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Łucja Biel<sup>1</sup>

# ORGANIZATION OF BACKGROUND KNOWLEDGE STRUCTURES IN LEGAL LANGUAGE AND RELATED TRANSLATION PROBLEMS

**ABSTRACT:** The paper examines the organization of background knowledge structures in legal language and related incongruities of legal terms. The cognitive linguistics methodology, in particular its findings on the nature of meaning, is applied. Terms serve as prompts with a semantic potential to activate various levels of knowledge structures, such as domains, scripts, scenarios, cognitive models and frames. In most cases organization of knowledge will differ in the SL and TL. The final part analyses translation strategies and techniques in terms of their potential to activate relevant knowledge.

**KEY WORDS:** legal language, legal translation, translation strategies, cognitive linguistics.

## 1. Introduction

Translation is frequently regarded as an act of communication, and legal translation is defined by Šarčević as a special type of act of communication which takes place “in the mechanism of the law” (2000). Our conventional model of communication is reflected in the conduit metaphor discussed by Reddy. People talk and think about linguistic communication as about the sending and receiving of parcels filled with meaning. Ideas, thoughts, emotions are taken out of the mind and put into words by the speaker; next they are sent along a conduit to the receiver, who unpacks the ideas from

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words (Ungerer and Schmid 1996:119). Deeply ingrained as it may be, this model is misleading in a number of ways. It suggests that it is possible to pack meaning into a word and find another packaging for that content in another language (*translation* comes from Latin *transferre* = *to transfer*; Oxford English Dictionary). It has been experientially proved that human communication is much more complex due to the nature of concepts. The aim of this paper is to analyse the organization of background knowledge structures behind legal concepts and related translation problems.

## 2. Semantics of legal terms and concepts

Terms, as argued by Sager, are ‘depositories of knowledge’ and units with specific reference in that they “refer to discrete conceptual entities, properties, activities or relations which constitute the knowledge space of a particular subject field” (1998:261). Although the discreteness of concepts may be questioned, the claim that concepts are embedded in complex knowledge structures is in line with the approach to semantics proposed by cognitive linguistics (CL), the mainstream branch within functional linguistics. CL views language as a direct reflection of cognitive processes and an integral part of human cognition and understanding of the world. In Langacker’s ‘subjectivist’ theory of semantics, meaning is understood as a dynamic process involving conceptualization (mental experience) rather than a static bundle of features (1988:50). As argued by Evans et al., during conceptualization “linguistic units serve as prompts for an array of conceptual operations and the recruitment of background knowledge” (2006:160); therefore, they have a certain semantic potential (Evans 2006:493). This claim also extends to terms, which function as prompts or points of access to vast knowledge structures rather than as containers for knowledge. The connection between a term and its knowledge structures may be seen as a mental routine. Sometimes people know only ‘linguistic labels’ but have not built the mental path which activates relevant knowledge: you may know the term *constructive trust* but may have difficulties in explaining what it means.

This dynamic approach is based on Haiman’s claim that meaning resembles an encyclopaedia rather than a dictionary. Therefore, to characterize a concept it is necessary to refer to other cognitive domains presupposed and incorporated by it (Langacker 1988:53). To understand a *tort of negligence*, the following domains should be activated: *tort law, court,*

*duty of care* and *breach of duty of care*, *civil liability*, *loss* and *remedies*. The *tort of negligence* also has a semantic potential for activating the domains of the *Caparo test*, *defences*, *causation*, *solatium*, etc. The domains overlap and are arranged hierarchically in terms of relevance and salience. Depending on a usage event, some domains are activated in the foreground, some are activated in the background, while others are not activated at all. The foreground is the focal point and is referred to by Langacker as a profile, the background serving as a base (1988:60). The term *base* emphasizes “the way in which background knowledge ‘supports’ the concept” (Clausner & Croft 1999:5) by providing a context.

All the domains activated by a given concept are called its matrix (Langacker 1988:56). Since meaning is a mental process, it invites idiosyncrasy: the domains activated by conceptualizers will differ depending on their experience and knowledge. The defendant may activate the domain of defences with more detail, focusing on the voluntary assumption of risk, contributory negligence or illegality while the claimant may focus on the domains of loss and remedies. A judge is expected to have a more structured knowledge and activate more domains than a lay magistrate from the magistrates’ court or a working-class tortfeasor aged 19.

