

Article

Termination Clauses in Common Law and Civil Law: A Comparative Corpus-Based Analysis of English–Italian Terms of Service

Patrizia Giampieri 

School of Law, University of Camerino, 62032 Camerino, MC, Italy; patrizia.giampieri@unicam.it

Abstract: In common law, the “termination” of a contract entails several consequences, particularly on the basis of the context where such a term is used and, from a linguistic perspective, depending on the words that accompany it (e.g., “termination for cause” vs. “termination without cause”). In Italian civil law, there are manifold translations of the lemma “terminate”, which are investigated and discussed in this paper. To this aim, English and Italian comparable corpora of terms of service (i.e., online terms and conditions of web hosting services) are consulted, where similar clauses are retrieved and words are analyzed in context. In this way, the complex nature and the manifold meanings of the lemma “terminate” are unveiled, and Italian (full or partial) equivalents are proposed. The paper’s findings highlight that in order to explore the renderings of complex terms, such as “terminate”, not only are linguistic tools, such as ad hoc corpora, necessary, but also legal resources, such as statutory documents and case law. In addition, solid knowledge of the subject matter addressed is necessary. In this respect, this paper unveils corpus-based methodologies and research strategies to cope with the intricacies of the translation(s) of “termination” clauses.

Keywords: legal corpora; online terms of service; termination in common law; comparative law



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1. Introduction

1.1. Legal Translation: A Comparative Approach

Legal translation is considered particularly demanding because translators must not only render source words into target words but they also need to consider and cater to a source and target legal system (Šarčević 1997). For this reason, legal translators create bridges (Engberg 2021) by connecting source words and legal principles to target ones.

Given the difficult tasks accomplished in legal translation, many scholars argue that translators should have a good grasp of comparative law (De Groot and Van Laer 2008, p. 1; Engberg 2020; Prieto Ramos 2021, p. 177), as “relevant differences should not be ‘lost in translation’: those differences have to be explained” (De Groot 2012, p. 159). In this respect, it is posited that the best legal translators are “those trained in both translation and law” (Prieto Ramos 2011, p. 13). This, however, is not always possible because tight deadlines make it very difficult for translators to carry out extensive or particularly accurate comparative law analyses (Biel 2008, p. 22).

In this respect, there are scholars who claim that, to some extent, technology can compensate for a lack of knowledge (Monzó-Nebot 2008; see also the case study by Giampieri 2021a). It is argued, in fact, that translation competence has shifted from knowing

words to using the right equipment (Martin 2011: online); “[b]eing able to translate highly specialized documents is becoming less a question of knowledge and more one of having the right tools”. Therefore, developing technological skills is pivotal in legal translation. Some tools that translators can use are DIY (do-it-yourself) and ad hoc corpora (Zanettin 2002; Giampieri 2021a, 2024).

1.2. Termination

This paper wishes to investigate the ways to address the translation(s) into Italian of the intricate common law term “termination”. This word is used in contract law to refer to the act of putting an end to a contract for various reasons (e.g., contract non-performance; mutual consent; change in mind of one party; death; unforeseen events; etc.). The mixed uses (and, potentially, translations) of the lemma “terminate” are due to the multi-faceted meanings and legal implications of the word. This term, in fact, encompasses several circumstances and implies the application of a variety of legal principles on the basis of the legal terminology that accompanies it (e.g., “termination by mutual consent”, “termination by operation of law”, etc.).

Therefore, “termination” is both a complex common law term and a polysemous word. In the legal field, words are polysemous when they have a meaning in legal discourse that is different from everyday language (Tiersma 1999, p. 111; Alcaraz Varó and Hughes 2002, p. 17).

1.3. Corpora for Language Pattern Investigations and Translations

A corpus is defined as “a collection of naturally occurring language texts, chosen to characterize a state or variety of a language” (Sinclair 1991, p. 171). Corpora are databases composed of authentic texts that are gathered in electronic form (Bowker and Pearson 2002, p. 9). For this reason, they are claimed to display real language usages in context (Farr 2008, p. 36). They also allow users to explore sector-based language and understand language evolution over time (Cuskley et al. 2014).

It is often argued that general (online) corpora can be unsuitable for sector-based translations, as they do not address highly specific terminology (Zanettin 2002, pp. 240–41; Bowker and Pearson 2002, pp. 46–47; Gallego-Hernández 2015, p. 376). For this reason, users resort to DIY (do-it-yourself) or ad hoc corpora (Zanettin 2002), which can either be online or offline. Such corpora are compiled in view of specific language investigations or translation tasks; hence, they can be composed on a case-by-case basis. They are often referred to as “on the fly” (Gallego-Hernández 2015, p. 376) or disposable (Varantola 2002) because they “can be disposed of as soon as the translation is completed” (Zanettin 2002, p. 242).

