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Aleksandra Matulewska¹

METHODS OF EXPRESSING DEONTIC MODALITY IN ENGLISH AND POLISH STATUTORY INSTRUMENTS IN THE ASPECT OF TRANSLATION

Abstract: This paper deals with the methods of expressing deontic modality in statutory instruments. The author analyzes three pure meanings that is to say; (i) obligation, (ii) prohibition and (iii) permission. Within those three meanings three sub-meanings are distinguished. Within the meaning of obligation, the author distinguishes the following sub-meanings: (i) unlimited duty, (ii) conditional duty, and (iii) external duty. Within the meaning of prohibition the following three sub-meanings may be distinguished: (i) unlimited prohibition, (ii) conditional prohibition, and (iii) external prohibition. Within the meaning of permission we have distinguished three sub-meanings: (i) unlimited permission, (ii) conditional permission, and (iii) external permission. The exponents of deontic modality are presented in the tables and compared in order to show potential translation equivalents.

Introduction

This paper deals with the methods of expressing deontic modality that is to say obligation, prohibition and permission in Polish and English statutory instruments.

Purpose of research

The purpose of this research is to provide answers to questions related to possible translation equivalents for pure modal meanings and sub-meanings of deontic modality in English and Polish. The author presents typical lexical and grammatical means of expressing obligation, prohibition and permission in English and Polish statutory instruments.

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Analysed corpora

The author has analysed the following Polish statutory instruments: (i) Polish Civil Code of 1964, (ii) Polish Code of Civil Procedure of 1964 as amended, (iii) Polish Code of Labour, (iv) Polish Code of Commercial Companies. The Polish corpora consisted of approximately 1000 standard pages altogether.

The English corpora included: Louisiana Civil Code (1275 pages), Uniform Commercial Code (about 503 pages), Childcare Act 2006 (about 67 pages), and Law of Property Act 1925 (about 32 pages).

Method used

The research method utilized in this study included the analysis of parallel documents of statutory instruments in Polish and English (British and American ones).

Deontic modality in statutory instruments – pure modal meanings

Deontic modality ‘odnosi się do świata norm i ocen i dotyczy działań człowieka, które z woli indywidualnego lub zbiorowego sprawcy są mu nakazane lub dozwolone [refers to the world of norms and judgments and it relates to the actions of people which at the will of an individual or collective actor are imposed on him or permitted to be performed by him]’ (Jędrzejko 1987: 19).

Having analyzed the corpora in Polish and English we may distinguish three pure modal meanings present in statutory instruments:

- (i) obligation,
- (ii) prohibition, and
- (iii) permission.

Within these three pure modal meanings, we may distinguish at least three modal sub-meanings.

Statutory obligation

Statutory obligation is ‘an obligation – whether to pay money, perform certain acts, or discharge duties – that is created by or arises out of a statute,

rather than based on an independent contractual or legal relationship' (Black's Law Dictionary 2004:1105).

As it has already been mentioned within the meaning of obligation, we can distinguish the following sub-meanings:

(i) *Unlimited duty* understood here as an obligation to perform which is binding no matter the situation.

(ii) *Conditional duty* which is understood here as an obligation to perform only in specific circumstances.

(iii) *External duty* that is an obligation to perform imposed on the actor not by the legislator but by other factors such as contracts, agreements, etc.

Due to grammatical reasons, we may distinguish different methods of expressing deontic modality with the actor revealed and not revealed in the sentence surface structure. The fact that the actor is not revealed in the sentence structure does not mean that he is not known. As a rule, he may be identified via the context. Additionally, in the case of Polish utterances in which the actor is not revealed in the sentence structure, we may often encounter impersonal structures, where the English passive voice is usually used.

In order to present the results of the research in a succinct way, the methods of expressing pure modal meanings and sub-meanings have been gathered in the tables below. The words and expressions given in inverted commas next to Polish exponents are literal translations and are presented here to show potential translation problems which may occur when they are translated literally by translation trainees. On the other hand, English and Polish expressions given without inverted commas may be treated as dynamic equivalents for the purpose of legal translation of exponents of deontic modality in statutory instruments.

