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Reading Legal Documents: from the Macrofunction to the Smaller Functions

Abstrakt. Autorka uczula nauczyciela przekładu na trudności, jakie napotyka nieznaną prawa student na etapie czytania dokumentu prawnego, i wskazuje, jak należy je pokonywać. Trudność polega na tym, że student nie jest w stanie zrozumieć całościowej funkcji tekstu, ponieważ nie może zrozumieć dyskursu prawnego nawet w mniejszych fragmentach tekstu. Autorka proponuje ćwiczenie, które powinno pomóc studentom pokonać takie trudności.

Abstract. Through this article we try to remind the teacher of translation of the difficulties the student lay in legal matters encounters at the reading stage of the document and how to overcome them. The difficulty lies with the fact that he cannot grasp the overall function of the text because he cannot even penetrate legal discourse in its smaller portions. We propose some exercises that should help the student to overcome such difficulty.

Introduction

The pragmatic purpose of the document to be translated does not appear in the document but it can be inferred from the legal regulation contained in the legal document in its relation with life and human interest. The translator, immersed in his culture, can be trained to relate his knowledge about human motivation to the legal regulation the document consists of.

Of course, when drafting, the legal draftsman knows the legal regulation and relies on legal concepts. However, we decided (2004) to deal with the pragmatic purpose of the document, quite independently of the specialist knowledge. This way we try to show that the student of translation only needs some documentation on the legal institution to infer the pragmatic purpose of the document if he has a certain minimum knowledge of legal discourse as a prototypical abstraction of legal efficacy. Therefore, we only deal with the legal provisions applicable to the document superficially although it is true that it is the legal system that allows discourse to become legal, the document attaining this way its regulatory function (*regulatory function of the document*).

The translation student is geared to predicting the practical function of the document by a reading devise that makes him construct meaning by relying on the key elements within the document, that is, the agent and the action and its circumstances, as causing necessarily a new legal situation. These simple schemata allow the lay reader to understand legal documents more easily.

However, we will now deal with a related issue: how is the student going to infer the practical function of the document if he cannot penetrate legal discourse, if legal discourse is so alien to him that he does not know how to come about it? Gunnarson (1984) showed that simplified legal texts are just as difficult for the lay person to understand, although they might have been reduced to the essence of legal efficacy. For example, in the context of a sales contract, to the language of obligation that conveys the bargain between the parties (*do ut das*).

Thus, the lay student still finds it extremely difficult to understand any legal document. That is why, we, as teachers, resort to didactic devises regarding the practical function of the document. For example, if we take the case of the translation of a Common-Law will into Spanish, we can tell the translation student that the testator's property is like a sack of riches from which are taken, hierarchically and in a sequence, the different riches of the testator: some part is used to pay the funeral expenses, some other part, the testator's debts, then any devises and bequests and lastly, the residue, so that the heir only inherits the remainder, that is, the property that is left, if there is any. This basic idea allows him to spot the practical purpose of a specific Common-Law will. When reading, he will notice that the information within the Common-Law will follow exactly the same order: clause after clause, the different concepts are described until the last one comes: the residue clause, as it can be seen in the example below, particularly in the sequence of clauses 1, 2 and 3.

Mrs. H. Bunch
Last Will & Testament
The State of Mississippi
Simpson County
In the name of God, Amen:

I, H. Bunch of the county of Simpson (formerly of Rankin) being of sound mind memory and understanding do make publish and declare this my last will and testament/in form following:

- 1) I direct that my debts and burial expenses be satisfied.
 - 2) I devise and bequeath to my Grandson John M. Steen my watch, and to my son in Law W. H. Berry a pair of Gold Specks. (legados).
 - 3) I desire that all my other property both real and personal be equally divided between my two daughters, Ruth A. Stubbs and Sallie E. Berry.
 - 4) I hereby appoint my son in law W. H. Berry of said Simpson County Executor of this my last will and testament.
- Item 5th. I hereby revoke a certain will made by me some time since in which I appointed Thos White of Rankin County Miss my Executor.

