



DEVELOPING GENERIC COMPETENCE IN LEGAL TRANSLATION TRAINEES

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Abstract

This paper addresses the notion of legal genres and text types from a classroom perspective. It presents several classifications of legal texts developed for legal translation (training) purposes and a critical reflexion thereof. Drawing on the classifications, the paper discusses what the rationale behind text selection in legal translation training should be, and why certain texts are more suitable than others in this respect, depending on the length and level of training. This is followed by a series of exercises designed to raise register and genre awareness in legal translation trainees. The exercises focus on the (a)symmetry of legal genres across languages and legal systems as well as the macrostructure of certain genres.

Keywords: *legal translation training, generic competence, macrostructure, legal text types, legal genres*

INTRODUCTION

This paper addresses the notion of legal genre or text type from the training perspective. The first part presents several classifications of legal texts developed for legal translation (training) purposes and aims to apply them to the legal translation classroom, for which they are important on two grounds. First, they must govern the text selection process. Second, the knowledge of legal genres or legal register is an important part of the legal translation competence. In fact, Goźdź-Roszkowski refers specifically to generic competence, which he defines

(53), following Bhatia (*Worlds of Written Discourse*), as “the ability to exploit successfully a range of genres to achieve the goals of a specific professional community”. In other words, possessing generic competence means an awareness of the variety of genres used in a given professional practice environment as well as knowledge as to how to use such genres. The importance is also stressed by Trosborg, who believes (*Rhetorical Strategies* 17) that “lack of relevant knowledge of genre, communicative functions, text types and culture may result in distorted translations”. Borja Albi (“A Genre Analysis Approach” 34) notes that competence in genres and genre systems enables trainees to socialise as “communicative agents” in the respective domain and to avoid being perceived as outsiders in the respective discourse community, which is also one of the reasons for developing generic competence in a legal translation classroom posited by Goźdź-Roszkowski.

In light of the above, it is only logical that genre and register¹ awareness has an important role to play in legal translation training, and may be a tool to develop communicative and textual competence (cf. Montalt Ressurrecció et al.). More specifically, Borja Albi (“Organización del conocimiento” 53) lists the following subcomponent of the textual competence in relation to genres: knowledge of text typology in the source and target languages, knowledge of comparative text typology, statutory requirements applicable to the respective genre, function and effect of the respective genres in the respective jurisdictions, macrostructure of the genre, stylistic aspects as well as phraseology and terminology typical of such genre. Last but not least, the identification of the respective genre is often included in the pre-translation analysis (cf. Prieto Ramos, “Interdisciplinarietà y ubicación”).

It is also interesting to note that sometimes the genre-based approach is criticized. For instance, Mayoral Asensio argues that the translation method and strategies for different genres will overlap, and that in terms of translation strategies, there are more similarities between form-based documents irrespective of the legal branch. I believe that this is a valid point, which has been incorporated into the exercises below, where a number of Company Register documents are dealt with (see exercise 2).

¹ For a detailed discussion of the difference between legal genre, discourse and register, see, for instance, Kurzon: Trosborg, “Text Typology”.

CLASSIFICATION OF LEGAL GENRES/TEXTS FOR TEACHING PURPOSES

Legal language is by no means a homogeneous category and should not be described as such nor should it be approached as such in a legal translation classroom. Therefore, a number of authors have come up with classifications of legal genres or text types specifically for the purposes of legal translation research and training. In general terms, the classifications may be seen as either based on discourse situations, which emphasizes the importance of the legal function, or based on the legal discourse, which includes non-legal texts that deal with legal subjects (e.g. a textbook) but excludes non-legal texts that contain no legal discourse (cf. Prieto Ramos, “Implications of Text Categorisation” 43).

In line with the above, genres will be seen as texts “used in a particular situation for a particular purpose composed and structured according to the norms accepted by a particular discourse community and thus displaying differences in external format” (Balogh 20–21), whereas “text types are differentiated according to their specific rhetorical (and communicative) function (e.g. narrative, descriptive, prescriptive, argumentative, comparative, etc.)”. This subsection will introduce some of the translation-oriented classifications and will discuss their relevance for translation training.

