

# A Corpus-based Study of *Shall* in the English Translation of Korean Statutes

Jeongju Yoo

Ewha Womans University, Korea

## 1. Background and Objectives

This study explores the issues of using *shall* in the English translation of Korean statutes with reference to the speech act theory. As the most important performative marker for indicating obligations in legal discourse, *shall* has assumed almost a biblical status in legal English for centuries (Gidová 2012). However, it has also been used in expressing constitutive rules and other declarative forces in English statutes, thus creating difficulties in interpretation of its intended illocutionary forces (Tiersma 1999; Williams 2006; Garner 2011; Goga-Vigaru 2012). Due to the efforts to modernize legal English over the past few decades by Plain Language advocates, *shall* is now increasingly used for imposing obligations on animate subjects only, or totally replaced by other verbal constructions such as *must*, *is/are to*, and the simple present as in the legislation of U.K and many other common law countries (Williams 2007; 2009; 2013a; 2013b; Garzone 2013). Although the frequencies and distributions of legal *shall* used in English-speaking jurisdictions are not even, this so-called “modal revolution” (Williams 2009) in English legislative texts have implications for the translation of Korean statutes, as translated law should follow the generic conventions of non-translated law to reduce a cognitive effort on the part of the reader (Biel 2014a; 2014b). However, *shall* is still the most frequent word to express various illocutionary forces in the translation of Korean statutes, which causes concerns for distant textual fit in the use of performative markers between translated and non-translated statutes in the future.

## 2. Research Questions and Methods

Against this background, this study set the following four research questions: (1)

identify the types and performative expressions of the illocutionary acts in English-translated Korean statutes; (2) identify the types and performative expressions of the illocutionary acts in non-translated English statutes, especially *shall*-dominant US statutes and *shall*-free(or restrictive) UK statutes; (3) analyze the similarities and differences(“textual fit”) in the use of performative forms between the translated and non-translated statutes; (4) examine the implications for the English translation of Korean statutes with special focus on using *shall*.

To answer the above research questions, the current study adopted corpus linguistics as the main research methodology and attempted to establish an integrated research model by compiling and analyzing three major types of corpora for translation purposes including parallel corpus, monolingual corpus, and comparable corpus. Prior to the compilation of main corpora for the present study, translated Korean Statutes Corpus(TKSC) and non-translated British Statutes Corpus(BSC), each consisting of approximately one million words, were compiled as preliminary corpora. American Statutes Corpus(ASC) of four million words was also used for reference corpus. The comparison of the two study corpora shows that TKSC uses *shall* more excessively than BSC. Keyword analysis also reveals that the frequency of *shall* in TKSC is much higher than ASC, questioning the current practices of using *shall* in the translation of Korean statutes.

Based on these findings and other parameters confirmed, three types of main corpora were compiled and analyzed as follows: First, in order to identify the types of illocutionary forces and performative forms of Korean statutes and their translations, a parallel corpus was established with Korean legislative provisions(35,118 tokens) and their English translations(70,071 tokens) extracted from Korean-English Glossary of Legal Terms, the only legislative translation guideline made by the Korean Legislation Research Institute, the authority responsible for legislative translation in Korea.

The analysis of the parallel corpus shows that *shall* is used to translate the illocutionary forces of directives(obligations/prohibitions) and declaratives in Korean statutes, except for few cases where *must* or the present indicative are used. *Shall* is used for translating most of the declaratives such as provisions about application or effect, deeming/presumptions, legal status or consequences of particular actions or states of affairs, and provisions creating a statutory body, office, etc., which do not correspond to the “right” use of legal *shall*. This result confirms that *shall* is used as the absolute performative and stylistic marker in the translation of Korean statutes.

Second, in order to examine the types of illocutionary forces and performative forms of the statutes of English-speaking jurisdictions and compare them with translated Korean statutes, three monolingual corpora, which also served as respective sub-corpora for

comparable 2+ corpora, were compiled and analyzed. Consisting of approximately 750 thousand words each, the three corpora(TKSC, ASC, BSC) were compiled in compliance with the comparable corpus design criteria set by Rayson(2003). Of the various performative expressions, the following four units were selected for analysis based on the prior research findings and legislative guidelines: *shall*, *must*, *is/are to*, and the simple present. In regards to the classification and frequency calculation of verb forms in the simple present, this study employed text files tagged with UCREL CLAWS7 and extracted concordance lines from TKSC, ASC, and BSC with VVZ tag(-s form of lexical verbs). The remaining verbs classified as the simple present other than lexical verbs(i.e. *is/are*, *do/does*, *have/has*) were analyzed by using plain text files.

