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A Genre-based Approach to the Translation of Private Normative Texts in Legal English and Legal Spanish

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Abstract This paper aims at clarifying some of the most common issues that legal translators have to face when dealing with the translation of private normative texts, such as contracts or wills, which naturally emerge as the consequence and expression of legal or juristic acts in the scope of private law, in Spanish and English. To comprehend the differences and subtleties regarding legal communication between the common law and the continental law countries (specifically the United States and Spain, respectively), we must unveil some essential clues for their translation and application in the global scope of professional interactions, thus creating a process of *inter-legal communication*, which takes place through the mutual interpretation and application of two, or more, legal traditions. Through the deployment of a generic or pragmatic analysis at textual or discursive and formal or superficial, strata, of two types of genre within the domain of private law (namely wills and tenancy agreements, or leases) this work aims to prove that both the civil law and the common law private instruments are *translatable* with respect to each other. An important proviso, however, is that their legal traditions and the genres that constitute the communicative tools of their specialised communities must be duly respected and kept in equilibrium, so that one does not overshadow and obliterate the other. Only in that way can the "convergence" of the two traditions truly enrich and strengthen national and international legal culture.

Keywords Legal genre · Legal discourse · Juristic act · Inter-legal communication · Legal translation

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1 Introduction: Private Law Genres, Their Similarities and Differences in Two Legal Systems

The present paper aims at clarifying some of the most common issues that legal translators have to face when dealing with the translation of private normative texts, such as contracts or wills, which naturally emerge as the expression of legal or juristic acts in the scope of private law, in Spanish and English. From the point of view of law, a juristic act—or *negocio jurídico* in Spanish—constitutes (according to West's Encyclopedia of American Law) "an action intended and capable of having a legal effect", or, more specifically, "any conduct by a private individual designed to originate, terminate, or alter a right". Legally speaking, *private* legal acts are the autonomous declaration of will on the part of private individuals to enter into contracts or establish legal relationships under the umbrella of the law. Linguistically speaking, these private expressions of volition give rise to a network of private legal genres, a cluster of texts which are the expression of the communicative necessities of the specialised community of the law at large, their linguistic traits and textual fabric changing from legal tradition to legal tradition.

Incidentally, both linguistic and legal differences respond to different conceptualizations of the world. Language, like law, is the product of human accord. It follows that legal communication cannot escape the legal tradition it springs from. Hence, each of these legal traditions generates its own system of genres, for the purposes of the interactions that each specialized legal community has to maintain within the culture where it exists. In tune with the statements above, translating legal texts is by no means an easy feat. In fact, as Šarčević [23, p. 13] points out:

> Due to differences in historical and cultural development, the elements of the source legal system cannot simply be transposed into the target legal system. As a result, the main challenge to the legal translator is the incongruence of legal systems.

The law in Spain belongs to the tradition of continental law, mainly based on codes and supported by an inquisitorial trial system, as opposed to the *stare decisis* based, adversarial, Anglo-American systems of common law. However, despite their many differences in legal tools, reasoning and interpretation, the array of legal texts in both languages—and their subsequent arrangement into legal generic systems—is similar enough in many respects. Yet these apparent similarities may actually hide differences or confusions connected to discursive practices and concepts springing from very different legal traditions. Indeed, the complexity of a legal translation, as Šarčević observes [24], depends on the affinities between the systems where the languages, source and target, are generated, rather than in the affinities between the languages themselves.

To begin with, private legal documents show parallel features from the moment in which they are, indeed, juristic texts bound to produce legal effect, or legal efficacy, through *performative* acts deployed to form legal relationships [15, p. 156]. In other words, legal instruments springing from juristic acts are somehow associated to one another for the sake of their enforceability and their validity. Secondly, legal texts in the private arena have common ultimate ends according to

the text type or genre they belong to, always constituting a declaration of intention by means of which a legal act in private law arises, i.e., bequeathing and devising, or entering into a contractual obligation and/or right. Implicitly, they always involve the expression of individual freedom, allowing individuals to organize or create their social interactions, so as to ultimately achieve autonomy in private life.

Notwithstanding all those similarities, private law genres within differing legal traditions are embedded in their own legal system. They can therefore be viewed as "*a set of differently and deeply rooted, historically conditioned attitudes about the nature of law, relating the legal system to the culture of which it is a partial expression*" [19]. Accordingly, private law documents—or legal text types—, have special requirements for formation, drafting and interpretation, traits which are peculiar to each legal tradition. Every private instrument has to be lawful, certain, possible and proper within the context of the institutional milieu where it emanates, and its legal force is conveyed by the conventions of the genre in each tradition.

The Spanish system, for instance, is heir to the Roman tradition of codes, and one of the members of the civil law family. The result of the development from the times of Justinian is a compact body of rules, where, according to Miguel Duro, "*there is little life beyond codes*" [13, p. 620]. This body of rules is made up of the *Código Civil* ('Civil Code'), *Código Penal* ('Criminal Code') and the *Código de Comercio* ('Commercial Code'). As a result of these codes, case law and custom have minor importance, comparatively.

As opposed to the continental systems, where law is based on legislation and codes, and their interpretation is open-ended and generalist, the common law system is one based upon jurisprudence or case law, rather than upon legislation, and codes are non existent. The judicature is awarded a very special position in the scheme of things, as the figure of the judge is supposed, not only to interpret law, but to make law when adjudicating. As far as legislation is concerned, there is a tendency on the part of many judges to interpret legal texts literally or acontextually [28]. It is worth adding that, although US federal law originated from the same English sources as all the others, it tends towards a greater systematization and codification. Without being codified as such, the American system could thus certainly be defined as being 'mixed'; it combines a complete written update of precedents in the *Restatements of Contracts Second* as well as an explicit *Uniform Commercial Code* regulating the sale of goods.

Nevertheless, there exist differences in the cultural and historical backgrounds of both traditions, continental and common law, which bring serious discrepancies in the making and development of the network of private legal texts types, or genres, and which cannot be overlooked in the translation process [8].