An important, translation-oriented, functional classification is that by Šarčević (11), who makes a distinction between descriptive, prescriptive and hybrid text types². Examples are shown in Table 1, adopted from Balogh.

PRIMARILY PRESCRIPTIVE	PRIMARILY DESCRIPTIVE BUT ALSO PRESCRIPTIVE	PRIMARILY DESCRIPTIVE
REGULATORY INSTRUMENTS (NORMATIVE TEXTS):	JUDICIAL DECISIONS AND INSTRUMENTS USED TO CARRY ON JUDICIAL AND	NOT USED IN THE MECHANISM OF LAW, BUT HAVING AN INDIRECT

² Hybridity means here a combination of prescriptive and descriptive features. In reference to legal texts, it also often used to mean legal texts that include non-legal specialized language (cf. Prieto Ramos, “Implications of Text Categorisation” 34). For example, a clinical trial agreement may include a great amount of medical terminology, or a judgment may include technical reasoning on the subject-matter.

legal acts statutes regulations codes contracts treaties conventions etc.	ADMINISTRATIVE PROCEEDINGS: actions pleadings briefs appeals petitions etc. (minutes, powers of attorney, certificates of clean record, etc.)	IMPACT ON THE LAW (WRITTEN BY LEGAL SCHOLARS): legal opinions law textbooks academic papers articles etc.
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Table 1. Differentiation between prescriptive and descriptive legal texts (Balogh)

Another classification is presented by Tiersma, who introduces three major categories, namely operative legal documents (those creating or modifying legal relations, such as statutes, contracts), expository legal documents (judicial opinions which analyse objectively legal points) and persuasive legal documents (e.g. briefs or memoranda). He claims that operative legal documents exhibit the highest concentration of legal register features (Tiersma 141).

While she maintains that legal texts may be classified in many different ways, e.g., according to the subject matter (legislation, private legal documents, case law) or status of the original (enforceable/non-enforceable), Cao believes that a translation-relevant classification should account for the difference in the purpose of the target text (8–11). Therefore, she introduces the following categories:

1. legal translation for normative purposes: this category includes the translation of legislation in bilingual and multilingual settings as well as private documents such as contracts that are authentic in both language versions;
2. legal translation for informative purposes: this category includes translation of statutes, court decisions, scholarly works and other types of legal documents in order to provide information to the target readers, which is most often found in monolingual jurisdictions;

3. legal translation for general legal and judicial purposes: translation of any texts, either legal (statements of claims, contracts) or non-legal (personal correspondence, expert reports) to be used in court.

According to Cao, the third category, especially as far as non-legal texts are concerned, is often omitted in the classifications (12). Some authors, such as Prieto Ramos (“Implications of Text Categorisation” 33), however, believe that it is difficult to accept that texts with no sign of legal discourse are considered legal texts, and see such an approach as an expansive one, based on discourse situation (i.e. legal setting) rather than discourse features.

When classifying legal texts for translation purposes, the differences in the genre classification resulting from the differences between various legal systems (cf. Orts Llopis), e.g. the common law system in English and the continental system in Czech, need to be borne in mind. An example showing a difference may be that of notarial documents, which are often not included in classifications by Anglo-American authors, but are present, for example, in classifications by Spanish authors (e.g. Prieto Ramos, “Interdisciplinarietà e ubicación”). Arguably, the most extensive classification of written legal genres for translation purposes is that by Borja Albi (*El texto jurídico*). She identifies six major genres of legal texts taking into account the discourse situation: normative (i.e. mainly legislative) texts, judicial texts, case law, reference books, legal science texts, and texts of the application of law.

More recently, Prieto Ramos discusses some aspects of text typology in his consolidating article (“Parameters for Problem-Solving” 262–65) and proposes a classification of legal texts based on their main function, text type and genre as summed up in Table 2. Aware of the relevance of the legal effects of a particular text type (e.g. a judgment may have a legislative function in common law systems, but not in civil law ones), Prieto Ramos (“Parameters for Problem-Solving” 265) argues that situating specific genres within general text types is useful when comparing discursive features.

