

## Source Law and Legalese: Essential for Accurate Legal Translation

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### Abstract

This article explores the basic knowledge of source law and legalese for legal translation by analyzing the translation of the property law in the National Civil (Code) Act 2017. It examines the basic skills to understand the source Nepali law and language, with legal argot that makes it difficult for general readers. The hermeneutic interpretative method is used to interpret and analyze the source language (SL) text and its equivalent in the target language (TL). This research is based on the proposition that a legal translator needs basic knowledge of the source law, legalese, and lexis for faithful correspondence. It concludes that quality in translation demands basic knowledge of the source law and legalese. From this research, the readers internalize the importance of the source law and language, and analyze the ST linguistically and extralinguistically as pre-translation.

**Keywords:** translation, source text, target language, terminology, hermeneutic

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### Introduction

Even though legal translation is a technical translation, the language of law comes from the native law, legal system, and culture. The objective of legal translation is to communicate the source law to TL readers, translating it into their language and culture, either for implementation or information. A text of law, such as a business advertisement and a witness inquiry report, can be translated variously to meet the *skopos* (purpose) of the translation for the readers. In the process of translation, the basic skills to understand the source text in line with the legislator, the conceptual meaning of the SL terminology, and the knowledge of the source legal systems are required. The meaning of a text crosses the particular word, sentence, or paragraph, but extends to the whole text. Sometimes, it requires a dictionary to understand what the term actually means to say in the particular context and to explore the intended meaning. A translator needs to be aware of the seemingly superficiality of a text and search for the textual meaning, going beyond the disciplinary boundaries. As Biel (2018) noted that legal translation studies is an interdisciplinary subject that intersects Translation Studies, Comparative Law, Linguistics, and Terminology (p. 25). To be competent in legal translation, comprehending the source law, legalese, and lexis is a must, in addition to the knowledge of the target law and legal system. Translating the property law of Nepal, the aforesaid skills are necessary, so this research examines the institutional translation focusing on the ownership, possession, and house rent agreement to assess its quality.

### Statement of the Problem

While translating prescriptive law in multilingual jurisdictions, the translation has to create an equal legal effect for the readers. To transfer legal effect, the translator needs to understand the legal spirit of the source law that it wants to convey to the SL reader. The

understanding of legal terminology under comparative law, coherence, and cohesion is basic to comprehending the source law to transferring the source law's intent. Acknowledging the importance of source law for legal translation, Sarcevic (1997) remarked, "In modern translation theory, it is generally agreed that the translator must understand the source text in order to produce an adequate translation" (89). Understanding the source text or law is an initial step to achieve success in legal translation, as it gives knowledge of the source law, the language, and the legal terminology used. However, it is challenging for the general readers who are away from the legal field.

### **Research Questions**

- i) What basic skills are needed for legal translation?
- ii) Why does the knowledge of source law and legalese matter in legal translation?

### **Objectives**

- i) To explore the basic skills of legal translation.
- ii) To examine the spirit of the source law and transfer to the TL.

### **Review of Literature**

A translator may become confused about whether the source law, language, and legal system, or the target law, language, and legal system, takes priority in legal translation. What are the appropriate ways to transfer the SL legal message to the TL readers? To overcome this issue, it demands a sincere analysis of the source law, language, and legal systems before the translation begins. The SL and terminology of the source law are designed for the SL readers and come as a product of the source legal culture, whereas the translation is for the TL readers and is oriented to meet the TL readers' expectations in their language and culture, which creates a gap of knowledge. So, it requires having a skill of understanding the source law, legalese, and legal system to transfer the legal message faithfully to the TL readers. Acknowledging the analysis of the original text in translation, Lafeber (2018) presented the basic knowledge of a translator:

The knowledge of the source language (vocabulary, expressions, rhetorical devices); the different varieties of source language; the source language culture(s) (history, geography, economic and political situation, customs, value-laden concepts, sensitive issues, etc.); the subject (technical knowledge, e.g. of economics, international law, science, technology); the organization and how it works. (p. 67)