This the 13th day of Nov. A. D. 1872.
 Witness by L. A. McCaskill Henrietta Bunch (Seal) at the request of Mrs. H. Bunch
 Signed sealed published and declared in the presence of the testator and in the presence
 of each other who at the request of the testator signed the same as witnesses thereto on
 the 13th day of November A D 1872.

Witness: G. W. Williams
 D. McCallum
 L. A. McCaskill

However, we will not deal any further with the issue of the practical purpose of the document but rather with the other issue mentioned: how is he going to grasp any meaning from the language of the document if it is totally alien to him, if he has not read any legal document before, or very few of them, or at least none of that type?

In order to favour his task we have devised some exercises for the student to become acquainted with legal discourse in a way that will also allow him at some stage to relate such language to the practical function of the document.

The two examples below are meant for the reader to take a glance of the document and spot the performatives within the text, as previously inferred.

In the example just below, searching for the performative within the clause allows him to separate other portions that do not contribute directly to the legal act.

In the example it is obvious that the parts crossed out only amount to an unnecessary description of the possible components of any estate.

FOURTH: All of my estate, whether the same be real, personal or mixed, of whatever kind or character, and wheresoever situated, or which I may die seized or possessed, or in which I may have any interest or right at the time of my death, I hereby give, devise, and bequeath to my said sons, PETER, NICHOLAS and Patrick if they survive me, in equal shares.

The result of such operation gives out the following sentence, much simpler:

“All of my estate I hereby give to my said sons, Peter, Nicholas, and Patrick if they survive me, in equal shares.”

In the exercise below all the performatives were taken out. In the case of the will, most of them incorporate performatives for the disposition of property and interests, whereas in a contract it is the language of obligation that prevails.

I do make publish and declare
 I give
 I dispose of as follows:
 I direct _____ be satisfied.
 I devise and bequeath _____, and to
 _____ (bequests).

I desire that _____ be equally divided between _____ and _____.
I hereby appoint _____ _____.
I hereby revoke a certain _____ in which I appointed _____.

Through a further exercise, the student is addressed to the language of obligation/right, which is to be found particularly in contracts, although wills may also explicit the powers and obligations of the executor. This exercise is a preparation for a later one that consists of splitting the sentence obligation into all the sintagms that express the different elements of the legal relationship or the legal obligation: subject, legal act, receiving party, subject-matter, circumstances of the act.

VERB	SUBJECT RECEIVING THE ACTION	SUBJECT-MATTER
		CIRCUNSTANCIAS

do make, publish and declare		this to be my Last Will and Testament
Direct	my Executor, hereinafter named,	to pay all of my just debts, funeral expenses and testamentary charges as soon after my death as can conveniently be done.
hereby revoke		all former Wills and Codicils by me made.
give and bequeath	to BERNICE MIRACLE,	the sum of \$10,000.00. should she survive me,
give and bequeath,	To NORMAN and HEDDA ROSTEN, or to the survivor of them (or if they should both predecease me then to their daughter, PATRICIA ROSTEN),	he sum of 5,000.00, [it being my wish that such sum be used for the. education of PATRICIA ROSTEN

Conclusion

Of course, we can think of many other exercises that allow the student to grasp those essential components (functions) within the text that will allow him to spot the true motivation of the testator or the contract parties more easily. They are smaller

functions (microfunctions) that come up by splitting discourse according to relevant functional criteria.

Should we keep on splitting legal discourse into smaller portions for the student to tackle the micro functions or rather should we allow him to come back to the text as a whole?

Where in between those exercises should the student be explained about the essence of the institution, that is, the practical function?

Those movements of expansion and contraction geared towards the smaller parts now or towards the text as a whole then, seem a natural and alternate movement within the student who finds his own way about the document in order to grasp its meaning and translate it correctly.

However, we would very much like to tackle this issue, that of the right moment for the student to grasp the meaning of the text, some other time, when we have experimented on it further.

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