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Joanna Grzybek<sup>1</sup>

# POLYSEMY, HOMONYMY AND OTHER SOURCES OF AMBIGUITY IN THE LANGUAGE OF CHINESE CONTRACTS

**ABSTRACT:** This paper discusses the main sources of ambiguity in Chinese-Polish translation of the contract legal language. Legal Chinese is very often the same as ordinary formal Chinese and that fact causes ambiguity in Chinese contracts. The author focuses on polysemy and homonymy which make the interpretation of legal language difficult and ambiguous. The meaning of Chinese characters depends on the textual context. However, when an interpreter does not know the background information of translated legal texts, it is very difficult to achieve a high quality legal translation. The abundance of homophones in Chinese language also poses a problem, especially in the case of contracts concluded in words, not in writing. The paper further presents different grammatical functions of Chinese terms encountered in contracts without a morphological change. Such linguistic features of Chinese language as: the absence of distinction between singular and plural nouns, lack of inflection, no grammatical categories of tense and aspect cause ambiguity and vagueness in interpreting the Chinese agreements. Moreover, the understanding of such texts is sometimes incorrect due to omissions and elliptical sentences. The author also shows the differences in the meaning of terms, which apparently signify the same entities and concepts in Polish and Chinese legal languages but in fact differ significantly.

## 1. Introduction.

### 1.1. The goal of the paper.

The article deals with translation of Chinese contract law into German and Polish. The goal of the present paper is to show the kind of problems that occur in translating Chinese contractual clauses in terms of law. The author collected data by using translation trainees' assignments, also by working for Chinese, Polish and German trade companies.

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Legal language is classified as a language for special purpose (LSP). Generally speaking, all LSP translation is interdisciplinary in nature. Translators of legal language must be competent in both translation and law (Šarčević 2000:113). *Legal competence presupposes not only in-depth knowledge of legal terminology, but also a thorough understanding of legal reasoning and the ability to solve legal problems, to analyze legal texts, and to foresee how a text will be interpreted and applied (...)* (Šarčević 2000:113-114). Unfortunately most of the translators and interpreters are educated in language, but are unfamiliar with economy and law, especially in the target language country.

### **1.2. The differences between legal reality and cultural background of Chinese, German and Polish legal language..**

Linguistic features and cultural background that characterize legal language in China, Germany, and Poland differ significantly. Many rules and practices of Chinese law can only be understood by applying Chinese legal thinking, cultural archetypes, history, and common linguistics patterns. In formulating laws, the People's Republic of China has been influenced by a number of sources, for instance the law of Germany, the *common law* and the P.R.C.'s socialist background. Chinese law is often seen as a collective term for the plurality of legal systems (Menski, 2006:493). According to Jones (2003), the Chinese legal system looks like a western system but contains the influence of its own traditions (Hsu, 2003:40). Codified law is overshadowed by cultural norms, customs, and Confucian ethics. Moreover, Chinese law has long been characterized as a socialist system with Chinese characteristics (Menski, 2006:23). In recent years, a large body of laws has been produced, in a kind of 'juridification' (Cao, 2004:12). Globalisation, business, and commercial opportunities change China into a modern, and increasingly capitalist country, but the reality of varied historical traditions remains like before (Menski, 2006:3-4). Polish and German legal systems belong to the family of the so-called civil law, which is based on the codifications introduced by Napoleon.

Seemingly legal Chinese discourse is not very complicated. It has to be easily understood by every citizen therefore is not a typical scientific language. The first authors of Chinese written law belonged to the working class (Senger von, 1994:173). The Polish language of law and the German *lingua legis* seem to be complicated and unclear and are very often difficult