The present study is differentiated from most of the previous studies in that it separately calculates the instances of performative forms that convey prescriptive force generally found in main clauses(Williams 2013b), in addition to the instances of those found in the entire corpora. Also, classification of the use(illocutionary force) of each performative form is based on the legal use of *shall* presented by DTG(2008) with some modifications.

### 3. Research Findings

The following are the results of analysis of the three monolingual corpora and comparable 2+ corpora.

First, in the case of TKSC, the present tense is the most frequent performative pattern(18,247 instances) of the four analysis units, followed by *shall*(11,642), *is/are to*(233), and *must*(20). However, the frequency pattern restricted to those verbal phrases with prescriptive force indicates difference in the ranks with *shall* being the most salient(11,360 instances) followed by the present simple(507), *is/are to*(28), and *must*(7). The cluster analysis showed that *shall* in TKSC is used most frequently for translating constitutive rules in Korean statutes, such as application/application mutatis mutandis provisions, deeming provisions and presumptions, and provisions about delegated legislation. Analysis of the randomly sampled concordances of *shall* also showed that it is abused for translating declaratives, as well as for translating obligations, not observing the recommendation made by the Plain English advocates that the present tense should be used for communicating constitutives and other declaratives in statutes. Meanwhile, the use of the present simple is restricted to the form of the lexical verb “means” in definition provisions, with some exceptions used in provisions about the legal status or

consequences, application/application *mutatis mutandis* provisions and requirements. (Semi-) modals *must* and *is/are to* are also rarely used as performative markers with prescriptive force in TKSC.

Second, ASC demonstrates convergence with TKSC in the frequencies of performative expressions in the order of the simple present(17,307 instances), *shall*(8,861), *is/are to*(191), and *must*(113). However, it shows contrast with TKSC in terms of the frequencies restricted to those used in main clauses. As in TKSC, *shall*(8,440 instances) is the most abused performative marker in ASC; but the simple present(3,059 instances) shows similar salience with *shall*, indicating the US legislation uses the present tense more often than the translated Korean legislation. The present tense is mainly used for expressing definition clauses, propositions about the legal status or consequences of particular actions or states of affairs, provisions creating a statutory body, office, etc. and related supplementary provisions, which shows distant textual fit between ASC and TKSC in terms of the use of the present tense as a performative pattern.

*Shall* also shows difference from TKSC in terms of its detailed expressions: unlike TKSC, *shall* is more frequently expressed in ASC in the form of active structures with an explicit animate subject in provisions about delegated legislation or provisions creating a statutory body, office, etc. Penal provisions, deeming/presumptions, and application *mutatis mutandis* provisions also reveal difference between the two sub-corpora in the detailed *shall* structures. *Must* is observed to show difference from TKSC in that it is more frequently used for expressing requirements, than expressing the illocutionary force of an order to natural/legal person. Meanwhile, semi-modal *is/are to* is rarely used as a deontic performative marker, except where used for expressing purpose clauses as in TKSC.

Third, BSC demonstrates very low similarity with TKSC and ASC in the frequencies and use of performative forms. For all of the verb constructions under examination, the simple present(31,636 instances) is used most frequently, followed by *is/are to*(2,111), *must*(2,108), and *shall*(257). The frequency pattern restricted to those verbal phrases with prescriptive force shows no great difference from the above pattern with the present tense(8,911 instances) showing the highest frequency, followed by *must*(1,680), *is/are to*(1,216), and *shall*(240). This means that *shall* is rapidly being replaced by other performative forms, notably the present simple, in the UK legislation. However, unlike the results of the prior studies(e.g. Williams 2013a), *shall* is still found hundreds of times in BSC, marking discrepancies in the use of *shall* between respective Acts.

Meanwhile, *must* is observed to be used frequently to express requirements with inanimate subjects, obligations with animate subjects, delegated legislation(for which DTG(2008) recommends *is/are to* form), and deeming provisions and presumptions(for

which DTG(2008) recommends the simple present). Verbs in the simple present are analyzed to be used for conveying constitutive rules, such as application/application mutatis mutandis provisions, and propositions about the legal status or consequences of particular actions or states of affairs, marking significant divergence between UK statutes and translated Korean statutes. Semi-modal *is/are to*, which is rarely used as a performative marker in TKSC and ASC, also occurs frequently for indicating deeming/presumptions/construction provisions, requirements with no explicit subject, and provisions making orders or regulations.

#### 4. Conclusion

The findings of this study present the following implications for using *shall* in the English translation of Korean statutes.