1. Main functions	Govern public or private legal relations Apply legal instruments in specific scenarios Convey specialized knowledge on sources of law and legal relations
2. Text types	Legislative (including treaties)

	Judicial (including court and litigation documents) Other public legal instruments or texts of legal implementation (issued by institutional bodies, public servants, registries or notaries) Private legal instruments Legal scholarly writing
3. Genres	Textual realizations of specific legal functions following culture-bound discursive conventions (for example, different kinds of court orders or contracts)

Table 2. Classification of legal texts according to Prieto Ramos (“Parameters for Problem-Solving” 265)

For curricular purposes, it is also useful to mention a classification by Bhatia (“Legal Genres” 6–7), who introduces four categories of legal genres: primary (legislation), secondary (e.g. judgments and case reports), enabling academic genres (e.g. textbooks, critical essays) and target genres (e.g. contracts, affidavits, insurance documents). Scott links these genres to their most likely translation contexts: primary genres tend to be translated by in-house translators, enabling genres by the authors themselves or in close collaboration with the translators, and, most often, secondary and target genres get outsourced. (44) For the purposes of her study of outsourced legal translation, Scott then proposes the following categories (47):³

- Corporate (e.g. contracts, terms and conditions, calls for tender, articles of association)
- Financial-legal (e.g. auditors’ report, fund prospectuses, offering circulars)
- Notarial (e.g. deeds, wills, creation of servitudes, powers of attorney)
- Court-related documents (e.g. pleadings, judgments, orders, notices of appeal)
- Insurance documents
- Legislation (articles, parts of laws, whole laws, regulations, standards, treaties, whether national or international)

³ Even though the categories have been created ad hoc as Scott herself admits, they reflect results of a survey on documents that participants translate or have translated. (47) That makes them extremely relevant for any translation course where the authenticity of the texts used is important.

- Certificates (e.g. birth, death, marriage, diplomas, ID papers) for official purposes
- Patents

As far as text selection for teaching purposes is concerned, the following classification is proposed in this paper, which may be applied to text selection in a legal translation classroom:

1. national legislative texts
 - a. translated as authentic translations in bilingual countries, or
 - b. translated for informative purposes;
2. supranational legislative texts (authentic translations);
3. documents of application of law either
 - a. from the domain of private law (contracts, corporate documents, wills, powers of attorney) or;
 - b. from the domain of public law
 - i. documents related to court proceedings;
 - ii. certificates and diplomas

This classification helps to identify texts and prioritise their inclusion in a legal translation course. I believe that in an introductory legal translation class, which is a part of a general translation curriculum for all translation trainees without any specialization, most time should be devoted to the texts under 3a above. In translation market terms, this is supported by Scott (44), who argues that such genres, called *target genres* by Bhatia (“Legal Genres”), are most frequently outsourced. In addition, documents such as contract or corporate documents may be encountered even by translators who usually translate in a different field. Moreover, such documents are often translated without the need for certification (unlike those under 3b). Such an approach is also in line with the recommendation of Way that introductory courses should focus on limited, rather than a broad number of subfields (“Structuring Specialized Translation Courses” 137). As official translators in the Czech Republic, for instance, have to attend a specialized course on the fundamentals of law and legal terminology organized by law faculties and need to gain 5 years of experience before being registered, and taking into account that court documents or certificates are

hardly translated without the certification, there is not much point in including texts under 3b in a standard BA or MA translation curriculum, as trainees will not encounter such documents in their everyday practice. The same applies to the translation of international legislation under 2, which involves only EU-related translations. Such translations are very specific and should not be a primary focus of a general translation training course. As for the translation of legislation, only the option under 1b is relevant for most professional translators in non-bijural jurisdictions. Such translations are, however, done only for informative purposes, and are not binding⁴, and thus do not qualify for inclusion in an introductory legal translation course. Having said that, inclusion of short extracts of laws to be translated from the source language into English may prove useful as many contracts in the civil-law systems include direct references to laws, and excerpts from laws may also be quoted in corporate contexts as well, which is a reflection of hybridity/intertextuality (Orts Llopis 321). As argued by Ferran Larraz, intertextuality and the reflection of the governing law and its mandatory rules has both linguistic and translation implications (168). That is why Scott's classification as presented above also includes articles of laws or parts of laws as relevant texts.

