

The Modal Verb ‘Shall’ in English Translations of Thai Legal Texts: The Plain Legal English Point of View¹

WIRIYA INPHEN

Faculty of Liberal Arts, Thammasat University, Thailand

Author email: wiriya@tu.ac.th

Article information	Abstract
<p>Article history: Received: 4 Oct 2023 Accepted: 26 Nov 2024 Available online: 4 Dec 2024</p> <p>Keywords: Legal translation Thai-to-English translation Translation of Thai laws Plain legal English Modal ‘shall’</p>	<p><i>This study was designed to investigate the translation of laws from Thai into English with a focus on the use of modal ‘shall’ in the translations. As the trend of plain legal English continues to rise in the contemporary legal environment, some legal practitioners – lawyers, judges and legal drafters – have perceived that the use of the modal verb ‘shall’ (or the modal ‘shall’) may seem inappropriate and even to some extent, unclear in legal texts. Observing this phenomenon ultimately led to the formation of this study, and in following this line of argument, the research focuses on the extent to which the modal ‘shall’ is used by translators in the English translated versions of Thai laws, thus raising the research question: in which circumstances and to what extent do translators use the modal ‘shall’ in law translations from Thai into English? The study mainly adopted the concept of translation equivalence, focusing on the source-text and target-text clauses and sentences of the legal language, as an overall theoretical framework. The concept helps to indicate the extent to which the modal ‘shall’ is used in the English translations. As for the data, a total of 17 Thai laws (published by the Office of Council of the State of Thailand) and their corresponding translations were collected and used. The clauses where the modal ‘shall’ is used were then sorted out to create a parallel corpus for the analysis. The findings show that the modal ‘shall’ represents multifaceted denotative meanings of the verb in the Thai-source texts – referring to 1) obligation; 2) declaration of facts; and 3) futurity in Thai laws – which interestingly, deviate from the plain legal English movement. From the perspective of plain legal English, the modal ‘shall’ is only used to serve the language of obligation, often referring to a situation where ‘someone has a duty to do something’.</i></p>

INTRODUCTION

The study strives to investigate the use of the modal auxiliary verb ‘shall’ (or the modal ‘shall’ in this paper) in the translation of laws from Thai into English. According to Sattachai (2019), Thai laws were drafted and written following Western models, e.g., French, German and English

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(p. 21). This inevitably caused the language of Thai laws to be influenced by foreign linguistic structures (ibid., p. 22). Even though the laws are written in Thai in Thailand (since Thai is an official language here), some foreign linguistic elements remain present in them to this day.

Legal language or legalese is considered to be specialized since it is only used by specific groups of practitioners and audiences. According to Šarcevic (2000), the language of laws is also mostly archaic and complex in terms of linguistic structures and denotative meanings of legal terms. An initial survey on translations of laws published in Thailand indicates that translations from Thai into the English versions remain linguistically and lexically archaic and complex (Sattachai, 2019). This poses an important question about the ways in which linguistic and lexical Thai-source texts (ST) are rendered into target texts (TT) in the English versions.

As mentioned, the language of Thai laws follows a traditional, archaic style akin to legalese. There are a few past studies that examine how laws are translated from Thai into English and vice versa in the Thai legal context (Inphen, 2010; Kusonpattana, 2016; Mongkol, 2019; Wongwanich, 2015), where they attempt to propose translation strategies that help translators to deal with translation problems arising from cultural and linguistic differences between the language pairs. However, they did not specifically examine how translators mediate linguistic differences and denotative meanings between source and target texts while taking other socio-cultural elements into consideration. The author considers this as a research gap in the existing literature of legal translations within the context of Thailand, and believes that the extent to which translations of laws from Thai into English can be investigated more thoroughly.

According to the Office of Parliamentary Council (1993), the use of modal auxiliary verbs, such as 'shall', 'may' and 'must', can affect the ways in which the English versions of the laws are interpreted in different ways (p. 20). For example, in legalese, the modal 'shall' is often used interchangeably with its simple declarative form in clauses and sentences and, in some cases, an obligation form similar to 'must' and futurity in English legalese. As Thai legalese and legal translations are mostly traditionally archaic, there is an opportunity to explore and assess, from the perspective of plain legal English (to be elaborated below), how legal structures are linguistically formed in the English translations. This includes, for instance, how translators use modal verbs to denote legal moves, i.e., the language of obligation and declarative statements of the source texts, to name a few (Coode, 1947).

The research is also a small-scale study and for this reason, it only focused on the circumstances and extent to which the modal 'shall' is used by translators in the English translated versions of Thai laws. As illustrated above, the use of 'shall' remains unclear and the ways in which translators employ it in their translations can vary. This study aims to investigate the use of the modal 'shall' in the translation of Thai laws from Thai into English. Hence, the following research question is posed:

RQ: In which circumstances and to what extent do translators use the modal 'shall' in the translation of Thai laws from Thai into English?

THEORETICAL FRAMEWORK

This section describes legal translation in general, and later continues to contrast it with the emerging trend of plain legal English. Characteristics of legal translations with a focus on the modal 'shall' in the Thai context will be discussed as well.

