

中华人民共和国《民法通则》AAA英译本比较分析

对国内各有关单位的法律英译有了一定了解之后，为了知己知彼，也必须对国外学术或商业单位所制作的中华人民共和国法律英译本的水准有所了解。我们在对各大洲国外单位关心我们的法律并组织译制的热忱表示赏尝的同时，也理所当然地对其译制质量表示关切——其程度且不亚于对我国单位所制作的译品。

为此，我们以《民法通则》亚（Asia）、澳（Australia）、美（America）三大洲的英译本各一种[中华人民共和国国务院法制局制作的英译本、澳洲 CCH 股份有限公司英译本和美国全美律协主办的 China Law Reporter 杂志英译本（注明为 James V. Feinerman 与 Lee M. Zeichner 两氏按 Frankie Fook-lum Leung 和 Franky Hung-kwun Tse 两君的草译在 Natalie G. Lichtenstein 女士协助之下翻译的）]为对象，进行了调查并称本调查报告为“中华人民共和国《民法通则》AAA 英译本比较评析”，望能引起国际中国法翻译界的注意，以便共同努力，把中国法律的英译工作提高一步。

以下为叙述方便，把法制局译本简称 LAB、澳洲译本简称 CCH、美洲译本简称 CLR，请看：

原文：中华人民共和国民法通则

译文：GENERAL PRINCIPLES OF THE CIVIL LAW OF THE PEOPLE'S
REPUBLIC OF CHINA (LAB)

General Principles of Civil Law of the People's Republic of China (CCH)

THE GENERAL RULES OF THE CIVIL CODE OF THE PEOPLE'S
REPUBLIC OF CHINA (CLR)

述评：“民法通则”是中华人民共和国的民法，以其内容之概而要，故称。这就是说，“民法通则”属“民法”范畴而不仅仅是民法的原则或规则。犹父亲是父亲、儿子是儿子，父亲的儿子仍是儿子而不是父亲，其理一也。因此，CLR 以之为“general rules”，LAB 和 CCH 均以之为“general principles”均不合立法的原意和文字，皆不可取。此外，“民法”不同于“民法典”，所以 CLR 作“Civil Code”是错的，而 LAB 和 CCH 作“Civil Law”是对的。

为此，建议改译如下：

General Civil Law of the People's Republic of China

原文：一九八六年四月十二日第六届全国人民代表大会第四次会议通过

译文：Adopted at the Fourth Session of the Sixth National People's Congress on April 12, 1986 (LAB)

Adopted 12 April 1986 by the 4th Session of the 6th National People's Congress (CCH)

Adopted by the Fourth Session of the Sixth National People's Congress, April 12, 1986 (CLR)

述评：六届全国代表大会是权力机关，有权通过法律，而其第四次会议并非权力机关，本身自无权通过。说得更具体一点则是由六届人大在其四次会议上通过的。因此，CCH 与 CLR 两译本均作“by the Fourth (4th) Session”是错误的；LAB 不用“by”而用了“at”这就对了，但究竟是由谁通过的呢？——没有把“通过”这一动作的施动者传译出来，仍嫌不足。为此，拟改译如下：

Adopted by the Sixth National People's Congress at its Fourth Session on April 12, 1986

原文：第一章 基本原则

译文：Chapter I Basic Principles (LAB)

Chapter I Fundamental Principles (CCH)

CHAPTER ONE: BASIC PRINCIPLES (CLR)

述评：basic 和 fundamental 两者互相渗透，但前者内涵更贴切，且短小见胜，更为可取。

原文：第一节 民事权利能力和民事行为能力

译文：(略)。

述评：(无异议)。

原文：第一条 为了保障公民、法人的合法的民事权益，正确调整民事关系，适应社会主义现代化建设事业发展的需要，根据宪法和我国实际情况，总结民事活动的实践经验，制定本法。

译文：Article 1 This Law is formulated in accordance with the Constitution and the actual situation of our country, drawing upon our practical experience in civil

activities, for the purpose of protecting the lawful civil rights and interests of citizens and legal persons and correctly adjusting civil relations, so as to meet the needs of the developing socialist modernization. (LAB)

Article 1. This Law is formulated in order to safeguard the legitimate rights and interests of citizens and legal persons, to correctly regulate civil relations and to meet the requirements of the development of the construction of socialist modernization, in accordance with the Constitution and actual conditions in China and drawing on the practical experience of civil activities. (CCH)

Article 1. This Law is promulgated in accordance with the Constitution at present situation of the People's Republic of China (PRC) and is drawn from practice in civil acts, to safeguard the legitimate civil rights and interests of citizens, juristic persons and to regulate correctly civil relations to meet the needs of construction and development of socialist modernization. (CLR)

述评：(1) 三译本把《民法通则》或译作“General Principles of ...”或译作“General rules of ...”。如前所示，“本法”自当相应地分别译如“These Principles”或“These Rules”，而今竟众口一词都译作了“*This Law*”，实属前后自相矛盾。但在《民法通则》已改译为“General Civil Law”的前提下，三译本以“*This Law*”译“本法”倒是译对了。

(2) 人大“制定”法律，三译均以“*formulate*”译之，虽尚不得谓误，然仍不如“*enact*”贴切。

(3) “制定”并非“公布”，CLR 竟以“*promulgate*”(即“公布”)译“制定”，殊属非是，其草率从事，不难窥见。

(4) 三译均以“*in accordance with*”译“根据”，而法律文体家有以作“*according to*”为佳者。

(5) “我国”用于法律条文不伦不类，此仍立法者之过。但译者不能将错就错，死扣原文而译作“*our country*”(LAB)。CCH 与 CLR 两译本均不作如是译，无疑是正确的。其中，CCH 作“*in China*”，自不如 CLR 之译作“*of the People's Republic of China (PRC)*”为好。

(6) “实际情况”被分别译为“*actual situation*”(LAB)、“*actual conditions*”(CCH) 和“*the present situation*”(CLR)，均不如改作“*actualities*”为宜。

(7) LAB 以“*civil rights*”译“民事权利”十分不妥——被英语民族读者误解为“民权”，是非常现实的。

(8) “为了”以 CLR 作“*to*”为最佳，CHH 作“*in order to*”次之，LAB 作“*for the purpose of -ing*”最次——最拖沓（即使要用，也只须“*for*”一词为足矣）。

(9) “调整”，与一般用语如“调整室内温度”之“调整”不同，乃法律用语，意为“规范”。故 CLR 与 CHH 均作“regulate”，恰如其分；而 LAB 作“adjust”显系用词不当。

(10) 综上所述并作通盘考虑，建议改译如下：

Drawn from the experience of practices in civil activities, this Law is enacted according to the Constitution and the actualities of the PRC to protect the legal rights and interests of citizens and juristic persons in civil matters, correctly to regulate civil relations so as to cope with the building up of socialist modernization.

原文：第二条 中华人民共和国民法调整平等主体的公民之间、法人之间、公民和法人之间的财产关系和人身关系。

译文：Article 2 The Civil Law of the People's Republic of China shall adjust property relationships and personal relationships between civil subjects with equal status, that is, between citizens, between legal persons and between citizens and legal persons. (LAB)

Article 2. The Civil Law of the People's Republic of China regulates, on the basis of equality, the property and personal relationships between citizens, between legal persons and between citizens and legal persons. (CCH)

Article 2. The Civil code of the PRC regulates the property and personal relations equally between citizens, between juristic persons and between citizens and juristic persons as subject. (CLR)

述评：(1) 三译本首先有一个共同的严重错误，即无中译有：世界上至今尚无一部《中华人民共和国民法》，而三种译本竟一致行动，译出了这样一部法律来了(虽然用的是两个不同的译名“The Civil Law of the PRC”和“The Civil Code of the PRC”)堪称国际法律翻译界的奇事——虽然立法者是通过含糊其词的笔法而在客观上参与此奇事的。

(2) 其实，这个“民法”系指《民法通则》内外的民事立法的总体(即 50 年代盛行的“总和”)。根据这一理解，应作“civil legislation of PRC”才可能是唯一正确的译法。

(3) 同第一条“述评”所指出的一样，LAB 以“adjust”译“调整”实属用词不当；唯有 CHH 与 CLR 以“regulate”译之，才是正确的。

(4) 本条所规定的不是“rule of conduct”而是“rule of law”，因此 LAB 用“shall”是违反英语法律文体从而是违反法律英译基础规律的，与此同时，也必须指出其余 CCH 和 CLR 两译都不用“shall”，是掌握了这一规律的正确译法。

(5) 关于“平等主体”，LAB (“between civil subjects with equal status”) 和 CCH (“on the basis of equality”) 所译均嫌拖沓；CLR 为求简练，用“equally”一言以译之，其精神可嘉，可惜“equally”位置摆得不对——致使译文中不是表达各民事主体之间的平等，而是三个“之间”之间的“平等”了。

(6) 综上所述，结合本条译文之宏观设计，拟改译如下：

The civil legislation of the PRC regulates the property and the personal relations between citizens, between juristic persons, and between citizens and juristic persons—all as equal subjects in civil matters.

原文：第三条 当事人在民事活动中的地位平等。

译文：Article 3. Parties to a civil activity shall have equal status. (LAB)

Article 3. Parties concerned shall enjoy equality of position in their civil activities. (CCH)

Article 3. The status of parties to civil acts shall be equal. (CLR)

述评：(1) 本条是平铺直叙地表述一项法律规定，而不是规定当事人的义务，故不能用“shall”。至于 CCH 所译“shall enjoy”云之，错得尤为出奇——译成汉语就是“有享有平等之义务”！

(2) 综上所述，并按法律翻译文字须力求精炼而说不说废话的原则，改译如下：

Parties are equal in a civil activity.

原文：第四条 民事活动应当遵循自愿、公平、等价有偿、诚实信用的原则。

译文：Article 4. In civil activities, the principles of voluntariness, fairness, making compensation for equal value, honesty and credibility shall be observed. (LAB)

Article 4. Civil activities shall respect the principles of voluntary participation, equity, compensation at equal value and honesty and trustworthiness. (CCH)

Article 4. Civil acts shall conform to the principles of voluntariness, fairness, compensation for equal value and good faith. (CLR)

述评：(1) 原文所规定的是法律规则即民事活动是如此这般的，而不是规定民事活动当事人应如何行事的行动规则，故三译本中的三个“shall”都是错误的。

(2) 据此并求行文之精炼，建议改译如下：

Civil activities are subject to the principles of voluntariness, fairness, quid pro quo, and full-faith-and-credit. (LAB)

原文：第五条 公民、法人的合法的民事权益受法律保护，任何组织和个人不得侵犯。

译文：Article 5. The lawful civil rights and interests of citizens and legal persons shall be protected by law; no organization or individual may infringe upon them. (LAB)

Article 5 The legitimate rights and interests of citizens and legal persons are protected by law and may not be violated by any organization or individual. (CCH)

Article 5 The legitimate civil rights and interests of citizens and juristic persons are protected by law, and no organization or individual may encroach upon them. (CLR)

述评：(1) “公民、法人的合法民事权益”的上列三种译文，其功过见第一条述评，不赘。

(2) CCH 与 CLR 在译文中不用“shall”是对的，LAB 用了“shall”就错了（理由同上文第三条“述评”（1）前段）。

(3) 建议改译如下：

The Legal rights and interests of citizens and juristic person in civil matters are protected by the law, not to be interfered with by any organization or individual.

原文：第六条 民事活动必须遵守法律，法律没有规定的，应当遵守国家政策。

译文：Article 6. Civil activities must be in compliance with the law; where there are no relevant provisions in the law, they shall be in compliance with state policies. (LAB)

Article 6 Civil activities must respect the law. Where the law has no provisions with regard to civil activities, they shall respect State policies. (CCH)

Article 6 Civil acts must be in accord with the law. Where there is no rule under the law, State policy must be obeyed. (CLR)

述评：（1）“遵守法律”，在三种译文中以 CCH 为是——直截了当的“respect the law”。余两种译文喜欢绕弯子、拖泥带水地硬是要作“be in compliance with”（为何不作“comply with”？！）和“be in accord with”！LAB 与 CLR 两译本所译均不足为训，切勿追踵效尤。

（2）“法律没有规定的”的译法更为累赘（见三种译本中冗长的“where”clause 和“when”clause），殊不足取。

（3）建议改译如下：

Civil activities must respect the law or, where the law is silent, the State policies.

原文：第七条 民事活动应当尊重社会公德，不得损害社会公共利益，破坏国家经济计划，扰乱社会经济秩序。

译文：Article 7 Civil activities shall have respect for social ethics and shall not harm the public interest, undermine state economic plans or disrupt social economic order. (LAB)

Article 7. Civil activities shall respect social moral principles and shall not harm the common interest of society, damage State economic plans or disrupt social economic order. (CCH)

Article 7. Civil acts should respect for social morality and must not harm the public interest, undermine the State economic plans nor disrupt the economic order of society. (CLR)

述评：（1）法律汉译英，切莫上“应当”的当——CLR 上了这个大当，译成了“should”；LAB 和 CCH 不上这个当，译作“shall”。本条是法律规则而不是行动规则，故连“shall”也是不能用的。

（2）LAB 绕了个弯用了“have respect for”而弃“respect”。按此，则下文自当以“do harm to”译“损害”了，但是不；便是直截了当用了“harm（动词）”。两种译风自以后者为是。所以 CCH 和 CLR 都不屑用“have respect for”而采用了“respect”应当受到表扬。

（3）建议改译如下：

Civil activities are to respect social mores but not to harm the public interest, undermine the State economic planning, or disrupt the social economic order.

原文：第八条 在中华人民共和国领域内的民事活动，适用中华人民共和国法律，法律另有规定的除外。

本法关于公民的规定,适用于在中华人民共和国领域内的外国人、无国籍人,法律另有规定的除外。

译文: Article 8 The law of the People's Republic of China shall apply to civil activities within the People's Republic of China, except as otherwise stipulated by law.

The stipulations of this Law as regards citizens shall apply to foreigners and stateless persons within the People's Republic of China, except as otherwise stipulated by law. (LAB)

Article 8. Unless otherwise stipulated by law, the laws of the People's Republic of China shall apply to civil activities carried out within the territory of the People's Republic of China.

Unless otherwise stipulated by law, the provisions of this Law with regards to citizens apply to foreign nationals and stateless persons within the territory of the People's Republic of China. (CCH)

Article 8. Except as otherwise provided by law, civil acts within the territory of the PRC are subject to the law of the PRC.

Except as otherwise provided by law, the provisions of this Law applicable to citizens shall apply to foreign persons and stateless persons in the territory of the PRC. (CLR)

述评:(1)本条完全是 rule of law 而不是 rule of conduct, 怎么能用“shall”呢? LAB 和 CLR 用了“shall”, 又错了。CCH 不用“shall”是对的; CLR 第一项译文也不用“shall”, 也是对的。看来, 凡我法律英译者千万要练好正确使用“shall”的基本功。

(2) “stipulate(-tion)”与“provide(-vision)”有别: 前者指契约条款之“规定”, 后者指法律条文之“规定”。故 CLR 此处用“provided”是对的, 而 LAB 和 CCH 用“stipulate(-lation)”当然是错的。CCH 与此同时还犯了另一个错: 名词用“provision”而动词则用“stipulate”, 违反了同一概念之译名必须同一这条法律英译规则。

(3) 原文“适用于”词不达意, 如能达意, 当改正为“也适用于”才是。

(4) 建议改译如下:

The PRC law applies to civil activities in the PRC unless otherwise provided.

Provisions of this law concerning citizens also apply to aliens and stateless persons unless otherwise provided.

中华人民共和国《民法通则》AAA 英译本比较评析（续）

陈忠诚

（接总第 11 期）

原文：**第四节 个体工商户、农村承包经营户**

译文：Section IV Individual Businesses and Lease-holding Farm Households (LAB)

Section IV Individual Industrial and Commercial Households and Rural Contracting households (CCH)

Section IV Individual Industrial and Commercial Households and Rural Contract Responsibility Households (CLR)

述评：（1）“工商户”就是“从事工商的一户人家”吗？如果不是（比如说“五反”中的“守法户”、“基本守法户”的“户”就有许多不是一家一户的“户”）则所有两种译文（CCH 和 CLR）用了“household”都是不贴切的；

（2）反之，假定“household”在译文中指的就是“户”，那么不止一人的户从事工商业的，不就是“Industrial and Commercial Household”吗？果然，则还要按上“individual”干什么？——难道还有“state household”或“collective household”必须与之划清政策界线的么？！

（3）至于 LAB 作“Individual Business”，自然比较好；但“individual”也可被理解为“个别的”，如何排除这种可能呢？

至于“农村承包经营户”，则 LAB 所译“Leasehold Farm household”乃“土地承租农户”，与原意未尽切合；CLR 译名中的“Contract Responsibility”乃“承包上的责任”而不是“责任承包”——“责任承包”该译作“Responsibility Contract”的吧；CCH 最简洁。

（4）为了表明并非看人挑担、指手划脚，特献丑如下，请批评指正：

Industrial and Commercial Proprietorships, Rural Contractors

上列试译中的“proprietorship”的词义如下：

proprietorship, or sole proprietorship, occasionally, an unincorporated business owned solely by one person.

-Cochran's Law Lexicon

原文：第二十六条 公民在法律允许的范围内，依法经核准登记，从事工商业经营的，为个体工商户。个体工商户可以起字号。

译文：Article 26. "Individual businesses" refers to businesses run by individual citizens who have been lawfully registered and approved to engage in industrial or commercial operation within the sphere permitted by law. An individual business may adopt a shop name.(LAB)

Article 26. A citizen who, within the scope permitted by the law and following examination, approval and registration according to law, engage in industrial or commercial business is an individual industrial and commercial household. An individual industrial and commercial household may adopt a business name.(CCH)

Article 26. Industrial or commercial households are citizens who have, within the scope permitted by law, undergone approval and registration to engage in industrial or commercial operation. Individual industrial or commercial households may take a trade name. (CLR)

述评：（1）LAB 所译“individual citizens”中的“individual”是毫无积极作用的累赘；其余两译做“a citizen”和“citizens”则无此弊，值得 LAB 学习。

（2）本条中原文有三个“工商”，CCH 的三处译名有两种译法：译作“industrial or commercial”和“industrial and commercial”自相矛盾。

（3）LAB 所译“individual businesses” refers to business run by...是明显错误，应作“Individual business”refers to business run by...或“Individual businesses”refers to businesses run by ...才是。

（4）第四节的述评中已涉及的，不赘。

原文：第二十七条 农村集体经济组织的成员，在法律允许的范围内，按照承包合同规定从事商品经营的，为农村承包经营户。

译文：Article 27. "Lease-holding farm households" refers to members of a rural collective economic organization who engage in commodity production under a contract and within the spheres permitted by law. (LAB)

Article 27. A member of a collective rural economic organization who, within the scope permitted by law, engages in commodity business in accordance with the provisions of a contract is a rural contracting household. (CCH)

Article 27. Rural contract management households are members of a rural collective economic organization who, within the scope permitted by law, engage in

commodity dealings according to the provisions of a responsibility contract. (CLR)

述评：（1）三家译文又都用了“household(s)”，显然是对这个词似乎还不认识或不大认识。所以大家一起来认一认：

household1/.../n[...] all the people living together in a house:...

-Longman Dictionary of Contemporary English

由此可见，一个人（citizen, member）一般不是全家（household）——除非每人等于每家、每户。“A citizen (member) ...is ...household”一般是文理不通的说法，从而其所派生的复数形式（citizens 或 members...are...households），也只好不通了。这就进一步明确：“household”是很不恰当的。

（2）这就是说，唯有以“proprietorship”取代“household”才是出路。

原文：第二十八条 个体工商户、农村承包经营户的合法权益，受法律保护。

译文：Article 28. The legitimate rights and interests of individual businesses and lease-holding farm households shall be protected by law. (LAB)

Article 28. The legitimate rights and interests of individual industrial and commercial households and rural contracting households are protected by law. (CCH)

Article 28. The legitimate rights and interests of individual industrial and commercial households and rural contract management households are protected by law. (CLR)

述评：（1）问题还在这两个“户”该如何译——见“第四节”述评栏。

（2）老问题：shall be protected(LAB)，还是 are protected(CCH/CLR)?

原文：第二十九条 个体工商户、农村承包经营户的债务，个人经营的，以个人财产承担；家庭经营的，以家庭财产承担。

译文：Article 29. The debts of an individual business or a lease-holding farm household shall be secured with the individual's property if the business is operated by an individual and with the family's property if the business is operated by a family. (LAB)

Article 29. The debts of an individual industrial and commercial households and rural contracting households shall, where such enterprises are individually operated, be undertaken with the property of the individual. Where operation is by a household, they shall be undertaken with the property of the household. (CCH)

Article 29. The debts of an individual industrial and commercial households which is operated by an individual shall be assumed by the property of the individual; those of a household operated by a family shall be assumed by the property of the family. (CLR)

述评：既称 household 则当然由 household 负责，怎么去要 family 负责（承担）了呢？当然是必须由 household 担保的！但 LAB 和 CLR 偏偏违反了 this 极其简单的道理。好在至少这一点上 CCH 没有与 LAB 和 CLR 一般见识——请看 CCH 的最后一句译文（为了引起大家注意，再抄录如下）：

Where operation is by a household, they shall be undertaken with the property of the household.

必须再次指出：此处用“household”本来就不恰当。

原文：第五节 个人合伙

译文：Section V Individual Partnership (LAB)

Section V Partnership between Individuals (CCH)

Section V Individual Partnerships*[*he-huo] (CLR)

述评：（1）还是 CCH 多动了一点脑筋，所以它的译法不是仅仅把汉语“个人”+“合伙”=“Individual partnership”那样堆砌式的逐字硬译——译出来了可以被理解为“（一些）个别的合伙”；它采用了经过融会贯通后的“Partnership between Individuals”，值得肯定弘扬。可惜，CCH 译者不懂英语大写规则——在这里，“between”虽然是介词，却是 7 个以上字母拼成的，因此在大写的标题中是必须大写为“Between”的——但必须明确：CCH 是在立了一个大功的同时犯了一个小错。

（2）“个人合伙”之翻译“困难”，亦来自立法原文。因为各国立法，合伙以个人间者为常，而且首先是自然人的合伙；因此，“个人合伙”中“个人”两字实属画蛇添足，多此一举。从译者来看，只须朴实地译作“Partnership”就是。为迁就目前立法水平，不妨把“个人合伙”译作“Citizen-Citizen Partnerships”，大家看行不行。

反正“individual partnership(s)”不是“个人合伙”而是“个别的合伙（组织）”！

原文：第三十条 个人合伙是指两个以上公民按照协议，各自提供资金、实物、技术等，合伙经营、共同劳动。

译文：Article 30. "Individual partnership" refers to two or more citizens

associated in a business and working together, with each providing funds, material objects, techniques and so on according to an agreement. (LAB)

Article 30. Partnership between individuals refers to two or more citizens operating in partnership or working together in accordance with an agreement, with each contributing such things as funds, property and technology. (CCH)

Article 30. An individual partnership is indicted by two or more citizens, in accordance with an agreement, each contributing capital, goods, technology, etc., managing operations and working together as partners. (CLR)

述评：(1) 本条是所谓“个人合伙”的定义条款；但立法者以作为定义对象的概念“合伙”给该对象“合伙”下定义，从而犯了定义的常见错误，这就给翻译工作制造了先天的、难以克服的困难。

(2) 本条译文以 CLR 为最次——简直是词的堆砌！

(3) 法律翻译的原则之一是尽量避免使用被动语态。CLR 中的“is operated by”完全是多余的，至少应改为“indicates”（如果必须使用这个动词），以正译风。

原文：第三十一条 合伙人应当对出资数额、盈余分配、债务承担、入伙、退伙、合伙终止等事项，订立书面协议。

译文：Article 31. Partners shall make a written agreement covering the funds each is to provide, the distribution of profits, the responsibility for debts, the entering into and withdrawal from partnership, the ending of partnership and other such matters. (LAB)

Article 31. The partners must conclude a written agreement on such matters as amount of capital contribution, distribution of profits, responsibility for debts, entry into and withdrawal from the partnership and termination of the partnership. (CCH)

Article 31. Partners should conclude a written agreement as to such matters as capital contribution; allocation of surplus; responsibility for debts; and entry into, withdrawal from and termination of the partnership and other matters. (CLR)

述评：(1) CLR 以“should”译“应该”，犯了一个常识性的错误，可见其法律翻译基本功之欠缺。此外，LAB（作 shall）和 CCH（作 must）亦可为 CLR 的误译佐旁证。

(2) 其他可讨论的具体问题不难从以上列三译与下列参考译文的比较中得知：

The partners shall conclude a written agreement on amounts of capital

contribution, profit distribution, debt sharing, and entry into, withdrawal from, and termination of, the partnership.

原文：第三十二条 合伙人投入的财产，由合伙人统一管理和使用。

合伙经营积累的财产，归合伙人共有。

译文：Article 32. The property provided by the partners shall be under their unified management and use.

The property accumulated in a partnership operation shall belong to all the partners. (LAB)

Article 32. Property invested by the partners shall be administrated and utilized jointly by the partners.

Property accumulated through the business activities of a partnership is owned jointly by the partners. (CCH)

Article 32. Property invested by the partners shall be under unified management and utilization of the partners.

