

## *Original Paper*

# The Translation Study of the Contract Section of the Civil Code Based on Schema Theory

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### ***Abstract***

*In the context of the continuous integration and development of Chinese and Western legal cultures, legal text translation has become an important topic in current translation studies. Schema theory, as a core theory in cognitive psychology, has been integrated and innovated with linguistics and various types of text translation fields, opening up new paths for legal translation research. However, current legal translation research mainly relies on functional equivalence theory and teleology as its main theoretical basis, and there is still a lack of exploration in combining specific legal texts with schema theory. This paper employs schema theory to analyze the translation of the Contract Section of the Civil Code from the perspectives of language, content, and form, revealing its significant influence on the translation strategies and connotation understanding of legal texts. The research provides practical theoretical references and practical experience for legal text translation, the dissemination of Chinese and Western legal cultures, and the drafting of cross-border commercial contracts.*

### ***Keywords***

*Schema theory, Contract Section of the Civil Code, Legal text, Legal translation*

## **1. Introduction**

In the current context of accelerating globalization and continuous integration of Chinese and Western legal cultures, legal translation has become an important branch in the construction of the legal framework. Among them, as the core text regulating civil activities and adjusting the order of market transactions, the translation of the Contract Section of the Civil Code plays a crucial role in the international dissemination of China's contract legal norms (Li & Zhang, 2022), cross-cultural legal exchanges, and the construction of the logical framework of the legal system (Liu & Cao, 2024). How to accurately analyze the terms and clauses in the Contract Section and the internal legal framework,

and understand the essential differences in language, content, and form of Chinese and Western legal texts, is an important task currently faced by legal translation.

## 2. Schema Theory and Relevant Research

Schema theory, a branch of cognitive science, is concerned with how the brain structures knowledge. A schema is an organized unit of knowledge for a subject or event, which is based on past experience and is accessed to guide current understanding or action.

The term “schema” was first proposed by the philosopher Kant, who pointed out that schema is “a product of the learner’s previous imagination and structure” (Zhao, 2024). Subsequently, after the Gestalt psychology and the stage of epistemology, modern schema theory gradually emerged. Frederic Bartlett’s memory experiments revealed that individuals unconsciously distort recalled story details to fit their cultural schemata, and defined the schema as “the active organization of past experiences” (Carrell, 1987). And David Rumelhart believes that schemata are activated when understanding new information and are continuously enriched and restructured with experience. In recent years, schema theory has increasingly demonstrates the transformation from single dimension to multi-level and multi-angle research paradigm, which has exerted a profound impact on multiple fields such as education, psychology, artificial intelligence and linguistics.

In the discipline of translation, Kramersch cited three kinds of schema in discourse understanding proposed by Fillmore, namely, text schema, genre schema and content schema (Kramersch, 1993). Professor Liu Mingdong emphasized that in the process of schema translation, the translator must correctly decode the language schema, context schema, stylistic schema and cultural schema in the source language and re-encode them appropriately in the target language in order to create superior translations (Liu, M. D., & Liu. K. P., 2004). He Ling believes that language schemata, content schemata and formal schemata are extremely necessary for English learners’ understanding and learning, especially in translation and listening comprehension (He, 2005). Given various classifications of schema, this paper adopts the latter classification as its analytical framework, as it enables a systematic examination of the translation from linguistic, content, and formal perspectives.

In combined research on schema theory and translation, with regard to research areas, they focus on English teaching, linguistics, and multi-category text translation (Yang, 2009). In terms of research methods, scholars adopt field investigation methods to collect data through questionnaires and interviews, and conduct comparative experiments by controlling variables for analysis or research through close text reading and corpus analysis. When it comes to research contents, scholars mainly focus on the application of schema theory in the translation of specific text types, the related translation strategies and methods, as well as the significance of schema theory for translators’ abilities. Although schema theory has been widely applied in many fields, there is very little research on legal texts and legal translation from different dimensions.