The meaningful linguistic signs of the original text need to be analyzed to communicate its history, culture, and social values to the TL readers. The analysis of the ST familiarizes the translator with the legislative intention of the source law, and encourages bringing the nearest correspondence. The meaning of the source law lies in the language register (formal and informal, urban/rural, standard/regional) and the tone (the overall meaning conveyed by a text) that are distinct from the TT. It makes the word-for-word or literal translation unsuitable for all legal texts that demand the communicative equivalence or functional translation. The analysis of the ST brings clarity in pragmatics, which is crucial in translation correspondence. The skill of exploring the implied meaning of the ST and the presupposed SL readers helps to explore the legislative intent and leads the translator to success. Pointing to the need for basic knowledge of translation, Snell-Hornby (2006) suggested developing a proficiency in the language(s) concerned, basic knowledge of the relevant theoretical approaches in Translation Studies, subject area expertise, and cultural competence (p. 134). She recommended that having the competence of the SL, including the source content and context, is equally important as the TL legal systems. In addition to the expertise in source law, legal jurisprudence, and legalese, the knowledge of translation principles and practices is an additional advantage for legal translation. The SL legal terminology is rooted in its legal history and culture, so its complete equivalent is uncertain; hence, the analysis of the source

law is needed. The misinterpretation of the source text and terminology degrades the translation quality and communicates to the readers.

This study helps to understand the selected property law of Nepal and bridges the knowledge gap between the SL and the TL readers.

### **Materials and Methods**

This qualitative research collects primary data from the property law of Nepal, collected in the National Civil (Code) Act, 2017, both from the source law and the English translation. It uses the hermeneutic interpretative method to analyze and interpret the meaning of the ST. The data are interpreted to find the legal spirit of the source law and its true equivalence in English from linguistic and extralinguistic perspectives, focusing on how linguistic signs are interpreted contextually, and the appropriate meaning is derived. As Davis (2009) explained:

Hermeneutics concerns the act of interpretation. It is closely related to, though not to be identified with, the science of semiotics, which is the study of meaning. Semiotics reflects upon how meaning comes about; it deals with signs and the ways in which they signify. . . . the question not only of how meaning is constituted but also, and more importantly, how we should seek to find the right meaning in any particular case. (p. 495)

The law needs interpretation and analysis that the jurist and lawyers frequently do to find out the legislative intent in a particular case. The interpretation and explanation of law and legal principles also influence the legal translation to find an equivalent between the ST and the TT. The secondary data is collected from the scholars' views on legal translation from relevant books, journals, and webpages.

### **Results and Discussion**

#### **Knowledge of the Source Law**

The most important work in legal translation is to read the source law closely and gather knowledge as far as possible. The basic knowledge of the reader widens through a close reading of the legal text. Reading legal text serves two purposes: collecting information, including the intent of the legislator or the judge in the case law, and analyzing and interpreting the text critically for intercultural communication. As Newmark (1988) suggested, the importance of reading is also relevant to translation, as understanding a text requires both general and close reading. General reading is for understanding the subject matter and concept, and close reading is for a challenging text to explore the words both out of and in concept (p. 11). The legal text requires both intensive and extensive reading to analyze the text of translation for interpretation and to infer the contextual meaning of the legal concepts used in different contexts and legal families. Law comes as an output of history, culture, politics, religion, and the like, purposively designed to regulate the social behaviors of people and confer rights and obligations. The background knowledge of the source law helps to understand the need for the law in society, and it helps to transfer the legal spirit to the TL. For instance, the property law of Nepal is formulated to protect and regulate the private, public, common, joint, trust, and government property. As the National Civil (Code), 2017 has defined property as "Any cash, goods or work shall be deemed to be a property if such cash, goods or action can be used or transacted in or the title thereto can be transferred by way of purchase, sale or otherwise or any benefit can be derived therefrom" (§ 251). The code explains the "goods" means a physical property capable of being purchased or sold including the intellectual property. Possessing personal property is a right to sustain life from the beginning of human society and is protected by law. Scholar Bowen (1925) defined property as a right, or set of rights, of exclusive use, enjoyment, and disposal (p. 42). However, the right to keep property and its limitation varies and are often regulated by native

law. The legal meaning of 'property' is inconsistent based on the 'rights' and 'liberty' given to the owner to keep, use, organize, and dispose of it by law.

The National Civil (Code) Act (2017) has classified property law into different classes based on the ownership of the property and guided by the national law. As per the native code, the property of Nepal is private, common, joint, community, public, government, and trust property (§ 255). Each type of property possesses the right to use and dispose of it.

