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## Adaptation in Legal Translation: The Case of the Moroccan Real Rights Law

*Nada Ramdani*

*Chouaib Doukkali University, El Jadida*



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### Abstract

This research paper examines the intricate process of translating the Moroccan Real Rights Law into French, shedding light on the complexities and challenges inherent in adapting legal texts across different legal systems and cultural contexts. Through the lens of the Skopos Theory, which emphasizes the importance of the target text's function in translation decisions, the research explores how adaptation strategies are employed to bridge the gap between the Moroccan legal system and the French legal system, ensuring clarity and comprehension.

By categorizing adaptation instances identified in the French translation of the Moroccan Real Rights Law into

three types - reference to a parallel target concept, paraphrase, and expansion - the study offers valuable insights into the effectiveness and limitations of each strategy in conveying the essence of the original text to a target audience unfamiliar with the Moroccan legal system. Ultimately, this research contributes to the growing body of knowledge in legal translation studies, providing a nuanced understanding of how adaptation functions as a crucial strategy in bridging linguistic and cultural gaps in the realm of legal translation.

**Keywords:** Adaptation, legal translation, Moroccan Real Rights Law, Skopos Theory.

**\* Introduction**

The ever-increasing interconnectedness of the globalized world has heightened the need for accurate and clear communication across different cultures and legal systems. Legal translation plays a crucial role in facilitating international trade, investment, and legal cooperation. However, legal translation is an exceedingly demanding task due to the cultural dependency on legal terminology. Legal concepts are not simply technical terms with an objective meaning. They are deeply embedded within a particular legal tradition and carry the weight of historical precedents, cultural assumptions, and established legal procedures. Translating legal documents from one legal system to another is like translating a poem, as the meaning goes beyond the literal words to delve into a deeper understanding of the underlying legal philosophy.

One crucial strategy to overcome this challenge is adaptation. It is a flexible translation strategy that goes beyond a strictly literal translation, aiming to convey the meaning and purpose of the source text for the target audience unfamiliar with the original legal system. While ensuring accuracy remains paramount, adaptation allows for the use of

alternative legal terminology, cultural context, and explanations to achieve clear comprehension for the target reader.

The present research paper investigates the application of adaptation in translating the Moroccan Real Rights Law into French. It begins by providing a comprehensive overview of this piece of Moroccan legislation. Following this, a review of existing literature will explore previous research on Moroccan legal translation. The Skopos Theory will then be introduced as a theoretical framework for analyzing translation, emphasizing the importance of purpose (skopos) in legal contexts. The research paper will then delve into the specific challenges inherent to legal translation and how adaptation strategies can be employed to address them effectively. Finally, the central research question guiding this investigation will be presented: How does adaptation function in translating the Moroccan Real Rights Law for a target audience unfamiliar with the Moroccan legal system? By analyzing specific examples of adaptation within the translated document, this research aims to offer valuable insights into the effectiveness and limitations of this strategy in legal translation.

## \* Overview of the Moroccan Real Rights Law

Before the French protectorate era, property disputes in Morocco were resolved following Islamic jurisprudence, particularly the Maliki School, supplemented by local customs. This remained the norm until the Madrid Agreement in 1881, which granted foreigners the right to own land in Morocco.

During the French protectorate, modern property laws were introduced to serve colonial objectives. This created a dual legal system, where modern courts handled conflicts while traditional courts continued to apply Maliki jurisprudence and local customs in areas outside modern court jurisdiction. The Real Estate Conservation Law of 1913, in effect until post-independence, was a significant legislation during this period.

After gaining independence, Morocco sought to regulate property ownership to drive economic and social development. However, the diversity of references posed challenges to unifying the real estate system. Property was classified into reserved, non-reserved, and private categories, including ancestral and Islamic endowment lands.

Urbanization's expansion prompted laws regulating urban planning for better real estate sector utilization. Dispute resolution continued based on Maliki principles alongside specific laws. The promulgation of the Real Rights Law was a pivotal legislative event, codifying Islamic Law provisions and introducing innovations. It recognized the importance of Maliki jurisprudence in the legal framework, referencing it where not codified.

The Moroccan Real Rights Law serves as the ideal case study for this research paper due to several reasons. Firstly, it stands out for its deeply rooted cultural specificity. Concepts and terminology within the Law are heavily influenced by Moroccan social and legal traditions, which are themselves shaped by Islamic law (Sharia). This fusion of cultural and religious elements necessitates significant adaptation to ensure comprehension for a non-Moroccan audience. As a result, the translated text likely employs a wide range of adaptation strategies, making it an ideal resource for analyzing how adaptation functions in legal translation. Furthermore, the official French translation of the Law is a relatively recent development, offering a fresh subject for investigation. Unlike

the well-studied Moroccan Family Law, the French translation of the Real Rights Law has not yet been extensively analyzed. This gap in existing research presents a valuable opportunity to explore the adaptation techniques employed in this specific legal document.

#### **\* Literature review**

While research on Moroccan legal translation is relatively limited compared to other legal systems, some valuable studies have explored this specific area. El Amari (2001) focused on conducting a comparative analysis involving three linguistic codes: Arabic, French, and English, which correspond to three distinct legal systems - the Moroccan, French, and British legal systems, respectively. The primary objective of this comparative analysis was to identify the inherent challenges encountered during the translation process of legal texts from one linguistic code to another, and to propose explanations for the mechanisms that govern this intricate process.