In order to carry out translations by consulting DIY and ad hoc corpora, users must be computer literate (Varantola 2003, p. 69), as they not only need to know how to consult a corpus but also how to compose it. For example, they must be acquainted with the selection and collection of reliable parallel texts. Parallel documents are generally sourced from the Internet. For example, Google’s advanced search techniques help find useful documentation on the web and eschew unreliable websites or non-representative texts (Gatto 2014). At the same time, however, ad hoc corpora need not be large to be effective (Zanettin 2001, p. 178). The literature suggests, in fact, that sector-based corpora “can be quite limited and still enjoy terminological representativeness” (Jensen et al. 2012, p. 24). This means that a corpus composed of a dozen texts can be considered enough, as it is representative of its genre (Bernardini and Ferraresi 2022, p. 208).

The question of representativeness is highly disputed in the literature, but it is often considered an “elusive concept” (Zanettin 2012, p. 46). It revolves around the capability of a

corpus to mirror the lexical features and connotations of words in contexts that are typical of a given genre. Several scholars, for example, carried out successful linguistic investigations and/or analyses of students' corpus-based translations using small but representative ad hoc corpora (see [Cirillo 2018](#); [Dani 2019](#)). This corroborates the fact that the texts comprising a DIY or an ad hoc corpus must be carefully selected because sector-based terminology must be well represented. In the long run, such corpora are considered particularly helpful ([Aston 2009](#), p. x), as they can be adapted and integrated over time ([Varantola 2002](#), p. 185).

2. Aims of This Study and Research Questions

The present study is initial and aims to explore the ways to address the translation of the common law term “termination” by consulting ad hoc English and Italian comparable corpora of terms of service ([Giampieri 2024](#)), as well as monolingual dictionaries, statutory documents, and case law. For the purpose of this paper, “terms of service” refer to the online terms and conditions of web hosting services¹.

Hopefully, this initial investigation will be followed by other comparative lexicology studies in the same or other language combinations.

The research questions that this paper aims to address are the following: (1) “How is it possible to tackle the translation into Italian of a complex common law term such as ‘termination’ via corpus consultation?”; (2) “Is it always possible to retrieve full equivalents?”; (3) “What are the language resources that are necessary to find full or partial equivalents of ‘termination’?”; (4) Are targeted corpora useful and reliable to deliver accurate legal translations?; and (5) “What comparative results can be obtained from the analysis which can be relevant for translators and students in Translation Studies?”.

To address the above questions, English–Italian comparable corpora of online terms of service are consulted².

3. Methodology

This paper aims to analyze two ad hoc corpora: one in (British) English, the other one in Italian. Both corpora contain authentic terms of service retrieved from the Internet.

3.1. Why Terms of Service

Terms of service pertain to the category of “private legal texts” ([Prieto Ramos 2014](#), p. 263) or “private legal documents” ([Giampieri 2024](#)), as they entail or imply most of the features of contract law (see also [Williams 2023](#), p. 139). As such, they contain and mirror many legal principles and legal terminology that characterize contracts and agreements. In addition, they have gained considerable momentum over the last years, especially with regard to consumer contracts and online transactions ([Williams 2023](#); [Giampieri 2024](#)). They are quite easy to retrieve from the Internet ([Williams 2023](#), p. 139; [Giampieri 2024](#)), and there has been an increased interest in their linguistic components and contents. Several

¹ This paper falls within the scope of Laws because it addresses legal language and how legal principles can be transposed and translated from one language into another. The paper is about translating terms and concepts from one language (and legal system) into another language (and legal system). Therefore, the translation work mentioned in the article is fully substantiated by the activities and the study carried out. It highlights the subtleties and challenges of legal (contractual) discourse. Equivalences are established on the basis of a set of examples sourced from the ad hoc corpora, from the literature, from case law, from statutory documents, and from field-related dictionaries. Additionally, it highlights how ad hoc corpora can successfully be integrated into the translation process, along with other language and legal resources, such as legal dictionaries, case law, and statutory documents.

² The research questions posed in this paper are pertinent to the field, providing a solid foundation for exploring the topic and contributing valuable insights to the field. They are not broadly formulated and allow readers to delve into an analysis of contract-driven terminology. Additionally, they help understand the nuances and implications of legal terms across different legal systems.

scholars have dedicated studies and investigations to analyze this particular legal genre (Martinez et al. 2021; Williams 2023; Giampieri 2024).

For these reasons, focusing on online terms of service is relevant from both a linguistic and legal perspective. Therefore, it is useful and appropriate from an academic point of view.