Property accumulated from the operation of a partnership shall be under the partners' joint possession. (CLR)

述评：（1）本条共两款均系规定合伙制度的法律规则（rule of law）而不是合伙人的行为规则（rule of conduct），因此全部 5 个“shall”全是误用；唯 CCH 的第二款不用“shall be owned?”（而用“is owned?”），才是正确的译法。

（2）“possession”与“ownership”——“占有”与“所有”——是两个截然不同的民事法律概念；另一方面，原文“归合伙人共有”的“共有”乃“共同所有”而不是“共同占有”之略。奈 CLR 竟把两者混为一谈——把“共同所有”理解为“共同占有”并作如是译（“joint possession”），其缺法律常识实在是令人吃惊。其实，有些财产虽很容易共同所有，却很难共同占有——如一只钻戒；果然，如法律规定凡合伙财产必须属“joint possession”，岂非强人所难？！……。令人高兴的是，其他两译已正确译出了法律的原意。

原文：第三十三条 个人合伙可以起字号，依法经核准登记，在核准登记的经营范围內从事经营。

译文：Article 33. An individual partnership may adopt a shop name; it shall be approved and registered in accordance with the law and conduct business operations within the range as approved and registered. (LAB)

Article 33. A partnership between individuals may adopt a business name and, following examination, approval and registration according to the law, may engage in business within the scope approved and registered (CCH)

Article 33. An individual partnership may take a trade name and, having undergone the approval and registration provided by law, shall engage in operations within the scope of the approval and registration. (CLR)

述评：（1）CLR 以“undergone”译“经核准登记”的“经”，似未曾或见，且意味着 partnership 是不大原意办理“核准登记”，或虽办理了“核准登记”却不高兴，有畏难情绪。不信请看：

undergo ... to experience (especially something unpleasant, unwelcome or difficult): She's undergoing treatment in hospital. The company has undergone some major changes in the last five years.

-Longman Dictionary of Contemporary English

undergo ... 1. To experience; be subject to.

2. To endure, suffer ...

-The American Heritage Dictionary

（2）“partnership”后用介词“between”[CCH]，意味着仅指两者间的关系，不妥。应是众合伙人间之关系，宜用“among”！

（3）LAB 以“shop name”译“字号”，其义域太狭，似以作“firm name”为是。

（4）三译中比较可取的，还是 CCH。但如前所述，“between individuals”大可不必。

原文：第三十四条 个人合伙的经营活动，由合伙人共同决定，合伙人有执行和监督的权利。

合伙人可以推举负责人。合伙负责人和其他人员的经营活动，由全体合伙人承担民事责任。

译文：Article 34. The operational activities of an individual partnership shall be decided jointly by the partners, who each shall have the right to carry out and supervise those activities.

The partners may elect a responsible person. All partners shall bear civil liability for the operational activities of the responsible person and other personnel. (LAB)

Article 34. The business activities of a partnership between individuals shall be decided jointly by the partners. The partners shall have both executive and supervisory rights.

The partners in a partnership may elect a managing partner. Civil liability for the business activities of the managing partners and other personnel is borne jointly by all the partners. (CCH)

Article 34. The operational activities of an individual partnership shall be jointly decided by the partners who shall have the right to implement and to supervise them.

Partners may choose a responsible person; the entire partnership shall bear civil responsibility for the operating activities of the responsible partner and of other personnel. (CLR)

述评：（1）英语有一句话——

Literal translation [逐字翻译] is not always the closest to the original meaning.

-LDoCE

却说汉语“经营活动”译作“operational activities”(CCH)或“operating activities”(LCR)不如译作“operations”。因为“operation”就是一种活动；“LAB”作“business activities”比其他两译入耳，但“activities”实无必要。

（2）原文“有……权利”，三译中倒有两译（LAB和CLR）用了“shall have the right ...”。把权利当作义务来译，自然只能陷于谬误。CCH不用“shall”而只用“have ... rights”，这就对了。请其他“shall”无滥用。

（3）第二款所推举的负责人，应理解为具有合伙人身份，而不是非合伙人。果然，则译文中必须明确这一点（among themselves）。从现有的三种译文来来看，负责人未必是合伙人。

（4）“全体合伙人”涵盖的是每一个合伙人，而绝非合伙组织。因此，CLR译作“entire partnership”从而抹杀了“合伙”的特色，当然是错误的；LAB和CCH两译均作“all (the) partners”是正确的译法。

（5）其他细节未及一一备说，让下列译文来反映吧，欢迎指正：

Partnership operations are to be decided jointly by all the partners; the partners have executive and supervisory powers.

The partners may elect among themselves a person in charge. All the partners

are civilly liable for business activities of the partner in charge and others.

原文：第三十五条 合伙的债务，由合伙人按照出资比例或者协议的约定，以各自的财产承担清偿责任。

合伙人对合伙的债务承担连带责任，法律另有规定的除外。偿还合伙债务超过自己应当承担数额的合伙人，有权向其他合伙人追偿。

译文：Article 35. A partnership's debts shall be secured with the partners' property in proportion to their respective contributions to the investment or according to the agreement made.

Partners shall undertake joint liability for their partnership's debts, except as otherwise stipulated by law. Any partner who overpays his share of the partnership's debts shall have the right to claim compensation from the other partners. (LAB)

Article 35. Liability for the debts of a partnership shall be undertaken by the partners with their respective property, according to the proportion of their contributed capital.

The partners shall undertake joint liability for the debts of a partnership, unless otherwise stipulated by law. Any partner whose repayment of a debt of the partnership exceed his personal liability has the right to seek compensation from the other partners. (CCH)

Article 35. Each partner shall undertake responsibility for satisfaction of the partnership's debts out of his own property according to the ratio of the capital contributions or as stipulated in the agreement made.

Except as otherwise stipulated by law, the partners undertake joint liability for the debts of the partnership. A partner who has repaid partnership debts in excess of the amount he should undertake to pay as a partner shall has the right to pursue compensation from the other partner(s). (CLR)

述评：上列三译的一些具体问题为节约篇幅恕不一一细说。请读者通过与下列试译的比较得知。——要害问题在于三译本译者中竟无一人能正确译出“连带责任”!!!

A partner is liable to satisfy, out of his own property, partnership debts in proportion to his capital contribution or as stipulated by agreement.

Absent any statutory requirement, partners are liable for partnership debts jointly and severally. A partner who has satisfied the partnership debts in excess of his due share has the right of recourse to other partners for reimbursement.

瞧，“连带责任”的“连带”作“joint and several”——这是笔者于 1944 年在上海东吴大学法学院法律系（二年级）学习时学到的，现在还不敢忘记。

（未完，待续）

第三章 法人

原文：第四十五条

企业法人由于下列原因之一终止：

- （一）依法被撤销；
- （二）解散；
- （三）依法宣告破产；
- （四）其他原因。

译文：Article 45. An enterprise as legal person shall terminate for any of the following reasons:

- (1) if it is dissolved by law;
- (2) if it is disbanded;
- (3) if it is declared bankrupt in accordance with the law; or
- (4) for other reasons. (LAB)

Article 45. A corporation shall terminate under any one of the following circumstances:

- (i) legal annulment;
- (ii) dissolution;
- (iii) legal declaration of bankruptcy;
- (iv) other reasons. (CCH)

Article 45. An enterprise juristic person may be terminated for any of the following reasons:

- (1) Annulment* in accordance with the law;
- (2) dissolution;**
- (3) declaration of bankruptcy in accordance with the law;
- (4) other reasons. (CLR)

述评：（1）LAB 犯了一个在系列表达中的典型错误：在总述中已经概括出来的成份(for)又在分述（“（4）”）中重叠出现；而 CCH 与 CLR 则已经注意避免了这一错误——CCH 译文作“(iv) other reasons”而没有错误地作“(iv) under other reasons”,CLR 译文只作“(4)other reasons”而没有错误地作“(4)for other

reasons”。

(2) LAB 之上文“ for any of the following reasons”, 但是下(1) if...; (2) if...; (3) ...; 都是“if clauses”根本就 不是“reasons”而是“conditions”, 犯了牛头不对马嘴的错误。为了更正这一错误, LAB 只能作如下译:

Article 45. ...terminate if:

- (1) it is dissolved by law;
- (2) it is disbanded;
- (3) it is declared bankrupt in accordance with the law; or
- (4) there is some other justifiable.

(3) “circumstances”≠“reasons”这是人所众知的; 但是 CCH 犯了把两者等同起来的错误——总述中是“any of the following circumstances”, 而分述中竟变为“(4)other reasons”。

(4) 按本条规定, 只要有(一)至(四)所列原因之一之出现, 毋须“企业法人”履行任何义务, 它当然地、自然而然地终止了, 犹人因癌症不治当然寿终正寝而不是终期癌症患者有死亡的义务一样。由此可见, LAB 和 CCH 均作“shall terminate”虽幽默有余而精确不足——又译错了!

(5) 唯独 CLR 不用“shall”, 虽幽默不足, 却也就避免了“shall”滥用症的侵袭。但是 CLR 译文用了“may be”也没有如实反映企业法人因某一法律所规定的原因之一而当然终止。

(6) 必须严肃认真但又不无遗憾地指出: 本条的立法技术是不及格的。因为本条的立法目的是明文规定企业法人所以终止的具体原因; 但由于“(四)其他原因”之规定, 使企业法人所以终止的原因数无穷大了。其消极效果是使企业法人在法律上不论因什么原因都要当然终止了。因此, 翻译者的天职就是要遵循民事立法的宏观意图, 在译文中弥补这一微观上的立法漏洞。

(7) 综上所述, 改正如下, 请指正:

Article 45

An enterprise-juristic person terminates because of:

- (1) its revocation;
- (2) its dissolution;
- (3) declaration of its bankruptcy; or
- (4) some other justifiable cause.

很抱歉, 笔者的上列译文中没有把原文的两个“依法”[见(一)和(三)]明文反映出来。但这是笔者在努力弥补立法者的不足: 其一, “依法”乃不言而喻因而是冗文; 其二, “解散”[(三)]不必“依法”, 唯独“被撤消”[(一)]与“宣告破产”[(三)]要“依法”, 宁非违反法制。

原文: 第四十六条 企业法人终止, 应当向登记机关办理注销登记并公告。

译文: Article 46. When an enterprise as legal person terminates, it shall cancel its registration with the registration authority and publicly announce the termination.
(LAB)

Article 46. Should a corporation terminate, it shall carry out procedures

with the original registering body for cancellation of its registration and shall make a public announcement. (CCH)

Article 46. When an enterprise juristic person is terminated, its registration should be cancelled with the registration agency and a public announcement made. (CLR)

述评：（1）原文“向登记机关”是立法废话——难道能向非登记机关“办理注销登记并公告”么？！译者自不能以废话译废话。

（2）由于所有三种译文在不同程度上均未能充分达到法律文字力求精确与简练的要求，愿在这方面略尽绵薄，请指正：

In the event of its termination, an enterprise-juristic person shall get itself deregistered and its termination announced.

看来，亚、澳、美三大洲《中华人民共和国民法通则》的英译者还不会用“deregister”这个词，这才噜里噜嗦地出此下策——分别译作“cancel its registration”(LAB)，“cancellation of its registration”(CCH)和“its registration (should) be cancelled”(CLR)的吧。

原文：第四十七条 企业法人解散，应当成立清算组织，进行清算。企业法人被撤销、被宣告破产的，应当由主管机关或者人民法院组织有关机关和有关人员成立清算组织，进行清算。

译文：Article 47. When an enterprise as legal person is disbanded, it shall establish a liquidation organization and go into liquidation. When an enterprise as legal person is dissolved or is declared bankrupt, the competent authority or a people's court shall organize the organs and personnel concerned to establish a liquidation organization to liquidate the enterprise. (LAB)

Article 47. Upon dissolution of a corporation, a liquidation group shall be established to carry out liquidation. If a corporation has been annulled or declared bankrupt, the department in charge or People's Court shall organize the relevant bodies or personnel to form a liquidation group to carry out liquidation. (CCH)

Article 47. When an enterprise juristic person is dissolved, a liquidating organization should be established to carry out the liquidation. If the enterprise juristic person is annulled or declared bankrupt, the competent authority or the people's courts shall organize the agencies and personnel concerned to establish a liquidating organization to carry out the liquidation. (CLR)

述评：（1）本条有两个“应当”，三种译本共有六个机会译对或译错；令人高兴的是，除了CLR上第一个“应当”的当，误译成“should”以外，其余五个“应当”全部译对了。由此可见，就“应当”而论，三大洲之法律英译的正误率为5：1，错误率为1 / 6，正确率为5 / 6。

（2）按汉语行文，“应当成立清算组织，进行清算”的义务人是要解散的企业法人。三种译文中倒有两种（CCH和CLR）使用了被动语态，故义务人是谁，就不得而知了。可见这一译法之不可取。唯LAB译文用的是主动态（...an enterprise..., ...shall...），从而明确了义务人。规律是什么呢？曰：法律英译切忌滥用被动语态，模糊义务关系。

（3）对三译文的其他方面，通过下列建议译文反映：

Article 47

While dissolving, an enterprise-juristic person shall start liquidation by setting up a special body therefore.

An enterprise-juristic person being revoked or declared bankrupt, the competent agency or people's court shall start liquidation by organizing relevant agencies and persons into a special body therefore.

原文：第四十八条 全民所有制企业法人以国家授予它经营管理的财产承担民事责任。集体所有制企业法人以企业所有的财产承担民事责任。中外合资经营企业法人、中外合作经营企业法人和外资企业法人以企业所有的财产承担民事责任，法律另有规定的除外。

译文：Article 48. An enterprise owned by the whole people, as legal person, shall bear civil liability with the property that the state authorizes it to manage. An enterprise under collective ownership, as legal person, shall bear civil liability with the property it owns. A Chinese-foreign equity joint venture, Chinese-foreign contractual joint venture or foreign-capital enterprise as legal person shall bear civil liability with the property it owns, except as stipulated otherwise by law. (LAB)

Article 48. A corporation under the ownership of the whole people shall assume civil liability with the property provided to it by the State for the purpose of business operations. A corporation under collective ownership shall assume civil liability with the property of the enterprise. Sino-foreign joint equity corporations, Sino-foreign co-operative corporations and corporations with sole foreign investment shall all assume civil liability with the property of the respective corporation, except where otherwise stipulated by the law. (CCH)

Article 48. Enterprise juristic persons owned by the whole people shall undertake their civil responsibilities using the state property given to them to operate and to manage. Enterprise juristic persons owned by collectives shall undertake their civil responsibilities with the property owned by the enterprise. Sino-foreign joint venture juristic persons Sino-foreign cooperative enterprise juristic persons and foreign enterprise juristic persons shall undertake their civil responsibilities with the property owned by such enterprises, unless otherwise provided by law. (CLR)

述评：下列试译反映笔者对上列三种译文的观感，请过目并指正：

Article 48. A whole-people owned enterprise-juristic person bears civil liabilities to the extent of the property granted by the state for its business and administration. A collective-owned enterprise-juristic person bears civil liabilities to the extent of its own property. A Sino-foreign equity or contractual joint venture or a foreign-owned venture as enterprise-juristic person, unless otherwise regulated, bears civil liabilities to the extent of the venture property.

原文：第四十九条 企业法人有下列情形之一的，除法人承担责任外，对法定代表人可以给予行政处分、罚款，构成犯罪的，依法追究刑事责任：

- (一) 超出登记机关核准登记的经营范围从事非法经营的；
- (二) 向登记机关、税务机关隐瞒真实情况、弄虚作假的；
- (三) 抽逃资金、隐匿财产逃避债务的；
- (四) 解散、被撤销、被宣告破产后，擅自处理财产的；
- (五) 变更、终止时不及时申请办理登记和公告，使利害关系人遭受重大损失的；

(六) 从事法律禁止的其他活动，损害国家利益或者社会公共利益的。

译文: Article 49. Under any of the following circumstances, an enterprise as legal person shall bear liability, its legal representative may additionally be given administrative sanctions and fined and, if the offence constitutes a crime, criminal responsibility shall be investigated in accordance with the law:

(1) conducting illegal operations beyond the range approved and registered by the registration authority;

(2) concealing facts from the registration and tax authorities and practicing fraud;

(3) secretly withdrawing funds or hiding property to evade repayment of debts;

(4) disposing of property without authorization after the enterprise is dissolved, disbanded or declared bankrupt;

(5) failing to apply for registration and make a public announcement promptly when the enterprise undergoes a change or terminates, thus causing interested persons to suffer heavy losses;

(6) engaging in other activities prohibited by law, damaging the interests of the state or the public interest. (LAB)

Article 49. Should any one of the following circumstances apply to a corporation, it shall assume liability and, in addition, its legal representative may be subject to administrative sanction or a fine; if a crime is constituted, criminal liability shall be investigated and determined according to the law:

(i) carrying out illegal business activities beyond the scope of business approved and registered by the registration body;

(ii) concealing the true facts from the registration or tax authorities, or practicing fraud;

(iii) extracting funds or concealing assets for the purpose of evading debts;

(iv) disposing of property without authorisation following dissolution, annulment or declaration of bankruptcy;

(v) failing to apply immediately for the registration and public announcement of a change or of termination, causing an interested party to sustain substantial loss;

(vi) engaging in other activities prohibited by law, causing damage to State or common public interests. (CCH)

Article 49. When one of the following situations exists with respect to an enterprise-juristic person, apart from responsibilities undertaken by the juristic person, an administrative sanction or a fine may be imposed on its legal representative; if a crime has been established, criminal responsibility shall be investigated in accordance with the law for:

(1) engaging in illegal operations beyond the scope of operations approved with the registration agency;

(2) concealing the actual circumstances from or deceiving the registration agency or the tax agency;

(3) embezzling funds or hiding property to avoid debts;

(4) disposing property without authority where the enterprise juristic person has been dissolved, annulled or declared bankrupt;

(5) failing to apply in time for the registration and public announcement of the change or termination of the enterprise juristic person, causing harm to a related person so that he suffers major losses;

(6) engaging in other activities forbidden by law, thus harming the State's interest or the public interest. (CLR)

述评：（1）“追究刑事责任”不是 investigate (CCH 和 CLR 两译)甚至“investigate and determine”所能尽其意的；

（2）原文“有下列情况之一的”主体是“企业法人”而这一点译文不如原文明确；

（3）在具体上下文中，句首的“Under”短语显得累赘；

（4）结合其他具体问题并综上所述，试译如下，请比较指正：

Article 49

Apart from the liabilities of an enterprise-juristic person, its legal representative can, upon the merit of the case, be administratively sanctioned or fined, or criminally prosecuted, if the enterprise

(1) operates illegally beyond the approved and registered scope of business;

(2) misrepresents before a registry or a tax agency under false pretenses;

(3) illicitly channels funds or hide property, to evade debts;

(4) disposes of its property without authority upon its dissolution, revocation or the declaration of its bankruptcy;

(5) fails to apply in good time for registration and announcement of its changes or termination, thereby causing great damages to the interested party or parties; or

(6) engages in other activity or activities prohibited by law to the prejudice of state interest and public interest of society.

原文：第三节 机关、事业单位和社会团体法人

译文：Section 3: Official Organ, Institution and Social Organization as Legal Person (LAB)

Section 3: Organizations, Institutions and Associations as Legal Persons (CCH)

Section 3: Organizations, Institutional Units and Social Organizational Juristic Persons (CLR)

述评：（1）从上列三译看，本节名称的原文是不明确的、摸棱两可的。因此，LAB 与 CCH 是一种理解，而 CLR 则又是一种理解；其有两种不同的译文

自乃理之当然了。

(2) 立法原文为避免歧义应修改为(在未正式修改前则按修改后的条文理解): 机关法人、事业单位法人和社会团体法人

(3) 建议按此译作:

Government Agency, Non-profit Institution, or Societal Organization—as Juristic Person

原文: 第五十条 有独立经费的机关从成立之日起, 具有法人资格。具备法人条件的事业单位、社会团体, 依法不需要办理法人登记的, 从成立之日起, 具有法人资格; 依法需要办理法人登记的, 经核准登记, 取得法人资格。

译文: Article 50. An independently funded official organ shall be qualified as a legal person on the day it is established.

If according to law an institution or social organization having the qualifications of a legal person needs not go through the procedures for registering as a legal person, it shall be qualified as a legal person on the day it is established; if according to law it does need to go through the registration procedures, it shall be qualified as a legal person after being approved and registered. (LAB)

Article 50. An organization with independent funds shall have the status of a legal person from its date of establishment.

An institution or association which fulfils the criteria of a legal person and which is not required by law to register as a legal person shall acquire the status of a legal person from the date of its establishment. An institution or association which is required by law to complete procedures for registration as a legal person shall acquire the status of a legal person following examination, approval and registration. (CCH)

Article 50. Organizations with independent funding have the status of juristic persons from the day they are established.

Institutional units and social organizations which meet the conditions necessary to be a juristic person that are not required by law to register as juristic persons have the status of juristic persons from the day they are established; those required by law to register as juristic persons shall attain the status of juristic persons upon approval and registration. (CLR)

述评: 三译除 CLR 外又都犯了“shall”滥用症, 而三译的通病则是有失简练, 试译如下, 欢迎比较、批评:

An independently funded government agency obtains its legal personality upon its establishment.

Eligible for legal personality, a non-profit institution or a societal organization obtains its legal personality upon its establishment, where no registration is required, or when duly approved and registered, where the registration is required.

原文: 第四节 联 营

译文: Section 4 Economic Association (LAB)

Section 4: Joint Operations (CCH)

Section 4: Joint Operations (CLR)

述评: 常听到“联营”英文怎么译这个问题, 足见其不好译。上列三译中, “联营”有两种不同的译文; 而且从英文译文来看, 两种不同的译文“Economic

Association”和“Joint Operations”指的显然不是同一事物。关键在于“联营”的立法定义：“联营”英译之成败取决于其立法定义有没有和好不好了——但愿下列条文中有一个“联营”的好定义。“阿门”！

原文：第五十一条 企业之间或者企业、事业单位之间联营，组成新的经济实体，独立承担民事责任、具备法人条件的，经主管机关核准登记，取得法人资格。

译文：Article 51. If a new economic entity is formed by enterprises or an enterprise and an institution that engage in economic association and it independently bears civil liability and has the qualifications of a legal person, the new entity shall be qualified as a legal person after being approved and registered by the competent authority. (LAB)

Article 51. In the case of a joint operation between enterprises or between an enterprise and an institution, forming a new economic entity which independently assumes civil liability and which fulfils the criteria of a legal person, such entity shall acquire the status of a legal person following examination, approval and registration by the authorities in charge. (CCH)

Article 51. The joint operation of enterprises or of an enterprise and an institutional unit constituting a new economic entity, undertaking civil responsibility independently and meeting the conditions necessary for a juristic person, shall attain the status of a juristic person upon the approval of and registration with the competent authority. (CLR)

述评：由本条款和五十二条以观，“联营”有组成新的经济实体者，有不然者。但英语“economic association”既是“实体”（“association”难道是假的吗？难道不是实体吗？！）又是“经济的”（economic），作为本节“联营”的译名，就显得片面了——它不能兼容不“组织经济实体”的“联营”。如此看来，本节中的“联营”不论本条还是 52 条都能适用的译名就只能是 CCH 和 CLR 所译的“joint operations”了。本条的其他问题大多已在 50 条的述评中涉及，恕不赘述。

原文：第五十二条 企业之间或者企业、事业单位之间联营，共同经营、不具备法人条件的，由联营各方按照出资比例或者协议的约定，以各自所有的或者经营管理的财产承担民事责任。依照法律的规定或者协议的约定负连带责任的，承担连带责任。

译文：Article 52. If the enterprises or an enterprise and an institution that engage in economic association conduct joint operation but do not have the qualifications of a legal person, each party to the association shall, in proportion to its respective contribution to the investment or according to the agreement made, bear civil liability with the property each party owns or manages. If joint liability is specified by law or by agreement, the parties shall assume joint liability. (LAB)

Article 52. Where enterprises or an enterprise and an institution join for business purposes without fulfilling the criteria of a legal person, each party to the joint operation shall, in accordance with its proportion of contributed funds or the provisions of an agreement, assume civil liability with its respective property or with the property for operation and management. Where joint liability is to be borne according to law or the terms of an agreement, the parties shall assume joint liability. (CCH)

Article 52. When the joint operation or operation in common of enterprises or of an enterprise and an institutional unit does not meet the conditions necessary for the status of a juristic person, each party to such joint operation shall undertake civil responsibility from the property it owns or it operates or manages according to the ratio of its capital contribution as stipulated in the agreement. Where joint liability is provided by law or stipulated by the agreement, joint liability is undertaken. (CLR)

述评：（1）三家译文又一次不约而同，把“连带责任”与“共同责任”混为一谈而终于误译为“joint liability”。亚、澳、美三大洲中华人民共和国法律汉译英洲际总水平之差，于此可见矣。据本人于四十年代初在东吴大学法学院法律系当低年级学生时所学到、现仍记得的，“连带责任”的英语是“joint and several liability”。当年的任课老师曹士彬教授等还多次指出：别把“共同责任”与“连带责任”、“joint liability”与“joint and several liability”混为一谈。故至今不敢忘怀——怕有违师教，且误大事也。

（2）试译如下，供比较讨论并批评指正：

Where two or more enterprises or one enterprise and one non-profit institution or more operate jointly in the form of business alliance without legal personality, parties to the alliance bear their civil liabilities in proportion to each other's share of contribution or in the proportion agreed on, and to the extent of each other's property or the property under each other's management and control. If the civil liability or liabilities are joint and several under law or under contract, the parties bear joint and several liability or liabilities.

