

# ASSESSMENT OF THE QUALITY OF CONTRACT TRANSLATIONS

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## Introduction

Working in the capacity of a Certified Translator, I have been asked several times to give statements attesting to the quality of the translation of legal contracts, so that the translated version from the English into the Portuguese language could be registered with the appropriate Corporate Registrar's Office. Though this request has been put to me several times, only once could I attest to the quality of the translation, and even in that case the statement was given with reservations.

The fact that the translations submitted to me were never good enough for official uses because they presented many problems puzzled me, especially because the contracts were translated by persons who seemed to have good command of both languages involved. I then became interested in investigating which linguistic parameters the theory could offer me to explain the problems found in the translations submitted to my evaluation.

From all the studies I have consulted, the only one that could be found aiming specifically at establishing parameters for the assessment of a translation text was Juliane House's *A Model for Translation Quality Assessment*, published in 1981. Thus, the main purpose of the study I have conducted was to test the applicability of that model to the translation of legal contracts to try to determine if the parameters established by House could help identify errors and inadequacies in the translation of those texts. Another purpose of the study was to verify the usefulness of the model in the assessment of different

translations of the same source text.

This paper will be divided into three parts. In the first part of this paper, I am going to present a very brief Review of the Literature on the topic, followed by a description of the Model For Translation Quality Assessment created by Juliane House. The second part of this paper focuses on my findings when applying House's model to the translations of business contracts from the English into the Portuguese language. Lastly, I will present some conclusions and some suggestions for further research in this area.

### **1.a Review of the literature**

When I set out to investigate what had been written on the topic of translation assessment I could notice that much had been written about translation theory and practice, but very little had been written on translation assessment. I could not find literature about the translation of legal documents, nor could I find one single text about the translation of contracts in particular.

The topic of translation assessment is not even mentioned in most of the books on translation I consulted. Some authors address this issue very briefly. Others come up with procedures for translation evaluation that seem too subjective and sometimes too vague to serve as the basis for assessing somebody else's work.

Nida and Taber (1982) in their well-known book *The Theory and Practice of Translation*, suggested some practical tests for assessing translation quality. However, all those tests are characterized by an attempt to link translation quality to the effect a translation elicits in its reader. Thus they are based on the unwarranted assumption that greater ease of comprehension equals better translation.

More recently, some authors such as Wilss (apud House, p. 21) and Reiss (apud House, p. 22) have made a potentially useful suggestion for translation assessment: the analysis of the source text prior to any evaluation of the translation text. However, these authors do not present any concrete suggestions on how to analyze the source text, the translation text, compare both and finally decide on the quality of the latter.

This is exactly what House attempts to do when proposing her model for translation quality assessment.

### **1.b House's model for translation quality assessment**

Before presenting her model, House explains the theoretical basis on which her model was developed. She starts by saying that it is the essence of translation that meaning be preserved across the two languages involved, and that meaning has three basic aspects: a semantic, a pragmatic and a textual aspect.

The semantic aspect is the most easily accessible from the three aspects and has been given preference by evaluators. However, the pragmatic aspect, that is "the particular use of an expression on a specific occasion" (House, 1981:27) is very important in translation because translation deals with language in use.

The textual aspect has been frequently neglected though it is a very important aspect because all the references such as substitutions, anaphora, ellipses, etc. that make up the different ways of text constitution account for the textual meaning that should be preserved in translation.

Thus, according to House, translation would be "the replacement of a text in the source language by a semantically and pragmatically equivalent text in the target language" (House, 1981:29-30). The problem is then to explain what equivalence means.

According to House, the equivalence sought should be an equivalence of function, that is both source and translation texts must present the same function and the text's function can only be made explicit through a detailed analysis of the text itself.

This is the basis for the model, and what makes it different from the other criteria for establishing equivalence because those criteria relied either on the writer's intention, an item that is not open to empirical investigation, or on the reader's responses, which presents problems to be measured.