The present work is, ultimately, an attempt to explain the role of cultural schemas in intercultural communication, and specifically what has been termed *inter-legal communication* [31], which takes place through the mutual interpretation and application of two, or more, legal traditions. I aim to prove that both the civil law and the common law private instruments are *translatable* with respect to each other, provided that their legal traditions and the genres that constitute the communicative tools of their specialised communities are duly respected and kept in equilibrium, so that one does not overshadow and obliterate the other. Only in that way can the

"convergence" of the two traditions truly enrich and strengthen national and international legal culture.

2 The Linguistic Tool for My Analysis: The Role of Genre

This study endeavours to provide an analysis in layers—generic or pragmatic, textual or discursive, and formal or superficial—of two types of genre in the domain of private law, namely rental agreements (leases), and wills. The study is aimed at unravelling the way in which juristic acts are organized in the area of private law and their expression through genres within the continental (civil law) and common law traditions, with their similarities and differences.

Amongst all the tools offered by current Linguistics, genre analysis has been widely adopted as the methodological framework to account for cross-cultural and disciplinary variations in specialised communication. As Bhatia [5, p. 13] points out, "though it is not always possible to find an exact correlation between linguistic resources—both lexico-grammatical and discursive—and the functional values that they assume during the communicative process, it is much easier to do it through genres than through any other concept explaining linguistic variation. Genre theory explains the way in which the communicative events produced by a specialised linguistic community are structured". Basically, a genre is a highly structured communicative event, which may be written (business letters, statutes, abstracts) or oral (job interviews, witness examination, negotiations) [27]. Getting to know a genre amounts to asserting that the more generic knowledge one has, the more initiated one may become in the mechanisms that run the communicative processes of a specialised community [26].

As pointed out above, the model of generic scrutiny herein proposed divides the research process into three different levels, from top to bottom: *generic or pragmatic, discursive* or *textual* and *formal* or *superficial* (divided in turn into lexical and morphosyntactic elements).

2.1 The Generic or Pragmatic Level

Genres are, mainly, the stratified discourse of a very specific specialised community. This, generically speaking, is shown both in their external and internal organizational structuring and in their communicative function and sociopragmatic conventions. Looking at language from its communicative perspective implies introducing a description of language in use, the specification of its pragmatic-discursive meaning, combining the linguistic aspects of textual construction and interpretation together with the sociocultural factors that integrate the text. This task will be tackled here in two ways:

(a) Through the identification of the matter/subject/extra-textual reality that the text attempts to represent, change or use, namely its *dominant contextual focus* [34, p. 19], which also links to the tenor of the text: the sender (i.e, the specialised community) and his/her relationships and purposes towards the

receiver of the text (its audience). Hatim [16, p. 215] distinguishes three main kinds of texts, according to their focuses:

(i) *expositive*, descriptive and narrative texts, description dealing with 'objects' or 'situations', and narrations organizing 'actions' and 'events' in a specific order. In court opinions and private instruments it has the function of providing relatively objective information about facts and events.

(ii) *instructive or exhortative*. Reiss [22] finds this focus in operative texts that arouse the interest of the readers and persuade them to do, or abstain from doing, something. Hatim and Mason identify [17] two subtypes: instructions *with options*, as in advertisements or consumer recommendations, and instructions *without options*, as in contracts and treaties, instruments prescriptively regulating civil behaviour.

(iii) and *argumentative texts*, where the focus is on what is known as 'situation managing', the dominant function of the text being "to manage or steer the situation in a manner favourable to the text producer's goals". Hatim and Mason [18] state that argumentative formats vary within, as well as across, languages and cultures, the preference for one or the other form being motivated by many factors such as politeness, power structures, and ideology. Typically, legal argumentative foci are found in court hearings in the legal basis or principles that lawyers present to judges. Judges then use these legal principles to conduct and justify their decisions.

(b) Analysing the *hybridity and intertextuality* phenomena that may take place at several levels in the genre, namely the identification of the blend of texts and linguistic traditions that compose the background of the text or genre specifically, or the existence of discursive connections with preceding legislation or other texts. In the analysis of legal discourse, intertextuality refers to the construction of discourse from a combination of other sources some from other disciplines. In this regard, intertextuality comes into play in the legal discourse because it speaks of what is legitimate or not, as regards the social situation, beliefs and values of a specific historical moment.

According to Burgueño [9, pp. 225–226]:

> Historically, the concept of intertextuality faces texts as transformations of the past into the present. These transformations have to be understood in a conventional and normative way, since discourse types are bound to change particular senses by means of conventions and routine texts, naturalizing those senses. Change can also be carried out in creative ways with new configurations of discourse elements and new modes of intertextuality. […] The concept of intertextuality points to the productivity of texts, namely how texts can be transformed and restructured in accordance to existing conventions (genres, discourses) so as to generate new texts.[1]

[1] El concepto de intertextualidad encara históricamente los textos como trasformaciones del pasado en el presente. Esto en un aspecto relativamente convencional y normativo, es decir, los tipos de discurso

2.2 The Discursive or Textual Level

This level scrutinises genre as an instance of text or written discourse that was composed from the basic rules of linguistic organisation that makes it work, and not just as a mere chain of words randomly arranged. The textual elements of professional language are visible in its supra-organisation or *macrostructure*, which is a very definite part within the text, and frames the textual segment, assisting the reader in its global comprehension. The macrostructure represents the dominion of the text in its functional level, revealing the way in which the elements of a textual typology operate. This textual structuring reflects the conventionalised social knowledge at the disposal of the discursive or professional community, besides the strategies or tactic choices used in general to render the discourse more effective for the sender's purpose.

The macrostructural rigidity of legal genres is remarked upon by Alcaraz [1, p. 250]. This very inflexibility proves to be of an enormous help for learners of Languages for Legal Purposes. Indeed, the inelasticity which characterises the layout of the genres at large contrasts the dissimilarities these show at the internal lexico-grammatical level. Likewise, and in total agreement with Valderrey [29, pp. 59–91], the legal translation process would be much benefited through the implementation of a textual analysis based upon understanding of the structure and the arrangement of information in legal texts, considered from the point of view of their macrostructure and textual conventions, which includes their ortho-typographical standards. Legal texts have peculiarly restrictive structures and a tendency to systematize their information layout, and such stereotyped organization fulfils a consequential function, contributing to limit and confine the parts in which the text is structured. In turn, this configuration reveals the conceptual structuring of the text, since the parts into which it is divided help to identify the different semantic elements, ultimately aiding to the comprehension of the text at large.