First, if the statutory translation authority decides to keep using *shall* when translating various illocutionary forces of Korean statutes, narrowing divergent textual fit with US laws would help produce translations more conforming to the readers' expectations and generic conventions of English statutes. For this purpose, the current translation guidelines need to be updated and revised, especially for provisions about delegated legislation, provisions creating a statutory body, office, etc., penal provisions, deeming/presumptions, and application mutatis mutandis provisions.

Second, if the statutory translation authority decides to introduce *shall*-free or *shall*-restrictive style in the translation of Korean statutes in the future, wholly new translation guidelines for the use of performative forms need to be established by referring to the UK drafting guidelines and the findings of the present study. Instead of *shall*, *must* is recommended for denoting obligations with animate subjects; *is/are to* for provisions about orders and regulations, and provisions creating a statutory body, office, etc. and related supplementary provisions; and the simple present for constitutive rules and declaratives.

---

## References

- Asprey, M. M. (1992). *Shall Must Go*. *Scribes Journal of Legal Writing*, 3: 79-83.
- Asprey, M. M. (2010). *Plain Language for Lawyers*. 4th ed. Sydney: Federation Press.
- Biel, Ł. (2014a). *Lost in the Eurofog: The Textual Fit of Translated Law*. Frankfurt am Main; New York: Peter Lang Edition.
- Biel, Ł. (2014b). The textual fit of translated EU law: a corpus-based study of deontic modality. *The Translator* 20 (3): 332-355.
- Bowers, F. (1989). *Linguistic Aspects of Legislative Expression*. Vancouver: University of British Columbia Press.
- Cao, D. (1998). The Illocutionary Act in Translating Chinese Legislative Texts. *Babel* 44(3): 244-253.
- Cao, D. (2007). Legal Speech Acts as Intersubjective Communicative Action. In *Interpretation, Law and the Construction of Meaning*, edited by Wagner, A., Werner, W. and Cao, D. Dordrecht, The Netherlands: Springer, 65-82.
- Child, B. (1992). *Drafting legal documents: Principles and practices*. St. Paul, Minn.: West Pub.
- Coode, G. (1976). Coode on Legislative Expression; or, the Language of Written Law. In *The Composition of Legislation, Legislative Forms and Procedures*, edited by Driedger, E. A. Ottawa: Department of Justice, 317-378.
- Craies, W. F., Greenberg, D., and Goodman, M. J. (2008). *Craies on Legislation: A Practitioners' Guide to the Nature, Process, Effect, and Interpretation of Legislation*. 9th ed. Sweet & Maxwell Ltd.
- Daigneault, E. (2009). *Drafting International Agreements in Legal English*. 2nd ed. Wien: Manz.
- Danet, B. (1980). Language in the Legal Process. *Law and Society Review* 14(3): 445-564.
- Danet, B. (1985). Legal Discourse. In *Handbook of Discourse Analysis* Vol. 1, edited by Teun A. van Dijk. London: Academic Press, 273-291.
- de Groot, Gerard-René. (2006). Legal Translation. In *Elgar Encyclopedia of Comparative Law*, edited by Smits, J. M. Cheltenham, UK and Northampton MA: Edward Elgar, 423-433.
- Department of Justice (Canada Government). (2015). Legistics. <http://canada.justice.gc.ca/eng/rp-pr/csj-sjc/legis-redact/legistics/toc-tdm.asp>. (October.6. 2015).
- Diani, G. (2001). Modality and Speech Acts in English Acts of Parliament. In *Modality in Specialized Texts: selected papers of the 1st CERLIS Conference*, edited by Gotti, M. and Dossena, M. Bern; New York: Peter Lang, 175-191.
- Dickerson, R. and American Bar Foundation (1986). *The Fundamentals of Legal Drafting*. Boston: Little, Brown and Company.
- Dodova, L. (1989). Translator Looks at English Law. *Statute Law Review* 10: 69-78.
- Drafting Techniques Group (DTG) (2008). *Shall*. <http://www.cabinetoffice.gov.uk/media/190076/shall.pdf>. (October.6. 2015).
- Gamer, B. A. (2011). *Garner's Dictionary of Legal Usage*. 3rd ed. Oxford; New York: Oxford University Press.
- Garzone, G. (2001). Deontic Modality and Performativity in English Legal Texts. In *Modality in Specialized Texts: selected papers of the 1st CERLIS Conference*, edited by Gotti, M. and Dossena, M. Bern; New York: Peter Lang, 153-173.
- Garzone, G. (2013). Variation in the use of modality in legislative texts: Focus on *shall*. *Journal of Pragmatics* 57: 68-81.

