Use the Right Legal Term

A Modern Guide to Legal Synonyms and Near-synonyms

法律术语翻译

要略

正确使用 法律英语同义、近义词语

宋雷◎著

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前言

伴随英美法漫长的发展历程, 法律英语衍生出大量的同义 与近义词,人们在阅读及翻译法律文本过程中,经常会碰到多 个词语表示同一意思的情况。如具有"律师"含义的词语便有 advocate, attorney, attorney-at-law, barrister, counsel, counselor, conveyancer, law agent, lawyer, practicing lawyer, solicitor, proctor 和 procurator 等。但严格就它们的意思 (meaning) 而言, "词汇 是不可能完全同义的"。多数法律同义词属于认知同义词、除在 概念意义上相似外,在其他意思上经常存在一些差异。如在以 上表示"律师"含义的词语中, lawyer 为通用词, 可泛指所有 律师。此外,它还指所有取得法律专业资格有权从事与法律相 关的工作的人。包括法官、检察官、律师、法学教师以及参与 法庭诉辩或提供法律咨询的任何人。此时, 我们可以将其翻译 成"法律人"以与"非法律人" (layman 或 layperson) 相对。 鉴于 lawyer 具有其他义项, 在特定语境中, 为避免歧义, 人们 使用 practicing lawyer (执业律师) 以确保"律师"与其他没有 从事律师工作的"法律人"有所区分。至于 attorney, 在英国是 指在英格兰和威尔士的普通法法院执业的律师(与其相对, solicitor 在衡平法法院执业, proctor 在宗教法院执业), 即由当事 人指定, 以委托人名义行使苏格兰的讼务律师、事务律师和代 理人等全部职能的律师。此外, 其还有"检察官"等其他的含 义。作为"律师",相比之下, attorney 比 lawyer 显得正式,但 所指范围较窄,多只限于法律事务的代理人。attorney-at-law 为 美国用语, 常在名片上使用, 优点在于其只有一个义项, 在名

片语境信息有限的情况下不至于导致读者误解(如用. attorney, 则有可能被人误解为是"检察官";用 lawyer 也有被误解为是 "法律人"之可能性)。barrister 和 solicitor 多用于英国或英联邦 国家或地区,与美国律师部分类别的情况不同。这两个单词的 翻译方法多种、前者有出庭律师、高级律师、专门律师、大律 师等;后者有诉状律师、初级律师、事务律师等。这些翻译均 不理想, 容易误导读者。事实上, barrister 与 solicitor 的职能各 有差异. 根本不能简单地用高级和低级区分。此外, solicitor 也 可以在高等法院 (high court) 之外的其他法庭出庭辩护,因而 也不能用出庭或不出庭加以区别。此外,鉴于 barrister 与 solicitor 的培养、职责、工作方式等诸多特性,如果用专门、大小、 诉状、事务等术语予以简单界定也容易导致误解。如初出茅庐 的 barrister 与事业有成的 solicitor 相比具有天壤之别,也就决不 能是"大律师"了。取其主要意思,可以将 barrister 译为"讼 务律师",将 solicitor 译为"事务律师",然后加上适当的注释, 如"事务律师"注释为"通过律师事务所实践(practice)培 养,与代理人直接交往,负责接案和收取诉讼费,只可在 high court 以外的初级法庭出庭辩护, 遇到在 high court 的案件, 得恳 请讼务律师替其出庭辩护 (solicit the services of a barrister to plead his case, solicitor也因此而得名)"。又如"讼务律师"注 释为"学院派律师(由四大律师学院培养),不与当事人直接交 往,从事务律师处分得诉讼费,应事务律师请求负责案件相关 法律问题和出庭辩护"。counsel 为"顾问律师",在英国多指为 事务律师提供意见或建议的讼务律师,有时也指成为王室法律 顾问的讼务律师,即 Queen's (或 King's) Counsel;在美国,其 多指为公司或政府担当法律顾问的律师,如 in-house counsel。 单词 counselor 意指"律师"的用法在英国已被废弃,但其在爱 尔兰和美国等地仍在使用,该单词基本等同 counsel,但比 counsel 正式,其主要是指提供法律咨询、处理各种法律事务、出庭进行诉、辩等的法律代理人,也应译为"顾问律师"。conveyancer 主要用于美国,专指从事不动产转让事务的律师(a lawyer who specializes in real-estate transactions),故为"不动产转让律师"。在英国,讼务律师和事务律师均可从事 conveyancer 的工作。advocate 为"出庭律师"(a lawyer who works and argues in support of another's cause, esp. in court)。此外,苏格兰的讼务律师也被称为 advocate,而事务律师则被称为 law agent。proctor现指宗教法院的教堂的辩护律师或宗教事务律师(an advocate of a religious house, one who represents a religious society in its legal affairs),其也称为 procurator。

