

Exploring Legal Terminology: Types of Business Organization in the United States

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Resumen

Leer un texto jurídico redactado en una lengua extranjera puede llegar a ser una tarea complicada. La terminología jurídica en inglés suele resultar muy compleja para aquellos que no están familiarizados con la jerga. Los hispanohablantes que estudian inglés como lengua extranjera pueden considerar que los términos ligados al proceso civil, al proceso penal y a las formas de organización empresarial son difíciles de entender debido a las grandes diferencias entre los sistemas jurídicos en cuestión, es decir, las diferencias entre el sistema jurídico anglo-norteamericano (*common law*) y el sistema jurídico establecido en los países de habla hispana como la Argentina (sistema continental). El objetivo de este artículo es explorar terminología jurídica relacionada con los tipos de organización empresarial en los Estados Unidos de América.

Palabras clave: terminología jurídica, organización empresarial, Estados Unidos, *common law*, sistema continental.

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Abstract

Reading a legal text written in a foreign language may be a complicated task. Legal terminology in English is usually very complex for those who are not familiarized with the jargon. Spanish-speaking learners of English as a foreign language may consider that terms related to civil procedure, criminal procedure and types of business organization are difficult to understand due to the great differences between the legal systems involved, that is to say, the differences between the Anglo-American legal system (common law) and the legal system established in Spanish-speaking countries such as Argentina (civil law). The aim of this article is to explore legal terminology related to types of business organization in the United States of America.

Keywords: *legal terminology, business organization, United States, common law, civil law.*

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Introduction

There are different reasons why Spanish-speaking learners of English as a foreign language may find legal texts very complex. One of them is that the vocabulary is too specific. For example, a word may have a particular meaning in general English but it may have a completely different one in the legal context. Furthermore, it is worthwhile mentioning the differences between the legal systems involved. The purpose of this article is to analyze terminology related to the different types of business organization in the United States. Some of the expressions considered herein are commonly used, but sometimes the speakers who use them ignore their real meanings. On certain occasions, they may be confused because of linguistic reasons, for example, due to the existence of "false cognates". On other occasions, they may be confused due to legal reasons. Lawyers and translators specialized in legal texts must use accurate vocabulary in order to avoid misinterpretations. Raúl Eduardo Narváez (2005, p. 161) points out that "legal texts are unified by a common aim: the expression of imposed rights and obligations. This objective demands the use of accurate terminology both in originals and in translations."

I hope the readers of this brief article may reflect on its contents and become aware of the necessity of doing research to be able to understand legal concepts included in texts written in English.

False cognates, transparent words and terms with different meanings

Before exploring specific terminology connected with types of business organization, certain linguistic aspects must be mentioned. What is a “false cognate”? I would like to quote the definition given by Alejandro Parini (2003, p. 43): “False cognates are words which have the same or very similar form in two different languages but which have a different meaning in each.”

In the legal field there are numerous false cognates. For example, the word “sentence” does not mean *sentencia* in Spanish because such English term means “punishment”, “conviction”. Thus, the noun “sentence” can only be used in criminal law. “Judgment” is the word in English to say *sentencia* (Curto, 2015, p. 43).

There are terms which are considered transparent. A transparent term is the opposite of a false cognate. For example, “contract” means *contrato* in Spanish. They are written in a similar way and they refer to the same concept (Curto, 2015, pp. 42-43).

On certain occasions, some words may have a meaning in general English but a different one in the legal field. For instance, the noun “charge”. A “charge” in general English may refer to a cost, a price that must be paid. In that sense *Collins COBUILD Dictionary* (1995, p. 264) in the third entry defines “charge” as “an amount of money that you have to pay for a service.”

But in the legal field “charge” may have a quite different meaning. *Collins COBUILD Dictionary* (1995, p. 264) in the fourth entry defines “charge” as “a formal accusation that someone has committed a crime.”

Furthermore, a term may have different meanings in the same legal field. For instance, the word “justice”. “Justice” may mean *justicia* in Spanish, but it may also refer to a judge of a high court. The expression “civil law” is another example. “Civil law” may refer to the area of law, but if the expression is used as the opposite of “common law,” it will probably refer to the legal system translated into Spanish as *sistema continental* (Curto, 2015, p. 44). But the expression “civil law” may have more than those two meanings. Readers must analyze the context in which such expression appears in order to feel certain about its meaning (Curto, 2016).