to understand by common people. The Chinese legal language is written in a way so as to be understandable by many people. That is a distinctive feature of the *lingua legis* of the Chinese culture. Legislators learned that legal documents should be written in plain language and a simple style. However generality and vagueness of Chinese legal texts poses many translation problems. It is easy to make mistakes when interpreting and translating legal texts which are highly dependent on the context. Many translators complain about the inconsistency of legal Chinese texts. Keller, in his study of Chinese law, notes that *Chinese lawmakers have not, in general, attempted to use legislative language supported by rules of construction to strengthen the internal structure and order of positive law. They prefer instead, particularly in relation to primary legislation, that the specific meanings attached to legislative language shift according to their contexts* (Keller, 1994:752). Similarly, *Chinese administrative bodies also have a preference for broadly drafted laws that leave them free to act as they see fit in specific circumstances* (Keller, 1994:749). Another opinion, that is worth mentioning is the view of Potter (2001), who agrees that *Chinese laws are intentionally ambiguous and are replete with vague passages that do not lend predicability or transparency to the regulatory process, but he believes that this is a consequence of legal instrumentalism prevailing in China that gives policy makers and officials significant flexibility in legislative interpretation and implementation* (Cao, 2004:95).

The roots of the Chinese contractual law are in the “continental European” theory, especially German theory. However, there are some differences in the comprehension of contract. The Chinese meaning of contract does not include a contract of marriage (‘Ehevertrag *m*’) and a contract of last will and testament (‘Erbvertrag *m*’) like the German contract does (Ping Shi, 2005:19). Moreover, a Chinese contract does not always contain specific agreements on the price, quality, remuneration, place for performance, etc. Under Polish and German law, such a contract would be called a pre-contract and would contain the obligation that both parties are willing to conclude a final contract in the future (Julius, in Gebhardt, 2003:133-134).

## **2. The ambiguity problems.**

### **2.1. Polysemy.**

The ambiguity of Chinese legal language arises very often from using polysems. Let us start with the analysis of the polysemy of the lexical item

代理人 *dàilìrén*, dictionary equivalents of with are: ‘an agent’, ‘a proxy’, ‘a limb’, ‘a deputy’, ‘an attorney’ (in German: ‘Agent *m*’, ‘Agentin *f*’, ‘Beauftragte *m*’, ‘Beauftragter *m*’, ‘Bevollmächtigte *m*’, ‘Kommissionär *m*’, ‘Prokurist *m*’, ‘Stellvertreter *m*’, ‘Substitut *m*’, ‘Vertreter *m*’; in Polish: ‘przedstawiciel’, ‘prokurent’, ‘agent’, ‘zastępca’). According to Black’s Law Dictionary (2004:68), *an agent is one who is authorized to act for or in place of another; a representative. An attorney is a person, who is designated to transact business for another; a legal agent* (Black’s 2004:138). *A person appointed or delegated to act as a substitute for another, especially for an official is a deputy* (Black’s 2004:474). *A proxy is one who is authorized to act as a substitute for another; especially, in corporate law, a person who is authorized to vote another’s stock shares* (Black’s 2004:1263). In Polish and German, there is a distinction between ‘die Prokura’ (Polish: ‘prokura’) and ‘die Vollmacht’ (Polish: ‘pełnomocnictwo’). The first is a special type of the second and can be granted only by businessmen. The rights of proxy (Polish: ‘pełnomocnik’, German: ‘Bevollmächtigte *m*’) concern all court acts of partnership and out-of-court acts of company. The rights of commercial proxy (Polish: ‘prokurent’, German: ‘Prokurist *m*’) concern only out-of-court acts of company. It is imperative to find out by translation what kind of power of attorney contains the source text. Although the Chinese have a term for the legal representation of a company (公司法定代表人 *gōngsī fǎdìng dàibiǎorén*), the low quality of dictionaries causes translators with little or no experience in Chinese commercial law not to use the term.

Another term, which can pose problems to translators with no legal knowledge is 财产 *cáichǎn*, which means ‘ownership’ or ‘property’. There are two types of titles for objects: 占有 *zhànyǒu* and 财产 *cáichǎn*. The first title means ‘possession’ (in German: ‘Besitz *m*’, ‘tatsächliche Sachenherrschaft’; in Polish: ‘posiadanie’). The second has the following English equivalents: ‘ownership’ and ‘property’ (in German: ‘Eigentum *n*’, ‘rechtliche Sachherrschaft’; in Polish: ‘własność’). For example, a thief can possess a car, but that does not mean that he owns it. There are dictionaries, which propose two meanings for 财产: ‘possession’ and ‘ownership’. For instance:

i. 新汉德词典 “Das neue Chinesisch-Deutsche Wörterbuch” 北京 2000:

财产: ‘Eigentum *n*’, ‘Besitztum *n*’, ‘Hab und Gut *n*’, ‘Vermögen *n*’

ii. 英汉双向法鲁, 北京 2001:

财产: ‘possessions’, ‘belongings’, ‘estate’, ‘fortune’, ‘means’.

