CHAPTER ONE

INTRODUCTION

1.0 Introduction

This research is focused on the use of language in the legal setting, particularly the use of terminology. Terminology in specific and professional fields like law, medicine, science, and engineering is important to ensure successful information sharing and to enhance mutual understanding (Lum, 2005). In the court of law, judges' misapprehension due to imprecise language or inconsistency of terms will result in grave consequences. This chapter gives a brief introduction to the legal system in Malaysia, the use of language in the legal system, the issues of legal translation generally and specifically in the Malaysian context. Following that, the research questions, significance of the study, and scope and limitation of the study are presented.

1.1 Background of the Study

Malaysia is a multi-racial and multi-cultural country as a result of migration and colonisation by the Portuguese, Dutch and British (Wan Norhasniah, 2011). As such, the legal system in Malaysia is shaped by various external and internal influences. Prior to British colonisation, the local laws are the customary laws. The Syariah law was later assimilated into the local customs (Sharifah Suhanah, 2007; Powell & Azirah, 2011, p. 93). However, it is the British, who had ruled Malaya for more than one hundred and fifty years, that left a great impact upon the law of the country. As a result, the Malaysian legal system is generally based on English common law. The common law and rules of equity of England were received together with British administration when the British came to the Malay Peninsula, Sabah and Sarawak. Therefore, besides

Syariah law and customary law traditions, the English legal system has become the main model and source for the modern Malaysian Law (Mead, 1988; Shaikh & Lim, 2011). A further elaboration of the Malaysian Legal System can be found in chapter 2, section 2.1.

1.2 The Use of the English and Malay Languages in the Malaysian Legal and Judiciary Field

The British introduced English law in the form of the Charter of Justice, legislation, and case law. These laws are inevitably in the English language. Among the earliest legislation passed are the Evidence Ordinance 1893 (the base of the current Evidence Act), the Penal Code 1871 (the base of the current Penal Code), and the Civil Law Ordinance 1878 (which later developed to be the Civil Law Act). (Wan Arfah & Ramy, 2006).

After the independence of Malaya in 1957, English remains the language of the law albeit the national language is the Malay language. This is stated in Article 152 in the Federal Constitution: For a period of ten years after Independence Day, the authoritative texts of all Bills to be introduced or amendments and all Acts of Parliament and all subsidiary legislation issued by the Federal Government shall be in the English language. Furthermore, for the same period after independence, all proceedings in the Supreme Court or a High Court, and in subordinate courts, other than the taking of evidence, shall be in the English language (Federal Constitution, Article 152).

Prior to 1967, the written law was only in English, and all proceedings in court were conducted in English (except the giving of evidence by a witness) (Nik Safiah & Faiza, 1994, pp. 3-6). However, with the enactment of the National Language Acts, in 1963 and 1967, the Malay Language becomes the language of the law. The National

Language Acts 1963/67 made amendments to the authoritative of text of laws. Section 6 of the act states,

> The texts—
>
> (a) of all Bills to be introduced or amendments thereto to be moved in Parliament or the Legislative Assembly of any State;
>
> (b) of all Acts of Parliament and all subsidiary legislation issued by the Federal Government;
>
> (c) of all Enactments and subsidiary legislation issued by any State Government; and
>
> (d) of all Ordinances promulgated by the Yang di-Pertuan Agong,
>
> shall be in the national language and in the English language, the former being authoritative unless the Yang di-Pertuan Agong otherwise prescribes generally or in respect of any particular law or class of laws.
>
> (National Language Acts 1963/67, Section 6)

There are also changes made to the language in courts in the amendments made in 1990. This is stated in Section 8 of the same Act, as follows:

> All proceedings (other than the giving of evidence by a witness) in the Federal Court, Court of Appeal, the High Court or any Subordinate Court shall be in the national language:
>
> Provided that the Court may either of its own motion or on the application of any party to any proceedings and after considering the interests of justice in those proceedings, order that the proceedings (other than the giving of evidence by a witness) shall be partly in the national language and partly in the English language. (National Language Acts 1963/67, Section 8)

With this new amendment, it is evident that the main language that should be used in court proceedings (except in the case of getting evidence from a witness) is the national language. Only in instances where the interest of justice is involved, the proceeding can be conducted partly in the English language. However, despite this provision, English was still the main language used in courts. It was not until the issue of a Directive by Chief Registrar of the Courts of Malaysia in October 1981 to implement the use of Malay in letters, speeches, arguments and judgments that the Malay language started to be used widely in the lower courts (Mead, 1988). Since then, the Malaysian legal system has slowly transformed into a bilingual one (Powell & Azirah, 2011). In addition, all lawyers who wish to practice law in Malaysia must comply with Section 11(2) in the Legal Profession Act 1976, which states the following:

> As from the 1 January 1984, no qualified person shall be admitted as an advocate and solicitor unless, in addition to satisfying the requirements of subsection (1), he has passed or is exempted from the Bahasa Malaysia Qualifying Examination.
>
> (Legal Profession Act 1976, Section 11(2))

In pursuant to the National Language Acts 1963/67 Section 7, the drafting of law text is done both in the national language and English since September 1967. The translation of English texts of pre-1967 laws into Malay is undertaken by the Law Revision and Law Reform Division of the Attorney General Chambers (AGC). On 5 December 1965, *Jawatankuasa Istilah* (Terminology Committee) was formed by Dewan Bahasa dan Pustaka (DBP), the language academy of Malaysia, consisting of academics, linguists, lawyers and officers from the AGC. As a result, *Istilah Undang-Undang*, a publication of bilingual legal glossary was published by DBP in 1970. It was later revised in 1985 and in 2003. A *Jawatankuasa Istilah* was also established by the

Drafting Division under AGC on 3 September 1981, with the purpose to review the translated terms that produce ambiguities and doubts in terms of accuracy, and to finalise certain terms (Nik Safiah & Faiza, 1994; Anandan, 2009).

1.3 General Issues in Legal Translation

Translation is a process of transferring source text (ST) in the source language (SL) into the target text (TT) in the target language (TL) (Munday, 2008). Such transfer, of course, must ensure that the content of the source text and target text is similar in meaning and the structure of the SL will be preserved as much as possible but not at the expense of structure of the TL that it will become incomprehensible to the TL readers or speakers (Bassnett, 1988). The source text and the target text must be equivalent, what Galdia (2003) called "substantive homogeneity" (p. 1). A brief explanation of the process of translation involves three stages, as cited in Varó & Hughes (2002):

(1) A thorough understanding of the ideas of the source text and the means by which these ideas have been achieved and expressed;
(2) The attempt to express these ideas in linguistically equivalent terms in the target language;
(3) The proviso that, other things being equal, the criterion of 'naturalness' of target-language expression is to preside over any other in attaining the equivalence referred to in stage (2), 'naturalness' being understood to mean the avoidance of strain of the forcing of sense of syntax. (Varó & Hughes, 2002, p. 23).

Legal translation is generally understood as the translation of texts within the field of law, and it is by no means a simple and easy task. The legal translators are required to produce the same legal text with the same meaning and effect, but in a different language. They are not merely translating the text but also the underlying legal

system (Poon, 2002, pp. 145-146). As such, the translation not merely produces linguistic but also legal impact and consequence (Cao, 2007, p. 7). Any statute, enactment, or judgment passed must be accurate and precise. Therefore, it is understandable that legal translators have traditionally been bound by the principle of fidelity to the source text. They tend to regard literal translation as the golden rule for legal translation, thus adhering to the source text as strict as possible (Sarcevic, 2000). In this section, some general issues pertaining to legal translation will be outlined, while a more specific discussion on legal terminology translation can be found in the following chapter (see chapter 2, section 2.6-2.8).

The key issues of translation centre on linguistic meaning and equivalence. Jakobson (1959) pointed out that there is ordinarily no full equivalence between code-units (cited in Munday, 2008, p. 37). The core problem lies in cultural differences. The language of the law in the SL is often culturally-dependent, and the concepts may not be found in the culture of the TL. When translating from one language to another, certain legal terms find no equivalence in the TL due to the lack of vocabulary and the void of such legal concepts. For example, the English common law is developed throughout the history of English judiciary practice and legal system. As such, the translation of common law into many British colonies proved to be a challenging task as many of the colonies do not have the same culture and therefore do not have such legal concepts (Sin and Roebuck, 1996). There is also the problem of differences in the syntax or structure of language, making it hard to produce the same effect of the SL in the TL. Literal translation or formal equivalence will only result in unintelligibility of text to the TL speaker (Gibbons, 2005).

1.4 Issues in Malaysian Legal Translation

There are inevitably, linguistic issues in the translation of English legislation and common law into Malay language. The main problem lies in the fact that any language which expresses the law and the law itself are culturally-laden, and a legal concept in the SL might not find its equivalent concept in the TL. Nik Safiah (1994) states that terminology in modern law, as with other modern areas of knowledge, is a great problem. The problem is due to the fact that modern law is derived from external sources, and was never uttered in the Malay language. Therefore, it can be said that there hardly exists native words in Malay that can sufficiently express concepts in modern law. (Nik Safiah, 1994, p. 70-71).

Amidst the hustle to fill up the terminological lacunae, or lexical gaps, in the Malay language, large amount of Malay legal terms was created resulting in confusion for students and general users of the language (Faiza, 1994). Faiza (1994) pinned the problem of terminological inconsistency to the use of English terms instead of the existing Malay terms. For him, the following approach should be employed: the terms chosen should be primarily from the Malay language, followed by the cognate languages of the Malay language, and finally foreign languages. However, he alleged that the current Malay legal register contains terms and expressions which are incongruous and foreign in sound and meaning not only to the Malay people who are untrained and unexposed to legal knowledge and experience, but even to people who are less proficient in Malay albeit possesses high English language proficiency (Faiza, 1994). Besides, there is the problem of the availability of law books in Malay. The shortage of legal reference books in Malay is seen as an impediment to the fluency and smoothness of the Malay language in courts (Faiza, 1994; Ahmad, Mansor, Juneidah, & Abdul Kahar, 1992; Poon, 2010).

Comparatively, the legal system of Hong Kong has a similar situation with Malaysia. Hong Kong is a former British colony and currently practicing a bilingual (English and Chinese) legal system (Poon, 2002). Sin and Roebuck (1996) summarised linguistic issues of common law translation in Hong Kong in three questions:

(1) Is the common law accessible to the native language of the former colony?
(2) Is the expressive power of the native language adequate for expressing common law concepts, which are couched in a highly complex, precise, and technical language?
(3) Is it possible to raise the native language to the level of high language so that it can function as the language of the law? (Sin & Roebuck, 1996, p. 236)

These questions are very much applicable in the Malaysian context, with the native language being the Malay language. They can also be used to address current issues in Malaysian legal translation and the ability of the Malay language to function as the language of the law.

Nik Safiah (1994) also identified some extralinguistic factors that contribute to the issues of the Malay language use in the legal field. She questioned the readiness of language users to keep themselves up-to-date with the legal terms and publications. From a small study, she proved that the syntax of the old Malay language which is used to write many laws during the Sultanate of Malacca does not differ much with the syntax of the modern Malay language. She asserts that it is not that the national language is incapable to express the law, but the users of the language who does not make the effort to produce or to utter the language in a smooth, clean and concise way. She then urges those involved in practicing the law to strive to have a good command of the Malay language. (Nik Safiah, 1994, p. 77).

Legal terms consist of words of various types. Some legal terms are words or phrases that only appear in legal language and are used exclusively to refer to legal contexts, for instance ‘estoppel’ and ‘abuse of process’. Other terms may be words or phrases that exist in the ordinary language having a non-legal meaning. However, when applied in the legal setting, these words bear a particular legal meaning that requires not merely the common understanding of the word but also the apprehension of the legal concepts embedded behind it (Mattila, 2006; Gibbons, 2005). Therefore, when translating legal terminology, a legal translator must not only master the semantics of the SL and TL, he also needs to be familiar with the legal concepts represented by the terms.

In legal translation, one way to resolve the problem of a nonexistent word or concept in the TL is to borrow the word or the concept from the SL by importing them from the SL either in whole or in part. As a result, one of the features in the Malay legal register is the frequent occurrence of borrowed words, or borrowings. Some examples of legal borrowings are the English terms ‘estoppel’ and ‘bailee’ which are translated as *estopel* and *baili* respectively in Malay. This feature will be the subject of study in this dissertation.

1.5 Research Questions

This study looks into the use of translated Malay legal terms found in the Evidence Act (*Akta Keterangan*), with a focus on a particular group of words, namely borrowings from the English language to the Malay language. More specifically, this study attempts to answer the following research questions:

(1) What are the forms and functions of borrowings in the Evidence Act?

(2) How do legal professionals view the use of borrowed legal terms?

(3) What problems arise when legal professionals attempt to use the terms and how are the problems resolved?

Fields involved in this study include translation studies (particularly legal translation), language contact (particularly linguistic borrowing), and terminology (particularly legal terminology).

1.6 Significance of the Study

The contribution of this study will be mainly in two aspects: (1) To provide a description of the current scenario of language use in the legal world as compared with the language policy set by the country; (2) to show the urgent need to publish more legal reference books, especially bilingual legal dictionaries (not just glossaries) and not merely for legal professionals but also targeted at the general public.

It is the researcher's hope that this study will contribute to the understanding of the current situation regarding the usage of translated Malay terms in the legal field. In the Malaysian context, researches related to terminological borrowings were carried out in areas of library management (Che Puteh, 1996), sports (Mohd. Azemi, 1996), news (Romarani, 2004), science (Nathesan, 2002), biology (Hasnah, 2001), mathematics (Wong M. K., 1998) and literature (Wong N. F., 1992). In the legal context, Puteri Roslina (1994) did a study of borrowings in the legal terminology. However, the nature of these researches is mainly armchair research which focuses on textual analysis. The current study no doubt involved textual analysis; but it took a further step to explore the preferences, applications, problems, and solutions to the usage of borrowings among legal professionals, thus taking into account the voice from the real world. To some, the answers to the research questions might seem obvious or predictable; nevertheless these

findings should be explicitly documented and formulated. One can never make a definite conclusion about a situation based on mere speculation, not to mention that some findings may be somewhat contrary to the general views.

1.7 Scope and Limitation of the Study

The scope of this study concerns language in the legal field, and focuses on the translation of legal terms in the Malay language which are borrowed from the English language. The textual analysis is limited to the legal terms in the Evidence Act 1950. Interviews and questionnaires provided information offered by legal professionals only (i.e., lawyers) and does not include the viewpoints from the general public. The problems and solutions investigated in this study (Research Question 3) are confined to lawyer-client communication, excluding oral discourse in the court proceedings. This study is limited to only a number of 55 lawyers (5 interviewees and 50 survey participants) in Kuala Lumpur and may not be a representative of the entire body of legal practitioners in Malaysia.

1.8 Conclusion

In the Malaysian legal terminology, there is a particular type of terminology that consists of words borrowed from the English legal terminology, which is called "borrowings" in this study. This study looks into the forms and functions of these borrowings and their usage, including the problems faced by legal professionals while using these terms. Following the changes made to the language policy in Malaysia, the legal system was changed from an exclusive English language domain to a bilingual one. Malay became the authoritative language of law texts in 1967 and the official language of the courts in 1990, as embodied in the National Language Acts. This chapter discussed the historical development of language use in Malaysian legal and judiciary field. It also presented general issues in legal translation and the current issues in the

Malaysian context followed by a brief introduction of Malay legal terms. The research questions, significance, scope and limitation of the study are also outlined. The next chapter will elaborate in detail concerning legal translation, terminology and linguistic borrowing.

CHAPTER TWO

LITERATURE REVIEW

2.0 Introduction

This chapter begins with an overview of the sources constituting Malaysian Law in order to highlight the influence of English in the legal system. Subsequently, a brief history of the implementation of Malay in the courts and the process of law translation is presented. The following section explains the structure and function of legislative text, the legal genre selected for this study. Following that is the discussion on the nature of the legal language and the linguistic features found in English and Malay legal language. Based on the previous chapter, discussion on legal translation will be narrowed down to the translation of legal terminology, providing definitions of terminology, terms and concepts. Legal terminological issues and related studies will also be discussed. Then there is a section on the typology of Malay legal terminology, with a special interest in borrowed words, or borrowings. This will lead to the study of linguistic borrowing, researched in the areas of translation studies and language contact. Finally, the theoretical framework of this study is formulated.

2.1 The Sources of Malaysian Law and the Influence of English in Modern Malaysian Law

It is important to highlight the different sources that make up the Malaysian Law in order to understand the influence of English in the current legal system. The word 'sources' used here refers to "the legal rules that make up the law" (Lee, 1999, p. 13). According to Wan Arfah & Ramy (2006), the sources in descending order of importance are: (1) The Federal and State Constitutions, (2) legislation, (3) judicial

decisions, (4) English law, (5) Islamic law, and (6) customary law (p. 23). Each will be discussed briefly in the following.

The Federal Constitution is the supreme and fundamental law of Malaysia. Any law inconsistent with the Federal Constitution may be challenged in court. Article 4(1) of the Federal Constitution states,

> This Constitution is the supreme law of the Federation and any law passed after Merdeka Day which is inconsistent with this Constitution shall, to the extent of the inconsistency, be void.
>
> (Federal Constitution, Article 4(1))

The Federal Constitution comprises constitutional concepts from Britain and India (a former British colony), and traditional Malay elements. It is interesting to note that the constitution was not formed as a result of discussion from representatives of the people, rather it was developed from an earlier constitution drafted by a commission which consisted of foreign constitutional law experts from the United Kingdom, Australia, India, and Pakistan. This commission is the Constitutional Commission headed by Lord Reid, generally known as the Reid Commission, formed in 1956 in order to prepare for the independence of the Federation of Malaya (Wan Arfah, 2009).

Legislation is the law promulgated by the legislature, and by bodies and persons authorized by the legislature. In Malaysia, the Parliament consisting of Dewan Rakyat (House of Representatives) and Dewan Negara (the Senate) has the power to enact federal laws, while state laws are made by the State Legislative Assembly (Lee, 1999). Before a legislation is enacted as a law, it is called a Bill. Laws enacted by the Parliament are called Acts while laws enacted by the State Legislative Assemblies are referred to as Enactments or Ordinances. Laws promulgated by the king, the Yang di-Pertuan Agong, under emergency circumstances, are called Ordinances.

Judicial decisions are laws that are made by the decisions of the courts. Such laws are generally called the common law or case law, in contrast with statutory law enacted by legislative authorities. The common law system in Malaysia has its roots in the English law. In fact, the bulk of the English law has not been enacted by the Parliament, but developed by judges sitting in the courts, applying their common sense and sound judgement case by case. Judges may decide cases based on an existing rule of law, or may extend the existing rules as new situations arise. Such has also become the practice of Malaysian judges for the development of a Malaysian common law. (Sharifah Suhanah, 2005).

In Malaysia, the courts that have the power to make laws are the superior courts, including the Federal Court, the Court of Appeal, and the two High Courts. The hierarchy of courts in Malaysia is seen in Figure 2.1:

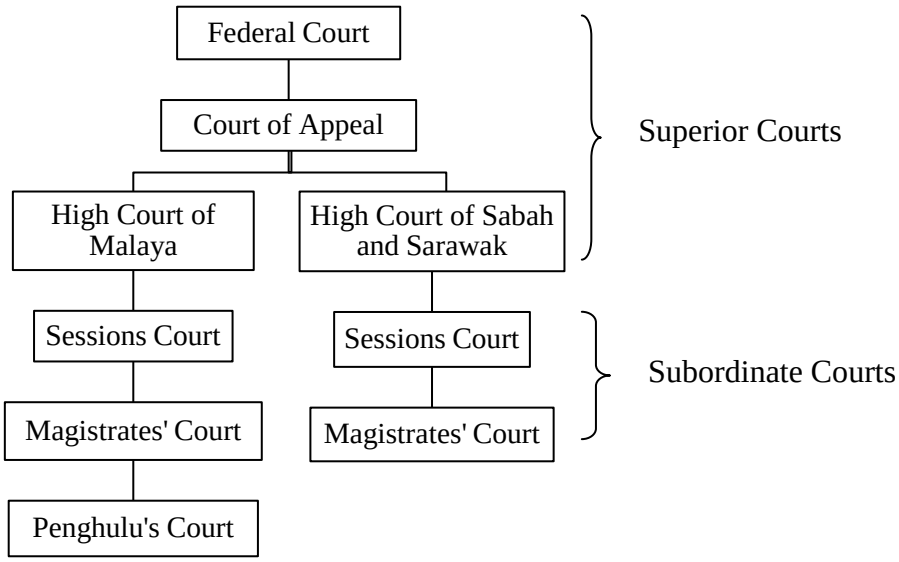

Figure 2.1: Malaysian Court System
(Wan Arfah & Ramy, 2006, p. 68)

The English law means “common law of England and rules of equity” (Civil Law Act 1956, Section 3(1)). The common law of England is based essentially on

customs common throughout England. The rules of equity are supplements to the common law, to correct and mitigate the common law (Wan Arfah, 2009). The English law can be applied in Malaysia and its authoritative nature is stated in legislation. In criminal law, Section 5 of Criminal Procedure Code states,

> As regards matters of criminal procedure for which no special provision has been made by this Code or by any other law for the time being in force the law relating to criminal procedure for the time being in force in England shall be applied so far as the same shall not conflict or be inconsistent with this Code and can be made auxiliary thereto.
>
> (Criminal Procedure Code, Section 5)

This shows that at any time local laws are insufficient or inexistent in certain cases, English law can be applied. In civil matters, Sections 3 and 5 of the Civil Law Act allows for the application of English common law, equity rules, and statutes in Malaysian civil cases where no specific laws have been made.

Before the coming of Islam, the Malays followed customary law under the influence of Hinduism. The introducing of Islam results in the modification of customary law to accord with Islam. The Islamic law which applies in Malaysia is of the Shafii school of jurisprudences. Therefore, Islamic law in Malaysia is also known as Syariah law. Looking at the Malaysian legal system as a whole, Syariah law plays a relatively small role in defining the laws of the country. It only applies to Muslims in personal legal matters (e.g. marriage, inheritance, apostasy.) (Wan Arfah & Ramy, 2006).