To summarize, Spanish-speaking readers of legal texts written in English must be aware of the existence of false cognates and transparent terms.

Moreover, it is important to remark that a term may have a meaning in general English and another one in the legal field. As if that were not enough, a legal term may have different meanings in the same legal field.

Exploring terms connected with types of business organization

There are certain differences between the American and the Argentine legal systems. In Argentina, Law 19550 sets forth the different types of business organization that may be formed in the country. In the United States there is not a similar federal law. Each state has the power to enact its own legislation on types of business organization. That typical characteristic of the American legal system can be appreciated in the different areas of law: criminal law, civil law, family law, etc. The differences between both systems can be seen clearly in the area of criminal law. Regarding criminal law, each Argentine province may set forth procedural rules for those criminal offences which are not considered federal crimes. As for the substantive law, there is one criminal code which sets forth the illegal acts considered as crimes in all the country. But in the United States each state may set forth rules of procedural and substantive law.

The typical types of business organization in the United States of America are:

- a) Corporations
- b) S corporations
- c) Limited liability companies
- d) Partnerships
- e) Limited partnership
- f) Limited-liability partnership
- g) Sole proprietorships

The types of business organization mentioned above do not have an exact equivalence in Argentine Law. They are legal creations of the American law. However, in some cases, similar concepts may be found in the two legal systems.

A legal creation is a human creation and this is one of the main characteristics of legal terminology. The legal vocabulary is not universal because the concepts are not necessarily the same in different countries. Each country has its power to create different types of business organization. On the contrary, terms related to medicine are universal. Medical concepts are the same everywhere. Legal translation involves doing research in the field of Law, specifically in two different legal systems. Furthermore, a linguistic analysis must be made in order to determine how to translate an expression despite the differences that may exist between such legal systems. For these reasons legal translation is considered so complex.

Corporations

Black's Law Dictionary (2004, p. 365) defines "corporation" as: "An entity (usu. a business) having authority under law to act as a single person distinct from the shareholders who own it and having rights to issue stock and exist indefinitely." George Gordon Coughlin Jr. (1993, p. 168) gives the following definition: "A corporation is a legal 'person' composed of one or more natural persons and is an entirely separate and distinct entity from the individuals who compose it." In both definitions the concept of corporation as a different person can be appreciated.

It is necessary to consider some characteristics of the corporation to be able to understand the legal concept. A corporation is a type of business organization. To set up a corporation certain requirements set forth by law must be met. Regarding the capital stock of the corporation, it is divided into shares of stock. The members of a corporation are the "shareholders"¹. As for their liability, Coughlin Jr. (1993, p. 169) mentions: "Once a stockholder has paid for his stock in the corporation, he usually is not liable to creditors of the corporation. Thus, businessmen can put money into a corporate venture and not run the risk of personal liability if the venture fails". Therefore, the stockholders of a corporation have limited liability. It is worthwhile mentioning that the word "liability" is commonly used in order to refer to the duties of the members of an entity. In fact, the noun "liability" is usually used in different legal contexts to indicate legal responsibility (Curto, 2015).

Furthermore, a corporation does not cease to exist if the shareholders die. Regarding this aspect, Coughlin Jr. (1993, p. 168) deepens the concept as

1. They are also called "stockholders".

follows: "A corporation may have perpetual existence, notwithstanding the death, withdrawal or disability of its members."

When Spanish-speaking learners of English see the term "corporation", they may feel a bit uncertain about its meaning. They may be tempted to translate it into Spanish as *corporación*, but this translation would be unsuitable. The word "corporation" cannot easily be translated into another language for the reasons I have mentioned before. Basically, it is a creation of American Law. However, the legal concept of *sociedad anónima* in Argentine Law has similar characteristics: its capital stock is divided into shares of stock and the shareholders also have limited liability.

Two documents are necessary to establish a corporation in the United States: "articles of incorporation" and "bylaws". The "articles of incorporation" are a document which contains basic information of the corporation. *Black's Law Dictionary* (2004, p. 120) defines "articles of incorporation" as follows: "A governing document that sets forth the basic terms of a corporation's existence, including the number and classes of shares and the purposes and duration of the corporation."