1. Translation equivalence and legal texts

The concept of translation equivalence has benefited translation studies for decades (Panou, 2013; Siponkoski, 2014). The main benefit of translation equivalence allows source and target texts to be compared in order to indicate the extent to which they are similar or different in terms of linguistic structures. Similarly, in legal translation, the concept of translation equivalence is also applicable to legal texts when laws are translated from their source to their target language, for example, from Thai into English. Recently, Inphen's (2022b) study focusing on the translation of official documents has also adopted the concept of translation equivalence and illustrates that source-text adherent translations are primarily adhered to in Thai-to-English translations. Inphen's (2022b) study also aligns with the ways in which legal texts are treated when they are translated from one language to another.

According to Šarčević (1997), legal translation is traditionally inclined toward source-text oriented translation or, in particular, it emphasizes strict adherence to source texts rather than focusing on fluent translation in the target texts (p. 24). Based on this notion, source-text adherent translation is linked to the concept of formal equivalence (Nida, 1964). Nida (1964) classifies equivalence into formal and dynamic equivalence. The former refers to ways in which translators strive to translate texts while adhering to source-text linguistics structures and meanings as much as they can. In contrast, the latter emphasizes translated texts that are read naturally and produce effects of the source texts as closely as possible. In the current Thai translation paradigm, translations of official documents and legal texts are often source-text oriented (Inphen, 2022b). This implies that translators of this type of text will attempt to preserve the source-text meanings and syntactic structures as much as they can. As mentioned, legal translation in Thailand is traditionally favored towards source-text oriented translations, and the extent to which translated texts are similar to or different from the source texts can be thoroughly examined through the concept of translation equivalence with a focus on legal texts, e.g., laws, acts and decrees translated from Thai into English.

2. Legal language and translation

Legal translation has specific characteristics that differ from the translation of other text genres and this makes it a specialized branch of translation (Sattachai, 2019). For a language that deals mainly with laws, legal processes and legal communication, legal language is mostly written or follows traditional practices that contain complex and archaic terms and linguistic structures (Cao, 2007). For this reason, characteristics of legal language seem specialized and can affect translations of legal texts (for example, see Sattachai's (2019, p. 122) discussion on relations between source and target texts of translations of deontic modality in English and Thai). In addition, the fact legal language is subjected to legal systems that differ from country

to country makes legal translation difficult because the practice lacks universal translation norms or specific patterns that can directly guide translators when dealing with the source texts (Šarčević, 1997). According to Biel (2014), legal systems can be tied to each country's history, morals and norms reflecting national ideologies and these can affect the ways in which legal texts are translated into their target-text versions. In sum, legal translation practices are complex due to the need to unravel sociocultural ties in the source texts which can vary greatly across legal systems and cultures.

In recent decades, the plain legal English movement has been used more widely especially in Anglo-American countries, such as the US, UK and Australia (Sattachai, 2019, p. 121). From a legalese perspective, plain legal English is more oriented toward simplicity and clarity in the language of laws. For example, legalese usually contains archaic and repetitive words, and complex syntactic structures, especially with the use of passive voice and nominalizations (Vitheekol, 2022). While legalese has been accepted by legal practitioners, some argue that it is still quite hard for the general public to understand the laws (Office of Parliamentary Council, 1993). This is the prime difference between legalese and plain legal English, as the latter emphasizes four major characteristics: 1) clarity, 2) concision, 3) precision and 4) readability.

From the plain legal English point of view, legal language used in drafting contracts can be used as an example to show how legal agents, such as practitioners, lawyers, and legal translators categorize the legal language (Office of Investor Education and Assistance, 1998; The Victorian Law Reform Commission, 2017). Vitheekol (2022) explains in his plain legal English material 'Categories of Contract Language' that some key language categories when drafting a contract, for instance, include: the language of agreement (appears in active form with present tense); the language of obligation (must + infinitive form); the language of discretion (may + infinitive form); and the language of policy (active form with present tense and will + infinitive) (p. 4). Given that the current study focuses on translations of the modal 'shall', it is worthwhile to pay closer attention to how the modal 'shall' is used in the categories listed above.

In general, it is accepted among plain legal English practitioners that the modal 'shall' be used in the language of obligation. In the language of obligation, the language can be further subdivided into four key language moods that are utilized in legal clauses and sentences in general. The key moods include: 1) imperative mood (i.e., imposing obligations); 2) permissive mood (i.e., giving rights and powers); 3) prohibitive mood (i.e., stating prohibitions) and 4) indicative mood (i.e., saying facts and rules) (Vitheekol, 2022). As mentioned above, the modal 'shall' is accepted for use in the language of obligation, particularly stressing the use of its imperative mood with the structure of 'must' or 'shall' + infinitive. While the plain legal English movement encourages the use of modal 'must + infinitive' over the modal 'shall + infinitive', the structure 'shall + infinitive' is also commonly accepted only when it denotes the meaning of 'has a duty to' (or 'Someone *has a duty to* do something.', in full). For instance, in a lease agreement, a clause 'The Landlord must/shall allow the Lessee to use the Premises on May 1, 2024.' conveys the same denotative meanings of the sentence. Following this illustration, it can be summed up that the use of the modal 'shall', from the perspective of the plain legal English movement, is quite specific as it only serves to denote an obligation with the syntax

'Someone *has a duty to do something.*' in clauses or sentences imposing duties and/or obligations.

