

C-E Translation of the Chinese Civil Code and Intellectual Property Law: A Systematic Functional Linguistic Approach

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Abstract: This thesis is based on the diverse C-E translation versions of the Chinese civil code and intellectual property law. Under the guidance of systematic functional linguistics, this thesis uses metafunction theory as the main perspective and takes the field, tenor and mode characteristics of intellectual property law into consideration to analyze the translation versions so as to find the most aptly worded translation version which reveals the legislation intention and original context. Also, efforts are made to seek the equivalence between the source language and the target language in terms of ideational metafunction, interpersonal metafunction and textual metafunction, thereby ensuring the accuracy of declaration of will and avoiding gross misunderstanding. Based on the comparative study of different translated versions, the thesis concludes that the translation of intellectual property legal articles should pay attention to the usage of legal professional words and model verbs and ensure the formalness, conciseness and readability.

Keywords: Systematic functional linguistics, Metafunction, The Chinese civil code, Intellectual property law, C-E translation research.

1. Introduction

On January 1st 2021, the Chinese civil code was formally implemented. As the first law named code, it complied with all the previous civil law and was therefore praised as the encyclopedia of social life. Before the implementation, the national people's congress promulgated the official English translation of the civil code. However, this translated version was not that perfect. For example, when translating “典型合同”, this version used “typical contract” in the context of English. In brief, this version didn't take the cultural differences into account, thereby possibly leading to the practice's misconception. To solve this problem, systemic functional linguistics is a good choice. This theory holds the view that languages have three functions: ideational function, textual function and interpersonal function. Instead of only translating the “meaning”, it emphasizes the idea from context and cultural background. Consequently, using systemic functional linguistics can translate more in accord with English-speaking countries' customs.

Among all the chapters of the civil code, the author chose the contract book as primary research object. Contracts play a significant role in international trade. To assure the accuracy of the international trade contract and facilitate scholarly communication between China and other countries, the contract law translation is incredibly indispensable. What's more, a better translation of the civil code can propaganda the fruits of comprehensively implementing governing the country by law to foreign countries. Therefore, the civil code should be translated accurately to help foreigners understand what the legal text means. Also, the civil code's advanced and right-protecting regulation can help them change their prejudice.

To achieve the research goal above, this study adopts logical analysis, comparative study and literature research method to investigate. Logical analysis occupies the chief place in the study. Firstly, the research uses three

metafunctions of systematic functional linguistics to analyze the civil code, which requires a good understanding of the whole logical framework. Secondly, the civil code has a vivid and outstanding logicity. Consequently, clarifying the logic between provisions in front and behind is of importance for an excellent translation. Comparative study is the research of comparing two or more things with a specific perspective to discover one or all of the things being compared. The translation report offers three different versions for comparison of the best translation version and the reason of it. There are four versions adopted to compare their advantages and disadvantages, including PKU law's version, Wolters Kluwer law database's version, the National People's Congress's previous and modified version. PKU law's version is translated by professors and students of PKU, which leads to its academic and professional characteristics. Wolters Kluwer law database's version is a highly commercialized database whose translation cater to the international trade practice. The National People's Congress's previous and modified version are the official translated versions of the civil code. As the national people congress make the draft of the civil code, translators can get the accurate legislation purpose easily from this version. However, due to short of hands and heavy tasks, some of these two versions' translation is not suitable for the spread in foreign countries and academic study. The first version is promulgated as the civil code released. In June 2021, this version was modified to make it more accurate and rounded. The literature research method is adopted as well. Since the limitation of time and resources, plenty of literature that is relevant to the translation of civil code is researched so as to acquire and summarize helpful information.

2. A Historical Survey of Systematic Functional Linguistics

Systemic functional linguistics is a branch of functional linguistics which thinks language is a social semiotic system

[1]. Proposed by Michael Halliday, it took the concept of system from J. R. Firth. Firth proposed that systems refer to possibilities subordinated to structure; Halliday "liberated" choice from structure and made it the central organizing dimension of systemic functional linguistics. In more technical terms, while many approaches to linguistic description place structure and the syntagmatic axis foremost, systemic functional linguistics adopts the paradigmatic axis as its point of departure.

For Halliday, a core theoretical principle is then that any interaction contains options. Language is above all a system; systemic functional linguistics maps the options accessible in any language variety using its representation means of a "system network"[2].

Functional signifies the proposition that language evolved under pressure of the functions that the language system must serve. Functions are taken to have left their mark on the structure and organization of language at all levels, which is achieved via metafunctions[3]. Metafunction is uniquely defined in systemic functional linguistics as the "organization of the functional framework around systems", i.e., choices. This is a momentous difference from other "functional" ways, such as functional grammar and lexical functional grammar[4].