Customary law is the regular pattern of social behaviour in a particular social setting, being racial and cultural specific. It is “the way it has been done or accepted as

norms" and thus became rules, mostly pertaining to matters of domestic life, such as marriage and religious rites, agricultural systems, and settlement of disputes. The Malay customary law is known as "adat", while Chinese and Hindu customs have become of little or no effect as a source of Malaysia law. (Wan Arfah & Ramy, 2006).

It is evident that the more prominent constituents of Malaysian Law are the Constitution, legislation, juridical decisions, and English law. These laws are very much based on or derived from the British legal system. As such, the English language with the English legal concepts is very much the roots of the Malaysian legal system and exerts a great influence on it.

2.2 The Implementation of the Malay Language in Courts

After Independence, English retained its status as the language of the law even after the National Language Act was introduced in 1963. However, in October 1981, the Chief Registrar of the Courts of Malaysia issued a Directive to impose the use of Malay in courts, where all letters should be written in Malay, all evidence translated in Malay, all arguments given in Malay, and all speeches spoken in Malay (Mead, 1988).

Following that, on 30 March 1990, the National Language (Amendment) Act 1990 came into force, stating that all proceedings (other than the giving of evidence by a witness) in the Federal Court, the Court of Appeal, the High Court or any Subordinate Court shall be in the national language (National Language Acts, Section 8).

The Rules of the High Court 1980 which governs the manner in which court proceedings are carried out was also amended to mandate the use of the national language, provided in Order 92 Rule 1:

> Any document required for use in pursuance of these rules shall be in the national language, and may be accompanied by a translation thereof in the English language:
>
> Provided that any document in the English language may be used as an exhibit, with or without a translation thereof in the national language.
>
> (Rules of the High Court 1980, Order 92, Rule 1)

Efforts have been made albeit in a slow pace to help legal practitioners to cope with this transition. Adjustments were also made in education to produce lawyers who will be bilingually competent. Table 2.1 shows the chronology of first-time events to match the change of language policy in the legal field.

Table 2.1: Language Policy: A Series of "First"

1963	The National Language Act	The Legislation
1965	Committee on legal terminology	DBP
1970	Legal terminology list published	DBP
1972	Legal education started*	University of Malaya
1973	Legal education started*	National University of Malaysia
1984	Bureau of Translation	Federal Court
1988	Committee for the implementation of language policy in courts	Chief Judge
1989	Kanun – first Malay law journal – published	DBP
1989	First language survey	DBP and Judiciary
1990	First language seminar	The Judiciary
1990	Weekly language course for judges	Federal Court
1990	Individual language tuition	Individuals
1991	First seminar on national language and law	Linguistics Society of Malaysia and DBP
1992	Survey Report published	DBP
1994	Proceedings of 1991 seminar published	DBP

*Medium of instruction initially entirely English (due to lack of references in Malay) but shifting to bilingual in the 1990s
Source: Zubaidah, 2002.

Despite the provision, the use of English is still admissible in the high courts where "the interests of justice" are concerned. As observed by several researchers (Zubaidah, 2002; Sharifah Suhanah & Roy, 2001), English is still used extensively in the superior courts.

2.3 The Process of Translating Laws in Malaysia

Since September 1967, the drafting of law text has been done both in the national language and English in pursuant to the National Language Acts. The English texts of pre-1967 laws are to be translated into Malay and the task is undertaken by the Law Revision and Law Reform Division of the Attorney General Chambers (AGC).

This section provides a concise account of the process of law translation in Malaysia. The information is taken exclusively from the AGC official portal. The translation work process commences when there is a request or instruction from the Commissioner of Law Revision (CLR) or Deputy Commissioner of Law Revision (DCLR), Ministry or department concerned to translate pre-1967 laws. Following that, the translation draft is prepared. The English text (source text) is read in its entirety so that the meaning and objective of the text are understood. The text is translated to the national language while maintaining the precise meaning, objective and the flow and "beauty" of the language. Terminology and spelling are updated at the same time. The translated draft is then submitted to the CLR or DCLR for approval. The draft may be amended in accordance with their comments. The finalised draft translation is sent to *Jawatankuasa Istilah*, Drafting Division for comments in terms of grammar and terminology. Based on the feedback and comments from the Drafting Division, necessary amendments are made. The amended translated draft is resubmitted for CLR or DCLR's final approval before it is sent to Percetakan Nasional Malaysia Berhad (PNMB) for printing. The translation produced is the sole authoritative and official translation despite other translations are also produced by private law publishers. Figure 2.2 shows the flowchart of the translation.

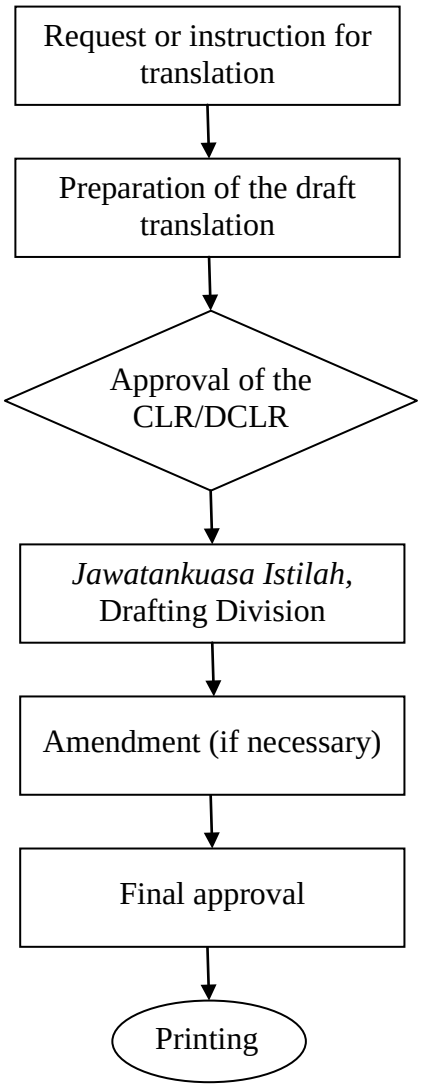

Figure 2.2: Flow Chart for Translation of Laws in Malaysia by AGC

(AGC Portal, 2011)

2.4 The Structure and Function of Legislation

In this study, a legislative text is chosen as the study data. It is therefore fitting to understand this type of genre among legal texts. Legislations are written laws made by law-making authorities. They are also referred to as statutes, and statues enacted by the Parliament are called Acts (see Figure 2.3).

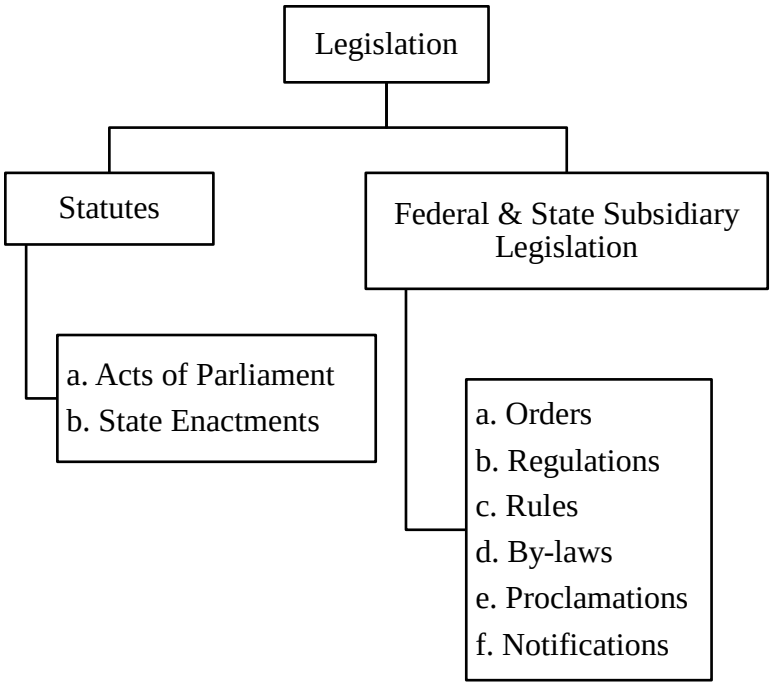

Figure 2.3: Malaysian Legislation
(Edzan, 2000, p.20)

The structure of a typical Act consists of the following elements:

(a) The Short Title

The short title is usually what the Act is known as, for example: Evidence Act 1950. The date is the year which the Act received the royal assent (Varó & Hughes, 2002).

(b) The Long Title

The long title is found at the beginning of the Act. For example, in Evidence Act, the long title reads, “An Act to define the law of evidence.” The long title describes the purpose of the legislation.

(c) Parts, Sections, and Paragraphs

An Act is divided into parts, sections, subsections, paragraphs and sub-paragraphs. Sections are indicated by a number in bold, subsections by a number in brackets; paragraphs are shown in italicised lower-case letters and sub-paragraphs in lower-case

Roman numerals, also between brackets. A fragment of Section 65 of the Evidence Act is shown below as an example:

> **65.** (1) Secondary evidence may be given of the existence, condition or contents of a document admissible in evidence in the following cases:
>
> *(a)* when the original is shown or appears to be in the possession of power—
>
> (i) of the person against whom the document is sought to be proved;

(d) Explanations and Illustrations

Occasionally, after a section, explanations are given to further define the application of that particular law. Sometimes illustrations are given to exemplify the working of its provision and serves as an aid to interpret the meaning of the law.

The function of legislation is generally regulative in nature, i.e. they are set to prevent undesirable consequences of actions or to determine admissible actions within certain areas (Trosborg, 1997). They express rights, obligations, permissions, prohibitions, and restrictions. To describe in pragmatic terms, statutes are speech acts *per definitionem* (Kocbek, 2008, p. 59). They are full of explicit directive and commissive acts, and the speech acts are usually uttered using direct and blunt strategies (Trosborg, 1995). The performative nature of the legislation can be identified linguistically by the uses of performative markers, such as modal verbs ‘shall’ and ‘may’ in English and performative verbs such as ‘declare’, ‘pronounce’, ‘undertake’, and ‘confer.’

2.5 The Language of the Law

The law is “a rule enacted or customary in a community and recognized as enjoining or prohibiting certain actions and enforced by the imposition of penalties”

(The Concise Oxford Dictionary, 1995). The law is conveyed in language; it is a linguistic entity with many linguistic processes involved, from legal contracts to court proceedings. Furthermore, the law of a country is the product of a historical process of its legal and judiciary system, which may in the course of time, experienced a series of interferences due to political changes, revolutions, colonisation, or globalisations. As such, the legal system is heavily laden with socio-cultural elements.

Although the law exists in every country, presented in different languages and various cultural backgrounds, there are certain common features peculiar to the language of the law. Generally, the legal language[1] is characterised by a specific language with a complex and unique vocabulary. The legal discourse as a technical language has a universal tendency toward stiffness and formality. It is typically formulaic, obscure, and archaic. The technicality of the legal discourse often causes the legal language to be known only to those who are trained in the legal field while poses difficulties of comprehension to the lay people (Garzone, 2000; Orts, 2010; Tiersma, 2004).

2.5.1 Linguistic Features of the English Legal Language

Varó & Hughes (2002) and Mellinkoff (1963, cited in Danet, 1980) outlined some lexical features of the English legal language. The legal English contains Latin phrases as a result of the Roman law influence (e.g. *ad infinitum, bona fide, inter alia*), terms of French and Norman origin as a result of the Norman Conquest (e.g. voir dire, prime de sauvetage), archaic adverbs and prepositional phrases (eg. hereinafter, heretofore, thereby, notwithstanding), redundancy of words or doublets (eg. null and

[1] The 'language of the law' and 'legal language' is used interchangeably throughout this dissertation, although in the study of certain studies, these two are distinguished (see Trosborg, 1997, p. 19-21).

void, false and untrue, each and every), and frequent usage of perfomative verbs (eg. pronounce, admit, overrule).

Studies in English stylistic in legal documents reveal a high frequency of nominalisations, passives, conjunctions, and qualifiers. The sentence length in legal writing is longer compared to other registers (Crystal & Davy, 1969). Discourse level studies show that legal English violates some rules of ordinary language. For example, nouns referring to persons or things are used repetitively instead of substituting them with pronouns (Danet, 1980). Shy and Larkin (as cited in Danet, 1980) noted that legal text lack cohesion and is overcompact, thus making it hard for readers to get the idea of the text.

2.5.2 Linguistic Features of the Malay Legal Language

Nik Safiah (1994) conducted a comparative study between the legal language of the olden Malay and the modern Malay language. She found out that there are no major differences between the syntax and morphology of the current Malay language with the olden Malay. The only difference is in the lexicon. Modern law brings new legal concepts which might not exist in the Malay language. Therefore new terms are created or coined to fill up the lexical gap. However, she noted that modern Malay shows the tendency of using layers of compound sentences, held together by conjunctions to show relative elements and complements.

Studies on the Malay legal register were done by Karthiyani (1994) and Midiyana (2008). Both studies identify the features of the Malay legal language from the aspects of lexis, syntax and morphology. Both proved that the Malay legal register is very much influenced by legal English. The legal terminology is very technical in nature and only intelligible to those who are expert in the field. Midiyana suggested breaking down long sentences into simpler ones and replace certain terms with native and more

common words. For example, she asserts that the term ‘fee’ is should be replaced by the word *yuran* or *bayaran* instead of using the borrowing *fi*. Evidently she represents the views of a layman. Legal professionals, however, may view this in an entirely different perspective, as will be shown in the latter part of this study. The following is a subsection from the Evidence Act in both English and Malay:

> A final judgment, order or decree of a court, in the exercise of probate, matrimonial, admiralty or bankruptcy jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character or the title of any such person to any such thing is relevant.
>
> (Evidence Act, Section 41(1))

> *Sesuatu penghakiman, perintah atau dekri muktamad yang dibuat oleh mahkamah pada menjalankan bidang kuasa probet, hal ehwal suami isteri, admiralti atau kebankrapan, yang memberikan kepada atau melucutkan daripada mana-mana orang apa-apa sifat di sisi undang-undang, atau yang menetapkan mana-mana orang menjadi berhak kepada mana-mana sifat itu, atau berhak kepada apa-apa benda tertentu, bukan terhadap mana-mana orang tertentu tetapi dengan mutlaknya, adalah berkaitan apabila kewujudan apa-apa sifat di sisi undang-undang itu atau kewujudan hak milik mana-mana orang sedemikian terhadap apa-apa benda sedemikian adalah berkaitan..*
>
> (*Akta Keterangan,* 41(1))

It is apparent that at first glance or even after reading multiple times, a layman does not make much sense out of the above statement. First of all, there is the

abundance of legal terminology, such as judgment (*penghakiman*), decree (*dekri*), probate (*probet*), admiralty (*admiralti*), jurisdiction (*bidang kuasa*) and legal character (*sifat di sisi undang-undang*), among which some are easily recognized as borrowings from the English language (*dekri*, *probet*, *admiraliti*). The sentence has multiple layers with an appalling length, joined together by multiples of conjunction 'or' (*atau*) and the adverb 'which' (translated as the conjunction *yang* in Malay). The present of frequent nominalisations, passives, conjunctions, and qualifiers shows similarity with the English legal language. This simple observation shows that legal concepts are transferred through literal translation from the English to the Malay. Therefore, the Malay legal language bears similar linguistic features with the English legal language.

2.6 Legal Terminology: Legal Terms and Legal Concepts

According to Sager (1990), the word 'terminology' has three meanings:

1. Activity…, i.e., the set of practices and methods used for the collection, description and presentation of terms;
2. Theory, i.e. the set of premises, arguments and conclusions required for explaining the relationships between concepts and terms which are fundamental for the coherent activity under 1;
3. Vocabulary of a special subject field. (p. 3)

It is not in the scope of this study to delve into the activity of terminology processing or the theory of terminology. The third definition by Sager will be used in this study. Legal terminology simply refers to the unique vocabulary of the legal field, found in spoken or written legal discourse.

In the field of specialized languages such as the legal language, a word and a term bear significant differences, as discussed by Cabré, (1998):

> Terms do not seem to be very different from words when we consider them from the formal or semantic point of view; they differ from words when we consider them as pragmatic and communicative units. The most salient distinguishing feature of terminology in comparison with the general language lies in the fact that it is used to designate concepts pertaining to special disciplines and activities (p. 81).

Concepts are elements of the structure of knowledge. A term is a symbol which represents concepts. Sager (1990) defined concepts as "constructs of human cognition processes which assist the classification of objects by way of systematic or arbitrary abstraction" (p. 22). A term in a particular field bears certain properties of concepts which are specified to the knowledge in that field. The legal texts are compacted with legal terms, and every legal term has its legal concept which is then contained within a particular legal system. The legal terms may consist of purely technical legal terms (eg. 'estoppels', 'solicitor', 'tort'), semi-technical terms (eg. 'issue'), and everyday vocabulary, i.e. ordinary English terms which have a defined legal meaning (eg. 'section', 'paragraph', 'subject matter') (Varó & Hughes, 2002; Poon, 2005). One absurdity in legal language is that ordinary words have special meanings which may never cross the mind of a layman (Danet, 1980). Therefore, as Poon (2002) rightly asserted, "If a layman just looks at a translation of the legal terms, it is conceivable that he will not understand the legal concepts behind them" (p. 218). One example is given by Jeremy Matthews, as cited in Sin and Roebuck (1996) while discussing the creation of Chinese common law in Hong Kong:

> There are a number of difficulties involved in preparing Chinese language texts of legislation originally drafted in English. One of them is the lack of appropriate terms in Chinese to describe concepts that are often peculiar to the common law. For example, the word 'possession' in English law is not restricted

> to immediate personal possession. A person can be guilty of possessing a forbidden object if he entrusts it to another person for safe keeping on his behalf. The important element is the capacity to control the thing in question. There is no one Chinese term that adequately covers the concept. That is why in recent legislation the draftsman coined a new Chinese term for 'possession' (p. 242).

2.7 Legal Terminological Issues in Translation

Legal terminology is the most striking linguistic feature of legal language. Every legal term represents a certain legal concept. The translation of legal terminology involves the complete transfer of the concepts from the SL to the TL. The concept which is to be transferred must match its linguistic label (a word or a phrase), which is the term itself. The attempt to find a suitable label must be done in a fine, careful, and detailed way so that the label would adhere to the original concept in the SL, that is, neither ambiguous nor vague, and not producing different connotations from the meaning borne by the SL (Mashudi, 1994).

The requirement for a fully equivalent translation stated by Mashudi above is idealistic and has since been deemed impossible by many researches in this field. This is why legal terminology is one of the major sources of difficulty in translating legal documents, and why legal translation has been largely researched from the perspective of terminology (Galdia, 2003). Wagner (2003) addressed the issue of terminological equivalence:

> Among problems posed by legal translation, that of terminological equivalence is one of keen current interest….The attribution of an equivalence to a legal term, for which no comparable concept exists in another legal system, can be the cause of ambiguities, confusion and all types of miscomprehension due to the effect the term in question produces in the reader of the translated text. (p. 180, 181)

This issue had drawn much attention especially in recent years due to the formation of the European Union (EU). The passing of the European Union law, which directly or indirectly affect the legal systems of the EU member states, evoked active research in comparative linguistics of the legal language. These researchers generally aim at reconciling the different legal systems in translation and working towards the standardisation of legal terminology across various European languages. Even though Malaysia is not concerned with the problem of contrasting legal systems (Malaysia inherited the British common law system, and never possessed an indigenous modern legal system before that), these researches in the European region more or less contributed to the study of legal translation in Malaysia in areas like translation approaches, terminology, sociolinguistics, and comparative linguistics.

Since the current study is on words (specifically terms), the researcher will focus on the issue of word equivalence. Baker (1992) relates the problem of non-equivalence at word level with semantic fields. Fields are abstract concepts. Examples of semantic fields are fields of speech, plants, or animals. Under each semantic field are words called lexical sets. For example, the semantic field of speech contains general words like ‘speak,’ ‘say,’ and more specific words like ‘murmur,’ ‘mumble,’ ‘mutter,’ and ‘whisper.’ Most languages are likely to have equivalents for the general words of ‘speak’ and ‘say,’ but may not have equivalent for the more specific ones. Therefore, the difference in the extent of semantic fields between different languages is one important factor to the problem of non-equivalence at word level. Table 2.2 shows the common problems of word-level equivalence and translation strategies:

Table 2.2: Common Problems and Translation Strategies at Word Level

Common Problems	Translation Strategies
(1) cultural-specific concepts	(1) using a more general word
(2) SL concept not lexicalised in the TL	(2) using a more neutral or less expressive word
(3) SL and TL have different distinctions in meaning	(3) using cultural substitution
(4) TL lacks a superordinate	(4) using loan word or loan word plus explanation
(5) TL lacks a specific term (hyponym)	(5) paraphrasing by using related words or unrelated words
(6) differences in physical or interpersonal perspective	(6) omitting certain words
(7) differences in expressive meaning	(7) using illustration
(8) differences in form	
(9) differences in frequency and purpose of using specific forms	
(10) the use of loan words in the SL	

Source: Baker, 1992.

The common problems of word translation shown above are also applicable in the context of legal terminology. The translation strategies outlined above serve to find a matching label for a problematic word in question. However, in the legal field, terminological equivalence is not merely concerned with the availability of words in the TL, it is also a matter of 'concept equivalence.' Researchers are more concerned with the transfer of concepts embedded in a legal term than achieving an accurate surface meaning of the word itself.

2.8 Finding Solutions to Legal Terminological Issues in Translation

The problem of legal terminology translation is not a new one. Research studies have been going on and efforts have been made by governmental bodies, educational entities or non-governmental organisations to find possible solutions. For example, in the European context, the International Institute of Legal and Administrative Terminology published volumes of *European Glossary of Legal and Administrative Terminology* with detailed description and comparison of various legal and administrative terminology in different European languages (Cao, 2007). By far, some linguistic measures are taken when translating legal terminology to ensure the

successful transfer of legal concepts; at the same time, not a few research studies have also emphasized the need of changing psychological perspectives. Some important measures are discussed in the following subsections.

2.8.1 Use of Borrowing or Creation of New Words

In legal context, Jakobson acknowledges "whenever there is deficiency, terminology may be qualified and amplified by loanwords or loan-translations, neologisms or semantic shifts, and finally, by circumlocutions" (as cited in Wagner, 2003).