Upon tracing the legal history of Thailand, it was found that the laws of Thailand are based on the civil system (The Constitution of Thailand, 2017). This means that legal cases are judged and decided based on written laws that appear in the forms of codes, for example, civil and commercial codes, criminal codes, acts, decrees and so on. In the initial stage of the legal system development, most Thai laws were written based on the models of laws in the West, for example, the German Civil and Commercial Laws (Kraiwichien, 2003, pp. 44–65). According to Sattachai (2019), one of the reasons that the modal 'shall' was heavily used in Thai laws originally written in English and Thai laws translated from English is because they primarily were influenced by legal English that has long been a staple language of the dominant Anglo-American countries, e.g., the US and UK for decades (p. 121). During that period, since laws were first written in English and translated into Thai later, meanings and linguistic structures of the source-text laws have influenced the way Thai laws were drafted and even translated into Thai from English in most respects, for instance.

Even though there are only a few studies looking into legal translations from English into Thai and vice versa, most studies similarly pointed out that practices of legal translation in Thailand emphasize faithfulness to the source texts (or source-text oriented translation, as discussed earlier). This suggests that translators attempt as much as they can to retain the denotative meanings and linguistic structures of the source texts. Sattachai's (2019) study, which is based on the monolingual and parallel corpora of Thai laws written in English and Thai laws translated from English, shows that the modal 'shall' was translated into Thai as follows: 1) simple declarative (s + v); 2) จะ (ja) (will, back translation or B.T.); 3) จะต้อง (jatong) (will + must, B.T.); 4) Thai causative form of ให้ (hai) (permit, B.T.); 5) ต้อง (tong) (must, B.T.); 6) ควร (khan) (should, B.T.) and 7) อาจ (arj) (may, B.T.) (p. 121). Her discovery is important because it shows the circumstances and the extent to which the modal 'shall' in translations of Thai laws were translated from English into Thai thus far. The current study, however, will reverse the comparison between source and target texts as it attempts to specifically explore characteristics of the modal 'shall' in translations from Thai into English and the circumstances upon which it is translated.

In modern day, however, as posited earlier, most legislations from countries where English is an official language are written with the plain legal English model. Despite this, Thai legislations by and large contain various action verbs – for example, 'hai' (permit, B.T.), 'jatong' (will + must, B.T.), 'tong' (must, B.T.) and others, including declarative statements and notions of futurity (Sattachai, 2019) – whereby they are denoted interchangeably by the use of the modal 'shall' by Thai translators. This further raises a point to note about the multifaceted meanings of the modal 'shall' in legal texts (Scalia & Garner, 2012), especially in Thai legal translations. Thus, it is quite important to investigate if translators who work in the field of legal translation have acknowledged the prevalent uses of modal verbs, such as 'shall', 'must', 'will' and other declarative statements or not and, if so, to what extent. This is also consistent with the research aim and question set out earlier.

MATERIAL AND METHODS

The materials of the study include source-text and target-text laws published by the Office of Council of the State of Thailand. The Office of Council of the State is a governmental agency that generally oversees and gives advice on law enactments and applicability. It also provides translated versions of laws that have been enforced in Thailand. Translated laws available for public reference are worth exploring because they are accessible and used for reference on national and international scales.

As for the inclusion criteria, the laws must be 1) laws (i.e., acts or decrees) that are written in Thai and accompanied by English translations, 2) laws that are published on the website by the Office of Council of the State, and 3) laws that are published in the last circa. 75 years (1944 to 2023) with the aim of covering a period of laws written in the past up until the present. In summary, 17 laws (and 17 corresponding translations) were randomly chosen, in total. In the next step, as the research aims to explore the extent to which ‘shall’ was used as a modality in translations from Thai into English, clauses where ‘shall’ is contained were focused. English translations where ‘shall’ clauses and sentences were found were then matched with their corresponding Thai versions for comparison. The data at this stage were stored in an Excel spreadsheet to create a parallel corpus. Below are the laws and their corresponding English translations with their respective codes. The data appearing in Table 1 are listed in chronological order of their years of publication first. If the laws were published in the same year, they were then listed accordingly in alphabetical order.

