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Legal Translation Training and Recognition of Information Needs

Or: Should the teaching of subject matter content be a thing of the past?

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1. Background

It is generally agreed that LSP translation requires considerable specialised subject matter knowledge, cf. e.g. Gutt (2000:173):

> Suppose the translator is dealing with technical material for some specialist audience without being expert himself/herself. In this case, both original and target audience may have similar specialist knowledge – but the translator may not. […] From the relevance-theoretic perspective, it is a must that the translator have a good grasp of both the receptor and the original context. In some situations this may require substantial preparation and research.

Besides specialised subject matter knowledge, LSP translation, like other types of translation, obviously also requires general world knowledge, knowledge of language (source and target), of genre and of translation processes. Knowledge within all of these spheres is necessary both in order to understand the meaning of a given LSP source text and to convey that meaning into the target language.

Even though it is generally agreed that specialised subject matter knowledge is an important part of the goal of LSP translation training, there is no real consensus on how topics are best dealt with and incorporated into the curriculum. To what extent and how should subject matter be taught to students who are students of language and translation rather than students of e.g. law, economics or science?

Kastberg (2002) focuses on the question of subject matter knowledge in relation to the teaching of technical translation and summarises and discusses the difference

between and appropriateness of what he finds to be the two approaches generally used in German and Danish translation schools: the deductive and the inductive approaches. The difference and aims of the two approaches are outlined by Kastberg as follows:

> The deductive approach means that the translation student will be taught or at least exposed to the basics of technical science. […] From this knowledge base the trainee translators are obviously supposed to derive the knowledge needed to understand and subsequently translate any given technical text. (2002:59)
>
> [In the inductive approach] […] the translation student is taught or exposed to a (usually) small number of technical disciplines. Based on this knowledge of individual disciplines, the student is then obviously supposed to understand and subsequently translate any given text. (2002:60)

Kastberg concludes that both approaches are fundamentally problematic, partly because they do not necessarily prepare students for handling texts they will be faced with having to translate 'in real life' as professional translators. The reason is, of course, that the subject matter of such real-life texts will not always (and maybe even seldom) correspond to the technical science topics taught as part of the technical translation training curriculum.

Instead, and in line with Driver & Oldham (1986), Kastberg proposes an alternative approach focusing on teaching methods that in his view will enable the trainee translator to cope with the content of – in principle – any technical text

> "[…] I propose a common denominator other than that of disciplines; namely the basic building blocks of disciplines with their representation in texts: information (2002:62).

The focus, then, is shifted away from technical subjects and onto texts as carriers of information about technical subjects. The underlying principle of this proposed alternative approach is a conception of a curriculum as something that is not a body of knowledge but rather a programme of activities from which such knowledge can be acquired. The programme of activities proposed is basically centered on two partially overlapping dimensions (the first one of which we are going to focus on here):

> The first dimension sees information management as a dynamic tool for informational problem solving. Here, the students are not taught or exposed to, say, the discipline of 'machinery'; <u>instead they are trained intensively and systematically in how to recognize what specific information needs they have with regard to a given translation assignment and how to fulfil that need</u>. (2002:62) (our emphasis)

Four phases are involved in the model proposed by Kastberg. In the first phase, the trainees are trained to recognize any information needs in relation to a specific translation assignment, i.e. what knowledge gaps do they feel they have in relation to the text at hand. In the second phase, the trainees are supposed to seek out any information needed to fill any knowledge gap from whatever source they can get access to. In the third phase the trainees are supposed to analyse the information gathered with regard to authenticity and authority. And finally in the fourth phase, the trainees are supposed in the translation process to make use of information gathered seen in relation e.g. to the skopos, target culture, genre, addressee, etc. of the translation (2002:63).