3.2. The Corpora Focused On

The corpora dealt with in this paper are the result of research activities by Giampieri (2024). They comprise English and Italian terms of service (ToS) retrieved from the Internet. The English ToS corpus is composed of authentic terms of web hosting services drawn up by service providers according to the laws of England and Wales, whereas the Italian ToS corpus comprises authentic terms of web hosting services drafted according to the laws of Italy. The English corpus is made up of 168,199 words (39 documents; 7924 word types), whereas the Italian one has 133,681 words (24 documents; 6998 word types) (for more details on the corpus building process, please refer to Giampieri 2024). The two sub-corpora are comparable, as they are composed of authentic texts that deal with the same subject matter (i.e., online terms of web hosting services). For this reason, they are highly targeted. Therefore, their consultation can help shed light on the rendering of the complex and multi-faceted term “termination”.

The next pages report and discuss possible equivalents in light of corpus evidence. Other language or legal resources (such as statutory documents and case law) are consulted to corroborate or confute possible equivalences.

4. Analysis

There are many circumstances in common law according to which a contract can be “terminated”. The most common and relevant ones are “termination by mutual agreement”, “termination for breach”, “termination for cause”, “termination for convenience”, “termination without cause”, and “termination by operation of law” (Giampieri 2021b, 2024)³. Such institutions are addressed in this paper and explored in the ToS corpora.

As mentioned, the English and Italian ToS corpora are consulted to retrieve possible equivalents at the word, phrase, and clause levels.

The following tables report English ToS clauses mentioning various types of “termination” referring to different circumstances according to the common law system. The columns to the left report the English ToS clauses containing the lemma “terminate”, the ones in the middle show Italian corresponding clauses retrieved from the Italian ToS corpus, and the columns to the right contain the back-translations of the Italian clauses. Back-translations are displayed to foster the comprehensibility and comparability of the data. It will be apparent that not all English clauses have full equivalences in the Italian ToS corpus. Also, the number of results per phrase may be rather low due to the small size of the corpora. Nonetheless, this does not impinge on the quality and relevance of the results obtained from a legal and linguistic perspective.

4.1. Termination by Mutual Agreement

Table 1 below shows an English ToS clause addressing a “termination by mutual agreement”. There is one hit with a “termination by mutual agreement” in the ToS corpus.

Table 1 above describes the case of a termination of contract by mutual consent. Although there are no similar clauses in the Italian sub-corpus, the corresponding legal principle of a “termination by mutual agreement/consent” is a *risoluzione per mutuo consenso*,

³ The fact that such terms are frequent in common law is corroborated by the many results obtained from the LawInsider contract platform (www.lawinsider.com) mentioning this terminology.

as provided for in article 1372 of the Italian Civil Code. In particular, the Code establishes that *[i]l contratto ha forza di legge tra le parti. Non può essere sciolto che per mutuo consenso o per cause ammesse dalla legge* (back-translation: “the contract functions as law between the parties. It cannot be undone/set aside except for mutual consent or for causes admitted by law”). Therefore, an equivalent of “termination by mutual agreement” is *risoluzione per mutuo consenso*.

Table 1. Termination by mutual agreement.

| No. | Clause (English ToS) |
|-----|---|
| 1 | Termination by Mutual Agreement. This agreement may be terminated by the mutual agreement of the parties. |

4.2. Termination for Cause

Table 2 below illustrates instances of “termination for cause” and “termination for breach” clauses. The ToS corpus produces three hits with “termination for cause” and one hit with “termination for breach”. Some terminology is underlined to be dealt with later.

Table 2. “Termination for Cause” and “Termination for Breach” clauses and their Italian equivalents.

| No. | Clause (English ToS) | Corresponding Clause (Italian ToS) | Back-Translation |
|-----|---|--|---|
| 1 | Termination for Cause. Either party may terminate this agreement at any time for 10 days prior with <u>written notice</u> if the other party breaches any of its material responsibilities or obligations under this Agreement and fails to cure that breach during that 10-day period. | <i>Clausolarisolutiva espressa. Il presente contratto si risolve di diritto, ai sensi e per gli effetti di cui all’art. 1456 c.c., qualora il Cliente: (. . .); (b) sia stato in precedenza o sia inadempiente ad ogni titolo nei confronti di XX, anche per servizi diversi da quello oggetto del presente contratto; (c) non provveda al pagamento del corrispettivo richiesto (. . .) Inoltre, in caso di inadempimento agli obblighi previsti dal Contratto, XX si riserva di inviare al Cliente, in qualsiasi momento, ai sensi e per gli effetti di cui all’art. 1454 cod. civ. diffida ad adempiere entro 15 (quindici) giorni dalla ricezione della relativa raccomandata A.R.</i> | Express termination clause. This contract shall terminate by law under and for the purposes of art. 1456 of the Civil Code if the Customer (. . .); (b) was or is in breach for any reason whatsoever to XX, even for services that are different from those offered in this contract; or (c) does not pay the amount requested (. . .). Furthermore, in case of a breach of the contractual obligations, XX reserves (the right) to send a notice to pay/to perform to the Customer under and in accordance with art. 1454 of the Civil Code within 15 (fifteen) days from the receipt of the related registered mail. |
| 2 | Termination of Services for Cause. If XX terminates your account for a violation of this Agreement, Company’s Acceptable Use Policy, or Company’s No-Spam Policy or data processing, the Company shall not be required to refund to you any amounts billed to you. | <i>ClausolaRisolutiva Espressa. In caso di inadempimento da parte del Cliente alle disposizioni di cui all’articolo 12, XX potrà risolvere il contratto ex articolo 1456 c.c. mediante <u>comunicazione scritta</u> al Cliente dell’intenzione di avvalersi della presente clausola risolutiva espressa.</i> | Express termination clause. In the event of default by the Customer of the provisions of article 12, XX may terminate this contract under article 1456 of the Civil Code by written notice to the Customer stating its intention to rely on this express termination clause. |
| 3 | In the event that XX terminates the Agreement for the Customer’s breach of the Agreement in accordance with Section 9 (Termination). | <i>Clausolarisolutiva espressa—risoluzione per inadempimento—condizioni risolutive.</i> | Express termination clause—termination for non-performance—terminating conditions. |