导致法律同义、近义词语繁多的主要原因很多,外来词的借用是其中一个重要因素。大量借用的拉丁语、法语以及斯堪的纳维亚的日耳曼语系(北欧日耳曼语系)的词语与盎格鲁一撒克逊语相混合,致使出现多个词语表示同一含义的情况屡见不鲜。如盎格鲁—撒克逊语中的 hitting, striking, stealing 及 robbing 与相对性的 assault, battery, larceny 和 burglary 等。

另一个重要因素是社会、体制、地域、时空等差异导致的语言变异,由此形成不同词语表示几乎同一意思的情况。如英国的英格兰与苏格兰的法律术语便因两地法律体系的差异(英格兰属于普通法系,苏格兰属于大陆法系)而存在同一意思不同词语的情况:

	英格兰	苏格兰
原告	plaintiff	pursuer
被告	defendant	defender
巴律师	barrister	advocate
沙律师	solicitor	law agent (也使用 solicitor)

(续表)

	英格兰	苏格兰
律师学院	Inns of Court	Faculty of Advocates
侵权法	law of tort	law of delict
陪审员	juror	assissor
上诉	appeal	advocation
斗殴 (罪)	fight	affray

又如美国与英国的法律语言也有不少差异,如"议会",美 国用的是 Congress (由参议院 Senate 与众议院 House of Representatives 组成). 而英国则用的是 Assembly (由上议院 House of Lards 和下议院 House of Commons 组成)。在美国, judgment 为判 决, 指的是有关案件的裁定结果; 而在英国, 其还指法官判决 案件之理由,即具有美式法律英语中的 opinion (法律判决意见) 之含义。在美国,上诉法院 affirm (维持)与 reverse (撤销)下 级法院的判决 (a lower court's judgment); 而英国的上诉法院则 是 allow (维持)与 dismiss (撤销)下级法院之判决(在美国, dismiss 则用于指"驳回"当事人的诉讼主张或"驳回"诉讼)。 在美国,公司法是 corporate law (单行立法则为 corporate act 或 corporation act); 在英国则是 company law (单行立法则为 companies act)。在美国、汇票被称为 draft; 在英国则是 bill of exchange。在美国,单词 bankruptcy 可用来指个人或公司的破产; 在英国, 其多用来指自然人破产, 公司(法人) 破产则多用 winding-up.

大多数的法律术语都具有多层次,多方面的特征和含义。 许多术语可能在某些部分或某个层面上与其他词语竞合或共核, 但在另外的意思或含义上又具有很大差异,因而必须加强注意。 在英汉翻译过程中,同义、近义法律术语的比较和辨析涉及到 对两种法律语言文化的了解和诠释。稍有不慎,便可能出现错误。如术语 final judgment (最终判决) 曾被许多人错误地当作"终审判决", statutory rape (制定法上的强奸罪) 被人误译为"强奸幼女", 而 administrative law 则被当作"行政法规"等。这些都可以视为是法律术语翻译的典型错误,应当引以为戒。