The function of a text would then be "the application (cf. Lyons, 1969:434) or use which the text has in the particular context of a situation" (House, 1981:37). Thus, each text is an individual text embedded in a unique situation, and to characterize the text's function it is necessary to refer the text to the situation. To accomplish this, the notion of situation has to be broken down into the following specific situational dimensions:

### *A. Dimensions of Language User*

1. Geographical origin: features indicating the text's producer geographical origin — Unmarked form: Standard British/American English

2. Social class: features indicating the text's producer position on a social scale — Unmarked form: Educated middle class speaker of the standard language

3. Time: features indicating the text's temporal origin

### *B. Dimensions of Language Use*

1. Medium - Simple: The text is spoken to be heard; written to be read  
Complex: The text is written to be spoken

2. Participation - Simple: Monologue  
Complex: The text contains features that show addressee participation

3. Social Role Relationship

Symmetrical: The text contains features indicating solidarity and equality between addresser and addressees

Asymmetrical: The text contains features indicating authority relationship between addresser and addressees

4. Social Attitude: The text contains features indicating the degrees of social distance or proximity - Five styles of formality: frozen, formal, consultative, casual and intimate.

5. Province: field or topic of the text; details of text production.

The analysis of these situational dimensions leads to establishing the function of a text. According to House "a translation text should not only match its source text in function, but employ equivalent situational-dimensional means to achieve that function" (p.49), that is the match has to be verified along all the situational dimensions.

When analyzing the situational dimensions, House makes use of the following means for characterizing the linguistic evidence present in the text: Syntactic Means; Lexical Means and Textual Means. The Textual Means comprise theme dynamics, clausal linkage, and Iconic linkage.

In addition to using the situational dimensions just mentioned, House utilizes the following devices when analyzing and comparing

source and translation texts: Symbols such as [+ human], [- human], [+ abstract], [- abstract]; rhetorical-stylistic concepts such as alliteration and anacoluthon; other concepts, such as foregrounding x automatization, illocutionary force, emic x etic texts, ideational and interpersonal functions; textual features, such as overall logic structure and the presence of redundancy.

House also relies on her native speaker intuition and on the judgments of other native speakers, which are taken as hypotheses. House believes that equivalence relations between two languages are not absolute but they fall on a scale of more or less equivalent items which runs from more to less probable. This degree of probability can only be judged by a subjective, hermeneutic element as the native speaker intuition.

As a result of the analysis just mentioned, a textual profile is established for the source text under the form of a Statement of Function. The translation text is then analyzed using the same dimensions, and its textual profile is determined. The comparison of the two textual profiles reveals the degree to which the translation text matches the source text being therefore adequate in quality, and a Statement of Quality is provided.

When the source text's and the translation text's profiles do not match, there is an error. House describes two types of errors:

**COVERTLY ERRONEOUS ERRORS:** those which result from a mismatch in one situational dimension.

**OVERTLY ERRONEOUS ERRORS:** those which result from a non-dimensional mismatch. Such errors can be divided into:

1. Breaches of the target language system:
  - cases of ungrammaticality (clear breaches of the TL system)
  - cases of dubious acceptability (breaches of the norm of usage)
2. Mistakes in the denotative meanings of *sr* and *tr*
  - wrong selections
  - wrong omissions
  - ambiguities

## 2. Application of the model

Two contracts written in English were used in their original and com-

plete versions. Each contract was translated by three different experienced translators, all native speakers of Portuguese. For the purposes of this study an experienced translator is someone who has been offering their services as a translator for more than six years.

In addition to using the model proposed by House, I relied on my native speaking skills and professional judgment, and I consulted four other proficient native speakers of the two languages. I also counted on my own experience as a lawyer, on the legal advice of two other lawyers, and on the experience of two professionals in the publishing and air transportation business.

One contract was a LICENCE AGREEMENT in which one university grants another university the right to translate, publish and sell a book. The other contract was a PASSENGER SALES AGENCY AGREEMENT, in which an association of air transportation companies authorizes one travel agency to sell air passenger transportation on the service of its members.