Given the limited amount of time devoted to legal translation in a general translation programme, what I do not see as a viable option is the gradual approximation proposed by Pontrandolfo. His approach is based on sensitizing trainees to legal discourse gradually, in four steps: 1) legal fiction (e.g. courtroom thrillers), 2) legal journalism, 3) translation of international and EU law texts and finally 4) translation of national legal texts. As the texts under 1–3 require a very different approach than the texts under 4, I believe that the primary focus should be placed on the national legal texts, since they cause most translation difficulties, and are what trainees expect to learn in a legal translation course. It should be understood that not all texts may be, and in fact need to be, equally represented in the translation curriculum.

With so many text types, text selection is crucial for the design of a translation training curriculum. Balogh maintains that two factors should be

⁴ See also Klabal.

considered: (i) the changing needs of the translation market⁵, but also (ii) the proficiency of the trainees at the respective level (18). The latter is an important concern in undergraduate legal translation classes, as trainees very often lack vital experience (Way, “The Challenges and Opportunities” 1020), such as buying a property or testifying in court, and thus many texts are rather abstract for them. In addition, Biel argues that in order to achieve professional realism in text selection, texts should be authentic and prototypical (167). Another dimension is the level of legal complexity introduced by Monjean-Decaudin and Popineau-Lauvray (120), which is determined by two factors: (1) the scope of legal knowledge required to understand and translate the text and the legal concepts, and (2) the resulting legal consequences when the translation is done. Genres like law textbooks, last wills, court decisions or contracts may be discussed as examples having varying levels of legal complexity. Puig mentions an interesting dilemma in terms of text selection, which is, however, specific to courses devoting substantial time slots to legal translation and covering different branches of law (892). He points out that if the texts were presented by increasing difficulty (e.g. starting with a birth certificate, and ending with complex judgments or contracts), it would imply changing the legal field. Therefore, he prefers covering a specific branch (e.g. company law, involving a certificate of incorporation, by-laws, or M&A transaction documents etc.) and then changing to another branch, even if the documents were easier than the final documents in the previous branch.

Nowadays, English has come to occupy the position of *lingua franca* in the legal community, with some authors (e.g. Vogt and Drolshammer) referring to the Anglo-Internationalization of legal activities. This involves a number of issues, the major one being that English, if used as *lingua franca* “either carries the common law or appears as a translation of the national law” (Künnecke 756). Having said that, “cross-system contracts”, where the language of the contract is not the natural language of the selected law, are a reality of international legal practice. Therefore, a legal translation course should also include texts drafted by non-native speakers of English or issued in English by authorities of a non-English speaking country (e.g. a Dutch copy of an entry in the Commercial

⁵ For example, Gámez and Cuñado state that the texts of application of law account for 80–90% of all legal translation work.

Register), as well as texts embedded in the national law⁶ drafted in English⁷ are also frequently commissioned for translation as part of legal transactions.

EXERCISES TO RAISE REGISTER AND GENRE AWARENESS

The exercises presented below are just a few out of the many activities⁸ that may be used to raise the trainees' awareness of the features pertaining to the legal register as well as of the contrastive textology and the genres that they may encounter in legal translation. The exercises aim to build knowledge of source text generic formats, which is useful for interpretative purposes, as well as the knowledge of target text generic formats, which is useful for productive purposes (Rogers 32). Alcaraz and Hughes argue that "the translator who has taken the trouble to recognise the formal and stylistic conventions of a particular original has already done much to translate the text successfully." (103)

Exercise 1: Raising awareness of the typical features of the legal register

The first exercise aims at raising the trainees' awareness of various features of the legal register. The introduction to the features is also important in terms of the defects of the legal language so that trainees can avoid the most frequent errors which are subject to criticism when made by the authors of the original texts (Falzoi 106).