According to Cao (2007), towards the end of the 19th century and the beginning of the 20th century, many Chinese legal terms were borrowed from the Japanese, including major concepts like *renquan* (human rights), *zhuquan* (sovereignty), and *xianfa* (constitution). The English legal language also borrows from Latin and French. There are abundance of English legal terms originated from Latin, to mention a few, *bona fide, habeas corpus,* and *ultra vires.* English terms that are borrowed from French include terms like 'attorney,' 'bailiff,' 'counsel,' 'evidence,' and 'summon' which has been very much assimilated into the English language today.

Borrowed legal terms in the Malay legal language are the study data in this research. Here borrowing is seen as a solution to legal translation. However, as the study revealed in the later part of this dissertation, this solution itself poses a further layer of issues especially in its practical application.

2.8.2 Use of Parentheses, Footnotes, and Endnotes

Another measure to encounter legal terminological issues is the use of parentheses, footnote, and endnotes. For example, in legal French, when word-to-word translation is impossible, many translators opt for this technique—putting an English

term in brackets, then using its French equivalent in the following sentence. The term is furthered explained in footnotes or endnotes, so that the target public may understand the textual content and the message may be preserved. (Wagner, 2003).

Poon (2002) explores the limitation on legal translation strategy by looking at legal judgments pertaining to the right of abode issue in Hong Kong. She suggested that a user-friendly approach be used that the general public will be able to understand the law. She suggested the use of footnotes to legal terms based on the English common law and are foreign to the Chinese culture.

In a study to look into translation of laws in Greece and Cyprus, Vlachopoulos (2007) noted that a more recent translation of the text of the Cypriot Law of Civil Wrongs makes use of brackets. For instance the term *φημολογία* is accompanied by the term 'hearsay' in brackets, which is the respective Common Law term in the English source text. This, according to him, is a sign of language change with respect to legal stylistic.

Rek-Harrop (2008) illustrates an example in English-Polish legal translation using the term 'director':

> In Poland a director does not have to be a member of the Board of Directors in order to hold that title while in the United Kingdom it is a necessary requirement. The role of the subject of the ST is thus that of Financial Director and member of the Board of Directors. To make the reader fully aware of the differences in the responsibilities of a Director or to prompt the reader to seek further legal advice and reassurance that the TT has the same legal effect as the original I have added 'orazczłonka rady dyrektorów' (and member of the Board of Directors) in brackets. (p. 13).

2.8.3 Semantic Extension and Conceptual Expansion of Native Words

Semantic extension is the result of transportation of a borrowed meaning or a circle of meanings onto an already existing word of similar semantic or phonetic appearance.

There are terms that might find semantic equivalence in the target language. However, the same words with the same meaning in different languages might have different conceptual equivalence. Quoting an example from Cao (2007), the French *droit* is not identical conceptually to the English word 'law'. Therefore, it is important to introduce new concepts into native words that the words will experience conceptual expansion or adjustment specific to the law.

2.8.4 Change in Perspective

Prejudices and psychological resistance to change is one of the inherent factors of the difficulties faced in the translation of legal terminology. Sin and Roebuck (1996) believe that "the real difficulty lies in our seeing the need for a change in perspective." They strongly refute the prevailing opinion that it is impossible to produce a law translation which can fully convey the legal concepts in the source language. They argued that no language is obliged to confine itself within its present state. By putting out examples of Chinese translated legal terms from the common law in Hong Kong, they showed that a language can always adapt itself to the changing social environment and can always augment itself by assimilating new concepts from other cultures.

Both Nik Safiah and Mashudi believe that the Malay language is well able to function as the language of the law in Malaysia. Nik Safiah (1994) asserted that the current problem lies in the unreadiness of the users of the legal language to keep themselves update with the legal terminology and reference books. It is not that the

national language is incapable to express the law, but the users of the language who does not make the effort to produce the language in an orderly, smooth, and correct way. She then urges those involved in practicing the law to strive to have a good command in Malay. Mashudi (1994) points out that what is crucial is the apprehension of the legal concept of the source language, and it does not matter what linguistic label or translated word is attached to it. One may find it awkward to use a new label in the first place, but as time goes by, the label will be commonly used and well-established in the target language.

2.9 Typology of Malay Legal Terminology

There are many ways to categorise a set of terminology. Mashudi (1994) did a research on the legal terms compiled in *Istilah Undang-undang* DBP 1986 (Revised Edition). He looked into the aspects of term formation procedure, appropriateness of the concept and its effect, appropriateness of the linguistic label and its practicality. From the analysis of terms listed in the glossary, he concluded that the legal terminology in the Malay language derived from five sources, namely:

(1) The Malay language itself, such as *sempadan* (boundary), *peras* (extort) and *hukuman* (sentence);

(2) Sources from dialects or cognate languages such as *calon* (candidate), *sogok* (bribe) and *kamar* (chamber);

(3) Terms which are loan translations, such as *penzahiran dokumen* (discovery of document), *perlindungan mutlak* (absolute privilege) and *penghinaan mahkamah* (contempt of court);

(4) Terms which are formed by transliteration, i.e. terms that borrow the original label in the source language but their spelling is adapted to the

pronunciation and spelling of the Malay language, such as *liabiliti* (liability), *litigasi* (litigation), and *defendan* (defendant); and

(5) Direct borrowing, where no alteration whatsoever is made including spelling and pronunciation, such as English *Common Law* and *alien;* French *feme sole* and *force majeure,* and Latin *prima facie* and *locus standi.* (p. 82-83).

The last three types fall under the category of borrowed words, or linguistic borrowings. Mashudi further ease the mind of the Malay language speakers not to feel awkward or ashamed with the borrowed words because borrowing does not belittle or denigrate the prestige of the Malay language. In fact, not one language is pure in nature and free from any foreign influence. As language is a tool for communication, borrowing of terms becomes necessary when new experiences, activities and thoughts arise. (Mashudi, 1994, p. 84).

2.10 Linguistic Borrowing

As this study focuses on borrowing, the concept of linguistic borrowing must now be made clear. The process of borrowing is described by Haugen (1950) as follows:

(1) Every speaker attempts to reproduce previously learned linguistic patterns in an effort to cope with new linguistic situations;
(2) Among the new patterns that he may learn are those of a language different from his own, and these too he may attempt to reproduce;
(3) If he reproduces the new linguistic patterns, not in the context of the language in which he learned them, but in the context of another, he may be said to have 'borrowed' them from one language into another. (p. 212)

Thus, the definition of borrowing could then be “the attempted reproduction in one language of patterns previously found in another.” (Haugen, 1950, p. 212)

Haugen did admit the absurdity of the use the term ‘borrowing’ as this process takes place without the lender’s consent or awareness, and the borrower is not bound to return the borrowed item. The borrowed words tend to remain in a language forever, unless they become obsolete (Aitchison, 2001, p. 141-142; Kitson, 2002).

In the macroscopic view of the sociocultural aspect, linguistic borrowing is a common phenomenon due to various inevitable circumstances. In medicine, science and technology, sharing of information demands the transfer of terms from the more researched or advanced region to the less. In circumstances such as war, conquest, colonisation, or migration, borrowing happens usually from the upper or dominant language to the lower. In literature, regional novels and essays (e.g. brochures or advertisements), cultural words are often transferred to give local colour, to attract the reader, or to give sense of intimacy between text and the reader. (Heah, 1989; Newmark, 1988).

In the present literature, there seem to be two main areas in linguistics which describes the phenomenon of linguistic borrowing. The first is translation studies, and the second is language contact. The former sees borrowing as a method or procedure of translation, while the latter sees borrowing as a result of linguistic interference and provides a detailed classification of borrowing. Based on literature in these two fields, the features of loan translation, transliteration, and direct borrowings (types of legal borrowing identified by Mashudi (1994)) will be further defined.

2.10.1 Linguistic Borrowing in Translation Studies

Several scholars in translation studies such as Catford (1965), Vinay & Darbelnet (1958), Baker (1992), and Newmark (1988) discussed linguistic borrowing. The idea of borrowing can be seen in Catford's transference (Catford, 1965). He sees transference and translation as two different processes. Transference involves implantation of SL meanings into the TL text while translation involves the substitution of TL meanings for SL meanings:

> In normal translation…the TL text has a TL meaning. That is to say, the 'values' of TL items are entirely those set up by formal and contextual relations in the TL itself. There is no carry-over into the TL of values set up by formal or contextual relations in the SL….It is, however, possible to carry out an operation in which the TL text, or, rather parts of the TL text, do have values set up in the SL: in other words, have SL meanings. We call this process transference (Catford, 1965, p. 43).

Vinay and Darbelnet (1958) named two general methods of translation, direct and oblique translation. Under direct translation, two procedures are related to linguistic borrowing: borrowing and calque. Borrowing in Vinay and Darbelnet's terms refers to direct borrowing. When translating words that are specific to SL culture, such as food names, borrowing is usually used. Some borrowing may become so common that it is part of the TL lexicon. Calque is the French word for loan translation, referring to a special kind of borrowing where the SL expression form is transferred with each of its elements translated literally. Calques can be a lexical calque or a structural calque. A lexical calque preserves the syntactic structure of the TL while introducing a new expression. One example is the French calque *Compliments de la Saison* for the English 'Compliments of the Season'. A structural calque results in change of language

construction or syntactic structure, e.g. French *science-fiction* (science fiction). Vinay & Darbelnet were also aware that due to semantic change, some calques may turn into false friends (Venuti, 2000; Munday, 2001).

Newmark (1988) sees transference as a translation procedure. He expands Catford's transference by including transliteration, which is the representation of text written in a different source language alphabet in a form readable by target audience. Examples of transference are English words 'décor' and 'coup d'etat' (from French). He also introduces naturalisation. Words that are naturalised adapt the SL word first to the normal pronunciation, then to the normal morphology, or word-forms, of the TL. Examples given are French *humeur* from 'humour' and German *performanz* from 'performance.' Newmark referred to loan translation, or calque, as thorough-translation. Thorough-translation is "the literal translation of common collocations, names of organisations, components of compounds" (1988, p. 84). In this sense, some local examples are *pencakar langit* for 'skyscraper', *muat turun* for 'download', and PEKEMBAR (*Pertubuhan Kebangsaan Melayu Bersatu*) for UMNO (United Malay National Organisation).

2.10.2 Linguistic Borrowing in Language Contact

In Weinreich's benchmark book, *Languages in Contact*, two or more languages will be said to be in contact if they are used alternately by the same persons. The outcome of such linguistic contact is the interference phenomena. The term interference implies "the rearrangement of patterns that result from the introduction of foreign elements into the more highly structured domains of language, such as the bulk of the phonemic system, a large part of the morphology and syntax, and some areas of vocabulary" (Weinreich, 1970, p. 1). Such interference phenomenon is termed "interlingual influence" by Haugen (1953). The greater differences between two given

languages, the greater the interference will be. Although the amount of interference may differ, the mechanism of interference, i.e. the way one vocabulary interferes the other, is apparently the same. Weinreich asserts that an analysis of interference must include study of languages' differences in every domain of linguistic—phonic, grammatical, and lexical. Lexical interference can be explained by the phenomenon of borrowing. Haugen also suggests the term 'linguistic diffusion' (adapted from anthropologists in relation to 'cultural diffusion') to describe the process of borrowing (Haugen, 1950, 1953).

Weinreich presented mechanisms of lexical interference in cases of simple words and compound words or phrases. For simple words, there are three types of major interferences. The first type is the direct transfer of the phonemic sequence from one language to another. One example given is the Italian *pizza* which has been adapted into English. The transferred word may also appear in a form that resemble phonemically to a word in the recipient language, such as *troca* in Spanish from 'truck'. The second major type of interference involves the extension of the use of an indigenous word of the influenced language in conformity with a foreign model. When two languages containing similar words come in contact, one may expand or adjust its semantics due to the influence of another. The third type is the change in the form of cognate.

For compound words, there are also three major types of interferences. First, interference may result in a transferred word being adapted to the word form or syntactic patterns of the recipient language. Secondly, the interference may result in the reproduction in terms of equivalent native words. This form of interference is generally called loan translation. The third type of interference involves the transfer of some elements and the reproduction of others, called hybrid compounds. (Weinreich, 1970, p. 47-53).

Haugen offered a detailed classification of linguistic borrowing and by far is one of the best-known taxonomies of borrowing. His model utilises the formal criteria of borrowed words and is based on importation-substitution distinction. He stated that all types of borrowing falls between the two extreme of complete importation and complete substitution. If a borrowing is similar enough to the foreign language, it is said to be imported. If a borrowing is reproduced in a way that is less than perfect in imitating the foreign word, but more familiar to the native language, then it is said to be substituted. The division of borrowings is thus according to the extent of morphemic substitution: none, partial or complete. Accordingly, three terminologies for three main types of borrowing are established: loanwords, loanblends, and loanshifts. Loanwords show morphemic importation without substitution; Loanblends show morphemic substitution as well as importation; whereas loanshifts show morphemic substitution without importation (Haugen, 1950). Loanwords are usually limited to borrowings in which both the phonemic shape of a word and its meaning are imported. Loanblends substitute a native morpheme for part of the foreign word, resulting in words consisting of a copied part and a native part. Within loanshift, there are loan translation and semantic loan. Loan translation is where only the overall pattern of the words (usually compound words) with its meaning is imported, but the native morphemes have been entirely substituted for foreign ones. Such substitution is quite mechanical and 'not a real translation'. He then coined the French term *calque* (coined by Vinay & Darbelnet), meaning 'copy' as a better description of such kind of borrowing. Semantic loan is where a native word acquires a new meaning because of its semantic or phonetic similarity to some word in the other language. A diagram of Haugen's classification of loanwords is shown in Figure 2.4.

Heah (1989) in her study of English influence on the lexical expansion of the Malay language, employed the classification of borrowing by Haugen (1953) and also

Weinreich (1970) with some modification to produce a detailed classification suitable to the local context.

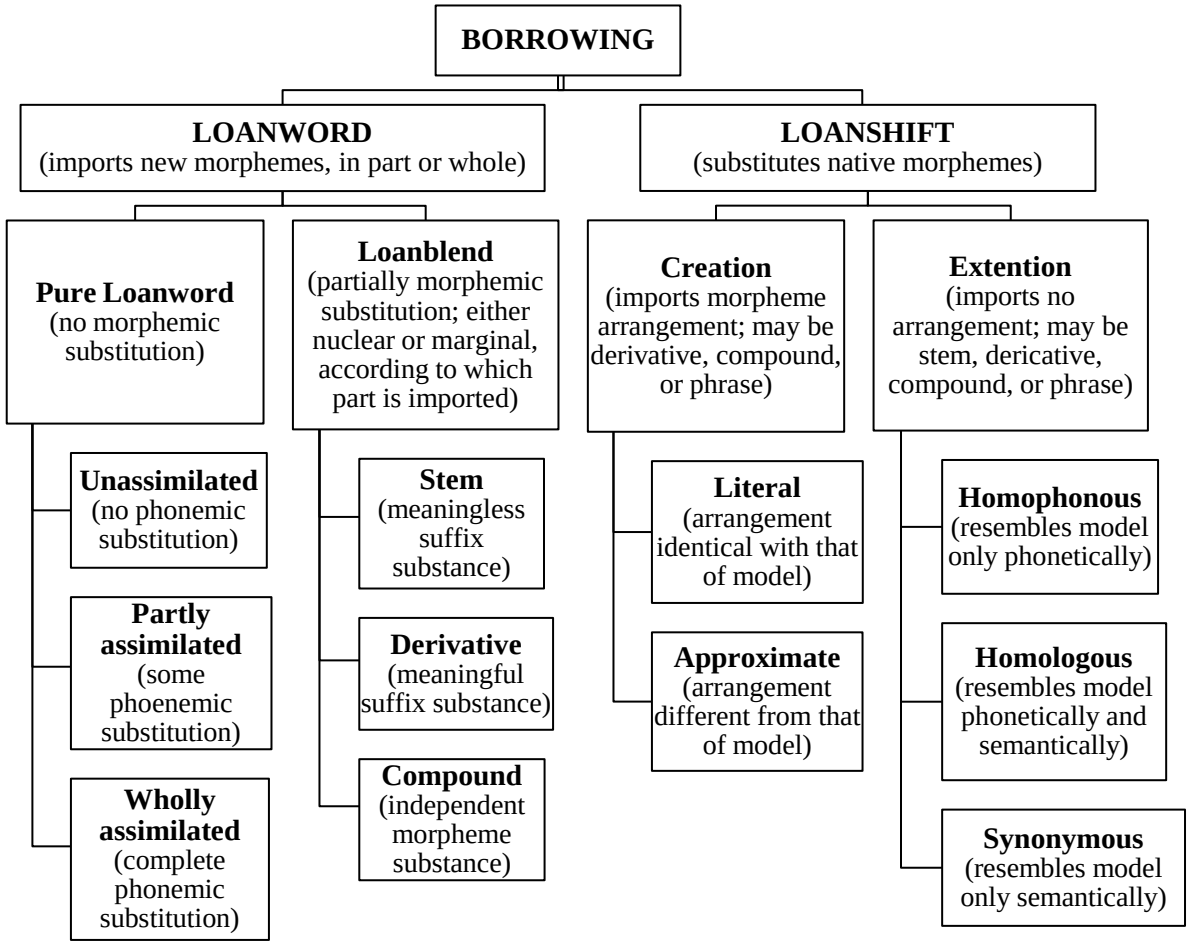

Figure 2.4: Classification of Borrowings by Haugen (1953)

2.11 Linguistic Borrowing in the Legal Field

Borrowings in the legal field were briefly discussed previously (Section 2.8.1). More will be reviewed in this section. Cocceji, a German jurist in the 18th century, suggested three ways to translate a technical concept in a language which is underdeveloped in the concept, that is, (1) to borrow or naturalize the source terms into the target language, (2) to use neutral terms to describe the concept, and (3) to create neologisms in the target language (as cited in Sarcevic, 1997). It is then the duty of legal

translators to decide whether or not to maintain the SL word or try to produce an equivalent for it in the TL.

Russell (1979) studied the influence of French in the English translation of the Statutes of Quebec, and found out that the translated laws contain a number of loans and transfers. The study concluded that linguistic borrowing is necessary and some legal concepts can only be rendered through loanwords. However, the writer also pointed out the problem of deceptive cognates, which are translated and naturalised words that is similar in form with existent SL words but have different meaning.

A study on Spanish business legal language was conducted by Llopis (2005). She came across the following pattern of borrowings: loans, false friends, false loans and calques. She asserted that importation of new words from English is a changing reality in Spanish legal word which cannot be denied nor rejected. Deeper training in these neologisms among legal and economic experts as well as translators is needed.

Puteri Roslina (2005) identified 1006 borrowed words from a total of 3404 legal terms documented in Malaysia legal glossary (*Istilah Undang-Undang*), that amount to almost one-third of the list of terms. However, the borrowed words studied only include loanwords and loanblends (Haugen's terms). Loanshifts (loan translation) was excluded in this study; this limitation in her study denotes that the actual amount of borrowings is far greater than 1006. She categorised the borrowings according to the formal approach (Haugen, 1953) and semantic approach (Stene, 1945). She also analysed the various effects of borrowing in the Malay language with respect to morphology and phonology.

No study has been conducted in relation to the practical application of legal borrowing in the Malaysian legal setting. The closest would be a report written in the Malay language concerning the usage of the Malay Language in judiciary and legal field by Ahmad et. al. (1992). This report covered an extensive research including the

execution of the usage of the Malay language, the problems of the usage of the Malay language among judges, lawyers, and in the study of law. There is, however, none related specifically on the usage of borrowings and problems in using borrowings in legal practice.

2.12 Linguistic Borrowing in Other Fields

In the discussion of terminology issues, besides the legal discourse, the medical discourse is also frequently brought up. In fact, the medical discourse has several similarities with the legal discourse. Both are highly compacted with technical terminology, both have dual addressee (doctors and patients), involving expert-to-layman communication, and both are concerned with public interest and welfare (Harvey, 2002). Therefore, certain scenarios of linguistic borrowing in the medical field are also reflected in the legal field.

It is a concern that medical terms which are borrowings (from English, Latin, or Greek) might lead to miscommunication and the disadvantage of the patients. Chapple, Campion & May (1997) conducted an ethnographic study on doctor-patient communication in genetic counselling. They found out that the choice of words used by doctors affects the psychology of the patients and their family members. Medical terms unfamiliar to the laymen create confusion and increase unnecessary fear and anxieties. The study suggested that careful explanation is given and simple English is used for better communication.

A study conducted in Turkey by Cengizhan & Tani (2010) found that Turkish doctors use English medical borrowings while conversing among themselves and even with patients. The doctors claimed that finding the exact corresponding Turkish words for the medical terms is highly challenging, time-consuming and may not correspond to

the target medical concepts. However, this poses a great concern as patients do not understand the specific medical terms.

Zethsen (2004) did a research project for the Danish Ministry of Health regarding the user-friendliness of “patient package insert” (written consumer information which comes with medication). She focused her study on the direct transfer of Latin-based terminology from English to Danish. Results confirmed that such direct transfer of terms used in the patient package insert poses a threat to the comprehension of the target audience. The use of such technical terms will not be a problem in expert-to-expert communication and rather will be a success in exchange of information. However, when expert knowledge is to be made available to laymen, direct transfer of terms is not a good choice to convey user-friendly information.

In another area, Takashi (1990) researched the functional analysis of English borrowings in Japanese advertising. He identified five functions of borrowings: lexical-gap fillers, technical terms, special-effect-givers, euphemisms, and trade names. He then investigated the relationship between these functions with linguistic and sociolinguistic variables, such as word-class and semantic changes, audience characteristics and product type.

2.13 Conclusion

This chapter presents the literature review on the legal system, legal translation and legal terminology, particularly legal borrowings. As Malaysia practices a bilingual legal system, legal translation has become a “mandatory” requirement. Legal translation is not a new issue and has been a major concern in many countries, especially countries which practice a bilingual legal system or in countries where multiple languages are used either due to multi-ethnicity or a common interest (such as the EU). In these countries, problem factors have been identified, solutions are being implemented, and

the results are monitored from time to time. In Malaysia, however, such studies have been found wanting. This lack provides much room for research in this area in various aspects. This research is but one small contribution to an area that has been large neglected. Directly related to this research is one of the methods of legal terminology translation, the borrowing of the English term morphologically, orthographically, phonetically, or semantically into the Malay language, resulting in direct borrowings, naturalisations, loan translations, and loanblends. This classification of legal borrowings will be the framework of this study. In the following chapter, the methodology of this study will be outlined.