- Gibová, K. (2012). On Modality in EU Institutional-Legal Documents. *ENGLISH MATTERS* II: 6-12.
- Goga-Vigaru, R. (2012). A Corpus-based Analysis of Deontic and Epistemic Values of the Modal *Shall* in Legal Texts. *Contemporary Readings in Law and Social Justice* 2: 752-763.
- Gotti, M. (2001). Semantic and Pragmatic Values of *Shall* and *Will* in Early Modern English Statutes. In *Modality in Specialized Texts: selected papers of the 1st CERLIS Conference*, edited by Gotti, M. and Dossena, M. Bern; New York: Peter Lang, 89-111.
- Gozdz-Roszkowski, S. (2011). *Patterns of Linguistic Variation in American Legal English. A Corpus-Based Study*. Frankfurt am Main: Peter Lang.
- Gustafsson, M. (1975). *Some Syntactic Properties of English Law Language. Publications of the Department of English*, No. 4. Turku: University of Turku.
- Hammel, A. (2008). Legal translation, the Plain Language Movement, and English as a lingua franca. In *Language and Law: Theory and Society*, edited by Olsen, F., Lorz, A. and Stein, D. Dusseldorf: Dusseldorf University Press, 275-91.
- Harvey, S. G. (1998). Speech Acts and Illocutionary Function in Translation Methodology. In *The Pragmatics of Translation*, edited by Hickey, L. Clevedon; Philadelphia: Multilingual Matters Ltd., 10-24.
- Hiltunen, R. (2012). The Grammar and Structure of Legal Texts. In *The Oxford handbook of language and law*, edited by Tiersma, P. and Solan, L. Oxford; New York: Oxford University Press, 39-51.
- Hjort-Pedersen, M. and Faber, D. (2010). Explicitation and implicitation in legal translation: A process study of trainee translators. *Meta: Translators' Journal* 55 (2): 237-50.
- Kimble, J. (1992). The Many Misuses of *Shall*. *Scribes Journal of Legal Writing* 3: 61-77.
- Kurzon, D. (1986). *It is Hereby Performed...: Explorations in Legal Speech Acts*. Amsterdam; Philadelphia: J. Benjamins Pub. Co.
- Laviosa, S. (1997). How comparable can comparable corpora be? *Target* 9(2): 289-319.
- Maley, Y. (1987). The Language of Legislation. *Language in Society* 16(1): 25-48.
- Maley, Y. (1994). The language of the law. In *Language and the Law*, edited by Gibbons, J. Harlow, Essex, England; New York: Longman, 11-50.
- Mattila, H. (2006). *Comparative Legal Linguistics*. Aldershot, England; Burlington, VT: Ashgate.
- Ni, S. and Sin. K. (2011). A matrix of legislative speech acts for Chinese and British statutes. *Journal of Pragmatics* 43: 375-384.
- Office of the Legislative Counsel (U.S. House of Representatives) (1995). *House Legislative Counsel's Manual on Drafting Style*.  
[http://w.legislativeconsulting.com/resources/manuals/US-House\\_DraftingManual\\_1995.pdf](http://w.legislativeconsulting.com/resources/manuals/US-House_DraftingManual_1995.pdf). (October.6. 2015).
- Office of the Legislative Counsel (U.S. House of Representatives) (2015). *HOLC Guide to Legislative Drafting*.  
[http://legcounsel.house.gov/HOLC/Drafting\\_Legislation/Drafting\\_Guide.html](http://legcounsel.house.gov/HOLC/Drafting_Legislation/Drafting_Guide.html). (October.6. 2015).
- Office of Parliamentary Counsel (Australian Government) (2003). *Plain English Manual*.  
[www.opc.gov.au/plain/docs.htm](http://www.opc.gov.au/plain/docs.htm). (October.6. 2015).
- Office of the Parliamentary Counsel (UK Government) (2014). *Office of the Parliamentary Counsel Drafting Guidance*.[www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/293866/guidancebook-20\\_March.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/293866/guidancebook-20_March.pdf). (October.6. 2015).
- Poon, W. Y. E. (2005). The cultural transfer in legal translation. *International Journal for the Semiotics of Law* 18: 307-23.
- Rayson, P. (2003). *Matrix: A statistical method and software tool for linguistic analysis through corpus*