2.3 The Formal or Superficial Level

The present level deals with the study of the surface elements [11], or the substance, or raw material of the text, as well as the peculiar combinations of that substance that can develop into higher units. It consists, for instance, of the analysis of layout devices, lexical recurrences and syntactic phenomena that take place in genres. Graphetic, lexical and syntactic forms, and their presence or absence, are unreliable indicators when analysed separately. Together and in context, however, they can supply very useful information about their discursive/pragmatic function. Ostensibly, the linguistic forms of legal English genres are mostly selected to be explicit

Footnote 1 continued
tienden a cambiar sentidos particulares usando convenciones y textos en rutinas para finalmente naturalizarlos. El cambio, también puede realizarse de modo creativo con nuevas configuraciones de elementos de los órdenes de discurso y con nuevos modos de intertextualidad. […]. Es importante destacar que el concepto de intertextualidad apunta a la productividad de textos, es decir, al cómo los textos pueden transformarse y reestructurarse existiendo convenciones (géneros, discursos) para generar nuevos textos. (My translation).

and precise, as well as—paradoxically—flexible and condensed, which often leads to a great deal of discursive opacity.

If a swift overview of the discursive features of Legal English from the lexical point of view had to be provided, one could identify traits such as the overuse of archaisms in Old English, Old French and Anglo French (the tongue spoken by jurists, long after French had disappeared as the official language in Britain) as well as Latin. Other features include an array of *terms of art* or specialised vocabulary; the deployment of common words with uncommon meanings (which lead to a tremendous amount of *faux amies*), and finally, an abundance of ritualistic formulae and polysyllabic words. All these features make the lexical stratum in legal discourse as compound of often unnecessary and excessively pompous words [20].

In the area of syntax and discourse, complexity is also the rule. Sentences around a hundred words long or more are common, when the average norm is for lawyers to include 20–30 words per sentence at most. Syntax is made up of complex structures embedded into one another, in an attempt to capture every possibility of regulation, and overusing conditionals with complex prepositional phrases. Nominalizations and passive structures obscure the agent of the sentence and make the prose heavy and unclear. The discourse focuses on exceptions and negatives, rather than on basic principles, setting the things that negate or form exceptions or limitations to the front of the sentence or paragraph, and relegating the main principle to the back of the line. These qualifications at the beginning of sentence make comprehension difficult and give a negative, threatening meaning to the text. Finally, a recurrent absence of anaphora and, as a result, a high amount of unnecessary lexical repetition, hinders a simple cognitive approach to the text.

In a similar vein, one of the most distinguished forensic linguists in Spain, Enrique Alcaraz, has described the lexicon and syntax of legal discourse in Spanish as opaque, obscure and awkward; full of formulaic sentences and devoid of elegance [2, pp. 15–22]. The dense and far-fetched nature of legal Spanish is especially characteristic of the language's syntax, which is often hackneyed and formulaic. Alcaraz remarks upon density and opacity springing from the usage of ritualistic formulae and polysyllabic words, such as *a tenor de* or *salvo disposiciones en contrario*, among many others. But the Spanish legal lexicon is also plagued with old-age words like the following:

(a) Latin words and phrases introduced from Roman law ("pure" Latinisms like a *ab intestato*, *ex aequo et bono*, *exequatur*, *in dubio pro reo* or *sub judice*) or through the romance root of the Spanish language ("mixed" Latinisms like *abogado*, *delito*, *muerte civil* or *usufructo*).
(b) Hellenisms, or borrowings from Classic Greek, mostly acquired through Latin (like *amnistía*, *anticresis*, *enfiteusis* or *hipoteca*).
(c) Arabisms, less present in the legal register than in other linguistic areas, but important, nonetheless (e.g., *albacea*, *albarán*, *alevosía*, *alguacil* or *alquiler*).

Additionally, legal Spanish also borrows from French[2]—a relic from the influence of the *Code Napoleon* on the Spanish law—in the shape of xenisms[3] (words finishing in—*aje* or—*ion*, like *sabotaje*, *chantaje*, or *promoción*) and calques[4] (*a fondo perdido*, *hecho consumado* or *fuerza mayor*). Alcaraz [2, p. 57] also dicusses the "univocity" and "medullar" character of words that belong exclusively to the legal world, terms of art that may be either simple lexical units (*adir*, *cohecho*, *exhorto* or *interdicto*) or complex phrases (like *lucro cesante*, *caducidad de la instancia* o *carga de la prueba*). On the other hand, he discusses "*equivocal*" words, whose connotative meanings are activated within a due context and could not be rightfully labelled as "terms of art". These constitute a wide field of study in the legal discourse of Spanish, and a source of difficulty for those who approach such discourse from an untrained stance or a foreign source.

3 Genre at Work: Analysing and Translating Legal Texts

As Wen [33] points out, genre analysis helps to make translators become aware that different professional genres might require different steps of restructuring of the source text. The legal profession offers some generic principles, in tune with the purpose and context in which texts of the same genre are issued. In other words, an affidavit will always be a sworn declaration by an individual, both in Spain and the United States, in the same way that a power of attorney will confer certain legal capacities of one individual to another, in both countries. Nevertheless, there also exist differences between genres in the two legal traditions—some subtle, some ubiquitous—marked by the legal sources and exegetical norms of each culture. After all, as Borja states [6, p. 45]

> The main objective of translation is to be able to generate a text in the TL that may keep the legal force in the SL, deploying the right style, legal register and genre conventions, without trying to create the illusion of originality. The question is not so much to be able to reproduce the linguistic elements in the original, but to find resources to respect the expressive identity between the original and its translation.[5]

To illustrate my arguments, I have selected two different samples of genre in both the Anglo-American and the Spanish system for analysis and deconstruction.

[2] These borrowings are called *Galicismos*, because of their "Gallic" origin.

[3] A *xenism* is the incorporation of a new expression from another language that virtually does not go through any morphological, phonological or semantic change, in a process currently known as *transposition*.

[4] *Calques* can take place in two ways, either by transposition involving a morphological adaptation, as in the Spanish words fútbol (football) or cruasán (croissant)–or by literal translation, as in the word balompié (football).