As teachers of another type of LSP translation, legal translation, we know from experience that the question of subject matter knowledge in curriculum planning is a tricky one to handle. It goes without saying that, ideally, the overall goal of legal translation training, and hence of the curriculum planning, is to enable trainees to develop cognitive strategies that will allow them to reconstruct the context of any legal text they are faced with having to translate. Pursuing that goal by exposing translation trainees to the entire curriculum of – in our case –the law degrees of two different legal systems is simply not an option. Time and money are obvious reasons. And we agree with Kastberg that the method of teaching – in our case - 'basic law' or a selected small number of law subjects has its limitations, as this approach will not necessarily enable trainees when they become professional translators to translate any legal text irrespective of subject. We therefore sympathize to some extent with Kastberg's remarks as to the feasibility of what he calls the inductive and the deductive approaches and with the goal of working towards a teaching methodology focusing on knowledge as something which is constructed along the way by learners rather than simply being transmitted to them by their teachers.

However, it is difficult to judge from Kastberg's description of the model the extent to which such a model would facilitate trainees' development of cognitive abilities that will allow them to recognize information needs they may have in relation to a legal text and translation task at hand.

To try to transpose the ideas of informational problem solving as a teaching methodology to our field, let us say that trainees are asked to work with the translation of case documents from English into Danish in which appear terms such as a *Part 20 Claimant* and *Part 20 Particulars of Claim* that are culturally specific to the English legal system. Trainees will most likely have no difficulty in recognizing that they have an information need in respect of such specialised terms, and should be able to work through the phases of locating, evaluating and using information to fill their knowledge gap as proposed by Kastberg. The idea is that on the strength of these activities trainees will go through a four-stage learning process adding to their ability to cope with other subject matter areas, the focus being on their competence in analogical transfer rather than on the teaching of subject matter knowledge. However, information needs cannot be restricted to the identification

and solving of terminological issues. There are other problem areas that must be identified by the trainee, too.

So, what happens if the first phase – the recognition of the information need – is not initiated?

2. Looking at trainee translations

When analysing trainee translations[1] of legal texts at the Faculty of Languages, Communication and Cultural Studies of the Copenhagen Business School (CBS) we find that, in fact, trainees often do not recognize their own information needs in the understanding and translation process. A natural conclusion is that if the trainees do not recognize a particular problem it may be related to their own particular understanding of the events described in the texts. This is not surprising considering that they are not members of the specialist speech community within which the text operates and therefore do not conceptualize the world on the basis of the same frames and scripts[2] as those who do belong to that speech community.

In other words trainees are in fact often convinced at the outset that they have achieved relevance in the process of understanding utterances in legal texts they are translating when in fact they have not. They will search for utterance meaning and stop too early in the process when they find a solution that is satisfactory, at least to them, and choose linguistic material in the target language that reflects their understanding. That is what we assume happened in the translation of (1) which, we believe, is an illustration of precisely such a situation where the trainees' contextual assumptions about the situation involved do not allow them to arrive at the meaning intended.

In the process of translating (1), which was part of an English sales contract between two businesses, about one-fifth, i.e. 11 our of a group of 47 BA students sitting for the written exams in a particular year, surprisingly produced Danish versions in which 'right' had become 'duty', as illustrated by (1a):

(1) Nothing in this clause shall confer any right on the Buyer to return the goods.

(1a) Intet i denne bestemmelse pålægger køber pligt til at tilbagelevere varerne.
[Nothing in this clause shall impose a duty on the Buyer to return the goods]

On the face of it, there is no reason why a particular right should become a particular duty in the translation. There is no doubt that if the trainees were asked out of context, they would never confuse the meaning of 'duty' with that of 'right'.

The provision in (1) was part of a number of provisions with the purpose of safeguarding the interests of the stronger of the two parties to the contract, i.e. the seller. We take it, however, that the trainees' general assumption schemes would be about the interests of consumers rather than about the interests of sellers. The reason is that they play the role of consumers themselves in their everyday lives. Such assumption schemes would interfere with their understanding of the intended meaning and prompt them to make inappropriate inferences about the ST and the situation behind the contract. In their translations it is therefore the interests of the buyer rather than those of the seller that are catered for[3]. There are certainly no grammatical or terminological difficulties, nor are there any linguistic ambiguities involved in (1).

This possibility of a mismatch between the relevance achieved by trainees as intermediaries between STs and TTs and the relevance intended by the ST sender may of course have many explanations. In (1), one explanation may be that trainees will readily disregard an intended and therefore relevant interpretation when it conflicts with their knowledge of the world and hence with their own perception of relevance.