There are translators or rather translation novices with no knowledge of the Chinese legal system or who simply do not distinguish possession from ownership. Such persons can sometimes unknowingly create a false legal reality. The difficulty in terms of law is, that a Chinese company can possess land but not own it. As contributions to a joint venture with German or Polish, Chinese businessmen use land-use rights (土地使用 *tǔdì shǐyòng*). As stated in “General Principles of the Civil Law of the People’s Republic of China”, *a citizen’s personal property shall include his lawfully earned income, housing, savings, articles for everyday use, (...) trees, etc., but never land* (中华人民共和国民法通则, 第十八条).

The next term which can be ambiguous is 股本 *gǔběn*, which means ‘share capital’ or ‘stock capital’. In German, it has more equivalents, e.g.: ‘Gesellschaftskapital’, ‘Grundkapital’ and ‘Stammkapital’. Even more equivalents exist in Polish, e.g.: ‘majątek spółki’, ‘kapitał zakładowy’, ‘kapitał akcyjny’. Translating in German or Polish 股本 can mean different types of capital. It can be translated as ‘Gesellschaftsvermögen’ (‘majątek spółki’), the capital of a commercial company or it could also be translated as ‘Grundkapital’ (‘kapitał akcyjny’, ‘kapitał zakładowy’) which is the capital of an association, such as a joint stock company or a limited joint-stock partnership. The minimal value of the abovementioned capital is EUR 50,000 (or PLN 500,000 zł in Poland). ‘Stammkapital’ (‘kapitał zakładowy’) means the capital of a limited liability company. Its minimal value is EUR 25,000 (or PLN 50,000 zł in Poland). The translator who does not know the context or who does not know the language of commercial law can easily use the wrong term when translating from Chinese into German or Polish.

Another Chinese polysem is 股东 *gǔdōng* and its English equivalents are ‘shareholder’ and ‘stockholder’ (in German: ‘Aktionär *m*’, ‘Anteilseigner *m*’, ‘Gesellschafter *m*’; in Polish: ‘udziałowiec’, ‘akcjonariusz’). ‘Gesellschafter *m*’ / ‘udziałowiec’ is the one who owns or holds a share or shares in a company, esp. a corporation. ‘Aktionär *m*’, ‘Anteilseigner *m*’ / ‘akcjonariusz’ is a type of a shareholder in a stock company. Every ‘Aktionär *m*’, ‘Anteilseigner *m*’ / ‘akcjonariusz’ is ‘Gesellschafter *m*’ / ‘udziałowiec’, but not every ‘Gesellschafter *m*’ / ‘udziałowiec’ is ‘Aktionär *m*’, ‘Anteilseigner *m*’ / ‘akcjonariusz’. For instance, the following sentence:

股东按照出资比例分取红利。

can be translated as:

‘Shareholders (German: ‘Gesellschafter *pl*’ / ‘Anteilseigner *pl*’, Polish: ‘udziałowcy’) draw dividends in proportion to their capital contributions’

(regarding limited liability companies – 有限责任公司)

or:

‘Shareholders (German: ‘Aktionäre *pl*’, Polish: ‘akcjonariusze’) shall draw dividends in proportion to their capital contributions.’

(regarding joint stock limited companies – 股份有限公司)

One of the most interesting examples for ambiguity in Chinese legal terminology is 被告 *bèigào* which is used to name the party sued in civil proceedings (German: ‘Beklagter *m*’, Polish: ‘pozwany’) and accused in criminal proceedings (German: ‘Angeklagter *m*’, Polish: ‘oskarżony’).

