

Assessing and Translating Conditional Sentences in Arabic Legal Texts into English

Asst. Prof. Sameer Salih Mehdi Al-Dahwi,
Mustansiriyah University, College of Arts, Department of
Translation, Email: samirdahwi@uomustansiriyah.edu.iq

Abstract

Conditional sentences play an important role in Arabic and English grammar. They sometimes pose some difficulty in understanding the meaning of the sentences in both languages. The legal language in both Arabic and English is considered to be a challenging process for ordinary people. Only those who are concerned with this language such as judges and lawyers can understand it easily. The legal language, especially contracts, includes strict instructions and provisions that must be abided by the parties involved. However, this language can include conditional sentences that explain the occurrence of probabilities and expected events, which might happen in the execution of the instructions and provisions of the articles and sections on contracts.

This study aims at assessing the translations of the if-particle in Arabic legal texts, specifically in contracts, which are translated into English and the conditional particles that

are specifically used in the Arabic legal texts and their translations.

To achieve the abovementioned aims, the study hypothesizes that only the first and second types of if - conditional is used in the legal texts of Arabic and English. It is also hypothesized that conditional sentences in Arabic are realized by particles like "إذا" to express a high degree of certainty and "إن" to express uncertainty; whereas, conditional sentences in English are realized syntactically to express both certainty and uncertainty.

To test the validity of the abovementioned hypotheses, conditional sentences and their translations have been selected from the Book 'The Reliable Guide to Legal Translation' written by Adel Azzam Saqf Al-Hait that contains different legal texts, especially contracts. Those translations will be subject to translation assessment by the researcher to check the types of conditional sentences used in Arabic legal texts and their counterparts in English. In case the translator fails to render the if-conditional sentences, the researcher will give his suggested translations.

Key Words: Conditional Particles, Legal Language, Translation Assessment

1- Conditional Sentences in Arabic (ان إذا And اذا)

The Arabic conditional sentence includes a linguistic structure that is comprised of two parts. The first part is called فعل الشرط the condition, which is the subordinate clause and the second part is called جواب الشرط the consequence, which is the main clause. The second part, the consequence, will be realized only if the first part, the condition, is realized previously (Al-Makhzumi, 1964:284). For example:

إذا جئت اعطيتك الكتاب

If you come, I will give you the book.

The above sentence consists of two parts: the condition which is (إذا جئت) and the consequence which is (اعطيتك الكتاب). Here, the condition clause cannot be understood unless it is related to the consequence clause or the main clause. Likewise, Tahhan (cited in Al-Massaddi and Al-Tarabulsi, 1985:21) holds that the conditional sentence is a linguistic structure that consists of أداة الشرط conditional particle, فعل الشرط conditional clause and جواب الشرط consequence clause. The two clauses are related by the conditional particle in a way that

makes no one clause imagined to be independent of the other.

Al-Makhzumi (1964:290-291) affirms that there are two types of Arabic conditional particles: the first is originally conditional such as (ان) and (اذ ما) whereas the second type is mixed with other meanings to refer to persons, things, places, circumstances but they are used as conditionals such as (ما, اين, من, etc...)

Aziz (1989:224) mentions four particles which are (ان, لولا, لو, اذا). (ان) and (اذا) are used to express open conditional (factual and predictive). On the other hand, (لو) and (لولا) are used to express rejected condition (imaginative), while (ان) is used with doubted events and (لو) with hypothetical or impossible events.

إن يسافر أسافر معه.

If he travels, I travel with him.

Aziz (ibid) also states that the use of the perfect and the imperfect after these particles is often neutralized and the time of clause is determined by the linguistic or situational context. Therefore, the

perfect which is probably more used in these clauses than the imperfect may refer to the present or future in addition to the past.

إن سافر سافرت معه.

If he traveled, I would travel with him.

If he travels, I will travel with him.

Arabic conditional is of two types. The first type is the real conditional, which includes fulfilled conditions and uses two particles (ان) and (إذا), while the second is the unreal conditional, which includes the unfulfilled conditional and the use of the particle (لو). Since the latter is rarely used in the legal language of Arabic because legal texts do not deal with the unreal condition, the researcher will tackle only the first type of conditional sentences in Arabic.

In what follows, the conditional particles that are used in Arabic legal language will be discussed in some detail:

1.1. ان to express uncertainty

The particle ان is the most important conditional particle in Arabic which originally refers to a condition. Al-Aswad (2005: 66) holds that (إن)is used

with non-assertive things, especially those about their happening a person is not quite sure:

إن يزرك خالد أزورك.