Therefore, this study will take the Contract Section of the Civil Code as the research subject and

investigate the practical use of schema theory in translation from three aspects: language, content and form.

### 3. Analysis of the Contract Section of the Civil Code Based on Schema Theory

#### 3.1 Linguistic Schemata

Linguistic Schemata refer to the basic knowledge about language in an article (Chen, 2009), mainly covering aspects such as vocabulary, sentence, grammar, and idiomatic expressions. When translating legal texts into English, the target language's vocabulary and grammar schemata are important factors for translation.

##### 3.1.1 The Related Vocabulary Schema of "Contract"

In the translation of "contract", the translation does not simply correspond to the words. Instead, it requires the translator's understanding of the target language's vocabulary to achieve precise translation, thereby establishing the framework of relevant legal concepts and rights and obligations.

① ST: 保证合同

TT: contracts of suretyship

In this example, the translator utilized the etymology and followed the complete lexical schema of the term "suretyship" in the target language, rather than relying solely on its literal definition. This avoided conceptual deviations caused by mismatched schemata. In the contract of suretyship, "suretyship" originates from the Latin word "securitas", meaning "safety, guarantee"; its guarantor is translated as "surety", and the debt is independent and is in contrast to the debt of the principal debtor. If it were translated literally as "guarantee contracts", it would refer to guarantee contracts, which would be quite different from the original meaning. "Guarantee" comes from the old French word "garant", essentially referring to the debt subordinate to the guarantor. The creditor usually has to fail in recovering from the principal debtor before they can recourse against the guarantor.

② ST: 保理合同

TT: factoring contracts

In this example, the translation also relies on the etymological connotations of the "factoring" vocabulary schema, precisely aligning with the essential characteristics of the factoring contract. The root of the word "factoring" comes from the French word "facteur", which means "agent, broker". This specific agent not only sells goods but also provides credit to buyers on behalf of the principal. Therefore, "factoring" specifically refers to the business model of "purchasing accounts receivable and providing corresponding financial services", reflecting the operational mode behind the "factoring" contract, clearly defining the focus and purpose of the contract.

##### 3.1.2 The Grammatical Schema of "Shall"

Grammatical schema is another important branch of language schemata, and it is crucial for understanding the structure of legal provisions and the logic behind them. When translating legal texts, modal verbs are quite common, and the most frequently used modal verb is "shall" (Liu, 2024). This is

closely related to the grammatical schema behind “shall”: it not only stipulates the positive obligations of the parties, that is, things that must be done; but also stipulates their prohibitory obligations, reflecting the mandatory and restrictive nature of the right.

① ST: 当事人应当按照约定全面履行自己的义务

TT: each party shall perform its own obligations as agreed

The “shall + active voice” structure usually refers to imposing an obligation for positive actions and also serves to emphasize the subject. Here, “shall” stipulates this content as a legal mandatory requirement, imposing a current and continuous legal obligation. The use of the active sentence also makes the subject “each party”, the party undertaking the obligation, clear.

② ST: 不得拒绝对方合理的订立合同要求

TT: shall not reject the reasonable request for contracting from the other party

The “shall not” structure establishes the absolute forbidden zone for legal actions. “Shall” functions as a modal verb here, not in the ordinary future tense usage, but rather expressing mandatory and obligatory nature, directly modifying the predicate verb “reject”, indicating that this restriction is a direct legal regulation of the behavioral norms; while “not”, as a negation word, completely negates “reject”.

Therefore, when “shall” is combined with “not”, it indicates that this restriction is a direct prohibition by the law, which is a legal limitation on the principle of “freedom of contract” in the pre-contract stage.