就同一法律术语而言,除存在表示类概念的上义词语(Supper ordinate)外,还经常存在一些表示种概念的下义词语(Subordinate)。如"杀人", killing 为表示类别的通用术语;而表示具体的特殊的用语则有: homicide(他杀), suicide(自杀), murder(谋杀), manslaughter(非谋杀)等;至于法律规定的,与杀人相关的同义或近义的术语就更多。同理,decision是"裁决"或"判决"的上义词,而 award,finding,judgment, sentence, verdict,decree,ruling 和 disposition 则为下义词;同样,defamation为"毁誉"的上义词,而 slander 和 libel 则为下义词。读者在作法律翻译时,务必要知道各术语含义的细微差别。法律翻译最重要的标准是准确,不能辨别近义词或同义词,"准确"一词只能是奢望。

本书旨在用最简明扼要的方式,对常用的同义或近义法律术语进行辨析和说明,以期帮助读者尽快掌握和识别翻译法律同义、近义词语的方法。鉴于法律术语翻译所涉及的知识太多和太深奥,尽管笔者不遗余力,遗漏和谬误在所难免,恳请读者谅解,如对本书内容产生任何疑惑,请与作者直接联系(作者 Email 地址: XNZFSL@163.com,网站地址: www.falvtrans.com)。

宋 雷 于西南政法大学外语学院 2010年8月

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- 1. 附录中的 violent crime (条目) 暴力犯罪······385 表示 violent crime 在文中相应的页数中有以其为标题的详细解释和辨析,读者可据此在文中直接查找阅读。
- 2. 附录中 vote Cf. poll vt., vi. & n. 投票,表决,表示 vote 是本书中列为 poll 的同义词、近义词的法律术语,对其的解析需参见以 poll 为标题的文中相应解析。读者需要在附录中再次查找 poll (条目) ······323,据此找到对 vote 的解析。
 - 3. 文中 Cf. = Confer 参见; Id. = Idem 同前, 同上。

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翻翻 Abandon、Relinguish 和 Renounce

三单词均有抛弃及放弃的含义。

abandon 主要指因挫折、气馁、厌倦、厌恶等原因而放弃或中止某事(包括权利或义务),或遗弃财产(to denote a complete giving up, especially of what one has previously been interested in or responsible for)^[1],且有永远不再主张之含义^[2]。包括 to abandon a crime "中止犯罪"; to abandon a contract "撤销合同"(cf. abandonment)。在家庭法上,尤指"离弃"配偶或家庭成员(有离开而不再归来的含义,cf. abandonment),如 to abandon a child "离弃子女"^[3]。relinquish 含义最广,可用于指权利或财产等的放弃^[4],常表示自愿(虽然有时也表示被迫),故多无暴力行为或强烈情感相伴随^[5]。renounce 则指自愿或正式宣布放弃某事,如: to renounce one's claim, right, authority, principle 等^[6]。

- [1] Cf. The Editors of the Reader's Digest, *Use the Right Word*, at p. 335, The Reader's Digest Association Proprietary Ltd. (1971).
- [2] "To give up with the intent of never again asserting or claiming an interest in (a right or property)." Cf. Linda Picard Wood, J. D., Merriam Webster's Dictionary of Law, at p. 1, Merriam-Webster, Incorporated, Springfield, Massachusetts (1996).
- [3] "Family law, to leave a spouse or child willfully and without an intention to return." Cf. Bryan A. Garner, Black's Law Dictionary, 7th edition, at p. 2, West Group (1999).
 - [4] "To abandon, to give up, to surrender, to renounce some right or thing." Cf. The

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Publisher's Editorial Staff, *Black's Law Dictionary*, abridged 6th edition, at p. 895, West Publishing Co. (1991).