Through his study, El Amari highlighted that despite the linguistic proficiency and cultural knowledge of the translator, the translated text remains significantly influenced by the source culture. This observation underscores the complexity of legal

translation, where not only linguistic accuracy but also cultural nuances play a crucial role in ensuring the fidelity and accuracy of the translated text.

Similarly, Alsulaiman's (2013) study on the functional equivalence challenges in translating personal status documents delves into the complexities faced by translators, particularly in the context of the Moroccan Family Law. The study emphasizes the critical importance of understanding both the cultural and legal nuances embedded within the texts being translated. By drawing on the Skopos Theory, Alsulaiman highlights the necessity of aligning the translation's purpose with the intended goal, underscoring the need for translators to navigate these intricacies effectively.

Furthermore, the study sheds light on the significance of elucidating the translation's purpose, either through client direction or independent determination by the translator. By addressing the challenges posed by culturally-loaded terms and advocating for the use of functional equivalents in translating religious terminology, Alsulaiman underscores the meticulous approach required in achieving accurate and culturally sensitive translations. The author also calls for the explanation of culture-

dependant terms within the target text and advises against resorting to borrowing unless no other solution is available.

Boudlal and El Amari's study (2016) on the paradigm of equivalence in legal translation offers a complementary perspective, analyzing the norms and laws involved in translating legal texts, with a specific focus on the Moroccan legal system. The study sets a clear objective of assessing the extent to which these norms and laws contribute to achieving equivalence in legal translation, emphasizing the importance of cultural transfer between different legal systems. By analyzing excerpts from the Penal Code and the Family Law, the study aims to determine the compatibility of French translations with the Arabic originals and evaluate whether the translations encompass the target culture context effectively.

The study is situated within the framework of Descriptive Translation Studies, drawing on the system theories of Even-Zohar (2004) and Toury (1995) to uncover the principles and norms guiding the translation process. Through this theoretical lens, the authors investigate whether the tools provided by these theories ensure the transfer of specific norms such as acceptability and adequacy in legal

translation. The conclusion highlights the significant impact of norms like acceptability and adequacy on the legal value of translated texts, emphasizing how discrepancies between languages can weaken the status of legal translations.

El Amari and Marouane (2018) delve into the complexities of cross-legal system equivalence by conducting a comparative analysis of the English and French translations of the Moroccan Family Law. Based on Sarcevic's (1997; 2000) functional equivalence model, the authors identify four levels of equivalence, ranging from concept-to-concept equivalence to mere transcription of Arabic terms, and highlight the challenges faced in translating legal concepts.

The study's findings offer valuable insights into the translation strategies employed in both languages, revealing that both the French and English translations encounter similar equivalence issues and use comparable solutions. Despite the French translation's official legal status equal to the original text, the study suggests that this does not significantly impact the equivalence between the two translations. The conclusion emphasizes the necessity of a background in Islamic law to fully

grasp key concepts in the Moroccan Family Law.

Following this exploration of equivalence in legal translation, the study conducted by El Ghazi and Bnini (2019) provides a comprehensive exploration of the translation methods employed in legal translation, with a specific focus on a marriage contract translated from Arabic to English. The authors set the stage by highlighting the ongoing debate between literal and free translation methods in translation practices. They acknowledge the critical nature of legal translation, emphasizing the need for accuracy and precision to prevent potential legal ramifications due to mistakes or mistranslations.

In the conclusion, the authors summarize the key techniques and strategies used in legal translation, including literal translation, free translation, the functional approach, transliteration/transcription, loan translation, adaptation, and more. The analysis of the translated marriage contract reveals the translator's use of various methods to convey the specific terms and expressions accurately, balancing literalism with other techniques like translation by omission and adaptation when necessary. The conclusion underscores the importance of legal translators being well-versed

in the legal systems of both source and target languages to ensure a faithful and meaningful translation.

The interest in exploring adaptation as a translation strategy in the context of Moroccan legal discourse is a novel approach that diverges from previous research predominantly focused on the general notion of equivalence in legal translation. While existing studies have primarily centered on the concept of equivalence, particularly in the Arabic-French translation of legal texts in Morocco, the examination of adaptation represents a fresh perspective that fills a significant gap in the literature. Scholars have extensively discussed the challenges and complexities of achieving equivalence in legal translation, emphasizing the need for precise and culturally appropriate renditions of legal terminology. However, the specific analysis of adaptation as a strategic tool to navigate linguistic and cultural disparities in the translation of Moroccan legal texts offers a new dimension to the field of legal translation studies.

Building upon the foundation established by previous research on legal translation and the limited research on Moroccan legal translation, this study focuses

specifically on the application of adaptation strategies in the official French translation of the Moroccan Real Rights Law. By analyzing specific examples of adaptation within the translated document, this research aims to offer valuable insights into the effectiveness and limitations of adaptation in legal translation within the context of the Moroccan legal system.