"Bylaws" provide more specific information. They regulate the internal affairs of a corporation. For example, they set forth the duties of officers and the way they must be appointed and removed, the types of meetings that may be held, quorums, election procedures, etc.

Likewise, two instruments are required to create a *sociedad anónima* in Argentina. They are similar to the articles of incorporation and the bylaws. They are: *instrumento constitutivo* and *estatuto*.

It is worthwhile mentioning that the term "bylaws" may have another meaning also connected with the legal area. It may refer to a local law. In that sense, *Collins COBUILD Dictionary* (1995, p. 224) defines "bylaw" as "a law which is made by a local authority and which applies only in their area."

As I have mentioned before, a legal term may have more than one meaning in the same legal field. The noun "bylaws" constitutes another example. Certain people may confuse the word "bylaws" with the term "statute". The word "statute" does not refer to the document which regulates the internal affairs of a corporation, it does not mean *estatuto* of a "corporation". The bylaws of a corporation have the same function of an *estatuto* of a *sociedad anónima* in Argentina.

But what is the meaning of “statute”? In the United States two important sources of law can be appreciated. Regarding this topic, Olsen A. Ghirardi (2007, p. 73) points out “*un derecho escrito, las leyes ordinarias originadas en el Congreso, y un derecho común, denominado common law, surgido de la actividad judicial, en las causas que constituyen en los conflictos privados un case law*” [a written law, the ordinary acts originated in Congress, and a common law, stemming from judicial activity, in court cases that constitute case law for conflicts between private parties].

The United States adopted common law, the legal system originated in England. Common law is based on case law (judge-made law). *Black’s Law Dictionary* (2004, p. 293) defines “common law” as: “The body of law derived from judicial decisions, rather than from statutes or constitutions.”

Thus, there are two important sources of law in the United States: common law and statute law. Common law is based on the doctrine called *stare decisis*. Guillermo Cabanellas de las Cuevas and Eleanor C. Hoague (2008, p. 704) give the following definition of the expression *stare decisis*: “*Obligatoriedad de los precedentes judiciales. Principio jurídico conforme al cual los tribunales deben basar sus decisiones en las reglas jurisprudenciales preexistentes*”. [Enforceability of court precedents. Legal principle according to which the courts must base their decisions on pre-existing case-law rules.] However, the *stare decisis* principle is not strictly applied in the United States (Cross & Harris, 2012, pp. 40-42). The term “statutes” refers to the laws enacted by the legislative branch.

From the taxation point of view, corporations are subject to “double taxation”. That is an important characteristic. *Black’s Law Dictionary* (2004, p. 1500) refers to the concept of “double taxation” as “the structure of taxation employed by Subchapter C of the Internal Revenue Code, under which corporate profits are taxed twice, once to the corporation when earned and once to the shareholders when the earnings are distributed as dividends.”

Therefore, both the corporation and its shareholders are taxed. Double taxation is a disadvantage that corporations have. Other forms of business organization offer certain tax benefits.

S corporation

Steven H. Gifis (1996, p. 110) points out that an “S corporation” is “a small corporation which elects to be taxed as a partnership for federal

income taxation purposes." Thus, an S corporation is a type of corporation. It must be small. Big corporations cannot apply for S corporation status. The advantage of S corporations is that they enjoy tax benefits and, at the same time, they enjoy the corporations' benefits. From the taxation point of view, they are treated like partnerships. Therefore, they are not subject to double taxation.

There is a concept called "pass-through taxation". *Black's Law Dictionary* (2004, p. 1500) explains the expression "pass-through taxation" in the following way: "The taxation of an entity's owners for the entity's income without taxing the entity itself." The concept of pass-through taxation may be contrasted with the concept of double taxation mentioned above. The former only implies taxing the members of the entity, the latter implies taxing the corporation and its shareholders.

Regarding the types of business organization which are subject to pass-through taxation, *Black's Law Dictionary* (2004, p. 1500) points out that: "Partnerships and S corporations are taxed under this method. So are limited liability companies and limited liability partnerships unless they elect to be taxed as corporations."

Limited liability company

A "limited liability company" is another type of business organization in the United States. Members of a limited liability company are not shareholders because its capital is not divided into shares of stock. Furthermore, such members are not personally liable for the company debts. They have limited liability. For that reason, a limited liability company has some of the characteristics of a *sociedad de responsabilidad limitada* in Argentine Law.