Table 1
Thai laws, their translations and their codes

No.	Title in Thai	Title in English	Code
1	พระราชบัญญัติคนเข้าเมือง พ.ศ. 2522	Immigration Act B.E. 2522 (1979)	IMM
2	พระราชบัญญัติอาวุธปืน เครื่องกระสุนปืน วัตถุระเบิด ดอกไม้เพลิง และสิ่งเทียมอาวุธปืน พ.ศ. 2490	Firearms, Ammunition, Explosives, Fireworks and Imitation Firearms Act B.E. 2490 (1947)	FIR
3	พระราชบัญญัติเศรษฐกิจการเกษตร พ.ศ. 2522	Agricultural Economics Act B.E. 2522 (1979)	AGR
4	พระราชบัญญัติ เครื่องหมายการค้า พ.ศ. 2534	Trademark Act B.E. 2534 (1991)	TRA
5	พระราชบัญญัติวัตถุอันตราย พ.ศ. 2535	Hazardous Substance Act B.E. 2535 (1992)	HAZ
6	พระราชบัญญัติการสาธารณสุข พ.ศ. 2535	Public Health Act B.E. 2535 (1992)	PUB
7	พระราชบัญญัติว่าด้วยข้อสัญญาที่ไม่เป็นธรรม พ.ศ. 2540	Unfair Contract Terms Act B.E. 2540 (1997)	UNF
8	พระราชบัญญัติจัดรูปที่ดินเพื่อพัฒนาพื้นที่ พ.ศ. 2547	Land Readjustment Act B.E. 2547 (2004)	LAN
9	พระราชบัญญัติควบคุมเครื่องดื่มแอลกอฮอล์ พ.ศ. 2551	Alcohol Beverage Control Act B.E. 2551 (2008)	ALC
10	พระราชกำหนดการประมง พ.ศ. 2558	Emergency Decree on Fisheries B.E. 2558 (2015)	FIS
11	พระราชบัญญัติแรงงานทางทะเล พ.ศ. 2558	Maritime Labour Act B.E. 2558 (2015)	MAR
12	พระราชบัญญัติภาษีสรรพสามิต พ.ศ. 2560	Excise Tax Act B.E. 2560 (2017)	EXC

No.	Title in Thai	Title in English	Code
13	พระราชบัญญัติทรัพยากรน้ำ พ.ศ. 2561	Water Resources Act B.E. 2561 (2018)	WAT
14	พระราชบัญญัติวิธีปฏิบัติราชการทางปกครอง (ฉบับที่ ๓) พ.ศ. 2562	Administrative Procedure Act (No.3) B.E. 2562 (2019)	ADM
15	พระราชบัญญัติการรักษาความมั่นคงปลอดภัยไซเบอร์ พ.ศ. 2562	Cybersecurity Act B.E. 2562 (2019)	CYB
16	พระราชบัญญัติการเลือกตั้งสมาชิกสภาท้องถิ่นหรือผู้บริหารท้องถิ่น พ.ศ. 2562	Election of Members of Local Assemblies or Local Administrators Act B.E. 2562 (2019)	ELE
17	พระราชบัญญัติสงวนและคุ้มครองสัตว์ป่า พ.ศ. 2562	Wild Animal Conservation and Protection Act B.E. 2562 (2019)	WIL

A parallel corpus benefits the analysis because it allows researchers to compare source-text and target-text clauses (Inphen, 2020, 2022a, 2022b; Ninrat, 2019) . The comparison was done using the concept of translation equivalence. The concept of translation equivalence benefits this stage of the analysis because it helps locate syntactical similarities and differences between the clause pairs (aligned with Toury's (1995) coupled pairs). Clauses where 'shall' is used and their corresponding counterparts were selected based on a random sampling method since each pair can represent how the modal 'shall' is used in the translations (Saldanha & O'Brien, 2013, p. 71). The random selection was made throughout the laws, because each law is about 20-30 pages long. Considering the length of each law, the clauses were randomly selected from each law from the beginning to the end. In sum, there are 301 clause pairs available from the 17 chosen acts. This collection finally resulted in the creation of a parallel corpus that was large enough to illustrate the extent to which 'shall' is used in the translations (for instance, see Inphen's (2020) corpus size for identifying translation strategies of literary translation, which was determined based on the length of the novels – where 50 percent of the novels of about 500 pages was sufficient to illustrate translation patterns).

The research design is also qualitative with the involvement of a few quantitative aspects. First, as soon as the corpus was available, the source-text and target-text clauses were compared, to count occurrences where translators used the modal 'shall' in translations of legislations from Thai into English. On the qualitative side, each circumstance was further explored with the aim of determining the extent to which the modal 'shall' is used to refer to the source-text meanings.

FINDINGS AND DISCUSSION

The analysis shows that the modal 'shall' was translated from Thai into English while denoting the following source-text meanings: 1) obligation; 2) declaration of facts; and 3) futurity. In terms of statistics, what follows is the circumstances of the translated modal 'shall' in the English versions.

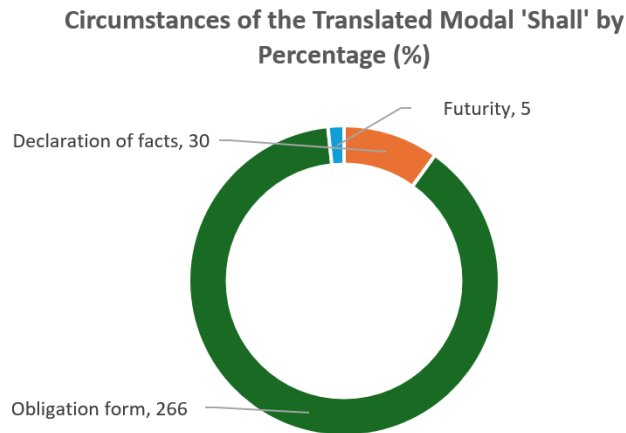


Figure 1 Circumstances of the translated modal 'Shall' by percentage (%)

Based on the statistics, these are the circumstances where the modal 'shall' was used to denote the source-text meanings in the translations of the laws from Thai into English. The modal 'shall' was most used in the English translations representing the source-text obligation form (266 out of 301 times; 88.4%). After that, the declaration of facts denoted with the use of simple tense comes second (30 times; 10%). Lastly, the modal 'shall' was least used to represent the source-text form of futurity (5 times; 1.6%).