- comparison*. Ph. D. thesis. Lancaster University.
- Saldanha, G. and O'Brien, S. (2013). *Research Methodologies in Translation Studies*. Manchester; Kinderhook: St. Jerome Publishing.
- Šarčević, S. (1994). Translation and the law: An interdisciplinary approach. In *Translation Studies: an interdisciplinary*, edited by Poehchacker, F. and Snell-Hornby, M. Amsterdam; Philadelphia: John Benjamins, 301-307.
- Šarčević, S. (1997). *New Approach to Legal Translation*. The Hague: Kluwer Law International.
- Šarčević, S. (2012). Challenges to the Legal Translator. In *The Oxford handbook of language and law*, edited by Tiersma, P. M. and Solan, L. Oxford; New York: Oxford University Press, 187-199.
- Scott, M. (2015). *WordSmith Tools Help*. Liverpool: Lexical Analysis Software.
- Searle, J. (1975). Indirect speech acts. In *Syntax and semantics 3: Speech Acts*, edited by Cole, P. and Morgan, J. New York: Emerald, 59-82.
- Searle, J. (1976). A Classification of Illocutionary Acts. *Language in Society* 5(1): 1-23.
- Sinclair, J. (1991). *Corpus, concordance, collocation*. Oxford: Oxford University Press.
- Sinclair, J. (2005). Corpus and text: Basic principles. In *Developing linguistic corpora: A guide to good practice*, edited by Wynne, M. Oxford: Oxbow Books, 1-16.
- Stubbs, M. (1995). Collocations and semantic profiles: on the cause of the trouble with quantitative studies. *Functions of language* 2(1): 23-55.
- Sullivan, R. (2014). *Sullivan on the construction of statutes*. 6th ed. Markham, Ont.: Lexis Nexis Canada.
- Thornton, G. C. and Xanthaki, H. (2013). *Thornton's Legislative Drafting*. 5th ed. Haywards Heath: Bloomsbury Professional.
- Tiersma, P. M. (1999). *Legal Language*. Chicago and London: University of Chicago Press.
- Tognini-Bonelli, E. (2001). *Corpus linguistics at work* (Vol. 6). Amsterdam; Philadelphia: John Benjamins.
- Tribble, C. (1997). Improving Corpora for ELT: Quick and Dirty Ways of Developing Corpora for Language Teaching. In *Proceedings of the First International Conference on Practical Applications in Language Corpora*, edited by Lewandowska-Tomaszczyk, B. and Melia, K. Lodz: Lodz University Press, 106-117.
- Trosborg, A. (1994). 'Acts' in contracts: Some guidelines for translation. In *Translation Studies: an interdisciplinary*, edited by Poehchacker, F. and Snell-Hornby, M. Amsterdam; Philadelphia: J. Benjamins, 309-318.
- Trosborg, A. (1995). Statutes and Contracts: An Analysis of Legal Speech Acts in the English Language of the Law. *Journal of Pragmatics* 23(1): 31-53.
- Walker, D. (1980). *The Oxford Companion to Law*. Oxford: Clarendon.
- Williams, C. (2006). Fuzziness in Legal English: What *Shall* we Do with *Shall*? In *Legal Language and the Search for clarity: practice and tools*. Vol. 37, edited by Wagner, A. and Cacciaguiddi-Fahy, S. Bern; New York: Peter Lang, 237-263.
- Williams, C. (2007). *Tradition and change in legal English: verbal constructions in prescriptive texts*. 2nd rev. ed. Bern; New York: Peter Lang.
- Williams, C. (2009). Legal English and the Modal Revolution. In *Modality in English: theory and description*, edited by Salkie, R., Busuttill, P. and Auwera, J. Berlin; New York: M. de Gruyter, 199-210.
- Williams, C. (2013a). Changes in the verb phrase in legislative language in English. In *The Verb Phrase in English: Investigating Recent Language Change with Corpora*, edited by Aarts, B., Close, J. and Wallis, S. Cambridge; New York: Cambridge University Press, 353-371.

- Williams, C. (2013b). Is legal English going European? The case of the simple present. *Canadian Journal of Linguistics* 58(1): 105-126.
- Zanettin, F. (1998). Bilingual comparable corpora and the training of translators. *Meta* 43(4): 616-630.
- Zanettin, F. (2000). Parallel corpora in translation studies: Issues in corpus design. In *Intercultural Faultlines. Research methods in translation studies I: Textual and cognitive aspects*, edited by Olohan, M. Manchester: St Jerome, 105-18.

---

*Author's email address*

jeongjuy@naver.com

*About the author*

Dr. Yoo, Jeongju earned her PhD in Translation Studies from the Graduate School of Translation and Interpretation(GSTI) of Ewha Womans University. Currently working as a freelance legal translator at Korea Legislation Research Institute, she also lectures legal translation at Ewha's GSTI and Handong International Law School.