If Khalid visited you, I would visit you.

(Al-Makhzumi, 1964: 290)

The time of this particle is contextual since it may refer to the past, present, or future. The main function of the particle (إن) is to convert the past tense into the future because only the future may be fulfilled or not fulfilled and this is applied to the definition of (إن) "which expresses uncertainty about the actions referred to" (Al-Aswad, 2005: 67).

إن فعلت هذا عوقبت.

If you did this, you would be punished.

إن تفعل هذا تعاقب.

If you do this, you will be punished.

(Kharma and Hajjaj, 1989: 140)

Likewise, native speakers of Arabic widely use the utterance (إن شاء الله) where the particle (إن) is used since they are not sure that the action will happen in the future and the possibility of occurrence is not strong. Thus, the particle (إن) is used for open

conditions only with an uncertainty that the action may happen.

1.2. إذا to express certainty

The problem related to this particle is that it occupies a place between condition and time and may be translated into English by “if” or “when” (Al-Masaddi and Al-Tarabulsi, 1985: 9; Aziz, 1989: 294-295).

إذا احترمت صديقك احترمتك.

If you respect your friend, he will also respect you.

إذا جاء الربيع اعتدل المناخ.

When spring comes, the weather becomes moderate.

Al-Ghalayini (1971: 195) draws a distinction between (إن) and (إذا) in that (إن) is used for uncertain actions and things while (إذا) still sounds to give a greater degree of certainty. Therefore, if you say:

إن جئت أكرمتك.

If you came, I would receive you cordially. (the speaker's coming is uncertain).

إذا جئت أكرمتك.

If you come, I'll receive you cordially. (the speaker's coming is certain).

The time here with (إذا) is also contextual, so it is variable (Al-Muttalibi, 1986: 87-88). In other words, the particle (إذا) is used when the speaker thinks that the action will no doubt occur (certainty) whereas the particle (ان) is used when the speaker thinks that the action will occur but in a less degree of probability. The Arab poet (Al-Mutanabi) says the following poetic verse where both particles are used:

إذا انت اكرمت الكريم ملكته وان انت اكرمت اللئيم تمردا

Here, the distinction between the two particles is clear since the poet affirms that people often receive generous persons cordially (strong possibility) while people are not expected to receive cordially those who are ungrateful (weak possibility).

1.3 **في حال او في حالة to express neutrality**

The prepositional phrase *في حال* or *في حالة* is widely used in Arabic legal texts instead of the particles *ان* and *إذا* to express certainty in the case of *إذا* and uncertainty in the case of *ان* in conditional sentences, i.e., to express the first and second types of conditional sentences used in legal texts. Examples of this kind of conditional sentences will

be provided in the section of translation assessment of Arabic legal texts into English.

2. Conditional Sentences in English

The references and textbooks of Traditional Grammar of English indicate that there are three classic types of conditional sentences, which are commonly known as the first, second, and third conditionals.

Conditional clauses in English are used to refer to the cause and effect or the temporal sequence of two events. The main structure of conditional sentences contains “an antecedent clause” and “consequent clause” (Traugott et al 1986; Yule 1998; Zhang 2005; Polanska 2006). The antecedent is deemed as a subordinate clause referring to a supposition situation, whereas the consequent consists of a proposition situation that occurs if the antecedent is realized (Dancygier, 1998; Young 1989).

Conditional sentences predominantly convey the logical sense "if situation P, then situation Q" and carry out different functions, for example, imaging,

inference, habitual, factual, and reasoning (Geis and Zwicky, 1971; Traugott et al, 1986). In English conditionals, the future is usually expressed by the present tense, the unreal present or future are expressed by the past tense and impossible events which did not occur in the past are expressed by the past perfect (Traugott et al, 1986:15).

Quirk et al. (1985: 1089) distinguish three types of “if” clauses depending on the tense they contain.

Type one

1- If the player plays well, he’ll win the match.

Type two

2- If he had money, he would buy a car. (but he has no money. The meaning here is present).

3- If that man tried to threaten me, I would call the police. (the meaning here is future).

They believe that type 2, like type 1, refers to the present or future and the past tense in the “if-clause” is not a true past but a subjunctive, which indicates unreality as in (2) above or improbability as in (3) above.

Type three

4- If I had known that you were coming, I would have met you at the airport. (but I did not know, so I did not come). They (ibid) also think that these three types and their different variations can express different meanings such as ability, permission, certain results, possibility, command, request, or advice. e.g.