TASK: Trainees are asked to identify in pairs or groups as many features of the legal register as they can in the following extract:

*The mortgage **herein** constituted is **intended by the parties hereto** to be security for the payment of all amounts (whether principal, interest, fees indemnities or other amounts) that are now or **hereafter outstanding or payable** to the bank under the **Tranches B and C Loan Agreement**. It **shall** not be construed as limiting or in any way precluding **the***

⁶ References to national law, national language or national system mean the law, language or system in the trainees' pair other than English, for instance Czech.

⁷ Such translation assignments are extremely valuable from the training point of view, since they put to the test the trainees' ability to recognize national legal institutions "hidden" behind the English terms.

⁸ For other exercises, which will not be reproduced here, see Galán-Mañas or Soriano-Barabino (167–70), and Goźdz-Roszkowski for a case study involving the development of generic competence.

exercise by the Bank of any and all of its rights for the full payment of such amounts under Tranches B and C Loan Agreement.

This extract has proved to be very useful as it makes it possible to address a high number of phenomena such as capitalization, syntactic complexity, nominalization, all-inclusiveness, binomials, modal verbs, passives, or deictics (*herein*). All of these phenomena have been vastly discussed elsewhere (e.g. Tiersma; Bázlik and Böhmerová), and will not be addressed in this paper.

Exercise 2: Correspondences between genres

This exercise aims to show a recurring problem in the field of legal translation, especially as far as certificates are concerned, namely the lack of correspondence between the title of a certificate/document and its function. It has been stated above that genres are closely related to their acceptance by the discourse community, which makes finding non-obvious correspondences crucial for the translation to be successful. In fact, this is closely related to the concept of expectancy norms introduced by Chesterman, who argues that translations are evaluated based on the expectancy norms, which are shaped by the target reader's expectations about genres and discourse conventions (65). In other words, the translator should preserve the text's "generic integrity"; otherwise, the text may be rejected.⁹ In relation to various certificates, the problem is especially acute as they are often translated in order to be filed with competent administrative bodies, where the civil servants expect to receive a document they know from their practice as having a certain, very specific name.

TASK: Trainees are presented with *A certificate of incorporation*¹⁰, *Certificate of incumbency* as well as an English extract from the Company Register in the Netherlands issued by the Dutch Chamber of Commerce and an official

⁹ An example is given by Goźdz-Roszkowski (63), who describes a case when an affidavit translated from Polish to English was not accepted by the Probate Court, since the document the court received did not retain faithfully and accurately the textual form typical of English affidavits.

¹⁰ Most of the exercises are based on (quasi) authentic documents from the author's translation practice, which are anonymized for classroom use unless they are publicly accessible (e.g., Company Register documents).

translation of a Thai extract into English, and asked to answer the following questions:

1. What is the purposes of such documents?
2. Who issues such documents?
3. What details do they contain?
4. What is the corresponding document issued by the national competent institution, if any?

In the classroom, trainees are guided to arrive at a conclusion that irrespective of the title of the document, the content is essentially identical, and so is often the purpose. For instance, the document corresponds to *výpis z obchodního rejstříku* (copy of an entry in the Companies Register) under the Czech law. A follow-up discussion then addresses the strategies available for translating the titles of the English documents into the target language as well as the pros and cons of a foreignizing and domesticating approach.¹¹

Exercise 3: (Non-)correspondence between contract types

The following exercises aim to make the trainees aware of the fact that even though similar life situation may be regulated by contract in different jurisdictions, the actual contracts used may differ, or may be classified or conceptualised in a different way.

The following task adopts a bottom-up approach where the trainees are presented with a real-life scenario and are asked to arrive at a conclusion.

TASK: Trainees are presented with the following scenario and asked to research the situation:

Imagine you wish to give the books in your collection to the university library free of charge, as a donation. What legal document do you need to execute to do so under your national law and under the English law?