原文：第五十三条 企业之间或者企业、事业单位之间联营，按照合同的约定各自独立经营的，它的权利和义务由合同约定，各自承担民事责任。

译文：Article 53. If the contract for economic association of enterprises of an enterprise and an institution specifies that each party shall conduct operations independently, it shall stipulate the rights and obligations of each party, and each party shall bear civil liability separately. (LAB)

Article 53. Where enterprises or an enterprise and an institution join for business purposes and operate independently in accordance with the provisions of a contract, their rights and duties are as stipulated by the contract and each shall assume civil liability. (CCH)

Article 53. When the joint operation of enterprises or of an enterprise and an institutional unit stipulates by the contract that each operates independently, rights and obligations of operation shall be stipulated in the contract, and each party undertakes civil responsibility. (CLR)

述评：以译代评如下，请指正：

Operating under a business alliance independently as contracted, each of the said parties bears its own civil liabilities, its rights and obligations being specified by contract.

第四章 民事法律行为和代理

原文：第四章 民事法律行为和代理
第一节 民事法律行为

译文：CHAPTER IV Civil Juristic Acts and Agency
Section 1: Civil Juristic Acts (LAB)

CHAPTER IV-CIVIL LEGAL ACTS AND AGENCY
Section 1: Civil Legal Acts (CCH)

CHAPER FOUR: CIVIL JURISTIC ACTS AND AGENCY
Section 1: Civil Juristic Acts (CLR)

述评：我《民法通则》中的“法律行为”之内涵与英语“act-in(-the)-law”即“jurist act”这一民法概念相当，因此 LAB 与 CLR 作“civil juristic act”中的“civil”乃过分拘泥于原文的文字表层的赘译，应改正为“juristic acts”才是。至于 CCH 作“civil legal acts”，则因“legal”一词多义，不如“juristic”毫无歧义。下列引文取自英国《牛津法律手册》，可为此佐证：

Juristic act (or act in the law). An expression of will or declaration of intention by a person having legal power to bring about a particular legal result, or produce a legally possible and permissible result. It is by juristic acts that legal persons create, modify, or extinguish rights and duties and affect legal relations between legal persons. Major examples of juristic acts are making promises or wills (unilateral juristic acts) and making agreements (bilateral juristic acts). They have to be distinguished from acts of the law where the law itself affects the rights and duties of a person, or persons, independently of their volitions.

原文：第五十四条 民事法律行为是公民或者法人设立、变更、终止民事权利和民事义务的合法行为。

译文：Article 54. A civil juristic act shall be the lawful act of a citizen or legal person to establish, change or terminate civil rights and obligations. (LAB)

Article 54. Civil legal acts are the legitimate actions of a citizen or legal person in establishing, modifying or terminating civil rights and civil obligations. (CCH)

Article 54. Civil juristic acts are the lawful acts of citizens or juristic persons to establish, change or terminate their civil rights and obligations. (CLR)

述评：(1) LAB 又滥用“shall”了，可见其积重之难返也。

(2) 其余翻译问题请结合下列译文探讨：

Juristic acts are lawful acts of citizens or legal persons to create, modify or extinguish their rights and duties.

原文：第五十五条 民事法律行为应当具备下列条件：

- (一) 行为人具有相应的民事行为能力；
- (二) 意思表示真实；
- (三) 不违反法律或者社会公共利益。

译文：Article 55. A civil juristic act shall meet the following requirements:

- (1) the actor has relevant capacity for civil conduct;
- (2) the intention expressed is genuine; and
- (3) the act does not violate the law or the public interest. (LAB)

Article 55. A civil legal act shall fulfil the following criteria:

- (i) the actor shall possess the appropriate capacity for civil acts;
- (ii) the intention shall be shown to be genuine;
- (iii) it shall not violate the law or the public interest. (CCH)

Article 55. Civil juristic acts should meet the following conditions:

- (1) the actor has proper capacity for civil activity;
- (2) the intent shall be accurately declared;
- (3) they must not violate the law or the public interest. (CLR)

述评：（1）“意思表示”是传说的民法术语，既非所表示的意思，更非意思；而上列 LAB 却译之为前者（“intention expressed”），CCH 与 CLR 且又译之为后者（“intention”和“intent”）。故上列三译都不对。

（2）CCH 在此处的“社会公共利益”英译（the public interest）与其在第四十九条中的英译（common public interests）不一，从而违反了法律翻译中的译名同一律。好在 LAB 与 CLR 都遵守了这一基本规则，不论在第四十九还是在在本条中先后同，都译作“the public interest”。

原文：第五十六条 民事法律行为可以采取书面形式、口头形式或者其他形式。法律规定用特定形式的，应当依照法律规定。

译文：Article 56. A civil juristic act may be in written, oral or other form. If the law stipulates that a particular form be adopted, such stipulation shall be observed. (LAB)

Article 56. A civil legal act may be in written, oral or other form. Where the law stipulates a particular form, this shall be complied with. (CCH)

Article 56. Civil juristic acts may take written, oral or other forms. When particular forms are provided by law, they should take the form provided by the law. (CLR)

述评：（1）本条第一句拖沓累赘，但其实质涵义还是明确的：“民事法律行为可采取任何形式”——共需 13 个字，而立法原却用了 24 个字。因此英译时千万不能拘泥于如此拖沓的文字做表面文章，而应该以简练的英语译出其涵义；

（2）法律规定的“规定”英语不是“stipulate”或“stipulation”而是“provide”或“provision”——这是法律英语的常识。LAB 与 CCH 所译都违反了这一常识，因此是错误的译文，必须更正。怎样更正呢？按 CLR“provided (by law)”用“provision”或“provides”。

（3）综上并综前所述，改译如下：

A juristic act may take any form, unless a specific form is provided by law.

原文：第五十七条 民事法律行为从成立时起具有法律约束力。行为人非依法律规定或者取得对方同意，不得擅自变更或者解除。

译文：Article 57. A civil juristic act shall be legally binding once it is instituted. The actor shall not alter or rescind his act except in accordance with the law or with the other party's consent. (LAB)

Article 57. A civil legal act is legally binding from the time it originates. An

actor may not rescind or modify an act without reference to the law or without obtaining the consent of the other party. (CCH)

Article 57. Civil juristic acts have legal binding force from the time they are established. Unless it is provided by law or the consent of the other party is obtained, the actor shall not change them without authorization or rescind them. (CLR)

述评：（1）什么是“成立”？三译理解似有所不同。笔者之见，“成立”即“完成”，故亦作如是译。

（2）CLR 把“不得擅自变更或者解除”不是正确地理解为“不得擅自变更或者擅自解除”（如 LAB 和 CCH 那样），而是错误地理解为把“不得擅自变更”和“解除”这两项相提并论了——因此“without authorization”只修饰“change them”而与“rescind”无涉了。

（3）提供第 4 个译文如下，供结合上列三译文进行讨论：

A juristic act becomes legally binding when completed. No actor may modify or revoke it without the legal authority or the consent of the other party.

原文：**第五十八条** 下列民事行为无效：

- （一）无民事行为能力人实施的；
- （二）限制民事行为能力人依法不能独立实施的；
- （三）一方以欺诈、胁迫的手段或者乘人之危，使对方在违背真实意思的情况下所为的；
- （四）恶意串通，损害国家、集体或者第三人利益的；
- （五）违反法律或者社会公共利益的；
- （六）经济合同违反国家指令性计划的；
- （七）以合法形式掩盖非法目的的。

无效的民事行为，从行为开始起就没有法律约束力。

译文：Article 58. Civil acts in the following categories shall be null and void:

- (1) those performed by a person without capacity for civil conduct;
- (2) those that according to law may not be independently performed by a person with limited capacity for civil conduct;
- (3) those performed by a person against his true intentions as a result of cheating, coercion or exploitation of his unfavorable position by the other party;
- (4) those that performed through malicious collusion are detrimental to the interest of the state, a collective or a third party;
- (5) those that violate the law or the public interest;
- (6) economic contracts that violate the state's mandatory plans; and
- (7) those that performed under the guise of legitimate acts conceal illegitimate purposes.

Civil acts that are null and void shall not be legally binding from the very beginning.

(LAB)

Article 58. The following civil legal acts are not valid:

- (i) those performed by a person without capacity for civil acts;
- (ii) those which, according to the law, may not be performed independently by a person with limited capacity for civil acts;
- (iii) those performed by way of one party cheating, coercing or

taking advantage of the other party's precarious situation, thereby causing the other party to act against his true wishes;

- (iv) those performed in collaboration and with ill intent, harming the interests of the State, collective or a third party;
- (v) those which violate the law or interests of society;
- (vi) economic contracts which contravene State planning directives;
- (vii) those which conceal illegal aims in a legal form.

Invalid civil legal acts shall have no binding force from the time of commencement of the act. (CCH)

Article 58. The following civil juristic acts are invalid:

- (1) those carried out by persons without capacity for civil activity;
- (2) those carried out by persons with limited capacity for civil activity which cannot be carried out independently in accordance with the law;
- (3) those where one party by means of fraud or duress or by taking advantage of the weakened position of the other causes the other party to act under circumstances contrary to his true intent;
- (4) a malicious conspiracy which harms the rights and interests of the State, a collective or a third party;
- (5) those violating the law or the public interest;
- (6) economic contracts which violate the State's mandatory plans;
- (7) those in a lawful form which conceal an unlawful purpose.

Invalid civil acts have no legal binding force from the time such acts commence. (CLR)

述评：（1）由于立法者随时导入新概念——如此处的“民事行为”——而又拒不为概念下定义，造成了不必要的混乱，应引以为训；

（2）以本条为论，理解就有不同而且已经在译文中反映出来了；

（3）“null and void”是叠床架屋式的法律陈词滥调，为法律文体学所不齿，改为“void”；

（4）第二款的英译可大大精简如下，请指正：

A void civil activity is void ab initio.

原文：第五十九条 下列民事行为，一方有权请求人民法院或者仲裁机关予以变更或者撤销：

（一）行为人对行为内容有重大误解的；

（二）显失公平的。

被撤销的民事行为从行为开始起无效

译文：Article 59. A party shall have the right to request a people's court or an arbitration agency to alter or rescind the following civil acts:

- (1) those performed by an actor who seriously misunderstood the contents of the acts;
- (2) those that are obviously unfair.

Rescinded civil acts shall be null and void from the very beginning. (LAB)

Article 59. In the case of the following civil acts, one of the parties has the right to petition the People's Court or an arbitration organ to modify or rescind the act:

- (i) an act where the actor seriously misunderstands the content of the act;

(ii) an act where there is a clear loss of fairness.

Civil legal acts which are rescinded are invalid from the time of commencement of the act. (CCH)

Article 59. With respect to the following civil acts, any party has the right to request the people's courts or an arbitration agency to modify or annul them:

- (1) acts where the actor is grossly mistaken about the substance of the act;
- (2) acts which are manifestly unfair.

Civil acts that are annulled shall be invalid from the time such acts commence. (CLR)

述评：(1) LAB 又乱用“shall”了，而且用得特别不通——“shall have the right”就是“有义务拥有……权”不啻变权利为义务了！LAB 应好好向 CCH 和 CLR 学习——至少在这一点上。

(2) 第二款的译文 LAB 和 CLR 均误作“shall be”应向 CCH 学习——CCH 正确地用了没有“shall”的“are”。

(3)“仲裁机关”CCH 作“arbitration organ”而 LAB 与 CLR 又均作“arbitration agency”[完全可以被误解为“仲裁代理（机关）”！]。据笔者印象，习惯上似乎多作“arbitration court/institute”；

(4)本条第二款可作如下译：

A revoked civil activity is void ab initio.

原文：第六十条 民事行为部分无效，不影响其他部分的效力的，其他部分仍然有效。

译文：Article 60. If part of a civil act is null and void, it shall not affect the validity of other parts. (LAB)

Article 60. The partial invalidity of a civil legal act shall not affect the validity of other parts, which shall remain valid. (CCH)

Article 60. Where a civil act is partially invalid, but this does not affect the validity of the other parts of the civil act, the other parts of the civil act remain valid. (CLR)

述评：(1) 由译文以观，三家译文有两种不同的理解——LAB 与 CCH 是一种理解而且是一种错误的理解和翻译；CLR 又是一种理解而且是一种正确的理解和翻译，但似乎也不够精确。

(2) 如下译法是否会精确一点呢？请看：

If a partially void civil activity does not affect the validity of its other part or parts,
the other part or parts remain valid.

原文：第六十一条 民事行为被确认为无效或者被撤销后，当事人因该行为取得的财产，应当返还给受损失的一方。有过错的一方应当赔偿对方因此所受的损失，对方都有过错的，应当各自承担相应的责任。双方恶意串通，实施民事行为损害国家的、集体的或者第三人的利益的，应当追缴双方取得的财产，收归国家、集体所有或者返还第三人。

译文：Article 61. After a civil act has been determined to be null and void or has been rescinded, the party who acquired property as a result of the act shall return it to the party who suffered a loss. The erring party shall compensate the other party for the losses it suffered as a result of the act; if both sides are in error, they shall each bear their proper share of the responsibility. If the two sides have conspired maliciously

and performed a civil act that is detrimental to the interests of the state, a collective or a third party, the property that they thus obtained shall be recovered and turned over to the state or the collective, or returned to the third party. (LAB)

Article 61. After a civil act is confirmed invalid or is rescinded, the party concerned shall return the property obtained as a result of the act to the party which has suffered loss. The party at fault shall compensate the other party for any resulting loss. Where both parties are at fault, each shall undertake respective liability. Where both parties collaborate with ill intent to harm State or collective interests or the interests of a third party, both parties shall be required to hand over the property they have acquired, ownership of which shall revert to the State or collective or return it to the third party. (CCH)

Article 61. After a civil act has been confirmed as invalid or annulled, the party concerned should return property acquired through such act to the injured party. The party at fault should compensate the other party for any damage he may have sustained as a result. If both parties are at fault, each should undertake appropriate responsibility. If both parties conspired maliciously to carry out civil acts that violate the rights and interests of the State, a collective or a third party, then the property which the parties have obtained must be recovered and returned to State or collective ownership or to the third party. (CLR)

述评：(1) “有过错的一方”LAB 译作“the erring party”至少是不明确的、模棱两可的——有过错，还是出差错？幸好 CCH 和 CLR 译作“the party at fault”是明确的、贴切的。

(2) “受损失的一方”LAB 作“the party who suffered a loss”而不作“the party who has suffered a loss”或“the party who suffers a loss”——用了过去时，意味着损失已不存在矣。

(3) LAB 上列译法，与 CCH 和 CLR 所译的非常贴切的“the injured party”相比，更见其短——何等 clumsy！

(4) LAB 把前后两个指同一内涵的损失“损失”，译成先单 (the loss) 后复 (the losses) 了。这是错的：“suffered”是“a loss”(而不是 losses)，而“compensate the other party for”即要赔偿的却“losses”了，这公平吗？！

(5) 立法原文第二款也有问题：在法律上，对恶意的双方来说，国家和集体都是第三人，因此“国家的、集体的或者第三人的利益”是不合逻辑、文理不通的，必须更正为“国家的、集体的或者其他第三人的利益”或“国家、集体等第三人的利益”。

(6) 第二款末立法原文又在浪费笔墨了——应精简节约并维护民事立法体在法律上的平等，更正为“收归国家、集体或者其他第三人”。这不是笔者无知之言，而是 CLR 的有知之译。CLR 的译者已经深入了原文的实质，故能摆脱原文文字的繁琐；此乃 LAB 与 CCH 两译所不及者也。

(7) “恶意串通”只需用“collude”一词，意思就全都有了。奈三译不厌其烦，或者作“to conspire maliciously”或者用“to collaborate with ill intent”，何苦呢？！对了，既然提到了“to conspire”，那就只能直言：CLR 用过去时 conspired 是错的，LAB (用现在完成时)、CCH (用现在时) 都不用过去时是对的，值得 LAB 学习。

(8) 试改译本条第二款如下，供评论：

If both parties collude in their civil activity or activities to violate the rights

and interests of the state, a collective, or some other third party or parties, the property the two parties appropriate shall be recovered and returned to the state, the collective, or the third party or parties, as the case may be.

原文：第六十二条 民事法律行为可以附条件，附条件的民事法律行为在符合所附条件时生效。

译文：Article 62. A civil juristic act may have conditions attached to it. Conditional civil juristic acts shall take effect when the relevant conditions are met. (LAB)

Article 62. Conditions may be attached to civil legal acts. Civil legal acts with conditions attached become valid upon fulfillment of such conditions. (CCH)

Article 62. Civil juristic acts may be conditional; conditional civil juristic acts shall become effective when the conditions are met. (CLR)

述评：(1)翻译的基础立于理解，所以就对本条立法的理解说一句决非题外之言：本条系片面立法。因附条件行为的条件可以是生效或成立条件，也可以是失效或解除条件，亦即先决条件(condition precedent)或后决条件(condition subsequent)。这里必须指出，我们一再表明过，此后仍将继续表明：立法文字未能曲尽立法原意时，译者务必不顾文字而通过文字探索立法之原意并传译之。但本条不属于上述情况。本条原文的文字非常达“意”即“立法意图”——但立法的意图是片面的。于兹场合，译者不能代立法者立意，而只能将错就错，译出立法者的片面或错误的意图来。这可说是法律英译者对待立法原文的政策界线。

(2)很不忍心再说，却又不得再说的，本条法律所规定的是法律制度(即附条件民事法律行为之如此这般)乃“rules of law”之属而不是规定民事法律主体必须如此这般即不在“rules of conduct”，根本没有“shall”的立锥之地。因此，LAB与CLR又一次滥用了“shall”实属非是，必须以十分的虚心向不用“shall”的CCH学习，学习，再学习！

原文：第二节 代理

第六十三条 公民、法人可以通过代理人实施民事法律行为。

代理人在代理权限内，以被代理人的名义实施民事法律行为。被代理人对代理人的代理行为，承担民事责任。依照法律规定或者按照双方当事人约定，应当由本人实施的民事法律行为，不得代理。

译文：Section II Agency

Article 63. Citizens and legal persons may perform civil juristic acts through agents. An agent shall perform civil juristic acts in the principal's name within the scope of the power of agency. The principal shall bear civil liability for the agent's acts of agency. Civil juristic acts that should be performed by the principal himself, pursuant to legal provisions or the agreement between the two parties, shall not be entrusted to an agent. (LAB)

Article 63. Citizens and legal persons may perform civil legal acts through an agent. An agent shall, within the scope of his agency, perform civil legal acts in the name of the principal. The principal shall assume civil liability for the representing acts of the agent. Civil legal acts which, according to law or express agreement between the interested parties, must be performed by the principal may not be performed by an agent. (CCH)

Article 63. Citizens and juristic persons may carry out civil juristic acts through an agent. Agents shall, within the limits of their rights as agents, carry out civil juristic

acts in the name of the principal. The principal shall undertake civil responsibility for the agency acts of his agent. Civil juristic acts that should be carried out by the principal himself in accordance with the provisions of law or according to an agreement between the parties concerned shall not be done by agents. (CLR)

述评：(1) 从立法文字来说，正如前已出现过的那样，如果法律规范对公民与法人不分彼此，一视同仁，共同适用时，就不必反复使用“公民、法人”而只需称“人”即收简练之效且无损立法意图于丝毫者，以“人”为上。因此，译文可据此精简为“A person may...”

(2) 原文“依照法律规定或者按照双方当事人约定”被分别译为：

A) “pursuant to legal provisions or the agreement between the two parties” (LAB)

B) “according to law or express agreement between the interested parties” (CCH)

C) “in accordance with the provisions of law or according to an agreement between the parties concerned” (CLR)

从而暴露三家译文的共同缺点：臃肿拖沓。其实完全可以译得大为简练以吻

合法律文字之要求的，如可试译为：

“by act of the law or by agreement of parties”

显然，这许多译者的词典里是没有“act of the law”这个法律用语的吧。

者自己编的法律词典尚未出版，但笔者案头的 *The Oxford Companion to Law* 中倒是有的。请看下列释义：

D) Act of Party. An expression of the will or intention of a person, directed to the creation, transfer, or extinction of some right and having legal effect for the purpose, e.g. the execution of a conveyance.

E) Act of the Law. The creation, transfer, or extinction of a right by the operation of some rule of law itself without the intervention or consent of a party concerned. Thus when a man writes a book the law confers copyright on him; if he becomes bankrupt, it transfers his assets to another; if time elapses, it extinguishes certain rights. Similarly the law itself imposes on a man duties not to injure fellow-men, and not to infringe the criminal law.

不过，更为直接的原因还是由于译者简练意识之贫乏。因为即使不识这两个法律术语，只要有简练意识，仍可予以精简的，如：“by law or by agreement”（较 LAB 节约一倍；较 CCH 和 CLR 精简了约两倍！）。请译者们牢记沙翁名言：

BREVITY IS THE SOUL OF WIT.

(3) LAB 和 CLR 两译都把“应当”都译成“should”了——这样的错误已非初犯，宜注意更正。好在 CLR 不用“should”是译对了的，值得 LAB 和 CLR 认真学习。

(4) “代理行为”以“act of agency” (LAB) 或“agency act” (CLR) 为当；“representing act”(CCH)比较罕用。

原文：第六十四条 代理包括委托代理、法定代理和指定代理。

委托代理人按照被代理人的委托行使代理权，法定代理人依照法律的规定行使代理权，指定代理人按照人民法院或者指定单位的指定行使代理权。

译文：Article 64. Agency shall include entrusted agency, statutory agency and appointed agency. An entrusted agent shall exercise the power of agency as entrusted by the principal; a statutory agent shall exercise the power of agency as prescribed by law; and an appointed agent shall exercise the power of agency as designated by a people's court or the appointing unit. (LAB)

Article 64. Agency includes agency by mandate, statutory agency and designated agency. An appointed agent shall execute his agency rights in accordance with the principal's appointment. A statutory agent shall execute his agency rights in accordance with the provisions of the law and a designated agent shall execute his agency rights as designated by the People's Court or designating unit. (CCH)

Article 64. Agency includes entrusted representation, legal representatives and appointed representatives. An entrusted agent exercises the power of agency in accordance with the entrustment by the principal; a legal representative exercises the power of agency in accordance with the provisions of law; and an appointed agent exercises the power of agency in accordance with the appointment by a people's court or the appointing unit.

述评：（1）本条共两款，而 CLR 抹煞了款的接线，致使人们在述及某款时无法指称，其弊前已以评述。

（2）CLR 对本条原文第一款的译文有处理不当之处，非常典型：大大冒犯了法律翻译的译名同一律——把四个“代理”分译为 agency 和 representation 了。须知尽管 agency 与 representation 在美国英语中有时可以相通，但一般来说，是两个不同的概念，比如说“代理处”是“agency”，而“representation”则是“代表处”！不，CLR 不只是把四个“代理”分别译成“agency”和“representation”——还有两个“representatives”呢！在短短的一款原文中四个同一涵义的“代理”竟被分译为三个不同的英语词，这不是粗暴地践踏法律英译中的同名同义同译的译名同一律吗？！CLR 必须好好向 LAB 与 CCH 用同一个“agency”译四个同一涵义的“代理”。严格遵守译名同一律的榜样看齐。但 CCH 用“agency by mandate”译“委托代理”又用“appointed agent”译“委托代理人”，又与 CLR 同病了。

（3）LAB 和 CCH 的第一款译文犯了文理不通和文法不通两种错误：一个“Agency”怎么能“includes”一个又一个再一个共三个不同的 agency 呢？必须更正如下：

A) “Agency” refers hereunder to ... agency, ... agency, or...agency.或

B) Agencies include...agency, ...agency, and... agency.

（4）本条其他问题还有；恕不细大不捐，面面俱到。

原文：第六十五条 民事法律行为的委托代理，可以用书面形式，也可以用口头形式。法律规定用书面形式的，应当用书面形式。书面委托代理的授权委托书应当载明代理人的姓名或者名称、代理事项、权限和期间，并由委托人签名或者盖章。

译文：Article 65. A civil juristic act may be entrusted to an agent in writing or orally. If legal provisions require the entrustment to be written, it shall be effected in writing.