All languages consist of three generated metafunctions at the same time: one construes experience of our outer and inner reality as well as logical relations between phenomena (ideational); another enacts social relations (interpersonal relations); and a third weaves together these two functions to create text (textual—the wording) [5].

3. Analysis of the Translated Civil Code and Intellectual Property Law from the Perspective of Systematic Functional Linguistics

3.1. Ideational Perspective

Because the comprehension and understanding are different, some words and expressions were translated differently, thereby leading to the slight meaning differences. For the legal text, the translation should be formal according to ideational metafunction to ensure the accuracy of expression of will. Below are some representative examples and their analysis.

First, when translating“标的”, the congress version used objects, the PKU version used subject matter. According to Black’s law dictionary, subject matter means “the thing in controversy, or the matter spoken or written about”. In Oxford dictionary, objects were explained as “a person or thing that somebody desires, studies, pays attention to”. The two translation versions both have its advantages and disadvantages. Subject matter is obviously a more professional and formal word when compared to object. However, the accurate meaning of subject matter can be translated to“主题事项”, which includes things, services, action and issue the contract aiming at. In brief, the meaning of this word is extensive and therefore not exactly the meaning in Chinese legal context. The word “object” is a word mostly for everyday use so it is easy for people not in legal major to understand. Also, its meaning can roughly equal to“标的”.

Second, when translating “意思表示”, the congress version adopted “an expression of intent”, the PKU version

adopted “a declaration of will”, the Wolters Kluwer version selected “the manifestation of intent”. According to Black’s law dictionary, intent means the resolve to carry out something, while will refers to the written legal document showing how a person wants his estate to be distributed among beneficiaries on his death. Obviously, the word “intent” is more correspond to the meaning in Chinese. The PKU version mistake interpreting words at their face value. When it come to the translation of “表示”, the three versions uses different words. Manifestation means the act of appearing as a sign that something exists or is happening, which focuses on the objective aspect and is not suitable for “表示”. Declaration means a written or spoken statement, especially about what people feel or believe, which is much too official and formal and is not consistent with the realistic situation. According to the analysis above, expression may be the best translation.

Third, when translation “订立合同”, the PKU version uses “enter into the contract”, the congress version uses “conclude the contract”. Conclude means to arrange and settle an agreement with somebody formally and finally. “Enter into” means beginning something or become involved in something. The two words both can be used to express the meaning, and each has its emphasis. Conclude stresses establishing connections, while “enter into” lays emphasis on engaging in trade. “Enter into” is more formal than conclude.

Fourth, below are three different translation versions of (1) 造成对方人身损害的

(congress’s version) (1) the liability arising from physical injury inflicted on the other party; or

(PKU version) (1) Those that cause personal damage to the other party.

(Wolters Kluwer version) (I)Those that cause personal injury to the other party; or

When translating “人身损害”, damage and injury are used. Damage means loss, injury, or deterioration, caused by the negligence, design, or accident of one person to another according to Black’s law dictionary. Injury includes harm done to a person’s body and feelings. Damage includes the property loss while Injury which may lead to ambiguity, so injury is better. When translating “造成”, inflict and cause are used. Inflict means to cause such as to inflict an injury or to impose a punishment. The range of cause is much wider than inflict. Also, inflict is much more formal than cause. What’s more, Voice conversion from active to passive makes the translation objective. As a result, inflict is better. Besides, from the tenor perspective, congress version is much better than others. This article relates to two parties, one is the sufferer, the other is injure. Though the word “arise from”, we can easily clarify the relationships between the involvers, thereby helping to define the injurer’s liability.

In summary, the translation versions don’t have substantial mistakes, however, to help foreigners learn these articles easily and avoid conflict caused by misunderstanding, more accurate and formal translation is needed.

3.2. Interpersonal Perspective

Because the foreigners don’t know much about Chinese law, to help them interact with Chinese company, the articles should be clear and concise and avoid being long-winded. However, because the systemic difference in culture and politics, translation sometime has to explain a lot. Below are some comparisons between different versions.

First, when translating “依法成立的合同，受法律保护”，(Congress version) A contract formed in accordance with law is protected by law.

(PKU version) A contract legally formed shall be protected by the law.

(Wolters Kluwer version) Any contract established in accordance with the law is protected by the law.