### Analysis of source texts

The analysis of the situational dimensions revealed the following:

MEDIUM: Simple - written to be read

a) Syntactic means: use of a subordinate clause before the main clause, long appositional structures, [+ formal] structures starting with *should* and *upon*.

b) Lexical means: use of [+ archaic] derivatives from *here* and *there*; ready-made strings.

c) Textual means: etic text, that is, it contains temporal, personal or local deictics pointing to various features of the situation enveloping the text, the addresser and the addressees.

PARTICIPATION: Simple - monologue. One instance of the use of imperative eliciting participation was found.

SOCIAL ROLE RELATIONSHIP: Three types of relationship were found:

A) Writer - General Readers: symmetrical

a) Syntactic means: absence of 2nd person pronouns

b) Lexical means: technical terms without definitions

B) Writer - Contracting Parties: asymmetrical

a) Syntactic means: sentences with the illocutionary force of order

b) Lexical means: parties are treated by the impersonal [+ abstract] terms *Agent* and *Carrier*.

c) Textual means: detailed description of the parties' obligations

C) Between The Contracting Parties: asymmetrical

a) Textual means: 21 references to the Publisher's obligations and 2 references to the Proprietors' obligations.

SOCIAL ATTITUDE: formal

a) Syntactic means: overcorrectness.

b) Lexical means: lexical items marked [+ formal].

c) Textual means: highly elaborate and coherent text, which suggests it has been written following a pre-established plan.

PROVINCE

Certain features usually associated with contracts such as preciseness in defining possibilities, textual cohesion and delimitation of acceptable interpretations are evidenced by the following means:

a) Graphical means: capitalization and bold-face type to highlight certain lexical items.

b) Syntactic means: use of *shall*, *will* and present tense with mandatory connotation.

c) Lexical means: repetition of lexical items to restrict interpretation; frequency of legal terminology.

d) Textual means: highly coherent text

- Theme Dynamics: anaphoric and exophoric referencing; repetition of key words expressing contractual obligations.

- Clausal Linkage: use of connective *then*.

- Iconic Linkage: structural parallelism between clauses.

### **Statement of fonction**

The addresser's main purpose is to inform the contracting parties, as precisely as possible, about their contractual rights and obligations. The natural flow of information is guaranteed by a condensed and

premeditated text, which is not interrupted by the addressees' participation.

All dimensions clearly operate in support of the ideational functional component through the use of well-structured sentences, structures that give the text a formal tone, precise legal terminology, strong textual cohesion, and explicit consideration of acceptable alternative interpretations. The texts indicate there is no attempt to make them attractive to the addressees. The writer's intention seems to be to impart information efficiently.

The interpersonal component is marked only to a minor degree by the use of the illocutionary force of order in the utterances showing the asymmetrical relationship existing between the addresser and the contracting parties. Also, the consistent use of the modal verb *shall* seems to emphasize to the addressees that those are texts that express obligations that must be fulfilled by both parties. The interpersonal component is also supported by the use of the imperative form in one of the contracts.

### Analysis of translation texts

The analysis of the translation texts revealed the following mismatches:

#### COVERTLY ERRONEOUS ERRORS:

##### MEDIUM:

a) Syntactic means: absence of a subordinate clause; reduction of long appositional phrases by omission of items; absence of a [- formal] translation for initial *should any*, translated as *se, caso* instead of *na hipótese de*, and upon translated as *uma vez, após*, instead of *quando da*;

b) Lexical means: lack of [+ archaic] derivatives from here and there; [- formal] or inadequate translation of those adverbs, such as herein translated as *aqui*, the parties hereto translated as *as partes com referência a este assunto* instead of *as partes do presente contrato*, omission of hereby, which de-emphasizes the performative character of the utterance; inadequate translation of ready-made strings such as in whole or in part, as *na sua totalidade ou em parte* instead of *no todo ou em parte* — except to the extent required by law, as *até onde a Lei os permitirem* instead of *exceto conforme exigido em lei*.

c) Textual means: Omission of temporal deictics forthwith, then and immediately; omission of local references: Brazil - USA.