Limited liability companies are not subject to double taxation, therefore, they have advantages from the taxation point of view.

Partnerships

As regards the definition of the term "partnership", *Black's Law Dictionary* (2004, p. 1152) points out: "A voluntary association of two or more persons who jointly own and carry on a business for profit."

Coughlin Jr. (1993, p. 193) states that "many businessmen prefer the partnership form of organization. This sentiment prevails when persons

consider important equality of action and freedom from public supervision, corporation taxes, and corporation routine.”

But partnerships do not limit the liabilities of their members, which may be considered a negative characteristic. As I have mentioned before, stockholders of corporations enjoy limited liability. Regarding the negative aspect of partnerships, Coughlin Jr. (1993, p. 193) clearly explains: “The major disadvantage of the partnership form of doing business is the unlimited personal liability of each partner for all obligations of the business, including liabilities which result from wrongful acts of another partner.”

Unlike corporations, partnerships do not have perpetual existence. There are different reasons why a partnership may cease to exist. For example, Coughlin Jr. (1993, p. 168) points out: “The death of a partner generally results in the dissolution of the partnership, but the death of a stockholder does not affect a corporation.”

As regards the formation of partnerships, Coughlin Jr. (1993, p. 195) points out: “No particular form of contract is necessary for the formation of a partnership. (...) Nevertheless, it is preferable to establish a partnership by a contract in writing.” The legal requirements to set up a partnership are very flexible: just an agreement without complicated formalities.

In Argentine Law, a *sociedad colectiva* is a type of business organization characterized by the unlimited liability of its members. In fact, the unlimited liability of the members of the entity is one of the characteristics that *sociedades colectivas* and partnerships have in common.

There is a concept in Argentine law called *responsabilidad solidaria*, another typical characteristic of *sociedades colectivas*. The liability is called *solidaria* in the sense that each member of a *sociedad colectiva* is liable for the totality of the entity’s debt. In American Law, there are two expressions which have different scopes: “joint liability” and “joint and several liability”. It is necessary to analyze the meaning of the adjective “joint” to understand those concepts. *Collins COBUILD English Dictionary* (1995, p. 903) in the first entry of the term “joint” points out that it “means shared by or belonging to two or more people.” Thus, the adjective “joint” and the adverb “jointly” imply the existence of a group of people (at least two persons).

Cabanellas de las Cuevas and Hoague (2008, p. 412) distinguish “joint liability” from “joint and several liability” when they mention that in the case of joint liability “(...) *cada deudor tiene derecho a exigir que, en caso de demanda, los demás deudores sean citados como codemandados (...)*”. [(...) each debtor has the right to demand that, in the event of a lawsuit, the other debtors be summoned as co-defendants (...)].

Regarding the expression “joint and several liability”, the term “several” changes the scope of the concept. “Several” is an adjective and “severally” is an adverb. The *Dictionary of Law* by Curzon (1996, p. 206) defines “jointly and severally” as follows: “Persons who are jointly and severally bound render themselves liable not only to a joint action against them, but also to separate actions against them individually.” Thus, the expression may be analyzed in the following way: “jointly” refers to the idea of “all together” and “severally” gives the idea of “in a separate way”, that is to say, a creditor may sue all the members of the partnership (“jointly”) and in a separate way (“severally”). If the creditor decides to sue the debtors in a separate way, he may choose to sue just one partner or more.

Cabanellas de las Cuevas and Hoague translate “jointly and severally” as “*solidariamente*” (2008, p. 414). The *Business Spanish Dictionary* (2002, p. 577) in the entry of the word “severally” points out: “adverb *separadamente* or *respectivamente* or *por separado*; they are jointly and severally liable = *son responsables solidariamente* or *en grupo y por separado*”.

To summarize, the members of a partnership may have “joint liability” or “joint and several liability”. Those two expressions do not have the same scope. The laws of the state in which the partnership is established set forth the type of liability that the members of such entity have.

Limited partnerships

Coughlin Jr. (1993, p. 194) describes “limited partnership” in the following way: “A *limited partnership* is composed of one or more general partners and one or more special partners. A special partner may limit his liabilities in the partnership to the amount of his investment by inserting modifying articles in the partnership agreement.”

