

# WORDS, LAW AND A SEARCH ENGINE

---

Margaret Hewett\*

## 1. Introduction

There is no doubt that the internet inventions of the last half-century and their widespread adoption throughout society have changed our lives dramatically and will certainly continue to do so. Many of these inventions are beneficial. Some – a few – are subject to abuse.

E-mail correspondence and billing are killing the postal system. Internet banking dispenses with cheques and tellers. Garmin and his/her pals replace tourist maps, sometimes leading up to dead ends but soon using that irritating word “re-calculating”. If you have GOOGLE, you have no need for dictionaries or printed books whether novels, archival material or notes on gardening. Among young people conversation is a dying art. This will shortly bring me to my central theme, which is language usage, particularly in the field of translating historical legal texts from Latin into English.

## 2. Universities and the internet

Academic life is also affected and, if I am not mistaken, one goal is “distance education” with lecture notes, texts and their answers displacing university lecture rooms, lecturers and libraries. However, there is still a long way to go before course material on a particular subject will be provided by a single eminent professor via the internet. This would negate valuable human contact between academic staff and students, with its accompanying arguments and discussions. On-line information will be free to all and sundry. Dramatic as this may sound to conservative academics, there is no doubt that such policies are being mooted in the United States of America and to a lesser extent in Europe. In South Africa “distance education” as offered by the University of South Africa is nothing new, but not as drastic as is now being suggested. At other universities, some students rely almost exclusively on the internet when doing research for projects and essays. Fortunately, in South Africa the human element in education is still effective and relevant. Long may it last!

\* Professor Emerita and currently Honorary Research Associate, Department of Private Law, University of Cape Town.

### 3. The old authorities and Latin

My life's work in teaching and translating legal texts arose from the mid-twentieth-century circumstances in the South African legal world. Roman-Dutch law required legal practitioners and academics to have a certain understanding of the subtleties of legal Latin. This involved attempting, with or without the help of a dictionary, to first understand and then translate texts in a broad swath from the sixth-century *Corpus iuris civilis* until the mid-twentieth century. Facility in classical Latin was not enough. The language of Cicero changed over the centuries, adapting to new needs with new vocabulary (eg “sclopetus” for the newly invented arquebus and musket) and was influenced by the national languages springing up around it. Specialised knowledge of legal terms was essential, especially their precise meaning in different periods and in different legal systems (*cf* the common-law “easement” and Roman-Dutch “servitude”).

Then, in the mid to late twentieth century, under pressure from other subjects, chiefly in the scientific and technical fields, facility in Latin declined. The legal world became dependent on the “old school” of lawyers who, supported and encouraged by the South African Law Commission, stepped in to provide translations of essential texts into either English or Afrikaans. Wisely, many academic lawyers such as Professor Ben-Zion Beinart of the University of Cape Town and Professor Paul van Warmelo of Pretoria provided parallel texts, so that those few who had the necessary skills and interest could check the target language against the original Latin. (Here, I am not entering into a discussion of editions or textual commentary, nor am I mentioning the stalwart work of English and European scholars.)

### 4. Sceptics and the GOOGLE solution

Naturally there are a number of sceptics who consider that today there is no need for the Old Authorities. Modern constitutions and legislation provide all that is required. Besides, any texts that might be necessary are available in translation in law libraries or on the internet. Moreover, using the GOOGLE TRANSLATOR offers a hopeful solution to the problems of hitherto untranslated texts. However, this is optimistic and open to comment.

The following short Latin-to-English and English-to-Latin “translations” show the linguist and jurist examples of the limitations of pressing buttons.

Let us consider the following – chosen at random – but generally representative of GOOGLE translation:

Institutes 2 1 12: *Ferae igitur bestiae et volucres et pisces, id est omnia animalia quae in terra mari caelo nascuntur, simulatque ab aliquo capta fuerint, iure gentium statim illius esse incipiunt. Quod enim ante nullius est id naturali ratione occupanti conceditur.*

The programme promptly produced the following:

Therefore, the beasts of the wild beast and the birds and the fishes, the sea, the sky, on the earth, that is to say all the beasts that are born, as soon as they have been captured by some, that the law of nations immediately begins to exist. For that which is in front of the natural reason is that no one's occupation is recognized.

Not exactly sense, the last sentence being incomprehensible. For comparison, let us look at the translation by JAC Thomas,<sup>1</sup> Professor of Roman law at the University of London.

Hence, wild animals, birds and fish i.e. all animals born on land or in the sea or air, as soon as they are caught by anyone, forthwith fall into his ownership by the law of nations: for what previously belonged to no one is, by natural reason, accorded to its captor.

JB Moyle<sup>2</sup> of Lincoln's Inn and late tutor of New College, Oxford, translating somewhat more acceptably, produced the following:

Wild animals, birds and fish that is to say all the creatures which the land, the sea and the sky produce, as soon as they are caught by anyone become at once the property of their captor by the law of nations; for natural reason admits the title of the first occupant to that which previously had no owner.

So far, so good! Now we reverse the process and present GOOGLE with Thomas' English and wait for the Latin, noting as we do so that the programme translates word for word disregarding the different word order of the two languages and ignoring grammatical cases:

Unde feris avibus et piscibus, id est omnia animalia quae in mari nascuntur in terra vel aer, cum ab aliquo capta fuerint, jure gentium statim cadit in possessione enim nullius est, quod prius, ubi per rationem naturalem ad suam sententiam raptor.

The GOOGLE Latin of Moyle's English translation follows below:

Bestiarum omniumque reptilium, avium et piscium qui sub terra, id est, mare et aethere exitus, cum primum facti sunt, qui statim captus est iure gentium, cuius et raptor, quia fert humana ratio nomen quod prius non fuerit primi occupantis.

Confusion reigns supreme!

## Abstract

The above article briefly outlines the problems associated with GOOGLE translations of Latin to English and conversely English to Latin. The need for some such assistance has been created by the unfortunate fact that today many lawyers and jurists can no longer read legal texts written when Latin was the international language of scholars. South Africa, together with other countries having Roman-Dutch legal systems, has been adversely affected. The immediate response was for those local scholars who were well versed in Latin and law to complete competent translations of certain Old Authorities. The need for further Latin translation has been questioned and not infrequently dismissed as irrelevant in the modern legal world. Should a required text not be available, the "Translate" function of the GOOGLE search engine is one of the only alternatives. Here I have tried to illustrate the fallacy of this present solution by choosing a few lines from

1 Thomas JAC *The Institutes of Justinian Text, Translation and Commentary* (Cape Town, 1975).

2 JB Moyle *The Institutes of Justinian Translated into English* (Oxford, 1913).

Justinian's Institutes, and having it translated into English by the GOOGLE "Translate" tool. The result is a linguist's nightmare. Conversely, translating competent English versions of Institutes 2 1 12 into Latin produces a mangled "Gobbledy GOOGLE," completely ungrammatical and incomprehensible! Where do we go from here?