CHAPTER THREE

RESEARCH METHODOLOGY

3.0 Introduction

This chapter describes the research objectives, theoretical framework and choice of data and participants. It then elaborates the research procedures of this study in three areas: textual analysis, interviews, and questionnaire survey. This study is conducted via a mixed method approach, incorporating qualitative analysis and quantitative analysis. The first part of the research, the textural analysis, is mainly quantitative in nature. The second part of the research, where fieldwork is involved, employed the sequential exploratory strategy (Creswell, 2009). First, there is the qualitative data collection and analysis through interviews. The data and analysis of the interview is used as the basis for more data collection in the second phase, the quantitative analysis through questionnaires.

3.1 Research Objectives

This research attempted to probe into the legal borrowings in Malaysian legislative text and lawyers' perspectives towards legal borrowings. The language of the law is a register by itself with distinguish characteristics, making it uncommon among the vernacular language. The Malaysian legal system is one that is heavily based on the English common law. As such, many legal concepts find their origins in the English legal concepts. Therefore, the translation of an English linguistic label (legal term), in which the legal concept is embedded, into the Malay language proved to be a challenging task. To fill up the lack of equivalent term or concept due to cultural difference, many terms are thus borrowed from English to Malay, resulting in Malay

legal terms like *injunksi,* from 'injection' and *probet,* from 'probate'. This research has three aims, which correspond to the research questions stated in Chapter One:

(1) To investigate the forms and functions of legal borrowings.

(2) To find out the reactions of lawyers towards the legal borrowings.

(3) To find out the problems faced by lawyers when using these legal borrowings and how the problems are resolved.

3.2 Theoretical Framework

From the literature review in the previous chapter, it is evident that based on formal criteria, there is a pattern for the classification of linguistic borrowing, though some classifications are more detail and more elaborate than others. The same of similar type of borrowing may be given different designations. The following table shows the major types of borrowing and their different designations labelled by various scholars in translation studies and language contact.

Table 3.1: Types of Borrowing by Various Scholars

	Haugen (1953)	**Vinay & Darbelnet (1958)**	**Weinreich (1970)**	**Newmark (1988)**	**Mashudi (1994)**
Types of Borrowing	Unassimilated loanword	Borrowing	Direct transfer	Transference	Direct borrowing
	Assimilated loanword		Direct transfer	Naturalisation	Transliteration
	Loan translation	Calque	Loan translation	Thorough-translation	Loan translation
	Loanblend		Hybrid compound		

The theoretical framework of the current study is based on Mashudi's typology of borrowed words in Malay legal terminology. Mashudi can be considered a pioneer in developing a classification of borrowing specific to the Malaysian legal context. Since

such a study has been carried out by Mashudi, it is naturally fitting to base the current study on his classification. Thus, Mashudi's typology of borrowed legal terms was chosen for this study. He identified three types of borrowings from the Malaysian legal glossary, namely loan translation, transliteration, and direct borrowing. As shown in Table 3.1, the term 'loan translation' was used by Haugen and Weinreich and is similar to 'calque' by Vinay & Darbelnet and 'thorough-translation' by Newmark. Transliteration, defined by Mashudi as terms that borrowed the original label but underwent adjustment to suit the pronunciation and spelling of the Malay language, is similar to Newmark's naturalisation and Haugen's assimilated loanwords. Direct borrowing, which is borrowing with no alteration to the spelling and pronunciation in the SL, corresponds to Vinay and Darbelnets' borrowing, Weinreich's direct transfer and Haugen's unassimilated loanwords.

The use of 'transliteration' by Mashudi may become a point of argument. Transliterate, according to the Oxford Concise Dictionary, refers to "represent (a word etc.) in the closest corresponding letters of a different alphabet or language." Transliteration is generally understood as in examples such as transliterating Sanskrit words or Hebrew words with roman letters. Therefore, the term 'naturalisation' by Newmark is preferred, which "succeeds transference and adapts the SL word first to the normal pronunciation, then to the normal morphology (word-forms) of the TL" (Newmark, 1988, p. 82).

However, Mashudi does not include borrowed words that may be a result of different types of borrowing or a combination of native and foreign elements. This type of word is referred by Haugen as 'loanblend' and is classified as the fourth type of borrowing in this study. Further subtypes of borrowings will be discussed in the analysis section.

The theoretical framework in this study is a formal classification of borrowings (Capuz, 1997) based on Mashudi (1994). An additional category of borrowing—loanblend—adapted from Haugen (1950, 1953), is taken into account in this study as it is not mentioned by Mashudi yet is found to be necessary. Therefore, the classification of borrowing employed in this study is as follows:

(1) **Direct borrowing:** Direct borrowing are words or phrases imported exactly into the TL with no alteration whatsoever. The orthography of the TL word is exactly the same as the SL word (e.g. *Common Law, folio*).

(2) **Naturalisation:** The SL word or phrase is adapted to the normal pronunciation and morphology, or word-forms, of the TL (e.g. *konversi* (conversion), *teori konstitutif* (constitutive theory)).

(3) **Loan translation (calque):** The semantic components of a given term are literally translated into their equivalents in the borrowing language. It is a word or phrase borrowed from another language by literal, word-for-word (Latin: *verbum pro verbo*) or root-for-root translation (e.g. *perlindungan mutlak* (absolute privilege), *kemuktamadan taksiran* (finality of assessment)).

(4) **Loanblend:** A combination of borrowing and translation, where the SL word of the phrase is partly imported and partly substituted (e.g. *undang-undang sivil* (civil law) and *prosiding kehakiman* (judicial proceedings)).

Apart from the studying of lexical borrowings, this study also surveys the use of these terms by the lawyers. The hypotheses in this study is that in expert-to-layman communication (in this case, lawyer-to-client), the use of borrowings in legal discourse may actually undermine comprehension of the clients.

3.3 Choice of Data and Participants

The first objective of this research is attained by carrying out a textual analysis. It would be impractical to include the whole bulk of legal terms in the legal glossary for this investigation. Therefore, a representation of legal text, in this case a legislative text, or statute, is chosen as the study data. The first criterion of the legislation is that it must be enacted before 1967 because laws were made in English prior to that time and were later translated into the Malay language. The second criterion is that the chosen Act must be commonly referred to and not some laws applicable only to rare cases. By interviewing five lawyers, four legislations were identified as most common and generally referred to, which are the Contracts Act 1950, Civil Law Act 1956, the Evidence Act 1950, and the Penal Code (enacted 1935). All four are also studied by law students. Among these four, only Evidence Act has the Malay translation on the AGC official portal. (There are Malay translations for Contracts Act, Penal Code, and Civil Law Act published by private law book publishers, but only the translation done by Law Revision and Law Reform Division of AGC is considered authoritative.) Therefore, due to data constraint and reliability purposes, the Evidence Act is chosen as the study data. Another reason is that the Evidence Act has a wider scope of usage. Civil Law Act and Contract Act is used in civil cases and Penal Code is used exclusively in criminal matters, while Evidence Act is referred to both in civil and criminal cases.

The second and third objectives of this study are attained by carrying out interviews with lawyers and distributing questionnaires to them. Subjects of interview are limited to litigation lawyers only, that are lawyers who represent their clients in court. This is because litigation lawyers are more exposed to the practice and application of verbal Malay and English legal language. They have more oral experiences in the courts with judges, clients and witnesses, and they are the ones who manipulate and manoeuvre the legal language in the interest of their clients.

The participants of the interviews are five litigation lawyers who are familiar with and frequently use the Malay language in the courts or with clients. Their working experiences range from 1 to 18 years. The responses from these lawyers were used in devising the questionnaire. A total of 70 questionnaires is given out in law firms and in court.

3.4 Research Procedure

This research was carried out in three parts. The first part was textual analysis, the second part was conducted through interviews while the third part was carried out through the distribution of questionnaires. In the meantime, five observations in court were carried out for the researcher's personal understanding of the courtroom situation in Malaysia. These observations are not documented in this dissertation.

3.4.1 Textual Analysis

Since borrowing has been defined as a process involving reproduction, any attempt to analyse its course must involve a comparison of the original pattern with its imitation (Haugen, 1950, p. 212). The first part of this research was devoted to identifying and categorizing borrowings found in a legal text. The following criteria, adapted from Haugen (1953, p. 384) was used to single out a legal term which is a borrowing:

(1) Any given item was used in the English heard or read by the native speakers;

(2) The item was not previously used in the Malay language that they know; and

(3) They could not have made it up independently.

The data for analysis is the Evidence Act 1950 (Act 56). The Act with its Malay translation was downloaded from the AGC official portal.

In order to show the density of legal terms in a legislative text, a word count of the entire Act in English and Malay is carried out. An online word counter and frequency tool (Word Counter and Frequency Data Tool) was able to provide the information of the total number of words in a document as well as total number of unique words, i.e., non-repetitive words. It was also able to generate a list of unique words in the Act in alphabetical order along with the frequency of occurrence. This list of words in alphabetical order was then compared with the most updated legal glossary, *Istilah Undang-undang* DBP (published in 2003) and the *Pusat Rujukan Persuratan Melayu* (PRPM) website (also by DBP), which provides online database for legal terms. From the comparison, words which are listed as legal terms were singled out. The list of legal terms identified enabled the researcher to proceed to identify legal terms which are borrowings and categorised them according to the theoretical framework.

Table 3.2 presents the criteria of each type of borrowing based on literature review. This was the guideline used to identify types of borrowings found in Evidence Act.

Table 3.2: Criteria to Identify Different Types of Borrowings

Type of Borrowing	Criteria
Direct Borrowing (DB)	(1) The orthography of the TL word is exactly the same as the SL word.
Naturalisation (N)	(1) The SL word or phrase is adapted to the normal pronunciation and morphology of the TL. (2) The TL word form still shows the features of SL word. (3) The TL phonemic shows similarity with the SL word.
Loan Translation (LT)	(1) The SL word or phrase is transferred in a literal translation while the syntactic structure is adjusted according to TL structure. (2) The TL word is entirely native in form, even though it might never have occurred in the language before (Haugen, 1953, p. 466) (3) The TL word will seem incomprehensible without expert knowledge. (4) The new meaning of the word or phrase is not derivable by simple addition of the two parts (Haugen, 1950, p. 214)
Loanblend (LB)	(1) The SL word of the phrase is partly imported into the TL and partly substituted by a native TL morpheme.

3.4.2 Interviews

The second part of this research was a qualitative research of an emergent design (Creswell, 2009). The aim is mainly to find out problems or issues faced by lawyers while using legal borrowings with clients, and also to find out the way they deal with the problems. The interviews were semi-structured where there is flexibility in the questions for sufficient data collection. Five litigation lawyers working in Kuala Lumpur were interviewed.

Before carrying out the interview proper, a pilot study was conducted to improve the original interview protocol. Prior to the interview, the researcher applied for a letter of introduction issued by the university. The participants were given a form which states the purpose of the study before giving their written consent for interview. Included within the consent form is the guarantee that the lawyers' identification will be kept confidential. The interviews lasted between 20 minutes to an hour, with an average time of around 35 minutes. During the interview, four categories of questions were asked (see Appendix C). The first category consists of questions about the participants' education background and working experience. The second category of questions focused on their language use at work (which language is more familiar to them and how much they use the Malay language in their work). The third category of questions centred to the translation of legal documents (problems in translation, the need of a specialised group of legal translators, views regarding the use of borrowed terms and reference materials used during translation.) The last category is related to the use of legal terms with clients (the difficulties of using borrowed terms in Malay, examples of borrowed terms which pose problems and their ways to resolve the problems.) All the interviews were audio-taped and the data transcribed using the software Transcriber (Boudahmane, 2008). The interview transcripts are attached in Appendix D. All the lawyers are confident that the information given is valid and reliable. From the

transcription, data coding was carried out according to topics of analysis, such as demographic background, language use in court, language use with clients, problems and solutions.

3.4.3 Questionnaires

Based on the responses gained from the five interviews, a questionnaire is prepared in order to find out the use of translated Malay legal terms among lawyers of a larger scale. Out of the 70 questionnaires being distributed, 50 were completed and returned to the researcher. The return rate is quite high in this case, 71%. The questionnaire contained 10 questions and was divided into three sections: section 1 is the background information of the respondents; section 2 asked about language use at work; while section 3 focused on the use of legal terms with clients (see Appendix E). Some questions are multiple-choice questions where participants can chose more than one option. All data from the 50 questionnaires was recorded in Excel spreadsheets. Formulas in Excel were used to do coding, statistical calculation, and to generate charts and graphs. Figure 3.1 shows the workflow of the research.

3.5 Conclusion

This research is partly armchair and partly fieldwork. It is a combined investigation of linguistic knowledge of legal borrowings used in legal translation and the practical application of these borrowings in the real world. It can be also called a mixed method design which analyses data qualitatively (through textual analysis and interviews) and quantitatively (through textual analysis and questionnaires). The following chapter will present the results and analysis of this study.

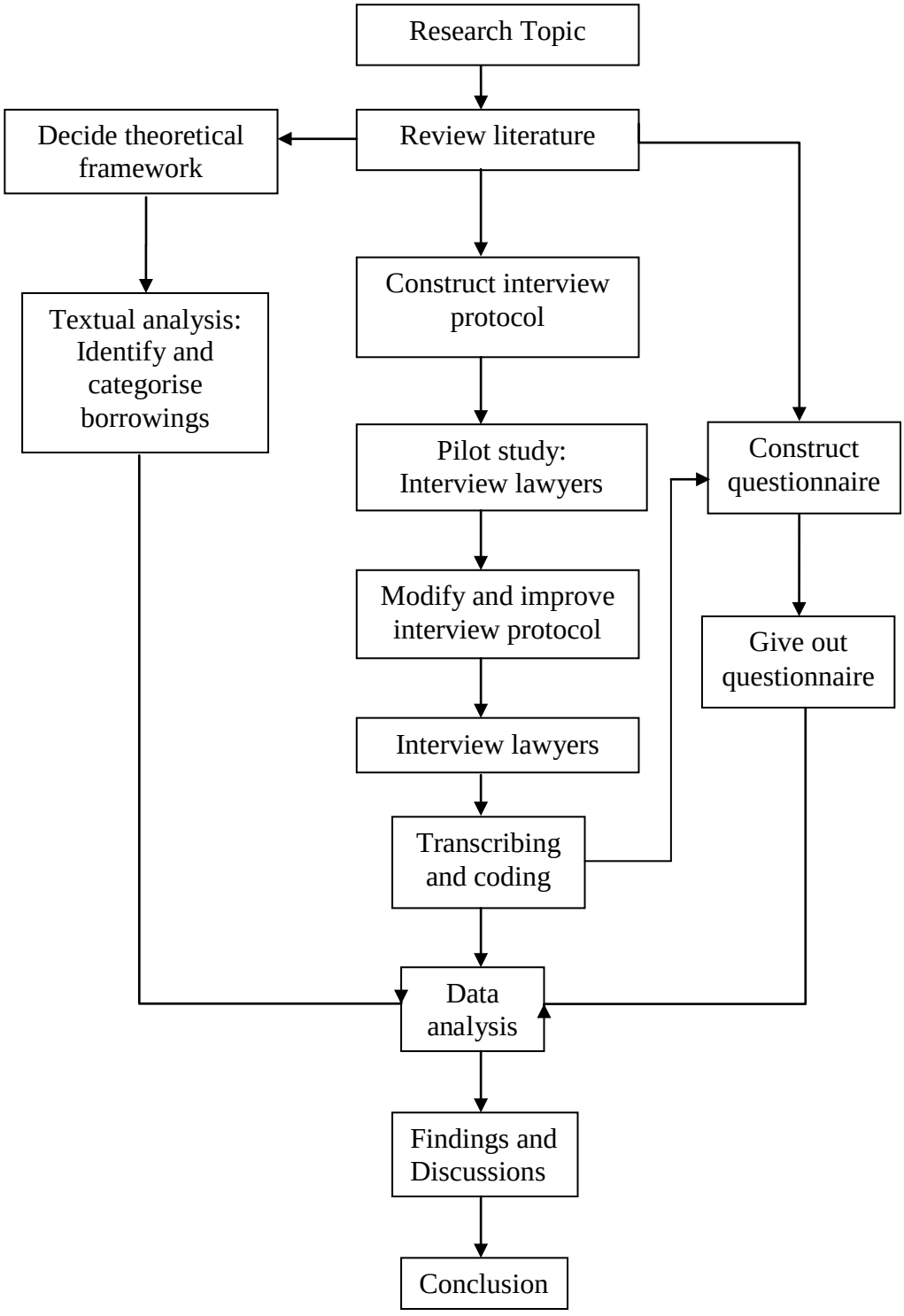

Figure 3.1: Workflow of the Research

CHAPTER FOUR

RESULTS AND ANALYSIS

4.0 Introduction

This chapter is divided into three parts. The first part (section 4.1-4.3) presents the textual analysis of the classification of borrowings. This section includes the identification, categorisation, as well as the forms and functions of legal terms in the Evidence Act. The second part (section 4.4) presents analysis on interviews with five lawyers, while the last part (section 4.5) probes into the results obtained from questionnaires distributed to 50 respondents who are also lawyers. The second and third parts focus on the practical usage of translated Malay terms in the legal field.

4.1 Textual Analysis of Legal Terms in Evidence Act

The Evidence Act 1950 is an act to define the law of evidence. As stated in the previous chapter, this Act is chosen based on three reasons: (1) It was enacted in English language and later translated into the Malay language; (2) it is an act that is commonly referred to by lawyers; and (3) it is applicable in both civil and criminal cases and therefore has a wider scope of usage. The Act is composed of three parts, eleven chapters and 167 sections. The Malay version of the English text is done by the Attorney General Chamber and the translation is not to be considered as the law (Akta Keterangan 1950, title page). By using an online word counter and frequency tool, a list of unique words in the Act in alphabetical order is generated. The total number of words without repetition in the English text is 2172 and the total number of Malay words without repetition is 2024. Comparison of the generated word list with *Istilah Undang-Undang* (IU) and *Pusat Rujukan Persuratan Melayu* (PRPM) yielded the identification of 474 legal terms. (Any discrepancy between the Malay terms in the legislative text

and IU or PRPM is remarked. See Appendix A.)This means that legal terms account for 22% of the total unique words in the English legislative text and 23% of the translated Malay text. This shows that legislative text is highly condensed and characterised by legal terminology.

There are two main types of legal terms, the "properly translated" terms and the borrowings. Since borrowing is also considered a translation procedure, the term "translation proper" is used to distinguish borrowing and other types of translations. "Translation proper" refers to terms translated into a native word that is very much ingrained in the native language. Of the 474 Malay legal terms, 316 are "translation proper", which is 67% of the bulk of terms in Evidence Act. This shows that effort is made to translate the terms as near to the TL as possible. The "translation proper" consists of words from the Malay language, the cognate languages, and coinage of new terms in Malay from the Malay vocabulary itself. Some examples are *persubahatan* (abetment), *dikatakan* (alleged), *taksa* (ambiguous), *sogokan* (bribe), and *mahkamah* (court). When a single Malay word is unable to express the meaning of the English term, additional words (e.g. modifiers) are used or compounds are coined. For example, *rakan sejenayah* (accomplice), *pihak menuntut* (claimant), *kebolehpercayaan* (credibility), *ganti rugi* (damages), *pelucuthakan* (forfeiture), and *tidak suai manfaat* (inexpedient). Table 4.1 and Figure 4.1 show the two major types of legal terms in Evidence Act.

Table 4.1: Major Types of Translated Malay Legal Terms in Evidence Act

Types	**Number**	**Percentage**
Translation Proper	316	67%
Borrowing	158	33%
TOTAL	474	100%

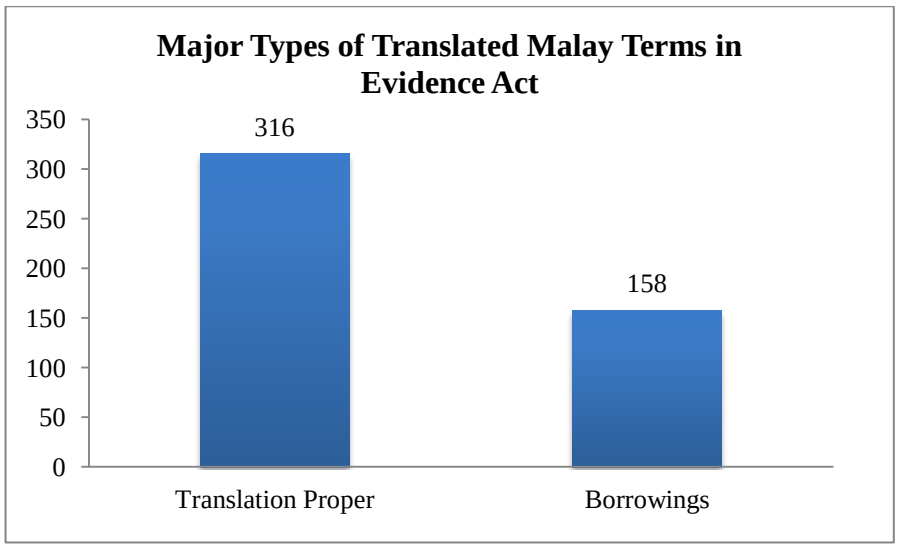

Figure 4.1: Major Types of Translated Malay Terms in Evidence Act

The second major type, the borrowings, consists of 158 terms, 33% of the bulk of legal terms in Evidence Act. This particular group of terms, being the problematic one, is the subject and focus of this study.

4.2 The Forms of Linguistic Borrowings in Evidence Act

This study will not delve into the minor details of the classification of borrowings; such research has been done extensively by experts in language contact (Haugen, 1950; Weinreich, 1970) and applied in Malaysia situation by several researchers (Heah, 1989; Puteri Roslina, 2005). The purpose of this section of analysis is to provide the researcher as well as readers who are unfamiliar with the technical legal terminology with an encompassing view of linguistic borrowings found in legal text. As stated earlier, the classification of linguistic borrowing in this study is based on Mashudi's three major types of legal borrowings, namely direct borrowing, naturalisation, and loan translation (Mashudi, 1994). An addition type of borrowing, loanblend, is taken from Haugen (1953). There is a total of 158 borrowings found in the Act, which account to 33% of total legal terms. Table 4.2 and Figure 4.2 show the distribution of various types of borrowings found in the Act.