The private property includes the personal earnings using own knowledge and skill, besides the received donations, succession, pension, remuneration, gratuity, medical expense, provident fund, insurance, or other social security. The property earned or acquired by a woman before marriage or acquired from her parental side at the time of marriage or accrued therefrom, the property granted by her husband or with the consent of all coparceners of the husband's side, or the property received from the relatives or friends of the husband, and property accrued therefrom (§ 256). This concept is inconsistent with the English property law, which is divided into tangible and intangible property. Brown and Pawlowski (n.d.) explicated:

A tangible object is described as a chose in possession or chattel. By contrast, where the asset is intangible (for example, shares in a company or a debt), the same is described as a chose in action. A key distinguishing feature between choses in possession and choses in action lies in the fact that in the former category, the owner of the property can physically lay claim to actual possession of the item whereas with intangible choses in action, the owner of the property must bring a legal action to assert ownership rights over the item in question against any wrongdoer. (p. 2)

The conceptual difference of private property in Nepali and English law justifies that the concept of the source law needs to be analyzed and truly transferred to the TL. English law categorizes private property as tangible (car, home) and intangible (share of a company, intellectual property, debt). The first is the physical possession, and the second is to be justified with evidence if questioned. The concepts of 'chose in possession' and 'chose in action' determine the ownership of English private property rights. Not only this, but also the concept of property varies from case to case and from one legal system to another.

Analyzing ahead the source law and language, the legal provision of *bakas* 'bequeath' and *aputali* 'succession' is discussed to analyze their meaning and provisions corresponding to them within the TL legal systems. *Bakas* is the legal way of transferring the title of a property to the beneficiary by registration. It possesses the elements of the 'Will Deed'. In Nepal, the provision of *bakas* is either at the life or after life of the grantor, as agreed in the *bakas partra* 'will deed paper'. Therefore, the translator needs to analyze the nature of the *bakas* by comparing and contrasting it with the TL legal provisions. The English law has classified "Will" into different categories based on the nature of the Will's aims to facilitate the beneficiary. Suppose a parent desires to transfer his/her property to a loved child by Will, intending to avoid a family dispute that may come after the grantor's death. The close correspondence is the 'simple Will, in which the grantor declares wishing to give the estate to the survivor who cared for him/her during life. The simple Will is one where a person leaves their entire estate to their spouse or partner or, if that partner pre-deceases them, they leave their entire estate instead to any children they have had together" (So legal solicitor, n. d.). It matches the legal provision of *Shespachhiko Bakaspatra* 'Will after death' in Nepal. The National Civil (Code) Act (2017) noted down, "If a donation or a gift becomes effective only after the death of the maker of such donation or gift, it shall be deemed that he or she has executed a testamentary donation or testamentary gift" (§ 406.4).

English law develops the concept of Simple, Mirror, and Complex Wills. The 'Mirror Wills' refers to two single wills agreed by two people (usually spouses) giving instructions about how their properties are to be distributed. The wills are almost identical except for the

position of the names of those doing the wills (Making a Will, 2025, p. 12). The Complex Will attracts in unequal situations where two partners are from different backgrounds. For instance, the spouse has children from a previous partner or relationship. It is more appropriate when the parents and grandparents intend to distribute the property unequally among the beneficiaries.

Besides the above-mentioned, English law has the provision of the 'Joint or Mutual Wills', in which "two or more wills made by people giving instructions based on agreement about how their assets should be distributed for each other's benefit upon their death. Mutual wills are deemed irrevocable, which means they cannot be cancelled once one person has died or lost mental capacity" (p. 12). The determinative factors of a Will are the testator's wishes and the real-life condition in which the property is distributed to the beneficiary. So, the Nepali concept of *bakas* equates with the English Will at the functional level.

To analyze the source law from the lexical level matters in legal translation. For instance, the term *aputali* is 'succession' in English translation; however, the concept is that the source may not equal the English legal provision. *Aputali* refers to the property opened to be transferred to the heir or a close relative after the demise of the owner. The National Civil Code Act (2017) states, "Where succession to a person's property is opened, his or her nearest heir shall be entitled to such succession" (§ 238). The nearest relatives, spouse, children, and parents who live together with the demised are prioritized on succession to other separated members, brother, uncle, sister, grandparents, sister-in-law, nephew, niece, and the like (§ 239). To search for the nearest correspondence of *aputali*, the search for succession in the TL law is a need. Foreign laws, like Nepal, open succession after the death of an owner, and the estate goes to the closest relatives. The difference is, even the illegitimate son or daughter of an unmarried person, a widow, or a widower becomes a legal child after the death of the unmarried person, widow, or widower who had no written will. As the succession law of Queensland (Australia) under the Succession Act (1867) mentioned:

Notwithstanding anything contained in this Act or in any other Act or law or rule or practice or process of law, where a person being a widow or widower or an unmarried person dies or has died without leaving a will, and without leaving any lawful issue but leaving an illegitimate child or children, then, if the residuary estate of such person does not exceed two thousand dollars, the following provisions shall apply, namely: (a) for the purpose of the distribution of the residuary estate an illegitimate child shall be deemed the lawful child of the deceased person. (§ 35.2.a)

Now, whether the Nepali legal term *aputali* completely or partially matches the English legal provision of 'succession' needs to be examined before translation. In English law, even the illegitimate son of an unmarried, widow, or widower gets the rights of succession if no intestacy remains. Such a provision of succession for the son from an unwed mother is not included in Nepali property law. So, *aputali* partially corresponds with 'succession'.

The next challenge arises in translating private property from Nepali law into English or from the SL to the TL. For instance, Nepali law defines a woman's private property that she earns herself and receives as a donation, which the translator needs to understand for its true equivalence as per the English law. According to the Civil Code of Nepal, a Nepali woman owns the personal property that she has earned or received by will before or after marriage from her parents or her husband's family, including the personal income from her job and business (§ 256.g.h). If such a provision does not exist in the TL legal system, it brings a challenge in conveying this culture to the TL readers. However, the former British colony, the Bahamas, has the legal culture of owning private property by a female before and after marriage, known as "feme sole". The Married Women's Property Act (1884) of the country pointed out:

A married woman shall, in accordance with the provisions of this Act, be capable of acquiring, holding, and disposing by will or otherwise, of any real or personal property as her separate property, in the same manner as if she were a *feme sole*, without the intervention of any trustee. (§2.1)

The British pre-colonial countries, such as India and the Bahamas, have a legal system that allows a female to possess personal fixed and movable property received from her parents as a will and her husband, which may be inconsistent with the Nepali *stridhan* 'female's property'. So, the analysis of the source law by comparing and contrasting it with the target legal system is crucial for a genuine translation.

### Understanding the Source Legalese

To translate law, the legal translator requires not only the basic knowledge of the source law but also the legalese used for it. A minor mistake in law brings major legal consequences, including financial loss and disputes. The nature of the Nepali legal language is ambiguous and complex to understand, as it frequently uses Sanskrit and foreign terminology. Syntactically, the sentences are complex, and legal jargons are used. Hindi, Persian, Arabic, Latin, and English terminology are borrowed in Nepali law. The Constitution of Nepal (2015) and modern laws prefer simple language of everyday use, influenced by the plain language movement at the international level. The first general country code *Muluki Ain* of 1854 used the vernacular Nepali language, which made it difficult to understand.

The Nepali language does not have auxiliary verbs like English, but verbs in Nepali inflect by gender and number, which influences meaning. The motherland is often referred to as a feminine entity and uses the pronoun "she," such as in the case, Nepal and her neighbors. Nepali legal terms are culture-based and jargoned, which requires special explanation and interpretation to understand them. The drafting style is unique, which often starts from *likhitam*, 'it is written' in the *Devanagari* script. It uses the honorific word *shree* to address public and private institutions like a person. Comparatively, the language of modern legal drafts is easier to understand than that of the past. It uses plain Nepali language and maintains coherence, clarity, and precision in text. For instance, the language used in the 'adverse possessory right' (§ 273) of the National Civil (Code) Act 2017 and its social, cultural, and legal context is examined in the SL for its natural correspondence in the TL.

कुनै व्यक्तिले अर्को व्यक्तिको चल सम्पत्तिको हकमा तीन वर्ष र जमिनको हकमा तीस वर्षभन्दा बढी समयदेखि त्यस्तो सम्पत्ति वा जमिन आफू नै सम्पत्ति वा जमिन सरह भोग गरेमा त्यस्ता सम्पत्ति वा जमिनमा निजको प्रतिकूल भोगाधिकार रहेको मानिनेछ ।

If any person has possessed any movable property or land owned by anyone else, since more than three years ago in the case of the movable property and thirty years ago in the case of the land as if the property or land were owned by himself or herself, that person shall be deemed to have an adverse possessory right over such property or land (Institutional translation).