③ ST: 视为对合同的追认

TT: shall be treated as having ratified the contract

The “shall + passive voice” structure is often used to describe objective legal effects, states or judgment criteria. As a modal verb, “shall” expresses legal mandatory nature; while the passive voice focuses on “the ratification of the contract”, highlighting the characteristics of legal determination rather than the subjective thoughts of the parties. At the same time, in the above examples, there are also “shall + perfect tense” structures. This structure does not merely describe a natural fact, but stipulates an unrefutable legal presumption (Chen, n.d.). When the agent actually fulfills the main obligations of the contract, the law directly and mandatorily determines that they have the intention of ratification, thereby rectifying the defect in the validity of the unauthorized agency behavior.

In the above examples, the grammatical schema of “shall” is not only closely related to the behavioral patterns of the parties, but also to a certain extent reflecting the legal purposes achieved by the legal provisions: maintaining transaction security and efficiency, and ensuring transaction freedom and stability.

### 3.2 Content Schemata

Content schemata refer to a series of concepts related to things, thoughts, or phenomena. It encompasses the knowledge of certain disciplines and specialties involved in a certain text, as well as other background, language, pragmatic, and various types of knowledge and memory of content that

are established through reasoning and interaction. In legal translation, the translator must accurately grasp the content of the legal concept system and its internal logic.

### 3.2.1 The Content Schemata of “Prevail”

“Prevail” is a highly effective verb in the contracts and standard terms of the Civil Code. When translating expressions such as “take as the standard” and “follow its provisions”, the translator mostly employs the structure “prevail”. The underlying content schemata reflect the mandatory nature of legal norms, enabling the value system inherent in Chinese law to be conveyed in a way that conforms to the thinking habits of the target readers, thus achieving a deep integration of legal logic.

① ST: 应当作出不利于提供格式条款的一方的解释

TT: an interpretation unfavorable to the party furnishing the standard terms shall prevail

One of the content schemata of “prevail” is to preset a scenario where a conflict exists and clearly define the final solution. “Prevail” in English has the connotation of “overcoming, winning”. When a conflict exists, the subject of “prevail” holds a higher position. Therefore, from this example, when there is ambiguity in a standard clause, an interpretation unfavorable to the provider should be made. By using “prevail”, the translation not only explains “how to interpret”, but also strengthens the meaning behind “why to interpret this way”—that the risk of ambiguity in the standard clause is pre-assigned to its creator.

② ST: 应当以法律、行政法规规定的期限为准

TT: the period prescribed by the laws and administrative regulations shall prevail

The content schema of “prevail” also conveys a sense of mandatory order. In the translation, “the period prescribed by laws and administrative regulations” is used as the subject, and “prevail” clearly indicates the mandatory nature, establishing the priority and mandatory nature of the law’s effectiveness, and reflecting the legal logic behind the law that “legal effect is supreme and legal rules must be strictly applied”.

### 3.2.2 The Content Schemata of “Be Subject to”

In legal texts, “be subject to” has multiple meanings, such as “be governed by”, “depend on”, “be conditional on” etc. The semantic connotation varies according to the context, but all revolves around the core meaning of “establishing constraints for actions or rights”.

① ST: 经债权人同意

TT: be subject to the consent of the creditor

When “be subject to” is used to convey the core meaning of “requiring the consent of a third party”, the underlying content schema it brings about makes the legal relationship clearer and more definite. For instance, “with the consent of the creditor”, “with the consent of the lessor”, “with the consent of the contractor”, etc., all adopt “be subject to the consent of” (Peng, 2000). This usage clearly demonstrates the validity of legal acts such as debt transfer, lease right transfer or subcontracting contract. The control power does not lie in both parties but is held by a specific creditor, making the legal relationship more explicit.

② ST: 具有知识产权的标的物

TT: the subject matter subject to the intellectual property rights

When describing the inherent legal rights attached to the subject matter itself, the content schema of the “be subject to” structure is closely related to the unique attributes of the subject matter. This section explains the unique intellectual property attributes of the subject matter, defines its scope, and from this perspective, it reflects that the right to use the subject matter is not complete, and the scope and manner of its exercise are restricted by intellectual property rights.

