations that may have a reasonable functional equivalent (2):**
in dubio pro reo

Some legal translators abide by the rule “if a term is in Latin, leave it in Latin”, assuming that lawyers who are the recipients of their work will surely understand its meaning. But *latinismos* that appear in Spanish legal texts may have universally-accepted counterparts in English (and vice versa). As an example, I propose *in dubio pro reo*, which students readily recognize as meaning *en la duda, a favor del acusado*, the principle that any doubt concerning an accused’s guilt must result in an acquittal. Often translated as “bias in favor of the accused” (a good literal rendering), I underscore that there is, however, a common law counterpart: the “lenity principle” or “lenity doctrine” (also called the “rule of lenity” or “rule of strict construction”) that requires courts to interpret an ambiguous or unclear criminal statute in the manner that is most favorable to the criminal defendant (Wood, 1996).

A Generally-Accepted Functional Equivalent Revisited: Is an *Escritura* Really a Deed?

This part of our examination of functional equivalents always proves controversial, since most of my lawyer-students have already encountered the omnipresent *escritura*–deed pairing, and many admit to using it often with confidence. One year a student literally became agitated when I suggested that “deed” might not be the best rendering of *escritura*, protesting that this was the translation used in her law firm and “it must be right”. I shared her frustration, indicating that “deed” does certainly appear as the standard rendering of *escritura* in countless bilingual sources, and that we obviously need a nice, simple translation for a term like *escritura* that is present in practically every Spanish legal document we encounter. I also assured her that “deed” as a rendering for *escritura* might not be “wrong”, that countless legal translators accept these terms as functional equivalents, but that there may also be other alternatives.

The first step is obviously to present students with a few definitions of deed, showing that, especially in the US, the term most often refers to an instrument transferring some type of rights in property:

- “At common law, any written instrument that is signed, sealed and delivered and that conveys an interest in property. A written instrument by which land is conveyed” (Garner, 2004),
- “A written instrument by which a person transfers ownership of real property to another” (Wood, 1996), and

- “An instrument in writing which conveys an interest in land; an instrument used to effect a transfer of realty” (Gifis, 1991).

Students then readily agree that there are many types of *escrituras* that do not involve the transfer of property rights. Since they specialize in corporate law, they immediately offer examples of *escrituras* that certify the activities of corporate entities, and are in no way related to property transfers. These include all *actos societarios que se elevan a escritura pública* such as *actos constitutivos, nombramientos y ceses de administradores, poderes de representación, fusiones y escisiones, la creación de sucursales, and la emisión de obligaciones u otros valores negociables*, among others.

We also look at formal aspects that distinguish *escrituras* from deeds as illustrated in the following table, which serves to prompt discussion in class, but that students may also find useful when explaining the nature of *escrituras* to their common law clients:

<i>Escritura</i> vs. Deed (formal aspects)	
<i>Escritura</i>	Deed
<ul style="list-style-type: none"> • instrument prepared and authenticated by a notary, formalizing many types of transactions (property transfers, wills, corporate agreements, etc.) • notaries attest to the transactions brought before them in a first-person narrative (“<i>Ante mí, José Pérez Pérez, Notario del Ilustre Colegio de Notarios de Madrid; Identifico a los señores comparecientes; Hago constar yo, el Notario; Así lo dicen y otorgan en mi presencia, Yo, el Notario DOY FE</i>”) • the parties’ transaction is reproduced <i>verbatim</i> within the <i>escritura</i> • signed solely by the notary • kept in notarial archives (<i>protocolos</i>) 	<ul style="list-style-type: none"> • single-party instrument in which the grantor conveys title or other rights in property to the grantee • depending on the warranties provided by the grantor, a deed may require a title search or title insurance • contains operative words of conveyance (“grant, bargain and sell”) and delivery (“to have and to hold,”) describing the estate taken by the grantee • may require witnesses and notarization of signatures • title passes when delivered to the grantee • recorded in land records

Source: Own work

But perhaps most importantly, I stress that “deed” does not in any way convey the idea that an *escritura* is a notarial instrument, nor the role that civil law notaries play in guaranteeing legal certainty in civil law systems. I underscore that when dealing with clients from common law jurisdictions, students will most likely have to explain that notaries play a neutral role, providing legal advice to all parties to a transaction, that they formalize and authenticate private transactions in notarial documents to ensure their legality prior to entry on public registers, and that they maintain and safeguard all notarial documents in their notarial archives (*protocolos*). I also advise students that their common law clients will likely question why they have to go to the notary’s office to sign documents in person and, certainly, why notaries charge what they charge.

Thus, if “deed” is used as a functional equivalent of *escritura*, I suggest that perhaps the term “*notarial*” should be added:” “notarial deed” or “notarially-recorded deed”. And I note that many legal translators often prefer to render *escritura* simply as “notarial instrument” or “notarially-recorded instrument”. In conclusion, I then confess to my students that Spanish-English legal translators may perhaps be divided into two groups: those who believe that “deed” is a valid functional equivalent for *escritura*, and those who really do not.

A Final Exercise: Determining When Functional Equivalents Are Close Enough

To conclude their work on functional equivalents, students are asked to determine whether they think *libertad condicional* can be accurately rendered as “parole,” and whether the two expressions can be considered useful near equivalents. After all, both terms denote circumstances under which inmates may be released from incarceration before serving their entire sentence.

Students are then divided into country-of-origin groups in order to prepare and present in class a summary of the requirements for being granted *libertad condicional* in their jurisdictions. Two additional groups are assigned to search and present the basic requirements for being granted parole in the US and in England and Wales. The parole board system in the US and in England and Wales is then compared and contrasted with the actual conditions for obtaining early release in the students’ countries (which, for example, in Spain is available to inmates classified in the minimum-security level of the offender treatment program, have served at least three-fourths of their sentence, and who have exhibited good behavior). Students then express their opinions as to whether *libertad condicional* and parole share sufficient characteristics to be considered useful functional equivalents.

Conclusions

After exposure to these examples of possible functional equivalency, when seeking translations in bilingual sources, students indicate that they now are more likely to view suggested term-pairs more analytically and to question their validity, seeking other possible options and taking into account the specific context in which the English term or concept is to be used. Moreover, they admit that given their prior knowledge of Spanish-language legal concepts, they are now more likely to seek possible functional equivalents in English monolingual sources, rather than relying on online translation applications or glossaries. And they generally agree that it would be useful to devote time to exploring comparative law texts, especially in their preferred practice areas related to corporate law.

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