- [5] "A word wide in meaning, usu. does not suggest forceful action or strong feeling in dropping, desisting, renouncing; it sometimes suggests regret at giving up or delay in the process." Cf. Philip Babcock Grove, Ph. D., Webster's Third New International Dictionary of the English Language Unabridged, at p. 1918, G & C Merriam Co. (1976).
- [6] "Renounce means to declare against or give up formally and definitively." Cf. The Editors of the Reader's Digest, *Use the Right Word*, at p. 487, The Reader's Digest Association Proprietary Ltd. (1971).

Abandonment。Desertion 和 Waiver IIIIIIIIIIII

上述三个单词均有"放弃"的含义。其中,abandonment 为通用词,可用于放弃诉讼、财产、各种权利、理由等;家庭法上指"离遗"配偶或子女,主要强调离开且不准备返回之行为,有一去不复返的含义^[1]。 desertion 常用作指放弃应当履行的责任或义务,尤指不服兵役或遗弃配偶或家庭成员;在遗弃配偶等时主要强调未尽责任义务而非一定有离开之实际行为(如constructive desertion,只要终止同居行为即可构成 desertion),故为"遗弃",也称为"gross neglect of duty"^[2]。waiver 通常用于表示对某种权利的放弃^[3]。



[1] "The act of leaving a spouse or child willfully and without an intent to return."

Cf. Bryan A. Garner, Black's Law Dictionary, 7th edition, at p. 2, West Group (1999).

- [2] "Separation of one spouse from the other, with a deliberate intention and, without reasonable cause and the other spouse's consent, to end cohabitation permanently." Cf. Daphne A. Dukelow, *The Dictionary of Canadian Law*, at p. 276, Thomson Professional Publishing Canada (1991).
- [3] "The renunciation, repudiation, abandonment, or surrender of some claim, right, privilege, or of the opportunity to take advantage of some defect, irregularity, or a legal wrong." Cf. The Publisher's Editorial Staff, Black's Law Dictionary, abridged 6th edition, at

p. 1092, West Publishing Co. (1991).

Abandonment 和 Rescission

两者均可用作指合同的"撤销",尤其是在土地买卖合同中。区别在于 abandonment 仅指合同一方接受另一方当事人所造成的不予履行合同之情况(merely the acceptance by one party of the situation that a nonperformance party has caused),另一方所导致的违约后果并不严重。而 rescission 则指合同一方当事人在有充足理由,如因另一方严重违约(material breach)而终止或解除所有合同责任和义务^[1];它是无过错当事人(non-breaching party)最常寻求的一种衡平法上的救济(equitable judicial remedy)和保护方法,其可使得双方当事人回复到合同之前的状况(restore the parties to their pre-contractual positions)^[2]。



- [1] "In the context of contracts for the sale of land, as if it were synonymous with rescission, but the two should be distinguished. An abandonment is merely the acceptance by one party of the situation that a nonperformance party has caused. But a rescission due to a material breach by the other party is a termination or discharge of the contract for all purposes." Cf. Bryan A. Garner, Black's Law Dictionary, 7th edition, at p. 2, West Group (1999).
- [2] "A rescission amounts to the unmaking of a contract, or an undoing of it from the beginning, and not merely a termination, and it may be effected by mutual agreement of parties, or by one of the parties declaring rescission of contract without consent of other if a legally sufficient ground therefore exists, or by applying to courts for a decree of rescission."

 Cf. The Publisher's Editorial Staff, Black's Law Dictionary, abridged 6th edition, at p. 905, West Publishing Co. (1991).