The Nepali lexis '*pratikul bhogadhikar*' is equated to 'adverse possessory right' in English and made time-based for the right. The tenant has to use the owner's property (movable and land) continuously as if it were the user's property without any capture or deceit. This right does not apply to the government, public, community, or trust property. The doctrine of adversary right is somehow connected to ownership and possessory rights. Ownership is the sole right to use, distribute, and dispose of the property by the owner, but possession is the physical control and use of the property. The Australian court interprets the doctrine of adverse possession that Burns (2011) mentioned:

In the Australian states where the doctrine of adverse possession applies, the requirements are that there is a factual possession by the adverse possessor and that the adverse possessor has *animus possidendi*. In relation to the former, Australian

courts have required that the adverse possessor demonstrate that there has been factual and exclusive possession, although that possession need not be adverse in the sense of being confrontational or violent. (p. 788)

The basic element of an adverse possessory right is the *animus possidendi* (intent to possess) of the property that must be beyond clash with the owner, and under the physical control of the adverse possessor claimant. The leased property does not attract the right of adverse possession. If the possessor uses the property secretly without informing the owner, it lacks the right of adverse possession. Further, the possession rights may be influenced by native law and legal systems, though the essence remains the same.

Despite the translation orientation to the receiver culture by using the source content, the context and culture of the source text influence the translator as a reader and need to be analyzed. The translator attempts to communicate the ST to the TL readers based on his/her understanding. The understanding of the source law and language needs an analysis of the content and context of the text based on the history, culture, and economic aspects of the law. As Bhattarai et al.(2014) said, "What is functionally suitable has to be determined by the translator, who is the expert in translatorial action and whose role is to make sure that the intercultural transfer takes place satisfactorily" (p. 131). The ST is for the SL readers, and the translation is for the TL readers, which may bring a communication gap between the readerships of two different languages and cultures. The linguistic and cultural analysis of the source law contributes to maintaining naturalness and equivalence in translation. For example, section 383 of the National Civil (Code) Act (2017) can be examined.

कसैले आफ्नो हक, भोग वा स्वामित्वमा रहेको घर रकम लिने गरी निश्चित समयको लागि कुनै व्यक्तिलाई उपयोग गर्न दिएकोमा बहालमा दिएको मानिनेछ ।

If a person who has right, possession or ownership in a house lends, for a rent, the house to another person to use it for a certain period of time, the person shall be deemed to rent the house (Institutional translation).

Whereas, the Nepali term *hak* is translated into 'right', as the owner's right to possess, register, and use the property or to rent it. It is the absolute right to use the property, dispose of it, develop, or rent it. The legal meaning of 'right' refers to enjoying, possessing, controlling, prohibiting unauthorized entry, using it peacefully, and disposing of it. Whether these rights exist in '*hak*' or not needs analysis for a true counterpart.

Next, the term *bahal* 'rent' is analyzed for the natural equivalent in the English legal system, which requires both the owner and the tenant to be qualified to agree on the conditions. An owner should be capable of renting the house to a competent tenant and allowing the house to be used freely, as agreed. Likewise, the tenant must be capable of paying the rent regularly and live peacefully without being involved in any illegal activities. The time element for the commencement and completion of the contract is crucial. If not, the commencing date is assumed as the starting date of the agreement. For the tenancy of a week, a month, or a year, it terminates after the expiry of this period. Provided the Nepali entrepreneurs mention the effective date of the agreement from the fiscal year, it starts from the first day of *Shrawan* (July 16). All these suggest that the knowledge of source legal terminology enables to transfer of the intent of the source text. The normative language of law not only passes information but also binds with rights and duties. As Zidan (2015) pointed out, "Whether it is a legal enactment, judicial pronouncement or a contract, it is not just to express or convey knowledge and information, but also to direct, influence or modify people's behaviour" (p. 29). So, understanding the source legalese and terminology and its linguistic and extralinguistic analysis enriches the translation quality.

## Conclusion

This research concludes that a proper understanding of the source law and legalese matters in legal translation. Although legal translation is TL-oriented, the linguistic and extralinguistic knowledge of the source law and language promotes the quality of translation. The translator's historical, cultural, legal, and linguistic knowledge helps to explore the textual meaning of the ST and tends to bring the true counterparts. Legal translation is measured by whether the legislative intent of the ST is genuinely transferred to the TT or not. The more the translators understand the source law, legalese, and lexis, the better the result they bring in translation. The close reading of the source law develops a quality of understanding that matters in legal translation.

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