For this reason it may be difficult to specify how many domains have to be evoked to understand a legal term. According to Shelov’s degrees of terminologicality, the more information is required, the more terminological a lexeme is (qtd. in Thelen 2002:196). In the case of legal concepts, the supra-individual semantic potential of terms is specified in legislation and case law. A substantial part of this knowledge is expected to be internalised and intersubjectively shared by members of the legal profession.

As emphasised by Clausner and Croft, the structure of domains “is more than a list of experientially associated concepts” (1999:2). Knowledge is arranged not only in terms of relevance and salience; concepts form complex interrelated networks and such vertical and horizontal interrelations are part of their meaning. A concept is understood fully when the conceptualizer knows its exact place in the network (cf. Sager 1998:260). First of all, concepts are organised in terms of their level of specificity along taxonomic vertical hierarchies (Langacker 1988:64). For example, a *legal person* is more schematic than a *company*; hence, the image it evokes is less rich in detail. Secondly, legal concepts are frequently organised along horizontal causal scripts/scenarios. Kjør argues that the horizontal organization has a form

of complex IF-THEN rules that prestructure the expert's knowledge and reasoning patterns. A legal concept connects legal conditions with legal effects; the connecting concept may be regarded as "a reduced representation of legal rules" (2000:146). A similar view is expressed by Gizbert-Studnicki, who sees legal terms as shortcuts that connect a certain set of facts with a certain set of legal consequences. He notes that the sets of facts and consequences are unlikely to be identical in two legal systems and goes as far as to suggest that the connecting concepts known as 'legal institutions' are proper names and as such are untranslatable (2001:52). These assumptions can be illustrated by *tort of negligence*, which evokes the following scenario: if the defendant owes a duty of care to the claimant and breaches it, the claimant suffers a loss, the loss is not time-barred and the tortfeasor is not able to raise any defences, then the claimant may bring a civil action and claim damages. This generic scenario forms part of the meaning of *tort of negligence* and is filled with details in a usage event.

Besides causal relations, concepts are embedded in various cultural models that organise a given field, which is clearly visible from the cross-linguistic perspective. For example, *Board of Directors* evokes the one-tier corporate governance model, where the board has both supervisory and management functions. By contrast, the Polish term *Zarząd*, which is provided in 5 out of 6 legal and business dictionaries as an equivalent of the *Board of Directors*, automatically activates the two-tier corporate governance model, which clearly separates management functions (*Zarząd*) from supervisory functions (*Rada Nadzorcza*). The incongruity between *Board of Directors* and *Zarząd* results from their entrenchment in different cultural models.

It may be supposed that concepts, scripts and scenarios are embedded in a number of overlapping, larger structures called frames. A frame is defined by Fillmore as a system of interrelated concepts that form a coherent script-like structure (1982:117). Ungerer and Schmid see frames as a type of cognitive models which include scenarios, domains, interactive networks and scripts, and claim it represents "a cognitive, basically psychological view of the stored knowledge about a certain field" (1996:211). The most important frame is the metaframe formed by the legal system itself. It provides organising principles, rules of legal reasoning, approaches to statutory or contractual interpretation. For example, it is more frequent in continental countries to apply the teleological approach to statutory interpretation, while English

courts prefer the literal approach (cf. McLeod 2005:328). Another illustration may be found in UK and US contract law and its parol evidence rule. The rule prevents any modification of contracts with evidence that was not included therein. By contrast, according to Article 65(2) of the Polish Civil Code, intentions of the parties should be taken into account: “In respect of contracts, one should determine the congruent intention of the parties and the purpose of the contract rather than rely on its exact wording.” Therefore, the approach to interpretation may limit or widen the scope of knowledge activated during meaning construction.

The macroframe consists of a number of microframes which function as a narrow context. Some frames may be shared by legal systems, especially those that stem from the same legal traditions, such as the continental legal systems. Polish frames will show more similarity to French or German frames than to English ones. Owing to the harmonization of law in the EU, the incongruity of frames between the continental systems and the UK (common law) system will decrease in time.

The above analysis provides a deeper insight into the nature of incongruity of legal terms between languages and legal systems. The incongruity applies not only to the boundaries of concepts underlying terms but, above all, is connected with the complex organization of knowledge structures in the SL and the TL. Concepts are embedded in different macro- and microframes, cognitive models, scripts, scenarios and domains, and it is very unlikely that these structures will be organised in the same way in two languages/legal systems. In most cases terms will not have the same semantic potential in the SL and the TL.