As can be read in Table 2 above, a “termination for cause” sets the right to terminate a contract on specific grounds. For example, it can address the case of default (or non-performance). In this circumstance, the clause is also referred to as a “termination for

breach” or “termination for default” clause (Barella 2012, p. 8). As a matter of fact, in Baker et al. (2016, p. 17), a “termination for cause” is considered the same as a “termination for default”.

A “termination for cause” clause can encompass the contract’s non-performance as well as other circumstances, such as the violation of the company’s policies. Some scholars of the common law tradition tend to criticize the excessive use of “termination for cause” or “termination for breach/default” clauses in contracts, as they do not take into account the seriousness of the breach committed but leave its interpretation and consideration to the parties’ evaluation (Cordero-Moss 2011, p. 22).

In Italian, an equivalent of a “termination for cause” or “termination for breach/default” clause is called a *clausola risolutiva espressa* (back-translation: “express termination clause”), regulated in article 1456 of the Civil Code. In particular, the Civil Code establishes that [*i*] *contraenti possono convenire espressamente che il contratto si risolva nel caso che una determinata obbligazione non sia adempiuta secondo le modalità stabilite* (back-translation: “the parties may expressly agree that the contract terminates in the event that a specific obligation is not performed according to the agreed modalities”). In addition, in the case of *contratti a prestazioni corrispettive* (back-translation: “reciprocal consideration contracts”), the Italian legal system allows a party to *risolvere il contratto per inadempimento* (back-translation: “terminate the contract for breach”) under article 1453.

The principle of “reciprocal consideration” is contemplated in both legal systems and occurs when a party offers something of value to the other, who pledges something else in receipt of it. In this respect, it is useful to mention that in the common law system, all contracts must have a “reciprocal consideration”, also referred to as a “good and valuable consideration” (Garner 2004, p. 926); otherwise, they are not considered as agreements (Allen and Overy 2016). According to Law (2015), in fact, consideration is necessary for the validity of a contract: “[w]ithout consideration an agreement not made by deed is not binding: it is a *nudum pactum* (naked agreement), governed by the maxim *ex nudo pacto non oritur actio* (a right of action does not rise out of a naked agreement)” (Law 2015, p. 136)⁴.

In the Italian civil law system, by contrast, there can be agreements whereby only a party complies with the obligations in favor of the other, who performs nothing in return (article 1333 of the Italian Civil Code). This is the case of a *contratto con obbligazioni del solo proponente* (back-translation: “contract with obligations only on the offeror”). An example is the *contratto di comodato d’uso* (back-translation: “loan-for-use contract”) (art. 1803 of the Italian Civil Code), whereby a party (the owner of a property) lends or offers a movable or immovable property to the other party, who must only give it back at the end of the contract.

As far as lexical peculiarities are concerned, as can be noticed on line 2 in Table 2 above, in the event of a contract non-performance, the “written notice” sent by a party to the other one is referred to as a *comunicazione scritta*. With such a notice, the parties notify their intention to terminate the contract. If, by contrast, a party wishes to await performance despite the default of the other, such notice is called a *diffida (ad adempiere)* (back-translation: “notice to pay” or “notice to perform”, depending on whether the performance awaited is payment or any other action or activity) (line 1 in Table 2; see art. 1454 of the Italian Civil Code).

⁴ See also the definition of “good and valuable consideration” by the Merriam-Webster dictionary: “a consideration that confers some benefit having pecuniary value on one party to a contract or imposes a detriment having pecuniary value on the other”. In particular, it is stated that “good consideration” generally means “a consideration based on a family relationship or natural love and affection”, which cannot create an enforceable contract (see also *Thomas vs. Thomas* 1842). Hence, in legal language, “good” is intended as a synonym of “valuable”. <https://www.merriam-webster.com/dictionary/consideration>. This is confirmed by the Black’s Law Dictionary (8th edition), which defines “other good and valuable consideration” as “additional things of value to be provided under the terms of a contract”.