5- If your documents are in order, you can/may leave at once. (permission)

6-. If we had found him earlier we could have saved his life. (ability)

7- If you want to lose weight you had better eat less bread. (advice)

Summing up, the different tenses of the three types of “if” clauses can express different meanings.

3. The Nature of Arabic Legal Language

In Arabic, the Arabic legal writing depends on two pillars: Islamic Law and Roman or Common Law (Wood, 2016: 11). The Ottoman Empire ruled the Arab countries for many years, and after its downfall, most of these countries began to legislate

and develop their new laws. According to Al-Fatlawi, Egyptian law is based directly on French law; the Iraqi and Syrian laws are based upon Egyptian law. Therefore, it is fair to say that they all follow the French model (Al-Fatlawi, 2013).

In Iraq, the legal system is based upon four sources: first, the historical source of the law which is the Egyptian model; the second, the substantive source which is customs and traditions; third, the interpretative source which is the jurisprudence and the jurisdiction; and finally, the real or official source which is the Islamic Sharia' (Canon) (ibid). The Iraqi legal system has legal institutions and bodies that conform to the modern western ones; it has various laws that cover all facets of life. These laws manage various aspects ranging from simple correspondences, traffic rules, and commercial contracts to judicial codes, national security, and international agreements (Hayawi, 2010: 2ff).

As for the legal language of the documents issued under Iraqi law, it does not differ from the language used in contemporary legal writings in the

surrounding states (Sabra, 2007: 2). Its terminology is indeed derived from classical Islamic law, yet there is an obvious (alien) influence that is detectable in the style as a result of the translation of foreign language documents especially contracts. (Hargit, 2013: 424- 446).

4. Assessment of Translations of Conditional Sentences in Arabic Legal Texts

Being archaic, formulaic, and complex, the legal language forms one of the most difficult kinds of texts to be translated (Garzone, 2000: 3). Legal language is regarded as the most formal language of all other varieties for it is of high formality, technicality, and professionalism (Abel, 1998: 9, 28ff). Every word in a legal document has to be rendered and translated in a way that considers the differences in terminology, syntactic devices, layout features, the intention of the original document drafter, and all the possible interpretations of the text. All of these elements put burdens and constraints on the translator; thus, such documents require a competent translator who is

specialized in legal translation to translate significant legal documents and contracts.

4.1 Functional Equivalence

In legal translation, many scholars associate legal equivalence with the extent to which the same 'legal effect' can be produced in the target text while maintaining fidelity to the source text. This technique often referred to as a functional equivalence, is described by Newmark (1988) as a procedure that occupies the universal area between the SL and the TL. He also recommends the use of functional equivalence for the official translation because it makes the TT both comprehensible to the target reader and faithful to the original ST.

Newmark (1981) further suggests that when dealing with legal documents like contracts that are concurrently valid in the TL, the translator should focus on a communicative approach that is TT-orientated. As Nida (1964:5) says, "*in general it is best to speak of 'functional equivalence' in terms of a range of adequacy since no translation is ever completely equivalent. Several different translations*

can represent varying degrees of equivalence". According to Butt and Castel (2001-21), functional equivalence should be used for translation of contracts, suggesting that the target term would be understandable to the target reader, as well as close to the source term. On the other hand, Mellinkoff (1963:19) further adds:

For instance, regarding contracts, the decision of whether and to what extent target-language formulae should be used is determined primarily by the law governing the contract. This fact is essential because it determines whether the contract will be interpreted according to the source or the target legal system.

Nida (1964) suggests that functional equivalence is appropriate mostly when the application of formal translation would not be adequate, as depicted in these three principles of functional equivalence:

Principle I: Functional equivalence is necessary if a close, formal translation is likely to result in misunderstanding of the designative meaning, certain changes must be introduced into the text of the translation.

Principle II: Functional equivalence is necessary if a close, formal translation makes no sense, certain changes may be introduced into the text.

Principle III: Functional equivalence is necessary if a close, formal translation is likely to result in serious misunderstanding of the associative meanings of the original text or a significant loss in a proper appreciation for the stylistic values of the original text, it is important to make such adjustment as are necessary to reflect the associative values of the original text. (Nida, 1964:125)

The process of the assessment of the translations of the conditional sentences in Arabic legal texts into English will be carried out on several Arabic conditional sentences that have been translated by Saqf-al-Hit (2012). The researcher will assess based on whether the

translator has succeeded in rendering the Arabic conditional sentences found in legal texts into English or not in terms of conveying the same degree of certainty and probability to English. If the translator succeeds in doing so, it means that he has achieved the functional equivalence required in the translation of legal texts. If he fails, the researcher will give the suggested translations to achieve functional equivalence.