Is there a form of business organization set forth in Argentine Law which

may have some of the characteristics of a “limited partnership”? Cabanellas de las Cuevas and Hoague (2008, p. 455) define “limited partnership” as follows: “*Forma de sociedad de personas similar a la sociedad en comandita simple, estando la responsabilidad de ciertos socios, que no administran la sociedad, limitada a sus aportes*”. [Type of business organization for natural persons similar to the *sociedad en comandita simple*, in which the responsibility of some partners, who are not in charge of the administration, is limited to their contributions].

The *sociedad en comandita simple* set forth in Argentine Law is composed of two types of partners: *socios comanditados*, who have unlimited liability, and *socios comanditarios*, who have limited liability. The *socios comanditados* are the ones who are in charge of the administration as well as the representation of the entity.

Thus, a certain analogy may be drawn between the *sociedad en comandita simple* and the limited partnership since in the latter there are also two types of partners with similar characteristics. In a limited partnership, the members who are in charge of managing the business are called “general partners” and they have unlimited liability. Those partners who cannot manage the business are called “special partners” or “limited partners”. Unlike general partners, they have limited liability.

Limited-liability partnership

“Limited partnerships” should not be confused with “limited-liability partnerships”. A limited-liability partnership may be a suitable type of business organization for those people interested in setting up a partnership in order to render professional services.

According to *Black’s Law Dictionary* (2004, p. 1152), a limited-liability partnership is: “A partnership in which a partner is not liable for a negligent act committed by another partner or by an employee not under the partner’s supervision.” Limited liability partnerships also combine tax advantages and limited liability.

Sole proprietorships

Black’s Law Dictionary (2004, p. 1427) describes a “sole proprietorship” as follows: “A business in which one person owns all the assets, owes all the liabilities, and operates in his or her personal capacity.” Gifis (1996, p. 478)

mentions an interesting aspect about the sole proprietorship. He points out: "Unlike a corporation or a trust, a sole proprietorship is not a separate taxpayer; instead its income is taxed directly to the proprietor."

Argentine Law allows for the creation of a *sociedad unipersonal*. However, the *sociedad unipersonal* set forth in Argentine Law (Law 19550) is different from the "sole proprietorship" in American Law since the former must be a *sociedad anónima*. Thus, a *sociedad unipersonal* in Argentina does not have the same characteristics of a "sole proprietorship" in the United States.

The term "bankruptcy"

The word "bankruptcy" has a broad scope in the English language. When Spanish-speaking learners of English who are not familiarized with certain traits of the legal jargon see the term "bankruptcy" in general they automatically translate it into Spanish as *bancarrotta* or *quiebra*. However, the concept in English is broader than in Spanish.

Black's Law Dictionary (2004, p. 156) defines the term "bankruptcy" in the following way: "A statutory procedure by which a (usu. insolvent) debtor obtains financial relief and undergoes a judicially supervised reorganization or liquidation of the debtor's assets for the benefit of creditors [...]". The definition covers two possibilities: "reorganization" or "liquidation". In Spanish there are two terms for two different concepts: *concurso* and *quiebra*. But in English there is one word, "bankruptcy", which may mean *concurso* or *quiebra* depending on the context. If the bankruptcy case just implies a reorganization, it may be translated into Spanish as *concurso*. If the bankruptcy case implies the liquidation of a company, it may be translated as *quiebra*. The context will help readers understand the meaning of the word.

In the United States, *The Bankruptcy Reform Act* of 1978 regulates bankruptcy. Chapter 7 of such law sets forth the proceedings which involve the liquidation of an entity while Chapter 11 sets forth proceedings aimed at avoiding the liquidation since it allows the debtor to propose a plan to reorganize the business. Such plan must be approved in court (Alcaraz, Campos & Miguélez, 2013, pp. 350-352).

Conclusions

The legal terms briefly analyzed herein show the need of connecting the linguistic field with the legal area. Therefore, they also show the need

of considering the characteristics of two different legal systems in order to be able to understand different types of business organization in the United States.

I have also tried to highlight the importance of the context in the reading-comprehension process. Legal terms such as “bylaws”, “bankruptcy”, and “civil law” may refer to more than one legal concept. Thus, those terms will be understood by a reader provided he or she may understand the context in which they appear. The purpose of this article has been to make readers aware of certain aspects of the legal jargon to help them improve their reading-comprehension skills in a very specific area of Law.

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