As the study strives to dig deeper, the discussion attempts to explore how legal translations in Thailand differ from major characteristics of plain legal English as discussed earlier in the theoretical framework. The analysis shows that the circumstances where the modal 'shall' is employed in legal translation in Thailand have mostly deviated from the movement of plain legal English.

As discussed, the trend of plain legal English has been on the rise in countries where English is primarily used. The movement aims to make the legal language less complex and more accessible and comprehensible to the general audience. However, in the Thai legal language context, the modal 'shall' appears to represent multifaceted source-text meanings and it will be interesting to see how these meanings are reflected in the subsequent translations.

1. Use of the modal 'Shall' in current Thai legal translation practices

Laws that are translated into English, by and large, deviate from the plain legal English movement, especially when the modal 'shall' is encouraged to be used as an action verb referring to 'Someone *has a duty to do* something.'. As a result of this, several uses of the modal have emerged. Below are the detailed circumstances of how the modal 'shall' was translated from Thai into English.

Use of the modal ‘Shall’ referring to the language of obligation

Following the statistics presented earlier, the modal ‘shall’ was used in the English translations while representing the language of obligation the most. In the translation of Thai laws, however, the use of the modal ‘shall’ varies and includes several circumstances representing the verbs ‘tong’ (must, B.T.); ‘jatong’ (will + must, B.T.); ‘jamtong’ (must, B.T.); ‘mee nhattee tong’ (has a duty to, B.T.); as well as ‘hai’ (permit, B.T.). Below are detailed examples of their usage.

Example 1

ST: ผู้ใดเก็บ จัดหา หรือรวบรวมพันธุ์ไม้ (...) เพื่อการศึกษาหรือวิจัย *จะต้องได้รับอนุญาต*จากพนักงานเจ้าหน้าที่ (...) (ANI)

BT: Whoever collects, procures or gather plant species (...) for the purpose of a study or research *must/shall be granted permission* by the competent official (...).

TT: Any person who collects, procures or gather plant varieties (...) for the purpose of a study or research *shall be granted permission* by the competent official (...). (ANI)

The clause above comes from Section 71 of the Wild Animal Conservation and Protection Act, B.E. 2562 (2019) with a language of obligation in the Thai source texts. The section states that ‘Whoever collects, procures or gather plant species (...) for the purpose of a study or research *must/shall be granted permission* by the competent official (...) (B.T.)’. The action verb ‘jatong’ (will + must, B.T.) represents an obligation imposed by the law and it was translated into English as ‘shall be ...’. As discussed, following the plain legal English movement, this is acceptable in that ‘shall’ denotes the meaning of the action verb ‘jatong’ (will + must, B.T.) which means ‘has a duty to’.

In Thai, as mentioned, the language of obligation can vary and include an action verb ‘tong’ (must, B.T.) which appears in the legislation below as well.

Example 2

ST: การชดเชยความเสียหายตามวรรคสอง ให้เป็นไปตามหลักเกณฑ์และวิธีการที่กำหนดในกฎกระทรวงที่ออกโดยนายกรัฐมนตรี ทั้งนี้ในการกำหนดหลักเกณฑ์ดังกล่าว*ต้องคำนึงถึง*ความเสียหายตามความเป็นจริง (...). (WAT)

BT: The compensation for damage under paragraph two must be in accordance with the rules and procedures stipulated in the Ministerial Regulations issued by the Prime Minister. However, in determining such rules, it *must consider* the actual damage (...).

TT: The compensation of damage under paragraph two shall be in accordance with the rules and procedures prescribed in the Ministerial Regulation issued by the Prime Minister. In this regard, in prescribing such rules, regard *shall be had to* actual damage (...). (WAT)

Example 2 is another circumstance where the language of obligation appears in a Thai law denoting the action verb ‘tong’ (must, B.T.). This excerpt is from Section 66 of the Water Resources Act B.E. 2561 (2018). The sentence contains an action verb ‘tong’ (must, B.T.) which imposes obligation on the officers to compensate for the damage to the affected person. In the English translation, the translators decided to use ‘shall’ to denote the obligation ‘tong’ (must, B.T.) and it was translated into ‘In this regard, in prescribing such rules, regard *shall be had to* actual damage (...)’ which follows the common syntactic structure of legislative drafting; for example, see Section 1(6) of the UK Mental Capacity Act 2005. The English structure in active form is ‘To have regard to something’, while the passive form is ‘regard shall/must be had to something’. This excerpt above exemplifies that the modal ‘shall’ is commonly accepted to denote obligation with the action verb ‘tong’ (must, B.T.) in Thai legislative translations as well.

The other commonly found syntactic structure in Thai denoting obligations includes the verb ‘hai’ (permit, B.T.) as well. The common structure is ‘*to permit* someone to have the power to do something’. This is illustrated below in Example 3.