Obligation

(i) Unlimited duty

<i>English</i>	<i>Polish</i>
<i>actor revealed</i>	
(i) Shall (ii) Is obliged to (iii) (although <i>must</i> and <i>is required</i> to are possible they are very rare)	(i) Jest obowiązany 'is obliged' (ii) Wymaga 'requires' (iii) Powinien 'should' (iv) Ma obowiązek 'has a duty' (v) Należy do obowiązków 'is the duty of' (vi) Present tense indicative (<i>including</i> : obowiązek ciąży/obciąża 'the duty burdens sb') (vii) Future tense indicative
<i>actor not revealed</i>	
(i) Shall (ii) Must (iii) Is binding (iv) Binds (v) is to be done	(i) Jest wymagane 'is required' (ii) Wymaga 'requires' (iii) Musi 'must' + passive voice (iv) Należy + infinitive and Należy się 'should' (v) Powinien 'should' (vi) Present tense indicative (<i>including</i> obowiązek obejmuje 'the duty includes') (vii) Future tense indicative

(ii) Conditional duty

<i>English</i>	<i>Polish</i>
<i>actor revealed</i>	
(i) Shall (ii) Must (iii) Is obliged to (iv) Is to be done by (v) Is required to (vi) x is bound by (vii) y is binding for x (viii) y binds x	(i) Jest obowiązany 'is obliged' (ii) Wymaga 'requires' (iii) Należy do '....' (iv) Powinien 'should' (v) Ma obowiązek 'has a duty' (vi) Present tense indicative (<i>including</i> : obowiązek ciąży/obciąża 'the duty burdens sb', obowiązek spoczywa 'the duty burdens sb') (vii) Future tense indicative
<i>actor not revealed</i>	
(i) Shall (ii) Must (iii) Is to be done by (iv) Is required to be done	(i) Wymaga 'requires' (ii) Musi 'must' + passive voice or Musi + infinitive mieć 'have' (iii) Należy 'should' and Należy się 'should' (iv) Present tense indicative (<i>including</i> : obowiązek obejmuje 'the duty includes') (v) Future tense indicative

(iii) External duty

<i>English</i>	<i>Polish</i>
actor revealed	
(i) is to be to (ii) is obliged to	(i) jest zobowiązany 'is obliged to'
actor not revealed	
no examples found	no examples found

Although we may encounter the same methods of expressing deontic modality in both British and American statutes, some of these methods are more often used in American statutes while others are common in British statutes. In the analyzed English material, the following exponents of deontic modality have been found: (i) *shall*; (ii) *is obliged to*; (iii) *must* and (iv) *is required to*. The expression *is required to* is the rarest. The most frequently used one is still the modal verb *shall*, and the second most frequent is *must*. It is worth noting that recently *must* is becoming more popular in statutory instruments, especially in the USA. This is most likely due to the recommendations included in the ABC rule and the US Code Construction Act, Chapter 311, Government Code. The ABC rule has been advocated by some American, British and Canadian drafters who have pointed out that *shall* is used in multiple meanings making the construction of legal documents, including statutes, very difficult and disputable. This is especially true in that some of those meanings are not deontic, but rather epistemic (as we would formulate it from the linguistic point of view). The US Code Construction Act, Chapter 311, Government Code, on the other hand, gives specific directions as to the usage of modals and their meanings:

'Sec. 311.016. "MAY," "SHALL," "MUST," ETC. The following constructions apply unless the context in which the word or phrase appears necessarily requires a different construction or unless a different construction is expressly provided by statute:

(1) "May" creates discretionary authority or grants permission or a power.

(2) "Shall" imposes a duty.

(3) "Must" creates or recognizes a condition precedent.

(4) "Is entitled to" creates or recognizes a right.

(5) "May not" imposes a prohibition and is synonymous with "shall not."

(6) "Is not entitled to" negates a right.

(7) “Is not required to” negates a duty or condition precedent?

There are also passive structures (*shall be done by sb*) or structures with adjectives (*shall be exercisable, shall be admissible, etc*) which are used when the agent on whom the duty is imposed is not the subject of the sentence but is given after the predicate.

We may also encounter deontic expressions such as: *is to be done, is binding, is bound, binds*. The deontic expressions *is obliged to, is required to* do not occur in unconditional sentences without revealing the agent in the sentence surface structure.

In the analyzed Polish material, the deontic meaning of the obligation may be expressed in a descriptive utterance without any exponent of deontic modality, that is to say (i) present tense indicative and (ii) future tense indicative. The function of the deontic exponent is realized with indicative mood by the non-modal finite or non-finite verb in present or future tense. The normative character of such utterances results from the pragmatic situation. In other words, the statutory instrument is obligatory in its nature. It should be noted here that in the majority of cases the semantic equivalence occurs among the units bearing the modal meaning of obligation. Sometimes there are strengthened structures with present tense indicative such as the present tense indicative + noun *obowiązek* ‘duty, obligation’ e.g. *obowiązek cięży/obciąża* ‘the duty burdens sb.’ (Kaczmarek, Matulewska, Wiatrowski 2008).

The deontic meaning of the duty of the person obliged to perform it not revealed in the surface structure may be expressed by: (i) *jest wymagane* ‘is required’; (ii) *wymaga* ‘requires’; (iii) *musi* ‘must’ + passive voice; (iv) *należy* + infinitive and *należy się* ‘should’; (v) *powinien* ‘should’; (v) present tense indicative; (vi) future tense indicative. It should be stressed here that the most frequent exponents of the imposed duty are impersonal, non-deontic verbs in present or future tense, and impersonal modals or modal expressions of the grammatical structure which does not reveal the person on which the duty is imposed in the surface structure. We may also encounter strengthened structures with present tense indicative and the noun *obowiązek* ‘duty, obligation’ e.g. *obowiązek obejmuje* ‘the duty includes sb.’