Legally and “in accordance with law” has the same meaning. Both of them express the meaning of “allowed by law”, and legally is much more conscious and make the article more readable. However, “in accordance with” have the function of emphasis, which indicates the formal and rigorous register of legal articles. What’s more, this article is an important principle so the emphasis is needed. Consequently, “in accordance with” is better.

Second, when translating “视为对合同的追认”，

(PKU version) the principal shall be treated as having ratified the contract.

(congress version) the contract is deemed ratified.

(Wolters Kluwer version) the contract shall be deemed to have been ratified

“be treated as”, “deemed” and “be deemed to” all can express the meaning “视为”， but “deemed” is more clear and concise. What’s more, deem compared to think is more formal and professional in legal area, so “deemed” is better. Another important difference is the use of modal verb. Two versions use “shall”, while the congress version use present tense. The usage of “shall” is ancient and formal. In the legal register style, “shall” indicates various regulations and requirements, demanding the other participant to undertake a certain responsibility or perform an obligation, which is instructive and mandatory, and usually is used to express the meaning of “must”. From the mode perspective, this legal article as a written text should express strong tone to demonstrate the legal validity and the interpersonal function. As a result, “shall” is indispensable when translating this article.

Third, when translating “一方在对方履行债务不符合约定时，有权拒绝其相应的履行请求”，

(PKU version) If the performance of the obligations of the party who is to perform first is not in conformity with the agreement, the party who is perform later has the right to reject the other party's request for corresponding performance.

(congress version) Either party may reject the other party’s request for the corresponding performance if the other party’s performance does not conform to the agreement.

(Wolters Kluwer version) A party has the right to reject the corresponding request of the other party for performance if such other party's performance does not comply with the provisions of contract.

Compared with other two versions, the PKU version place high emphasis on the order of performance, so it seems a bit wordy. However, the content of this article has hinted the sequence of performance, so additional literal emphasis is not necessary. When translating “有权”， the congress version uses the modal verb “may”, while the other two uses “have the right to do”. “May” in legal context lacks power and strength. To meet the interpersonal function, “have the right to do” is more concise and formal.

3.3. Textual Perspective

Textual metafunction focused on whether the article is fluent, logical and enjoyable to read. As a particular functional text, we should guarantee the formalness and

readability first. That’s the reason why this part is put the last of comparison. To help international legal education and culture communication, the relationship and identity of different articles is also of importance. Below are some examples of readability comparison in the view of textual metafunction.

First, when translating “承诺生效的地点为合同成立的地点”，

(congress version) The place where an acceptance becomes effective is the place where the contract is formed.

(PKU version) The place of effectiveness of an acceptance shall be the place of the formation of the contract.

When comparing these two versions, readability is an indispensable factor. From macro aspect, the two versions both used symmetry structures to adapt to source language. From micro aspect, the PKU version used four “of’s to express the decorated part, which didn’t conform to English habits. Also, the continuous used “of’s make the sentence less influent. Consequently, the congress version is more readable than the PKU version.

Second, when translating “当事人采用合同书形式订立合同的，最后签名、盖章或者按指印的地点为合同成立的地点，但是当事人另有约定的除外”，

(congress version) Where the parties conclude a contract in the form of a written agreement, unless otherwise agreed by them, the place where the written agreement is finally signed, stamped, or fingerprinted is the place where the contract is formed.

(PKU version) Where the parties enter into a contract in the form of a written contract, the place of formation of the contract shall be the last place where the signature, seal, or fingerprint is affixed, unless the parties agree otherwise.

(Wolters Kluwer version) Where the parties conclude a contract in written form, the place of establishment of the contract shall be the place where the parties last sign or affix their seals on it or place their fingerprints on it, except as otherwise agreed upon by the parties.

To compare these three versions, the place of parenthesis is important. Whether the additional parenthesis should be in the middle or in the last remains a problem. This article is very long sentence, putting the parenthesis in the middle is likely to interrupt reader’s train of thought. What’s more, the additional situation is very common in the civil code, so there is no need for translation to put it in the middle to emphasize it. Based on analysis above, the PKU version and Wolters Kluwer version is better.

Third, when translating “当事人一方不履行预约合同约定的订立合同义务的，对方可以请求其承担预约合同的违约责任”，

(congress version) Where one of the parties fails to perform the obligation to conclude a contract agreed in the preliminary contract, the other party may request such party to bear the liability for breach of the preliminary contract

(PKU version) If one party fails to perform the obligation to contract as agreed in the preliminary agreement, the other party may claim liability of the party for breach of the preliminary agreement.

(Wolters Kluwer version) Where one party fails to perform the obligations under the advance contract, the other party may request it to assume the liability for breach of the advance contract.