This exercise aims to add one more dimension to the contrastive analysis of genre, namely the asymmetry between various legal systems. Specifically, for instance, there is a lack of correspondence between donations under the Czech

¹¹ Trainees are reminded that the same problem occurs when translating e.g. certificates of criminal convictions, which again bear different names such as *disclosure* or *character certificate*.

law, where donations may be done by contract, and under the English law, where they must be done by deed, as they do not fulfil one of the requirements for a valid contract (consideration). The exercise should thus raise the trainees' awareness that unlike in the case of the certificates in exercise 2, where the asymmetry consisted in rather accidental features, the regulation of donation is asymmetrical in its essential terms. The implications for translation are discussed.

TASK: Trainees are asked to research the difference between two types of similar documents under their national law (for instance, *smlouva o zápůjčce* and *smlouva o úvěru* under the Czech law) and identify the corresponding contracts/agreements in English speaking countries.

As a case study, for example, the Czech law distinguishes two types of contracts that may be used to loan money to another: namely *zápůjčka* and *úvěr*, both of which are regulated by the 2012 Civil Code. The differences between the two contract types, as summed up by Marek, are as follows:

1. Only money is eligible for *úvěr*, while any fungible thing (e.g. grain or even securities) are eligible for *zápůjčka*.
2. Interest must always be charged on *úvěr*, while *zápůjčka* may be interest free.
3. In the case of *úvěr*, the contract is made upon execution, while in the case of *zápůjčka*, the contract is made upon the delivery of the loaned thing.

While the difference under 3 is rather theoretical in nature and is derived from a Roman law distinction between real and consensual contracts, the differences under 1 and 2 would be obvious from the wording of the actual contract. Chromá suggests *loan agreement* and *loan contract* as an equivalent for *úvěr*, and *loan for consumption* or *simple loan* as an equivalent for *zápůjčka* (216). The problem, as it appears, is that *loan* is used in both and the terms denoting *zápůjčka* are congruent conceptual equivalents, but are not attested in authentic documents, where *loan agreement* or *loan contract* is the preferred term. After the trainees have been introduced to the difference, the implications for translation from English to the target language as well as in the opposite direction are discussed.

The previous task has presented a situation where a more nuanced distinction is made in the trainees' national legal system, and the following exercise shows an opposite case, with a wider variety in English.

TASK: Try to come up with as many situations as possible when you enter into a service contract under your national law (e.g. *smlouva o dílo* under the Czech law). Then research what contracts/agreements are used in such situations in the UK, USA, etc.

In the case of Czech, *smlouva o dílo* is a very versatile contract type used under the Czech law in a myriad of situations when one party contracts another party to do construction work, translate a book, conduct commissioned research etc. While the literal equivalent *contract for work*¹² (done and materials supplied) exists in English (although it may also be used for employment-related contracts, as noted by Chromá (220), or as a general term), it is more frequent to use a name which is specific to the work or service in question. For example, *construction contracts* are used in construction, *work for hire* may be used for software design or translation. Trainees are encouraged to search for such contracts in their national setting, identify the situations regulated by such contracts and then look for the regulation of such situations in English speaking countries. In a classroom, each student may be assigned one area where the contract is used, do the research and then report back to the group.

Exercise 4: Non-existent genres

The asymmetry between genres may go as far as to the absence of a specific genre in the other legal system. To raise the trainees' awareness of this situation, the following exercises are used.

¹² “A contract the substance of which is that skill and labour must be exercised in carrying out the contract, in addition to supplying the materials used in the work. Examples are contracts by an artist to paint a portrait and by a builder to fit double glazing. Such a contract is distinct from a contract of sale of goods, in which the substance of the contract is a product to be sold” (Oxford University Press. “Contract for Work Done and Materials Supplied.” *Oxford Reference*. Accessed on 30 June 2023).

TASK: Trainees are asked to do some research about the role of *deeds* in the English speaking countries and then answer the following questions.

