

# The letter of the law

*Why do lawyers write the way they do? Do we need 'doublets' and 'triplets' in contracts? Richard Lackey decided to find out more about this complex world*



Richard Lackey MITI has been translating from Spanish and French to English since 2011, now as Contractually Speaking, specialising in legal and business translations. You can contact him at richard@contractually-speaking.co.uk or via Twitter, @ContractSpeak.

On 6 March, I teamed up with fellow legal translator Jenni Radford to attend a one-day drafting course at University College London aimed specifically at lawyers working with contracts – an ideal opportunity to find out more about this complex world.

Our group of 12 was led by visiting lecturer Mark Anderson, who is a leading author, lecturer and practitioner in contract and intellectual property law. We were promised a detailed rundown of each part of a contract, and the small group setting also offered us the chance to ask questions and discuss approaches.

We started the morning on warranties, liabilities and indemnities. These sections essentially cover what happens when things go wrong; and in recent years they seem to be getting longer and more complex. The afternoon began with a workshop to dissect warranty clauses, and then ran through a selection of boilerplate clauses and key points to consider.

## Hitting the register

The course focused on creating purposeful content, but also highlighted some issues about drafting language. One question on my mind was the register. It might be a secondary priority for others, but it is a key area where translators must make tough choices. Should you opt for a plain legal English approach? Should your Spanish contract be transposed into an equally archaic and convoluted English version? Can and should sentences be recast

in order to split them into more manageable chunks?

I learned that register is likely to differ across different types of agreements and across different sections too. Relational agreements (where the parties want to create an ongoing business relationship) are likely to be simpler to understand, particularly where the stakeholders are not lawyers (eg spin-offs from university research projects). On the other hand, one-off transactional contracts serve a narrower purpose so do not need to use plain English to build trust.

*Translators are not the only ones to get worked up over words. "Shall" is a hotly debated word in contract-speak*

## The war of the words

You'll be pleased to hear that translators are not the only ones to get worked up over words. 'Shall' is a hotly debated word in contract-speak, and it came up in discussion. In fact all but one lawyer in the room preferred 'shall' to 'must' or 'will' for language of obligation, and few were keen on recasting to omit it (as some advocates suggest). Interestingly, we learned that 'must' was put forward in the 1980s as a possible solution, but didn't catch on. 'Should' was another alternative, but creates an often undesirable level of doubt. Mark

Anderson's verdict? It doesn't matter too much, as long as you are consistent and the rest of the contract protects you.

The course also highlighted the context of contract language. Although drafters attempt to negotiate the best terms for their clients, many people pointed out that in most cases the smaller party has limited power to change the wording. Case law also plays an essential part and is one reason why legal language is constantly evolving (and why we must stay abreast of developments). Furthermore, legislation changes language usage, such as through the 1999 Civil Procedure Rules ('plaintiff' to 'claimant', less Latin). But lawyers can't always rely solely on the courts' using proper terminology so they sometimes slip in 'safety valves' to protect their interests, and these can be particularly tricky to navigate. For instance, what's the purpose of doublets or triplets such as 'X shall indemnify, hold harmless and defend Y'? Judges (particularly in the US) can sometimes be encouraged to rule cases on new slight shades of meaning that then stick. Simplifying a contract could potentially open you up to unnecessary increased liability. Doublets can sometimes be considered safer.

UCL is running another drafting course in November with plain English advocate Ken Adams, who is the author of *A Manual of Style for Contract Drafting* and a previous contributor to *ITI Bulletin*. I plan to be there and I hope other translators will join me so we can take advantage of the cheaper group tickets.

The question of register is still on my mind, as one of the few areas the translator consciously manipulates in their interpretation of a text. Together with a fellow translator, Maeva Cifuentes, I'm developing a research project to investigate the matter and present at a conference later in the year. What are your thoughts on register? Please do get in touch! 