Example 3

ST: ให้กรรมการและเลขานุการเสนอเรื่องที่อยู่ในอำนาจหน้าที่ของคณะกรรมการต่อประธานกรรมการ และให้ประธานกรรมการหรือกรรมการดังกล่าวเป็นผู้เรียกประชุมตามความรีบด่วนของเรื่อง ตามเกณฑ์ที่ที่ประชุมกำหนด (IMMI)

BT: *To permit* the committee and secretary *to submit* the matter falling within the authority of the committee to the chairperson and *to permit* the chairperson or the said committee *to call* a meeting following the urgency of the matter as prescribed by the meeting.

TT: The Commission member and secretary *shall*, without delay, *submit* matters under the jurisdiction of the Commission to the chairperson of the Commission. The Commission member so assigned *shall convene* a meeting in accordance with the urgency of the matter and the criteria prescribed by the meeting. (IMMI)

The example above illustrates a clear example of how the Thai legislative structure is rendered into the English version ‘shall ... submit’ in Section 8 of the Immigration Act B.E. 2522 (1979). In the section, the law gives power to the commission member and secretary to submit matters

under the jurisdiction to the Chairperson of the Commission. The clause ‘ให้กรรมการและเลขานุการเสนอเรื่อง (...)’ (*To permit* the committee and secretary *to submit*, B.T.) translated into English as ‘The Commission member and secretary *shall*, without delay, *submit* (...)’ is seen to denote the action of obligation stipulated by the Act.

Furthermore, a similar situation also applies to the clause ‘ให้ประธานกรรมการหรือกรรมการดังกล่าวเป็นผู้เรียกประชุม (...)’ (*to permit* the chairperson or the said committee *to call* a meeting, B.T.) which was translated into English as ‘The Commission member so assigned *shall convene* a meeting (...)’. Alternatively, the translated clause can also be rewritten as ‘The Commission member so assigned *is obliged to convene* a meeting’ (...).

In summary, the modal ‘shall’ is primarily used by the translators to denote source-text meanings of obligation, which include several action verbs, e.g. ‘jatong’ (will + must, B.T.), ‘tong’ (must, B.T.) and ‘hai’ (permit, B.T.) in Thai, respectively, as discussed.

Use of the modal ‘Shall’ referring to declarative clauses/sentences

Another aspect that affects how the modal ‘shall’ is translated is when it is used to denote clauses and sentences with declaration of facts in the source texts. As discussed, through the lens of the plain English legal movement, the modal ‘shall’ seems unnecessary because it can be replaced by action verbs in the present simple tense that are more direct and clearer. Based on the statistics, the occurrences of the modal ‘shall’ in the English translations (30 out of 301 times; 10%) often refer to clauses and sentences that indicate simple declarative actions performed by actors. This, in turn, indicates that translators also use the modal ‘shall’ interchangeably with simple declarative clauses and sentences where action verbs in the simple present tense are needed. This observation is quite important since the analysis suggests that it can lead to inaccuracy in the translations. Translators can opt to use a simple declarative form, e.g., subject + predicate in the simple present tense, to denote the actions of the actors in the laws instead. Below is an example.

Example 4

ST: พระราชบัญญัตินี้ใช้บังคับตั้งแต่วันถัดจากวันประกาศในราชกิจจานุเบกษาเป็นต้นไป (HAZ)

BT: This Act *comes into force* as from the day following the date of its publication in the Government Gazette.

TT: This Act *shall come into force* as from the day following the date of its publication in the Government Gazette (HAZ).

The example above shows that the translator used the modal ‘shall’ to denote a simple declarative sentence in the translated version. The excerpt is from the provision of the Hazardous Substance Act B.E. 2535 (1992) and it shows the translator using the modal ‘shall’ to denote the action of the verb ‘come into force’ in the translations. The source text ‘พระราชบัญญัตินี้ใช้บังคับตั้งแต่วันถัดจากวันประกาศในราชกิจจานุเบกษาเป็นต้นไป’ (This Act *comes into force* as from the day following the date of its publication in the Government Gazette., B.T.) can be rendered into plain legal English as ‘This Act *comes into force* as from the day following the date of its publication in the Government Gazette’. The translator, however, can remove ‘shall’ in the translation and use an action verb (i.e., come into force) in its place in the sentence. By removing the modal ‘shall’, the translation would be made clearer and less redundant. This shows that the modal ‘shall’ is considered unnecessary in this circumstance.

Use of the modal ‘Shall’ referring to future actions

Lastly, it was also discovered that the modal ‘shall’ in the English versions is commonly used to denote futurity in the Thai source texts as well. Even though the statistics show that this

type of denotation occurs the least (5 times; 1.6%), the result remains meaningful because it shows an important circumstance where Thai translators would use the modal ‘shall’ in their translations.

Example 5

ST: (...) ให้ผู้จดทะเบียนซึ่งได้รับหนังสือแจ้งคำสั่งดังกล่าวตกลงกันว่าจะให้รายหนึ่งรายใดเป็นผู้จดทะเบียนเป็นเจ้าของเครื่องหมายการค้านั้นแต่ผู้เดียว และให้ผู้จดทะเบียนรายหนึ่งรายใดมีหนังสือแจ้งให้นายทะเบียนทราบภายในกำหนดเวลาดังกล่าวว่าตกลงกันได้หรือไม่

BT: Section 24: (...), to permit the applicant to agree as to *which one will be the sole applicant* of the trademark and to permit any one of them to notify the Registrar in writing within such period whether or not agreement has been reached.