Abate, Curtail, Diminish, Lower和 Reduce

上述单词均有减轻和减少的含义。其中, reduce 最为通用,可指在体积、数量、金额、程度及范围等方面的减少, 如 to re-

duce expenses (labor force, acreage of property, means, etc.) 以及 to reduce to letting rooms, private $\mathfrak{S}^{[1]}$ 。abate 在法律英语中常用作及物动词,多指在强度或程度上减轻或全部及部分废除,常用于减价及税收、遗产或骚扰的减少 $\mathfrak{S}^{[2]}$ 。curtail 一般用作指突然减少或彻底除去原来并不计划或打算的事务,多指抽象而非具体的东西^[3]。diminish 常指部分删减,如责任、人口、数量等,所删减部分有时并非无价值^[4]。lower 多指价值、等级及水平的减少和降低,其强调程度和所指的精确程度不及reduce ^[5]。



- [1] "Reduce has a wider range of connotations than the other word and is also the most general. It means to make less in size, amount, number, extent or intensity." Cf. The Editors of the Reader's Digest, *Use the Right Word*, at p. 484, The Reader's Digest Association Proprietary Ltd. (1971).
- [2] "To break down, destroy or remove; to lower the price." Cf. Daphne Dukelow, The Dictionary of Canadian Law, at p. 1, Thomson Professional Publishing Canada (1991). "Abate means to reduce, as in strength or degree, usually from an excessive intensity or amount." Cf. The Editors of the Reader's Digest, Use the Right Word, at p. 485, The Reader's Digest Association Proprietary Ltd. (1971).
- [3] "Curtail is to reduce abruptly and radically, as by cutting off or cutting short than was originally intended. The word is used chiefly of non-material things and conveys the idea of the unexpected." Cf. The Editors of the Reader's Digest, *Use the Right Word*, at p. 485, The Reader's Digest Association Proprietary Ltd. (1971).
- [4] "Diminish is a more accurate word than reduce when one wishes to stress the idea of removing part of something so that there is a manifest and sometimes progressive lessening, but not to the point of total disappearance. The word may suggest either the loss of something valuable or a lessening of that which is undesirable." *Id.* at p. 485.
- [5] "Lower is to make less, especially in value, degree or level. It is not as emphatic or precise a word as reduce in this sense, although fairly close in meaning." Id. at p. 485.

Abdicate, Renounce, Resign, Cede, Relinquish,

Surrender 和 Yield

这些单词均有放弃(权利或职位等)的含义。其中,abdicate 主要是指放弃某种法定职位,如君主正式放弃其王位等,有时也指放弃某种特权(prerogative)^[1]。renounce 常与 abdicate 互换使用,多指放弃某种权利、权利要求、资格或惯例(right,claim,title,practice),且有作出某种牺牲的含义^[2]。resign 多指正式通知辞去从上级或其他人处所获的某种职位或未满任期^[3]。cede 指正式放弃权利,常用于法律上的转让及根据条约割让领土等^[4]。relinquish 最为通用,可表示自愿或非自愿的放弃^[5],如 relinquish control over sth 或 relinquish a claim 等。surrender 多指被迫,或在感情或权势的影响下的放弃^[6]。yield 类同 surrender,但相比之下,其所受的压力或所受到的情感的影响小于后者^[7]。



- [1] "To refuse or renounce a thing, a person in office to renounce it or give it up voluntarily." Cf. Daphne A. Dukelow, *The Dictionary of Canadian Law*, at p. 2, Thomson Professional Publishing Canada (1991).
- [2] "To give up or abandon formally (a right or interest); to disclaim." Cf. Bryan A. Garner, Black's Law Dictionary, 7th edition, at p. 1299, West Group (1999).
- [3] "To give up a possession, office or claim." Cf. Daphne A. Dukelow, *The Dictionary of Canadian Law*, at p. 922, Thomson Professional Publishing Canada (1991).
- [4] "To yield or grant usu. by treaty." Cf. Linda Picard Wood, J. D., Merriam Webster's Dictionary of Law, at p. 71, Merriam-Webster, Incorporated, Springfield, Massachusetts (1996).
- [5] "Relinquish is the most general and neutral term in the group. It can indicate no more than the release of one's grasp. It can denote the letting go from one's direction or possession, usually voluntarily but sometimes reluctantly." Cf. The Editors of the Reader's Di-

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gest, Use the Right Word, at p. 487, The Reader's Digest Association Proprietary Ltd. (1971).