What is interesting is the fact that the most typical exponent of obligation in colloquial and literary language (*musieć*) has not occurred in the whole corpus under scrutiny despite the fact that it is enumerated as one of the methods of expressing deontic modality by the drafters of statutory instruments and lawyers (Wronkowska, Zieliński 1993, 1997).

Statutory Prohibition

Prohibition is defined as ‘a duty to refrain from acting’ (Garner 2001:609). That is to say it is an obligation not to do something.

Within the meaning of **Prohibition** the following three sub-meanings may be distinguished:

(i) *Unlimited prohibition* which is understood here as the prohibition to perform which is binding no matter the situation.

(ii) *Conditional prohibition* which is understood here as the prohibition to perform only in specific circumstances.

(iii) *External prohibition* which is understood here as the prohibition to perform imposed on the actor, not by the legislator, but by other factors such as e.g. contracts, agreements.

(i) Unlimited prohibition

<i>English</i>	<i>Polish</i>
<i>actor revealed</i>	
(i) Shall not (ii) Must not (UK) (iii) May not (iv) Cannot (USA) (v) Is prohibited	(i) Nie ‘not’ + powinien ‘should’ (ii) Nie ‘not’ + present tense indicative (iii) Nie ‘not’ + future tense indicative (iv) Nie móc ‘may not’ (v) Nie jest uprawniony ‘is not entitled’ (vi) Nie ma prawa ‘has no right’ (vii) Niedopuszczalne jest (jest niedopuszczalne, nie jest dopuszczalne) ‘is not admissible, is not permissible’
<i>actor not revealed</i>	
(i) Shall not (ii) Must not (UK) (iii) May not (iv) Cannot (USA) (v) Is prohibited	(i) Nie ‘not’ + powinno ‘should’ (ii) Nie ‘not’ + należy ‘should’ (iii) Nie ‘not’ + present tense indicative (usually passive) (iv) Nie ‘not’ + future tense indicative (usually passive) (v) Nie można ‘may not’ (vi) Nie wolno ‘must not’ (vii) Niedopuszczalne jest (jest niedopuszczalne, nie jest dopuszczalne) ‘is not admissible, is not permissible’ (viii) Zabronione jest ‘is forbidden, is prohibited’

(ii) Conditional prohibition

<i>English</i>	<i>Polish</i>
<i>actor revealed</i>	
(i) Shall not (ii) Must not (UK) (iii) May not (iv) Cannot (USA)	(i) Nie 'not' + present tense indicative (ii) Nie 'not' + future tense indicative (iii) Nie może 'may not' (iv) Nie ma prawa 'has no right' (v) Nie wolno 'must not' (vi) Nie jest dopuszczalne 'is not admissible, is not permissible'
<i>actor not revealed</i>	
(i) Shall not (ii) Must not (UK) (iii) May not (iv) Cannot (USA)	(i) Nie 'not' + present tense indicative (ii) Nie 'not' + future tense indicative (iii) Nie może 'may not' (iv) Nie można 'may not' (v) Nie wolno 'must not' (vi) Nie jest dopuszczalne 'is not admissible, is not permissible'

(iii) External prohibition

<i>English</i>	<i>Polish</i>
<i>actor revealed</i>	
is prohibited	wydać zakaz 'impose the prohibition'
<i>actor not revealed</i>	
prohibition	być zakazanym 'be prohibited'

In English, prohibitive clauses with the deontic meaning have been expressed by: (i) *shall not* and (ii) *must not* (UK) as well as not so frequent clauses (iii) *may not*; (iv) *cannot* (USA) and (v) *is prohibited*.

In Polish prohibitive utterances we have found the following exponents used for utterances

- with the actor revealed in the sentence surface structure
 - (i) *nie* 'not' + *powinien* 'should';
 - (ii) *nie* 'not' + *należy* 'should';
 - (iii) *nie* 'not' + present tense indicative,
 - (iv) *nie* 'not' + future tense indicative,

- (v) *nie móc* 'may not',
- (vi) *nie można* 'may not',
- (vii) *nie jest uprawniony* 'is not entitled',
- (viii) *nie ma prawa* 'has no right',
- (ix) *nie wolno* 'must not',
- (x) *niedopuszczalne jest (jest niedopuszczalne, nie jest dopuszczalne)* 'is not admissible, is not permissible',
- (xi) *zabronione jest* 'is forbidden, is prohibited'.
➤ and the actor not revealed in the sentence surface structure:
 - (i) *nie* 'not' + *powinno* 'should'
 - (ii) *nie* 'not' + *należy* 'should'
 - (iii) *nie* 'not' + present tense indicative (usually passive)
 - (iv) *nie* 'not' + future tense indicative (usually passive)
 - (v) *nie można* 'may not'
 - (vi) *nie może* 'may not'
 - (vii) *nie wolno* 'must not'
 - (viii) *niedopuszczalne jest (jest niedopuszczalne, nie jest dopuszczalne)* 'is not admissible, is not permissible'
 - (ix) *zabronione jest* 'is forbidden, is prohibited'

Still, the most frequent method of expressing the prohibition is the present tense indicative. The next most frequent exponents of prohibition are *nie można* and *nie należy*.