What trainees think they know, then, may be one factor blocking their recognition of their own information needs. Another reason for possible mismatches between trainee and ST sender relevance is that sentences in texts are often ambiguous in that the same linguistic units can be related to a set of different situations. The phenomenon is explained by Widdowson (1998:19) as follows:

> There are innumerable instances of textual imprecision and ambiguity in actual language use which simply pass unnoticed because we of course quite naturally complement what we read with what we know. It is true of all texts that we piece out their imperfections with our thoughts.

In the following example, again from an English sales contract, the ambiguity is linked to the syntactic role played by the prepositional phrase 'with the software' which would allow the trainees to relate the sentence to different situations.

Consider (2)

(2) In purchasing the Goods, the Purchaser is granted a non-exclusive non-transferable licence to use the software only on the equipment supplied by the Company with the software.

where the prepositional phrase could, seen in isolation, be understood as specifying either 'the equipment supplied' or 'the Company'. Syntactically, both versions are acceptable. (2) was in fact translated by some trainees (BA students) as (2a):

(2a) Ved køb af varerne bevilges køber en ikke-eksklusiv, ikke-overdragelig tilladelse til at bruge softwaren kun på udstyr leveret af virksomheden som har softwaren
[... supplied by the Company which has the software]

The trainees have chosen to translate the linguistic unit as they would e.g. 'the man with the boots'. It is not possible to say whether the trainees have identified the ambiguity of the grammatical construction or not, but they do not seem to have recognized that their chosen way of interpreting the construction (with the prepositional phrase specifying the Company) would be an unlikely and much too imprecise way of achieving specification of a contract party in the text type involved. Besides, as one of the two contractual parties, the Company would already have been identified at the beginning of the contract text.

The interplay between the different types of knowledge resources required in understanding utterances is sometimes fuzzy. And it seems that because of this multidimensionality of knowledge resources and the fuzziness involved in their interplay trainee translators are not necessarily able to recognize that they are in fact faced with a problem, what kind of problem it is, and what additional information they therefore need to elicit to understand and translate a given text.

One of the tools that a reader may have when trying to understand a given text is knowledge of what the communicator may normally be assumed to be communicating about as well as how the communicator normally does that. Kramer (2003:179f) discusses the mutual context that parties to, say, a contract have. This mutual context consists of both their personal common ground and their communal common ground which they draw on for the interpretation of a contract entered into by them. The personal common ground is inferred from the communicators' (the contract parties') shared experience. In most cases this would not be accessible to a translator working with the translation of the contract. Rather, the question is how to assist our trainee translators in gaining access to what is referred to by Kramer as the communicators' communal common ground. The so-called communal common ground must be inferred on the basis of the communicators' membership of the same group (e.g. buyers and sellers in a particular industry), the usual way of doing things in that industry and the lawyers' knowledge and techniques (since normally lawyers will have drafted the contract for them). The part of the communicators' communal common ground which is independent of situation and industry is the lawyers' knowledge and techniques and will therefore for our purposes be the most natural point of focus.

In a simple communication situation it is common sense that speakers will need to express themselves in a way that will enable hearers to assign reference to entities and actions described. However, in legal texts, which have to function independently of the situation in which the texts are drafted, this requirement is particularly acute because in these texts the receiver will expect salient factors (such as agents and events) to be linguistically encoded with a high degree of

explicitness to facilitate the reference assignment process. Explicitness or precision is an often mentioned characteristic feature of legal texts, cf. e.g. Garner (1994):

> Traditionally, lawyers have aimed for a type of ”precision” that results in a cumbersome style of writing, with many long sentences collapsing under the weight of qualifications. (Garner 1994:1)

If a trainee has no or limited access to the communal common ground, i.e. knowledge of the subject matter and of lawyers' techniques, it will hamper his or her chances of first of all detecting possible ambiguities and secondly, choosing the interpretation intended. (3) is an example which was to be translated by MA students from Danish into English, and again, as in (2), the ambiguity problem is connected with the identification of the role played by a prepositional phrase:

(3) Vedrørende spørgsmålet om rette værneting antog sagsøgeren først, at der i dette tilfælde var aftalt voldgift i London (og derfor indledte sagsøgeren en sådan voldgift [judgment][4]

In (3), the meaning of the prepositional phrase is ambiguous in the source language, and this ambiguity is represented in trainee translations (3a) and (3b) below, where (3a) is less likely even though it is not in any way ungrammatical or otherwise inappropriate in the co-text:

(3a) With respect to the issue of proper venue, the claimant first assumed that in this case arbitration had been agreed in London, (and consequently, the claimant commenced such arbitration proceedings).