### **3. Textual conventions**

Conventions concerning the amount of knowledge to be incorporated into a legal text may differ in the SL and TL country. Hill and King’s comparative research of US and German contracts has shown that the former are significantly longer than the latter. This is because less statutory contract law is applicable to transactions in the US. The US legal system is not uniform as it has fifty state statutes and the common law. Some states, such as Louisiana and California and several Western states, are more code-oriented, while others regulate only certain types of contracts by statute (2004:921). Hill and King’s findings may be extended

to Polish contracts, which in fact are similar to German ones. Poland is a civil law system with only one jurisdiction; contracts are governed by the Civil Code and hence show a higher degree of intertextuality. Additionally, some contract law has a form of definitions and elaboration of typical legal concepts. As emphasised by Hill and King with reference to US contracts, “the parties typically would not have available either a common-law or statutory definition that could be readily incorporated” (2004:913); hence, contracts contain a large amount of knowledge, detailed definitions and litanies of synonyms. US lawyers attempt to draft very cautious, self-contained contracts since they may be litigated in various states. Having regard to the foregoing, it may be supposed that a verbose US contract translated into Polish and thereby uprooted from its legal context will be easier to understand than a concise Polish contract translated into English.

It is worth emphasising that a source text contains as many prompts and activates as much knowledge as necessary for SL recipients to understand it properly, which is consistent with Grice’s Maxim of Quantity. Difficult as it may seem, the translator’s task is to ensure that TL prompts are adequate for TL recipients in that they create the same legal effect as SL prompts. This may pose problems in legal translation since, in general, translators are not expected to make explicit information that is implicit in the source text.

#### **4. Knowledge and translators**

With regard to LSP translators, who frequently work under time pressure, they should have sufficient knowledge to limit the time required for research. The translator’s knowledge is one of the factors that affect translation quality and productivity. This requirement is emphasised not only by theorists (e.g. “translation as knowledge-based activity”, Wilss 1994), but also by translator educators and the translation industry. For example, the programme of European Master’s in Translation prepared by the Directorate-General for Translation (EC) recommends allocating at least 50% of the total credits to practical translation classes and courses fostering knowledge of special fields and their languages. With regard to the translation industry, the translator’s knowledge of the field and expertise are regarded as an industry standard and are frequently provided

for in contracts that regulate the relationship between freelance translators and translation agencies. Additionally, some institutions set very high requirements concerning the translator's formal training in the special field. This can be illustrated by the European Court of Justice, which employs only lawyer-linguists as translators.

In respect of legal translation, the translator should know both the SL and TL legal macroframes: the more specific and detailed the frames, the higher the quality of translation and the lower the risk of mistranslation. As emphasised by Wilss, if the translator has little expertise, s/he will be involved in local processing of information without the wider picture rather than more global and efficient processing (1994:41). In particular, the translator should be able to distinguish a term from a mere word and select the right equivalent from a dictionary entry. My analysis of English equivalents of Polish company types shows that in 5 dictionaries there are as many as 16 equivalents of *spółka akcyjna*, some of which are incorrect (Biel 2006). The overall quality of bilingual legal dictionaries published in Poland leaves much to be desired, which poses constant challenges to translators and increases the time they need to find the most suitable equivalent.

In addition to the knowledge of the field, another crucial component of translation competence is the knowledge of the target audience's expectations. As noted by Séguinot, "a successful translator is conscious of the receptivity and reactions of the target audience. Some of that recognition may be stored in the form of knowledge, but each new client and every new assignment brings with it the potential for interaction and novelty" (2000:96). Generally, the translator is expected to fill in the knowledge gaps of the target audience; however, this issue raises some controversy in legal translation. The influential Polish Sworn Translator Code claims that the translator is entitled to assume that the recipient is aware of incongruity of legal systems; hence, the translator does not have to provide any additional explanations or definitions (Kierzkowska 2005:87–88). On the other hand, in TL-oriented approaches, such as Šarčević's receiver-oriented approach, it is argued that translators should "compensate for conceptual incongruity whenever possible" to ensure that the SL text and the translation have the same legal effect (2000). This, however, requires the translator to project how SL and TL texts will be received, and hence to be more actively involved.