[5] El objetivo principal de la traducción es generar un texto en lengua meta que, sin pretender crear la ilusión de ser un documento original, salvaguarde la función jurídica del texto original utilizando un estilo y un registro jurídico apropiados y respetuosos con las convenciones de género. No se trata de reproducir elementos lingüísticos del original, sino de encontrar recursos para mantener la identidad expresiva entre el original y la traducción. (My translation).

Because legislation and judicial opinions have already been analysed in previous literature (Alcaraz, [1–3] Borja Albí, [8] Orts, [20]), and belong to an area of legal language more likely to be theorised upon, in this paper I will seek to analyse genres that are commonly used by the legal profession, but that have been the subject of hardly any analysis, as it is the case with lease agreements and wills in Spanish and English. My documents come from several sources, partly from online forms published by bar associations, but mainly from private-law translation corpora containing documents deployed in my translation classes [4, 21, 29]. From these corpora I have chosen one example of lease agreement and one example of will in both languages, and this should ostensibly narrow the scope of my findings. Nevertheless, the standardized, sometimes boilerplate character of private instruments, and the similarity of the formats deployed in this study with the textual characteristics and generic similarities of wills and leases in both legal traditions and languages, suited my purposes of comparison sufficiently. In agreement with Tiersma [28]:

> The most salient feature of the structure legal texts is that they are highly formulaic or stereotypical. Some texts can be quite elaborate in terms of structure, of course, but routine legal documents tend to follow a predetermined structure that changes little over time.

In order to carry out my analysis, I will proceed top-down, paying particular attention to the following generic aspects of the texts:

(a) The rhetorical function of the genres in question, as illustrated by their focus: instructive, expositive and argumentative, as well as their indexes of hybridation, or intertextuality in order to determine the presence of other texts belonging to the *stored knowledge patterns* of the specialised community.
(b) Their textual structuring or macrostructure.
(c) Their formal surface, including morphosyntactic and lexical choices.

3.1 Lease Agreements

A lawyer's most common form of private-law drafting is probably the drafting of contracts [14]. A lawyer drafts contracts for many purposes, such as the sale of goods, employment agreements and leases of real estate. Even if they are private instruments, contracts regulate future conduct and should stand the test of time just like statutes and other forms of enacted law, which is why the main focus of both our texts in English and Spanish is that of an instructive, exhortative text. Both are, as legal agreements, operative texts intending to command the addressee or addressees—through commands or instructions—to do or not to do something. Also like enacted law, contracts are often the product of collaboration and negotiations undertaken to hammer out language that all parties will accept. Coherent organization of contract terms or clauses is needed, permitting the parties to easily locate the terms that they may need. This is also the reason for the existence of a secondary focus of an expositive nature describing the property and utilities under rental, services and facilities and other relevant information for the users.

Table 1 Hybridation in the Spanish Contrato de Arrendamiento

Cláusula Primera: "*…lo establecido en la Ley 29/1994 de 24 de Noviembre, de Arrendamientos Urbanos y se regirá por lo dispuesto, y por lo pactado en este documento."*
Cláusula Cuarta: "*el Índice General de Precios al Consumo que fije el Instituto Nacional de Estadística.*
Cláusula Novena: "*…derechos especiales que le concede la Ley 29/1994 de Arrendamientos Urbanos*".
Cláusula Décima: "*…Art. 16 de la Ley 29/1994 de Arrendamiento Urbano, respecto al evento de fallecimiento de la arrendataria.*
Art. 14 de la vigente Ley de Arrendamientos Urbanos respecto a la extinción del arrendamiento.

In general, legal instruments of this kind are supported by the law governing contracts generally, and the laws governing this particular type of leasing contract more specifically.[6] Nevertheless, the legal constraints that limit the private scope of rights and duties are not equally explicit in both Spanish and English texts. As shown in Table 1, the Spanish *Contrato de arrendamiento de vivienda* displays hybridation indices in the shape of a phenomenon that has been labelled as *explicit remission* [15] in several of its clauses. Table 1 shows the different clauses in the contract that make intertextual reference to the Spanish normative in force regarding urban leases, the Ley de Arrrendamientos Urbanos 1994, plus one reference to the legal "consumer price index" under which rents are fixed.

In other words, the presence of the legal system and its rules is essential in the drafting of the Spanish contract and, hence, the dependence of the contract on other framework documents is explicitly manifested in the text. As far as intertextuality is concerned, however, the American lease seems to have a peculiar relation to substantive policy, as no reference is made to external legislation, thus deploying *unexplicit remission* [15], or the concealed presence of framework legislation in the document at hand. Therefore, in comporting with the law in the area, intertextual reference in the American lease is implied, but may be guessed in the coherent organization of contractual terms that—exercise "due diligence" in implicitly abiding by existing laws. In sum, both texts are children of their own legal tradition: one, the Spanish continental text where there is a compact body of rules that is constantly referred to, and law is a coherent, economic and precise system of norms; the second, the American lease, shows traces of a tradition where legal texts have to resort, ideally, to autonomy of interpretation and where a sceptical attitude towards the value of norms is usual: no framework text is mentioned, no law quoted, just the clauses of the contract themselves.

The tenor or the degree of formality–informality between sender and receiver of the text in the *Contrato de arrendamiento de vivienda* shows little distance between the parties and a low degree of formality, as compared to the American text. This may be seen in the usage of simple present and future structures, and in the absence of conditionals in the expression of duty and obligation, alluding to users as '*el arrendador*' (the tenant), '*el arrendatario*' (the landlord), '*las partes contratantes*'

[6] Uniform Residential Landlord And Tenant Act in the United States, URL http://www.law.upenn.edu/bll/archives/ulc/fnact99/1970s/urlta72.pdf.

Ley 29/1994 de 24 de noviembre de Arrendamientos Urbanos in Spain, URL http://www.spaviv.es/docs/LeyArrendamientosUrbanos.pdf.

(the contracting parties) or, simply, '*las partes*' (the parties). In contrast, the *Sample lease or rental agreement* portrays a rigid feeling of formality. It shows a taut formal structure and exhaustiveness regarding the specificity of the contract details ('parties', 'premises', 'term', 'rent', 'security deposit'), as well as the aims of the parties that are entering into it. Distance is achieved through passives and modal verbs, mainly *shall* (with an imperative import on the parties, namely 'the tenant' and 'the landlord') and *will*, but also *may*.