In what follows, the translations of some conditional sentences found in Arabic legal texts will be assessed in terms of conveying the same degree of certainty and probability of the Arabic if-particles into English.

Legal Text 1 :

إذا امتنع أو تأخر المستأجر عن دفع قسط من الأقساط في
ميعاد استحقاقه فتصبح جميع الأقساط الأخرى مستحقة
الأداء حالا.

If the Lessee abstains from or defaults any due installment, all other installments shall be due at once.

In the legal text above, the translator has rendered the Arabic particle (إذا), which expresses certainty and a strong possibility, into (if) in English with the use of the present tense. The translator has successfully rendered this particle into English since the present tense in English expresses certainty and a strong possibility, i.e., the action will no doubt occur. Here, the conditional sentence in English has been realized syntactically. The translator has achieved the functional equivalence required in translation since it seeks the intention of the SL writer.

Legal Text 2 :

إذا أخل الفريق الثاني بأي التزام أو سبب ضررا في الشقة فان
للفريق الأول حبس مبلغ التأمين كتعويض

In case the Second Party breached any of his obligations, or caused damage to the apartment,

the First Party then, shall have the right to distrain the security deposit as compensation.

Here, the translator has rendered the Arabic particle (إذا) into (in case) which is similar to the English particle (if) with the past tense, which denotes uncertainty. The English translation is inadequate because the Arabic particle إذا denotes certainty and expresses that the action will occur in the future. The suggested translation will be:

In case the Second Party breaches any of his obligations, or caused damage to the apartment, the First Party then, shall have the right to distrain the security deposit as compensation.

The above-suggested translation has conveyed the same legal effect of the Arabic original text to English.

Legal Text 3:

إذا قرر الفريق الأول إنهاء هذا العقد قبل انتهاء مدته المبينة لأسباب تنظيمية أو أخرى خاصة بها يدفع الفريق الثاني رواتبه حتى نهاية العقد.

In case the First Party decided to terminate this contract before the expiry of its specified term for organizational or other related causes, the First Party then, shall pay the Second Party the rest of salaries until the expiry date of the contract.

Again, the translator fails to translate the Arabic conditional particle because he used the past tense with the English conditional particle. He should have used the present simple with (in case) to achieve the same legal effect realized in the Arabic conditional sentence and thus, the functional equivalence could be achieved. The suggested translation is:

In case (if) the First Party decides to terminate this contract before the expiry of its specified term for organizational or other related causes, the

First Party then, shall pay the Second Party the rest of salaries until the expiry date of the contract.

Legal Text 4 :

في حال نشوب أي نزاع-لا قدر الله فان محكمة شمال عمان هي صاحبة الاختصاص المكاني في النظر في هذا النزاع.

In the unlikely event that a dispute arises, the Court of North Amman shall be the court of venue jurisdiction over such dispute.

The translator, in the legal text above, used the conditional phrase (if) instead of the particle (if) with the adverb (unlikely) to express uncertainty, but he contradicts himself in this case because he used the present tense of the verb (arises) to express certainty and the strong possibility of the conditional sentence. Therefore, he fails to render the conditional sentence of the legal text and does not convey the legal effect required in the translation of legal texts. He could avoid using the adverb (unlikely) and could use the past tense of the verb to express uncertainty and weak possibility. The suggested translation is:

If a dispute arose, the Court of North Amman shall be the court of venue jurisdiction over such dispute.

Legal Text 5 :

في حال تأخر الفريق الأول عن مواعيد الصيانة الدورية فإنه يتحمل الأضرار الناتجة عن ذلك ويتحمل غرامة مقدارها (-----) (-----)

In case the First Party falls behind the dates of scheduled maintenance, he shall be responsible for the arising damage; hence, he shall pay a penalty of (-----)

Here, in the legal text above, the First Party might fall behind the dates of scheduled maintenance, which means that this conditional sentence expresses uncertainty because the Second Party does not expect that the First Party will break the legal agreement with the Second Party. Therefore, the translator should have used the past simple of the verb (fell behind) to express uncertainty and not the present simple since the latter expresses certainty and strong possibility. The suggested translation will be:

In case (if) the First Party fell behind the dates of scheduled maintenance, he shall be responsible for

the arising damage; hence, he shall pay a penalty of (-----)

Legal Text 6:

تعتبر هذه الاتفاقية مفسوخة حكما في تاريخ انتهائها (ان نظمت لتكون محددة المدة)

This agreement shall be deemed invalid upon the date of expiry (if the agreement's term was specified)

The translator here has succeeded in conveying the conditional expression of the Arabic conditional sentence into English when he translates the Arabic conditional particle ان into (if) with the past simple of the verb be (was) since this Arabic conditional particle expresses uncertainty and weak possibility. Therefore, the translation is adequate since it has conveyed the same legal effect of the Arabic text to English. Furthermore, the translator has achieved the functional equivalence which seeks the intention of the SL writer.