Table 4.2: Types of Borrowings in Evidence Act

Types	Number	Percentage
Direct Borrowing	7	4%
Naturalisation	63	40%
Loan Translation	45	29%
Loanblend	43	27%
TOTAL	158	100%

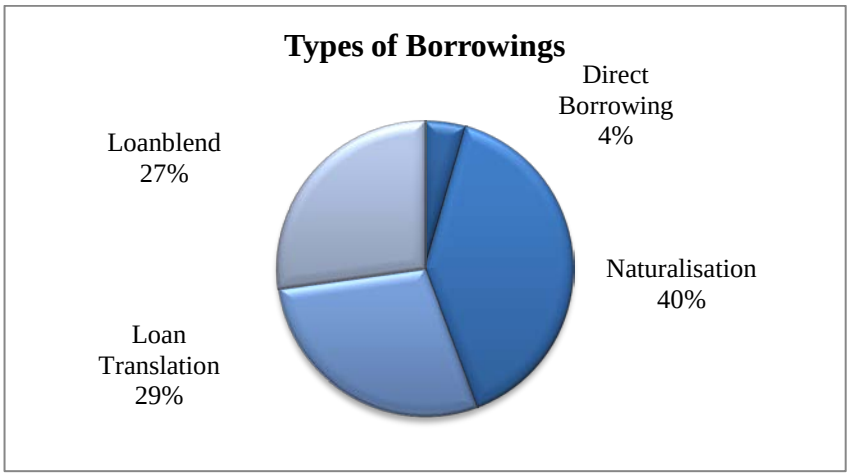

Figure 4.2: Types of Borrowings in Evidence Act

The types of borrowing can be illustrated in a continuum (borrowing continuum as the researcher would call it, see Figure 4.3), which in turn is part of the translation continuum. The translation continuum is a spectrum of translation procedure, moving from importation to substitution, or in translatology terms, from literal to free. The borrowing continuum is located at the beginning of the translation continuum.

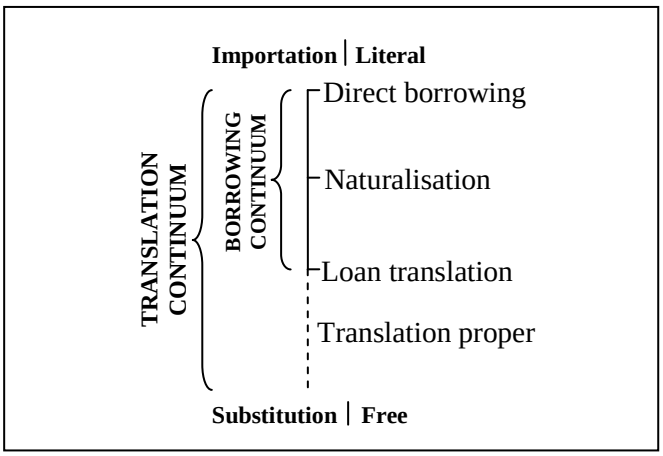

Figure 4.3 Borrowing Continuum

4.2.1 Direct Borrowing

Direct borrowing refers to terms which are taken from English without morphological change. Furthermore, their orthography is exactly the same as the English. Direct borrowings account for a mere 1% (7 terms) of the total number of borrowings (see Table 4.3).

Table 4.3: Direct Borrowings in Evidence Act

No	English	Malay
1	bailor	*bailor*
2	broker	*broker*
3	fraud	*fraud*
4	libel	*libel*
5	memorandum	*memorandum*
6	proviso	*proviso*
7	tribunal	*tribunal*

The number of direct borrowings is few compared to other types of borrowings due to the vast differences between English and Malay. Borrowed terms will most likely be adapted in some ways as language users tend to preserve the prestige of their native language and try to avoid direct borrowing by adapting or substituting certain habits of their own language to prevent complete language shifts (Haugen, 1953). Direct borrowing occurs because of two reasons. One reason is that the terms relate to matters

which are alien to the Malay society. Another reason is that the terms fit the pronunciation and form of the Malay language, thus no alteration in the orthography is needed. For example, *broker* (broker) and *proviso* (proviso). Nevertheless, direct borrowings of similar orthography may result in different pronunciation according to the phonetics of bahasa baku, the autochthonous Malay phonological system (Pedoman Umum Sebutan Baku Bahasa Melayu, 1988). Romanised Malay is a perfectly phonological alphabet; one can envision the orthography or spelling of a word when it is pronounced, and one can also predict the pronunciation of a word by looking at the orthography or spelling.

For example, the term 'bailor' [beɪˈlɔ:] in English is supposedly pronounced as [bailo] in Malay. However, it is questionable whether lawyers really follow the Malay pronunciation in their speech. For instance, 'fraud' [frɔ:d] is translated as *fraud* in Malay, and the correct pronunciation would be [fraud]. In the interviews, one lawyer commented, "Fraud [frɔ:d] in bahasa we also call frod [frod] but the spelling is different. In English F-R-A-U-D, in bahasa F-R-O-D" (Aishah, personal communication, August 3, 2010). Another said, "I use fraud [frod] all the time" (Janice, personal communication, June 4, 2010). Another said, "In Malay, I will put fraud as frod" (Lily, personal communication, July 30, 2010). In actual practice, the lawyers neither follow the standard term phonetically nor orthographically. Instead, they borrow the English sound of 'fraud' and transliterate it into Malay in writing. It will be hard to tell whether the lawyers are borrowing or actually code-switching in speaking. It is no wonder that there is a great deal of disagreement in recent literature as to what determines clear-cut borders between 'borrowing' and 'code-switching'. Many researches were unable to decide whether a word imported from another language is classified as borrowing or code-switching (Bagwasi, 2007). Some argue that there is no clear dividing line between the two (Clyne, 2003, p. 71).

According to Heah (1989), direct borrowing occurs because of the rapid and necessary transmission of technical information. There is little time for technical terms to be assimilated into the TL (p. 100-101). In her study, Heah noticed that the presence of direct borrowings is often indicated graphically, most commonly being put within quotation marks or italicised. However, in the current study text, no such graphical indication was made, even for the word *proviso* which originates from Latin. Furthermore, six of the seven directly borrowed terms, with the exception of *bailor*, have their entries in the fourth edition of Kamus Dewan (2005). This shows that such words are no longer particular to the legal world but also assimilated in the general public.

4.2.2 Naturalisation

Naturalisations are borrowed terms which are adapted to suit the morphology or phonology of the TL. In other words, the orthography or pronunciation of the source language is adjusted in such a way that conforms to the norms of the TL. There are 63 naturalised terms that account for 40% of legal borrowings 13% of the total legal terms in Evidence Act. Table 4.4 presents 10 selected naturalisations in alphabetical order (see Appendix B for complete list).

Table 4.4: Sample of Naturalisations in Evidence Act

No	English	Malay
1	affidavit	*afidavit*
2	civil case	*kes sivil*
3	contract	*kontrak*
4	fee	*fi*
5	license	*lesen*
6	obligation	*obligasi*
7	section	*seksyen*
8	terms of contract	*terma kontrak*
9	probate	*probet*
10	proceedings	*prosiding*

The orthographic form of the naturalised terms is constructed based on general guidelines set by DBP in the book *Pedoman Umum Pembentukan Istilah Bahasa Melayu* (PUPIBM), 2004.

Take the first example, 'affidavit.' The term 'affidavit' originates from Medieval Latin, literally means "he has made oath" (Meriam-Webster Unabridged Dictionary, 2000). When transferred into Malay, the double consonant 'ff' is reduced to a single 'f', becoming *afidavit*. Same goes to *estopel* (estoppel), where the double consonant 'pp' is reduced to a single 'p'. Such adjustment is made to suit the *bahasa baku* phonological system. For English terms which have the suffix *-sion* or its allomorph, Malay suffix *-sion, -si,* or *-syen,* is used. For example, obligation – *obligasi* and section – *seksyen*.

Some terms are naturalised in a way that they are re-spelled to sound exactly like or in close approximation with the English. For a person who knows English and Malay, these terms will look odd orthographically in Malay. One example from Table 4.3 is 'fee' which is translated as *fi*. Other examples are *pliding* (pleading), *dekri* (decree), and *ejen* (agent).

Consonant clusters in word final positions are unknown in the Malay language and thus not presented in the orthography. For example, *kontrak* (contract) omitted the final 't' and replaced the 'c' with 'k' to suit the Malay phonetics. Consonant clusters in final position in an English term may also be expanded in Malay by inserting a vowel sound. One example is the addition of 'a': term – *terma,* act – *akta,* fact – *fakta* (PUPIBM, 2004). In English, the final 'e' is usually not pronounced, for example, 'probate,' 'statute,' 'ordinance,' 'procedure,' and 'treatise.' Hence, when adapting these terms in Malay, the final 'e' is omitted, thus become *probet, statut, ordinan, prosedur* and *treatis*.

Certain naturalisations are morpho-syntactic, meaning to say that the terms are adapted to the syntactic patterns of the TL. For example, 'civil case' becomes *kes sivil* where the English noun phrase order Modifier-Head becomes the Malay word order, Head-Modifier. Another example is 'proceedings', with 's' indicating plurality. (As a legal term, proceeding are always plural, i.e. proceedings.) When borrowed into Malay, the 's' is omitted, thus *prosiding.* This is because in Malay, a noun may be both singular and plural.

Some naturalisations have been assimilated into the Malay language for a long time and are therefore commonly used. A target language user might not even realise that these words are borrowed from a foreign source because they are incorporated into the "system and feeling of the language" (Heah, 1989, p. 104). Haugen called this type of naturalisation "wholly assimilated loanwords" (1950, p. 402). In order to identify these words, a substantial knowledge of the historical background and socio-cultural development in English-Malay contact is necessary. *Lesen* (license) falls into this category. The legal terms in this respect are usually common words which bear specific legal meaning. Other examples are *akta* (act), *fakta* (fact), *akaun* (account), and *kontrak* (contract).

As in other types of borrowing, naturalisation occurs because the lack of a term or a concept in the TL. It would be more difficult to create a new word in the TL. Since a label is already attached to the concept, it is easier to introduce the new concept into the TL, by retaining the word form of the SL. Moreover, some technical terms are beyond the limits of translatability (Catford, 1965, p. 93). However, in order for TL users to be able to accept and identify the term as having the features of the TL, the English terms have to be imported with modification orthographically, phonetically or even syntactically.

4.2.3 Loan Translation

At the other end of the borrowing continuum is loan translation, a borrowing which is nearer to the TL. In loan translation, the form and meaning of the English word, instead of being carried over into the Malay language as a unit, is merely employed as a model for a native formation (Heah, 1989, p. 162). Heah further gives a description of the process of loan translation:

> For the loan translation to be possible, the English model must be both morphologically complex and semantically transparent, and the process consists in substituting for each of its morphemes the semantically closest morphemes in Bahasa Malaysia and combining these according to its own native rules of word formation (p. 162).

Loan translation at first glance seems to be a normal translation. However, when one surveys in detail, he will find that the translation is not merely literal, it seems alien and incomprehensible to the user of Malay language. An untrained person might even consider it to be a bad translation. Therefore, loan translation is a special kind of literal translation and is also commonly known as calque. Table 4.5 shows sample of loan translations found in Evidence Act.

Table 4.5: Sample of Loan Translations in Evidence Act

No	English	Malay
1	active confidence	*kepercayaan aktif*
2	admissible evidence	*keterangan boleh terima*
3	burden of proof	*beban membuktikan*
4	charitable foundation	*yayasan khairat*
5	cross-examination	*pemeriksaan balas*
6	good consideration	*balasan yang cukup*
7	ground of opinion	*alasan pendapat*
8	leading question	*soalan memimpin*
9	right of way	*hak lalu-lalang*
10	rules of construction	*rukun pentafsiran*

There might be some arguments and disagreement as to the border line between translation proper and loan translation. Heah (1989) also admitted the difficulties in identifying loan translations. She identified the "arbitrariness of the images conveyed by the loan translations" will make one to identify them as loan translations. To validify the researcher's claim that a certain term is a loan translation instead of a normal translation, all Malay terms consist of pure Malay words are singled out. The list was given to four personnel with recognized qualification in the study of the Malay language. According to their discernment, they identified each term as either loan translation or translation proper. Any dissimilarity was decided based on majority choice. As a result, there are altogether 45 loan translations, which accounts to 28% of the borrowings and 10% of all legal terms.

In legal terms, there are basically three types of loan translations. The first type is the exact literal translation from English to Malay. Examples are *beban membuktikan* (burden of proof), *akuan nazak* (dying declaration), and *soalan memimpin* (leading question). The second type is where "the model compound only furnishes a general hint for the reproduction" (Heah, 1989, p. 166). This is called "loan rendition" by Weinreich (Weinreich, 1970). Following are some examples (back translation shown in square brackets): *alasan pendapat* (ground of opinion) [reason of opinion], *pemeriksaan balas* (cross examination) [counter examination] and *hak lalu-lalang* (right of way) [right of passing].

According to the findings in this study, there is a third kind of loan translation, where the translated term consists of words that are somewhat explanatory in nature but will still appear incomprehensible. Only when a person refers to the law dictionary will he be able to understand the choice of such words. One example is *balasan yang cukup* (good consideration) [adequate return]. 'Consideration' in the legal field refers to "that which is actually given or accepted in return for a promise" while 'good consideration'

refers to “consideration founded on generosity, natural affection or normal duty” (Curzon, 1993). In this light, one is able to relate the terminological choice of *balasan yang cukup.* Another example is *rukun pentafsiran* (rules of construction) [principles of interpretation]. ‘Rules of construction’ refers to “decisions of court relating to the interpretation of document” (Curzon, 1993). One will then be able to figure the choice of using *pentafsiran* (interpretation) as a substitution for ‘construction’. This type of loan translation is very close to translation proper, however they are still subsumed within the borrowing continuum.

Certain formation of loan translations appears to be illogical semantically. Examples are *beban membuktikan* (burden of proof) and *soalan memimpin* (leading question). *Membuktikan* (lit., to prove) and *memimpin* (lit., to lead) are verbs showing actions done by animate subjects. However, ‘proof’ and ‘question’ are inanimate subjects and therefore make the noun phrases appears incongruous. Besides, both loan translations violated the rules of Malay syntax. *Membuktikan* and *memimpin* are transitive verbs which require a direct object. Without direct objects, both phrases appear to be incomplete sentences instead of noun phrases. One needs to refer to the SL to understand their implications.

4.2.4 Loanblend

A loanblend is a result of a process that combines morphemic importation and substitution in the same item. In other words, a loanblend may compose of a foreign morpheme being borrowed and also a native morpheme. Loanblends exist in single words and also phrases. There are 43 loanblends, making up 27% of all borrowings and 9% of the total legal terms. Table 4.6 shows a sample of loanblends in Evidence Act.

Table 4.6: Sample of Loanblends in Evidence Act

No	English	Malay
1	civil procedure	*tatacara sivil*
2	conclusive proof	*bukti konklusif*
3	consigned	*dikonsainkan*
4	immaterial	*tidak material*
5	notary public	*notari awam*
6	specific performance	*pelaksanaan spesifik*
7	depose	*mendeposkan*
8	legal fee	*fi di sisi undang-undang*
9	licensee	*pemegang lesen*
10	licensor	*pemberi lesen*

There are various combinations that can make up a loanblend. There is first the kind where the word stem is English but the affix is Malay. One example is *dikonsainkan* (consigned). The stem 'consign' is being borrowed through naturalisation to become *konsain*. The passive mode of the English word (indicated by the suffix *-ed*) is replaced according to the Malay syntax of passive mode *di…kan*, thus *dikonsainkan*. Other examples are *mendeposkan* (depose) which is 'depose' in active mode (indicated by Malay active mode affix *me…kan*).

Certain affixes in English do not have its equivalent in Malay. For example, the prefix *-im* (from *-in*) which gives a negative sense to the attached word does not exist in Malay. Therefore, terms like 'immaterial' will be rendered as *tidak material* (lit., not material). In this case, *material* is a direct borrowing. English suffixes *-ee* and *-or* forming a pair of active and passive agent of personal reference, or relative antonymy (Bell, 1991, p. 93) is common in legal usage, such as licensor – licensee, mortgagor – mortgagee, and obligor – obligee. The suffix *-or* forms agential nouns, denoting someone or something that performs a given action, while the suffix *-ee* marks the passive recipient of an action (Quinion, 2008). Therefore, 'licensor' is a person who issues a license. Since such affixes do not exist in Malay, the notion of the active agent

is translated as an independent word, *pemberi* (giver), hence *pemberi lesen* (lit., license giver) with *lesen* as a naturalisation. 'Licensee' is one granted a license, hence the Malay word *pemegang* (holder) is used, i.e. *pemegang lesen*.

Legal phrases can also experience independent morpheme importation and substitution. One example is *tatacara sivil* (civil procedure). Procedure is translated as *tatacara* while civil is naturalised as *sivil*. Another example is *bukti konklusif* (conclusive proof), where *bukti* is a translation proper and *konklusif* a naturalisation. Note that in the above two instances, the word order is reversed in accordance with the Malay syntax of Head-Modifier.

4.3 The Functions of Linguistic Borrowings in Evidence Act

This study will now take a turn from the forms of linguistic borrowing to its functions. The functional perspective of language sees language as a means of human communication, emphasizing the use of language in a particular socio-cultural context (Butler, 2003). As such, language cannot be disassociated from meaning. Firth asserted that language represents a set of events which speakers uttered, and any utterance must be understood in the context of the situation (Firth, 1950). In order to understand the functional nature of a language in a particular context of situation, one must understand the register in which the language is used. The language activity in the current context is of the legal register. Therefore the communicativeness meant here is not in the general sense but the communicativeness for the receivers or the potential receivers of legislative text (Chodun, 2009). Despite the Evidence Act is accessible to the general public, it is unlikely to be referred frequently by them. The most likely recipient or readers of this Act is the legal practitioners, especially judges or lawyers who are involved in adducing evidence in court.

One of the most important functions of legal borrowing is to be "lexical gap fillers" (Takashi, 1990). Terms lacking Malay equivalents are basically considered as lexical gap fillers, such as *estopel* (estoppels), *afidavit* (affidavit), and *probet* (probates). Loan translations are used to represent legal concepts alien in the Malay as well. For example, *beban membuktikan* is a phrasal noun for 'burden of proof' and is used in the following context:

1(a) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person (Section 101(2)).
Apabila seseorang terikat untuk membuktikan kewujudan apa-apa fakta, dikatakan bahawa beban membuktikan terletak pada orang itu (Seksyen 101(2)).

1(b) The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side (Section 102).
Beban membuktikan dalam sesuatu guaman atau prosiding terletak pada orang yang akan gagal jika tiada apa-apa keterangan langsung diberikan oleh mana-mana pihak (Seksyen 102).

Beban membuktikan, taken out of context, seems to be grammatically incorrect (noun + transitive verb yet without object) and does not seem comprehensible, but when put in context, it's meaning can be inferred as the obligation of one party to provide proof or evidence to support one's claim or to rebut others allegation.

Despite the existence of a native equivalent, some terms are still borrowed in order to distinguish the legal register from the vernacular language. For instance, 'award' (*mengawardkan* instead of *memberikan*), 'depose' (*mendeposkan* instead of *memberi keterangan bersumpah*), and 'fee, (*fi* instead of *bayaran* or *yuran*). The word 'section' has a general meaning of "a part, a group, or a subdivision" (The Concise Oxford

Dictionary, 1995), however in the legal register, 'section' has a particular meaning of "distinct, numbered subdivisions of an Act of Parliament" (Curzon, 1993). Therefore, instead of using the Malay equivalent word *bahagian* (lit., part), a naturalised term *seksyen* is used.

Some terms are borrowed to maintain the discreteness of legal terms, or to distinguish hyponyms. This is to avoid confusion with another term where both terms can be expressed by the same word in Malay. For example, there exist legal terms like 'penalty' and 'punishment'. Both have an equivalent Malay word: *hukuman*. However, in order to preserve the precision in legal language; 'penalty' is being borrowed and naturalised as *penalti* to differentiate both terms. Same goes for 'responsibility', 'duty', and 'obligation', where all three terms bear its own significance in the legal language; therefore, in Malay, these three are termed *tanggungjawab*, *kewajipan*, and *obligasi* respectively, where *obligasi* is a naturalisation. Such terminological choice is made to resolve the lack of Malay vocabulary.

In some cases, a same English word can bear two or more very different legal meanings. A same word can be translated differently in the TL according to its meaning. The different shades of meaning are determined by the context. An example is the word 'term' used in the Evidence Act:

> 2(a) When the court has to form an opinion as to the meaning of words or terms used in particular districts or by particular classes of people… (Section 49)
>
> *Apabila mahkamah perlu membuat sesuatu pendapat tentang pengertian perkataan atau istilah yang digunakan di dalam daerah tertentu atau oleh golongan orang tertentu…(Seksyen 49)*

2(b) A orders goods of B by a letter in which nothing is said as to the time of payment, and accepts the goods on delivery. B sues A for the price. A may show that the goods were supplied on credit for a term still unexpired. (Section 92 Illustration (f))

A memesan barang-barang daripada B melalui surat tanpa apa-apa jua disebut tentang tempoh pembayarannya, dan menerima barang-barang itu apabila diserahkan. B mendakwa A untuk mendapatkan bayaran bagi harga barang-barang itu. A boleh membuktikan bahawa barang-barang itu telah dibekalkan secara kredit bagi suatu tempoh yang masih belum tamat. (Seksyen 92 Misalan (f))

2(c) When the terms of a contract or of a grant or of any other disposition of property have been reduced by or by consent of the parties to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of the contract, grant or other disposition of property or of the matter except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained (Section 91).

Apabila terma sesuatu kontrak atau sesuatu pemberian atau apa-apa pelupusan harta telah diubah oleh atau dengan persetujuan pihak-pihak ke dalam bentuk dokumen, dan dalam segala hal yang dalamnya apa-apa perkara dikehendaki oleh undang-undang supaya diubah ke dalam bentuk dokumen, tiada keterangan boleh diberikan bagi membuktikan terma kontrak, pemberian atau pelupusan harta lain atau bagi membuktikan perkara itu, kecuali dokumen itu sendiri, atau keterangan sekunder mengenai kandungannya dalam hal yang dalamnya

keterangan sekunder boleh diterima di bawah peruntukan yang terkandung terdahulu daripada ini (Seksyen 91).