Finally, it is worthwhile mentioning that in contracts of employment, a “termination for cause” corresponds to a *risoluzione per giusta causa* (back-translation: “termination for right/just cause”), according to art. 2119 of the Italian Civil Code. It is evident that in such types of contracts, a “termination for cause” assumes a very precise and distinct meaning in Italian. This confirms the polysemous nature of the lemma “terminate” and of the expression “termination for cause”.

Although such considerations may appear misleading and deviate from the main focus of this paper, they are noteworthy as they exhibit the polysemic and intricate nature of legal language and its genre-dependent, multi-faceted translations.

4.3. Termination Without Cause

Table 3 below contains “termination without cause” clauses sourced from the ToS corpora. The English corpus generates one hit with “termination without cause”.

Table 3. “Termination without cause” clause and its Italian equivalents.

| No. | Clause (English ToS) | Corresponding Clause (Italian ToS) | Back-Translation |
|-----|---|--|--|
| 1 | Termination Without Cause. You may terminate this agreement at any time, for any reason, by contacting XX, either by phone, mail, or email and requesting that your account be canceled, and the notice period is 3 months. | <i>Dirittodi recesso. Art. 8.1 Il Cliente, persona fisica e giuridica, ha diritto di recedere dal contratto senza alcuna penalità e senza specificarne il motivo, entro il termine di 30 giorni lavorativi decorrente dal giorno dell’attivazione del servizio e della relativa comunicazione. Il diritto di recesso viene esercitato tramite comunicazione scritta.</i> | Right of withdrawal. Art. 8.1. The Customer, a natural or a legal person, has the right to withdraw from the contract without penalty and without any reason within 30 working days from the day of the activation of the service and related notice. The right of withdrawal is asserted by written notice. |
| 2 | Termination for Convenience. Either party may terminate this agreement at any time and for any reason with 30 days prior written notice to the other party. | <i>Recessoda parte del Cliente. Il Cliente, che sia qualificabile come *consumatore* ed identificato, ai sensi dell’art. 3 del D.Lgs. 206/2005 (cd. *Codice del Consumo*), (. . .), avrà facoltà di recedere dal presente Contratto in qualsiasi momento, senza alcuna penalità e senza indicarne le ragioni.</i> | Withdrawal by the customer. Customers that are consumers under art. 3 of the Legislative Degree 206/2005 (namely, Code of Consumption), (. . .), may withdraw from this Contract at any time, without any penalty and without providing any reasons. |

Under a “termination without cause” or “termination for convenience” clause (Garner 2004, p. 4600), each party has the right to withdraw from a contract at any time for whatsoever reason. Table 3 above addresses the “termination without cause” (line 1) and “termination for convenience” (line 2). Both clauses grant the withdrawal from (or termination of) the contract, as they express the possibility for each party to withdraw at any time by providing a written notice to the other⁵.

In common law, in order to assert the right to withdraw from a contract, such clauses must be specifically included in the contract (Giampieri 2021b, p. 47)⁶. This is a major difference between common law and the civil law systems. According to the latter, in fact, some rights can be taken for granted by the parties, as the law provides for them automatically (unless the parties are given the possibility to exclude them in writing)

⁵ In the case *Interboro Packaging Corp. v. Fulton County Schools* (2006), it was stated that “the phrase ‘termination for convenience’ is treated as the functional equivalent of a provision allowing ‘termination without cause’”. Likewise, in *Harris Corp. v. Giesting Associates, Inc.* (2002), it was asserted that a “termination for convenience” clause is “not ambiguous because the meaning of the phrase is plain on its face insofar as it permits termination without cause”.

⁶ The same occurs, for example, in force majeure clauses. In common law, in fact, “[f]or a party to claim liberation from a force majeure event, the clause must be specifically stated in detail in the contract” (Chadée et al. 2022, p. 4).

(Jacometti and Pozzo 2018, pp. 243–44). In common law, on the contrary, if the parties omit or forget to include specific clauses in their agreement, they cannot exercise the related rights. Therefore, each common law contract must be as complete and thorough as possible (Jacometti and Pozzo 2018, pp. 243–44). For these reasons, typical common law contracts are rich in details and definitions because, originally, the common law system did not rely on a written tradition of codes and regulations (Gambaro and Sacco 2000, pp. 61ff). Therefore, the parties were granted the freedom to regulate and articulate their specific interests and contract subject matter. This means that common law contracts are characterized by as many elements and definitions or descriptions as possible, according to which they are to be interpreted. Interpretation is then made on the basis of the contract wording (Cordero-Moss 2014, p. 11). Consequently, it is claimed that “English judges often affirm that a sufficiently clear contract wording will be enforced” (Cordero-Moss 2014, p. 11). In the Italian legal tradition, by contrast, contracts do not need sections dedicated to definitions, interpretations, and descriptions, as these are generally provided for by law.