### **\* Theoretical Framework: The Skopos Theory**

The study adopts a functional approach to translation, focusing on the Skopos Theory, to analyze how adaptation is used in translating the Moroccan Real Rights Law into French. The functional approach prioritizes the target text's function (skopos) as the key factor in making translation decisions. Introduced by Hans J. Vermeer in the 1970s, the Skopos Theory emphasizes that a translation should fulfill its intended function in the target context. The Skopos Rule states that a text should serve its purpose and be tailored to function effectively for its intended audience. This approach shifts the focus from equivalence and fidelity to achieving adequacy in translation, where the end goal justifies the means used. Different translation strategies may be employed based on the specific

purpose (Skopoi) of the translation, which is influenced by the expectations and norms of the target culture.

In addition to the Skopos Rule, a functionally adequate translation is evaluated based on two other rules: the coherence rule and the fidelity rule. The coherence rule emphasizes that the target text should align with the receiver's situation, ensuring it is coherent with their circumstances, knowledge, and needs (Reiss & Vermeer, 1984, p. 113). On the other hand, the fidelity rule requires coherence between the source text, the translator's interpretation of the information, and the information conveyed to the target text receivers. These rules play a crucial role in ensuring that the translation is not only accurate but also relevant and meaningful to the target audience (Reiss & Vermeer, 1984, p. 114).

The skopos, or purpose, of a translation is typically influenced by factors related to the target context, such as the function of the target text, the target audience, and the reception circumstances. However, in some cases, the skopos may also be determined by the function of the source text, particularly in legal texts. Advocates of the Skopos Theory assert its applicability to all text types, including legal translation, with

Vermeer extending its validity to legal contexts (1986, p. 34). According to Reiss and Vermeer (1984, 2003) the skopos in legal translation is to inform the target reader about the content of the law. Legal texts are categorized by Reiss (1977, 1989) as informative texts, characterized by the plain communication of facts and logical or referential language used to convey information as the primary focus of communication.

A legal text is classified as informative because it “does not intend to convince, to persuade or to appeal to the recipients to obey the law, rather, they are informed of the content of the law” (Reiss & Vermeer, 1984, p. 158). The translation of informative texts “should transmit the full referential or conceptual content of the source text [...]. (It) should be in ‘plain prose’, without redundancy and with the use of explicitation when required. “The semantic equivalence is most important for translating informative texts” (Reiss, 1977, pp. 108- 109). However, this categorization seems to overlook the fact that while legal texts are to some extent informative/descriptive (especially scholarly works and texts concerning legal doctrine in general), they have a primarily normative/ prescriptive function, as

they establish rules aiming to produce a legal effect.

Traditionally, in specialized translations like legal translation, the prevailing belief was that the translator's main objective was to convey the meaning or content of the source text with utmost accuracy. However, this perspective shifted with Vermeer's Skopos Theory, which emphasized the importance of the intended purpose of the translated text in shaping the translation strategy. This theory highlighted that a text can be translated differently based on its communicative purpose, diverging from the traditional focus on content-based translation approaches. The Skopos Theory introduced a new paradigm where the function of the translation takes precedence over a literal rendering of the source text (Sarcevic, 1997, p. 65).

Vermeer's Skopos Theory, which asserts that the meaning of a text is influenced by its cultural context and communicative situation, has faced criticism from scholars like Sarcevic (1997, pp. 18 – 19), Madsen (1997, pp. 17 – 26), and Nord (1997, pp. 109 – 122). Some special purpose translation theorists questioned the applicability of the Skopos Theory to specialized texts, arguing that these texts contain universal factual information



independent of cultural context, thus suggesting no shift in communicative function during translation. However, while this may hold true for exact sciences, it is not the case for humanities and social sciences, including law, where the Skopos Theory can offer a relevant framework for legal translation. The functionalist approach, deemed more suitable for legal translation, emphasizes the importance of determining the function of the translated text - whether it is an authoritative translation vested with legal force or a non-authoritative translation serving as an informational source. The translator must select appropriate translational techniques based on this determination. For an authenticated translation, legal equivalence is crucial, ensuring the translation is interpreted and applied by courts in the same manner as the original text to produce identical legal effects. In contrast, an informative translation should effectively convey the original legal concepts to the target readership to achieve its intended informative purpose

**\* Adaptation as a Cultural Domestication Strategy in Legal Translation**

Adaptation is a translation strategy used to address challenges arising from cultural differences by

creating an equivalence of situation. It involves replacing unfamiliar elements in the source text with familiar equivalents in the target language, aiming to enhance the target text's readability and familiarity to the target audience (Newmark, 1988; Venuti 1995, 2004). While adaptation can help achieve functional equivalence and overcome linguistic and cultural obstacles, it may introduce issues related to semantic and conceptual accuracy. Additionally, as a strategy focused on domestication, adaptation runs the risk of compromising authenticity and faithfulness, potentially limiting the target reader's exposure to other cultures. In the context of translating authoritative texts like legal documents, the implications of adaptation become more critical, as it could potentially alter the legal content itself.

The effectiveness of adaptation in legal translation, I would argue, depends on the translation's objective. In cases where legal texts are translated to be authoritative and must produce the same legal outcomes as the original texts, adapting the target text to align with the recipient language's legal system is crucial for ensuring equal legal effects. Conversely, when legal translations are conducted purely for informational purposes, adaptation

may fail to generate precise legal equivalents, particularly in languages with distinct legal traditions.