Where the entrustment of agency is in writing, the power of attorney shall clearly state the agent's name, the entrusted tasks and the scope and duration of the power of agency, and it shall be signed or sealed by the principal. If the power of attorney is not clear as to the authority conferred, the principal shall bear civil liability towards the third party, and the agent shall be held jointly liable. (LAB)

Article 65. An appointment of agency for civil legal acts may be in written or oral form. Where required by law to be in written form, it shall be in written form. An appointment of agency in writing shall clearly state the personal or business name of the agent, the matters subject to agency, the limitations and duration of agency and shall bear the signature or seal of the principal. If the written appointment of agency is not clear, the principal shall undertake civil liability toward any third parties. The agent shall bear joint liability. (CCH)

Article 65. An agency may be entrusted for civil juristic acts in written or oral form. Where the law provides for written form, a written form should be used. The authorization in the document entrusting power of agency shall clearly record the name or title of the agent, the items subject to the agency, the limits of the power, the duration of the agency, and the signature or seal of the entrusting person. In cases where the authorization in the document of entrustment is unclear, the principal should undertake civil responsibility toward third persons, and the agent should be jointly liable. (CLR)

述评：(1) 学生应考，首先必须审题；否则，连考题都没有搞清楚就乱做一气，哪有不名落孙山，一败涂地的。法律英译也一样，得首先吃透原文才是。本条第一句原文，其话题是“委托代理”而不是“民事法律行为”。这一点，CCH 与 CLR 两译是做到了；但 LAB 则否——竟反其道而译之为“A civil juristic act may be entrusted”了。

(2) CLR 又把原文“应当”误译为“should”了。应向其他两译（LAB 和 CCH 均作“shall”是对的）好好学习，天天向上。

(3) “授权委托书”有译作“power of attorney”（LAB）的、“appointment of agency in writing”（CCH）的和“document entrusting power of agency”（CLR）的。可见，多数译者还不懂“power of attorney”和“power of agency”的确切含义，特别是后者。从下列引文可以知道，在英语，“power of attorney”本身就是“（授权）委托书”却不是“授权”。至于“power of agency”则是德译英的产物，涵义亦不同于“power of attorney”，故 CLR 以之译“（授权）委托书”似有未当。请看：

The authority of an agent to act on behalf of his principal, where not given by legal rules, is created by an act of the principal. The agent's power derived under such an act is termed *Vollmacht* in German law, and is here translated by the term 'power of agency'. The English term 'power of attorney'... is inappropriate, as it suggests the idea of a formal document, whereas the German power of agency can be conferred informally and even by implication. The rule of English law, according to which an authority to execute a contract under seal must be given by deed under seal, has no counterpart in German law, it being expressly enacted that the declaration of intention, by which a power of agency is conferred, need not be made in the form required for the act which it authorizes.—B.G.B.167(2)

--The Principles of German Civil Law, p.116

这就是说，“授权委托书”一语的英译，CCH 与 CLR 所译均不恰当，以 LAB 的“power of attorney”为是。

原文：第六十六条 没有代理权、超越代理权或者代理权终止后的行为，只有经过被代理人的追认，被代理人才承担民事责任。未经追认的行为，由行为人承担民事责任。本人知道他人以本人名义实施民事行为而不作否认表示的，视为同意。代理人不履行职责而给被代理人造成损害的，应当承担民事责任。

代理人和第三人串通，损害被代理人的利益的，由代理人和第三人负连带责任。第三人知道行为人没有代理权、超越代理权或者代理权已终止还与行为人实施民事行为给他人造成损害的，由第三人和行为人负连带责任。

译文：Article 66. The principal shall bear civil liability for an act performed by an actor with no power of agency, beyond the scope of his power of agency or after his power of agency has expired, only if he recognizes the act retroactively. If the act is not so recognized, the performer shall bear civil liability for it. If a principal is aware that a civil act is being executed in his name but fails to repudiate it, his consent shall be deemed to have been given. An agent shall bear civil liability if he fails to perform his duties and thus causes damage to the principal. If an agent and a third party in collusion harm the principal's interests, the agent and the third party shall be held jointly liable. If a third party is aware that an actor has no power of agency, is overstepping his power of agency, or his power of agency has expired and yet joins him in a civil act and thus brings damage to other people, the third party and the actor shall be held jointly liable. (LAB)

Article 66. Civil liability for acts performed without agency, beyond the scope of agency or after termination of agency rights shall only be assumed by the principal following ratification by the principal. The actor shall assume civil liability for acts not ratified by the principal. Failure on the part of the principal to deny an act which he is aware of being performed in his name by another person shall be deemed to be consent. If an agent does not fulfill his duties and thereby causes the principal to suffer damage, he shall assume civil liability. If an agent and a third party collaborates to harm the interests of the principal, the agent and the third party shall bear joint liability. If a third party performs a civil act with an actor while aware that the actor is without agency rights, is exceeding his scope of authority or that such authority has terminated, and thereby causes damage to another person, the third party and the actor shall bear joint liability. (CCH)

Article 66. The principal takes civil responsibility for acts where there is no power of agency or exceeding the power of agency or after the power of agency has terminated only if they have been ratified by the principal. As to unratified acts, the actor bears civil responsibility for such acts. A principal who knows that another person uses his name to carry out civil acts and fails to indicate his denial shall be deemed to consent to such acts. When an agent fails to perform his duties thus causing losses to his principal, he should undertake civil responsibility. When an agent colludes with a third person to harm the rights and interests of his principal, the agent and the third person shall bear joint liability. When a third person knows that an actor has no power of agency or has exceeded the power of agency or that the power of agency has terminated, yet still carries out civil acts with the actor thus causing harm

to anthers, the third person and the actor shall bear joint liability. (CLR)

述评：(1) 原文第一款“代理权终止后”，说了等于不说，不如不说。立法者多说了不起作用的废话照译，而应该在无损立法原意的前提下废话不译，保证法律文字之精练。理由很简单：“代理权终止”就是上文所已经说过的“没有代理权”了（已经“终止”即“死”了，还能有代理权吗？！）；再说，“代理权终止后”还要有什么“代理”行为，也不必再说，就是上文已经说过的“超越代理权”。所以说“代理权终止后”是地地道道的立法废话，应该坚决有前提地不予译出，以正法律文风。

(2) 第二款在“没有代理权”的情况下，是不可能有什么“代理人”的；在这一意义上，“被代理人”就只有 50% 存在理由 (raison d'être) 了——译者不得不在译文中予以弥补。

(3) 同一内涵的概念在本条立法原文中被异化为二：“被代理人”和“本人”，既损害了法律内容的精确度，又违反了用语同一律，是立法者的又一败笔。译文必须使之同一，以资弥补。

(4) 本条共仅四款，但 CLR 把第一款分为两款，这样全条多了一款，共有五款了。其弊前已评述，不赘。

(5) 本条译文应就精确与简练两个方面力求完善。为此，试译如下，以示参与，并请指正：

A principal or potential principal is civilly liable for an actor's act without or beyond agency power only if he approves of the act. Where no approval is available, it is the actor that bears the civil liability. A principal's failure to negate the juristic act done in his name to his knowledge means his approval of the act.

Failing in his agency duty to the prejudice of his principal, an agent shall bear the civil liability.

An agent and a third party collude to cause damage to the principal are jointly and severally liable therefore.

A party knowingly transacts with someone acting without or beyond agency power to the prejudice of another is liable jointly and severally with the ultra vires actor for the damage(s) caused.

原文：第六十七条 代理人知道被委托代理的事项违法仍然进行代理活动的，或者被代理人知道代理人的代理行为违法不表示反对的，由被代理人 and 代理人负连带责任。

译文：Article 67. If an agent is aware that the matters entrusted are illegal but still carries them out, or if a principal is aware that his agent's acts are illegal but fails to object to them, the principal and the agent shall be held jointly liable. (LAB)

Article 67. If an agent knows that the matter in which he is appointed to act as agent are illegal and nevertheless carries out his agency activities or if a principal is aware that the actions of an agent are illegal and fails to object, the principal and agent shall bear joint liability. (CCH)

Article 67. When an agent knows that the items entrusted to agency violate the law, but still carries out the agency activities, or when the principal knows that the agent's acts as agent violate the law, but does not express opposition, the principal and the agent shall bear joint liability. (CLR)

述评：(1) 以“entrust”译“委托”（前已有之，为笔者所不取，但未予述评），是否有歧义（“委托”与“信托”）？而“appoint”（CCH）呢（“委托”与“指定”）？

(2) 试译如下，作补充述评：

If either an agent knows what he is authorized to do is illegal but nevertheless acts accordingly or a principal knows that his agent's act is illegal but nevertheless raises no objection thereto, then both are jointly and severally liable.

原文：第六十八条 委托代理人为被代理人的利益需要转托他人代理的，应当事先取得被代理人的同意。事先没有取得被代理人同意的，应当在事后及时告诉被代理人，如果被代理人不同意，由代理人对自己所转托的人的行为负民事责任，但在紧急情况下，为了保护被代理人的利益而转托他人代理的除外。

译文：Article 68. If in the principal's interests an entrusted agent needs to transfer the agency to another person, he shall first obtain the principal's consent. If the principal's consent is not obtained in advance, the matter shall be reported to him promptly after the transfer, and if the principal objects, the agent shall bear civil liability for the acts of the transferee; however, an entrusted agency transferred in emergency circumstances in order to safeguard the principal's interests shall be excepted. (LAB)

Article 68. If, in the interests of a principal, an appointed agent finds it necessary to appoint a sub-agent, he shall obtain the prior permission of the principal. If he does not obtain the prior permission of the principal, he shall notify the principal promptly after the event. In the event that the principal does not agree, the agent shall bear civil liability for the acts of the sub-agent appointed by him, except where the sub-agent has been appointed under emergency conditions for the purpose of protecting the interests of the principal. (CCH)

Article 68. Whenever the entrusted agent, in the interest of the principal, must appoint a subagent, he should obtain the consent of the principal in advance. If he cannot obtain the principal's consent in advance, he must notify the principal after the action has been taken in timely fashion. If the principal does not consent, the agent shall bear civil responsibility for the acts of the subagent he appointed, unless the subagent was appointed under emergency conditions to protect the interests of the principal. (CLR)

述评：本条译文应如何进一步精确简练？以下列试译权充对各细节的述评：

A principal-authorized agent who needs to delegate a subagent in the principal's interests shall first obtain the principal's consent. Which failing, he shall immediately notify the principal post facto of the delegation. Absent the principal's consent the agent shall be liable in civil law for his subagent's act(s), unless the delegation is meant for protecting the principal's interests in an emergency.

原文：第六十九条 有下列情形之一的，委托代理终止：

- (一) 代理期间届满或者代理事务完成；
- (二) 被代理人取消委托或者代理人辞去委托；
- (三) 代理人死亡；
- (四) 代理人丧失民事行为能力；
- (五) 作为被代理人或者代理人的法人终止。

译文：Article 69. An entrusted agency shall end under any of the following circumstances:

- (1) when the period of agency expires or when the tasks entrusted are completed;
- (2) when the principal rescinds the entrustment or the agent declines the entrustment;

- (3) when the agent dies;
- (4) when the principal loses his capacity for civil conduct; or
- (5) when the principal or the agent ceases to be a legal person. (LAB)

Article 69. Should any one of the following conditions exist, the appointed agency shall terminate”

- (i) expiration of the period of agency or completion of the matters entrusted to the agent;
- (ii) cancellation of the appointment by the principal or resignation from the appointment by the agent;
- (iii) death of the agent;
- (iv) loss by the agent of capacity for civil acts;
- (v) termination of the legal person constituting the principal or the agent. (CCH)

Article 69. Entrusted representation shall terminate in any of the following situations:

- (1) the time period of the agency has expired or the task of the agent has been completed;
- (2) the principal cancels the entrustment or the agent resigns from the entrustment;
- (3) the agent dies;
- (4) the agent loses his capacity for civil activity;
- (5) a juristic person that was the principal or that was the agent is terminated. (CLR)

述评：(1) 笔者在感情上真不想再谈，但是在理智上又深感责任重大，非说不可。正如爱滋病例频繁出现，做医生的不能望之生厌不予重复治疗一样，笔者也只得在旧事重提（说不清已经是多少次了，上列三译中三个“shall”病毒又来作乱了，必须一个个地斩草除根！）：须知本条规定是法律本身的规则（rule of law），即规定委托代理的终止制度，因此根本没有“shall”的立锥之地。国际间中国法律英译的译者同仁们，谨以尊重中国法的名义、谨以保证中国法英译的国际质量的名义，请勿再滥用“shall”了，切记，切记！

(2) LAB 的译文“(1) —— (5)”中每项都有一个“when”总共有 5 个“when”。这 5 个“when”为什么不合五为一，只留下一位“when”并把他请到上文“circumstances”与冒号“:”之间去好好地就座？！——当然这唯一的一个“when”还是改名“where”更彻底。法律英译的诀窍之一，别忘了，是力求简练——在精确的前提下。

(3) 还有一条规律性的体会：“有下列情况之一者”的英译千万不要不问场合一律硬译为“in any of the following circumstances”——凡可以“if”“where”或“when”译之者，决不用需 6 倍兵力的“under (或 in) any of the following circumstances”。译者作为词语兵的总指挥而调兵遣将，要千万爱惜自己手下的词语兵——哪怕是一兵一卒都要爱惜，切莫浪费兵力！

(4) 请看笔者的试译并结合三种原有译文展开评比指正：

A principal-delegated agency terminates if

- (1) the agency expires or its business is completed;
- (2) either the principal revokes the delegation or the agent quits;
- (3) the agent dies;

- (4) the principal loses his disposing capacity; or
- (5) the agent- or principal-legal person ceases to be.

原文：第七十条 有下列情形之一的，法定代理或者指定代理终止：

- (一) 被代理人取得或者恢复民事行为能力；
- (二) 被代理人或者代理人死亡；
- (三) 代理人丧失民事行为能力；
- (四) 指定代理的人民法院或者指定单位取消指定；
- (五) 由其他原因引起的被代理人和代理人之间的监护关系消灭。

译文：Article 70. A statutory or appointed agency shall end under any of the following circumstances:

- (1) When the principal gains or recovers capacity for civil conduct;
- (2) When the principal or the agent dies;
- (3) When the agent loses capacity for civil conduct;
- (4) When the people's court or the unit that appointed the agent rescinds the appointment; or
- (5) When the guardian relationship between the principal and the agent ends for other reasons. (LAB)

Article 70. Should any one of the following conditions exist, the statutory agency or designated agency shall terminate:

- (i) acquisition or resumption of capacity for civil acts by the principal;
- (ii) death of the principal or agent;
- (iii) loss by the agent of capacity for civil acts;
- (iv) cancellation of designated agency by the People's Court or designating unit;
- (v) dissolution, due to other reasons, of the guardianship between a principal and an agent. (CCH)

Article 70. Legal representation or appointed representation terminates in any of the following situations:

- (1) the principal obtains or recovers the capacity for civil activity;
- (2) the principal or the agent dies;
- (3) the agent loses his capacity for civil activity;
- (4) the people's court or the unit that appointed the agent cancels the appointment;
- (5) other reasons which arise to eliminate the guardianship relation between the principal and the agent. (CLR)

述评：(1)CLR 较其在上条中已有进步，已经不再屈服于“shall”病毒，已经只用“terminates”而不用“shall”了——值得三呼“欢迎”，大声叫“好”！但令人痛惜的是 LAB 与 CCH 却沉痾依旧，宿疾难愈，积重难返，仍在“shall...”、“shall...”，为“shall”病毒所困！

(2) 兹改译如下：

A statutory or a designated agency terminates when:

- (1) the principal obtains or recovers his disposing capacity;
- (2) either the principal or the agent dies;

- (3) the agent loses his disposing capacity;
- (4) the court- or the institute-designator of an agent recalls the designation; or
- (5) the guardianship of the agent toward the principal dissolves owing to some other cause.

(3) 必须注意 LAB 所犯的一个独特错误：即虽然在前文用了“any of the following”而“following”的(4)与(5)之间的连词却用了“or”——应该用的当然是“and”。

中华人民共和国《民法通则》AAA 英译本比较评析

陈忠诚

原文： **第五章 民事权利**

第一节 财产所有权和与财产所有权有关的财产权

译文： CHAPTER V Civil Rights (LAB; CCH; CLR)

Section 1 Property Ownership and Related Property Rights (LAB; CCH)

Section 1 Property Ownership Rights and Property Rights Related to Property Ownership Rights (CLR)

述评：(1) “civil rights”是西方特别是美国的所谓“民权”，怎么能逐字对号入座，用来译“民事权利”呢？！——就不怕（往少里说）被英语民族的英语读者误解吗？凡事要动动脑子；译事亦然，愿共勉之。

(2) 第一节原文的汉译，LAB 与 CCH 是一种译法，CLR 又是一种译法，以后者为精确，但有失精练，拟作如下译，供比较指正：

a) Property Ownership and Its Related Property Rights 或

b) Property Ownership and Property Rights Related Thereto

原文： 第七十一条 财产所有权是指所有人依法对自己的财产享有占有、使用、收益和处分的权利。

译文： Article 71. “Property ownership” means the owner’s rights to lawfully possess, utilize, profit from and dispose of his property. (LAB)

Article 71. Property ownership refers to the rights of an owner, according to the law, to possess, use, reap benefit from and dispose of his own property. (CCH)

Article 71. Property ownership rights refer to the rights of all people to possess, use, benefit from and dispose of one’s own property in accordance with the law.

(CLR)

述评：(1) CLR 把原文“所有人”的“所有”误解为“一切”了，从而“所有人”被误解为“所有的人”并误译为“all people”了。在译者的上述误解误译中，立法也有过焉——因为立法者如能防止歧义，原是会把“所有人”写成“所有权人”的。

(2) 笔者对三种译文作了比较后，认定以 LAB 为其中的最佳译（utilization 宜改为 use）

原文：第七十二条 财产所有权的取得，不得违反法律规定。

按照合同或者其他合法方式取得财产的，财产所有权从财产交付时起转移，法律另有规定或者当事人另有约定的除外。

译文： Article 72. Property ownership shall not be obtained in violation of the law. Unless the law stipulates otherwise or the parties concerned have agreed on other arrangements, the ownership of property obtained by contract or by other lawful means shall be transferred simultaneously with the property itself. (LAB)

Article 72. The ownership of property may not be acquired in violation of the provisions of the law. Where property is acquired in accordance with a contract or other legal means, ownership of the property shall pass from the time the property is handed over, unless otherwise stipulated by law or by agreement between the interested parties. (CCH)

Article 72. The acquisition of ownership rights to property must not violate provisions of law.

With respect to property obtained by contract or other lawful means, ownership rights are transferred at the moment the property is delivered except where the law provides otherwise or where the parties have agreed otherwise. (CLR)

述评：(1) 请问“不得违反法律规定”与“不得违反法律”有什么不同吗？只差了“规定”两字，而含义全同。不妨说，“规定”两字，是立法废话。所以“CCH”与“CLR”译作“provisions of (the) law”乃以废译废，不足为训；但 LAB 能去废话而不译，仅作“in violation of the law”而不作“in violation of (the) provisions of the law”，足见其高明之处。

(2) “财产所有权从财产交付时起转移”是法律制度即“rule of law”而不是责成某人以某项义务的行为规范（rule of conduct）当然无“shall”立锥之地，而 LAB 和 CCH 又让“shall”病毒感染上了，令人扼腕。但也有令人高兴的——在这里 CLR（没有同 LAB 和 CCH 一般见识）译作不用“shall”的“are transferred”，值得表扬。

(3) CCH 和 LAB 把“法律另有规定”的“规定”译作“stipulate(d)”是典型的用

词不当；而 CLR 译作“provides”，这就得当了。

(4) “财产所有权”CLR 的译文作“ownership right to property”，虽憨态可掬，却大可不必——自以 CCH “ownership of property”为是，而 CLR 作“property ownership”更佳，简洁故也。

(5) 三译文颇有精练之余地。

(6) 法律条文或由一款组成，为单数条文；或由两款以上组成，为多款条目。本条为多款条目，却被 CCH 译文合两（款）为一（款），使多款条文变成单款条文。使有关法律或法律文书指称本条（如“《民法通则》第七十二条第二款”）者无法在 CCH 译文中找到——第二款已经给合并掉了，没有了。

(7) 本条三译文颇有改进之余地，兹以下列译文代替对三译文的综合评论，请指正：

Article 72.

No property ownership may be obtained against law.

In acquisition of property by contractual or other means, property ownership transfers upon delivery of the property.

原文： 第七十三条 国家财产属于全民所有。

国家财产神圣不可侵犯，禁止任何组织或者个人侵占、哄抢、私分、截留、破坏。

译文： Article 73. State property shall be owned by the whole people.

State property is sacred and inviolable, and no organization or individual shall be allowed to seize, encroach upon, privately divide, retain or destroy it. (LAB)

Article 73. State property is owned by the whole people.

State property is sacred and inviolable. It is prohibited for any organization or individual to occupy, fraudulently seize, privately divide, withhold or damage State property. (CCH)

Article 73. State property is owned by the whole people. State property is sacred and inviolable; and it is forbidden for any organization or individual to encroach upon, to plunder, to take for oneself, to retain or to destroy it. (CLR)

述评：（1）“shall”病毒真是猖獗，LAB 的抵抗力真差，第一款译文（shall be

owned) 又患上“shall”滥用症了。CCH 和 CLR 两译能洁身自好, 不为“shall”病毒所染, 均只作“is (而不是“shall be”) owned”, 这有多好啊。

(2) 这回轮到 CLR 把本条从多款条目译成单款了。这一情况以及已经评述到的其他类似情况集中证明了一点: 中国法洲际英译水平很不稳定。我国的中国法英译工作者必须作出更大的贡献。

(3) 三译在译文之结构合理、用词精确和行文精练等方面, 颇有提高、改进之余地。为此, 试译如下, 请比较指正:

Article 73

State property is owned by the whole people.

State property being sacred and inviolable, no organization or individual may misappropriate, snatch up en masse, illicitly allocate, intercept, or undermine it.

原文: 第七十四条 劳动群众集体组织的财产属于劳动群众集体所有, 包括:

(一) 法律规定为集体所有的土地和森林、山岭、草原、荒地、滩涂等;

(二) 集体经济组织的财产;

(三) 集体所有的建筑物、水库、农田水利设施和教育、科学、文化、卫生、体育等设施;

(四) 集体所有的其他财产。

集体所有的土地依照法律属于村农民集体所有, 由村农业生产合作社等农业集体经济组织或者村民委员会经营、管理。已经属于乡(镇)农民集体经济组织所有的, 可以属于乡(镇)农民集体所有。集体所有的财产受法律保护, 禁止任何组织或者个人侵占、哄抢、私分、破坏或者非法查封、扣押、冻结、没收。

译文: Article 74. Property of collective organizations of the working masses shall be owned collectively by the working masses. This shall include:

(1) Land, forests, mountains, grasslands, unreclaimed land, beaches and other areas that are stipulated by law to be under collective ownership;

(2) Property of collective economic organizations;

(3) Collectively owned buildings, reservoirs, farm irrigation facilities and educational, scientific, cultural, health, sports and other facilities; and

(4) Other property that is collectively owned.

Collectively owned land shall be owned collectively by the village peasants in accordance with the law and shall be worked and managed by village agricultural production cooperatives, other collective agricultural economic organizations or villager' committees. Land already under the ownership of the township (town) peasants' collective economic organizations may be collectively owned by the peasants of the township (town). Collectively owned property shall be protected by law, and no organization or individual may seize, encroach upon, privately divide, destroy or illegally seal up, distraint, freeze or confiscate it. (LAB)

Article 74. The property of a collective organization of the working people is owned by the collective, including:

(i) land, forests, mountains, grasslands, wastelands, siltbanks, etc., stipulated by law as being owned by the collective;

(ii) property of collective economic organization;

(iii) buildings, reservoirs, irrigation and water conservation installations and educational, scientific, cultural, health and sports facilities, etc., which are owned by the collective;

(iv) other property owned by the collective.

Land owned by a collective shall, in accordance with the law, be owned collectively by the village peasants and managed and administered by an agricultural collective economic organization such as the village agricultural production co-operative or by the village citizens' committee. Land which is already owned by a township peasants' collective economic organization may be collectively owned by the township peasants.

Property owned by a collective is protected by law. It is prohibited for any organization or individual to occupy, fraudulently seize, privately divide, damage or illegally seal up, detain, freeze or confiscate such property. (CCH)

Article 74. The property of collective organizations of the laboring masses is collective property owned by collective organizations of the laboring masses, which includes:

(1) land and forests, mountain ridges, grasslands, uncultivated land, beaches, etc.;

(2) property of collective economic organizations;

(3) buildings, reservoirs, farmland, irrigation facilities, as well as educational, scientific, cultural, health, athletic and other facilities owned by collectives;

(4) other property owned by collectives.

Collectively owned land which, according to law, is owned by village peasant collectives shall be operated and managed by agricultural collective economic organizations such as village agricultural production co-operatives or by village peasant committees. The land that is already owned by county (town) peasant collective.

Collectively owned property is protected by law; and it is forbidden for any organization or individual to encroach upon, to plunder, to take for oneself, to destroy, or illegally to seal up, to seize, to block or to confiscate it. (CLR)

述评：(1) “laboring masses”是“劳苦大众”，CLR 以之译“劳动群众”，就失真了即扭曲我国社会现状了——“劳动”是“working”！所以，CCH 和 LAB 两译都是对的。

(2) “集体所有的财产受法律保护”中的“受法律保护”，CCH 与 CLR 均作“is protected by law”，无疑是正确的；但 LAB 却作“shall be protected by law”无疑又错了！——难道是命令“law”，要“law”承担使集体财产被保护的义务吗？

(3) 看来，LAB 简直嗜“shall”病毒成癖了——连第一款的“包括”也被译成“shall include”了！当然，又是 CCH (“including”) 和 CLR (“includes”) 对。

(4) 原文一款(一)之首“法律规定为”中的动词“规定”，LAB 和 CCH 两译本均作“stipulate”，如前所述评二译错了；应改正为“provide”才是。但 CLR 并未犯这一错误，这是由于 CLR 犯这一错误的前提已被它所犯的另一个错误所彻底剥夺了——CLR 根本把“法律规定为”漏译了。

原文：第七十五条 公民的个人财产，包括公民的合法收入、房屋、储蓄、生活用品、文物、图书资料、林木、牲畜和法律允许公民所有的生产资料以及其他合法财产。公民的合法财产受法律保护，禁止任何组织或者个人侵占、哄抢、破坏或者非法查封、扣押、冻结、没收。

译文：Article 75. A citizen's personal property shall include his lawfully earned income, housing, savings, articles for daily use, objects d'art, books, reference materials, trees, livestock, as well as means of production the law permits a citizen to possess and other lawful property. A citizen's lawful property shall be protected by law, and no organization or individual may appropriate, encroach upon, destroy or illegally seal up, distraint, freeze or confiscate it. (LAB)

Article 75. The private property of a citizen includes lawful income, house, saving, daily effects, cultural relics, books and library materials, forest trees, livestock and means of production which a citizen is permitted by law to own, and other lawful property.