Some text types are more prone than others to a previous arrangement of information, which, undoubtedly, helps to identify them and make them liable to be compared to similar or parallel texts. This may also constitute a substantial advantage in the translation process. Overall, as pointed out above, legal texts are characterized in terms of their structural rigidity and the systematisation in the presentation of information. The macrostructure of the *Contrato de arrendamiento de vivienda* shows a peculiar structuring of its own, being built around a heading and an introductory paragraph with data to be completed by both parties, regarding city and date. The opening paragraph identifies the parties to the contract using several archaic formulae in capitals very typical of Spanish legal instruments: '*REUNIDOS*' (to be completed with the names of the *arrendador* and the *arrendatario*) and '*INTERVIENEN*' and '*EXPONEN*' (as introduction to the subsequent ten recitals, which bear no heading).

In contrast, the American lease imposes a more visible, more coherent organization of the contract terms by categorizing those provisions topically, including explicit headings dealing with each topic and arranging the categories in a proper sequence. As was mentioned above, organizing the terms of an agreement in this way permits the parties to locate the provisions or details that they need in an easier way. Such a distribution obeys a pre-established organization with stereotyped formulae and conventional schemas in American contracts (often called boilerplate).

Table 2 shows a primary macrostructure ('Commencement', 'Operative Provisions', 'Additional Provisions', 'Testimonium' and 'Signatures') of both a Spanish *contrato* and an American lease. The American lease also contains a macrostructure that divides the 'Additional Provisions' in several moves, from A to G, containing, this time unlabelled, essential dispositions in the text. The caps in the Spanish text constitute a traditional, and pervasive, graphetic convention, marking the sections of the contract.

Last, but not least, are the formal traits present in both texts. On the one hand, the Spanish *Contrato* shows long sentences (90–125 words per sentence) with no graphical division in the text for easy access of data, which makes specific details more difficult to locate. The level of embedding is high in the text, containing mostly subordinate structures, some coordination and scarce simple sentences. The American text is much shorter in length as are individual sentences (15–25 words per sentence). It is less dense, mainly with subordinate sentences of the conditional type, but tending to very clearly separate concepts and specific provisions by displaying a graphical arrangement of sorts, with enumerations and tabulations. All the possible contingencies of the lease are taken into account in the shape of adverbial phrases normally indicating time, but there exists a clear attempt to avoid straining the reader's understanding, mainly by means of visual clarity.

Table 2 Macrostructures in the Spanish Contrato and the American lease

Macrostructure in the Spanish *Contrato De Arrendamiento*	Macrostructure in the American Lease
Introduction (*REUNIDOS de una parte y de la otra*)	Commencement (*introductory formula*)
Antecedents:	(*By this agreement*…, date, Landlord and Tenant's details)
INTERVIENEN and EXPONEN	
(Landlord (*Arrendador*) and Tenant's (*Arrendatario*) personal data)	
CLÁUSULAS (provisions)	Operative provisions:
(Unlabelled):	
PRIMERA: Statutory framework	1. PROPERTY
SEGUNDA: Property	2. TERM
TERCERA: Term	3. RENT
CUARTA: Rent	4.UTILITIES/SERVICES
QUINTA: Services	5. DEPOSIT
SEXTA: Taxes and dues; Inspection of the Premises	6. REFUND PROCEDURE
SÉPTIMA: Alterations and Improvements	7. INVENTORY CHECKLIST
OC TAVA: Damage Deposit	8. ADDITIONAL PROVISIONS:
NOVENA: Statutory framework on Waiver	Moves a to g (unlabelled): provisions on:
DÉCIMA: Death of the Tenant and Framework Law	(a) Assignment and subletting
	(b) Inspection of the premises
	(c) Condition of the Premises
	(d) Maintenance and Repair Rules
	(e) Quiet enjoyment
	(f) Surrender of the Premises
	(g) Modifications
Concluding formula and legal framework.	Testimonium
(*A los efectos del Art. 14 de la vigente Ley…las partes convienen….)*	(We, the undersigned, agree to this lease)
Signatures	Signatures

The long, involved paragraphs of the Spanish contract make the text more difficult to process, even if the typology of subordination is similar to its American counterpart. In contrast, the latter is more notorious in its deployment of words of authority and formality. This is shown in the usage of compound words such as 'notwithstanding', 'thereafter', 'foregoing', the usage of nominalizations, of deontic modals ('shall', 'will', 'may') and a preference for Latinisms like 'itemized', 'alterations', 'conduct' and many others, and technical terms like 'nuisance', 'termination' or 'possession'. Ritual language is less abundant in the Spanish text, except for the introductory formulae presenting the *dramatis personae* of the agreement, the above-mentioned caps in '*REUNIDOS*' (to be completed with the names of the '*arrendador*' (the tenant) and the '*arrendatario*' (the landlord), '*INTERVIENEN*' and '*EXPONEN*'). On the other hand, and disregarding the lack of parallelism in the complexity of words at large in both documents (the Spanish version being less formulaic than its American counterpart), Table 3 below shows a

Table 3 Lexical equivalence in the Spanish and American lease agreements

American text	Spanish text
automatically	*por la tácita*
damage	*daño*
deposit	*fianza*
expiration	*vencimiento*
landlord	*arrendador*
lease agreement	*arrendamiento de vivienda*
not mentioned	*subrogación mortis*
renewal	*prorrogación*
rent	*renta*
residential premises	*finca*
sublease	*subarriendo*
tenant	*arrendatario*
term	*período contractual, plazo*
termination	*rescisión, disolución*
wear and tear	*desgaste por uso ordinario*

fair possibility of translation by equivalence of the main terms in the documents, i.e., those used to identify the main characters and data in both texts. An exception is the concept of *subrogación mortis*, which considers the contingency of death on the part of the landlord, a detail which is not contained in the American contract.

All in all, the lease agreements under analysis show important similarities in focus and purpose. Yet there are some relevant differences regarding macrostructure, as both are divided in clauses assigning rights and duties to the parties, but the graphical display is much more user friendly in the American text. Indeed, the American contract is easier to read, as the abundant *moves* in the text are clearly labelled for easy reference and subordinates. In addition they are not as long as those in the Spanish *contrato*, which seems to be more loosely or carelessly drafted in rigmarole of detail with, manifold qualifications and no labelling.