Adaptation in legal translation, viewed as a cultural domestication strategy, aligns well with the principles of the Skopos Theory. In this framework, the focus is on the intended function (skopos) of the target text in the target culture. When utilizing adaptation techniques in legal translation, the translator must prioritize the communicative goal of the translation to ensure the adapted text effectively serves its function within the legal context of the target language. By following the Skopos Rule, which emphasizes translating to enable the text to function appropriately in the target situation, legal translators can strategically employ adaptation to bridge cultural and legal differences between the source and target texts. This approach facilitates a nuanced and contextually relevant adaptation of legal documents, ensuring they fulfill their intended legal functions while preserving cultural authenticity and equivalence.

By adaptation in the current study, I mean the set of translation techniques designed to play the role of a “legal functional equivalent” which Sarcevic (1997, p. 263) defines as “a term designating a concept or

institution of the target legal system having the same function as a particular concept or institution of the source legal system” in case of the absence of such an identical legal functional equivalent. Such is often the case when the languages involved have different cultural backgrounds and legal systems.

#### \* **Data Analysis**

Following is an empirical contrastive analysis of the original Arabic items and their corresponding French translations, showcasing instances of adaptation. Specifically, each example is presented in both Arabic and French, accompanied by an English translation. Subsequently, a contrastive analysis is undertaken following these steps:-

- 1- Defining the selected original term/expression and its French equivalent (when feasible) to show how they are culture bound in their respective legal systems.
- 2- Indicating that the translation represents a case of adaptation (a case of target culture domestication with roughly equal function).
- 3- Identify levels of correspondence and levels of deviance in the semantic properties of the two terms/expressions.
- 4- Evaluating the translation decision by discussing whether translation

through adaptation represents the optimal choice, or whether the translator should have considered other more accurate options.

### (1) Adaptation type 1: Reference to a parallel target concept

#### Example 1: Article 285

Source Text	Target Text	English Translation
الاعتصار في الهبة	La rétractation au sujet de la donation	The revocation of a gift

The concept of هبة “hiba” (gift) in language denotes absolute donation and favor, whether it is in the form of money or otherwise (Hamoush, 2012, p. 2). However, in the jurisprudential terminology, the jurist Ibn Arafa (2014, p. 401) defined it as “a gift without recompense, transferring ownership of a beneficial thing to the recipient without compensation”. Therefore, a gift entails transferring ownership without compensation. If it is for the sake of God and the reward of the Hereafter, it is considered charity (sadaqah). If it is for the sake of the beneficiary without intending the reward of the Hereafter, then it is considered a gift. The legislator defined the gift in Article 372 of the Moroccan Real Rights Law as “the transfer of property or a real property right to the beneficiary during the lifetime of the donor, for the sake of the beneficiary, without compensation”.

The term الاعتصار “al-i'tasār” is considered a specific proprietary term used exclusively within the Maliki school of jurisprudence, distinct from other jurisprudential schools that use the term الرجوع في الهبة “ruju' fi al-hibah” (revocation of a gift) instead. الاعتصار is when the giver forcefully takes back the gift from the recipient without compensation. Its ruling is that it is not permissible, except for the father and mother. The father is allowed to revoke the gift from his child forcibly, regardless of the child's gender, age, wealth, intelligence, or whether the child acquired the gift or not.

Similarly, the mother is permitted to revoke the gift from her child, subject to two conditions: if she gifted it to a non-orphan minor and the child had not become an orphan at the time of revocation. If the child becomes an orphan, she cannot revoke it because orphanhood prevents the right to revoke according to the Maliki School. However, concerning an adult child, she has the absolute right to revoke the gift, regardless of whether the child is an orphan or not. The reason for the mother's inability to revoke in the case of an orphan minor is that the gift to the orphan is usually out of compassion and fear of loss for the orphan. This compassion and

closeness intended for the sake of God Almighty resemble the nature of charity. Thus, its ruling aligns with that of charity, which cannot be revoked (Hamoush, 2012, pp. 6-8).

In Moroccan law, the issue of retracting a gift refers to the provisions of Maliki jurisprudence. The Court of Cassation (previously known as the Supreme Council) has affirmed that retraction is permissible only for the father and mother, excluding other relatives. However, according to Article 342 of the Real Rights Law, the right to retract a gift is no longer exclusive to the parents but has become a right for every donor to revoke their gift. The said article states that “retraction refers to the donor revoking their gift and is permissible in the following two cases: Firstly, in what the father or mother gave to their minor or adult child. Secondly, if the donor becomes unable to provide for themselves or those they are obliged to support”

In French law, there is not an exact equivalent to the concept of *الاعتصار* as found in Islamic law, instead, there are circumstances where a gift might be invalidated rather than the donor having an explicit right to revoke it. The French legal term of “rétractation” represents a more general right or option available to a

party involved in a contract or agreement. It signifies the right to withdraw from a contract within a stipulated timeframe or under specific conditions.

The translation of *الاعتصار في الهبة* into French as “La rétractation au sujet de la donation” embodies a case of adaptation where a parallel concept is referenced to reflect a similar legal action in a different legal context. This adaptation represents a form of target culture domestication, aiming for functional equivalence. While *الاعتصار في الهبة* specifically denotes the act of retracting or revoking a gift in Islamic law, the translated phrase “La rétractation au sujet de la donation” in French captures a comparable notion within French law, depicting the revocation or retraction of a donation. The adaptation endeavors to align both concepts, aiming to convey a similar legal action despite differences in legal systems, achieving a roughly equal functional understanding in their respective legal contexts.