1. In what situations are *deeds* used and why?
2. What are the requirements for a document to qualify as a *deed*?
3. What specific *deeds* can you identify on the Internet?

Once researched, trainees are assigned a translation of a *deed of appointment*.

Deed is a genre notoriously related to the common law system. Lunn sums up the role of *deeds* as follows:

A deed is a formal legal document. In England and Wales, transfers of land, mortgages, powers of attorney, some business agreements and wills must be executed as deeds. In the US, deeds are only required for real property transactions. A deed must be in writing, signed, witnessed, delivered and stated to be a deed on its face. Unlike contracts, deeds can be executed unilaterally and do not require consideration.

First, a discussion is held about the rationale behind the use of *deeds*, and how this may be related to the role of notaries public in the UK, USA or the trainees' national system, which brings into the legal translation classroom an aspect of macrocomparison also discussed in Soriano-Barabino. Then, trainees are encouraged to find a variety of deeds such as *mortgage deeds*, *deeds of appointment*, *deeds of foundation* etc. and discuss the translation strategy for each of them separately. This also involves a reflection on the use of the term *deed* for translations from the trainees' national language into English where, if at all, the *deed* should be reserved for certain legal acts made in the presence of a notary.

Finally, trainees are presented with contexts (other than the titles of documents) where *deed* may appear and the translation strategies for such uses are discussed.

The methods of execution of documents (including deeds) by a company are set out in section 44 of the CA 2006.	
Executed as a Deed by [Company name]	
NOW THIS DEED WITNESSETH AS FOLLOWS	

Table 3. *Deed* used in various contexts requiring different translation strategies

Exercise 5: Classification of texts

This exercise aims at raising the trainees' awareness of the fact that the category of legal texts is not a homogeneous one, as discussed extensively above.

TASK: Trainees are presented with a number of genres in English-speaking legal systems and their national system and are asked to describe them and classify them in groups using a classification system presented in the classroom. Usually the classification by Šarčević or Borja Albi is used.

As part of the exercise, features that the genres within one category share are also discussed as well as any relevant properties of the genres (e.g. author, recipients, mode, tenor, function, purpose etc.).¹³

Exercise 6: Comparison of the macrostructure of parallel texts

This is a classic exercise, which is promoted by Borja Albi and Hurtado Albir or Galán-Mañas.

TASK: Trainees are shown an example of a comparison of *employment contracts* drafted in their national language and in English (see Table 4 below for an example involving Czech). Then, they are asked to look up *lease (tenancy) agreements* drafted in their national language and in English and compare in pairs their macrostructure, individual clauses as well as their degree of intertextuality. Alternatively students may be given a similar table with clauses in one language and be asked to complete the corresponding provisions in the other language.

Naturally, this exercise could be used with any legal genre but the reasons for using *lease* are twofold. First, trainees are expected to have some personal experience with leases, and thus it may be easier for them to understand the legal content¹⁴. Second, in some jurisdictions, flat leases are rather heavily regulated to protect the tenants, and thus include frequent

¹³ Cf. a similar exercise proposed by Borja Albi and Hurtado Albir (161).

¹⁴ In fact, some authors such as Borja Albi and Hurtado Albir even recommend using a trainee's actual lease contract (160).

references to the applicable legislation, usually the Civil Code. Therefore, this also serves as a good example of intertextuality as discussed above.

Provision in an employment contract drafted in English	US	UK	Written statement of particulars	Corresponding provision in employment contracts drafted in Czech
Commencement Date	YES	YES	YES	Den nástupu do práce
Position	YES	YES	YES	Druh práce
Term of Employment	YES	YES	YES	Doba, na kterou se uzavírá
Trial Period	YES	YES	YES	Zkušební doba
Responsibilities	YES	YES	NO	Povinnosti zaměstnance
Place of Work	YES	YES	YES	Místo výkonu práce
Hours of Work	YES	YES	YES	Pracovní doba
Remuneration	YES	YES	YES	Odměňování
Overtime	YES	YES	YES	Práce přesčas
Employee Benefits	YES	YES	NO	N/A
Noncompetition	YES	YES	NO	Konkurenční doložka
Nondisclosure	YES	YES	NO	Zachování mlčenlivosti
Illness or Incapacity	YES	YES	YES	N/A
Leave	YES	YES	YES	N/A
Governing law	YES	NO	NO	N/A
Termination of Employment	YES	YES	YES	Ukončení pracovního poměru
Notices	YES	YES	YES	Výpovědní lhůta
Modification of Contract	YES	YES	NO	Dotatky

