

Where there's a will...

Translating English wills into German is a complicated task. Sabine Hellmann on dealing with the different legal systems and idiosyncratic terminology

Most legal texts are complicated to translate. Translating a text from a common law country into German (Germany is a civil law country) presents specific difficulties, as you have to translate not only between language systems but also between legal systems. The structural differences between the two legal systems are challenging. The translator is often ill-advised to opt only for a functional equivalent with the same or similar legal effects in the target language because the recipients, with their specific culture-based pre-understanding of legal concepts, might inadvertently misinterpret the term.

English wills are notoriously hard to translate. Take this passage, for example:

I GIVE free of all inheritance tax and other duties and taxes payable on or by reference to my death the sum of ONE HUNDRED THOUSAND POUNDS (£100,000) ("the Cash Legacy"), and all my personal chattels as defined by section 55(1)(x) of the Administration of Estates Act 1925 not hereby or by any Codicil hereto otherwise disposed of to my Trustees absolutely and without imposing any trust or other legally binding obligation on them I request that they dispose of the same in accordance with any Memorandum or note made by me which may come to their knowledge within six months after my death and in default of any such Memorandum I further request my Trustees to divide the said chattels between the Beneficiaries of my Residuary Estate and to treat any surplus, of the Cash Legacy as an accretion to my Residuary Estate.

How can you tackle a passage such as this? Unfortunately, the principle "one sentence, one thought" that is generally applied to technical texts does not apply to most legal

texts – whether in English or German. The directions given by a testator (the person making the will) are often very complex. Formal lexis, the use of archaisms, missing punctuation, complex legal terms and a convoluted sentence structure, characterised by restrictive conjunctives, make wills complicated to read and translate.

Wills are characterised by highly specialised lexis and semantics. Testators in both countries usually need to seek professional advice to be able to assess the legal effect of a will and to

There are considerable differences between the legal concepts of wills under English and German law

Recommended reading

- Von Bernstorff, C G, *Einführung in das englische Recht* (2011): lexical analysis and the English common law system
- Süß, R, *Erbrecht in Europa* (2007): passage on the law of succession in England
- Reimann, M & Zekoll, J (ed), *Introduction to German Law* (2005): details of the German law of succession
- Clark, R, "The Fatal Comma" in *The Write Stuff* (2007), www.emwa.org/PastTWS/FatalcommaClark.pdf: information on punctuation in English legal documents.

ensure that it is valid. Translators of wills are faced with texts that often cover several areas of law, especially English land law and trust law. These areas require extensive research. When working with legal texts of any kind, the translator should bear in mind that the exact wording of the text is the basis for later interpretation, and they should keep as close as possible to the wording of the original.

On close analysis

There are considerable differences between the legal concepts of wills under the English common law system and the German civil law system. Under English law, for example, the estate of a deceased does not pass directly to the beneficiaries but to a personal representative. Legal ownership of the estate is initially vested in this representative, who administers the estate; in Germany, title to the estate passes to the heir automatically, by operation of law.

Let us return to the sample passage. What are the problem areas for a German translator and how can they be resolved? The analysis should start at word level. Expressions such as "cash legacy", "personal chattels", "codicil", "trustees", "residuary estate" and "accretion" need to be closely examined before a possible German equivalent is chosen. The analysis and search for an equivalent can be broken down into three steps:

- 1 Analysis of the English term within the framework of the English legal system (using monolingual technical dictionaries or legal textbooks)
- 2 Contrastive analysis with the German legal system: is there a synonym or similar expression in the target language (TL) system and does it have the same or a



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BINDING LEGACY

The language used is so specialised that people nearly always seek legal advice when writing a will

similar function within the legal system of the TL? (Using German technical dictionaries and legal textbooks or the code of law.)

3 Determination of a TL expression (a descriptive paraphrase may be a solution).

To illustrate this process of analysis let us look more closely at the terms in the sample text:

- **Cash legacy:** a gift of personal property effected by a will (*Oxford Dictionary of Law*). Translation: *Barzuwendung*. Alternatively, *Vermächtnis* could be used, with a note explaining that the difference between heirs and legatees does not exist in English law.
- **Personal chattels:** tangible goods, comprehensively defined by section 25 of the administration of estates act 1925 (ODL). Translation: *bewegliche persönlich genutzte Gebrauchsgegenstände*.
- **Nil rate sum:** the amount of money for which you do not pay Inheritance Tax (ODL). Translation: *steuerlicher Freibetrag*.
- **Trustees/trust.** These are common law concepts: if a testator directs a trust in his will he exerts influence on the estate on a long-term basis. In English law, the trustee holds the legal title, which is limited by the equitable interests to the estate held by the beneficiary of the trust. In German law of succession, this legal effect of influencing the estate is achieved by a completely different legal concept (determination of heirs). To indicate these conceptual differences I would add the English expression to the translation in brackets: *Treuhänder* (trustee).

Introducing structure

After lexical analysis of the passage, its complex syntax structure has to be analysed and broken down in order to work out how each part is intended to be understood. The

Schematic illustration of the text

I give -	£100,000 (cash legacy) – free of inheritance tax + all personal chattels not otherwise disposed of by will or codicil
To:	trustees (absolutely without trust or other obligation)
I request -	trustees dispose of same in accordance with memorandum or note within six months after death
if no memorandum -	trustees divide chattels between beneficiaries of residuary estate treat surplus as accretion to residuary estate

author's ideas and any conditions introduced by restrictive connectors, such "as if", should be ordered in a schematic way. This process does not always have to be carried out explicitly, but if you come across a very long passage, a short schematic illustration helps to disentangle the threads (see figure, above). A schematic illustration can also be very helpful if reference items are unclear because ambiguous cohesive connectors ("same", "such") have been used.

The exact sentence structure cannot be replicated in German, but the general presentation of ideas, the author's train of thought and the intended legal effect should be retained. As in many English wills, there is no punctuation in this passage. Punctuation should be used in the German version or it will be unintelligible. A possible translation is:

Ich VERMACHE, erbschaftssteuerbefreit und unbelastet von weiteren bei meinem Tode oder in Verbindung mit meinem Tode zahlbaren Abgaben oder Steuern, den Betrag von EINHUNDERTTAUSEND PFUND (100.000,- GBP) (Barzuwendung) sowie alle meine beweglichen persönlich genutzten Gebrauchsgegenstände (personal chattels) im Sinne des Abschnitts 55(1)(x) des

Administration of Estates Act 1925 (Gesetz über die Gesonderte Obligatorische Nachlassabwicklung aus dem Jahr 1925), über die ich nicht durch dieses Testament oder durch irgendeinen Testamentsnachtrag anderweitig verfügt habe, uneingeschränkt meinen Treuhändern (trustees) und bitte sie, ohne ihnen jedoch irgendwelche Verpflichtungen aus dem Trust oder irgendwelche anderen rechtlich bindenden Verpflichtungen aufzuerlegen, über dieselben in Übereinstimmung mit jedem von mir verfassten Memorandum oder Vermerk zu verfügen, von dem sie innerhalb von sechs Monaten nach meinem Tode Kenntnis erlangen und bitte sie ferner, sofern ein solches Memorandum nicht vorliegt, die genannten Gebrauchsgegenstände zwischen den Begünstigten meines Restnachlasses aufzuteilen und jeglichen Überschuss der Barzuwendung als Anwachsung zu meinem Restnachlass zu behandeln.

A working active knowledge of the German legal language and style (e.g. collocational patterns) is indispensable. Extensive research, a good understanding of the English common law concepts related to land law, trust law and wills, and the related German legal concepts, are also prerequisites.