The two terms, *الاعتصار في الهبة* in Arabic and “La rétractation au sujet de la donation” in French, demonstrate a moderate level of semantic correspondence and functional similarity. Both terms encompass the idea of revoking or retracting a gift or donation within their legal

frameworks, aiming to address the possibility of undoing a previously given gift. However, there exist legal intricacies specific to Islamic law (*الاعتصار في الهبة*) that differ from those in French law (*La rétractation au sujet de la donation*). As discussed above, the legal frameworks of Islamic law and French law have different procedures, criteria, or conditions for revoking gifts or donations.

The translation decision to adapt *الاعتصار في الهبة* into “*La rétractation au sujet de la donation*” seems appropriate considering the absence of a direct equivalent in French law for the concept in Islamic law. Functionally speaking, the translation successfully achieved the informative skopos by conveying the general idea of reversing a legal action concerning gifts or donations, despite some nuances that might not have been entirely mirrored in the target language.

#### Example 2: Article 329

Source Text	Target Text	English Translation
قسمة المهايأة	Le partage provisionnel	The provisional division

The Kuwaiti Encyclopedia of Islamic Law defines *قسمة المهايأة* “*qismat al-muhāya'ah*” as follows:-

<sup>1</sup> The Kuwaiti Encyclopedia of Islamic Law, Ministry of Endowments and Islamic Affairs, 1984-2007, vol. 33, p. 249.

قسمة المنافع: وتسمى قسمة المهايأة، بتحقيق الهمزة وتسهيلها، وهي في أصل اللغة: مفاعلة من الهيئة قال في المصباح: تهاياً القوم تهايؤا من الهيئة، جعلوا لكل واحد هيئة معلومة والمراد النوبة. وهي شرعا: قسمة المنافع: لأن كل واحد فيها، إما أن يرضى بهيئة واحدة ويختارها، وإما أن الشريك الثاني ينتفع بالعين على الهيئة التي وقع بها انتفاع شريكه الأول<sup>1</sup>.

[ Translation: It is called the division of Al-Muhaya'ah, with the hamza pronounced clearly and lightly, and in its original linguistic meaning, it is based on "hi'ah". As stated in Al-Misbah: “The people practiced ‘tahāya'u’ from ‘al-hi'ah’, meaning they assigned a specific and well-known form of use to each person, which essentially refers to turns”. And in Islamic law, it is the division of benefits, because in it, each person either chooses and agrees to a single form of use, or the second partner uses the property in the same way that the first partner used it due to their respective “hi'ah”].

Islamic scholars have agreed that the place of division in *المهايأة* is the benefits, not the assets themselves. These benefits can be found in both assets that are divisible and assets that

are not divisible. Therefore, *المهابة* can be applied to a small house that cannot be divided, just as it can be applied to a large house that can be divided. Assets do not need to be adapted for division because they can be divided in their own right, except in the case of an asset that cannot be divided due to difficulty or excessive harm from dividing it. In this case, *المهابة* is permissible because it is difficult to divide the asset. It is also stipulated that the asset remains with the usufruct. Therefore, *المهابة* is not permissible for assets such as fruit of a tree or milk of sheep because they are remaining assets that can be divided when they are obtained. Therefore, there is no need for adaptation.

*المهابة* can be classified into different types based on various factors. Here are two types of *المهابة* based on its nature:-

1- Temporal Al-Muhaya'ah: In this type of Al-Muhaya'ah, each partner benefits from the asset for a period of time equal to that of the other partner. For example, they may agree that one partner will live in the house or cultivate the land for a certain period of time, and the other partner will do the same for a similar, shorter, or longer period of time.

2- Spatial Al-Muhaya'ah: In this type of Al-Muhaya'ah, each partner is

allocated a specific portion of the shared property according to their share. They then benefit from the property simultaneously. For example, one partner may use one part of the house for a certain period of time, while the other partner uses another part of the house for the same period of time.

The rules of *المهابة* are subject to the rules of rent in Islamic Law, as adopted by the Moroccan Real Rights Law in Article 329 above. Moreover, *المهابة* does not turn into a final division, no matter how long its duration.

As for the French target concept, "le partage provisionnel", it refers to a legal operation that allows co-owners to enjoy undivided property before the final division. It does not terminate the co-ownership, but temporarily assigns the enjoyment of certain assets to each co-owner.

The translation of *قسمة المهابة* as "le partage provisionnel" also exemplifies adaptation through reference to a parallel target concept. It leverages a conceptually similar term within the French legal framework. Both *قسمة المهابة* and "le partage provisionnel" share the key function of allowing enjoyment of undivided property by co-owners, even though they differ in specific details or cultural context. This adaptation prioritizes

clear understanding for the target audience by using a familiar concept within their legal system.