There are terms 租赁 *zūlìn* and 出租 *chūzū* and terms regarding hire, rent and lease, which are ambiguous in Chinese with their English equivalents being polysemic as well. By translating these into German or Polish, the situation is even more complicated because there are many different equivalents for 租赁 and 出租. 租赁 – English ‘hire’, ‘rent’, ‘lease’ can be translated into German as ‘Miete *f*’ (Polish: najem’) or ‘Pacht *f*’ (‘dzierżawa’). As far as the first one is concerned, one party conveys to another party a parcel of land or another immovable property, to be used and occupied in exchange for payment. As far as the second one is concerned, the second party not only owns but also benefits from using the leased object. 出租人 *chūzūrén* – English ‘lessor, landlord’ can be translated into German as ‘Vermieter *m*’ (‘wynajmujący’), ‘Verpächter *m*’ (‘wyzierżawiający’) or ‘Leasinggeber *m*’ (into Polish: leasingodawca / finansujący). 承租人 *chéngzūrén* can be translated into German as ‘Mieter *m*’ (into Polish: ‘najemca’) or ‘Leasingnehmer *m*’ (‘korzystający’, ‘leasingobiorca’). The polysemy of the aboved mentioned terms can create problems in business talks or oral negotiations when context is omitted.

The term 共同遗嘱 *gòngtóng yízhǔ* can also cause vagueness in understanding. It is the equivalent of ‘Berliner Testament *n*’ or ‘gemeinschaftliches Testament’. ‘Gemeinschaftliches Testament’ means joint last will and testament and ‘Berliner Testament’ is the special form of it. Thus ‘gemeinschaftliches Testament’ is a hyperonym whereas ‘Berliner Testament’ is a hyponym. The mentioned last will and testaments conclude marriages and civil marriages.

## 2.2. Grammar.

Translators must cope with many linguistic problems caused by the dissimilarity between Polish and Chinese, such as structural or syntactic ambiguities in legal Chinese. It is often necessary to decipher, or even guess, the meaning from the

context due to the lack of grammatical changes. The change of meaning is hard to notice as there is no morphological change to be observed.

One of the difficulties is the fact that there are no verbs which denote an imperative in the future tense in Chinese. Some of the present tense sentences have the same imperative meaning as the Polish sentences containing verbs in Present Tense. They impose an obligation or command but without the use of any imperatives. Those sentences are often called *zero performatives* (Cao 2004: 57), to denote sentences without any modal verbs.

#### Artykuł 15

(...) Zgromadzenie Ogólne otrzymuje i bada roczne i specjalne sprawozdania Rady Bezpieczeństwa; sprawozdania te powinny zawierać zestawienie środków (...)

#### 第十五条

(...) 大会应收受并审查安全理事会所送之常年及特别报告；该项报告应载有安全理事会(...)

#### Article 15

(...) The General Assembly shall receive and consider annual and special reports from the Security Council; these reports shall include an account of the measures (...)

(Charter of the United Nations)

#### Artykuł 53

(...) Rada Bezpieczeństwa posługiwać się będzie układami lub organizacjami regionalnymi w odpowiednich przypadkach w celu stosowania środków przymusu pod jej kierownictwem. (...)

#### 第五十三条

(...) 安全理事会对于职权内之执行行动，在适当情形下，应利用此项区域办法或区域机关。(...)

#### Article 53

(...) The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. (...)

(Charter of the United Nations)

### 2.3. Legal language versus colloquial language.

Legal language is often used alongside colloquial language. Matulewska (2007) notices, that *if there are two texts which in one natural language are formulated in lingua legis and colloquial language their translations into another natural language may differ despite the fact, that they may apparently look the same in the source language*. For instance, the sentence from Universal Declaration of Human Rights:

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”

is translated into Chinese as

„任何人不得加以酷刑，或施以残忍的，不人道的或侮辱性的待遇或刑罚。” The phrase 不得 bùdé (English: ‘is forbidden’) is often replaced with other phrases, which are colloquial: ‘不许’ bùxǔ, ‘不要’ búyào, ‘不准’ bùzhǔn.

### 3. Conclusion

Chinese legislation has been created under the influence of foreign sources and many legal terms are translated terms. Foreign laws were not absorbed in a vacuum, but incorporated into a totally different culture and linguistic reality. Therefore, there are words which only seemingly denote the same legal reality as in German or Polish. *Many Chinese legal terms of foreign origin have unfolded a life of their own in the Chinese legal context* (Cao 2004).

To sum up, only translators who have extensive knowledge of the target legal system as well as the source legal system are capable of mitigating the difference between the terms, which seemingly have the same scope of meaning.

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