③ ST: 承担保证责任

TT: be subject to suretyship liability

The content schema of “be subject to” is also closely related to the characteristics of legal liability assumption. The translation of “assume” here reveals the underlying legal status and logical relationship. That is, the principal creditor’s rights come first, and the guarantee liability follows and is subject to the control of the principal creditor’s rights, fully demonstrating the subordinate and derivative relationship within the legal relationship.

In conclusion, “be subject to” is usually placed at the beginning or in the middle of a sentence. It clearly presents the logical framework of the legal provisions and also reflects the applicable sequence of the relevant provisions. It has certain procedural significance in guiding the use of legal provisions (Zeng, 2015).

### 3.2.3 The Content Schemata of “按照”

In the Contract section, “按照” is mainly translated as “in compliance with”, “on”, “in accordance with”, or “in light of”. The diversity of its translations to some extent reflects the core challenge of legal translation: the same source language word may correspond to multiple expressions in the target language with different content schemata.

① ST: 按照约定的质量要求交付标的物

TT: shall deliver the subject matter in compliance with the agreed quality requirements

The content schema of “按照” is pre-established in the translation “in compliance with”, which sets up a clear and objective standard system. Here, “compliance” represents the content illustration of result conformity. In this example, the content schema of “按照” is reflected in comparing the deliverables with a pre-defined standard, with the focus being on “whether the requirements are met”.

② ST: 依照买受人的指示向第三人交付标的物

TT: delivers the subject matter to a third party on the buyer’s instructions

When “按照” is followed by conditions, the content schema refers to specific actions taken by the rights holder. The translation “on the buyer’s instructions” accurately conveys the core obligation of the obligor, which is to comply with the requirements and instructions provided by the rights holder. The use of the preposition “on” also strengthens the deep relationship between “entrustment” and “agency”.

③ ST: 按照勘察人、设计人实际消耗的工作量增付费用

TT: in light of the actual amount of work done by the surveyor or designer

When it comes to the specific details of the contract, the content schema behind “按照” is expressed by “in light of”. “In light of” focuses on “decisions or actions made based on objective facts or actual circumstances”, and in legal texts, it means “considering”, “given”, “referencing”, and is mostly used in clauses such as “cost adjustment”, “responsibility division”, and “contract amendment” that require judgment based on specific facts. The translation of this example fully reflects the content schema of “按照” - based on objective facts, ensuring the interests of both parties and guaranteeing the fairness and operability of the legal provisions.

Depending on different contents and contexts, the translation of “按照” fully reflects the phenomenon of “multiple translations for one word” in legal translation. This is conducive to achieving deep functional equivalence in translation and ensuring the accuracy of cross-cultural transmission of legal information.

### 3.3 Formal Schemata

Formal Schemata, also known as Rhetorical Schemata, they refer to the knowledge of the genre and structural aspects of the material. The specific tenses and conjunctions in legal texts highlight the distinctive formal features of legal texts, and their translation has a crucial impact on the precise conveyance of the original text’s meaning.

#### 3.3.1 Change of Tense: From “Active” to “Passive”

There are many sentences without a subject in the Chinese version of the Contract Law. When translating them, in order to name the subject and highlight its importance, the passive voice form is often adopted. The focus is placed on the subject position. Moreover, the expression of the passive voice can also reflect the mandatory provisions of the law, making the legal text more authoritative and embodying its distinctive form features. Therefore, the passive voice becomes a significant form feature in the translation of legal texts (Tang, 2013).

① ST: 通知债权人

TT: the creditor is notified

The passive voice can serve to emphasize the legal subject. The Chinese phrase “通知债权人” is an active expression. However, in the translation, the rights holder “creditors” is placed in the subject position, drawing the reader’s full attention to the creditors and emphasizing that their status in the legal process is “being notified”. Compared with the active sentence, the passive voice more prominently highlights the important position of the rights holder in the contract.