The semantic and functional properties of *قسمة المهايأة* and “le partage provisionnel” exhibit both levels of correspondence and deviance. Similarities between the two concepts include their shared objective of addressing the division of jointly owned assets when physical division proves impractical or undesirable. Both concepts operate by dividing the profits generated by the assets rather than the assets themselves, thereby preserving the ownership structure. Additionally, both *قسمة المهايأة* and “le partage provisionnel” recognize the need for a temporary arrangement, preventing a final division regardless of the duration. However, some differences emerge in the application and scope of each concept. *قسمة المهايأة* predominantly applies to non-consumable assets that are difficult or harmful to physically divide, excluding readily divisible assets like fruits and milk. In contrast, “le partage provisionnel” is more versatile, extending its application to both consumable and non-consumable assets, even when physical divisibility is feasible, as long as a definitive partition is deemed complex, time-consuming, or undesirable. Moreover,

while *قسمة المهايأة* is governed by Islamic Law, “le partage provisionnel” operates under the regulations outlined in articles 815 to 842 of the French Civil Code, highlighting differences in the legal frameworks that underpin these concepts.

The decision to translate *قسمة المهايأة* into French as “le partage provisionnel” demonstrates an adaptation that successfully achieves its informative skopos. Direct translation limitations, arising from the nuanced meanings of the Arabic term, are overcome by the adoption of “le partage provisionnel”. While not being an exact match, this adaptation maintains functional equivalence, as both concepts allow co-owners temporary enjoyment of undivided property without dissolving co-ownership. Considering the cultural and legal context, the Islamic roots of *قسمة المهايأة* lack a direct equivalent in French law, making “le partage provisionnel” a suitable alternative that aligns with the French legal framework. The use of “le partage provisionnel” enhances clarity and understandability for the target audience, eliminating the need for extensive explanations and ensuring accessibility to the concept. In essence, the adaptation successfully conveys the essential aspects of *قسمة المهايأة* to the

target audience, demonstrating a well-informed translation decision.

## (2) Adaptation Type 2: Paraphrase/semantic modelling

### Example 3: Article 138

Source Text	Target Text	English Translation
حق الهواء والتعليية	Le droit de houa et d'exhaussement	The right of air and overbuilding

“حق الهواء والتعليية *haqq al-hawāa' wa al-taa'liyah*” (the right of air and overbuilding) is one of the customary Islamic rights. Professor Ibn Maajouz (1999, p. 67) defined it as “the right of ownership over a registered or unregistered property, whether it is vacant land or has a building on it, that extends to the air above that property”.

The legislator defined it, based on Article 138 of the Real Rights Law, as: “A real right that consists of owning a specific part of the vertical space located above an existing building owned by another person, in order to build a structure on it in accordance with the laws and regulations”. It is noteworthy that the Real Rights Law, in its definition of the right of air, abolished the image on which the right of air used to be based, which is the free space, and sufficed with the second image, which is the vertical air that rises above a building actually standing.

It is also worth mentioning that the right to air and overbuilding is one of the original property rights with

legislative roots in Islamic Law, particularly in the Maliki School. The credit for regulating the provisions of the right to air is attributed to Maliki jurisprudence, as the Maliki and Hanbali schools have permitted the sale and disposal of air through various means.

In French law, there exists a concept similar to *حق الهواء والتعليية*, but the crucial difference lies in ownership. The “droit de surélévation”, or the right of overbuilding, generally grants the building owner the authority to construct additional floors on their property. On the other hand, *حق الهواء والتعليية* creates a distinct ownership right for the airspace, allowing the potential for someone else to build in that space above the existing property.

The translation of *حق الهواء والتعليية* into French as “le droit de houa et d'exhaussement” showcases an adaptation through paraphrase following a hybrid approach. Indeed, the translator employs a two-pronged approach: One part, “houa”, directly mimics the Arabic term for “air” through transliteration, preserving its specific connotation within the context of *حق الهواء والتعليية*. The other part, “exhaussement”, opts for a straightforward translation of *التعليية* (overbuilding or raising structures



vertically), providing clarity on the action involved.

In comparing the semantic properties of the Arabic term *حق الهواء والتعلية* and its French translation “le droit de houa et d'exhaussement”, we can identify both levels of correspondence and levels of deviance. At the level of correspondence, both terms maintain the overarching legal concept of ownership rights related to airspace and overbuilding. Both *حق الهواء والتعلية* and “le droit de houa et d'exhaussement” convey the idea of possessing a right to the space above a property for construction purposes. However, at the level of deviance, we observe differences in linguistic expression and specificity. The Arabic term uses *هواء* (air) to encompass the airspace, while the French term introduces the calque “houa” to maintain this specificity. Additionally, while *التعلية* refers specifically to overbuilding or raising structures vertically, the French translation uses “exhaussement”, which carries a similar meaning but may not capture the exact legal nuances of the Arabic term.

While the translation of *حق الهواء والتعلية* by “droit de houa et d'exhaussement” captures the core concept of airspace rights for construction, it presents a case of both

commendable effort and room for improvement. By incorporating calque alongside direct translation, the translator achieves a balanced adaptation that captures the intricacies of the original concept while making it accessible to the target audience in French-speaking legal contexts. Nevertheless, employing “droit de houa et de surélévation” would offer a more precise and consistent translation than “droit de houa et d'exhaussement”. This preference arises from the fact that “surélévation” (overbuilding) is the established term used in French law, particularly in Law No. 65-557 of July 10, 1965, amended and modified in 2013 and 2014, notably by the ALUR law, for the right to add additional floors to an existing building.

### (3) Adaptation type 3: Expansion

#### Example 4: Article 3

Source Text	Target Text	English Translation
الاستصحاب	...la continuité de la situation antérieure dudit bien	...the continuity of the previous situation of the said property.