(3b) With respect to the issue of proper venue, the claimant first assumed that in this case arbitration in London had been agreed (and consequently, the claimant commenced such arbitration proceedings).

(3) conveys information about a particular legal action, namely arbitration. And as it appears from translations (3a) and (3b) this legal action can be related to two different types of situations. In (3a) reference is made to one type of situation, namely a situation involving arbitration which had been agreed in London. In (3b), on the other hand, reference is made to a type of situation involving arbitration which was to be conducted in London. The problem then relates to the identification of the role played by the prepositional phrase 'in London', i.e. whether it plays the role of specifying the place where the two parties initially negotiated and agreed the issue of arbitration proceedings (rather than court proceedings), or whether it plays the role of specifying the place where the arbitration proceedings, if any, were to be held. Seen in isolation, both (3a) and (3b) are entirely possible readings and we again suspect that the ambiguity was not even recognized and identified as a problem by the trainees translating (3). Thus, the trainees may well have processed (3) up to a point where relevance was achieved and then translated what they understood to be the meaning of (3). They

simply went ahead and chose a solution that seemed compatible with their knowledge of the world.

A member of the intended target group, on the other hand, would have opted for the (3b) version based on the communal common ground that consists in knowing what arbitration proceedings are about and what sort of linguistic specifications are needed to achieve the purpose of arbitration. What trainees may not be able to deduce by themselves, but need to be made aware of, is that, in a legal context, (3b) will be the preferred reading by legal users of the text, the pragmatic reason being that the primary information need of such users relates to the place where arbitration was to be conducted[5]. With the (3a) version, the action (arbitration) described cannot be unambiguously identified, i.e. the (3a) interpretation does not enable the TT reader to assign reference to the arbitration proceedings referred to (and identify them as the London-based ones).

Legal documents such as judgments and contracts are meant to be used by judges and lawyers as instruments of action in legal situations. For the communication to be successful the ability of the users to achieve precise reference assignment will therefore be decisive, and knowledge of this need combined with legal knowledge of the subject matter (arbitration) will be part of the communal ground taken for granted by the legal discourse community for the interpretive processing of legal texts. So before they can detect any problems of interpretation and their own information needs in order to be able to determine the relevance intended by the producer of the ST, our trainees need to have made this part of their own contextual assumptions.

3. Legal knowledge and inferencing

So far, we have tried to demonstrate that much depends on the successful implementation of the first phase of the activities-based curriculum discussed by Kastberg (2002), which is the identification by the translator trainee of his or her informational needs in relation to a given translation activity, and that without access to a certain amount of communal contextual assumptions, such identification may not be made.

In the following we want to look a bit more closely at the kind of knowledge that is involved and the way in which it becomes part of the communal common ground of the members of the legal speech community.

The effect of legal knowledge, i.e. knowledge of legal rules, on the way in which a legal text is understood is examined by Kjær (2000), and for this purpose she divides legal texts into three different types (2000:139-40):

- descriptive texts which describe or comment on legal rules (textbooks, law reports, etc.)
- constitutive texts which lay down legal rules (statutes, executive orders, contracts[6] etc.)

- reproductive texts which apply legal rules (judgments, statements of case, etc.)