## 5. Translation strategies and their potential to bridge knowledge gaps

As already noted in section 3, in most cases terms will not have identical semantic potential in the SL and the TL. Furthermore, the translator may well be able to replace the SL concept with a relatively similar concept from the TL legal system, but the TL concept will not be able to evoke the same knowledge structures. The scope and depth of knowledge evoked will depend on the recipients, who may range from experts to laypersons. As noted by Schäffner, the recipient's prior knowledge has a crucial impact on his/her ability to understand a text (1993).

There are several degrees of terminological incongruity, ranging from identical concepts (very rare) or near equivalence to conceptual voids without equivalents in the TL. The techniques of dealing with incongruous concepts may be placed along the continuum between two extremes: domesticating and foreignizing strategies. As noted by Venuti, the debate between domesticating and foreignizing is long-standing in translation practice. **Domesticating** involves assimilation to the TL culture and is intended to ensure immediate comprehension; hence, it is also referred to as the **TL-oriented strategy**. By contrast, **foreignizing** "seeks to evoke a sense of the foreign" by "sending the reader abroad"; as a result, it may pose a risk of incomprehension (2001:240–4). It is also known as the SL-oriented strategy.

Chesterman proposes to reserve the term *strategy* for macro-level problem-solving, a cognitive plan, e.g. "the initial choice of source or target orientation, decisions about foreignizing or domesticating", while the term *technique* should be used for "routine, micro-level, textual procedures" (2005:26). This distinction will be followed in the subsequent section, which discusses major translation techniques in terms of their potential to activate relevant knowledge structures. The micro-level techniques of legal translation were adopted with some modification after Weston (1991:19–34) and Harvey (2000). The most important ones include: transcription, literal equivalent, descriptive equivalent and functional equivalent. They may be placed along the foreignizing-domesticating continuum as shown in Chart 1.

Chart 1. The continuum of major translation strategies and techniques.

Foreignizing SL-oriented	STRATEGIES		Domesticating TL-oriented
Transcription	Literal Equivalent	Descriptive Equivalent	Functional Equivalent

SL- and TL-orientation in legal translation are based on Kierzkowska’s distinction between near and far recipients. The former have a relatively good knowledge of the SL culture, while the latter do not know it and have little motivation to learn it. In the first case SL-oriented equivalents of legal terms should be used to emphasize differences, while far recipients require TL-oriented equivalents to capitalize on similarities (2002:88-89).

The first technique is **transcription** (borrowing), including **naturalization** (adaptation of spelling). It is the most foreignizing strategy, the use of which is usually motivated by a large incongruity or untranslatability of TL concepts. As Weston notes, “inevitably ... there will be a number of SL expressions which defy translation in the strict, narrow sense because nothing truly comparable to the corresponding concept exists in the TL culture and a literal translation makes no sense” (1991:26). Prominent examples include *common law*, *equity* and *trust*. The advantage of using a transcription is that it provides a clear and accurate reference to the external source frame. As emphasised by Šarčević, it specifies “the law according to which national terms and institutions are to be interpreted”, which is very useful in translation of international conventions “because national courts have no other choice but to apply the foreign concept” (2000). From the translator’s point of view, a borrowing is a ‘safe’ equivalent as it allows him or her to avoid liability for inaccuracy. On the other hand, accuracy is achieved at the expense of comprehension. Some researchers emphasise that this technique “admits defeat” (Weston 1991:26). The meaning is opaque and has low analysability; it does not capitalise on the TL knowledge. In consequence, its understanding requires more mental effort and a good working knowledge of the SL legal system. This technique is more appropriate for translation from well-known languages, e.g. from English to Polish rather than from Polish to English. Given the low popularity of Polish as a foreign language and few English-language publications on Polish law available in the UK and the US, transcription of Polish legal terms in the English texts would be impracticable. These barriers are lower in translation from German or French.

Another technique, **literal equivalence**, may be regarded as a special type of borrowing. It is also known as formal equivalence, word-for-word translation, calque or loan translation. As noted by Weston, the acceptability of literal equivalents depends on their type. Some do not correspond to any TL concept (**neologisms**) but are sufficiently transparent in meaning; in some cases, it is possible that a literal equivalent will also be a functional equivalent. Literal equivalents are not acceptable when they are false friends (refer to a different TL concept) or are virtually meaningless (1991:25). For example, the term *limited partnership* is calqued in some dictionaries as *spółka z ograniczoną odpowiedzialnością*, which is misleading since it evokes the concept of a Polish *limited company*. The danger connected with the literal equivalent is that it will neither refer the recipient to the right SL frames nor, as with most neologisms, be connected with knowledge structures in the TL. The latter may be exemplified by the Roman-law term *użytkowanie wieczyste*, which is unknown in the common law system. The standard equivalent in legal dictionaries and translation practice is *perpetual usufruct*. Obscure to most English lawyers, this term does not evoke the information that *użytkowanie wieczyste* applies to land owned by the state or local government and leased for 99 years or less but at least 40 years (Articles 232 and 236 of the Polish Civil Code).