The British *Consumer Contracts (Information, Cancellation and Additional Payments) Regulations* (2013)⁷ (henceforth “CCR”) provides for the same right of withdrawal (or termination) in distance consumer contracts. However, the statutory nomenclature and definitions are different from the standard ones (i.e., from “termination without cause” and “termination for convenience”). More precisely, instead of referring to a “right of withdrawal”, the Act mentions a “right to cancel” and a “right of cancellation”. The only difference with the principles established in the “termination without cause” and “termination for convenience” clauses lies in the fact that the CCR govern the relationship between a seller and a “consumer” whose right of withdrawal (or cancellation) must be asserted within 14 days from the contract formation. In contrast to such a principle, in a “termination for convenience” or “termination without cause” clause, the parties are free to establish the length of the notice period. Moreover, one of the parties is not necessarily a “consumer”.

It is evident that the juxtaposition of similar clauses (i.e., the “cancellation” nomenclature, according to the CCR, the “termination for convenience”, and the “termination without cause”, according to standard common law rules) creates some confusion (see also Giampieri 2024).

According to the Italian legal system, the parties have the right to withdraw (*recedere*) from the contract under article 1373 of the Italian Civil Code. In off-premises and distance contracts, consumers are granted the same right of withdrawal within 14 days from the date of the purchase, although the offeror may provide for its forfeiture or waiver in certain circumstances (art. 52 and 59 of the Italian Consumer’s Code—Legislative Decree No. 206/2005). In either case, the terminology referred to is always *recesso* (“withdrawal”).

4.4. Termination for Insolvency

Table 4 shows a “termination for insolvency”, which is generally included in a “termination by operation of law” clause. Amongst others, a “termination by operation of law” occurs in case of death, supervened incapacity, or bankruptcy of a party (Mechem 1901, pp. 67–68). There is one hit with “termination for insolvency” in the English corpus.

As can be seen, a “termination for insolvency” clause provides for contract termination in case of bankruptcy, insolvency, or liquidation of a party. As mentioned, in some circumstances, a “termination by operation of law” clause may also set aside a contract in case of death or the supervened incapacity of a party. The Italian equivalent principles and nomenclature do not envisage a contract “termination” (*risoluzione*) in these circumstances. In the Italian clauses reported above, the contract drafter mentions the customer’s

⁷ Available at: <https://www.legislation.gov.uk/ukxi/2013/3134/contents>.

bankruptcy or insolvency as a valid reason to terminate the contract (see “A”). This is possible, as the Italian jurisprudence admits bankruptcy as a cause of termination of some contracts. In this respect, the decision of the *Corte di Cassazione* No. 9488/2013 stated that a lease agreement had to be immediately terminated by virtue of a *clausola risolutiva espressa*, which, in its conditions, listed the bankruptcy of the lessee. Generally speaking, the Italian *Legge fallimentare* (back-translation: “bankruptcy law”) No. 267/1942 establishes that in case of bankruptcy, the pending contracts may either be affirmed and continued or terminated (art. 72), depending on the official receiver’s choice (*curatore fallimentare*). In the particular case of consumer contracts, the Italian Consumer’s Code states that [è] *istituito presso il Ministero delle attività produttive un fondo nazionale di garanzia, per consentire, in caso di insolvenza o di fallimento del venditore o dell’organizzatore, il rimborso del prezzo versato* (back-translation: “the Ministry for productive business has established a national security fund to allow the refund of the price paid in case of seller’s insolvency or bankruptcy”) (art. 100 of the Legislative Decree No. 206/2005). Therefore, consumers are granted a refund of the paid price if the *seller* is bankrupt or insolvent [emphasis added].

Table 4. “Termination for insolvency” clause and its Italian equivalents.