'Term' in 1(a) means "a word or expression that has a precisely limited meaning in some uses or is peculiar to a science, art, profession, trade, or special subject" (Meriam-Webster Unabridged Dictionary, 2000). Therefore, the Malay equivalent *istilah* is used. 'Term' in 1(b) refers to "a fixed period of time" (Curzon, 1993) and is a legal term. In this sense, the word *tempoh* is used. 'Term' in 1(c) is also a legal term meaning "condition, provision, or limitation" (Curzon, 1993). For this word, the naturalised word *terma* is used.

Another example is the term 'act':

3(a) This Act shall apply to all judicial proceedings in or before any court, but not to affidavits presented to any court or officer nor to proceedings before an arbitrator (Section 2).

Akta ini hendaklah terpakai bagi segala prosiding kehakiman di dalam atau di hadapan mana-mana mahkamah, tetapi tidaklah terpakai bagi afidavit yang dikemukakan kepada mana-mana mahkamah atau pegawai dan tidaklah juga terpakai bagi prosiding di hadapan seseorang penimbang tara (Seksyen 2)

3(b) A, a person of the highest character is tried for causing a man's death by an act of negligence in arranging certain machinery (Section 114 Illustration (ii)).

A, seorang yang berwatak terpuji, dibicarakan kerana menyebabkan kematian seseorang dengan perbuatan cuai dalam mengatur mesin tertentu (Seksyen 114 Misalan (ii)).

An ‘act’ may refer to (1) Act of Parliament or (2) That which is done by a person, generally consequent on volition (Curzon, 1993). Therefore, in 3(a), where meaning (1) is concerned, naturalisation *akta* is used. In 3(b), where meaning (2) is concerned, a native word *perbuatan* (lit, doing) is used.

Some borrowed terms experience semantic restriction. The meaning of the borrowed word is narrowed down to a particular meaning of the English word while the other senses of the word are excluded. One example is the term ‘inference’:

4(a) An admission is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons and under the circumstances hereinafter mentioned (Section 17(1)).

Pengakuan ialah suatu pernyataan, lisan atau dokumentar, yang menyarankan apa-apa inferens mengenai sesuatu fakta persoalan atau mengenai sesuatu fakta berkaitan dan yang dibuat oleh mana-mana orang dan dalam hal keadaan yang disebut kemudian daripada ini (Seksyen 17(1)).

4(b) For the purpose of deciding whether or not a statement is admissible as evidence by virtue of subsections (1) to (4), the court may draw any reasonable inference from the form or contents of the document in which the statement is contained, or from any other circumstances… (Section 73A(5)).

Bagi maksud memutuskan sama ada sesuatu pernyataan boleh diterima atau tidak sebagai keterangan menurut kuasa subseksyen (1) hingga (4), mahkamah boleh membuat apa-apa kesimpulan yang munasabah daripada bentuk atau kandungan dokumen yang mengandungi

pernyataan itu, atau daripada apa-apa hal keadaan lain… (Seksyen 73A(5)).

The borrowing *inferens* bear slightly different meaning from the English 'inference'. In English, "infer" denotes both "conclude" and "guess, surmise" (Meriam-Webster Unabridged Dictionary, 2000). Therefore, 'inference' includes the sense of "conclusion" and "proposition." In the context of 4(a), the precedent word 'suggests' denotes that the outcome is merely a "guess" or a "surmise," and the naturalised term *inferens* is used. In the context of 4(b), the 'inference' has a firmer notion (precedent words like 'deciding' and 'draw' denotes a high certainty in judgment). In that case, the Malay translation *kesimpulan* (lit., conclusion) is used.

4.4 Results and Analysis from Interviews

The legal professionals, particularly the lawyers, are the most frequent users of the legal language. In Malaysia, litigation lawyers need to deal with the legal borrowings both in English and Malay, in fact, they are the ones who manipulate and engineer the language appropriate to their situation. The following are the results of interviews with five lawyers regarding their perspectives on linguistic borrowing and their practical usage of it.

4.4.1 Demographic Information and Work Experience of Interviewees

Questions 1-3 of the interview questions provide the demographic information and work experience of the interviewees (lawyers), as shown in Table 4.7. (See Appendix C for the interview protocol.) Pseudonyms are used to identify the interviewees.

Table 4.7: Demographic Information and Work Experience of Interviewees

Interviewee	Gender	First Language	Institute for Law Education	Years of Practice	Sort of Cases
Penny	F	Chinese	University of Malaya	1 year 4 months	Civil & criminal
Aishah	F	Malay	International Islamic University	6 years	Civil
Lily	F	Chinese	Kolej Damansara Utama	9 years	Civil
Hisham	M	Malay	International Islamic University	14 years	Civil & criminal
Janice	F	Chinese	University of London	18 years	Civil & criminal

4.4.2 Language Use at Work

Questions 4-5 deals with the lawyers' use of language at work. Three interviewees (Penny, Aishah, dan Janice) responded that they are more familiar with the English language in their work; Hisham is more familiar with the Malay language while Lily is familiar with both languages. All interviewees pointed out generally the rules of language use in legal documents and during court proceedings. According to their current practice, legal documents must be prepared in the Malay language for every court with the exception of the superior courts. The English version will only be prepared if required by judges. To initiate a suit, all the documentation (e.g. summons[2], statement of claim) must be in the Malay language. During court proceedings, all applications[1] must also be in the Malay language. However, according to Janice, almost 99% of submissions[1] of cases are in English. According to Aishah, cause papers filed in high court are usually in English.

[2] Summons is the preliminary document to initiate a case in the court; application denotes application to the court for something; towards the end of the case, there is the need for both parties to give submission, which is a summary to the entire proceeding.

Language of communication in the courtroom is supposedly conducted in the Malay language. The word "supposedly" is used because that is the normal rule of practice and is stated in Section 8 of the National Language Acts. However, according to Hisham, the actual situation depends on the judges. Senior judges are more competent in English. They may be able to understand the facts given in Malay, but when the lawyers are to do submission in written or oral form, i.e. "telling the whole story" to refer the matter to arbitration, the lawyers will have to speak in English.

Lily describes her experience in using Malay in court:

> "Sometimes if we cannot think of the terms, we can speak in English terms, then after that, we switch back to bahasa Malaysia. Sometimes it [the word] just doesn't occur to us, even if we have to use bahasa Malaysia, it will take a while for us to think what do they want, what is the meaning intended for the word." (personal communication, July 30, 2010).

Code-switching becomes a common phenomenon in courtroom. This is observed in various researches (Mead, 1988; Zubaidah, 2002; Powell & Azirah, 2011) and confirmed by the researcher's personal observation in court. In a few occasions, while examining a witness, the session was conducted in Malay between the lawyer and the witness. However, when certain matters need to be clarified or certain arguments arise from the other lawyer of the adverse party, communication between lawyer and judges immediately switch to English. This shows that among legal professionals, they are more comfortable and fluent in using the English language. Janice remarked that most of the senior counsels and lawyers are not very proficient in the Malay language.

To conclude, Malay Language is common used in the lower courts, however in the higher courts, English is continued to be used where the "interests of justice" is deemed. This is confirmed by Powell & Azirah: "English is frequently used in the High

Court and dominates the Court of Appeal and Federal Court. It is the default language of most commercial law and much civil litigation" (2011, p. 95). A parallel situation is happening in Hong Kong, a former colony of British. The number of trials in Chinese has increased in the lower courts, but in the upper courts, English are frequently used because there are more English-speaking judges who handle more complicated legal concepts (Poon, 2010, p. 84).

In lawyer-client communication, the language used naturally depends on the client. Lily commented that she uses Malay in court rather than with clients. The other interviewees also remarked that current society, including the Malay-speaking community, has a better conduct in English. Penny remarked that the only time she uses Malay is in a situation where Malay is the only communicable language between her and the client.

4.4.3 Translation of Legal Documents: Problems and Solutions

The legal documents, both in English and Malay, are prepared by the lawyers themselves. All interviewees, except Penny, do not think a specialised group of legal translators is necessary to help them in legal translation. However, Penny favours the idea of setting up a specialised team of legal translators provided that the translators have a legal degree in law or are practicing lawyers. Otherwise, the lawyers will still have to check the translations. This is because legal documents have to be accurate to convey the correct message when the document is read as a whole. It will be a problem if the translation may not convey the proper meaning and legal effect as a whole. This is especially important as Malaysia only recognizes cause papers in Malay. (Penny, personal communication, May 16, 2010).

Penny described the difficulties in preparing Malay cause paper,

> "The meaning plus the spirit of the English should be the same in BM. It's difficult, because sometime the word lacking in BM, and we don't really want to explain so much…You cannot add extra paragraph, and not advisable to add extra word. For legal translation, you can only translate the word directly to BM.…If you take directly from the dictionary, it's going to sound very weird. But we have to do it, no choice, because every application must be in BM.…The context, the meaning must be the same, what you want to convey, the effect must be the same because if it's not the same, the court may not see what you want. Luckily sometimes the court will help. We ask them to rely on the English version." (personal communication, May 16, 2010).

Janice also elaborated his experience while translating legal documents,

> "In many of my statements of claim, if you do it in English, it's so simple. If you do it in Malay, it's another hurdle. A lot of times we are stuck with words which we cannot really express. For example, 'thereafter'. *Seterusnya* is 'subsequently'. You cannot find a word for it. *Selepas itu* is not really appropriate, but that is the closest word.…Sometimes when I prepare cause papers, if I'm not very sure, or I'm not comfortable, I'll just put in bracket the English word." (personal communication, June 4, 2010).

It is a normal practice of lawyers to put English term in bracket as discussed in chapter 2, section 2. This need arises when (1) the lawyers are not able to translate a word or (2) they are not comfortable with the translation. Examples given are *penyatuan isu* (rejoinder of issue) and *menghampakan keadilan* (to frustrate justice). Penny explains the legal concept of 'rejoinder':

> "Sometimes when we cannot translate the word, we put in bracket what the word is in English. For example, *penyatuan isu* (rejoinder of issue). Rejoinder sounds better. First, the plaintiff puts out the statement of claim, the defendant reply, and then the plaintiff reply back to the defendant. Plaintiff, defendant, then plaintiff. Then if the defendant wants to reply back, it would be under rejoinder. Rejoinder means you actually reply and join issues to what is raised earlier, and also to raise certain thing that you want to reply back. That means we maintain our earlier stance, this is our claim. You respond to the same or new issue, it's called rejoinder." (Penny, personal communication, May 16, 2010).

We can now understand why rejoinder is a better word compared to *penyatuan* or *pencamtuman* (term provided by Istilah Undang-undang DBP). 'Rejoinder' does not merely imply merging or joining as conveyed by *penyatuan* or *pencantuman*, but also an answer or reply, in the legal sense, a defendant answer to a plaintiff's replication.

The example 'to frustrate justice' is given by Janice. Frustration is a doctrine under contract. 'Frustration of contract' means "where there is an event or change of circumstances so fundamental as to strike at the root of a contract as a whole and beyond what was contemplated by the parties, that contract is considered frustrated" (Curzon, 1993). Janice explained in simple words that the law of frustration is the impossibility to perform something. She further gives an illustration: A signed a contract with B to sell A's house to B. But the next day the house was burned. There is nothing to sell, and there is no point for B to sue A. This is the frustration of contract. To her, the word 'frustration' has no equivalent in Malay. I then pointed to her that *Istilah Undang-undang* DBP renders 'frustration' as *kekecewaan*. This, to her, is not very appropriate, for *kecewa* brings in feeling and emotion. But the law of frustration itself is a doctrine. Her way to conciliate this matter is to translate as *menghampakan keadilan* followed by 'to frustrate justice' in bracket. It is interesting to note that in

MABBIM database, the Indonesian translate this term as ‘frustrasi’, a naturalized borrowing.

Aishah and Lily rely on law dictionary in legal translation. Lily commented,

> “When I’m not sure about some terms, I will refer [to legal glossary or dictionary]. Sometimes I think we have to use the terms in accordance with the meaning that should be accorded. Not necessarily a direct translation.” (personal communication, July 30, 2010).

The interviewees also commented on certain terms in Malay which is insufficient in technicality. One example given is liquidator, which is translated as *penyelesai* (lit., solver). Liquidator refers to “one who is appointed in the case of a company which is being wound up by the court, ‘to secure that the assets are got in, realised and distributed to creditors and, if there is a surplus, to those entitled to it’” (Curzon, 1993). Janice reacted that ‘liquidator’ and *penyelesai* are not the same. She acknowledged that *penyelesai* in a certain sense does explain the function of a liquidator but it is not “technical enough” to be used. In her practice, she puts *likuidator* as the Malay term in cause papers; all the other documents that she came across used the same word.

Lily brought out on the term ‘immunity’ which is translated as *kekebalan* in Malay. She asserted that in her practice, she never comes across the word *kekebalan*, usually she uses *imuniti*, a naturalisation.

4.4.4 Use of Borrowings by Lawyers

When asked regarding the use of borrowed terms, the interviewees replied that they do not find any problem in using borrowings. On the contrary, usage of borrowed

terms is the way for them to reconcile with the legal concept behind the English term. Aishah commented,

> "We do use a lot of borrowed terms….We have legal terms in English, but in bahasa normally we don't have that, so we don't know how to interpret the terms, so instead of wrongly interpret the meaning, we just convert; we borrowed the English terms to be adopted in the Malay terms." (personal communication, August 3, 2010)

Likewise, Lily and Janice commented that borrowed terms are "not a problem at all." Janice describes the use of borrowed words as a convenience:

> "Speaking about borrowed words, on one hand, it is convenient for us. For example, I don't have to remember *halangan*, I remember 'injunction', straightaway it is *injunksi*." (personal communication, June 4, 2010).

Lily further suggests that perhaps the older generation may have problems with borrowed words. Penny admits that using borrowed terms are easy and faster, a "short-cut" way. However, she states that problems will arise when submitting in court orally or during cross examination in full trial where the witness or judge may not understand the borrowed term, thus require explanation. Incorrect explanation might convey a slightly different meaning. She feels that lawyers should keep themselves updated in the Malay language and not practise this borrowed term all the time.

In this research, I would also like to find out the usage of the legal glossary (*Istilah Undang-undang*) published by the national language academy, Dewan Bahasa dan Pustaka. Surprisingly, none of the interviewees refer to that particular book, although four out of five refers to *Istilah Undang-undang* published by Sweet &

Maxwell Asia. Their reasons being that Sweet & Maxwell is a renowned law book publisher. Aishah prefers bilingual law dictionary.

4.4.5 Use of Legal Terms with Clients

Generally, the language used by the lawyers with their clients is of a mixed nature, and this largely depends on the client's ethnicity and their preferred language of communication. For Penny, Malay is used when it is the only common language between her and the client. Even so, she will mix with dialects such as Hokkien. The interviewees commented that generally the Malay and Chinese people are able to communicate in English. Of course, code-switching is a common phenomenon in the communication.

The only instance where Malay is used exclusively is when communicating with the illiterate (Penny, personal communication, May 16, 2010) and foreigners like Indonesians (Janice, personal communication, June 4, 2010).

Clients do have difficulties understanding borrowed terms in Malay. Normally clients are uncertain or do not understand the legal terms (Hisham, personal communication, August 3, 2010). Aishah will not use legal terms with clients because they will not understand. Likewise, Lily stressed the understanding of the legal concept is more important, to use or not to use legal terms is not the main issue. Janice states that legal terms are incomprehensible towards the layman, either in English of Malay:

> "You just have to explain to them. Not only to the Malay-speaking clients, the Chinese-speaking clients, or the Indian-speaking clients,…even the English-speaking clients, you still have to explain to them." (personal communication, June 4, 2010).

4.4.6 Examples of Legal Borrowings

This section will discuss seven Malay legal terms borrowed from the English language provided by the interviewees, including the problems faced by the lawyers when they need to use these terms with clients and the way the resolve the problems. The term in italic form is the Malay legal term. Bracketed word shows term used by lawyers commonly, which does not follow the legal glossary *Istilah Undang-undang* DBP.

(1) Injunction—*Injunksi*

'Injunction' is "an order of the court directing a person to refrain from doing or continuing to do an act complained of, or restraining him from continuing an omission" (Curzon, 1993, p. 224). This word is almost exclusively used in the legal context. Lily comments,

> "'Injunction' is a legal term. So it's not a matter of they don't understand the word *injunksi*. I thinks it's more of they don't understand how an injunction works. If you tell them 'injunction', in BM *injunksi*, but they don't know what is the concept….If it's a 'prohibitory injunction', you're prohibited from doing something. If it's a mandatory injunction, that means you're being injuncted to do something. If you explain to them, they will be able to understand better the concept." (Lily, personal communication, July 30, 2010).

Janice says that injunction has the meaning of *halangan* in BM but she will not use *halangan* to replace *injunksi*. To her, using *halangan* will make the term common. She will not even quote the Malay term *injunksi* instead retain using the English term and explain it in Malay. She will explain in two ways depending on the types of injunction:

(1) Prohibitory injunction: “Kita apply injunction. Injunction bermaksud kita memberhentikan dia. Dia tidak boleh buat sesuatu.”

(2) Mandatory injunction: “Injunction ini memaksa dia buat sesuatu, mengarahkan dia membuat sesuatu. Kita memohon kepada mahkamah supaya mahkamah mengarahkan dia membuat sesuatu.” (personal communication, June 4, 2010)

When asked whether the BM word *sekatan* is appropriate to use in this matter, Aishah reacted,

> “No no no. That one is prohibitory order. *Sekatan* means restraining. ‘Injunction’, it stands on itself. The term stand on its own, speak for itself.” (personal communication, August 3, 2010).

(2) Fraud—*Fraud (Frod)*

Lawyers will use the word *frod* although the spelling given in the legal glossary and Kamus Dewan is *fraud*. They will usually explain by using the word *tipu* (Hisham, Penny). They prefer fraud over *penipuan* because fraud bears a wider scope of meaning compared to *penipuan*.

> “*Frod* is in a way cheating. Something you have done dishonestly. I can use the exact word (*frod*), but more importantly is the concept or the meaning, as to how it works.” (Lily, personal communication, July 30, 2010).

Aishah commented that even laymen are familiar with the word ‘fraud’, but what they usually do not know is the element of fraud. Janice remarked that the allegation of fraud has a very high standard of prove:

> “When you want to allege that there’s a fraud, then your standard of prove is very high. You have to prove this case that he really, really had done that, really

really high standard. To prove means you have to adduce a lot of evidence, to prove that he had actually done that, not simply said." (Janice, personal communication, June 4, 2010)

(3) Declaration—*Deklarasi*

The term 'declaration' is brought out by Aishah and Lily. 'Declaration' in law has seven meanings:

(1) A statement of claims in proceedings.
(2) A decision of the court.
(3) A discretionary remedy declaring the position in law based on given facts.
(4) A formal statement, e.g. to assert a right.
(5) A statement of testimony made by a witness not under oath.
(6) A declaration of trust is an acknowledgment by a person that he holds property in trust for another.
(7) A statutory declaration is one made before a Commissioner of Oaths in prescribed form. (Curzon, 1993).

From my interviews, when speaking about 'declaration', the lawyers refer to the second and third meaning of this term:

"For example, an agreement is entered between parties, but it doesn't follow the law, *ultra vires* law. So we have to apply for a declaration, for the court to decide that the agreement is null and void by reason of *ultra vires*." (Aishah, personal communication, August 3, 2010).

"Declaration is a release in law, that means you ask the law to declare something." (Lily, personal communication, July 30, 2010).

Istilah Undang-undang DBP puts ‘declaration’ as *penetapan, akuan, perisytiharan, or deklarasi.* In this context, both lawyers prefer the word *deklarasi*:

> “We cannot simply call *perisytiharan*. I choose the word *deklarasi*. It’s more accurate compared to other words.” (Aishah, personal communication, August 3, 2010).

> “Some people, I do see their documents using *perisytiharan*. But I like the simple term, *deklarasi*. The moment you put there *deklarasi*, people will know it as ‘declaration’. If you put there *perisytiharan*, it just doesn’t come in the twinkle of light that it is ‘declaration’.” (Lily, personal communication, July 30, 2010).

(4) Obligation—*Obligasi*

‘Obligation’ is “a duty, usually legal or moral and of one’s choosing, to undertake a course of action” (Curzon, 1993). The layman explanation given by Lily is “obligation is your responsibility” (personal communication, July 30, 2010). When asked why not *tanggungjawab* or *kewajipan*, the answer given,

> “You borrow the term *obligasi* instead of *tanggungjawab*. It makes it very simple for us. We shouldn’t give a Malay word by itself to the word ‘obligation’. I think the borrowed term *obligasi* is good enough. Simply because if I use the word *tanggungjawab*, I have an English term that is called ‘responsibility’.” (Lily, personal communication, July 30, 2010).

By checking the *Istilah Undang-undang, kewajipan* also represents another synonymous legal term ‘duty’. This shows that the word choice in the Malay language is limited.

(5) Petition—*Petisyen*

Another naturalised borrowing brought out by Janice is the word 'petition'.

> "'Petition', they also use *petisyen*. I would say that the main thing is that they do not understand the term. First of all, it's a technical term. Like 'petition', actually is *memohon*. But this form of *permohonan* is called 'petition' in law. For example, petition of winding up a company, petition of divorce. You have to use 'petition', you cannot use 'application'. I cannot 'apply' for divorce. You have to [make] petition to the court for divorce….The meaning may be the same, but you cannot borrow another lay meaning to put in the cause paper, *permohonan* [as] 'petition'. I think they will not register your case." (Janice, personal communication, June 4, 2010)

(6) Capacity—Keupayaan (Kapasiti)

'Capacity' is another legal term which the lawyers do not follow the Malay legal glossary *keupayaan* but use *kapasiti* instead. Hisham explains,

> "We don't use *keupayaan*, we use kapasiti. Capacity is a legal term. It means your capacity to make transaction. *Keupayaan* is more to strength. In law, we called it 'capacity'...the law allows them to make transaction. For example, for those who are bankrupt, they don't have the capacity to make transaction. Capacity is more to allow." (Hisham, personal communication, August 3, 2010).