Text hybridation, with its explicit and implicit presence in the Spanish and American texts, respectively, is an index of the different identity of two legal traditions and their interpretive techniques. It is explicit in a continental system, where legislation has a central role, while it tends to be implicit in common law contracts, where texts have to be ideally autonomous in their construction.

The tenor of the *Contrato* shows lack of distance between the parties to the contract in the deployment of the active voice and a higher familiarity in the addressing of the parties, whilst the American rental agreement, on the contrary, — exhibits a strained feeling of formality in the usage of passives and modals. Lexical choices regarding the main parties and terms of the contracts are similar, and there is a possibility of equivalence in translation; nevertheless, detachment and ceremony are expressed more evidently in the American text not only through modality, but also in the usage of Latin cognates and compound words.

3.2 Spanish and American Wills

There are essential differences between Spanish and American wills. A will or testament is a legal declaration by which a person, the testator, names one or more persons to manage his or her estate and provides for the transfer of his or her property at death. In both countries they are supposed to be the last expression of a person's desires.

Still, for cultural reasons Spanish inheritance laws restrict the testator's freedom to leave his property to anyone he pleases.[7] It is almost impossible for a Spanish parent to disinherit a child, because the law provides for the family and protects the children by requiring a parent to leave two-thirds of his estate to his offspring (the *herederos forzosos*, or apparent heirs), even if there is a surviving spouse. This is also true of Roman law and Civil law in other continental countries, where the *legitime* of a decedent's estate is that portion of the estate from which he cannot disinherit his children, or his parents, without sufficient legal cause. Also, in Spanish law, a surviving spouse keeps a life interest (*usufruct*) on all of the assets acquired during their marriage, half of the goods acquired by marriage, and all personal gifts or inheritances which have come directly to this spouse. This is especially true of real property and, as a result, when one spouse dies, only half of the inheritance of the Spanish property is transmitted, the living spouse continuing to own his or her half. If someone in Spain dies *intestate*, the estate will be distributed according to the Spanish laws of Succession into three equal parts: two for the children and a third to his children or grandchildren [25, pp. 226–227].

At common law, there is no *legitime*. The deceased has almost unfettered distribution over his or her estate; a testator is entitled to disinherit any and all of his children, for any reason or for no reason. The Uniform Probate Code (UPC) of the United States, which regulates inheritance and the decedents' estates in several U.S. states provides explicitly for spouses and children only in cases of intestacy. Also, the only jurisdictions in the United States that protect descendants against disinheritance by giving them indefeasible shares are Louisiana and Puerto Rico, whose legal systems are not derived from the common law. However, most jurisdictions in the United States have enacted statutes that prohibit a testator from disinheriting a spouse, or provided that in the event of such a will the spouse may elect to "take against the will" and claim a statutory share of a decedent's estate. Nevertheless, the conception of the freedom of disposition by will is familiar in modern England and the United States, but nowhere does it exist without limitations.[8]

Another important difference between the Spanish and the American systems is that wills are usually drawn up by notaries in the civil system. A notarial act is self-authenticating and endowed with executory force, direct evidentiary status, and probative value at civil law. As a result of the compulsory notarization of wills in civil law countries, and the relevant position of notaries public in the Spanish succession process, the Spanish will under analysis has two rhetorical foci, namely an expositive one because of the informative character endowed to the text, issued

[7] Código Civil: Libro III, De las sucesiones, url: http://civil.udg.edu/normacivil/estatal/cc/3T3C1.htm.

[8] http://www.britannica.com/EBchecked/topic/288190/inheritance/.

in the third person of the notary. At the same time, the primary focus at the background is actually exhortative or instructive, as the materialization of a determined person's last will. Thus while the text presents a detailed account of the testator's identity and desires through exposition, it is implicitly making the document binding, the notary's words commanding the compulsory fulfilment of the testator's will.

The focus of the American will is mainly exhortative, since wills don't have to be notarized to be valid. Section 2-502 of the US Probate Code, or UPC,[9] provides that a valid will must be:

(1) in writing;
(2) signed by the testator or in the testator's name by some other individual in the testator's conscious presence and by the testator's direction; and
(3) signed by at least two individuals, each of whom signed within a reasonable time after he [or she] witnessed either the signing of the will as described in paragraph (2) or the testator's acknowledgment of that signature or acknowledgment of the will.

The American will under analysis is, consequently, written in the first person in the name of the testator and several formulae are clear orders on the part of the testator to deal with his or her property from beyond the grave, as for example: "I direct my Executor to pay my judicially enforceable debts", "In the event my (Spouse) shall not survive me, then I give and bequeath all such tangible personal property to my surviving children", "I do give and bequeath to my (Spouse)/(Name), all my personal effects and all my tangible personal property", and many more contained in the preamble and the ten articles of the will.

Regarding intertextuality, in the Spanish will there is no *explicit remission* to the code or statutory requirements for executing a will, and no reference to statutory provisions regarding the substantive laws of wills, since the code itself is the maximum and only authority regulating probate law. Nevertheless, the remission seems to be implicit, since the will was drafted within a system of laws, whih are implicitly embedded in the document. In other words, the legal system shapes the organization of the document, in such a way that there are clauses, —'*PRIMERA*' and '*SEGUNDA*'—which establish the life interest (*usufruct*) of the spouse in the estate, and institute the obligatory heirs in the will, whose absence would render the testament null and void. Both clauses are essential under Spanish law and legal effect requires that both be explicit.

The American testament shows the same phenomenon of *implicit remission*, with no direct allusion to basic legal principles behind the instrument but with the common law or legislation, such as the UPC, in the background. As Barbara Child says about testaments, "a will is a creature of statute" [10, p. 224]. The format of a will in English depends on many factors that bear no similarity to the Spanish equivalent, one of them being the requirement of witnesses and the possible inclusion of a trust, a phenomenon which is not present in the Spanish law. The customary structure, as gathered from the American sample, that the will should

[9] http://www.law.upenn.edu/bll/archives/ulc/upc/final2005.htm.

include an introduction identifying the document's purpose and the testator, as well as a revocation formula in the preamble. This is followed by several dispositive provisions identifying the testator's property and its beneficiaries (Articles II to V), and some administrative provisions identifying the executor, the guardian of the testator's children, if any, and the trustee, if the will includes testamentary trusts (Articles I and VI to VIII). All of this we shall see more clearly when discussing the macrostructure of the wills under study.