TT: Section 24 (...), the applicant shall agree as to *which one shall be the sole applicant* of the trademark and any one of them shall notify the Registrar in writing within such period whether or not agreement has been reached (TRA).

The above sentence comes from Section 24 of the Trademark Act B.E. 2534 (1991). Observing the example above, the translators also use the modal ‘shall’ to indicate future action. The clause ให้ผู้จดทะเบียนซึ่งได้รับหนังสือแจ้งคำสั่งดังกล่าวตกลงกันว่าจะให้รายหนึ่งรายใดเป็นผู้จดทะเบียนเป็นเจ้าของเครื่องหมายการค้านั้นแต่ผู้เดียว (to permit the applicant to agree as to *which one will be the sole applicant* of the trademark, B.T.) was rendered into English as ‘the applicant shall agree as to *which one shall be the sole applicant* of the trademark and any one of them shall notify the Registrar’. The italicized part ‘ผู้จดทะเบียน (...) ตกลงกันว่าจะให้รายหนึ่งรายใดเป็นผู้จดทะเบียน’ or ‘the applicant *shall agree as to which one shall be the sole applicant*’, demonstrates that the action to represent the registering applicant with the registrar office is a future action. In this translated document, the translators decided to use the modal ‘shall’ in the clause to denote an action that will happen as soon as the applicant receives the notification as stipulated by the laws. This circumstance proves that the modal ‘shall’ is also used in clauses that denote future action or futurity.

2. Use of the modal ‘Shall’ in the English translations vis-à-vis Thai legalese

Even though previous studies about legal translations in Thailand already provide fundamentals about legal translation patterns and structures in English (Sattachai, 2019), the findings of this study remain beneficial for future studies of translation through several aspects. First, given that the study is descriptive, it shows the extents to which Thai legal translators utilized the modal ‘shall’ in their English translations. Furthermore, their use is varied and includes multifaceted meanings from the Thai source texts. Considering that Thai legal translation is an integral part to Thai society and culture, existing socio-political elements would help interpret the results of the current research. By situating the results of this study in wider legal practices and conditions – e.g., focusing on existing socio-cultural elements affecting the decisions of the translators or standard English grammar usage – this section helps explain the extent to which ‘shall’ was used interchangeably with other modal verbs, ‘will’ and ‘must’.

As listed from Section 4.1.1 to 4.1.3, the modal 'shall' is used by translators of Thai legislations to denote different source-text meanings: 1) obligation; 2) declaration of facts; and 3) futurity. Statistically, it can be observed that the modal 'shall' was used to denote 'obligation' the most. This deviates from the plain legal English movement where 'must' is encouraged because 'must' gives a stronger command of obligation and clearly, implies non-negotiability.

The above observation indicates that the conventional structure of the Thai legal language has an influence on the extent to which legal translators use the modal 'shall' to denote obligation in their translations. The influence could originate from the archaic Thai legal language which mainly associates obligation with an action verb like 'jatong' (will + must, B.T.). This structure implies future actions based on standard English grammar rules (Greenbaum & Quirk, 1997). Example 1 under Section 4.1.1 serves as a clear example in illustrating this case. However, before this issue is further discussed, it is important to revisit standard English rules that prescribe how 'shall' and 'must' are conventionally used and different in English.

The modal verbs 'shall' and 'must' serve different functions based on English grammar and have different meanings. First, 'shall' is usually used to denote future planned actions. For example, the statement 'I shall visit the store tomorrow.' denotes the speaker's future intended plan. In other words, the modal 'shall' can assist the readers in understanding that the action will happen sometime in the future. Second, in terms of formality, 'shall' tends to be more formal and less prevalent in everyday discourse when compared to the modal 'will' which is also used to denote futurity as well. More importantly and as mentioned earlier, the modal 'shall' can be used in specialized languages, such as in legalese to denote the action of obligation. In a contract, the clause 'The tenant shall pay rent on the first of each month.' clearly imposes a duty on the tenant's part to pay the rent on the first day of each month, for example. However, when the modal 'shall' is mainly used to denote future action, it does connote a weaker sense of command and/or obligation when compared to 'must'.

The modal 'must' thus serves a different function from 'shall' since it conveys a sense of absolute necessity, resulting in a stronger command of obligation. It is often used to state the requirements of a clause or the authors' and speakers' mandates. For instance, the sentence 'Students must submit their assignment before the due date.' exudes a very strong sense of duty or obligation and can be considered as a direct command or instruction. In the same way, the negative form of 'must' – 'must not' clearly and strongly indicates prohibition as well. For example, the sentence 'You must not smoke here.' can be interpreted as 'Smoking is prohibited here.', which clearly means that smoking is not permitted in that location. In other words, this shows that 'must' is often used to denote something with non-negotiability and requires the audience's strict compliance.

From what has been illustrated above, the conventional uses of 'shall' can mostly affect the extent to which Thai legal drafters and translators opt to use 'shall' to denote obligation instead of 'must'. According to conventional English grammar rules (Greenbaum & Quirk, 1997), the modal verb 'shall' is largely used in formal settings and denotes futurity. This could be a factor that influences legal translators to adopt 'shall' in their translations and use it interchangeably to refer to the language of obligation. As mentioned, Example 1 serves as a clear case to elaborate this case.