- [6] "Surrender means to give up under compulsion to any person, passion, influence or power." Id. at p. 487.
- [7] "Yield is close to surrender, but implies milder compulsion and therefore some softness, concession, respect or even affection on the part of the person who yields." *Id.* at p. 487.

Abduct,Kidnap 和 Hijack IIIIIIIIIIIIIII

三者均有劫持及绑架的含义。在英国或普通法上,abduct 主要是指诱拐或胁持妇女,即在普通法上指"挟持妇女罪",主要指以婚姻、卖淫、非法性行为等为目的,用诱骗或武力胁迫,违反妇女意志而拐走 16 或 18 岁以下的或有精神障碍等的少女以及妇女;在美国成文法中,为"挟持罪",多与受害人的性别无关^[1]。kidnap 主要是指为索取赎金的绑架或劫持人质的行为,其为"绑架",古时也称为 manstealing^[2]。hijack 则是指为达到某种目的而"劫持"飞机等运输工具^[3]。同理,与以上三个单词相对应的名词 abduction、kidnapping 和 hijacking 也有如此差别。

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- [1] Cf. Bryan A. Garner, A Dictionary of Modern Legal Usage, at p. 4, Oxford University Press (1995).
- [2] "To seize and take away a person by force or fraud, often with a demand for ransom." Cf. Bryan A. Garner, *Black's Law Dictionary*, 7th edition, at p. 874, West Group (1999).
- [3] "To seize possession or control of (a vehicle) from another person by force or threat of force, esp., to seize possession or control of an aircraft." Linda Picard Wood, J. D., Merriam Webster's Dictionary of Law, at p. 226, Merriam-Webster, Incorporated, Springfield, Massachusetts (1996).

Abet,Encourage,Incite,Instigate和 Provoke

以上术语均有煽动和怂恿的含义。abet("教唆",尤指"教唆罪")指鼓励、教唆他人犯罪,常含有协助并参与犯罪之意,如 abet(教唆)他人犯 murder(谋杀罪),则包括命令、促使、协商、鼓励、诱惑、帮助杀人等属于知情、共谋、协助或参与犯罪的情节行为^[1]。encourage 则多指鼓励、支持或劝告某人干某事^[2]。在刑法中,incite 几乎与 abet 同义,此外,在表示激励或鼓动时,incite 所导致的后果可好可坏,造成的影响也可大可小^[3]。instigate 指唆使或鼓动某人犯罪,常涉及一些极端行为,如 instigate an assassination 或 instigate a plot to seize control of a government 等^[4]。provoke 也可指挑唆或煽动,但此种行为不必一定且经常不是经有意识策划,故常用作指一些激情或冲动性质的行为^[5]。



- [1] "To encourage and assist someone, esp. in the commission of a crime; to support (a crime) by active assistance." Cf. Bryan A. Garner, *Black's Law Dictionary*, 7th edition, at p. 4, West Group (1999).
- [2] "In criminal law, to give courage to; to inspirit; to embolden; to raise confidence; to make confident; to help; to forward; to advise." Cf. The Publisher's Editorial Staff, Black's Law Dictionary, abridged 6th edition, at p. 364, West Publishing Co. (1991).
- [3] "Incite means to spur to action, any may to applied to measures leading to salutary as well as deplorable results, to minor as well as profound changes." Cf. The Editors of the Reader's Digest, *Use the Right Word*, at p. 294, The Reader's Digest Association Proprietary Ltd. (1971).
- [4] "Instigate usually suggests the setting in motion of events that in some way threaten or upset the status quo. It will therefore convey a negative or unfavorable connotation to the extent that one deplores violent change. It suggests an insidious design to bring about some drastic action." Id. at p. 294.
 - [5] "To excite; to stimulate; to arouse." Cf. Bryan A. Garner, Black's Law Diction-