Table 4. Comparison of clauses in employment contracts adopted from Jasenská

Trainees also must be made aware of the fact that certain clauses may be introduced in a different way in English and in their national language and may

require different translation solutions. Therefore, the following exercise focuses on the *whereas clause*.

TASK: Trainees are shown two examples of a *whereas clause* from an English lease agreement and a deposit agreement related to a lease, and are asked to come up with solution to translate the phrase *whereas* into their national language.

Example 1 (Property Standardisation Group, n.d.)

WHEREAS:

- (A) The Landlords are the landlords under the Lease;
- (B) The Tenants are the tenants under the Lease;
- (C) The Landlords have requested, and the Tenants have agreed to lodge with the Landlords, the Deposit which is to be held by the Landlords as security for the due performance by the Tenants of their obligations under the Lease.

Example 2 (Hall 2012)

WHEREAS, Landlord is the fee owner of certain real property being, lying, and situated in (CITY, STATE), such real property having a street address of _____ (hereinafter referred to as the “Premises”) together with the following fixture furnishings and appliances: _____

WHEREAS, Landlord desires to lease the Premises to Tenant upon the terms and conditions as contained herein; and

WHEREAS, Tenant desires to lease the Premises from landlord on the terms and conditions as contained herein;

The *whereas*-clause found in an opening part of English contracts introduces the recitals part of the contract, which is generally a non-binding part

of the contract that gives background information about the parties and the context of the agreement. (Wiggers 55) According to Trosborg, *whereas* is an archaic term, which tends to be replaced by “Background” or “Findings” in modern-day contracts (*Rhetorical Strategies* 67). The problem raised by Examples 1 and 2 in the preceding exercise lies in the position of *whereas* in the contracts and its incorporation into the text. While in Example 1 (a UK contract) it is used as a heading, Example 2 (a US contract) incorporates it as a conjunction introducing the individual recitals.¹⁵ When translating into Czech, for instance, each case calls for a different translation strategy. It is not conventional to use conjunctions as headings in Czech legal documents and thus a literal translation does not work for Example 1. That is why trainees need to be aware of the function of *whereas* and need to know that it introduces a recital clause, and thus they may translate it accordingly using a nominal term such as *preamble* or *východiska*. On the contrary, in Example 2 *whereas* is used as a conjunction introducing a clause, and thus may be translated into Czech with a conjunction having a similar meaning (e.g. *vzhledem k tomu že*). This exercise shows how the knowledge of the macrostructure of a legal document, a lease agreement in this case, may be crucial for opting for a specific translation strategy.

CONCLUSION

This paper provided an overview of several classifications of legal texts developed for legal translation (training). The classifications are of crucial importance since, as argued by Prieto Ramos, “it is a critical step in situating and conducting translation-oriented text mining and analysis.” (“Implications of Text Categorisation” 30) The criteria for text selection were discussed and “national legal texts” were suggested as the most useful text category for translation. This was followed by a series of exercises aimed at raising the trainees’ awareness of the features of the English legal register, and, most importantly, the (a)symmetry between legal genres in various jurisdictions. In general, the exercises aim at developing generic competence, which is, according to Goźdz-Roszkowski

¹⁵Wiggers notes that it is typical for European contracts to use letters (A), (B)... to introduce recitals, while American contracts prefer to introduce each clause with *whereas*, which is also attested by the examples used in the exercise.

“crucial to the success of interlingual translational activities done in professional legal contexts.” (51).

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BIONOTE

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