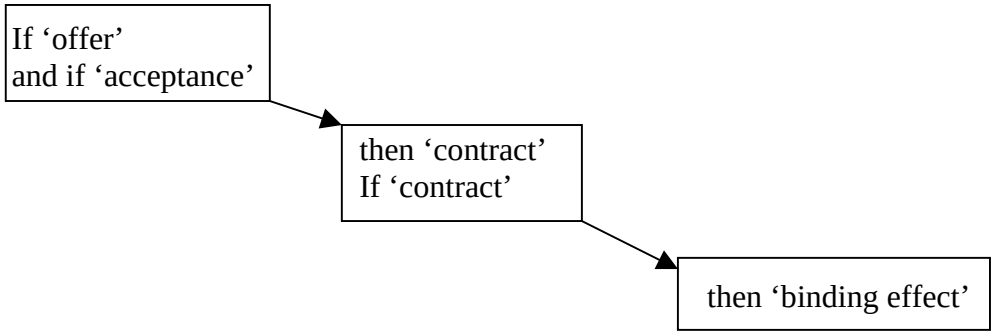
Kjær assumes that

> Rule knowledge is of particular importance to the reader of reproductive texts, because legal rules are here only applied (neither stated nor explained). Descriptive texts describe legal rules. Therefore it can be expected that the rules are explicitly stated. Constitutive texts lay down legal rules, which on the face of it also seems to imply that they state the rules in extenso. [.…] (2000:140)

Kjær discusses an example taken from a judgment, i.e. a reproductive text applying rules:

> *The Plaintiffs have in support of their claim stated that the defendant was bound by his offer when LR accepted it*

which can be schematized as follows (2000:145):



and demonstrates the role played by rule knowledge and the understanding of the interrelations of legal concepts. The point is that the 'if-then-if-then' relations are achieved by means of the so-called connecting concept of 'contract' which is implicit in the text, and thus inferred by the expert reader. Her claim is that only in descriptive, and to some extent constitutive, texts are such rules and relations explicitly stated, whereas in the case of reproductive texts the legal expert 'co-thinks' the statutes underlying the argument of the judgment, cf. p. 149:

> My assumption is that he intuitively interprets the words of the text as lexical representations of rule fragments. Or more precisely, he understands the words as signals to him to infer relevant rule knowledge

Since the legal translator is not reading the legal texts for the same purposes as the legal expert, it therefore could be argued that the same kind of full understanding is not necessary for the translator. However, the reliance of these texts on a rule

system which may be only implicitly stated nevertheless means that he or she still needs to perform a good deal of inferencing in order to first identify potential personal knowledge gaps of his or her own and then to arrive at the intended meaning of the source text. Thus, the trainee translator not only has to cope with the "normal" indeterminate nature of utterances, but also in the case of reproductive and to some extent constitutive texts, with the implicit reference to a rule system that may not be available to him or her.

So, while legal texts are on the one hand subject to the particular requirement of explicitness to enable precise reference assignment, they are still like other texts characterised by elements of underdeterminacy. For their interpretation receivers consequently have to resort to pragmatic inferencing.

One possible implication of the need to rely on knowledge of rules which are not explicit in the text is that the first phase of the activities, i.e. recognizing their own information needs, becomes even more difficult to implement for trainee translators without a basic knowledge of the rule system.

Consequently, as we see it, for trainees to be able to identify the problems that they may have in understanding and translating legal texts they should be able to make inferences based on

1. the legal situation described in the text, in particular the usual course of events in that type of situation (subject matter knowledge)
2. the way in which legal experts normally express themselves in order to describe such situations and the reasons behind their linguistic choices, e.g. the explicitation of salient actors and events to enable reference assignment (genre knowledge based on subject matter knowledge)
3. the way lawyers usually infer by co-thinking rules which may be only implicitly referred to (e.g. use of connecting concepts as proposed by Kjær (2000).

And so we are back to the question of how to implement the intensive and systematic training of trainees in recognizing their informational needs.

4. Concluding remarks

As we see it the main purpose of legal translation teaching is to raise the trainees' process awareness level thereby improving the self-monitoring and inferencing skills of the individual trainee rather than to aim for the fairly impossible, i.e. the legal knowledge level of the legal professional. And we agree with Kastberg that once trainees are able to embark on phase one (recognition of information need), the autonomous handling of terminology and terminological knowledge based on a programme of activities rather than on direct teaching of subject matter knowledge will no doubt allow trainees to develop long-term cognitive strategies of their own more easily. With respect to terminology in particular trainees are very early on in

the process automatically confronted with having to sort out terminological problems relating to culture specificity. In this case, they are aware that they will have to make a choice one way or the other. So in case of terminology, problems emerging in the translation process are evident to trainees, and they should be able to work with the activities outlined by Kastberg.