The lawful property of a citizen is protected by law. It is prohibited for any organization or individual to occupy, fraudulently seize, privately, divide, damage or illegally seal up, detain, freeze or confiscate such property. (CCH)

Article 75. Citizens' personal property includes the citizens' lawful income, dwellings, savings, articles for daily use, cultural objects, reading and reference materials, trees, livestock, means of production that citizens are lawfully permitted to own and other lawful property.

Citizens' lawful property is protected by law; and it is forbidden for any organization or individual to encroach upon, to plunder, to destroy or illegally to seal up, to seize, to block or to confiscate it. (CLR)

述评：(1) 不得不重复又重复地指出：LAB 又滥用了“shall” (“shall include”)；而 CCH 和 CLR 又没有滥用“shall”而正确地只用“includes”。

(2) LAB 犯了另一个严重错误——把“公民所有”误译为“a citizen to possess”即“公民占有”了。CCH 和 CLR 又译对了：“a citizen...to own”。须知“to possess”即“占有”与“to own”即“所有”截然有别，是最最起码的民法常识，是每一个新从事法律英译者上岗前非具备不可的最低要求。

(3) 但第二款后段译文设计 LAB 比 CCH 和 CLR 成功，故有简洁之效。

原文：第七十六条 公民依法享有财产继承权。

译文：Article 76. Citizens shall have the right of inheritance under the law. (LAB)

Article 76. Citizens enjoy the right of property inheritance in accordance with the law. (CCH)

Article 76. Citizens enjoy the right of succession to property in accordance with law. (CLR)

述评：LAB 的致命伤是又一次使用了“shall”——且情况较前更为严重。如果把 LAB 的英译译回汉语 (back translation)，其谬误之非同一般就非常明显了：“公民依法必须[即有义务]享有财产继承权。”!!! LAB 的这一错误正是下列引文所批评的典型——把权利译成了义务：

The draftsman should avoid the common error of using “shall” to confer a right when the recipient is the subject of an active sentence. A right should not be stated as a duty to enjoy the right.

Don't say

Say

He shall receive compensation of

He is entitled to compensation of

\$12,000 a year.

\$12,000 a year.

--From The Fundamentals of Legal Drafting

原文：第七十七条 社会团体包括宗教团体的合法财产受法律保护。

译文：Article 77. The lawful property of social organizations, including religious organizations, shall be protected by law. (LAB)

Article 77. The lawful property of associations, including that of religious associations, is protected by law. (CCH)

Article 77. The lawful property of social organizations, including religious organizations, receives the protection of law. (CLR)

述评：（1）CLR 在明明可以直截了当地作“is protected”（如 CCH 所译）的上下文中，偏要执意绕弯子，译作“receives the protection of”行文累赘不足为训。

（2）LAB 的“shall (be protected by law)”滥用症看来确已病入膏肓，但我们决不气馁，还要治愈它。

原文：第七十八条 财产可以由两个以上的公民、法人共有。

共有分为按份共有和共同共有。按份共有人按照各自的份额，对共有财产分享权利，分担义务。共同共有人对共有财产享有权利，承担义务。

按份共有财产的每个共有人有权要求将自己的份额分出或者转让。但在出售时，其他共有人在同等条件下，有优先购买的权利。

译文：Article 78. Property may be owned jointly by two or more citizens or legal persons.

There shall be two kinds of joint ownership, namely co-ownership by shares and common ownership. Each of the co-owners by shares shall enjoy the rights and assume the obligations respecting the joint property in proportion to his share.

Each of the common owners shall enjoy the rights and assume the obligations respecting the joint property. Each co-owner by shares shall have the right to withdraw his own share of the joint property or transfer its ownership. However, when he offers to sell his share, the other co-owners shall have a right of pre-emption if all other conditions are equal. (LAB)

Article 78. Property may be owned jointly by two or more citizens.

Co-ownership is divided into co-ownership according to share and ownership-in-common. Co-owners by share enjoy rights and undertake obligations with regard to property in accordance with the proportion of their respective shares. Owners-in-common enjoy rights and undertake obligations with regard to the property owned in common.

Every co-owner of property co-owned by share has he right to demand the separation or assignment of his portion. When selling a share, however, the other co-owners shall have a pre-emptive right of purchase on equal terms. (CCH)

Article 78. Property may be jointly owned by two or more citizens or juristic persons. Joint Ownership is divided into co-ownership by shares and undivided co-ownership. A co-owner by shares, according to the number of shares owned, shares [to that extent] in the enjoyment of rights in the common property and in the undertaking of obligations. An undivided co-owner has the right to enjoy, and undertakes obligations for, the whole [extent of] property that is jointly owned.

Every co-owner of property by shares has the right to request partition or transfer of his shares in the property. However, when a co-owner of property by shares sells his shares, the other co-owners have a prior right to buy his interest on the same terms. (CLR)

述评：（1）本条第一款末的“共有”，三种译本基本同一——“jointly owned”或“owned jointly”。

（2）第二款首的“共有”（名词）自应相应地同第一款中的“共有”（动词）保持同一；但是，虽然 LAB 和 CLR 做到了这一点，译作“joint ownership”；CCH 却译作“co-ownership”，同上文“owned jointly”不一致了。CCH 这种译法前后矛盾，是不足取的。

（3）既然第二款之首的“共有”应该同第一款末保持同一，译作“joint ownership”；那么下文“按分共有”和“共同共有”中的“共有”也得译成“joint ownership”，可是“LAB”和“CLR”又变卦了——变成“co-ownership...”和“co-ownership...”了。这又违反同一律了。应分别更正为“joint ownership by shares”和“joint ownership in common”。

(4) 本条共有三款，而 CLR 的译文只有两款——二、三款被合而为一了。这里必须再次强调：在法律条文翻译中原文有几款几项，译文也必须有几款几项，不容作任何增损！

(5) 原文中所“购买”的，当然就是所“出售”的即“份额” (shares)。但 CLR 的译文中，竟然出现了一个怪现象：“sell”的是“his shares”，但人家“to buy”的却不是“his shares”而变为“his interest”——请问：买的与卖的不是同一事物——能成交吗？或者说，由于译文偷换了概念使法律原文显得不通了。这就是说，法律译文违反了译名同一律时也可以造成歪曲法律的恶果。是吗？

原文：第七十九条 所有人不明的埋藏物、隐藏物，归国家所有。接收单位应当对上缴的单位或者个人，给予表扬或者物质奖励。

拾得遗失物、漂流物或者失散的饲养动物，应当归还失主，因此而支出的费用由失主偿还。

译文：Article 79. If the owner of a buried or concealed object is unknown, the object shall belong to the state. The unit that receives the object shall commend or give a material reward to the unit or individual that turns in the object.

Lost-and-found objects, flotsam and stray animals shall be returned to their rightful owners, and any costs thus incurred shall be reimbursed by the owners. (LAB)

Article 79. Buried or hidden objects, the ownership of which is unclear, shall be handed over to the State. Units accepting such items shall commend or offer a material reward to the unit or individual which hands in the item.

Lost articles, flotsam or lost domestic animals which are found shall be returned to the owner who shall compensate the finder for any costs incurred in doing so. (CCH)

Article 79. Buried property and hidden property whose ownership is unclear reverts to the ownership of the State. The unit receiving such property should give to the unit or individual which delivers it commendation or material reward.

Recovered lost property, goods which have floated away or stray domestic animals should be returned to their original owner, who should compensate for any expenses paid. (CLR)

述评：(1) 本条第一款前段“归国家所有”仅仅是陈述法律制度；“归”，与其作“归还”（这是误解）不如作“归属”（这才是正解）。在文体上不是在发命令——责成某主体以归还之义务，更何况即使当它在发布命令，那么命令“物”（埋藏物或隐藏）“归国家所有”更属怪诞荒谬。因此，LAB 和 CCH 的译文均有违原文原

意，而 LAB 之译作“shall belong”更是大错特错。CLR 不作这等处理是完全正确的，但就用词（diction）来说，“reverts”不如“belong”精确。

（2）本条第一款后段“应当”，LAB 与 CCH 均作“shall”是完全正确的，而 CLR 作“should”似是而非，上了原文的当，是完全错误的。

（3）第一款末的“表扬或者物质奖励”三种译文均作“commend(ation)...or...material reward”，过分拘泥于原文的文字、且又不明译文语言“reward”本身就指“物质”：

reward...n. 1. Something, as money, given or offered esp. for a special service, such as the return of a lost article or the capture of a criminal.

--American Heritage Dictionary

“reward”本身就内含着“物质”；译文中多了一个“物质”即“material”，从而也多犯了一个错误：用词模棱两可乃法律文字之大忌——“material reward”可以被理解为扎实的重大奖励即“重奖”。也许有关译者认为只用“reward”会被误解为“精神奖励”而不放心？大可不必：“commend(ation)”就是“精神奖励”，是绝对排斥物质奖励的——有“commend(ation)”在，还怕什么？！

（4）第二款“失主”共有三译：“the owners”（LAB）、“the owner who”（CCH）、“their original owner”（CLR）。其中第三种译文显然是动了脑筋、译得很辛苦，却有语病：在英语来说，“their[失物的] original[原来的]owner[主人]”意味着“物”一旦遗“失”，物主就丧失其对失物的所有权而沦为原主了。这岂非把“占有”同“所有”混为一说了？！其实“their(失物的) owner(主)”不已经是“失主”了吗？！须知“失主”仍不失为所有权人，而“原主”则已让位于现主而无所有权了。

（5）CCH 的第二款“the owner who”在“owner”与“who”之间不用逗号，造成了文理不通的后果，只要在此两词间用是逗号，文理就通了。

（6）综上所述，改译如下：

Buried or hidden things of unknown ownership belong to the state through its receiving agencies, which shall commend or reward those who surrender these things.

Once found, lost articles, flotsam, or lost domestic animals shall be returned to their owners, who shall compensate for any expenses involved.

原文：第八十条 国家所有的土地，可以依法由全民所有制单位使用，也可以依法确定由集体所有制单位使用，国家保护它的使用、收益的权利；使用单位有管理、保护、合理利用的义务。

公民、集体依法对集体所有的或者国家所有由集体使用的土地的承包经营

权，受法律保护。承包双方的权利和义务，依照法律由承包合同规定。

土地不得买卖、出租、抵押或者以其他形式非法转让。

译文： Article 80. State-owned land may be used according to law by units under ownership by the whole people; it may also be lawfully assigned for use by units under collective ownership. The state shall protect the usufruct of the land, and the usufructuary shall be obligated to manage, protect and properly use the land.

The right of citizens and collectives to contract for management of land under collective ownership or of state-owned land under collective use shall be protected by law. The rights and obligations of the two contracting parties shall be stipulated in the contract signed in accordance with the law.

Land may not be sold, leased, mortgaged or illegally transferred by any other means. (LAB)

Article 80. Land owned by the State may, in accordance with the law, be used by a unit under ownership of the whole people or be designated for use by a collectively-owned unit. The State protects the right to utilize and reap benefit from the land. The unit utilizing the land is obligated to administer, protect and make reasonable use of the land.

The legal right of citizens and collectives to manage under contract land which is owned by a collective or owned by the State and utilized by a collective is protected by law. The rights and obligations of both parties to the contract shall be stipulated in the contract in accordance with the law.

Land may not be traded, leased, mortgaged or otherwise illegally transferred. (CCH)

Article 80. Land that is owned by the State may be used by units under ownership by the whole people in accordance with the law, and by units under collective ownership as determined in accordance with the law, and the State protects the rights to use and to benefit from it; the units using it have the obligations of management, protection and reasonable use.

The contractual operation rights to land under collective use which is owned by collectives or by the State, by citizens or collectives, in accordance with the law, receive the protection of law. The rights and obligations of the contracting parties shall be provided in the contract in accordance with the law.

Land is not to be bought and sold, leased, mortgaged or transferred in other unlawful forms. (CLR)

述评：译文应如何力求精练呢？通过下列试译予以述评：

State-owned land may be used legally by units of all-people ownership and also by legally designated collectively owned units, the right to its use and its proceeds being protected by law; the user-units are duty-bound for its supervision, protection and reasonable use.

A citizen's or a collective's contractual right of operations over collective-owned or state-owned but collective-used land is protected by law with the rights and duties of the contracting parties legally specified in the contract.

No land may be sold, leased, mortgaged, or otherwise transferred against law.

（未完，待续）

中华人民共和国《民法通则》AAA 英译本比较分析（续）

（接总 27 期）

陈忠诚

原文：第八十一条 国家所有的森林、山岭、草原、荒地、滩涂、水面等自然资源，可以依法由全民所有制单位使用，也可以依法确定由集体所有制单位使用，国家保护它的使用、收益的权利；使用单位有管理、保护、合理利用的义务。国家所有的矿藏，可以依法由全民所有制单位和集体所有制单位开采，也可以依法由公民采挖。国家保护合法的采矿权。公民、集体依法对集体所有的或者国家所有由集体使用的森林、山岭、草原、荒地、滩涂、水面的承包经营权，受法律保护。承包双方的权利和义务，依照法律由承包合同规定。

国家所有的矿藏、水流，国家所有的和法律规定属于集体所有的林地、山岭、草原、荒地、滩涂不得买卖、出租、抵押或者以其他形式非法转让。

译文： Article 81. State-owned forests, mountains, grasslands, unreclaimed land, beaches, water surfaces and other natural resources may be used according to law by units under ownership by the whole people; or they may also be lawfully assigned for use by unit under collective ownership. The state shall protect the usufruct of those resources, and the usufructuary shall be obliged to manage, protect and properly use them.

State-owned mineral resources may be mined according to law by units under ownership by the whole people and units under collective ownership; citizens may also lawfully mine such resources. The state shall protect lawful mining rights.

The right of citizens and collectives to lawfully contract for the management of forests, mountains, grasslands, unreclaimed land, beaches and water surfaces that are owned by collectives or owned by the state but used by collectives shall be protected by law. The rights and obligations of the two contracting parties shall be stipulated in the contract in accordance with the law.

State-owned mineral resources and waters as well as forest land, mountains, grasslands, unreclaimed land and beaches owned by the state and those that are

lawfully owned by collective may not be sold, leased, mortgaged or illegally transferred by any other means. (LAB)

Article 81. Natural resources such as forests, mountains, grasslands, wastelands, siltbanks and waters which are owned by the State may, in accordance with the law, be utilized by a unit under the ownership of the whole people or be designated for use by a collectively-owned unit. The State protects the right to use and reap benefit from such resources. The unit utilizing the resource is obliged to administer, protect and make reasonable use of the resource.

Mineral resources owned by the State may, in accordance with the law, be exploited by a unit under ownership of the whole people or by a collectively-owned unit. They may also, in accordance with the law, be extracted by a citizen. The State protects lawful mining rights.

The lawful rights of citizens and collectives to manage under contract collectively-owned or State-owned, collectively-utilized forests, mountains, grasslands, wastelands, siltbanks and waters are protected by law. The rights and obligations of both contracting parties shall be stipulated in the contract in accordance with the law.

State-owned mineral deposits and rivers and forest-land, mountains, grasslands, wastelands and siltbanks owned by the State and designated by law as being owned by a collective may not be illegally bought or sold, leased, mortgaged or otherwise illegally assigned. (CCH)

Article 81. State-owned natural resources such as forests, mountain ridges, grasslands, uncultivated land, beaches and bodies of water may be used by units under ownership in accordance with the law, and the State protects the rights to use and to benefit from them; the units using them have the obligations of management, protection and reasonable use.

State mineral resources may be exploited by units under ownership by the whole people and by units under collective ownership in accordance with the law and may also be mined by citizens in accordance with the law. The State protects lawful mining rights.

The contractual operation rights of citizens and collectives to forests, mountain ridges, grasslands, uncultivated land, beaches and bodies of water under collective ownership or under State ownership and collective use in accordance with the law are protected by law. The rights and obligations of the contracting parties shall be provided in the contract in accordance with the law.

State-owned mines and watercourses and forests, mountain ridges, grasslands, uncultivated land and beaches owned by the State or stipulated by law as belonging to collectives shall not be bought and sold, leased, mortgaged or transferred in other unlawful forms. (CLR)

述评：(1) 第一款中“国家保护……”是平铺直叙地阐明国家保护制度，与“国家必须保护”以国家为义务人生命国家保护截然不同。LAB 不加辨别，盲目地译作“The state shall protect...”，当然又患“shall”滥用症了。CCH 和 CLR 两译认清了这一区别，毅然不上“shall”的当，都译作“(T)he State protects...”，应予以表扬。应强调指出，在第二款乃至第三款译文中 LAB 又一次重复了滥用“shall”之误。

(2) 第二款“和”字, LAB 和 CLR 都逐字照译、对号入座, 均作“and”, 不如 CCH 译作“or”精确。

(3) 第三款中, LAB 与 CCH 均作“shall be stipulated in the contract”处 CLR 作“shall be provided in the contract”——究竟是“stipulated”对, 还是“provided”对呢? 都对! 因为与之搭配的是“contract”而不是“law”——如果是“law”, 那么如前已评述多次的, 一般就不能用“stipulate”了。

(4) 可是, CLR 第三款译文中偏偏又出现了“stipulate by law”这样的误译, 必须更正为“provided by law”才是——切记切记!

(5) 按原文第四款的“林地……滩涂”, 有两种可能的所有制——或者是国家所有, 或者是(经法律规定由)集体所有, 而决不是双重所有, 即既属国家所有同时又是(经法律规定由)集体所有。因此, 原文“和”不能译成“and”而只能译作“or”。

(6) “出租、抵押”只指一方, 而“买卖”却指双方, 此乃汉语习惯。因此, 译成英语时只须译“卖”而不必把“买”译出来。否则, “出租”与“抵押”也同时发生“承租”和“承押”的, 怎么没有明文写出来呢? 因此译文中的“bought”是多余的。

(7) 由此可见中国法律汉译的洲际质量宏观问题是: 如何提高译文的精确简练度。

原文: 第八十二条 全民所有制企业对国家授予它经营管理的财产依法享有经营权, 受法律保护。

译文: Article 82. Enterprises under ownership by the whole people shall lawfully enjoy the rights of management over property that the state has authorized them to manage and operate, and the rights shall be protected by law. (LAB)

Article 82. The lawful right of an enterprise under the ownership of the whole people to operate and manage property entrusted to it by the State to operate and manage shall be protected by law. (CCH)

Article 82. Enterprises under ownership by the whole people which enjoy operating rights in accordance with the law to operate and to manage the property given them by the State receive the protection of law. (CLR)

述评: (1) 对不起, 不得不苦口婆心再一次(说不清是第多少次了)以最大的耐心着重指出: LAB 和 CCH 所译“shall be protected by law”又错了。

(2) 更荒谬的是 LAB 的独家错误——“shall lawfully enjoy the rights”即“有义务享受权利”即谁不享受权利(经营权)谁就违背了义务违背了法律。这样由于乱用“shall”, 权利变成义务了!

(3) 立法原文的先天不足也增加了英译工作的难度。例如本条国家授权的范围是“经营”和“管理”, 但“依法享有”的却只有“经营权”而没有“管理权”了。这就是为什么同样这个“经营权”, LAB 译作了“管理权”即“rights of management”, 而 CCH 作“the lawful right...to operate and manage”即“经营管理权”而 CLR 却按原文硬译作“经营权”即“operating rights”。真是难为了三家译文的译者了。如果由笔者选择, 当然会选用“CCH”的译法。

(4) 本条原、译文的比较研究, 为我们提供了一条非常宝贵的、独特的但也是常识性的经验: 为了提高中国法英译的洲际水平, 必先提高中国法的立法水平, 或者说, 中国法立法者的群众观点中也不能没有译者的观点。须知巧妇是难以保证(但还是要拼死命争取)把劣质米烧成优质饭的。以往不谏, 来者可追。望我尊敬的立法者诸公, 今后也能多为译者的译事着想, 免得他(她)们在心有余而力不足的困境下只好违心地把你们的洋相出到洲际去。届时, 幸勿谓言之不预也。

原文：第八十三条 不动产的相邻各方，应当按照有利生产、方便生活、团结互助、公平合理的精神，正确处理截水、排水、通行、通风、采光等方面的相邻关系。给相邻方造成妨碍或者损失的，应当停止侵害，排除妨碍，赔偿损失。

译文：Article 83. In the spirit of helping production, making things convenient for people's lives, enhancing unity and mutual assistance, and being fair and reasonable, neighboring users of real estate shall maintain proper neighborly relations over such matters as water supply, drainage, passageway, ventilation and lighting. Anyone who causes obstruction or damage to his neighbor, shall stop the infringement, eliminate the obstruction and compensate for the damage. (LAB)

Article 83. Neighbors on real estate shall correctly resolve their relationships with regard to such matters as damming of water, drainage, access, ventilation and natural lighting in the spirit of facilitating production, making life easier, unity and mutual assistance and equality and fairness. Should one party obstruct or cause damage to his neighbor, he shall cease the infringement, remove the obstacle and compensate for damage. (CCH)

Article 83. Neighbors to immovable property, in the spirit of benefiting production, making life convenient, group mutual assistance and fairness and reasonableness should correctly handle such neighborly relations as stopping the flow or draining of waters, passage, and ventilation and daylight. One who causes obstruction or loss to neighbors should cease the trespass, remove the obstruction, and compensate for the loss. (CLR)

述评：(1) 本条前后有两个“应当”，在三种译文中正误两译——CLR 照例误译为“should”，而 LAB 和 CCH 都正译为“shall”。

(2) 本条最后一句，行为人所造成的只是“妨碍或者损失”两种结果而已；但下文行为人应当排除的，都除了“排除妨碍”与“赔偿损失”之外，突然冒出了“停止侵害”这第三种前所没有的结果。因此，原文有关部分必须作如下修改：甲：“给相邻方造成侵害、妨碍或者损失的，应当停止侵害、排除妨碍或者赔偿损失”或乙：“给相邻方造成妨碍或者损失的，应当[其后删除了“停止侵害”这四个从天而降、没来由的字]排除妨碍或者[不加添“或者”又是文理不通、立法不公了]赔偿损失”。

我们认为按显然不通的原文文字照传照译，不是负责的译法。为此，试图把原文的不通部分按照愿意正译如下：

A neighbor shall make good the obstruction or the loss he has caused to other neighbor(s). (16 个词) 或

A neighbor shall undo the infringement, the obstruction, or the loss he has done to other neighbor(s). (17 个词)

原文：第二节 债权

八十四条 债是按照合同的约定或者依照法律的规定，在当事人之间产生的特定的权利和义务关系，享有权利的人是债权人，负有义务的人是债务人。

债权人有权要求债务人按照合同的约定或者依照法律的规定履行义务。

译文：Section II Creditors' Rights

Article 84. A debt represents a special relationship of rights and obligations established between the parties concerned, either according to the agreed terms of a contract or legal provisions. The party entitled to the rights shall be the creditor, and

the party assuming the obligations shall be the debtor. The creditor shall have the right to demand that the debtor fulfill his obligations as specified by the contract or according to legal provisions. (LAB)

Article 84. Debt is the particular relationship involving rights and obligations created between parties in accordance with the stipulations of a contract or provisions of the law. The parties in accordance with the stipulations of a contract or provisions of the law. The party which enjoys rights is the creditor and the party which bears obligations is the debtor.

A creditor has the right to demand that a debtor fulfils its obligations in accordance with the stipulations of a contract or provisions of the law. (CCH)

Section 2: Obligations (CLR)

Article 84. Obligations are relationships [involving] specified rights and obligations between parties, stipulated according to contract or provided in accordance with law. The person who enjoys the rights is the obligee, and the person who assumes the obligations is the obligor.

The obligee has the right to demand that the obligor perform his obligations according to the stipulations in the contract or in accordance with the provisions of law. (CLR)

述评：(1) 原文文字上用的“债权”两字，但其立法意图即其实质涵义却不以“债权”为限，亦不以债权人有限；不以“债务”为限，亦不以“债务人”为限。凡是“债”，不问“债权”、“债务”都是规定的内容。因此，LAB 和 CCH 把“债权”译作“Creditors' Rights”，仅就“Rights”一字而论就已经错了——不合本节的实质涵义了。再说，“债权”不仅是“债主的权利”，从而它不是英语“Creditors' Rights”所能表达的，这就是“Creditors' Rights”是错误译名的双重证明。“Creditors' Rights”这一译名是双重错误的译名，还可以从 CLR 不译“Creditors' Rights”而译作“Obligation”这一事实中获得旁证。

(2) 据此，并力求译法之精确简练，提出下列试译供比较讨论并批评指正：

Obligations are specific right-duty relations arising from between parties by act of laws or by act of parties. Those entitled to the rights are obligees, whereas those charged with duties are obligors.

The obligee may demand specific performance by the obligor under the contract or law.