The tenor in the Spanish document is much more detached, since it is a will drawn up by a notary, and requires unusual solemnity, being written with notarial wording according to strictly prescribed formalities of language. As prescribed by the law, the will indicates—in the third person singular voice of the notary—the date and place where it was made, and is signed by the testator, the notary and the witness, in each other's presence. Highly specialised legal terms are used, such as '*preterición*', '*legítima*', '*usufructo*', '*carácter privativo*', '*premoriencia*', '*conmoriencia*', '*gravamen*'. Its preference for nominalization over subject-verb constructions and the use of the future tense and passive constructions with agent contribute to the aloofness and formality of the document. In the American testament there are also legal formulae ('hereinafter'; 'thereon'; 'I hereby nominate/authorize'…) and some performatives ('do make, publish and declare'; 'I give and bequeath'…), but the distance is narrower and the sense of detachment lower in the usage of subject-verb constructions and the present simple, being drafted in the testator's voice.

The macrostructure in the Spanish testament abides by the general ritual of the instrument, the identity and relevant details of the instrument appearing within three starting formulae, again in the Spanish fashion of private instruments: '*INTERVIENE*', '*COMPARECE*' and '*DISPONE*', where the notary public reveals the identity of the testatrix, her personal details, and her wish and capacity to make her will. Clauses '*PRIMERA*', '*SEGUNDA*' and '*TERCERA*' contain the dispositions on the usufruct and the main assets of the estate, and the appointing of a guardian. The last formula, not labelled, gives legal effect of the ceremony of attestation on the part of the notary, and the signatures of both the notary and the testatrix.

As pointed out above, the American testament is made up of a preamble, or introduction, and finishes with quite a ritualistic formula with the testator's and witnesses' signatures. There is a preference for cardinal numbers organizing the different aspects of the text, as opposed to the lack of labelling, and the ordinals in the Spanish clauses. As shown below in Table 4, Articles I to X elaborate on the directions to the executor of the will regarding the payment of taxes, on the dispositions to devise real and bequeath personal property to the spouse, to create a trust, and to appoint an executor.

As far as formal features are concerned, the text in English has longer and quite convoluted sentences (some of them with 185 and 175 words), with a total of 2,538 words and an average of 70 words per sentence, while the Spanish one has 444 words overall, an average of 25 words per sentence, the longest sentences being made up of 94 and 64 words. The dominant structure in both texts is subordination, much more so in the American text, which is plagued with conditionals in long and complex sentences with few linkers, which often creates syntactic discontinuity. Coordination is also very common in both texts, but simple sentences are scarce.

Table 4 Macrostructures in the Spanish and American wills

Macrostructure in the Spanish Will	Macrostructure in the American Will
Number of document	Testator's name and address
	Last Will and Testament clause
	Revocation clause
Date, place and time of publication	ARTICLE I, arrangement for tax payments.
Notary's name and Professional Association	ARTICLE II, disposition of personal property to be transmitted to spouse and descendants (legacies and bequests clause)
Testatrix's personal data (*COMPARECE*)	ARTICLE III, disposition of real property to be transmitted to spouse and descendants
Acknowledgement of notary of veritable data on the testatrix's part	ARTICLE IV
(*INTERVIENE*)	*Move one*: disposition of the rest residue and remainder of the will to be transmitted to Trustee
	Moves two to four: disposition of the Trust, its principal, levies, encumbrances and beneficiary
The testatrix explicitly express her desire to grant testament	ARTICLE V
	Disclaimer clause
(*DISPONE*)	
Identification of the ancestry and issue of the testatrix	ARTICLE VI, VII, Appointment of Executor
Type of testament	ARTICLE VIII, *Moves from A to D*, powers granted to executor and trustee.
CLAUSES: *PRIMERA*, *SEGUNDA*, *TERCERA*	ARTICLE IX
Dispositions on the usufruct and the main assets of the estate, and the appointing of guardian.	Predecease clause
Notary's granting of faith	ARTICLE X
	Simultaneous death clause
Sheets, series and numbers of the document	Signature of testator and witnesses,
Testatrix's signature	Date, place and time of publication
Notary's signature	

As far as the lexical features are concerned, the American testament exhibits the typical traits of mainstream legal English, such as archaisms and formal expressions ('bequeath', 'bequest', 'seize', 'hereinafter'); words from Latin and French words and expressions seldom used in general vocabulary ('marital', 'spouse', 'lapse', '*per stirpes*', '*choses* in action'); terms of art ('trust', 'trustee', 'executor', 'codicil', 'legatee'); terms of the general language with a special meaning ('devise', 'give', 'security', 'encumber', 'assignment') and other examples of professional jargon ('residuary estate, 'intangibles', 'pursuant to', 'foregoing'). There is also a clear preference for lexical doublets ('give and bequeath', 'real or personal', 'tangible and intangible'), triplets ('make, publish and declare', 'give, devise and bequeath', 'care support and maintenance') and multiples ('alienate, dispose of, anticipate, encumber, or create', 'attached, diverted, seized or sequestered'). Such features are absent from Spanish legal texts in general.

Table 5 Lexical equivalence in the Spanish and American lease agreements

American text	Spanish text
debts and funeral and administrative expenses	*not mentioned*
dispose of, anticipate, encumber or create a charge	*disposición y gravamen*
do give and bequeath	*lega*
executor	*albacea*
gross estate	*masa hereditaria*
intangibles	*not mentioned*
last will and testament	*testamento*
nominate, constitute and appoint	*nombra*
not mentioned	*notario*
not mentioned	*carácter privativo*
not mentioned	*premoriencia, conmoriencia o incapacidad*
not mentioned	*preterición*
property	*bienes*
spouse	*cónyuge*
trust, trustee	*not mentioned*

The Spanish will, likewise, shows some of the most typical traits of legalese, such as formal and archaic vocabulary ('*usufructo*', '*preterición*', '*premoriencia*', '*conmoriencia*', '*gravamen*'), stereotypical formulae ('*casada en únicas nupcias*', '*así lo dice y otorga en mi presencia*', '*de haberse observado la unidad del acto*') and terms of the general language with special meaning ('*legítima*', '*privativo*', '*vulgarmente*', '*disposición*'). Nevertheless, as Table 5 below reveals, the level of verbosity and long-windedness is much higher in the American text. Also, and in contrast with the terminology of the contractual documents analysed above, where the possibility of equivalence is closer, Probate law is much the subject of the idiosyncrasies of legal discourse at large, where the possibilities of equivalence are scarce, due to the lack of linearity between the different "complex social and political framework(s) which respond(s) to the history, uses and habits of a particular group" [32].