② ST: 自解除权人知道或者应当知道解除事由之日起一年内不行使，或者经对方催告后在合理期限内不行使的，该权利消灭。

TT: the right shall be extinguished by non-exercise within one year from the day when the party who has the right to rescind knows or should have known the cause of rescission or within a reasonable period after the other party makes a demand.

The passive voice can reflect the mandatory nature of legal rules. In this translation, “the right” is placed as the subject. The use of the passive sentence structure focuses the sentence’s emphasis on the

topic of the conversation, highlighting the legal consequences after “not exercising the right”. This clause, by clearly stipulating the legal time limit for exercising the power and the automatic extinction of rights upon expiration, not only compels the parties to exercise their rights in a timely manner but also ensures the transaction security and interests of the counterpart, embodying the mandatory nature of the legal provisions for both parties (Wen, 2015).

### 3.3.2 The use of Archaic Compound Adverbs

The archaic compound adverbs are rarely used nowadays, but they still exist as a common form in various English legal documents. This is because the use of archaic words not only enables the concise expression of the connotations of legal provisions, but also enhances the rigor of the legal text, making the logic between sentences more coherent.

① ST: 买卖合同是出卖人转移标的物的所有权于买受人，买受人支付价款的合同。

TT: A sales contract is a contract whereby the seller transfers the ownership of the subject matter to the buyer and the buyer pays the price for it.

The archaic compound adverb “whereby” elaborates on the specific contents of the contract. When defining a sales contract, “whereby” establishes the connection between “contract” and “specific actions”. The clause introduced by “whereby” serves as a legal constituent element of this contract, concisely expressing the rights and obligations that will inevitably arise after the contract is legally established.

② ST: 借款合同是借款人向贷款人借款，到期返还借款并支付利息的合同。

TT: A contract for loan of money is a contract whereby the borrower borrows a sum of money from the lender, and repays the borrowed money with interest thereon when it becomes due.

Similarly, the archaic compound adverb “thereon” clearly defines the rights and obligations between the “borrower” and the “lender” when describing a loan contract. Analyzing “thereon” separately, “there-” refers to the “borrowed money” mentioned earlier, and “on” implies the core legal relationship of “attached to...” or “arising from...” (Li, 2017). Here, “interests thereon” refers to “interests on the borrowed money”, strictly limiting the calculation of interest to the principal amount borrowed. The use of “thereon” connects the preceding and following content, making the logical structure more rigorous.

In conclusion, in legal texts, the archaic compound adverbs such as “whereby”, “thereon”, and “thereof” are formed by combining the prepositional endings of Old English with prepositions. They have precise semantic meanings and can accurately convey the contractual terms, rights and obligations, etc. mentioned in the previous text, making the expression concise and rigorous, thereby reflecting the authority and professionalism of the legal sentences.

## 4. Conclusion

This paper employs schema theory to conduct an in-depth analysis of the translation of specific terms and related legal regulations in the Contract Section of the Civil Code from the perspectives of

language, content, and form. At the language schemata level, the selection of different “contract” words and the use of “shall” fully consider the underlying lexical and grammatical schemata, ensuring that the translation is in line with the language cognition of the target language readers. At the content schemata level, the functional equivalent translation strategy based on the content schemata of “prevail”, “be subject to”, and “按照” facilitates the accurate transmission of legal meanings. At the form schemata level, the use of passive voice and archaic language compound adverbs in translation is adapted to the form of the legal text, clarifying legal relationships and enhancing the logical framework of the text.

In summary, this study not only enriches the translation research of schema theory in legal texts but also provides relevant references for subsequent legal text translation practices, and offers theoretical support and practical experience for cross-border contract drafting. In the future, research can further explore the application of schema theory in other legal texts to promote the cross-cultural dissemination of Chinese legal connotations and logic, and enhance the understanding and communication between Chinese and Western legal systems.

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