原文：第八十五条 合同是当事人之间设立、变更、终止民事关系的协议。依法成立的合同，受法律保护。

译文：Article 85. A contract shall be an agreement whereby the parties establish, change or terminate their civil relationship. Lawfully established contracts shall be protected by law. (LAB)

Article 85. A contract is an agreement between interested parties which creates, modifies or terminates a civil relationship. A contract established in accordance with the law is protected by law. (CCH)

Article 85. A contract is an agreement between parties for establishing, changing or terminating civil relationships.

A contract concluded in accordance with the law receives the protection of the law. (CLR)

述评：(1) “合同是……”的“是”，又被 LAB 滥译为“shall be”了；务必向 CCH

和 CLR 学习、看齐——译作“is”。LAB 把第二句末“受法律保护”误译为“shall be protected by law”亦务必按 CCH 和 CLR 改正为“is protected by law”（或“receives the protection of law”）。

（2）CLR 重又犯了擅自变更条文款数的错误——本条为单款条文被 CLR 擅自一分为两，成了多款条目了，殊属非是。

（3）三译文中，以 CCH 较好；但“interested”并非必需，行文仍欠简练。

原文：第八十六条 债权人为二人以上的，按照确定的份额分享权利。债务人为二人以上的，按照确定的份额分担义务。

译文：Article 86. When there are two or more creditors to a deal, each creditor shall be entitled to rights in proportion to his proper share of the credit. When there are two or more debtors to a deal, each debtor shall assume obligations in proportion to his proper share of the debt. (LAB)

Article 86. If a creditor comprises two or more parties, each shall enjoy rights in accordance with its stipulated share. If a debtor comprises two or more parties, each shall bear obligations in accordance with its stipulated share. (CCH)

Article 86. When there are two or more obliges, they shall separately enjoy the rights according to their determined shares.

When there are two or more obligors, they shall separately assume the obligations according to their determined shares. (CLR)

述评：（1）CLR 重复了把单款条文译成错款条文的错误。

（2）本条“债权人”和“债务人”的涵义各大于而不是等于“creditor”与“debtor”。因此，LAB 与 CCH 所译远不如 CLR 之译作“obligee”与“obligor”为精确可取。

（3）所示三种译法各用了两次“shall”，其中第二次（shall(...) assume/bear (the) obligations）都不能算错，但其中的第一次 [shall (be entitled to)(separately)(enjoy)(rights)] 都只能算错——都把权利的享受规定为一种义务（即享受权利的义务）从而颠倒了权利义务关系。

（4）是否可以使译文更为简练紧凑一点呢？请看试译：

Two or more obliges or obligors involved in one transaction are to enjoy their rights or do their duties respectively in specified shares.

原文：第八十七条 债权人或者债务人一方人数为二人以上的，依照法律的规定或者当事人的约定，享有连带权利的每个债权人，都有权要求债务人履行义务；负有连带义务的每个债务人，都负有清偿全部债务的义务，履行了义务的人，有权要求其他负有连带义务的人偿付他应当承担的份额。

译文：Article 87. When there are two or more creditors or debtors to a deal, each of the joint creditors shall be entitled to demand that the debtor fulfill his obligations, in accordance with legal provisions or the agreement between the parties; each of the joint debtors shall be obliged to perform the entire debt, and the debtor who performs the entire debt shall be entitled to ask the other joint debtors to reimburse him for their shares of the debt. (LAB)

Article 87. If the number of creditors or the number of debtors is two or more, then, in accordance with the provisions of the law or agreement between the interested parties, each creditor enjoying joint rights has the right to demand fulfillment of obligations by the debtor. Each debtor bearing joint liability shall be obliged to fully discharge the debt. The party which has fulfilled the obligation has the right to demand that other

debtors under joint liability pay the portion they should bear. (CCH)

Article 87. When there are two or more persons either as obliges or obligors, each of the obligees enjoys the right, in accordance with the provisions of law or as stipulated by the parties, to demand that any of the obligors perform the obligation; each of the joint obligors assumes the obligation to satisfy the entire liability. The person who has performed the obligation fully has the right to demand that the other joint obligors reimburse him [according to] the shares undertaken. (CLR)

述评：(1) “共同”是“共同”即“joint”；“连带”只是“连带”即“joint and several”而绝不是“joint”——那是“共同”！因此，LAB、CCH 和 CLR 等三译中一个又一个再一个的“joint”们，个个都是错误译名，务必个个都坚决地彻底地毫不留情地更正为“joint and several”。

(2) CLR 能正确使用“stipulated”，在目前中国法英译的洲际现况下，应该得到鼓励。

(3) 为探索如何使译文精确简练，试译如下，请在指正：

Each of the two or more obliges or obligors involved in one transaction and related jointly and severally under law or contract right-wise or duty-wise is entitled to demand for performance in toto or bound to discharge the obligation in toto, as the case may be. The obligor in the latter case may claim any other obligor's share for reimbursement.

原文：第八十八条 合同的当事人应当按照合同的约定，全部履行自己的义务。合同中有关质量、期限、地点或者价款约定不明确，按照合同有关条款内容不能确定，当事人又不能通过协商达成协议的，适用下列规定：

(一) 质量要求不明确的，按照国家质量标准履行，没有国家质量标准的，按照通常标准履行。

(二) 履行期限不明确的，债务人可以随时向债权人履行义务，债权人也可以随时要求债务人履行义务，但应当给对方必要的准备时间。

(三) 履行地点不明确，给付货币的，在接受给付一方的所在地履行，其他标的在履行义务一方的所在地履行。

(四) 价款约定不明确的，按照国家规定的价格履行；没有国家规定价格的，参照市场价格或者同类物品的价格或者同类劳务的报酬标准履行。

合同对专利申请权没有约定的，完成发明创造的当事人享有申请权。

合同对科技成果的使用权没有约定的，当事人都有使用的权利。

译文：Article 88. The parties to a contract shall fully fulfill their obligations pursuant to the terms of the contract. If a contract contains ambiguous terms regarding quality, time limit for performance, place of performance, or price, and the intended meaning cannot be determined from the context of relevant terms in the contract, and if the parties cannot reach an agreement through consultation, the provisions below shall apply:

(1) if quality requirements are unclear, state quality standards shall apply; if there are no state quality standards, generally held standards shall apply.

(2) if the time limit for performance is unclear, the debtor may at his convenience fulfill his obligations towards the creditor; the creditor may also demand at any time that the debtor perform his obligations, but sufficient notice shall be given to the debtor.

(3) if the place of performance is unclear, and the payment is money, the performance shall be effected at the seat or place of residence of the party receiving the payment; if the payment is other than money, the performance shall be effected at the seat or place of residence of the party fulfilling the obligations.

(4) if the price agreed by the parties is unclear, the state-fixed price shall apply. If there is no state-fixed price, the price shall be based on market price or the price of a similar article or remuneration for a similar service.

If the contract does not contain an agreed term regarding rights to patent application, any party who has completed an invention-creation shall have the right to apply for a patent. If the contract does not contain an agreed term regarding rights to the use of scientific and technological research achievements, the parties shall all have the right to use such achievements. (LAB)

Article 88. The parties to a contract shall fully discharge their obligations as stipulated by the contract.

If the contract stipulations concerning quality, duration, location or price are unclear and cannot be determined by reference to relevant articles in contract and if the parties, moreover, are unable to reach agreement through discussion, the following provisions shall apply:

If the quality requirements are unclear, the contract shall be performed in accordance with State quality standards. In the absence with usual standards.

If the term of performance is unclear, the debtor may fulfill its obligations to the creditor at any time. The creditor may also demand at any time that the debtor fulfill its obligations, but shall allow the other party the necessary preparatory time.

If the place of performance is unclear and the payment of money is involved, performance shall be in the place in which the party receiving the payment is located.

If the place of performance is unclear in other respects, performance shall be in the place in which the party fulfilling the obligation is located.

If the agreement with regard to price is unclear, the contract shall be performed in accordance with a price set by the State. In the absence of a State-set price, the contract shall be performed with reference to the market price or the price of a similar item or the standard of payment for a similar category of labor.

If a contract does not contain an agreement with regard to patent application rights, the party which accomplishes a discovery or invention shall enjoy the right to apply for patent.

If a contract does not contain an agreement with regard to rights to use scientific or technical results, the interested parties shall all enjoy such rights. (CCH)

Article 88. Parties to a contract shall fully perform their own obligations in accordance with the stipulations of the contract.

If the provisions of the contract as to quality, term, place or price are not clear, and they cannot be ascertained from the content of the relevant provisions of the contract, and the parties are unable to arrive at a negotiated agreement, the following provisions shall apply:

Where the quality required is not clear, then performance accords with the State standard of quality; where there is no State standard, performance accords with

customary standards of quality.

If the term for performance is not clear, the obligor may perform his obligation to the obligee at any time; also, the obligee may demand the obligor to perform his obligation at any time. However, [either party] should give the other party time necessary to prepare.

Where the place for performance is not clear, if money is paid, then the place of performance is the location of the recipient of the money; in other cases, the place of performance is the location of the party who is obligated to carry out the performance.

Where the price stipulation is not clear; the performance accords with the price provided by the State; where there is no State-provided price, performance should refer to the market price or to the price of goods of the same type or the standard of remuneration for labor of the same type.

Where a contract lacks a stipulation as to the right to apply for a patent, the party who made the invention-creation enjoys the right of application. Where a contract lacks a stipulation as to the right of use of the fruits of science and technology, all the parties have the right to use them. (CLR)

述评：（1）上列汉语原文录自 LAB；但 LAB 在排印时采用的，本是一种所谓新式——不问场合，各款之首一律“顶格”。但本条最后两款却忘了顶格了。因此乍一看，最后两款“合同……”、“合同……”款不成款，而活像是二款（四）的组成部分了。须知法律条文即使是汉语，即使是其排印规格也是丝毫马虎不得的。切记，切记，切切记！CLR 则是明目张胆地把第三、四两款合并为一款了。

（2）各译文中的“shall”共约 21 个，其中除了第一款各家译文中的“shall”（共 3 个）和 CCH 译文第二款(ii)项中的“shall”（共 1 个）两共四个外，总共 17 个“shall”个个都是滥用的。我国法律之英译的洲际水平如此，是难以令人置信却又确是实态，为我译者同仁提供了粗中求精、精益求精的广阔天地——这多么令人高兴啊。

（3）“所在地”非“居所地”；因此，LAB 所译的“place of residence”是错误的。

（4）在 LAB 犯了“shall all have the right”，CCH 也犯了“shall all enjoy such rights”等大错特错外，CLR 能众醉独醒、按“shall”之兵不动，而译作“all the parties have the right”，应授予洲际中国法英译专项特等奖，并通报各洲译者好好学习，天天向上。

（5）其余以译代评，试译如下，供讨论批评：Article 88

Parties to a contract shall fully discharge their obligations under the contract.

If contract stipulations on the quality, time, place or price are neither clear nor possible to be ascertained by other, related stipulations, and the parties are unable to reach an agreement through negotiations, the following provisions apply:

The quality requirements unclear, performance is governed by State standards, absent which the usual standard governs.

The performance time unclear, the performance is to take place at any time at the initiative of either of the contracting parties, allowing good time for the other party to get prepared.

Performance place unclear, the performance involving money payment takes place where the payee is, whereas a performance otherwise takes place where the performer is.

The agreed price unclear, the state price governs, absent which the market price or the

price for similar article or service governs.

A contract silent on patent application, the contracting party-discoverer or –inventor is entitled to the patent application.

A contract silent on a right to the use of sci-tech fruit(s), all the contracting parties are entitled to the use. (未完待续)

中华人民共和国《民法通则》AAA 英译本比较评析

陈忠诚

(接总第 30 期)

原文：**第八十九条** 依照法律的规定或者按照当事人的约定，可以采用下列方式担保债务的履行：

(一) 保证人向债权人保证债务人履行债务，债务人不履行债务的，按照约定由保证人履行或者承担连带责任；保证人履行债务后，有权向债务人追偿。

(二) 债务人或者第三人可以提供一定的财产作为抵押物。债务人不履行债务的，债权人有权依照法律的规定以抵押物折价或者以变卖抵押物的价款优先得到偿还。

(三) 当事人一方在法律规定的范围内可以向对方给付定金。债务人履行债务后，定金应当抵作价款或者收回。给付定金的一方不履行债务的，无权要求返还定金；接受定金的一方不履行债务的，应当双倍返还定金。

(四) 按照合同约定一方占有对方的财产，对方不按照合同给付应付款项超过约定期限的，占有人有权留置该财产，依照法律的规定以留置财产折价或者以变卖该财产的价款优先得到偿还。

译文： Article 89. In accordance with legal provisions the agreement between the parties on the performance of a debt may be guaranteed using the methods below:

(1) A guarantor may guarantee to the creditor that the debtor shall perform his debt. If the debtor defaults, the guarantor shall perform the debt or bear joint liability according to agreement. After performing the debt, the guarantor shall have the right to claim repayment from the debtor.

(2) The debtor or a third party may offer a specific property as a pledge. If the debtor defaults, the creditor shall be entitled to keep the pledge to offset the debt or have priority in satisfying his claim out of the proceeds from the sale of the pledge pursuant to relevant legal provisions.

(3) Within the limits of relevant legal provisions, a party may leave a deposit with the other party. After the debtor has discharged his debt, the deposit shall either

be retained as partial payment of the debt or be returned. If the party who leaves the deposit defaults, he shall not be entitled to demand the return of the deposit; if the party who accepts the deposit defaults, he shall repay the deposit in double.

(4) If a party has possession of the other party's property according to contract and the other party violates the contract by failing to pay a required sum of money within the specified time limit, the possessor shall have a lien on the property and may keep the retained property to offset the debt or have priority in satisfying his claim out of the proceeds from the sale of the property pursuant to relevant legal provisions. (LAB)

Article 89. In accordance with the provisions of the law or as agreed between the parties, the following methods may be adopted to guarantee the discharge of a debt:

(i) If a guarantor has guaranteed to a creditor the discharge by a debtor of a debt and the debtor fails to discharge such debt, the guarantor shall, in accordance with the agreement, fulfill the obligation or bear joint liability. After it fulfils the obligation, the guarantor has the right to seek compensation from the debtor.

(ii) A debtor or third party may provide certain assets as security. If the debtor fails to discharge its debt, the creditor shall have the right to receive priority in payment by, according to the provision of the law, converting the security to its value or by selling the secured assets.

(iii) One party may, within the scope stipulated by law, pay a deposit to the other party. Following discharge of the debt by the debtor, the deposit shall be deducted from the price or refunded. If the party which paid the deposit fails to discharge the debt, it shall have no right to demand the refund of the deposit. If the party which accepted the deposit fails to fulfill its obligations, it shall repay double the original deposit amount.

(iv) If one party possesses, in accordance with a contract, the property of another party and the other party fails to pay the sum of money agreed in the contract within the time agreed, the party in possession of the property shall have the right to retain the property and, according to law, to receive priority in payment by converting the property to its value or by selling the property. (CCH)

Article 89. Performance of obligations in accordance with the provisions of the law or according to the stipulations of the parties may be guaranteed by the following means:

(1) The guarantor guarantees to the obligee that the obligor will perform his obligations. If the obligor does not perform his obligations, the guarantor shall, in accordance with the stipulations of the contract, perform the obligations or assume

joint responsibility; after the guarantor has performed the obligations, he has the right to pursue compensation from the obligor.

(2) The obligor or a third person may submit specified property as collateral. If the obligor does not perform his obligations, the obligee has the right, in accordance with the provisions of the law, to convert the collateral or to take priority in repayment when the collateral is sold.

(3) Either party may, within the scope provided by law, give a deposit to the other party. After the obligor has performed his obligations, the deposit should be deducted from the price or returned. Where the party who gave the deposit does not perform his obligations, he has no right to demand a return of his deposit; where the party who has received the deposit does not perform his obligations, he must return double the amount of the deposit.

(4) Where one party, according to the stipulations of the contract, has possession of the other party's property, if the other party does not -in accordance with the contract-pay the money that he should have paid or pays after the time stipulated by the contract, the party in possession has the right retain the property, and in accordance with the provisions of the law, to convert the property retained or to take priority in repayment when the property is sold. (CLR)

述评：(1) “债务的履行”，CCH 作“discharge of a debt”，CLR 作“performance of obligations”在语言上都是可以接受的；而“LAB”作“performance of debt”在语言搭配上感到别扭。从其含义来看，则“debt”只是“债务”的一种，而不是广义的“债务”（应由 obligation 表示），属用词不当。

(2) LAB 把原文第一款前半理解错了，故有如下的误译：

In accordance with legal provisions the agreement between the parties....

(3) CLR 给本条一款的译文“Performance of obligations in accordance with the provisions of the law or according to the stipulations of the parties....”中，刻意用“in accordance with”（在先）和“accordance to”（在后）两个不同的复合介词传译原文中先后两个“依照”，适足以反映译者对译名同一律缺乏敏感。

(4) 本条第二项原文“债权人有权.....”中“有权”两字，被 LAB 误译为“shall be entitled to...”，又被 CCH 错译为“shall have the right to ...”。但是我们不必太难过，好在 CLR 还是译对了的——“has the right...to...”。是不是可以说三步之内必有芳草呢？

(5) 但第三项原文“定金应当抵作”却被 CLR 误译成“the deposit should be deducted”——这回是 LAB 和 CCH 对了：用“shall”而不用“should”译“应该”。

(6) 三家译文都把“定金”再三译为“deposit”（共九次）。但请注意：“定金”乃“deposit”之属而非“deposit”。或者说：“定金”者“白马”也，“deposit”者“马”也；白马非马，故“定金”非“deposit”也。那么“定金”在英语中的“白马王子”是何许词呢？——“earnest money”是也。

原文：第九十条 合法的借贷关系受法律保护。

译文：Article 90. Legitimate loan relationships shall be protected by law. (LAB)

Article 90. Lawful creditor-debtor relationships are protected by law. (CCH)

Article 90. A lawful lending relationship receives the protection of the law. (CLR)

述评：(1) 本条立法原文乃同义词反复的立法废话——“合法的借贷关系受法律保护”同“非法的借贷关系不受法律保护”一样，都是废话，应坚决删除，以端正立法文风。当然，作为译者，我辈无权删除；但作为译者，我侪必须理解原文和原文的周围情况，因为理解原文是翻译的起点和基础。

(2) “受法律保护”，又遭 LAB 误译为“shall be protected by law”了。

原文：第九十一条 合同一方将合同的权利、义务全部或者部分转让给第三人的，应当取得合同另一方的同意，并不得牟利。依照法律规定应当由国家批准的合同，需经原批准机关批准。但是，法律另有规定或者原合同另有约定的除外。

译文：Article 91. If a party to a contract transfers all or part of his contractual rights or obligations to a third party, he shall obtain the other party's consent and may not seek profits therefrom. Contracts which according to legal provisions are subject to state approval, such as transfers, must be approved by the authority that originally approved the contract, unless the law or the original contract stipulates otherwise. (LAB)

Article 91. If one party to a contract assigns, in full or in part, its rights and obligations under the contract to a third party, it must obtain the agreement of the other party to the contract and may not seek to make a profit. Any contract which, according to the law, had to be approved by the State must be re-approved by the original approving body, except where otherwise stipulated by law or the provisions of the contract. (CCH)

Article 91. When one of the parties to a contract assigns a part or the whole of his contractual rights and obligations to a third party, he must obtain the consent of the other party to the contract and he must not profiteer.

When, in accordance with the provisions of the law, there should be State approval of a contract, there must be approval from the original agency except where otherwise provided by law or otherwise stipulated in the original contract. (CLR)

述评：（1）CLR 把本单款条文擅自改译为多款条文，殊属非是。

（2）“应当由国家”，CLR 作“there should be State approval”不如 LAB 的“are subject to state approval”和 CCH 的“had to be approved by the State”。

（3）本条第二句，是关于“转让给第三人”是否须批准及如何批准的规定；但立法文句词不达意，易滋误解。三种译文的客观存在就是最好的证明。特别是 LAB 的有关译文根本与原意风马牛，如果译为汉语，竟是“依照法律规定应当由国家批准的转让等合同，……”了。但立法原意却是：凡经批准的合同，其转让须由原批准机关批准之。

（4）试译如下，请指正：

In assigning (which must be gratis) his contractual rights and duties in full or in part to a third party, a contracting party shall obtain the other party's consent. Unless otherwise provided under the law or the original contract, the assignment shall be approved by the original approving agency if the original contract is subject to state approval.

原文：第九十二条 没有合法根据，取得不当利益，造成他人损失的，应当将取得的不当利益返还受损失的人。

译文：Article 92. If profits are acquired improperly and without a lawful basis, resulting in another person's loss, the illegal profits shall be returned to the person who suffered the loss. (LAB)

Article 92. If improper benefits are obtained without legal basis and damage is caused to another party, the illegally gained profits must be returned to the party which suffered such damage. (CCH)

Article 92. One who, without lawful basis, obtains illegal profits causing loss to another should return the illegal profits obtained to the person who has suffered the loss. (CLR)

述评：（1）原文中先后出现两次的“不当得利”是同一概念、同一事物，在译文中自亦应维持其同一，遵守译名同一律。但上列三译文中，只有 CLR 懂得遵守这一规律——先后均作“illegal profits”（“obtains illegal profits”和“illegal profits obtained”），其余两译都违反了这一重要法律翻译规则——CCH 先作“improper benefits are obtained”后又改作“illegally gained profits”而 LAB 则既作“profits are acquired improperly”于先，又改译为“the illegal profits shall be returned”——务必

向 CLR 学习才是。

(2) 但 CLR 犯了一个 CCH 与 LAB 都没有犯的错误——把“应当”误解为“should”，而且已非初犯。

(3) CCH 与 LAB 均作“suffered (such damage; the loss)”，这里用过去时是错误的；CLR 作“has suffered (the loss)”是可以的，但有法律文体学者认为法律条文中应尽可能用现在时；如此，则最好是用“suffers”了。

(4) 试译如下，供继续评论之参考：

Benefits from legally groundless, unjust enrichment causing damage to another person must be returned to the person suffering the damage.

原文：第九十三条 没有法定的或者约定的义务，为避免他人利益受损失进行管理或者服务的，有权要求受益人偿付由此而支付的必要费用。

译文：Article 93. If a person acts as manager or provides services in order to protect another person's interests when he is not legally or contractually obligated to do so, he shall be entitled to claim from the beneficiary the expenses necessary for such assistance. (LAB)

Article 93. If a party undertakes management or a service without a legal or agreed obligation in order to avoid harm to the interests of another party, it shall have the right to demand from the benefiting party compensation for the necessary expenses incurred thereby. (CCH)

Article 93. One who, without legal or contractual obligation, carries out management or provides service in order to avoid losses of profit to another, has the right to request that the person who has received the benefit reimburse him for this and for the necessary expenses paid. (CLR)

述评：(1) “有权……”被 LAB 和 CCH 又一次分别误译为“shall be entitled to...”和“shall have the right to...”，可见“shall”病毒之猖獗。好在 CLR 还能保持其译文的正确性——译作不滥用“shall”的“has the right to...”。

(2) 按照文末，“要求受益人偿付的”只是“必要费用”而已。对此，LAB 和 CCH 的译文是准确的。但 CLR 的译文却是“reimburse him for this and for the necessary expenses paid.”——除了偿付“必要费用”即“the necessary expenses paid”之外，还得偿付“this”即“管理或服务”费了！

(3) 试译如下，供继续评论之参考：

Taking charge to or rendering service to others without a statutory or contractual

obligation and in the interest of others, a person may demand from the beneficiary or beneficiaries the reimbursement of necessary expenses the person incurs as a result.