In Example 1, the Thai source texts ‘ผู้ใดเก็บ จัดหา หรือรวบรวมพันธุ์ไม้ (...) เพื่อการศึกษาหรือวิจัย จะต้องได้รับอนุญาตจากพนักงานเจ้าหน้าที่ (...) (ANI)’ was translated into English as ‘Any person who collects, procures or gather plant varieties (...) for the purpose of a study or research *shall be granted permission* by the competent official (...). (ANI)’. The Thai sentence contains an action verb ‘jatong’ (will + must, B.T.) and it was translated into Thai as ‘shall’ (i.e., ‘...*shall* be granted permission by...’). To elaborate the case further, the action verb ‘jatong’ (will + must, B.T.) consists of two separate words: ‘ja’ (will, B.T.) and ‘tong’ (must, B.T.) They can be literally translated into English as ‘will/shall’ and ‘must’, respectively. Therefore, this to a large extent aligns with the rules prescribed by conventional English grammar – that ‘shall’ denotes futurity. Particularly, the example also shows that the action verb ‘jatong’ (will + must, B.T.) contains a characteristic denoting futurity and this could affect the legal translators’ decision to choose ‘shall’ over ‘must’. Alternatively, this also causes the translators to perceive that both ‘shall’ and ‘must’ can be used to denote the language of obligation interchangeably. However, as discussed in the results section, while this is acceptable in legal translation in general, the plain legal English movement encourages ‘shall’ to be replaced by ‘must’ to indicate obligation and communicate with the readers more straightforwardly. In addition, they would not confuse the language of obligation with futurity.

Although the modal ‘shall’ is used in various circumstances to denote multifaceted source-text meanings in Thai laws, it seems that most translators to a certain extent are influenced by conventional English grammar when they attempt to translate some Thai phrases of obligation – e.g., ‘jatong’ (will + must, B.T.) to denote futurity. As posited earlier, having pre-existing knowledge of conventional English grammar can definitely influence the translators’ decisions to replace these action verbs with ‘shall’ instead of ‘must’. Therefore, acknowledging such influence and the extent to which the modal ‘shall’ is employed in the current legal translation practices in Thailand can help translators produce more accurate and clearer translations of Thai laws, especially when equipped with the knowledge that the use of modal verbs can vary based on the source-text meanings of the legal structures.

CONCLUSIONS

From the plain legal English point of view, it is encouraged for legal practitioners, legislative drafters and others to use the modal ‘shall’ in the clauses where obligations are imposed – when it refers to the action verb, ‘has a duty to’. However, in the Thai legal language context, the process is different in that the modal ‘shall’ appears to represent various source-text meanings. The investigation, reveals that the modal verb ‘shall’, when rendered from Thai to English, conveys three different meanings from the original texts: 1) obligation; 2) declaration of facts; and 3) futurity. According to the statistics, the modal ‘shall’ in the translation of Thai laws into English mostly represents the source-text obligation, occurring 266 out of 301 times (88.4%). The representation of factual declarations using simple tense then follows, representing 30 times (10%). Lastly, the modal ‘shall’ was also used to express futurity, though on 5 occurrences only (1.6%).

The extent to which the modal ‘shall’ was used in legal English translations in Thailand remains mostly varied from one circumstance to another and includes multifaceted meanings from the source texts. This is because the modal ‘shall’ in certain circumstances can be used to convey a simple declarative statement (i.e., action verbs in the simple present tense), obligations with action verbs such as ‘tong’ (must, B.T.), ‘jatong’ (will + must, B.T.), and ‘hai’ (permit, B.T.), and future ‘will’ statements with ‘ja’ in Thai, (i.e., the use of ‘will’ to denote future actions), for instance. Last but not least, the discussion shows that the legalese structure of Thai laws is also heavily influenced by conventional English grammar, which can to most degrees, affect the way the translators use ‘shall’ over ‘must’ in their translations. This contribution is quite important since it benefits future research with in-depth investigation into other conditions, such as socio-cultural elements (Even-Zohar, 1990; Lefevere, 1992, for instance). For Thai legal translation, other socio-cultural elements can influence legal practitioners, legislative drafters and others to employ the modal ‘shall’ in their narratives and translations in different ways than described so far as well.

As for limitations, given the fact that the present study is a small-scale study, it is limited in breadth as its focus is placed on the use of the modal ‘shall’ only. It is suggested that future research can include other modal verbs (e.g., modal ‘may’) to explore the extent to which they are used in legal translations. In addition, larger corpora with other texts of the same kind (e.g., notifications and announcements, or civil and criminal codes) should reveal more solid patterns of how the modal ‘shall’ and other modal verbs are used.

THE AUTHOR

Wiriya Inphen is an assistant professor of English in the English Department at the Faculty of Liberal Arts, Thammasat University (Rangsit Campus), Thailand. He first obtained his Bachelor’s degree in Law in 2005, then his Master’s degree in English–Thai Translation in 2009 from Thammasat University, and later earned his Doctoral degree in English (Translation Studies) in 2024 from the University of Jyväskylä, Finland. His academic interests include the translation of Anglo-American popular fiction, legal translation, and the study of contemporary Thai readership.

wiriyain@tu.ac.th

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