(7) Beneficiary—*Benefisiari*

Janice brought forth this term and commented,

> "'Beneficiary' we still use *benefisiari*. How do you explain to your client, 'Awak seorang benefisiari.' [It's actually] *penerima;* you are receiving

> something good. But when you use *penerima*, it is also not appropriate. For example, a trustee. He is holding a trust, but siapa benefisiari? Ok, anak dia. So bapa dia tak boleh jual, anak dia ialah benefisiari. You cannot say anak adalah penerima….'Orang yang benar-benar mendapatkan property itu adalah anak dia, dan dia itu jadi benefisiari.'…No Malay word is appropriate. You only can explain, 'Itu sebenarnya, akhirnya kamu yang dapat, tak ada orang lain. Ini you punya benefit, so you menjadi benefisiari.'" (Janice, personal communication, June 4, 2010).

When ask if the word *manfaat* (lit., benefit) is applicable in this sense, Hisham reacted,

> "The meaning is different. *Manfaat* and *benefisial* are different, although in bahasa *manfaat* has the meaning of benefit, but the real meaning behind is different. 'Beneficiary' is people, when you have interest in something. Let say you buy a land, you pay the money, you acquire the right to the property, you are called the 'beneficiary', but *manfaat* is different. That's why we have to use English to make sure the whole meaning [is there]" (Hisham, personal communication, August 3, 2010).

One common problem faced by lawyers while using borrowings is the incomprehensibility on the part of the clients. The common solution is to engage in explanation and elaboration. "That is the purpose of the lawyer—to explain and give guidance to the public" (Hisham, personal communication, August 3, 2010). The interviewees admitted that there are difficulties in the process of making plain the meanings of legal borrowings to clients. They use slightly different approaches in this matter. The common way is to use layman words. Penny says that she will use a simpler word that is suitable and "safe" as a substitution for the legal term. Aishah says that she

will not even use the legal terms sometimes. For example, while explaining an injunction to a client, she will simply say, "Kita *failkan* application *untuk* stop *parti* from...." Janice will retain the English term in her conversation and explain the meaning in ordinary Malay words. Lily feels that to use the exact legal term or not is not the issue, the important thing is that clients must understand the legal concept and how the law works. From their responses, it seems that lawyers endorse the use of borrowings albeit they would try to simplify the legal meaning with clients for communication purposes.

4.5 Results and Analysis of Questionnaire

Based on responses gained from the five interviews, a questionnaire was prepared to investigate in a larger scale the use of translated Malay legal terms among lawyers. 70 questionnaires were distributed, and 50 responded with complete or near complete answers. The questionnaire was constructed in three sections: section 1 inquired about the background information of the respondents; section 2 sought information about language use at work; while section 3 focused on questions related to the use of legal terms with clients (see Appendix E).

4.5.1 Background Information of Respondents

Of the 50 respondents, 27 are males and 23 are females. This is quite an equal proportion of both genders. 24 of the respondents have been practicing as a lawyer between 1-5 years (50%), 11 between 6-10 years (23%), 9 between 11-15 years (19%) and 4 have been working for 16-20 years (8%). Two respondents did not give this information. 21 of the respondents (48%) stated that their first language is the Malay language, 12 (27%) the Chinese languages (including Mandarin, Cantonese, Teochew, and Hokkien), 7 (16%) the Indian languages (including Tamil, Punjabi, and Malayalam) while 4 (9%) of them speak English as their first language. 83% of the respondents had

English as their medium of instruction in their study of law while 17% received their education of law in both English and Malay language. Figure 4.4 to 4.6 show the respondents' working experience, their first language and the medium of instruction during their law studies.

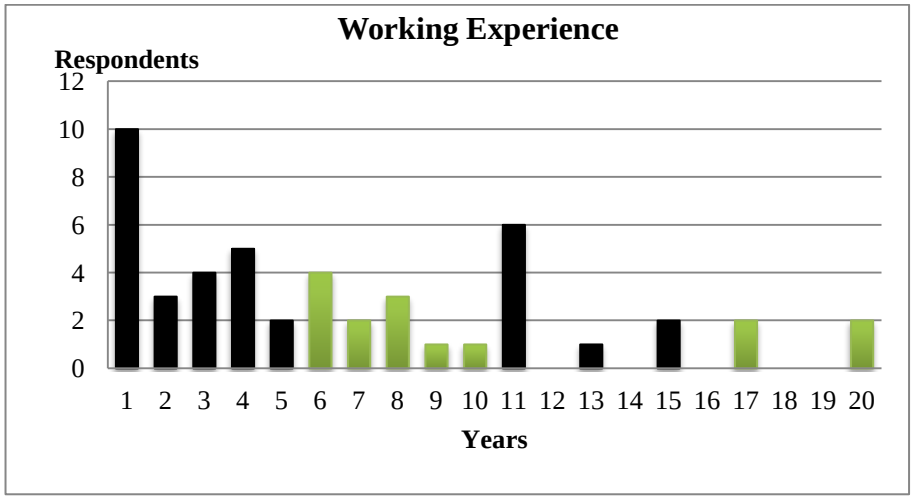

Figure 4.4: Working Experience of Respondents

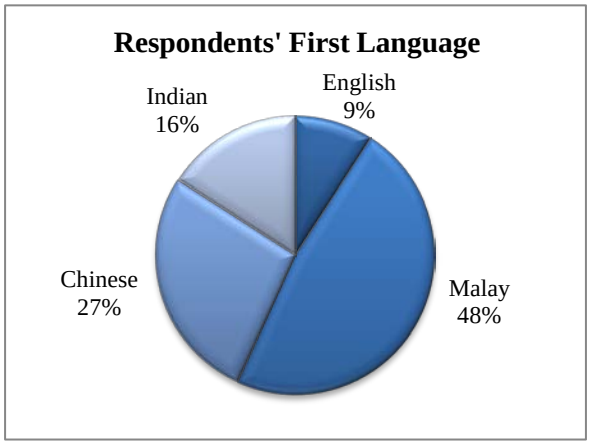

Figure 4.5: Respondents' First Language

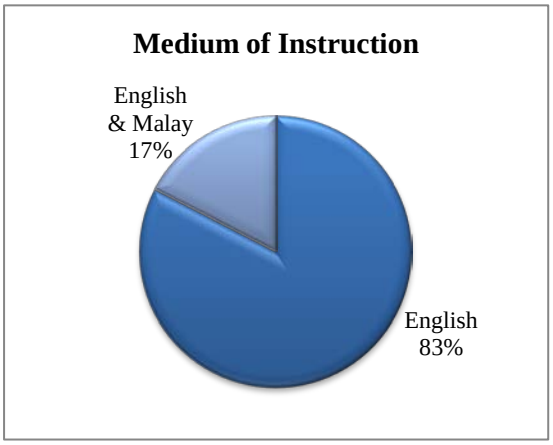

Figure 4.6: Respondents' Medium of Instruction in Law Education

The frequency of reference to the Evidence Act was also asked to further validate the choice of data. 45 of the respondents (90%) refer to the Act either always (12), frequently (14), or sometimes (19). This proves that the Evidence Act is a common reference in legal practice.

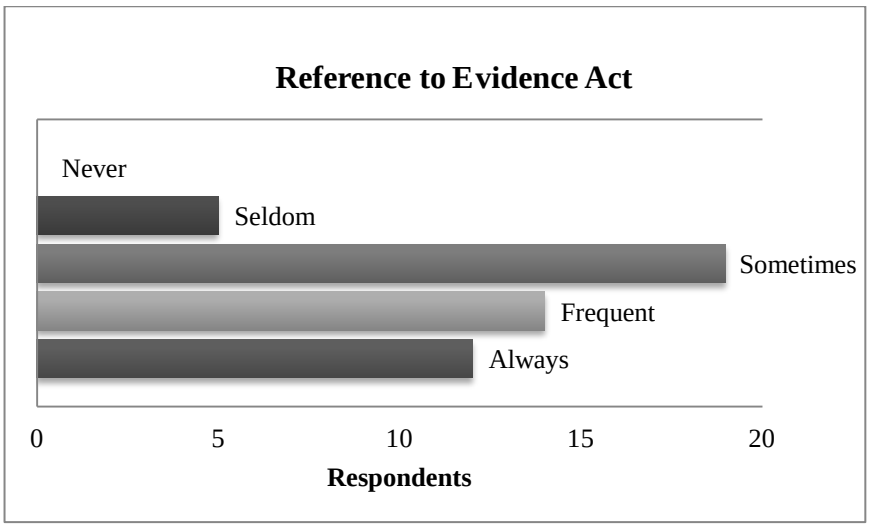

Figure 4.7: Respondents' Frequency of Reference to Evidence Act

4.5.2 Language Use at Work

45 respondents (90%) prefer English legal terms instead of its Malay version provided by DBP. When asked the reason for not using the Malay legal terms, the reason "English terms are more convenient to use" was chosen by 36 (72%) lawyers, "I do not want to misinterpret the meaning of the English term" was chosen by 35 (70%) lawyers, and "Malay version is insufficient in terms of legal concept" was chosen by 26 (52%) lawyers. Only ten (20%) responded that "Malay version tends to make a legal term common." Six lawyers provided other reasons: (1) They were not trained to conduct trials in BM; (2) Resources and authorities are in English; (3) English is more varied yet specific; (4) Judges who are dependent on the Malay language will not be able to fully grasp the legal concepts established in English over the centuries; (5) Submissions or arguments are more precise and clear in English; (6) The understanding of judges in Malay is limited; and (7) Almost all local reported cases are in English. (See Table 4.8 and Figure 4.8.)

Table 4.8: Reasons for not Using Malay Legal Terms

	Reason for not using Malay legal terms	Respondents (N = 50)
1	English terms are more convenient to use	36 (72%)
2	I do not want to misinterpret the meaning of the English term	35 (70%)
3	Malay version is insufficient in terms of legal concept	26 (52%)
4	Malay version tends to make a legal term common	10 (20%)
	Other reasons (provided by respondents):	
5	We were not trained to conduct trials in BM	1 (2%)
6	Resources and authorities are in English	1 (2%)
7	English is more varied yet specific	1 (2%)
8	Judges who are dependent on the Malay language will not be able to fully grasp the legal concepts established in English over the centuries	1 (2%)
9	Submissions or arguments are more precise and clear in English	1 (2%)
10	The understanding of judges in Malay is limited	1 (2%)
11	Almost all local reported cases are in English	1 (2%)

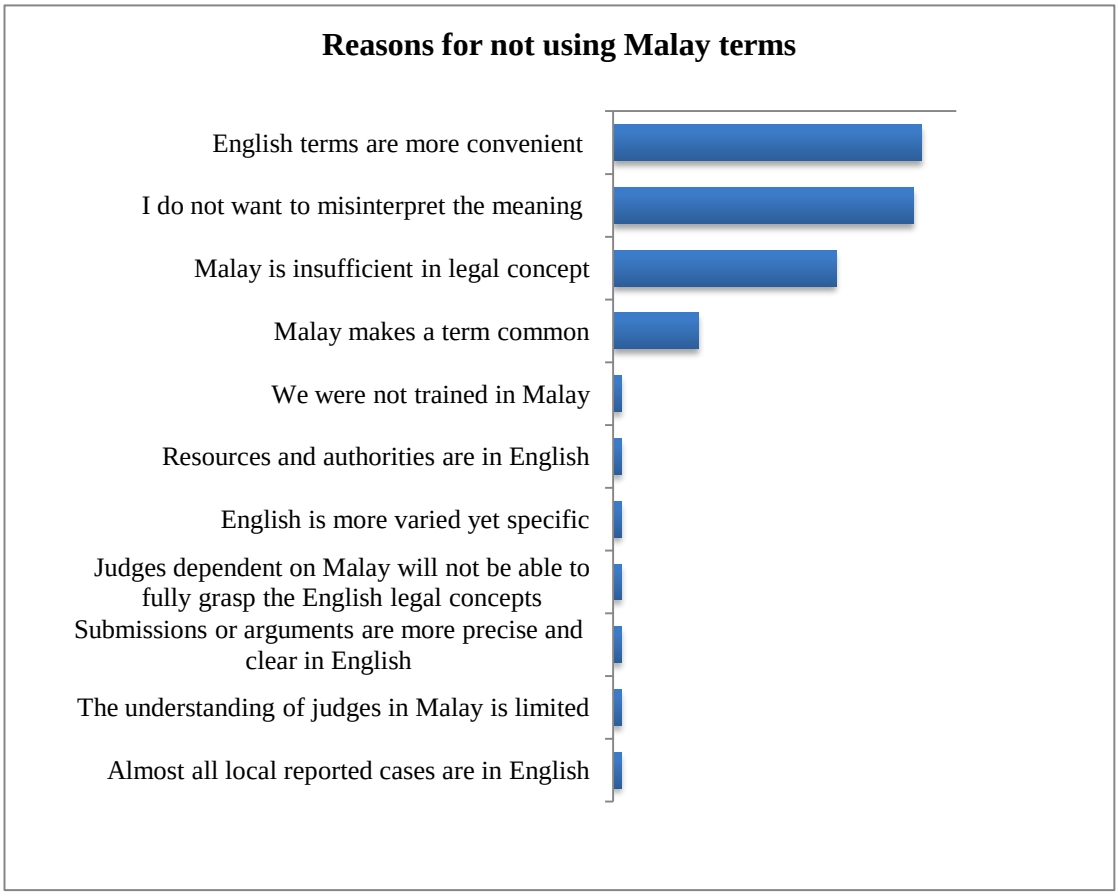

Figure 4.8: Reasons for not Using Malay Legal Terms

4.5.3 Use of Legal Terms with Clients

Questions 8-10 are focussed on the use of legal terms with clients. Question 8 provided 20 terms taken randomly from the Evidence Act (six of the terms were mentioned by the interviewees). The legal terms chosen are naturalisation since they are the easiest to be identified as a borrowed word to those who are not linguistically trained. Every English term has two options for the Malay translation. The first option (Option 1) is a borrowing while the second option (Option 2) is a native Malay word. The 20 terms are carefully selected and divided into two groups of ten each. In the first group, the "correct" equivalent Malay term is Option 1, which is a borrowing. ("Correct" here is used in the sense that the term is according to what has been set by DBP and listed in the legal glossary, *Istilah Undang-undang*). Option 2 in the first group is a translation proper. In the second group, the "correct" equivalent Malay term is Option 2, which is a translation proper while Option 1 is a borrowing coined from the English by following the general guidelines in PUPIBM. The lawyers were asked to tick the preferred words that they will use while communicating with clients if they will need to use bahasa Malaysia. (It is assumed that they will use proper terms in legal documents and in the courts.)

For the first group of 10 terms in which the equivalent Malay term should be a borrowing, the lawyers prefer to use 8 borrowings in their communication with clients. Only two words, 'consign' and 'fee' are exception. Lawyers prefer to use Malay words, *hantar* (lit., send) and *bayaran* (lit., payment) for 'consign' and 'fee' respectively in their communication with clients. (See Table 4.9, asterisk mark indicates the term provided by DBP. Shaded region shows preference of term.)

Table 4.9: Terminology Preference with Clients (Group 1)

English Term	Malay Term*	Response (N =50)	Percentage	Preference based on majority
award	mengawardkan*	31	62%	Borrowing (according to DBP)
	memberikan	19	38%	
conclusive proof	bukti konklusif*	30	60%	Borrowing (according to DBP)
	bukti muktamad	20	40%	
consign	konsain*	15	30%	Translation proper (not according to DBP)
	hantar	35	70%	
contract	kontrak*	40	80%	Borrowing (according to DBP)
	perjanjian	10	20%	
depose	depos *	28	56%	Borrowing (according to DBP)
	membuat keterangan bersumpah	22	44%	
fee	fi*	16	32%	Translation proper (not according to DBP)
	bayaran	34	68%	
fraud	fraud / frod*	39	78%	Borrowing (according to DBP)
	penipuan	11	22%	
liability	liabiliti*	46	92%	Borrowing (according to DBP)
	tanggungan	4	8%	
obligation	obligasi*	28	56%	Borrowing (according to DBP)
	tanggungjawab	22	44%	
probate	probet*	49	98%	Borrowing (according to DBP)
	sijil pengesahan	1	2%	

The opposite is the case for the second group where the "correct" equivalent Malay term should be a translated Malay word. The lawyers do not prefer the "correct" translated Malay terms in most instances. Only 3 out of 10 of the terms are chosen; they are *pihak menuntut* (claimant), *persetujuan* (consent), and *tidak suai manfaat* (inexpedient). This shows that lawyers still prefer to use borrowing with clients even though the *Istilah Undang-undang* provides a Malay term. (See Table 4.10, asterisk mark indicates the term provided by DBP. Shaded region shows preference of term.) Figure 4.9 shows the overall preference of legal terms and Figure 4.10 is a graphical presentation of lawyers' choice of words for the 20 English terms.

Table 4.10: Terminology Preference with Clients (Group 2)

English Term	Malay Term*	Response (N =50)	Percentage	Preference based on majority
arbitrator	arbitrator	31	62%	Borrowing (not according to DBP)
	penimbang tara*	19	38%	
capacity	kapasiti	39	78%	Borrowing (not according to DBP)
	keupayaan*	11	22%	
civil procedure	prosedur sivil	44	88%	Borrowing (not according to DBP)
	tatacara sivil*	6	12%	
claimant	klaimen	6	12%	Translation proper (according to DBP)
	pihak menuntut*	44	88%	
consent	konsen	4	8%	Translation proper (according to DBP)
	persetujuan*	46	92%	
conspiracy	konspirasi	45	90%	Borrowing (not according to DBP)
	komplot*	5	10%	
credibility	kredibliti	47	94%	Borrowing (not according to DBP)
	kebolehpercayaan*	3	6%	
declaration	deklarasi	31	62%	Borrowing (according to DBP)
	perisytiharan*	19	38%	
defective	defektif	31	62%	Borrowing (not according to DBP)
	cacat*	19	38%	
inexpedient	inekspedien / tidak ekspedien	18	36%	Translation proper (according to DBP)
	tidak suai manfaat*	32	64%	

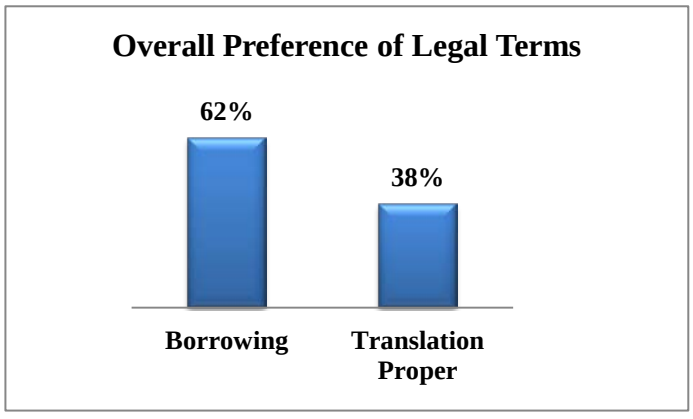

Figure 4.9: Overall Preference of Legal Terms

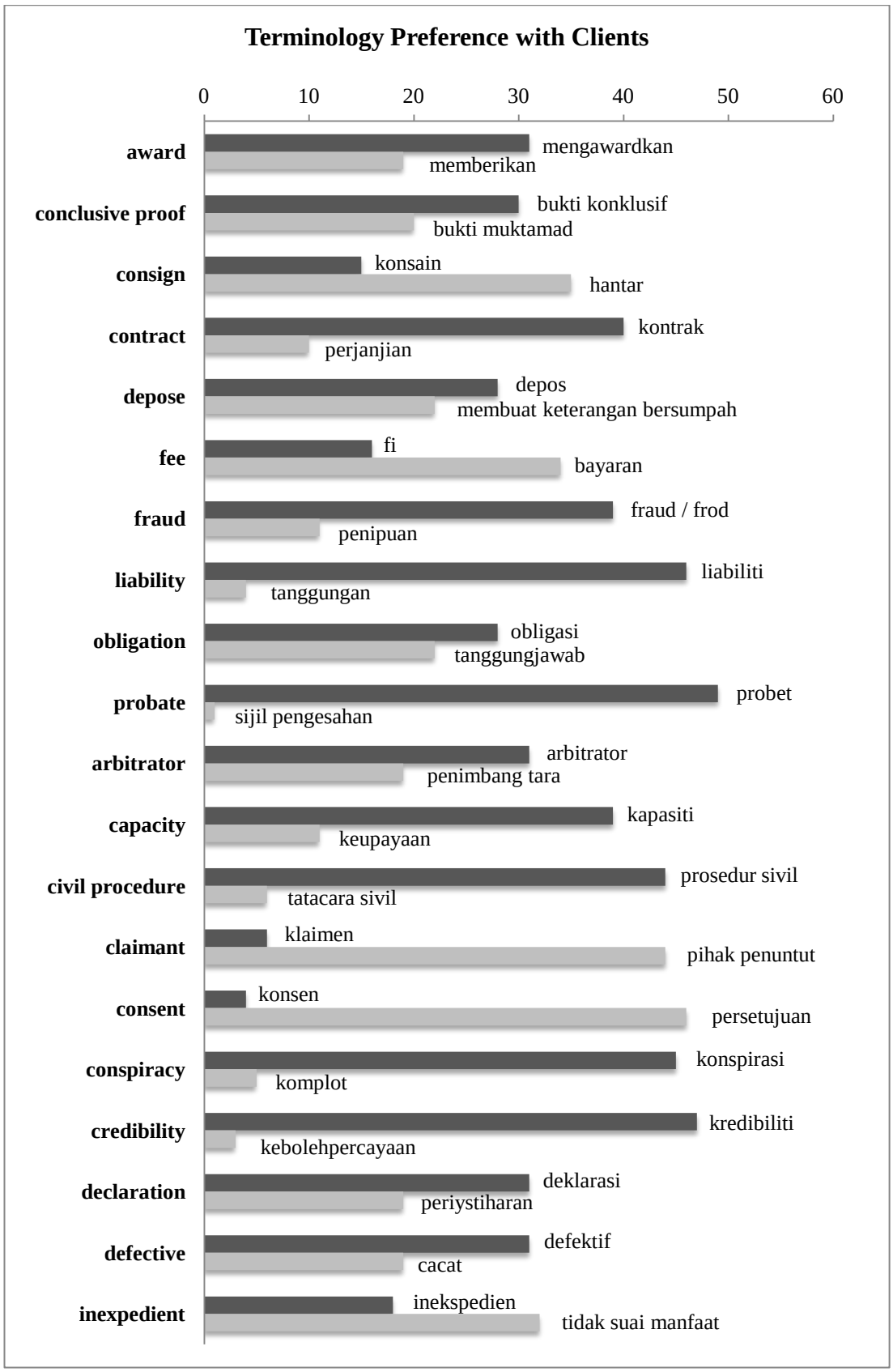

Figure 4.10: Terminology Preference with Clients

Question 9 enquired about the problems faced by lawyers while using translated legal terms with clients. Majority of them face three problems: (1) 37 respondents (74%) admitted that they need to pause to think in order to find the Malay equivalent of the English terms; (2) 37 respondents (74%) stated that some English terms do not have the Malay equivalent terms; (3) 36 respondents (72%) agreed that one of the problems is that the clients do not understand the translated legal terms. The first problem is the limitation of the speaker of the language, i.e. the lawyers; the second problem is the limitation of the language itself, i.e. the Malay language; and the third problem is the limitation of the hearer, i.e. the clients. 25 of the respondents (50%) stated that the problem lies in the fact that the Malay legal terms are not standardised. 21 (42%) stated that even the English terms are not intelligible to the clients. 2 lawyers provided additional information of the problems they faced while using Malay terms. One stated that the Malay legal terms are in a continual state of confusion, in which there is the problem of non-standardisation of Malay terms. Another stated that some translated Malay equivalent terms are not effective or applicable. (See Table 4.11)