PARTICIPATION: Omission of please giving the sentence an illocutionary force of order; omission of the only phrase in one of the STs in which the addressees' participation is elicited — *if address is incorrect please indicate below*.

SOCIAL ROLE RELATIONSHIP: use of [- technical] terms. For instance, *default* translated as *falta* instead of *inadimplemento*; *notice* translated as *aviso* instead of *notificação*; translation of *shall* as *pode*, a verb that does not convey an illocutionary force of order; translation of *royalty* and *copyright*, instead of maintaining the terms in English.

#### SOCIAL ATTITUDE

a) Syntactic means: the overcorrected phrase *upon being called upon so to do* is not rendered in Portuguese in an overcorrect style — *caso seja chamado para*, instead of *quando solicitados a assim proceder*.

b) Lexical means: omission of [+ formal] terms; use of [- formal] terms - *otherwise* translated as *coisa semelhante*, *notwithstanding* translated as *apesar* instead of *não obstante*, *whereas* as *uma vez que* instead of *considerando que*;

#### PROVINCE

a) Graphical means: non-capitalization, de-emphasizing the item; more abundant use of boldface type than the ST.

b) Syntactic means: non-use of present tense with mandatory connotation (*the Publishers undertake to ensure* — *os Editores se empenharão em assegurar*); inconsistent translation for modal verb *shall*, translated as *deverá* and *poderá* (TT lacks one strong element of textual cohesion in contracts: one tense throughout the entire contract).

c) Lexical means: Omission of several items causing the text to be less precise or emphatic than the ST (*approved, at all times, adequate*); lack of lexical repetition present in the ST in order to restrict interpretation (*said*, translated as *referido, do tal, acima mencionado*); lack of precise legal terminology (translation of *paragraph* and *subparagraph* as *parágrafo* and *subparágrafo*, instead of “cláusula” and “item”, *dispute* translated as *desacordo*, instead of “litígio”);

d) Textual means:

- Theme Dynamics: lack of anaphoric referencing (omission of *such, their*); lack of repetition of lexical items that function as key words expressing the contractual relationship between the parties (*due* translated as *pagável, vencida, a vencer, a receber*; *agreement* translated as *acordo, contrato*); change in theme-rheme sequence;
- Clausal Linkage: omission of logical connector *then*;
- Iconic Linkage: structural parallelism is broken (*in the event*, translated as *na eventualidade de, se, caso*).

#### OVERTLY ERRONEOUS ERRORS

##### 1. BREACHES OF THE TARGET LANGUAGE SYSTEM:

- Cases of Ungrammaticality: Incorrect choice of pronouns and prepositions; wrong verb form (E.g.: *casos os editores não cumprirem*);
- Cases of Dubious Acceptability: literal translation causing a lexical repetition that makes the sentence sound awkward (E.g.: *os Proprietários são Proprietários do*); constant repetition of nouns that can be replaced by pronouns (E.g.: *o Transportador concorda que o Transportador*).

##### 2. MISMATCHES OF DENOTATIVE MEANING

- Wrong Selections: Translation of *royalties* for *direitos autorais*, which indicates the translator is taking *royalty* for *copyright*; *due* translated as *à vencer*, instead of “*vencido*”; *acknowledgment* translated as *conhecimento, esclarecimento*, instead of “*crédito de copyright*”.
- Omissions: important references to other documents and to the contract itself are lost with the omission of *thereunder* and *hereunder*;
- Insertions: insertion of the phrase “*da maneira como estes são oferecidos*” establishing a condition that is not present in the ST.

#### Statement of quality

The omissions of several derivatives from *here* and *there* not only impair comprehension and thus weaken the ideational component of the text's function, but also exclude from the TTs items which are typically used in formal written texts.

The ideational component is also compromised by the non-use of cohesive devices and precise legal terminology.