Linguistically speaking, the term *استصحاب* "istishāb" is defined as follows in the "Al-Misbah Al-Munir" dictionary:-

" الاستصحاب لغة: طلب الصحة، يقال: استصحبه إذا دعاه إلى الصحة ولازمه، فكل شيء لازم شيئاً آخر فقد استصحبه، فتقول استصحبت الكتاب حملته، واستصحبت

الحال إذا تمسكت بما كان ثابتا كأنك جعلت تلك الحالة مصاحبة غير مفارقة<sup>2</sup>.

[ Translation: “Istishab” in the language means seeking companionship. It is said: "استصحابه" (istaṣḥabah) when he invites someone to be his companion and stays with him. So, anything that accompanies something else is said to have been "istiṣḥabah" (be its companion). For example, you can say "استصحب الكتاب" (istaṣḥabtu al-kitāb) to mean "I carried the book with me". You can also say "استصحب الحال" (istaṣḥabtu al-ḥāl) to mean "I held onto the existing state of affairs", as if you made that state a constant companion that never leaves].

As for the technical meaning of “istishab” in Islamic law, Dr. Ibrahim Atiya Mahmoud Qandil defines it in his book “Istishab Al-Hal Wa-Madaa Ta’thirihi Fi Al-Furu’ Al-Fiqhiyyah” (1994, p. 12) as follows:-

"الحكم على الشيء بما كان ثابتا له أو منفيًا عنه لعدم قيام الدليل على خلافه بعد بذل الجهد في البحث عن هذا الدليل".

[ Translation: “Istishab” is the act of judging a thing based on what was previously established for it, whether it be a positive or negative

attribute, in the absence of any evidence to the contrary, after exerting all efforts to find such evidence”].

Indeed, الاستصحاب is one of the secondary evidences in the science of Usul al-Fiqh (The Science of the Principles of Islamic Jurisprudence). It signifies the presumption that existing legal rulings persist until evidence proves a change. It involves maintaining established legal positions in the absence of contradicting evidence, relying on either legal or rational proofs. For instance, if uncertainty arises about the validity of ablution (wudu’), الاستصحاب dictates adherence to the presumption of continuity until evidence of nullification surfaces. الاستصحاب is considered a last resort for Islamic jurists when evidence is lacking or inconclusive, ensuring the continuity of existing legal rulings without establishing new ones.

In the context of the present example taken from the Moroccan Real Rights Law, بيينة الاستصحاب “bayyinat al-istishāb” roughly translates to (the evidence of presumption), and it means the argument that proves the continuation

<sup>2</sup> Al-Misbah Al-Munir Dictionary, Al-Fayyumi. A., 1985, vol. 1, p. 454.

of the state of something as it was, such as:-

**1- Possession:** A person's possession of something indicates their ownership of it, unless proven otherwise.

**2- Testimony:** Witness testimony that something was owned by a particular person at an earlier time.

The principle here is that evidence of transfer is stronger than evidence of presumption, because it indicates a new event (transfer of ownership) while evidence of presumption indicates the continuation of an existing state. Suppose that two parties are disputing the ownership of a property, if one party presents a deed that shows that they purchased the property from the previous owner, this evidence will be given precedence over the evidence of the other party who has been living on the property for many years and paying taxes on it.

The translation of *الاستصحاب* as “la continuité de la situation antérieure dudit bien” (continuity of the previous situation of the said property) exemplifies adaptation through expansion. This single Arabic term with specific Islamic legal meaning is translated into a whole French phrase that unpacks its key components: “la continuité” (continuity), “de la situation antérieure” (of the previous situation), and “dudit bien” (of the said

property). This adaptation becomes necessary for conveying the nuanced meaning accurately while catering to a different audience's understanding.

In the translation of *الاستصحاب* as “la continuité de la situation antérieure dudit bien” into French, there is a high level of correspondence in capturing the original legal concept, with the only observed deviance being in the loss of conciseness. The French translation provides a more explicit and detailed interpretation by emphasizing the continuity of the previous situation of the property, which introduces a slight expansion in linguistic expression. In this sense, the perceived loss of conciseness is rather not a deviance, but a calculated choice to enhance accessibility and precision.

Building upon the translation analysis of *الاستصحاب* into “la continuité de la situation antérieure dudit bien” in French, it is evident that the translation achieves its informative skopos admirably. The high level of correspondence ensures the preservation of the original legal concept, and the decision to trade conciseness for explicitness is justified, as the French translation provides a more detailed interpretation, emphasizing the continuity of the property's prior situation.

### Example 5: Article 265

Source Text	Target Text	English Translation
حد الإطعام	...lorsque les arbres produiront leurs fruits.	...upon the trees bearing fruit.

The expression *حد الإطعام* “hadd al-it'aām” is literally translated as “the limit of feeding”. In the context of the Islamic/Moroccan legal contract of mogharassa, it is a jurisprudential expression found in several fiqh (Islamic jurisprudence) books, including “Jawahir Al-Durar fi Hall Alfaz Al-Mukhtasar” by Tattati (2014), “Al-Sharh Al-Kabir by Sheikh Al-Dardir with Hashiyat Al-Dasuqi” by Al-Dasuqi (1911), and “Hashiyat Al-Sawi 'ala Al-Sharh al-Saghir” by Al-Sawi (1826). Alongside various other fiqh books, they collectively define *حد الإطعام* as the time in the life of the tree when it becomes fruitful. Additionally, these sources specify that this occurs within the first five years of the tree's life.