As Vázquez points out [30, p. 97], there are notable differences in the systems under study:

> Probably, the most noteworthy differences are the way the document is published, its drafting, the figure of the notary public, the executor's role, the existence of a legitime, the legislation in force, the main role of witnesses, the way the legal tutor is conceived, the freedom to make the will, and the legal process of administering the estate of a deceased person.[10]

[10] Probablemente, las diferencias más notables sean la forma de otorgamiento del documento, la redacción, la figura del notario, las funciones del albacea, la existencia de legítima, la legislación vigente, el protagonismo de los testigos, la concepción del tutor legal, la libertad a la hora de testar y la trayectoria de la herencia. (My translation).

Therefore, even if there are similarities in the purpose, foci and intertextuality in both the Spanish and American versions, those significant differences that underlie both systems—in tune with Vazquez's words and as discussed above—have necessarily resulted in essential disparities in the tenor, macrostructure, syntax and lexis of both texts. Accordingly, the tenor of the American text is narrower than the Spanish one in detachment, as the testator/testatrix writes the document in the first person as his/her last will. Even if this is done with the ceremony that is a legally enforceable statement of a person's wishes regarding matters to be attended to after that person's death, the use of the active voice and the present simple—as opposed to the passives and futures of the Spanish testament—bring the text closer to the reader. There are also essential differences in macrostructure, as both texts abide by the legal tradition they spring from, investing the texts with a peculiar rigidity of their own, in accordance with preferences regarding the role of the participants (the notary, the executors) and the way the different parts of the text are arranged visually. Other factors that peculiarly constrict the macrostructure in these genres are the existence and pre-eminence of the trust phenomenon in the American will, as well as the constrictions or prerogatives that each tradition imposes on the testator.

Finally, there are substantial differences in lexis and syntax, because, even if the Spanish text contains many of the traits of a ritualistic, ceremonial discourse, both the syntax and the lexicon of the American text surpass it in complexity and involvement. Lack of semantic equivalence is usual, concepts being linked to the peculiarities of each legal tradition.

4 Conclusions

The process of legal translation implies the command and deployment of a series of skills and aptitudes which go beyond the transposition of content from the source to the target texts. In the present paper I have attempted to evaluate the efficacy of genre studies as a model strategy to engage in a kind of translation practice that envisages the legal tradition in which the text originates as a specialised community with specific communicative purposes and peculiar communicative conventions. In doing so, I have considered factors of analysis that incorporate, first, contextual matters like the rhetorical focus of the text; its degree of intertextuality as the "stored knowledge patterns" [12] of the community that issues it and, the tenor, or relationship between the issuer and the receiver of the text. Secondly, I have paid attention to the macrostructure and textual and typographical conventions of the texts as genres, which render useful clues regarding the importance of structure and information arrangement in private law instruments. Finally, I have compared the texts of both traditions in terms of syntactic trends, sentence length and lexical choices, since these formal or surface traits of the discourse analysed in isolation bear no coherent significance on genre difference, but in context generally confirm hypotheses found in the two previous levels, i.e., the pragmatics of the text and its discursive cohesion, and constitute, from this standpoint, a fundamental aspect for the efficacy of translation.

All in all, there are differences and concomitances in the texts under analysis at the different levels. These have shed some light on the way that every legal system handles juridical acts in the private scope. Similarities are found in the very nature and purpose of juridical acts, i.e., they are instruments for private individuals to establish and manage relationships under the umbrella of the law; they have also similar rhetorical foci in common, the texts at large being mainly exhortative or instructive, in the character of legislative texts, but also containing a necessary expositive part to detail the context in which the agreement or testament takes place. Nevertheless, the degrees of hybridation vary from some texts to the others. Only the Spanish *Contrato* shows instances of *explicit remission* as a consequence of the interpretive quality of Spanish law that places legislation in a central position, but the rules that inspire these juridical acts are present in all the texts through *implicit remission*, and in the way in which each instrument organizes its conceptual rationale. Such rationale is accomplished, among other tools, by means of the macrostructural choices in the texts, choices which reveal textual and contextual conventions of the legal tradition in question. Visual clarity and orderly arrangement are much evident in the two American instruments, as these categorize clauses topically in a proper sequence and include explicit headings dealing with each topic. The Spanish texts, on the other hand, are built around a heading and a series of introductory ritual formulae followed by a series of clauses, or recitals which are numbered.

Each text also modulates its voice according to the customs of the genre: attaining distance through passives, nominalizations, the use of the third person singular and the future tense as examples; or, contrarily, approaching the recipient through the first person speaker, the active voice and the present tense. Lexical and syntactic similarities are typical of a language that imposes rules and conditions in a certain realm of the law, but the differences are also dramatic. Even if verbosity and long-windedness are partly controlled by the graphic arrangement of the text in the American lease and the Spanish testament, not even macrostructural devices can deal entirely with the prolixity and embedding of the American testament and the Spanish *Contrato*. Lexical equivalences are sometimes possible especially in leases, but constitute a hindrance in the world of wills, where people arrange the transmission of their property beyond the grave, using the peculiar legal constructs of each tradition in the matter.

Finally, I would like to remark upon the complexity of the translator's task when trying to transfer one legal culture into another, mainly in the area of private agreements and wills. Legal translations, no matter how successfully they are tackled, are hybrid products whereby the expressive identity between ST and TT has to be faithfully conveyed. Nevertheless, the translator will have to determine the limits between respect for generic conventions in both languages and the efficient rendering of the letter of the law in a particular case. The translatability of texts between the civil and common law traditions requires these two traditions and the respective translation of their genres be kept in equilibrium, one never overshadowing the other, at the risk of either of them losing expression and legal vigor.

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