Statutory permission

within the meaning of *Permission* we have distinguished three sub-meanings:

- (i) *Unlimited permission* which is understood here as the right which may be exercised no matter the situation.
- (ii) *Conditional permission* which is understood here as the right which may be exercised only under specific circumstances.
- (iii) *External permission* which is understood here as the right which may be exercised under non-statutory instruments such as e.g. contracts, agreements.

(i) Unlimited permission

<i>English</i>	<i>Polish</i>
actor revealed	
(i) have a right (ii) may (iii) shall be entitled	(i) móc 'may' (ii) mieć prawo 'have a right' (iii) być uprawnionym 'be entitled to' (iv) dopuszczalne jest (jest dopuszczalne) 'is admissible, is permissible'
actor not revealed	
may	(i) móc 'may' (ii) mieć prawo 'have a right' (iii) być uprawnionym 'be entitled to' (iv) dopuszczalne jest (jest dopuszczalne) 'is admissible, is permissible'

(ii) Conditional permission

<i>English</i>	<i>Polish</i>
actor revealed	
(i) have a right (ii) may (iii) shall be entitled	(i) móc 'may' (ii) mieć prawo 'have a right' (iii) być uprawnionym 'be entitled to' (iv) dopuszczalne jest (jest dopuszczalne) 'is admissible, is permissible'
actor not revealed	
may	(i) móc 'may' (ii) mieć prawo 'have a right' (iii) być uprawnionym 'be entitled to' (iv) dopuszczalne jest (jest dopuszczalne) 'is admissible, is permissible'

(iii) External permission

<i>English</i>	<i>Polish</i>
actor revealed	
enjoy a right	prawo przysługuje 'enjoy a right' nabywać prawo 'acquire a right'
actor not revealed	
the right conferred the existing right the right which exists	prawo powstaje 'a right is established' prawo jest ujawnione 'a right is revealed'

In general, in Polish permission is expressed by the following exponents of deontic modality:

- (i) *jest uprawniony* (lit. *is entitled*),
- (ii) *ma prawo* (lit. *has a right*),
- (iii) *może* (lit. *may*),
- (iv) *wolno jest* (lit. *it is allowed*),
- (v) *dopuszcza się* (lit. *it is allowed*),
- (vi) *zezwała się* (lit. *it is permitted*);

It requires further analysis whether the exponents of weak obligation, that is to say *należy*, *powinno*, may also be used as exponents of recommendation.

The typical exponents of permission in utterances with the actor revealed in English are the modal verb *may* and the expression *have a right (to do something)* as well as the expression *shall be entitled*. The most frequently used exponent of permission in utterances not revealing the actor in the sentence structure is the modal verb *may*.

Conclusions

To sum up, it is worth stressing that it is typical of Polish and English languages of statutory instruments to use the same exponents of deontic modality for expressing various deontic sub-meanings. Consequently, the meaning of the source text cannot be deciphered solely on the basis of the exponents of deontic modality used by the legislator. Thus, it requires a thorough knowledge of the legal construction to find the proper meaning of the source text.

Palmer (1999:233) stated that 'in an overall system of modality it may be best to treat the declarative as the semantically unmarked member of the epistemic system, by which speakers merely present the information available to them, without guaranteeing its truth; it is also, of course often but not always, formally unmarked.' However, the present tense indicative is a typical grammatical exponent of obligation and permission in Polish statutory instruments.

Moreover, it seems that the choice of the exponents of deontic modality used in various legal instruments (especially Polish ones) is not intentional, but rather intuitive. Although, present tense indicative remains the most frequently used exponent of deontic modality (obligation and prohibition), the other exponents are used interchangeably. Additionally, the analysis of frequency indicates that the distribution of the exponents is random and varies depending on the analysed statutory instruments. Therefore, we may draw the conclusion that

the choice of the exponents of deontic modality used in Polish statutory instruments is intuitive, and the legislators' legal idiolects affect the final distribution of exponents of deontic modality used in specific statutory instruments.

On the other hand, a translator is less likely to make a mistake if he/she used proper translation equivalents for exponents of obligation, prohibition and permission uses in statutory instruments.

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