Legal Text 7 :

إذا طلب الى الكاتب العدل أن ينظم سنداً أو يصدق أو يؤشر عليه واشتبه من محتوياته أو من الظروف المتعلقة به أنه قصد به الاحتيال فعليه أن يرفض تنظيمه أو التصديق عليه أو التأشير

If the Notary Public was asked to organize, authenticate or endorse a document, and he was suspicious that its contents or the conditions related to it indicate an intended fraud, then the Notary Public shall abstain from organizing, authenticating, or endorsing it

In the legal text above, the Arabic conditional particle إذا expresses certainty and strong possibility. However, the translator has rendered it into (if) with the past participle (was asked), which expresses uncertainty and weak possibility. Furthermore, the tense of the passive voice should be in the present in order to convey the same legal effect of the Arabic conditional sentence to English. In doing so, the translator could achieve functional equivalence. Therefore, the suggested translation is:

If the Notary Public is asked to organize, authenticate or endorse a document, and he was suspicious that its contents or the conditions related to it indicate an intended fraud, then the

Notary Public shall abstain from organizing, authenticating, or endorsing it.

Legal Text 8 :

إذا كان الكاتب العدل يجهل لغة أحد من ذوي العلاقة فيكلف مترجما بترجمة بياناته

If the Notary Public was unfamiliar with the language of any of the concerned persons, he should assign a translator to translate his statements

The Arabic text here uses the conditional particle إذا to express certainty and strong possibility in the conditional sentence. This means that the legislator of the Arabic legal text is sure that the Notary Public is usually unfamiliar with the language of any of the concerned persons. For this reason, he used the particle إذا which indicates that the conditional clause will no doubt occur. The translator also fails to render the conditional sentence when he used the past participle (was unfamiliar) instead of the present simple (is unfamiliar) to express certainty and strong possibility. The suggested translation is:

If the Notary Public is unfamiliar with the language of any of the concerned persons, he

should assign a translator to translate his statements

Legal Text 9 :

والعكس صحيح ان كان صاحب العلاقة يرغب بتصديق الوثيقة النظامية الأجنبية واعتمادها في الاردن.

The contrary is true if the concerned party wants to have a foreign legal document authenticated in Jordan.

In the Arabic text above, the conditional particle used is ان which indicates uncertainty and weak possibility. The translator uses the present tense with the conditional particle in English (if --- wants) which expresses certainty and strong possibility. Here, the translator fails to give the optimal equivalence of the conditional sentence. Thus, the suggested translation is:

The contrary is true if the concerned party wanted to have a foreign legal document authenticated in Jordan.

Legal Text 10 :

للفريق الأول أن يطلب في أي وقت انتهاء التعاقد إذا أساء الفريق الثاني استعمال الشقة أو قصر في القيام بالاحتياط الواجب للمحافظة عليها.

The First Party may demand termination of the contract at any time in case the Second Party misused the apartment, failed to take necessary precautions to keep the apartment in good condition.

The conditional particle used in the Arabic text is إذا which expresses certainty and strong possibility. Again, the translator fails to render the conditional sentence when he uses the past tense instead of the present tense since the latter is used with the conditional particle to express certainty and strong possibility in English. The suggested translation is:

The First Party may demand termination of the contract at any time in case the Second Party misuses the apartment, failed to take necessary precautions to keep the apartment in good condition.

5. Conclusions

The present study has come up with some conclusions. The conditional sentence is widely

used in Arab and English legal texts, especially in contracts. The study has shown that only the first and second types of if-conditional are used in legal texts, i.e., the third type is rarely used since the legal language deals with agreements, treaties, contracts, and so on, which have no room for hypothetical events. This validates the first hypothesis. the study has also shown that the conditional sentence in Arabic is realized by conditional particles whereas the conditional sentence in English is realized syntactically by the particle and tense. In other words, the conditional sentence in Arabic and English is realized differently. This has validated the second hypothesis.

The process of translation assessment has shown that the translator of the legal texts that have been subject to assessment has no linguistic knowledge about the difference between the use of the Arabic conditional particles اذا and ان, the former expresses certainty and strong possibility whereas the latter expresses uncertainty and weak possibility.

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