The translation of the Islamic jurisprudential expression *حد الإطعام* into French as “lorsque les arbres produiront leurs fruits” (when the trees produce their fruits) can be viewed as a case of adaptation through expansion. While technically meaning “feeding limit”, directly translating it loses legal context and naturalness in French. Instead, the translation expands upon the core idea by specifying “fruit production”, which captures the

intended meaning and function within the mogharassa contract. This expansion uses the idiomatic phrase “produiront leurs fruits” to ensure natural understanding for target readers.

The translation of the present example demonstrates a high level of correspondence in terms of semantic and functional properties. Semantically, the translation accurately conveys the temporal condition indicated by *حد الإطعام*, specifying the point in the tree's life when it becomes fruitful. Functionally, both expressions serve the same legal and contractual purpose within the Moroccan context of the mogharassa contract, clarifying the moment when the planter becomes entitled to a specified share of the land and trees. However, there is a slight level of deviance in the translation's expansion. The Arabic expression uses a nominal structure, relying on the noun *حد* (limit) to carry the meaning of maturity. The French phrase, on the other hand, adopts a verbal structure with “produiront” explicitly indicating the action of fruit production. Moreover, the Arabic expression carries a nuanced religious reference to Islamic jurisprudence, while the French phrase focuses solely on the biological aspect of fruit production. But despite this

expansion, the overall correspondence in meaning and functionality remains intact, ensuring effective communication of the legal concept in the target language.

Overall, the translation decision to use “lorsque les arbres produiront leurs fruits” for حد الإطعام has effectively achieved its informative skopos by emphasizing the specific point when the trees bear fruit, aligning with the context of the mogharassa contract in the Moroccan legal text. However, considering that this is a legal translation intended for a technical audience, a more consistent choice would have been to use “l'âge de fructification” especially since the translator employed this term for the same expression in another instance within the same legal text. While both translations convey the essential meaning accurately, maintaining consistency in the choice of terminology contributes to a more polished and professional legal translation. Therefore, the suggested alternative translation would be : “La mogharassa est un contrat en vertu duquel un propriétaire laisse son terrain à un tiers pour y planter, à ses frais, des arbres contre une proportion déterminée du terrain et des arbres à laquelle aura droit le planteur lorsque

les arbres atteignent l'âge de fructification”.

#### **\* Conclusion**

Departing from the premise that legal translation involves not only linguistic transfer but also the transfer between distinct legal systems with diverse historical and cultural backgrounds, this study has investigated the complexities of adaptation in the French translation of the Moroccan Real Rights Law. Through the theoretical lens of the Skopos Theory (Vermeer and Reiss, 1984, 2013; Vermeer, 1989), the study has meticulously examined the types of adaptation employed in translating this legal text and has assessed the degree to which such adaptation has achieved semantic equivalence with the original legal concepts.

The key findings and insights gained from the analysis of adaptation in the translation of the Moroccan Real Rights Law can be summarized as follows:-

1- Translating Moroccan legal texts into French presents challenges in achieving lexical equivalence, navigating cultural disparities, and ensuring accuracy in conveying legal concepts. The complexity of cross-legal system equivalence underscores the need for a deep understanding of both legal systems, emphasizing the

importance of employing appropriate translation methods and strategies.

2- The application of the Skopos Theory to the translation of legal texts is particularly relevant precisely because law is not an exact science. While disciplines like mathematics have fixed universal meanings, legal language is deeply influenced by cultural and historical contexts. The Skopos Theory emphasizes that a text's meaning is determined by its intended function and communicative situation, making it valuable for legal translation.

3- When the translation is meant to be authenticated, the primary goal is achieving the same legal effect in the target legal system, even if this requires translating the source concept with a semantically different target concept. On the other hand, when the translation is intended for informative purposes, as exemplified in the current study, the primary goal (skopos) shifts towards accurately and clearly communicating the meaning of the source concept as it stands

4- Adaptation in legal translation serves as a communicative strategy aimed at enhancing the intelligibility of the target text for the target reader, particularly when dealing with culturally bound concepts. In the context of legal translation, adaptation prioritizes the use of target culture-

specific and localized equivalents over foreign or unfamiliar terms.

5- Three types of adaptation were used in translating the Moroccan Real Rights Law into French: reference to parallel target concepts, paraphrase, and expansion.

6- Adaptation has been generally successful in accurately transferring culturally bound legal concepts from the source legal system and culture into the target legal system and culture.

7- Among the three identified types of adaptation, the type of “reference to a parallel target legal concept” is less effective in achieving the informative skopos of the translation compared to the other two types. While referencing a parallel target legal concept does provide some level of equivalence between the source and target texts, it does not always fully convey the specific legal nuances and implications of the original concept.

8- When it is stated that the aforementioned type of adaptation “has successfully achieved its informative skopos”, this assessment is made in accordance with the definition of adaptation put forth by Vinay and Darbelnet (1958/1995). In this context, the focus is on replacing cultural references or concepts specific to the source language with elements that are familiar and comprehensible to the

target audience, thereby ensuring clear understanding.

9- The other types of adaptation involve more extensive modifications and explanations and thus are more effective in enhancing the informative aspect of the translation.

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