The main difference between these three sentences is the guiding word of the adverbial clause of condition. The

sentence guided by “if” place more emphasis on the time sequence of two actions, while the sentence guided by “where” stressed the cause and effect. From the content of the article, the logic of “where” is more fluent and understandable.

Fourth, when translating “遗弃、逃逸的动物在遗弃、逃逸期间造成他人损害的，由动物原饲养人或者管理人承担侵权责任”。

(PKU version) Where an abandoned or fleeing animal causes any harm to another person during the time period of its abandonment or fleeing, the original keeper or manager of the animal shall assume the tort liability.

(congress version) Where an abandoned or escaped animal causes damage to another person during the period of abandonment or escape, the original keeper or custodian of the animal shall bear tort liability.

(Wolters Kluwer version) Where any damage is caused to others by an animal that is abandoned or escapes during the period of abandonment and escape, the original keeper or manager thereof shall bear tortious liability.

According to theme-rheme theory[6], the theme is “animal”. The whole attribute modifying can be seen as two actions related to animal, which is “abandon” and “flee”. In fact, these two attributes can be divided into two sentences. In the “abandon” sentence, the animal is the bearer of the action “abandon”. While in the “flee” sentence, the animal is the issuer of the action “flee”. What makes this sentence more complicated is that “flee” has cause and effect relationship with the keeper because the keeper has the responsibility to control the animals he keeps. All in all, the word “flee” superficially is different from “abandon” because the voice is different as for animal, but in fact, “flee” and “abandon” both are the passive voice action as for the keeper. As a result, if we put the “animal” as the theme, the structure of the whole sentence become confused when translating into English. To solve this problem, we can add the word “keeper” as the theme of the attribute, which can help the reader to understand the meaning of this sentence more fluently.

4. Conclusion

Under the guidance of systematic functional linguistics, this thesis finds the most appropriate translation version of Chinese civil code and intellectual property law in terms of ideational metafunction, interpersonal metafunction and textual metafunction, which takes the cultural differences into account and translates more in accord with English-speaking countries’ customs, thereby helping propagate the fruits of comprehensively implementing governing the country by law to foreign countries. What’s more, this translation comparison thesis makes other three contributions and enlightenment to legal translation for translators:

The first is understanding the stylistic features of legal documents such as intellectual property contracts and related knowledge in the field of legal translation. To be engaged in translation requires not only a solid language foundation in Chinese and English, but also a broad range of knowledge, especially a general understanding of the professional background of the text to be translated. Since intellectual property is an important sort of rights, its language is required to be precise and formal, and no mistakes can be tolerated. Therefore, in order to ensure the accuracy of the translation and meet the requirements of translation quality, a large number of documents on the characteristics of terms and

sentences are firstly consulted. In addition, this practice helps to understand the relevant knowledge of legal documents, and lays a solid foundation for other similar translation practices in the future.

The second is to recognize the importance of cross-checking and comparing translations. Errors in intellectual property rights translation will have a huge impact, and the translation should be compared repeatedly to ensure complete accuracy. Therefore, in this translation study, the translated manuscripts have undergone several rounds of comparison, respectively, to unify the full-text professional terminology translation method to ensure the consistency of the whole text. What’s more, by means of comparing different translations, translators can easily acquire the universal translation methods of legal translation which can help us translate the legal contract in the future.

Third, by applying systemic functional linguistics to this translation practice, a deeper understanding of translation is developed. First, when translating a text, it should closely integrate its register so that the translated text can accurately reflect the conceptual, interpersonal, and textual functions of the language. In this translation practice, the language field of “the civil code” is taken into account, that is, legal texts, and selects appropriate translation methods for terms, abbreviations and other words, so that the translated text has the laws embodied in legal contracts. The solemnity, rigor and simplicity of style reproduce the conceptual function of language. Secondly, the tenor of “Contract” is considered, that is, the relationship between the two parties to the contract, accurately grasps the use of modal verbs in the translation, and reproduces the interpersonal function of the language. Furthermore, the style of the civil code is fully considered, and attention is paid to the subject-theme structure in sentences, the cohesion between sentences, and between paragraphs. It translates the text into a coherent and coherent discourse and reproduces the discourse function of the language.

Although a lot of law-related materials has been consulted, but relevant knowledge is still not sufficient. For some professional words, its meaning cannot be understandable thoroughly. In addition, some professional vocabulary translation methods cannot be found in dictionaries or on the Internet. In the future translation research, the translator may continue to explore more extensively, broaden his horizons, understand the knowledge of various industries, and strive to continuously improve inter-professional level.

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