Table 4.11: Problems Faced by Lawyers while Using Malay Terms

	Problems faced by lawyers while using Malay terms	**Respondents (N = 50)**
1	I have to pause to think in order to find the Malay equivalent of the English terms	37 (74%)
2	Some English terms do not have the Malay equivalent terms	37 (74%)
3	Clients do not understand the translated legal terms	36 (72%)
4	Some translated Malay terms are vague in meaning	34 (68%)
5	The Malay terms are not standardised	25 (50%)
6	Even the English terms are not intelligible to clients	21 (42%)
	Other problems (provided by respondents):	
7	Malay legal terms are in a continual state of confusion	1 (2%)
8	Some translated Malay equivalent terms not effective or applicable.	1 (2%)

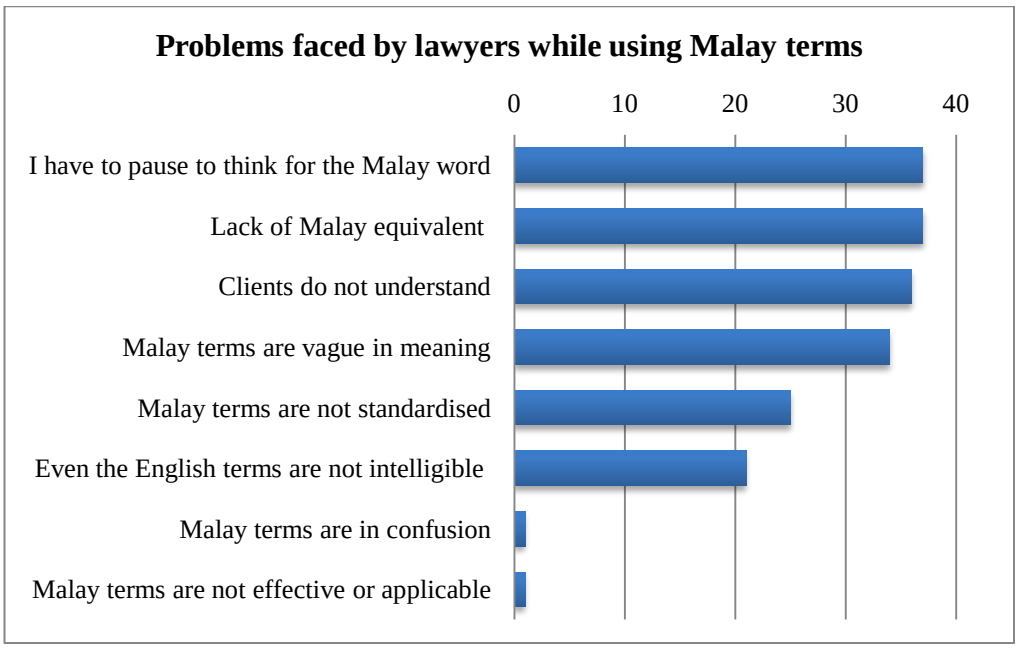

Figure 4.11: Problems Faced by Lawyers while Using Malay Terms

The final question investigated the way lawyers overcome the problems faced in the previous question. 46 of the respondents (92%) will use the English terms and explain in layman terms the legal concept to the clients. This approach is most widely used. This shows that when given a choice, the lawyers prefer to adhere to the English term even in a Malay language communication. The second most popular approach is not using any legal term that the clients will probably not understand. Instead, only layman terms, or simpler words, which is considerably similar and acceptable are used. 36 respondents (72%) chose to use this approach. A total of 32 respondents (64%) chose both approaches. Only 17 respondents (34%) will use the Malay terms and explain in layman terms the legal concept to the clients. The least popular approach is to seek help from legal translators or interpreters. Only 6 lawyers (12%) resolves the issue in this way. Even so, one respondent elaborated that she will do so under the circumstances where the language of communication is other than Malay or English. (See Table 4.12)

Table 4.12: The Ways Lawyers Overcome the Problems

	How do lawyers overcome the problems	Respondents (N = 50)
1	I usually use the English terms and explain in layman terms the legal concept to the clients	46 (92%)
2	I refrain from using any legal term that clients will probably not understand. Instead, I will only use laymen terms, or simpler words, which is considerably similar and acceptable	36 (72%)
3	I usually use the Malay terms and explain in layman terms the legal concept to the clients	17 (34%)
4	I seek help from legal translators or interpreters	12 (6%)

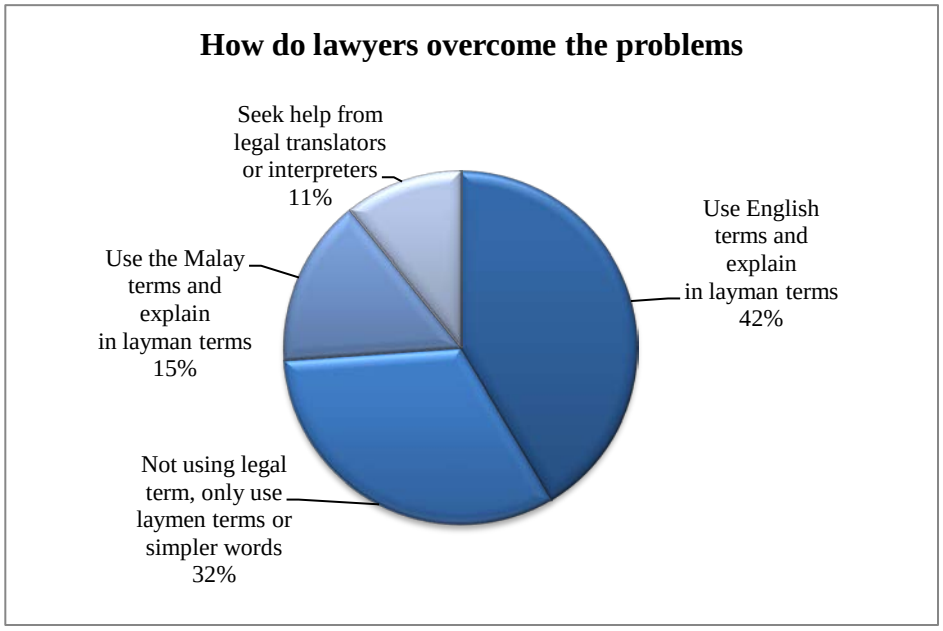

Figure 4.12: The Ways Lawyers Overcome the Problems

4.6 Conclusion

This chapter presents findings and analysis from textual analysis on Evidence Act, interviews with five litigation lawyers, and responses from questionnaires distributed to 50 lawyers. The next chapter will continue with further discussions on these findings.

CHAPTER FIVE

DISCUSSION AND CONCLUSION

5.0 Introduction

In this final chapter, the findings presented in the previous chapter will be discussed. The discussion is carried out along three lines corresponding to the three research questions. The first part of the discussion centres on the translation of the Malaysian legal terminology and framework of this study; the second part is based upon the views offered by participants regarding the use of Malay legal terms which are borrowings; the third part looks into the problems and solutions in the usage of legal borrowings. Mellinkoff (1963) divides the language of the law into "language that is intended to speak to lawyers and laymen" and argot, "a professional language" (as cited in Harvey, 2002). In this respect, the former is the subject of study for the second and third part of this research and the latter, the argot, is the study data for the first part of the research. Finally, the conclusion of this study is given, along with the limitation of the study and suggestions for further works.

5.1 Discussion on Translation of Malaysian Legal Terminology

In the theory and practice of translation, there is the century long debate between literal and free translation. The former adheres to the SL while the latter strives to be near as the TL as possible; the literal approach claims the importance to preserve SL meaning and accuracy while the free approach stressed the functional and communicative purposes of language. Legal translation is not exempted from this debate albeit the functional approach enters legal translation rather late compared to

other fields of translation given the formal and stiff nature of legal discourse (Harvey, 2002, p. 180).

In the Malaysian context, translation of legal texts is still carried out according to the traditional practice of literal translation or formal correspondence. This is observed while comparing the Evidence Act in both English and Malay versions. In this study, however, the focus is on legal terminology. The translation of legal terminology from English to Malay proved to be a challenge. The common law system contains legal terms with legal concepts which are historical and cultural specific to the English customs. In considering the most appropriate translation, legal translators need to move back and forth along the translation continuum (Figure 4.3) to choose to either import an English term or to substitute it with a native word. One way to solve the problem of nonexistent concepts and non-equivalent words is to borrow the English term morphologically, orthographically, phonologically and/or semantically into the Malay language. Focussing on one legislative text among the bulk of legal genres, analysis of the Evidence Act 1950 shows that one-third of the legal terms (33%) are borrowings. The other two-thirds of the terms (67%) are translation proper, consisting of words from the Malay vocabulary. These terms are usually common generic concepts of justice such as criminal – *penjenayah*, prosecution – *pendakwaan*, and court – *mahkamah*. There are also terms that are coined to elucidate the English meaning, e.g. forfeiture – *pelucuthakan*, legitimate – *sah taraf*, and inexpedient – *tidak suai manfaat*. This majority group of "properly translated" Malay legal terms reflect the effort to produce a local glossary of legal terms in the native language and to prove the functionality of the national language as the language of the law. It can also be seen as an endeavour to distance the country's legal system from that of the former imperial power and the strife towards creating a "Malaysian common law" (Wan Arfah and Ramy, 2006).

However, unlike certain language purists (Puteri Roslina, 2006, p. 48), several language scholars (Asmah, 1972; Nik Safiah, 1994; Mashudi, 1994) in Malaysia acknowledge the inevitable need to borrow foreign terms into the national language in line with the current modernisation and globalisation phenomena. In fact, Mashudi (1994) exerted that no language is free from foreign influence unless it is spoken by a community which does not come in contact with other communities (p. 84). There is always the need to update and expand a language to suit the rapid growth, changes, and transmission of knowledge in and across various domains.

Based on the framework of this study, the borrowed legal terminology is categorised into four major types, namely direct borrowing, naturalisation, loan translation, and loanblend. The largest group of borrowing is naturalisation, which accounts to 40% of the total borrowings. Since English and Malay have the same writing system and Roman alphabet, it is easy to take over a term from one language and adapt it to the spelling system of another. The terms are naturalised to look and sound more agreeable to the Malay orthographic appearance and sound system. The guidelines to naturalise a word is provided by DBP (PUPIBM, 2004). The least popular type of borrowing is direct borrowing; this is predictable as there are major differences between the morphology and phonetics of both languages. Besides, there is the consideration of national language prestige where an exact reproduction is to be avoided.

The functions of the borrowings have been discussed in the previous chapter (See section 4.3). The main functions of the legal borrowed terms are to fill up lexical gaps, to distinguish the legal register from the vernacular language, to maintain the discrete meaning of legal terms, and to represent a particular meaning of an English word which is not denoted by the equivalent Malay word. Looking at the borrowing as a whole, they are used to enhance communicativeness for the “direct” addressee, i.e. the

legal professionals. However, they are not meant for communicativeness towards the "indirect" addressee of the law, i.e. the general public (Sarcevic, 1997, p. 57-61).

The framework of this study is deemed sufficient for the identification of legal borrowings. Of course, one can always detail into every type of the borrowing by dividing them into further subtypes. For example, in the discussion on loanblends (section 4.2.4), three types of loanblends are identified. However, the current framework suffices to serve the purpose and scope of the study.

5.2 Discussion on Lawyers' Perspectives on Linguistic Borrowing

The second part of the research, the fieldwork part, aimed to harness lawyers' perspectives on the linguistic borrowing discussed in the textual analysis. Findings show that all the participants in this study hold a same perspective: borrowing is not a problem at all. On the contrary, they are comfortable with the usage of borrowings; in fact, they find it necessary and prefer to use them to a native Malay word. Results show that the preference for borrowings is much higher (62%) than a native Malay word (38%). Even in lawyer-client communication, an expert-to-layman communication, the lawyers are inclined to adhere to legal borrowings, despite the problem of incomprehensibility on the layman side, and despite a translated Malay word is available and authorised as a legal term by DBP. Why do the lawyers prefer English borrowings for legal terms? Based on the findings of this study, there are four factors to be considered.

The first factor is related to the nature of law itself. The law is not merely a language but more importantly it is an institution to uphold justice and to make sure justice is dispensed. Therefore, precision in legal language is of utmost importance. The lawyers are more comfortable to cling to the original English term to avoid confusion

and misunderstanding. They are afraid that substituting the English term with other words will lead to misinterpretation. This is echoed in Varó & Hughes (2002):

> Lawyers are reluctant to depart from these terms precisely because, having fallen out of ordinary use—if indeed, they ever really belonged to it—they are less prone to semantic change and so have the advantage of clarity and certainty to those who understand them (p. 7).

The second factor is the law education received by the lawyers locally or abroad. Malaysian law schools and the professional training of lawyers are modelled on the English system (Shaikh & Lim, 2011). The majority of the respondents (83%) has English as their medium of instruction while the remaining studied in both languages. Lawyers do not have problems practicing in English since it is the language of instruction at the university. However, they are not trained to use Malay. One lawyer who studied at a local university commented that although instructors do speak in Malay yet all the reference books are in English. Surprisingly, out of 21 respondents whose first language is Malay, 18 of them prefer the English term to its Malay version. The prevailing use of English in colleges and universities undoubtedly produce lawyers who are more confident with English in their practice. To them, to use an English borrowing is much easier, convenient, and time-saving.

Another major factor is the functionality of English as the language of the law in contrast with the limitation of the Malay language. Lawyers prefer English borrowings to Malay native words because the Malay version is insufficient in terms of legal concepts and tends to make a legal term common (according to their perception). On the other hand, English to them is more varied yet specific. Furthermore, submissions or arguments are more precise and clear in English, and almost all legal resources, authorities and local reported cases are in English. The fourth factor is the practical

consideration that judgments are passed by judges; therefore arguments must be presented in the language that the judges understand best. Senior judges are more competent in English, and their understanding in Malay is limited. One respondent goes as far as to say that judges who are dependent on the Malay language will not be able to fully grasp the legal concepts establish in the English over the centuries.

5.3 Discussion on Problems and Solutions in the Usage of Legal Borrowing

The problems faced by lawyers while using translated legal terms with clients can be categorised according to the three units of a basic communication model: the speaker (sender/encoder), the hearer (receiver/decoder), and the language (signs/message). The first category of problems is related to the language proficiency of lawyers (the speaker), the second consists of problems related to the limitation on the part of the clients (the hearer), and the third category is associated with the limitation of the language itself.

At this juncture, there is a need for clarification in a particular matter. Readers must be aware the lawyers, not being linguistically trained, regard borrowings as only including direct borrowing, naturalisation and loanblends. They do not have in their mind that loan translation is a type of borrowing (despite the explanation given by the researcher); rather they see loan translation as just any other kind of translation. Furthermore it is difficult for them to view borrowing as *a type of translation.* Therefore, when asked about the problems faced by them while using translated legal terms, they usually have in their mind terms that are purely from the Malay vocabulary, in other words, native Malay words. On the other hand, when communication with clients is mainly in Malay, some lawyers regard “English terms” equals “borrowings.” This shows how deeply rooted the practice of code-switching in the legal setting and this lead to the issue of the blurred boundaries between code-switching and borrowing which was

mentioned briefly in chapter 2. Therefore, when answering the third research question, as far as the speakers of the language (i.e. the lawyers) is concerned, there is no problem. However, one interviewee was frank enough to voice out her concerns on the "overusing" of borrowings. She thinks that borrowing is a shortcut method and is not something that lawyers should practice always. Problems will eventually arise during oral submissions and cross-examination where witnesses or even judges may not understand the borrowed term. She suggested that lawyers should keep themselves updated in the Malay language and not practise borrowing all the time (Penny, personal communication, May 16, 2010). From the survey, 37 of the 50 respondents admitted that they need to pause to think in order to find the Malay equivalent of the English terms. The lower proficiency in Malay among lawyers compared to English is very much related to their legal studies and training. Zubaidah (2002) in her study observed that the Malay spoken in the magistrate and session courts is "Bazaar Malay", a non-standardised Malay mixed with other languages commonly used in daily conversation, a result of pidginisation and creolisation. Besides, code-switching has been a common phenomenon in the courtroom. Despite this, Nik Safiah (1994) believes that the Malay language is well able to function as the language of the law. She blames the current problem to the inability of the Malay language users to present phrases and sentences in an orderly, smooth, and correct way. She alleged that one has to first master the Malay grammar and the Malay legal terminology before he can practice the legal register in Malay. Asmah (1990) illustrated the problem by two "vicious circles (as cited in Poon, 2002):

> There is a vicious circle here: the professionals in the legal sector are not proficient in Malay and so they do not write anything in Malay, and because there is very little in Malay on law the professionals are not able to practice using the language. Another vicious circle is seen in the relationship between the

> lack of books and that of legal terms in Malay. There is a dearth of law books in Malay because there is a lack of legal terms in the language, and because of this the professionals are not able to use the language, and hence they are not able to write books, and as such there are no legal terms for use (p. 87).

The major problem in the usage of borrowing is the incomprehensibility of clients towards the legal language. The clients do not understand the translated legal terms (referring mostly to borrowings). The lay people are not educated and empowered with the legal terms contained in a language that sounds 'unnatural' and archaic. They might understand the surface meaning of a term but certainly not the legal concepts. Quite a number of respondents (21 of them) admitted that even the original English terms are not intelligible to English-speaking clients. In this light, the incomprehensibility of legal terms is not confined to legal borrowings only, but also includes the legal terms in the source language. The same result was reached by Poon (2002), where she discovers that the need for lawyers to explain the meaning of Chinese legal terms to clients in Hong Kong is not a new one, for English common law also needs to be explained before the Hong Kong implements the current bilingual legal system.

The use of legal borrowing shows the limitation of the Malay language. While using borrowings and attempting to find the Malay equivalent terms, the lawyers stated that some English terms do not have the Malay equivalent terms, some translated Malay terms are vague in meaning, the Malay terms are not standardised and are in a continual state of confusion, and some translated Malay equivalent terms are not effective or applicable.

Generally, lawyers solve the problems of legal borrowings by explanation. They use various ways to make plain the meanings of legal borrowings to clients. Almost all

(92%) of the lawyers will retain using the English terms and explain in layman words to the clients. On many occasions, they might not use the legal terms at all if they think that the clients will not understand but substitute the term with a more common or simple word. About one-third (34%) of the lawyers will use the Malay terms and followed by explanation. Twelve respondents will also seek help from legal translators or interpreters.

5.4 Conclusion

The use of language in the legal setting has an utmost important role in the administration of justice. Language precision and technical accuracy is essential to convey the intended meaning in any legal text, either written or verbal. The legal system in Malaysia, being largely based on the English common law, is very much influenced by the English language. Since the enactment of the National Language Act 1963, the Malay language is officially recognised as the language of the court. With the language policy as the background, this study attempt to look into the translation of legal terminology with a particular interest in linguistic borrowing.

This study succeeded in reaching its original objectives. The framework, a typology of legal borrowings which categorising borrowings into four major types, is sufficient to analyse the borrowings found in the Evidence Act. Interviews and questionnaires also produce informative results. The participants were cooperative to provide their viewpoints and perceptions concerning legal borrowings, the problems they encounter and the solutions employed. In addition, they were helpful to describe the current scenario of language use in documents and in the courts. The hypothesis mention earlier is proven to be correct as the use of borrowings in legal discourse does actually undermine comprehension of the clients.

From the study, it is evident that the use of English and Malay in court is not on equal footing. Legal borrowings are widely used even though a native term is available. The legal practitioners ascribe the use of borrowings as convenient, time-saving, communicable, and safe. This shows the lawyers' reluctance to attach new linguistic labels to legal concepts to which a label already exists in the English and their readiness to assimilate English legal concepts into the Malay language for the purpose of accuracy and good justice in the expense of the "language purity."

There is still much work and testing to do before Malay can assume its role as the major and prestigious language of the court. Despite the current effort, much collaboration is still needed between governmental bodies, educational institutes, language academy, legal publishers and the legal practitioners. There is an urgent need for language practitioners to improve Malay language competence and performance in the legal language. Teamwork between legal experts and publishers are essential to produce more legal reference material in the Malay language. These references should not merely cater the need of those educated in the legal profession, but also to the general public. Since the principle *ignorantia juris non excusat* (ignorance of law is no excuse) applies where the public is expected to understand the law, legal reference materials must also be targeted at the public as they need access to legal explanatory materials that is intelligible to them. One such publication is *Maksim dan Ungkapan Undang-Undang* by Mohd. Razali (2001). However, more bilingual legal dictionaries are needed.

There remain many areas for further research regarding the current topic. One can look into the meaning comparison of the English and Malay terms based on semiotics theory or other related theories. Besides borrowing, other types of legal terms, for example the newly coined Malay legal compounds (neologism), are also worth exploring. Of course, similar studies as this one can be conducted on a larger scale,

involving other legal genres (e.g. judicial decisions, law journal, contracts etc.) and larger number of participants.