原文：第三节 知识产权

第九十四条 公民、法人享有著作权（版权），依法有署名、发表、出版、获得报酬等权利。

译文：Section III Intellectual Property Rights

Article 94. Citizens and legal persons shall enjoy rights of authorship (copyrights) and shall be entitled to sign their names as authors, issue and publish their works and obtain remuneration in accordance with the law. (LAB)

Section 3: Intellectual Property Rights

Article 94. Citizens and legal persons enjoy rights of authorship (copyright). According to law, they have such rights as those to sign, issue, publish and be remunerated. (CCH)

Section 3: Intellectual Property

Article 94. Citizens and juristic persons enjoy the right of authorship (copyright), and in accordance with the law have rights such as signature, publication, printing and obtaining remuneration therefore. (CLR)

述评：（1）“知识产权”的上列译名之两（LAB 和 CCH）均有“rights”一词；但此词实属可有可无，故 CLR 仅作“Intellectual Property”是更为可取的。

（2）LAB 译文用了两个“shall”，个个 N-US > CCH 与 CLR 两译中连一个“shall”病毒亦无容身之地，从而相应地保证了翻译质量。

（3）这里，不得不把汉语条文中的“依法”，提到讨论日程上来了。以本条而论，其提法是非常奇特的：“署名……等权利”是包容于“著作权（版权）”的更为具体的权利，但前者必须“依法有”而后者却是不必“依法”的“享有”对象！难道“著作权（版权）”就可不“依法”或“非法”享有吗？由此可见“依法有署名……等权利”中“依法”两字的荒谬——除非您承认“公民、法人……”之前遗漏了“依法”两字。我们衷心希望有关立法者能从立法废话中解放出来，不要再用这种（而不是一切）“依法”了——它至少会替中国法律的翻译制造不必要的障碍，大而言之它会降低立法质量。由于这种“依法”之是否见诸于文字与立法意图无关，因此把所有三种译文中的“in accordance with the law”和“according to law”删得一个也不留，对抑制言之无物的译文和提倡法律文字力求简练的译风是大有好处的。凡我法律英译者在维护法律翻译原则和端正立法文风两条战线上千万不能手软。

原文：第九十五条 公民、法人依法取得的专利权受法律保护。

译文：Article 95. The patent rights lawfully obtained by citizens and legal persons shall be protected by law. (LAB)

Article 95. Patent rights obtained according to the law by citizens or legal persons are protected by law. (CCH)

Article 95. Patent rights obtained by citizens and juristic persons in accordance with the law receive the protection of the law. (CLR)

述评：（1）本条规定就其汉语原文而言，实有失简练且有言之无物之处，译者在理解原文阶段自难视而不见。为端正立法文风使弹无虚发、墨无浪费，本条应改缩为：“专利权受法律保护”。任何权利作为法律概念哪有不合法的？！哪能非法取得？！所以“依法取得”没有说明什么，是废话（强盗可以取得物质利益但无法取得其所有权）。

（2）LAB 又犯了滥用“shall”之误，CCH 与 CLR 均不用“shall”就足以为此作证了。

（3）本条如译作“Patent rights are protected by law.”，是丝毫无损于立法原意的。

原文：第九十六条 法人、个体工商户、个人合伙依法取得的商标专用权受法律保护。

译文：Article 96. The rights to exclusive use of trademarks obtained by legal persons, individual businesses and individual partnerships shall be protected by law. (LAB)

Article 96. The exclusive right to use a trademark obtained, according to the law, by a legal person, individual industrial and commercial household or a partnership between individuals is protected by law. (CCH)

Article 96. The right to exclusive use of a trademark acquired by any juristic person, individual industrial and commercial households or individual partnership in accordance with the law receives the protection of the law. (CLR)

述评：（1）同第 95 条述评之（1）和（2）

（2）见前文有关述评

（3）本条作如下译是完全贴合立法原意的：

The exclusive trademark right is protected by law.

原文：第九十七条 公民对自己的发现享有发现权。发现人有权申请领取发现证书、奖金或者其他奖励。

公民对自己的发明或者其他科技成果，有权申请领取荣誉证书、奖金或者其他奖励。

译文：Article 97. Citizens who make discoveries shall be entitled to the rights of discovery. A discoverer shall have the right to apply for and receive certificates of discovery, bonuses or other awards.

Citizens who make inventions or other achievements in scientific and technological research shall have the right to apply for and receive certificates of honor, bonuses or other awards. (LAB)

Article 97. Citizens enjoy the right of discovery with regard to their own discoveries. A discoverer has the right to apply for and obtain a certificate of discovery, a monetary award or other award.

Citizens have the right, with regard to their own inventions or other scientific and technical achievements, to apply for and obtain a certificate of honor, monetary award or other award. (CCH)

Article 97. Citizens enjoy the right of discovery for their own discoveries. A discoverer has the right to apply for a certificate of discovery, monetary reward or other awards.

Citizens have the right to apply for certificates of honor, monetary rewards or other awards for their own inventions or other scientific accomplishments. (CLR)

述评：（1）LAB 用了三个“shall”，个个都没有用对。

（2）本条立法一、二两款显然有失平衡。

（3）试译如下：

A citizen enjoys the right of discovery to what he discovers. A discoverer has the right to apply for the discovery certificate and monetary or other prize(s).

For what he invents or achieves scitech-wise, a citizen may apply for the certificate of honor and monetary or other prizes.

原文：第四节 人身权

第九十八条 公民享有生命健康权。

译文：Section IV Personal Rights

Article 98. Citizens shall enjoy the rights of life and health. (LAB)

Section 4: Personal Rights

Article 98. Citizens enjoy the right to life and to health. (CCH)

Section 4. Rights of the Person

Article 98. Citizens enjoy the right to life and health. (CLR)

述评：（1）LAB 用了“shall”，使“享有生命健康权”沦为义务，而停止其为权利了。

（2）“人身权”有两译：“Personal Rights”（LAB 和 CCH）和“Rights of the Person”，似以后一种译法为精确——前一译易滋歧义。

原文：第九十九条 公民享有姓名权，有权决定、使用和依照规定改变自己的姓名，禁止他人干涉、盗用、假冒。法人、个体工商户、个人合伙享有名称权。企业法人、个体工商户、个人合伙有权使用、依法转让自己的名称。

译文：Article 99. Citizens shall enjoy the right of personal name and shall be entitled to determine, use or change their personal names in accordance with relevant provisions. Interference with, usurpation of and false representation of personal names shall be prohibited. Legal persons, individual businesses and individual partnerships shall enjoy the right of name. Enterprises as legal persons, individual businesses and individual partnerships shall have the right to use and lawfully assign their own names. (LAB)

Article 99. Citizens enjoy the right to a name and have the right to determine, use and, in accordance with regulations, to change their own names. It is prohibited for a person to interfere with, fraudulently use or to pass himself off under another citizen's name.

Legal persons, individual industrial and commercial households and partnerships between individuals enjoy the right to a business name. Corporations, individual industrial and commercial households and partnerships between individuals have the right to use and, in accordance with the law, to transfer their own business names. (CCH)

Article 99. Citizens enjoy the right to their names and have the right to determine, to use and, in accordance with regulations to change their names; interfering with, usurping or falsely using the name of another is forbidden.

Juristic persons, individual industrial and commercial households and individual partnerships enjoy the right to their names. Enterprise juristic persons, individual industrial and commercial households and individual partnerships have the right to use and, in accordance with the law, to transfer their names. (CLR)

述评：（1）LAB 滥用“shall”——已经多少次了？！

（2）三家译文均有欠简练处。

（3）试译如下：

A citizen has the right to adopt, bear and legally change his name, never to be interfered with, usurped, or misrepresented under.

A legal person, proprietorship or partnership has the right to its business name. An enterprise-legal person, proprietorship or partnership has the right to bear or legally assign its business name.

原文：第一百条 公民享有肖像权，未经本人同意，不得以营利为目的使用公民的肖像。

译文：Article 100. Citizens shall enjoy the right of portrait.

The use of a citizen's portrait for profit without his consent shall be prohibited. (LAB)

Article 100. Citizens enjoy the right of portrait. A citizen's portrait may not be used for the purpose of obtaining a profit without the permission of the citizen himself. (CCH)

Article 100. Citizens enjoy the right to their likenesses; one should not use a citizen's likeness for profitmaking purposes without obtaining his consent. (CLR)

述评：（1）原文为单款条文，被 LAB 误译为多款（双款）条目，殊属非是。

（2）CLR 以“should not”译“不得”，未达原意，是错的；CCH 作“may not”是可以的。

（3）LAB 中的两个“shall”都是滥用。

(4) 上列各译均欠简练。

(5) 试译如下：

A citizen has the right to his portrait, never to be used without his consent.

原文：第一百零一条 公民、法人享有名誉权，公民的人格尊严受法律保护，禁止用侮辱、诽谤等方式损害公民、法人的名誉。

译文：Article 101. Citizens and legal persons shall enjoy the right of reputation. The personality of citizens shall be protected by law, and the use of insults, libel or other means to damage the reputation of citizens or legal persons shall be prohibited. (LAB)

Article 101. Citizens and legal persons enjoy the right of reputation. The human dignity of citizens is protected by law. It is prohibited to harm the reputation of a citizen or legal person by such means as insult or libel. (CCH)

Article 101. Citizens and juristic persons enjoy the right to their reputations. A citizen's personal dignity receives the protection of law. It is forbidden to injure the reputation of citizens or juristic persons by such means as insult or slander. (CLR)

述评：(1) 立法原文逻辑欠顺——没有明确“公民的人格尊严受法律保护”与“禁止用侮辱、诽谤等方式损害公民、法人的名誉”和“公民、法人享有名誉权”之因果关系和前提、推论与结果系列中的定位。因此，译者在理解原文、以备表达的工序中有职责予以理顺。

(2) 原文中的“等”无实质涵义，并非“等等”

(3) LAB 的两个 shall 照例又错了，而 CCH 和 CLR 照例又没有错。

(4) 三译均欠简练。

(5) 试译如下，其他述评尽在其中矣：

His dignity of personality protected by law, a citizen, or a legal person for that matter, has the right to his reputation, subject to no insult, slander or libel.

原文：第一百零二条 公民、法人享有荣誉权，禁止非法剥夺公民、法人的荣誉称号。

译文：Article 102. Citizens and legal persons shall enjoy the right of honor. It shall be prohibited to unlawfully divest citizens and legal persons of their honorary titles. (LAB)

Article 102. Citizens and legal persons enjoy the right to honor. It is prohibited to illegally strip a citizen or legal person of an honorary title. (CCH)

Article 102. Citizens and juristic persons enjoy the right to their honor; it is forbidden illegally to deprive citizens or juristic persons of their honorary titles. (CLR)

述评：（1）翻译之基础在于理解原文。不懂原文如何能译？不彻底理解原文并融会贯通之，如何能有透彻贴切之译文？！本条原文中的“荣誉权”与“荣誉称号”是同义概念还是前者包含后者？如前者包含后者，则为什么只保护“荣誉权”的内容之一“荣誉称号”而不保护“荣誉权”的全部内容？这样，立法者就无法自圆其说了。如果此处的“荣誉称号”就是“荣誉权”的别称，两者是同一个概念，即就能自圆其说了。因此，为了维护本条之自圆其说，译者只得把“荣誉称号”理解为“荣誉权”的同义概念。

（2）LAB 中的两个“shall”都是滥用。

（3）LAB 把“人格尊严”误解为“人格”，从而误解为“personality”；而其他两译则不然，故译文中均有 LAB 所没有的那个“dignity”。

（4）各译均欠简练。

（5）试译如下：

A citizen or a legal person has the right to his honor, never to be deprived of in violation of law.

原文：第一百零三条 公民享有婚姻自主权，禁止买卖、包办婚姻和其他干涉婚姻自由的行为。

译文：Article 103. Citizens shall enjoy the right of marriage by choice. Mercenary marriages, marriages upon arbitrary decision by any third party and any other acts of interference in the freedom of marriage shall be prohibited. (LAB)

Article 103. Citizens enjoy the right of freedom of choice in marriage. Mercenary marriages, arranged marriages and other actions which interfere with freedom in marriage are prohibited. (CCH)

Article 103. Citizens enjoy the right to marital autonomy. Sale or purchases of marriage, arranged marriage and other acts which interfere with the freedom of marriage are forbidden. (CLR)

述评：（1）首先，LAB 中的“shall”又个个都是滥用的。

(2) “婚姻自主”不以“婚姻的选择自由”为限。因此，LAB 所译“marriage by choice”不是以译此；CLR 所译“marital autonomy”才是“婚姻自主”的贴切的译名。

(3) “包办婚姻”译作“arranged marriage”是妥帖的。这不是由于它是定译，而是由于它如实传达了汉语原意。LAB 所译之所以不切原文，是由于凡按第三人决定成婚就是包办，与包办决定之是否 arbitrary 无关。

(4) 试译如下：

A citizen has the right to marital autonomy; any mercenary or arranged marriage or other act of interference with the right of autonomy is prohibited.

原文：第一百零四条 婚姻、家庭、老人、母亲和儿童受法律保护。残疾人的合法权益受法律保护。

译文：Article 104. Marriage, the family, old people, mothers and children shall be protected by law. The lawful rights and interests of the handicapped shall be protected by law. (LAB)

Article 104. Marriage, the home, old people and mothers and children are protected by law.

The legitimate rights and interests of disabled persons are protected by law. (CCH)

Article 104. Marriage, the family, the elderly and mother and child receive the protection of law.

The lawful rights and interests of the handicapped receive the protection of law. (CLR)

述评：(1) LAB 的“shall”又个个都是用错了的。

(2) 本条为多（双）款条文，而 LAB 以之为单款条文了。

(3) 三译中，以 CCH 最为可取，但其中第一个“and”以改成逗号为好。

原文：第一百零五条 妇女享有同男子平等的民事权利。

译文：Article 105. Women shall enjoy equal civil rights with men. (LAB)

Article 105. Women enjoy civil rights equal to those of men. (CCH)

Article 105. Women enjoy the same civil rights as men. (CLR)

述评：(1) LAB 用“shall”简直可以说是荒唐，其后果是硬派给妇女一项义务——享有民事权利平等的义务！

(2) 如前早已述评，“civil rights”完全可以被英语民族者误解为“民权”，故不足取。

(3) 试译：

Women enjoy equal rights with men in civil law.

(未完，待续)

中华人民共和国《民法通则》AAA 英译本比较评析

陈忠诚

(接总第 34 期)

原文：第一百一十八条 公民、法人的著作权（版权）、专利权、商标专用权、发现权、发明权和其他科技成果权受到剽窃、篡改、假冒等侵害的，有权要求停止侵害，消除影响，赔偿损失。

译文：Article 118. If the rights of authorship (copyrights), patent rights, rights to exclusive use of trademarks, rights of discovery, rights of invention or rights for scientific and technological research achievements of citizens or legal persons are infringed upon by such means as plagiarism, alteration or imitation, they shall have the right to demand that the infringement be stopped, its ill effects be eliminated and the damages be compensated for. (LAB)

Article 118. If a citizen's or legal person's right of authorship (copyright), patent right, right to the exclusive use of a trademark, right of discovery, right of invention or other right pertaining to scientific or technical achievements is infringed upon in the form of plagiarism, falsification or imitation, the citizen or legal person shall have the right to demand that the infringement be stopped, the effects of the infringement eliminated and damage compensated for. (CCH)

Article 118. A citizen or a juristic person whose right of authorship (copyright), patent right, right to exclusive use of a trademark, discovery right, invention right and other scientific accomplishments is infringed by plagiarism,

unlawful alteration or passing-off, etc, has the right to demand cessation of the infringement, elimination of the [false] impression and compensation for losses. (CLR)

述评：(1) “有权”，LAB 和 CCH 均作“shall have the right”乃典型的错误；唯 CLR 作“has the right”始为正译。

(2) “著作权”与“版权”并非同一概念，原文采用“著作权（版权）”表达形式可谓概念不清，游移不定。立法者自身如此，要翻译者如何是好？！犹发言人口齿不清，要翻译如何译述？——唯有依样画“葫芦”，画了出来还不知其为何物！请问：我们参加版权公约还是著作权公约（如果有的话）？为什么不作“著作权即版权”或“著作权或版权”？！

(3) “其他科技成果权”，三种译本各译各的；如译回汉语，则 LAB 为“科技研究成果权（复数）”、CCH 为“其他有关科技成就权（单数）”、CLR 又作“其他科学[“技术”不要了！]成就[无“权”矣！]”。

(4) 从语法来看，CLR 的“...right,...right, right to...,...right,...right and other scientific achievements is infringed”除逻辑外其主谓语不一致也是不合语法的；而 LAB 与 CCH 两译并无此弊，令人感到宽慰。

(5) 汉语中的“和”译成英语时不能不问青红皂白一律死译为“and”。本条“和其他科技成果”中的“和”，CLR 作“and”乃依样画葫芦貌合神离；LAB 和 CCH 则把这个“和”译成“or”是动了脑筋的，貌似离而神实合。

(6) CLR 把原文“影响”误解为“印象”，结果就误译为“impression”了。中国法律英译过程中正确理解汉语原文之重要意义于此可见。

(7) 但三种译文中，总体结构以 CLR 为最合理。

原文：第一百一十九条 侵害公民身体造成伤害的，应当赔偿医疗费、因误工减少的收入、残废者生活补助费等费用；造成死亡的，并应当支付丧葬费、死者生前扶养的人必要的生活费等费用。

译文：Article 119. Anyone who infringes upon a citizen's person and causes him physical injury shall pay his medical expenses and his loss in income due to missed working time and shall pay him living subsidies if he is disabled; if the victim dies, the infringer shall also pay the funeral expenses, the necessary living expenses of the deceased's dependents and other such expenses. (LAB)

Article 119. In the case of violation of a citizen's person causing bodily injury, compensation shall be paid for medical costs, reduced income due to time off work and the living allowance of a disabled person, etc. If death is caused, costs such as the funeral expenses of the deceased and the necessary living costs of those who

were dependants of the deceased prior to his death shall be paid. (CCH)

Article 119. One who harms the person of a citizen causing injury should compensate him for medical expenses, reduced income due to missed work, living expenses, disability allowance, and such expenses; where death has been caused, he should also pay funeral expenses and the necessary living expenses for the deceased's dependents. (CLR)

述评：（1）CLR 又把“应当”误译成“should”了。

（2）CCH 和 CLR 以“reduced income”译“减少的收入”是误译。例如，月薪 300 元者误工十天后其月入仅 200 元了。这 200 元便是 the “reduced income”，然而此人因误工而“减少的收入”却是 100 元即“应当赔偿”的金额。但按 CCH 和 CLR 的译法（把“减少的收入”误译为“reduced income”），“应当赔偿”的金额就不是 100 元而是 200 元了。因此，这“减少的收入”必须译作“the lost income”才是正道。由此以观，LAB 的译法“pay...his loss in income”倒也是对的。

（3）试译如下：

A violator of a citizen's person causing physical injury shall pay for the medical expenses, the income lost owing to missed work, and the disability allowance for daily life; the violator shall, where death is caused, also pay for the funeral service and the living expenses of the surviving dependent(s) of the deceased.

原文：第一百二十条 公民的姓名权、肖像权、名誉权、荣誉权受到侵害的，有权要求停止侵害，恢复名誉，消除影响，赔礼道歉，并可以要求赔偿损失。

法人的名称权、名誉权、荣誉权受到侵害的，适用前款规定。

译文：Article 120. If a citizen's right of personal name, portrait, reputation or honor is infringed upon, he shall have the right to demand that the infringement be stopped, his reputation be rehabilitated, the ill effects be eliminated and an apology be made; he may also demand compensation for losses. The above paragraph shall also apply to infringements upon a legal person's right of name, reputation or honor. (LAB)

Article 120. If a citizen's right to a name, right of portrait, right of reputation or right of honor is infringed upon, he shall have the right to demand that the infringement be stopped, that his reputation be restored, that the effects of the infringement be eliminated and an apology made. He may also claim damages.

If a legal person's right to a business name, right of reputation or right of honour is infringed upon, the provisions of the preceding paragraph shall apply. (CCH)

Article 120. When a citizen's right to his name, his likeness, his reputation or his honor is infringed, the injured person has the right to demand cessation of the infringement, restoration of reputation, elimination of the [false] impression, the making of an apology, and may also demand compensation for losses. When a juristic person's right to its name, its reputation or its honor is infringed, the preceding provisions shall apply. (CLR)

述评：（1）LAB 和 CCH 把“有权”译为“shall have the right”，又错了；CLR 译之为“has the right”，又对了。同理，“shall apply”中的“shall”也是滥用，但这是三家共同的滥用了。

（2）CLR 又把“影响”误解为“印象”，从而又把“影响”误译为“impression”了。

（3）本条一系列的“权”，在英译中以 CCH 把这一系列的“权”一一明文（right）译出是明确的；其他两译中只有一个明文“right”和一个介词（“of”或“to”），易滋歧义。

（4）在语言上，“right to”或“right of”都是可以的；但在同一系列中表示同一关系时，CCH 一会儿用“to”，一会儿又用“of”，违反了译名同一律，因此是不可取的。这一点由于下列事实，更有其宏观意义：CCH 的中国法译文的出版最系统、最及时，往往被后来的译本参考。这就是说后来的译者不能盲从 CCH 的任何一种译法，以免以讹传讹——尽管 CCH 不乏佳译。

（5）CLR 的“right...is infringed”是错的；LAB 和 CCH 作“right...is infringed on”才是对的。

（6）试译如下以反映其他述评：

A citizen whose right to his name, to his portrait, to his reputation, or to his honor is infringed on may demand cessation of the infringement, rehabilitation, and an apology in addition to his claim for damages.

The preceding paragraph applies where a legal person's right to its business name, to its reputation, or to its honor, is infringed on.

对以上试译，已有初稿读者指出——“消除影响”漏译了。但笔者认为，不“消除影响”是无法“恢复名誉”的。或者说“rehabilitation”乃“平反昭雪”；而“消除影响”者，“昭雪”的白话版也。综上所述，“消除影响”并未漏译。

原文：第一百二十一条 国家机关或者国家机关工作人员在执行职务中，侵犯公民、法人的合法权益造成损害的，应当承担民事责任。

译文： Article 121. If a state organ or its personnel, while executing its duties, encroaches upon the lawful rights and interests of a citizen or legal person and causes damage, it shall bear civil liability. (LAB)

Article 121. If a State organ or an employee of a State organ in the execution of his duties violates the legitimate rights or interests of a citizen or legal person and causes damage to be sustained, civil liability shall be assumed. (CCH)

Article 121. When a State agency or the personnel of a State agency in the execution of their duties infringes upon the lawful rights and interests of a citizen or a juristic person causing losses, it should undertake civil responsibility. (CLR)

述评：以译代评，试译如下，希正：

Violating while on duty a citizen's or a legal person's legitimate right(s) or interest(s) and thereby causing damage to the victim, a state agency or any of its functionaries shall bear the civil liabilities therefor.

原文：第一百二十二条 因产品质量不合格造成他人财产、人身损害的，产品制造者、销售者应当依法承担民事责任。运输者、仓储者对此负有责任的，产品制造者、销售者有权要求赔偿损失。

译文： Article 122. If a substandard product causes property damage or physical injury to others, the manufacturer or seller shall bear civil liability according to law. If the transporter or storekeeper is responsible for the matter, the manufacturer or seller shall have the right to demand compensation for its losses. (LAB)

Article 122. If damage is caused to another person's property or body as a result of a substandard product, the manufacturer and the seller of the product shall assume civil liability in accordance with the law. If responsibility lies with a carrier or storer, the manufacturer and seller shall have the right to claim damages. (CCH)

Article 122. When personal injury or damage to property results from a product's sub-standard quality, the manufacturer or seller should undertake civil responsibility in accordance with the law. Where those who transport or store [the product] are responsible for this, the manufacturer or the seller has the right to demand compensation for losses. (CLR)

述评：(1)原文“承担民事责任”前有“依法”两字而“要求赔偿损失”前无“依法”两字，难道只有“承担民事责任”需要“依法”而“要求损害赔偿”不需要“依法”了吗？！可见“依法”是可有可无的立法废话，译者必须理解并在理解的基础上根据可译可不译则不译的原则，坚决不译。

(2) 唉！“应当”又被 CLR 误译为“should”了。

(3) 唉!“有权”又被 LAB 和 CCH 译错,又被 CLR 译对了。

(4) 按我国社会的价值观,人是第一位的,物是第二位的。由是以观,则尽管原文是“财产、人身损害”(物在前人在后)而 CLR 的译文却仍然作“personal injury or damage to property”(人为先,物次之),更能体现我国社会的法哲学,值得欢迎。

(5) 译文颇有力求精确简练之余地,作为笔者的探索,试译如下:

A maker or a seller of a substandard product which causes physical injury or property damage to another person shall bear the civil liability. The maker or seller may claim damages from the carrier or storekeeper responsible for injury or the damage.

原文:第一百二十三条 从事高空、高压、易燃、易爆、剧毒、放射性、高速运输工具等对周围环境有高度危险的作业造成他人损害的,应当承担民事责任;如果能够证明损害是由受害人故意造成的,不承担民事责任。

译文: Article 123. If any person causes damage to other people by engaging in operations that are greatly hazardous to the surroundings, such as operations conducted high aboveground, or those involving high pressure, high voltage, combustibles, explosives, highly toxic or radioactive substances or high-speed means of transport, he shall bear civil liability; however, if it can be proven that the damage was deliberately caused by the victim, he shall not bear civil liability. (LAB)

Article 123. Civil liability shall be assumed if harm is caused to another person in the course of work which involves a high degree of danger to the surrounding environment, such as the operation of high-altitude, high-pressure, inflammable, explosive, poisonous, radioactive or high-speed transport tools. If it can be proved that the harm was deliberately caused by the victim, civil liability shall not be borne. (CCH)

Article 123. One engaging in activities involving a high degree of risk to the surrounding environment, such as work in the upper atmosphere or under high pressure, or with inflammables or explosives or poisons, or with radioactive materials, or with high-speed means of transportation and the like, who causes injury to another should undertake civil responsibility; if he can prove that the injury was intentionally caused by the injured person, he will not undertake civil responsibility. (CLR)

述评:(1) CLR 在“who”之前使用逗号是错误的,因为此处“who...”只能是限制性定语从句。

(2) CCH 译文第一句中在没有任何“person”(a person/ one person...)的

前提下突然冒出了一个“another person”，使“another”成了无本之木、无源之水，是败笔。

(3) LAB 的译文一开始就出人意外：与“any person”（而不是“any people”）相呼应的竟不是“another (person)”而是“other people”！

(4) “高度危险”，CCH 与 CLR 均作“a high degree of danger”很对；但不如“a great danger”简练。

(5) “不承担民事责任”，是平铺直叙地阐明法律制度，因此译文中不应用“shall”（LAB 和 CCH）或者“will”（CLR）。

(6) 按原文“对周围环境有高度危险的作业”包括：“高空（作业）”、“高压（作业）”、“易燃（作业）”、“易爆（作业）”、“剧毒（作业）”、“放射性（作业）”、“高速运输工具（作业）”“等”在内；但按 CCH 的有关译文（such as...tools），则“对周围环境有高度危险的作业”的内容变了，变为“高空（运输工具作业）”、“高压（运输工具作业）”、“易燃（运输工具作业）”、“易爆（运输工具作业）”、“剧毒（运输工具作业）”、“放射性（运输工具作业）”、“高速运输工具（作业）”“等”。可能有读者不同意此说；果然，笔者要请教了：按 CCH 译文，“poisonous”和“radio active”是前文“of”的宾语呢，还是后文“transport tools”的定语呢？！为什么 CLR 中用的是名词“poison”（而不是形容词“poisonous”）？！为什么 LAB 要用“radioactive substances”（而不只用一个形容词“radioactive”）？！

(7) CLR 又把“应当”误译为“should”；LAB 和 CCH 又把“应当”正译为“shall”了。

原文：第一百二十四条 违反国家保护环境防止污染的规定，污染环境造成他人损害的，应当依法承担民事责任。

译文：Article 124. Any person who pollutes the environment and causes damage to others in violation of state provisions for environmental protection and the prevention of pollution shall bear civil liability in accordance with the law. (LAB)

Article 124. If State provisions on environmental protection and prevention of pollution are violated, resulting in pollution of the environment and harm to another person, civil liability shall be assumed according to the law. (CCH)

Article 124. Anyone who violates the State provisions of law on environmental protection and prevention of pollution and pollutes the environment causing injury to another should undertake civil responsibility in accordance with the law. (CLR)

述评：以译代评，试译如下：

Polluting environment in violation of the State's environment-protection and anti-pollution regulations to the prejudice of others, the polluter shall bear his civil liability therefore.