The interpersonal functional component is violated in many instances: the degree of equality between the writer of the contract and its readers is altered in the TTs; and the TTs lose part of the intimidating power the impersonal language in the STs provides. The non-utilization of the graphical means present in the STs impairs the interpersonal component by lessening the potential emotive impact of the text. Also, the emphatic effects displayed in the STs through theme-rheme distribution and structural parallelism are not matched in the TTs

In addition, the translation of *shall* as *poderá* weakens both components of the texts' function.

By far the problems present in the TTs are related to *overtly erroneous errors*. These errors detract from a clear and efficient passing on of information. Thus, the ideational component which is strongly marked in this type of text is violated to a considerable extent in the TTs.

The *overtly erroneous errors* found also cause impact on the interpersonal functional component. This happens especially in one of the contracts by the omission of the only instance in which the addressees are invited to participate.

### 3. Conclusion

This study has led me to the following conclusions:

The application of the model to the *corpus* of this study revealed that it proved useful in the assessment of contract translations from English into Portuguese. Thus, the main purpose of my study was accomplished.

The model proved to be especially useful in the identification of the *covertly erroneous errors*, which would probably be left unnoticed otherwise.

From all the breaches of equivalence made visible by the application of the model, the three following problems seemed to have special importance in the translation of contracts.

Firstly, the translation of [+ formal] terms in English into [-

formal] counterparts in Portuguese. These errors may have serious consequences for the possibility of utilizing the translation, if we consider that to be enforceable in Brazil, contracts signed in a foreign language must be translated and registered here. Thus, if the translation is to be registered as an official document the type of language used does matter.

Secondly, the change in the degree of symmetry in the social role relationship. This is especially important because the main purpose of a contract is the creation of obligations between the parties. So, if the translator chooses linguistic items that end up weakening the obligational character of the clauses, serious consequences may arise to the enforceability of the contract.

Likewise, if the translated version of a contract displays a less intimidating tone, the party in disadvantage may not fully understand the true obligational character of the contract and sign it with less precaution than if the dominating power of the other party is clear.

Lastly, the occurrence of omissions and insertions that are identified as *covertly erroneous errors*, and that make the text less precise, emphatic or formal. This seems to be a significant finding of this study because omissions and insertions constituted, by far, the most frequent errors found.

House's model also proved to be useful in the comparison of different translations of the same source text, the second objective of my study. The model helps bring to surface all problematic items and provides a practical listing of errors. Such a list makes it easier for the evaluator to verify which translation seems to be the most adequate, by evaluating the impact each error had on the overall quality of the translation text. In addition, the statements of quality provide a fast and objective means of text comparison.

The use of the concepts of ideational and interpersonal functional components also proved to be useful in the analysis and comparison of the STs and TTs. When these components are taken into consideration in the assessment of a contract translation, one is made aware of the fact that although the ideational component is strongly marked throughout the text, the interpersonal component is also sometimes well-marked, and should therefore be taken into account and preserved in translation.

However, the utilization of the model has some shortcomings. As

pointed out by Rodrigues (1985), the application of the model is an extremely laborious task. This fact makes the model useful for translation evaluators, but of little practical use for translators in their daily practice, since they obviously do not have the time to check the quality of their translations by means of the utilization of the model.

Also, some errors found in the texts analyzed do not fit House's classification of errors mentioned earlier. Two examples of these errors are incorrect capitalization and incorrect spelling.

In addition, the Dimensions of Language User did not prove to be useful to the assessment of contract translations. For instance, a problem concerning the geographical origin of ST.2 was found, but this problem did not seem to affect the TTs analyzed.

Some follow-up studies can be suggested. One would be the application of the model to a larger number of contracts. Such a study could attempt to identify which situational dimensions are more important than others in the translation of contracts, as it is hypothesized that the dimensions *Social Attitude* and *Social Role Relationship* are. Then it could produce a specific version of the model for the assessment of contract translations.

Another study could investigate in detail the power relations existing among all those persons involved in the signing of contracts. These relations were only briefly presented in this study, and seemed to deserve a more detailed description.

Finally, I want to emphasize that the application of House's model also proved it to be very useful in refining my sensibility to the subtle implications my choice of words can bring, and to make me more conscious of the results of those choices in the quality of my work.



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