| Clause (English ToS) | Corresponding Clause (Italian ToS) | Back-Translation |
|---|---|--|
| Termination for Insolvency. Either party may terminate this agreement at any time, on written notice to the other party, if the other party ceases to conduct business in its normal course; makes an assignment for the benefit of creditors; is liquidated or otherwise dissolved; becomes insolvent; files a petition in bankruptcy; or a receiver, trustee, or custodian is appointed for it. | (A) <i>Condizione Risolutiva. Il Contratto si risolverà di diritto nel caso in cui il Cliente venga sottoposto a procedure esecutive, procedure di fallimento, di amministrazione controllata o altre procedure concorsuali, divenga in ogni caso insolvente o ceda i beni ai creditori, subisca un sequestro o altra forma di vincolo sui propri beni o venga messo in liquidazione, volontariamente o coattivamente, salvo che XX decida di rinunciare ad avvalersi della condizione.</i> (B) <i>Risoluzione del Contratto. 5.1 Clausola risolutiva espressa. Il presente contratto si risolve di diritto, ex art. 1456 c.c., (...) qualora lo stesso Cliente: 1. ceda in tutto o in parte il contratto a terzi, senza il preventivo consenso scritto di XX; 2. non provveda al pagamento del corrispettivo richiesto; 3. agisca o si presenti come un agente di XX; 4. sia sottoposto o ammesso ad una procedura concorsuale e/o fallimento.</i> | (A) Termination Clause. The contract shall terminate by operation of law in case the Customer is subject to enforcement proceedings, bankruptcy, receivership, or other insolvency proceedings, becomes, in any case, insolvent or makes an assignment for the benefit of creditors, is subject to seizure or any other encumbrance on its property, or is subject to liquidation, either voluntary or compulsory, except where XX decides to waive this clause. (B) Contract Termination. 5.1 express termination clause. This contract shall be terminated by operation of law, under art. 1456 of the Civil Code, in the event the Customer 1. transfers the contract in whole or in part to third parties without the prior written consent of XX; 2. does not provide for payment of the price; 3. defines himself or acts as XX’s agent; or 4. becomes insolvent or bankrupt. |

In case of the supervened incapacity of a party, a contract can be avoided or annulled (as per art. 1425 of the Italian Civil Code). In case of death, an agreement is generally transferred or assigned to the party’s heirs, who have the right to withdraw (see, for example, art. 1614 of the Italian Civil Code, dealing with tenancy agreements; art. 1627, addressing leasing agreements; art. 1674, tackling tenders; art. 1722, dealing with agency agreements; and art. 1811, revolving around free loans or loan-for-use agreements). With regard to other (unspecified) contracts, Italian law imposes the contract continuation in case of death or supervened incapacity of a party. For example, art. 1723 of the Italian Civil Code establishes that agency agreements for the benefit of third parties or the agent will not be terminated in case of the death of the principal.

In light of the varied circumstances described above, in the Italian legal system, it is not always possible to “terminate” a contract in case of death, incapacity, bankruptcy, or

insolvency of a party. It is, in fact, apparent that the Italian legal drafters aim to protect the other parties' rights by allowing the transfer of the contract or its affirmation.

In certain circumstances, the near equivalent of a "termination for insolvency" clause (and, to some extent, of a "termination by operation of law" clause) can be a *clausola risolutiva espressa* (back-translation: "express termination clause"). This clause, in fact, lists the cases according to which the contract is automatically terminated (for example, when permitted by law, in the event of a party's bankruptcy). As a matter of fact, both the Italian clauses in A and B in Table 4 mention, amongst others, the consumer's bankruptcy.

5. Discussion

The analyses carried out above show how the rendering of certain complex terminology is possible as long as a variety of language and legal sources are accounted for. In particular, consulting the ToS corpora (Giampieri 2024) is useful, as they provide examples of word usage in context and allow users to grasp meanings in similar clauses. In addition, English and Italian case law, as well as the Italian Civil Code, have to be constantly referred to in order to shed light on complex legal situations and eschew false correspondences.

Although the number of results retrieved per phrase was rather low, the corpus consultation and the related evidence were, nonetheless, relevant due to the different legal implications of the terms in English and Italian. For this reason, this initial study could pave the way to further corpus analyses and examinations of the English–Italian legal language.

In order to better clarify (near) equivalences, Appendix A summarizes correspondences between English and Italian "termination" clauses. As can be noticed, the circumstances are manifold, and it is necessary to become acquainted with the different legal principles governing the polysemous word "termination" before engaging in translation work.

6. Conclusions

This paper was aimed at exploring whether and how the complex and polysemous word "termination" can be rendered into Italian. The English and Italian corpora on terms of service were particularly helpful, as they allowed the retrieval of similar clauses containing corresponding terminology in both languages. Nonetheless, other resources, such as case law and statutory documents, had to be accounted for to eschew false equivalences.

The questions posed were the following: (1) "How is it possible to tackle the translation into Italian of a complex common law term such as 'termination' via corpus consultation?"; (2) "Is it always possible to retrieve full equivalents?"; (3) "What are the language resources that are necessary to find full or acceptable equivalents of 'termination'?"; (4) "Are targeted corpora useful and reliable to deliver accurate legal translations?"; and (5) "What comparative results can be obtained from the analysis which can be relevant for translators and students in Translation Studies?".

To answer the first question, the paper highlighted that by consulting small ad hoc corpora, it is possible to retrieve clauses with similar contents and equivalent terminology and satisfy the same legal principles. In detail, this paper has shown how corpus consultation can be carried out effectively and that corpus evidence can be integrated with other legal and language tools to provide accurate translations. It is evident, in fact, that equivalences must be verified by consulting ad hoc legal resources, such as case law, statutes, and/or codes. This methodology could, hence, be replicated in translator training in order to prepare students in Translation Studies to meet the challenges of legal translation.