Instead of *perpetual usufruct*, the translator may use a **descriptive equivalent** (also known as a gloss or a paraphrase), such as *99-year or less lease of land owned by the state or local government or a long-term leasehold*. This technique is more TL-oriented than the previous ones as it takes into account the recipient's knowledge gaps. It is based on explicitation, i.e. making explicit in the TT what may be implicit in the ST. It is worth noting that explicitation is not so infrequent in translation practice: it is regarded as one of the translation universals (Laviosa-Braithwaite 2001:289). The descriptive equivalent may provide more (but not complete) information than the literal equivalent and is certainly more comprehensible. The major disadvantage of descriptive equivalent is its length. Since a term functions as a shortcut and may be repeated frequently in a text, one of its main properties should be brevity of form. The longer the equivalent, the more inconvenient it is.

A descriptive equivalent is frequently based on a legal term known in the TL but which undergoes some modification to signal the difference. It is argued that foreign-sounding equivalents make recipients realize the incongruity of terms and refer them to the proper legal system (cf.

Kierzkowska 2002:59). They may also allow recipients to map some TL knowledge by activating generic scenarios; for example, when *spółka partnerska* is translated as a *professional partnership*, the translator activates the general knowledge connected with partnerships (personal liability of partners, etc.).

The most TL-oriented equivalents, known as **functional** or dynamic equivalents, approximate the SL culture by evoking well-internalized concepts. Šarčević defines a functional equivalent as “a term designating a concept or institution of the target legal system having the same function as a particular concept of the source legal system” (1997:236). When *spółka partnerska* is translated as a *limited liability partnership*, more detailed knowledge of limited liability partnerships in English law is mapped from the TL concept onto the SL concept than in the case of a *professional partnership*. What is interesting is that recipients access an SL concept by using their knowledge of the TL system and establishing epistemic correspondences. This cross-systemic mechanism seems to resemble the intralinguistic mechanism behind conceptual metaphors where one concept that is usually more abstract, novel or complex is accessed through a more basic, concrete or well-known concept (cf. Biel 2008:25). The functional equivalent is easy to understand as it quickly activates relevant knowledge structures. However, its major disadvantage is that it may map too much system-specific knowledge that is not connected with the SL concept and may suggest that the TL and SL concepts are identical. Even though readability is frequently obtained at the expense of accuracy, this method is gaining proponents. Weston considers it to be “the *ideal* method of translation”, (1991:23) while Alcaraz and Hughes emphasize, “After all, the aim, in legal as in other forms of translation, is to provide target versions that are at least as readable and natural as their source predecessors” (2002:178–9). Some researchers are however less enthusiastic about this technique; Šarčević argues that the acceptability of functional equivalents depends mainly on the degree of incongruity between SL and TL concepts (1997:236). It is worth noting that the translator may provide clear reference to the SL system by including the SL term in brackets or by adding a prompt such as a *Polish* limited liability partnership.

## 6. CONCLUSIONS

The foregoing discussion has demonstrated that legal translation is a complex act of communication subject to two competing motivations: accuracy and

comprehensibility. In fact, legal translation may be perceived as a hybrid where the SL text is accessed through TL knowledge structures. What requires further research is the nature of mapping from TL concepts onto SL concepts as well as the role of TL knowledge structures in understanding a legal translation.

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## **Problemy terminologiczne w przekładzie prawniczym związane z organizacją struktur wiedzy**

Artykuł omawia specyfikę terminów prawniczych i struktury wiedzy aktywowane przez terminy. W analizie zastosowano metodologię językoznawstwa kognitywnego. Terminy pełnią rolę skrótów prowadzących do pojęć zakotwiczonych w strukturach wiedzy, jak np.: domeny, scenariusze, modele kognitywne i ramy. Struktury wiedzy są odmiennie zorganizowane w poszczególnych systemach prawnych, przyczyniając się do nieprzystawalności pojęć. Strategie i techniki translato-ryczne w różnym stopniu uzupełniają brakującą wiedzę.