But as we see it, the model proposed hinges on the need for trainees to be able to recognize their information gaps and on the way they are "trained intensively and systematically" in doing just that. And although our examples are based on relatively limited data, we think that they point to other types of problems that trainees meet, but are unable to recognize as such. They seem to lack sufficient knowledge of the legal system underlying or supporting, so to speak, the text to be translated.

It goes without saying that we sympathize with Kastberg's attempts to work towards a teaching methodology focusing on knowledge as something which is constructed along the way by learners rather than simply transmitted to them by their teachers. But because of the necessity in legal language of accessing the communicators' communal ground in Kramer's terminology and rule knowledge in Kjær's terminology in order to make the proper pragmatic inferences, we fail to see how lift-off can be ensured for the trainees in phase one without some sort of scaffolding to support them in their own learning process, i.e. a legal knowledge structure. And as illustrated by our three examples, we must by necessity introduce trainees to a basic cross-section of legal topics and in the process focus on types of legal situations with legal actors performing legal actions at certain times, in certain manners etc and on how these actors and actions are described by legal communicators. The trainees need to have some sort of general overview to work from, otherwise they may not succeed in their efforts when trying to understand and ultimately translate legal texts. They cannot rely solely on the text to be translated, cf. e.g. Widdowson (1998:19):

> What interpretation involves is the relating of the language in the text to the schematic constructs of knowledge, belief and so on outside the text. [….]
>
> Co-textual connections are semantic in character, and are only relevant to the pragmatic process to the extent that they can be contextually realised.

So despite the appealing aspects of Kastberg's model, there is no avoiding a curriculum incorporating structured components that will to some degree enable the trainees to build up a legal knowledge scaffold of their own which can be fleshed out during their process of specialisation. Such components must include the study of descriptive texts where the who-where-when-etc. relations of legal situations are spelt out instead of being implicitly relied on.

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[1] Our data consist of translations produced by 3rd year BA students or 1st year MA students of English (LSP).

[2] See e.g. Scarpa (2002:142): […]'frames', which deal with knowledge about the properties of objects […] and locations, and 'scripts', which deal with knowledge about events and sequences of events […].

[3] Cf. also Kussmaul's *misuse-of-top-down-knowledge-hypothesis* (1995:35)

[4] (3) is a reduced version of a sentence appearing in a Danish judgment involving foreign parties. The full sentence reads as follows: Sagsøgerens advokat har vedrørende spørgsmålet om rette værneting anført, at sagsøgeren først antog, at der i dette tilfælde var aftalt voldgift i London og derfor indledte sådan voldgift.

[5] Cf.: Oxford Dictionary of Law: **arbitration agreement:** … No particular form is necessary, but the agreement should name the place of arbitration and … (1997:29)

[6] Although Kjær allows that contracts may be seen as constituting rules, she prefers to categorize them as belonging to the reproductive text type based on the claim that the contract "is always formulated on the basis of rules constituted by statutes." (2000:140, note 11). This does not seem to fit the Anglo-Saxon contract law picture, however. For our purposes we have therefore chosen to regard contracts as constitutive texts.

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ABSTRACT

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Or: Should the teaching of subject matter content be a thing of the past?

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This article proposes to discuss a question which was prompted by an article 'Information and Documentation Management in the Training of Technical Translators – As opposed to Teaching Technical Science' (Vol 2, No. 2 of this journal, 2002), by Peter Kastberg: Should the teaching of subject matter content to students of language and LSP translation be a thing of the past?

Granted that specialised knowledge is necessary for the LSP translator to enable him or her to interpret and transfer a ST, this article seeks to discuss the routes towards the acquisition of this specialised knowledge and the alternative process model for information and documentation management proposed by Kastberg which is to form the basis of, in his case, the organisation of a technical translation training curriculum. As teachers involved in another type of LSP translation training, namely legal translation training, we want to consider the pros and cons of transferring this model to our field.

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