The answer to the second question is affirmative, at least in the cases addressed in this paper. However, it should be reminded that at times, full equivalences may not be retrieved due to discrepancies in the legal systems considered. Strains of the literature, in

fact, often suggest resorting to functional translations or paraphrasing, especially in the legal field (Garzone 2000). This was not the case in the current study.

In answering the third question, in addition to “language resources”, this paper highlighted the need for reliable legal resources, such as case law and statutory documents. In the legal sector, in fact, language tools may not be sufficient due to the necessity to adjust contents and legal principles to a (most likely) different legal system. Therefore, not only are language resources (such as corpora) necessary to retrieve full or acceptable equivalents but also legal tools and, possibly, knowledge of the subject matter being dealt with.

The fourth question can be answered affirmatively, as long as corpora are targeted and representative (i.e., provided that they mirror the sectoral language focused on). In this case, the ToS corpora were composed of private legal documents reflecting (and containing) some of the principles of contract law (Giampieri 2024). For this reason, they successfully helped render system-specific terms. Students in Translation Studies could be taught how to navigate corpora and, at the same time, retrieve consistent information from legal sources.

The answer to the fifth and last question revolves around the fact that students must first familiarize themselves with legal concepts and terminology before engaging in legal translation. There are, namely, several pitfalls and nuances that could otherwise be neglected. This initial study showed how corpora can be beneficial in the translation process. Nonetheless, they must be supported by adequate research and comparative field-related analyses. In this respect, the comparative investigations undertaken in the sections above can be shown to students in order to help them become acquainted with corpus-based translation in the legal sector. Additionally, as mentioned, Appendix A lists the equivalences obtained thanks to the consultation of the ad hoc corpus and targeted legal resources. Appendix A could become a useful reference tool for students and scholars in legal Translation Studies when dealing with some of the principles of contract law.

The limits of this paper lie in the fact that only five variants of the term “termination” were considered (i.e., “termination by mutual agreement”, “termination for cause”, “termination for breach”, “termination without cause”, and “termination for insolvency”). Future research could explore other termination clauses (e.g., “termination by operation of law”, “termination for completion of term”, etc.) and/or their translations into other languages. Also, apart from (or in addition to) corpus consultation, scholars might consider other language resources, such as the web as a corpus in country-specific domains. Alternatively, corpora composed of academic papers on legal matters and/or judicial documents may be accounted for.

It is hoped that this initial analysis has laid the foundations for future investigations into the language of contract clauses and polysemous terms.

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Data Availability Statement: The English ToS corpus can be consulted at the following link: https://app.sketchengine.eu/#dashboard?corpname=preloaded%2Ftos_eng. The Italian ToS corpus can be consulted upon request sent via email to Patrizia Giampieri.

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Appendix A

Table A1. Near or full equivalences of English termination clauses.

| No. | Of English Termination Clauses | Italian Equivalents |
|-----|--|--|
| 1 | Termination by Mutual Agreement | <i>Risoluzione per mutuo consenso</i> (art. 1372 of the Italian Civil Code) |
| 2 | Termination for Cause | - <i>Clausola Risolutiva Espresa</i> (art. 1456 of the Italian Civil Code) - <i>Risoluzione per inadempimento</i> (art. 1453 of the Italian Civil Code providing for <i>contratti a prestazioni corrispettive</i> , back-translation: “reciprocal consideration contracts”) - <i>Risoluzione per giusta causa</i> (art. 2119 of the Italian Civil Code providing for employment contracts) |
| 3 | Termination Without Cause; Cancellation (according to the CCR) | <i>Recesso unilaterale</i> (art. 1373 of the Italian Civil Code and art. 52 of the Italian Legislative Decree 206/2005 providing for off-premises and distance consumer contracts) |
| 4 | Termination for Convenience; Cancellation (according to the CCR) | <i>Recesso unilaterale</i> (art. 1373 of the Italian Civil Code and art. 52 of the Italian Legislative Decree 206/2005 providing for off-premises and distance consumer contracts) |
| 5 | Termination for Insolvency; Termination by Operation of Law | - <i>Clausola Risolutiva Espresa</i> (art. 1456 of the Italian Civil Code) (only in given circumstances; e.g., bankruptcy, liquidation, or insolvency of a party or the consumer in consumer contracts) - Right to a full refund (art. 100 of the <i>Codice del Consumo</i> , i.e., Legislative Decree No. 206/2005) (in case of the seller’s insolvency or bankruptcy in consumer contracts) - Contract avoidance, continuation, or termination (depending on the situation and nature of the contract) |

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