原文：第一百二十五条 在公共场所、道旁或者通道上挖坑、修缮安装地下设施等，没有设置明显标志和采取安全措施造成他人损害的，施工人应当承担民事责任。

译文：Article 125. Any constructor who engages in excavation, repairs or installation of underground facilities in a public place, on a roadside or in a passageway without setting up clear signs and adopting safety measures and thereby causes damages to others shall bear civil liability. (LAB)

Article 125. If holes are dug or underground installations repaired or installed in a public place, roadside or thoroughfare without installing clear signs and adopting safety measures, resulting in damage to other person, the construction workers shall assume civil liability. (CCH)

Article 125. Whenever in public places, ditches are dug at the roadside or in the thoroughfare, or underground facilities are repaired or installed, and clear signs are not placed or safety measures not adopted, causing injury to others, the person[s] who carries out such work should undertake civil responsibility. (CLR)

述评：（1）显然，对原文“施工人”，三种译文有两种不同的理解，因此也有两种不同的译法——LAB 译作未必是具体操作工人的“constructor”，而 CCH(the construction workers)和 CLR(the person who carries out such work)则译作具体操作的工人。应该说，原文“施工人”与“施工工人”并非同一。因此，如由笔者选择，会选用“constructor”的。

（2）原文“坑”，有被译成“沟”（CLR 的“ditches”）的，有被虚化而被译作“挖”（LAB 的“excavation”）的，也有被译成了“洞穴”（CCH 的“holes”）。对此，如与所涉及的法律关系无关宏旨，不妨百花齐放：只要正确简练，诸译不必一律。但是如果“洞”译作“holes”，则在具体上下文中这个“洞”自以译作“pothole(s)”为好，这叫做“具体词语具体翻译”律。

（3）唉，CLR 又把“应当”误译为“should”了。

（4）在译原文“在……上”是，LAB 与 CLR 在每一个介词宾语前使用相应的、不止一个介词，而 CCH 所译则全由“in”这一个介词担当——以不变应万变地作“in a public place, roadside or thoroughfare”。CCH 所译在“以一介顶三宾”总体设计上应该得到表扬，但其具体操作上却用错了这一个介词——在具体上下文中能以一顶三的介词不是“in”而是“at”！

（5）LAB 译文的“who” clause 中“excavation, repair or installation of

underground facilities”易滋歧义：不是原意“挖坑”而是“挖地下设施”了！故此译不足取。

(6) 译文的总体结构以 LAB 为宜。

原文：第一百二十六条 建筑物或者其他设施以及建筑物上的搁置物、悬挂物发生倒塌、脱落、坠落造成他人损害的，它的所有人或者管理人应当承担民事责任，但能够证明自己没有过错的除外。

译文：Article 126. If a building or any other installation or an object placed or hung on a structure collapses, detaches or drops down and causes damage to others, its owner or manager shall bear civil liability, unless he can prove himself not at fault. (LAB)

Article 126. If a building or other installation or an object placed on or suspended from a building collapses, comes loose or falls, causing damage to another person, the owner or manager shall assume civil liability unless it can be proven that he was not personally at fault. (CCH)

Article 126. When buildings or other facilities, including objects attached to or hanging from [buildings or facilities], collapse or fall off, or fall down, causing injury to another, the owner or the person in control [of the building or facilities] should undertake civil responsibility, except when he can prove that he is not at fault. (CLR)

述评：(1) CLR 照例把“应当”误译为“should”，而 LAB 与 CCH 照例正译为“shall”。

(2) 什么叫“设施”？据《现代汉语词典》，则“[设施]……为进行某项工作或某种需要而建立起来的机构、系统、组织、建筑等”。据《辞海》（《词语分册》），有两释。其一为“布置安排；行事”，与此处无关；其二为“措施；设备”。据《新华词典》亦有两释，即“设备，措施”与“布置安排”。可见，不论根据三种词书中的哪一种，本条“其他设施”中的“其他”两字，成事不足、败事有余——违反了立法原意！理解了这一点，在理解的基础上，译者为忠实于原意，千万不能把破坏立法原意的“其他”译成英语（“other”）！何况仅就英语的词义而论笼而统之的“building”未必就在“installations”之列。果然，则“a building or (any) installation”连英语也是不通的——能说“a man or (any) other dog”吗？

(3) 其他述评体现在下列试译之中，请指正：

Unless proved innocent, an owner or a supervisor of a building, an installation, or an object placed or hung thereon shall bear the civil liabilities for damages done to another person by its collapse, detachment, or fall.

原文：第一百二十七条 饲养的动物造成他人损害的，动物饲养人或者管理人应当承担民事责任；由于受害人的过错造成损害的，动物饲养人或者管理人不承担民事责任；由于第三人的过错造成损害的，第三人应当承担民事责任。

译文：Article 127. If a domesticated animal causes harm to any person, its keeper or manager shall bear civil liability. If the harm occurs through the fault of the victim, the keeper or manager shall not bear civil liability; if the harm occurs through the fault of a third party, the third party shall bear civil liability. (LAB)

Article 127. If a domestic animal causes damage to another person, the owner or keeper of the animal shall bear civil liability. If the damage results from the fault of the victim, the owner or keeper of the animal shall not bear civil liability. If the damage results from the fault of a third person, the third person shall bear civil liability. (CCH)

Article 127. When domestic animal cause injury to another, the person raising or the person in control of the animal should undertake civil responsibility; if the injury is due to the fault of the victim, the person raising or the person in control of the animals will not undertake civil responsibility; if the injury is due to the fault of a third person, the third person should undertake civil responsibility. (CLR)

述评：（1）原文“他人”，被 CLR 译成“another”，真有意思——如果把这段译文译回汉语就成了“饲养的动物造成他一动物损害的”，与原意大相径庭了。这不是很有意思吗？因此必须把“another”更正为“another person”，以免把人畜混为一谈。

（2）“domesticated animal”（LAB 所译）与“domestic animal”（CCH 和 CLR 所译）不是同一事物，比如说马戏团里的孟加拉虎再 domesticated 也不是一般意义上的 domestic animal。此处“饲养的动物”以译作“domestic animal”为是，译作“domesticated animal”为非。

（3）“他人”当然不是 LAB 所译的“any person”；“any person”是也包括“管理人”、“饲养人”在内的哟。因此，“any person”必须更正为“another person”才是。

（4）“不承担责任”不是“不准”或“不得担任责任”。因此，LAB 和 CCH 译作“shall not bear civil liability”是不对的，CLR 作“will not...”是不必的。正确而妥善的译法是“does not bear civil liability”或“is not to bear...”

（5）三译文之结构和行文在不同程度上均不够简练。

原文：第一百二十八条 因正当防卫造成损害的，不承担民事责任。正当防卫超过必要的限度，造成不应有的损害的，应当承担适当的民事责任。

译文： Article 128. A person who causes harm in exercising justifiable defense shall not bear civil liability. If justifiable defense exceeds the limits of necessity and undue harm is caused, an appropriate amount of civil liability shall be borne. (LAB)

Article 128. Civil liability shall not be borne for damage caused in self-defence. If self-defence exceeds the necessary limits, causing unnecessary damage, then appropriate civil liability shall be assumed. (CCH)

Article 128. One who causes injury by justifiable defense does not undertake civil responsibility. When the defense exceeds the limits of necessity and causes unnecessary injury, appropriate civil responsibility should be undertaken. (CLR)

述评：（1）正如第 127 条“述评”之（4）所指出的，本条原文“不承担民事责任”LAB 和 CCH 所译的英语“shall not”是错误的。我们很高兴地看到 CLR 的有关译文已由第 127 条的“will not undertake...”改为本条的“does not undertake...”，这是很大的进步。我们为此鼓掌，以资鼓励。

（2）“应当”仍然被 CLR 误译为“should”，而被 LAB 和 CCH 正译为“shall”。

（3）“正当防卫”不是“自卫”即“self-defense”，因此，CCH 以之译“正当防卫”，有以鹿译马之弊。

（4）试译如下，以补述评之言犹未尽处，请指正：

A person has no civil liability for any damage caused in his justifiable defense, which, if beyond necessity, however, gives rise to his civil liability to a reasonable degree for the unnecessary damage caused thereby.

原文：第一百二十九条 因紧急避险造成损害的，由引起险情发生的人承担民事责任。如果危险是由自然原因引起的，紧急避险人不承担民事责任或者承担适当的民事责任。因紧急避险采取措施不当或者超过必要的限度，造成不应有的损害的，紧急避险人应当承担适当的民事责任。

译文： Article 129. If harm occurs through emergency actions taken to avoid danger, the person who gave rise to the danger shall bear civil liability. If the danger arose from natural causes, the person who took the emergency actions may either be exempt from civil liability or bear civil liability to an appropriate extent. If the emergency measures taken are improper or exceed the limits of necessity and undue harm is caused, the person who took the emergency action shall bear civil liability to an appropriate extent. (LAB)

Article 129. If damage is caused in the course of the urgent avoidance of

danger, the person who caused the situation of danger shall assume civil liability. If the danger arose from natural causes, the person urgently avoiding the danger shall not bear civil liability, or shall bear appropriate civil liability. If a person urgently avoiding danger takes inappropriate or excessive measures to do so, causing unnecessary damage, he shall bear appropriate civil liability. (CCH)

Article 129. Where injury is caused in avoiding danger during an emergency, the person who gives rise to the dangerous situation undertakes civil responsibility. If the danger arises from natural reasons, the person avoiding danger during the emergency does not undertake civil responsibility or only undertakes appropriate civil responsibility. When a person avoiding danger in an emergency adopts inappropriate measures or exceeds the limits of necessity, causing unnecessary injury, the person avoiding danger during the emergency should undertake appropriate civil responsibility. (CLR)

述评：以译代评如下，请指正：

A person is to bear the civil liability for the damage done to avoid a danger he has caused. The danger being caused by Nature, the person in avoidance of it bears no, or only a reasonable degree of, civil liability. The same person shall, however, bear a reasonable degree of civil liability for any unnecessary damage owing to his improper reaction or overreaction.

附带说明一下，英语中相当于“紧急避险”（传统用语为“紧急避难”）的习用法律术语为“necessity”一字而已。此处未予采用是免得英美民族的法律英译读者可能以其在英美法中的全部 implications 去理解它。

原文：第一百三十条 二人以上共同侵权造成他人损害的，应当承担连带责任。

译文：Article 130. If two or more persons jointly infringe upon another person's rights and cause him damage, they shall bear joint liability. (LAB)

Article 130. If two or more persons jointly infringe upon another person's rights, thereby causing him damage, they shall bear joint liability. (CCH)

Article 130. Two or more persons who together infringe the rights [of another person], causing damage to him, should undertake joint responsibility. (CLR)

述评：（1）关于“连带责任”的正译，前已指出过不止一次。令人费解的是：亚、澳、北美有代表性的这三种中国法英译本，竟都把“连带责任”与“共同责任”混为一谈，指“共同责任”为“连带责任”（即 joint and several liability）。这是洲际中国法英译的不幸，我国法律英译界应作出更大的贡献，大力提高法律英译的世界水平。

(2) 其他述评体现于下列试译, 请指正:

Two or more persons shall bear joint and several liability for the damage they jointly cause to another person (other persons).

原文: 第一百三十一条 受害人对于损害的发生也有过错的, 可以减轻侵害人的民事责任。

译文: Article 131. If a victim is also at fault for causing the damage, the civil liability of the infringer may be reduced. (LAB)

Article 131. If the victim is also at fault with regard to damages caused, the infringing person's civil liability may be reduced. (CCH)

Article 131. When the victim has also been at fault in causing the injury, the injurer's civil responsibility may be lessened. (CLR)

述评: 以试译代述评如下, 请指正:

The victim(s)'s contributory negligence to the injury or damage may mitigate the civil liability of the wrong-doer.

原文: 第一百三十二条 当事人对造成损害都没有过错的, 可以根据实际情况, 由当事人分担民事责任。

译文: Article 132. If none of the parties is at fault in causing damage, they may share civil liability according to the actual circumstances. (LAB)

Article 132. If none of the interested parties is at fault with regard to damages caused, the civil liability may be divided among them in accordance with the actual circumstances. (CCH)

Article 132. When injury is caused through no fault of any of the parties, according to the actual situation, civil responsibility may be apportioned among the parties. (CLR)

述评: 试以译代评如下, 请指正:

Having no contributory negligence to the injury or damage caused, the parties are, in the light of the reality, to share the civil liability therefore.

原文: 第一百三十三条 无民事行为能力人、限制民事行为能力人造成他人损害的, 由监护人承担民事责任。监护人尽了监护责任的, 可以适当减轻他的民事责任。

有财产的无民事行为能力人、限制民事行为能力人造成他人损害的，从本人财产中支付赔偿费用。不足部分，由监护人适当赔偿，但单位担任监护人的除外。

译文： Article 133. If a person without or with limited capacity for civil conduct causes damage to others, his guardian shall bear civil liability. If the guardian has done his duty of guardianship, his civil liability may be appropriately reduced.

If a person who has property but is without or with limited capacity for civil conduct causes damage to others, the expenses of compensation shall be paid from his property. Shortfalls in such expenses shall be appropriately compensated for by the guardian unless the guardian is a unit. (LAB)

Article 133. If a person with limited or no capacity for civil acts causes damage to another person, his guardian shall assume civil liability. If the guardian has fully discharged his guardianship responsibilities, his civil liability may be reduced appropriately.

If a person with limited or no capacity for civil acts who owns property causes damage to another person, compensation shall be paid from the person's own property. Any shortfall shall be paid, as appropriate, by the guardian unless the guardian is a unit. (CCH)

Article 133. When injury is caused to another by persons without capacity for civil activity or with limited capacity for civil activity, civil responsibility is undertaken by their guardians. If their guardians have fulfilled their responsibilities as guardians, their civil responsibility may be appropriately lessened.

When injury is caused to others by persons who are without capacity for civil activity or with limited capacity for civil activity who have [their own] property, expenses of compensation are paid from their own property. Insofar as this is insufficient, their guardians [pay] appropriate compensation, except when a unit serves as guardian. (CLR)

述评：（1）根据《民法通则》关于监护的规定，“无民事行为能力人、限制民事行为能力人”就是“被监护人”，“被监护人”也必然是“无民事行为能力人、限制民事行为能力人”。因此，本条原文的合理行文自当作“被监护人造成他人损害的……”为是，自应抛弃迂回曲折的、舍简就繁的“无民事行为能力人、限制民事行为能力人造成他人损害的……”。在对原文作如此理解的基础上，英译者有责任把“无民事行为能力人、限制行为能力人”直截了当地、舍繁就简地、忠于立法原意地译作一个词——“ward”！

（2）“由（从）……”不同于“须由……”或“应由……”。因此，用“shall…”(LAB 和 CCH)是错的，不用“shall…”（CLR）才是对的。

(3) 如何从结构上和遣词行文上使译文最大限度地做到精当简练值得作进一步探索。试译如下，供讨论指正：

A guardian has the civil liability for the damage done to another person by his ward. Having done his best as such, the guardian may have his liability reasonably reduced.

Damages for the injury or damage done to another person by a ward are payable from the ward's property, if any. The shortfall, if any, is to be made good by the guardian who is not an institution.

有读者看了初稿后指出：“适当”两字漏译了。笔者认为此两字可译可不译故不译。法律不要求任何不适当的赔偿——法律所规定的赔偿（除特殊情况，也许）一定是“适当”的。以为即使译了出来也等于白译。

第一节 一般规定

译文：CHAPTER VI Civil Liability

Section I General Stipulations (LAB)

Chapter VI—Civil Liability

Section 1: General Provisions (CCH)

Chapter Six: Civil Responsibility

Section 1: General Provisions (CLR)

述评：诸译中取其长、补其短，可集纳为：

Chapter Six Civil Liability

Section 1 General Provisions

原文：第一百零六条 公民、法人违反合同或者不履行其他义务的，应当承担民事责任。公民、法人由于过错侵害国家的、集体的财产，侵害他人财产、人身的，应当承担民事责任。没有过错，但法律规定应当承担民事责任的，应当承担民事责任。

译文：Article 106. Citizens and legal persons who breach a contract or fail to fulfill other obligations shall bear civil liability. Citizens and legal persons who through their fault encroach upon state or collective property or the property or person of other people shall bear civil liability. Civil liability shall still be borne even in the absence of fault, if the law so stipulates. (LAB)

Article 106. A citizen or legal person who violates a contract or fails to fulfill other obligations shall assume civil liability. A citizen or legal person who through his own fault infringes upon State or collective property or upon another person, or who harms another person, shall assume civil liability. If he is not at fault but the law stipulates that he shall assume civil liability, he shall assume such liability. (CCH)

Article 106. Citizens or juristic persons who breach contracts or do not perform their other obligations should undertake civil responsibility. Citizens or juristic persons who erroneously infringe upon State property or collective property, or infringe upon other's property or person, should undertake civil responsibility. Where there has been no erroneous act, but the law provides that civil responsibility should be undertaken, civil responsibility should be undertaken. (CLR)

述评：(1) “法律规定”的“规定”，LAB 作“stipulates”，CCH 亦然——都是用语不当；唯 CLR 不与之一般见识，译作“provides”，是正确的。

(2) CCH 未能把“他人财产”的“财产”译出，有损原意。

(3) “应当”，CLR 作“should”为误译。

(4) 第三款“过错”不是“错误”即“error”。因此 CLR 把“没有过错”译作“there has been no erroneous act”是误译，应更正为“there has been no fault”。同理第二款 CLR 译文中的“erroneously”同样是错的。

(5) 三译均欠简练，试译如下：

A citizen or a legal person shall bear civil liabilities for his failure to discharge his contractual or other obligations. A citizen or legal person has civil liabilities for his infringement by fault of state or collective property, or of another person's property or person. Non-fault civil liabilities required of by law shall be assumed accordingly.

原文：第一百零七条 因不可抗力不能履行合同或者造成他人损害的，不承担民事责任，法律另有规定的除外。

译文：Article 107. Civil liability shall not be borne for failure to perform a contract or damage to a third party if it is caused by force majeure, except as otherwise provided by law. (LAB)

Article 107. If a contract is unable to be performed or damage caused to another person for reasons of force majeure, civil liability is not borne unless otherwise stipulated by the law. (CCH)

Article 107. Where because of force majeure, a party cannot perform the contract, or loss is caused to another person, that party need not undertake civil responsibility, except when the law provides otherwise. (CLR)

述评：(1) “法律……规定”的“规定”CCH作“stipulated”不对；LAB和CLR分别作“provided”和“provides”是对的。

(2) 本条规定在一定前提下“不承担民事责任”，因此LAB作“shall be borne”不切原文，而CCH作“is not borne”是贴原文的。

(3) 是否可以从结构上加以改进，以收译文精练紧凑之效呢？这是大家应该精益求精，继续探索的。为此，试译如下，请指正：There is no civil liability for non-performance of a contract or for damage done to someone, owing to force majeure unless otherwise regulated by law.

原文：第一百零八条 债务应当清偿。暂时无力偿还的，经债权人同意或者人民法院裁决，可以由债务人分期偿还。有能力偿还拒不偿还的，由人民法院判决强制偿还。

译文：Article 108. Debts shall be cleared. If a debtor is unable to repay his debt immediately, he may repay by installments with the consent of the creditor or a ruling by a people's court. If a debtor is capable of repaying his debt but refuses to do so, repayment shall be compelled by the decision of a people's court. (LAB)

Article 108. Debts shall be fully discharged. If a debtor is temporarily unable to repay a debt he may, with the consent of the creditor or as a result of a ruling by the People's Court, repay the debt in installments. If he is capable of repaying the debt but refuses to do so, the People's Court shall issue a verdict to enforce the repayment. (CCH)

Article 108. Debts must be repaid. When [the debtor] is temporarily unable to repay, he may repay by installments, with the creditor's consent or a ruling of a people's court. [A debtor] who is able to repay but obstinately refuses to do so may be compelled to repay by a ruling of a people's court. (CLR)

述评：(1) 本条第一句的上列三种译法中，以CLR为最简练，但“repaid”亦可作“paid”。

(2) 如何力求简练？试译如下，请指正：

Debts must be paid. Unable to pay at a time, the debtor may pay his debt in installments with the creditor's consent or the People's court ruling. The court may by its judgment compel the payment by the solvent debtor who refuses to pay.

原文：第一百零九条 因防止、制止国家的、集体的财产或者他人的财产、人身遭受侵害而使自己受到损害的，由侵害人承担赔偿责任，受益人也可以给予适当的补偿。

译文：Article 109. If a person suffers damages from preventing or stopping encroachment on state or collective property, or the property or person of a third party, the infringer shall bear responsibility for compensation, and the beneficiary may also give appropriate compensation. (LAB)

Article 109. If a person suffers damage as a result of preventing or stopping an infringement upon State or collective property or upon the property or body of another person, the person committing the infringement shall be liable to compensate. The beneficiary may also provide appropriate compensation. (CCH)

Article 109. Where, in order to prevent or to stop harm to State or collective property or to the person or property of another, a person himself receives injury, the injuring party undertakes responsibility to compensate, and the person who received the benefit may also provide appropriate compensation. (CLR)

述评：（1）CLR 的译文很幽默：“a person”之所以“receive injury”是有目的的（即“in order to...”），可惜原意被译错了。好在在这一方面，LAB 与 CCH 并没有译错。

（2）“他人”与“第三人”在法律上并非同一概念，而 LAB 竟把两者混为一谈，把“他人”译为“第三人”即“a third party”，殊属非是。CCH 和 CLR 分别把“他人”译为“another person”和“another”（而不译作“a third party”）才是正确的译法。

（3）“侵害人”以 LAB 所译“infringer”为最佳；CLR 的“the injuring party”最劣，因为所受“损害”的加害人未必一定是“侵害人”；CCH 所译“the person committing the infringement”并不错，但其拖沓与 awkward 之严重与 LAB 的“infringer”相比，就一目了然了。

原文：第一百一十条 对承担民事责任的公民、法人需要追究行政责任的，应当追究行政责任；构成犯罪的，对公民、法人的法定代表人应当依法追究刑事责任。

译文：Article 110. Citizens or legal persons who bear civil liability shall also be held for administrative responsibility if necessary. If the acts committed by citizens and legal persons constitute crimes, criminal responsibility of their legal representatives shall be investigated in accordance with the law. (LAB)

Article 110. If it is necessary to investigate and determine administrative liability with regard to a citizen or legal person bearing civil liability, such administrative liability shall be investigated and determined. If a criminal offence is constituted, the criminal liability of the citizen or of the legal representative of the legal person shall be investigated and determined. (CCH)

Article 110. Where it is necessary to determine administrative responsibility with respect to citizens or juristic persons which undertake civil responsibility, there should be a determination of administrative responsibility; if [the act] constitutes a crime, with respect to the citizen or the juristic person's legal representative, there should be- in accordance with the law-a determination of criminal responsibility. (CLR)

述评：（1）本文第一句 LAB 作“held for administrative responsibility”不含愿意——至少可以被理解为因行政责任予以扣押。

（2）CLR 先后用两个“should”译两个“应当”，是误译；CCH 与 LAB

均以“shall”译“应当”是正译。

(3) “追究”，LAB 作“shall be investigated”；CCH 作“investigated and determined”；CLR 作“determine”或“determinate”均不能达意——所传达的不是“追究”而是“追究”的预备动作。

(4) 原文“对公民、法人的法定代表人”，CCH 和 CLR 都作了正确的理解和翻译；但 LAB 却作了错误的理解和翻译：

If the acts committed by citizens and legal persons constitute crimes, criminal responsibility of their legal representatives shall be investigated in accordance with the law.

据此错误译法，公民犯罪就应当向法定代表人追究其刑事责任，而公民本人是不负刑事责任了。岂不怪哉！

(5) 试译如下：

A citizen or legal person bearing civil liabilities shall, if necessary, be prosecuted administratively; where a crime is committed, the citizen or the legal representative of a legal person shall be prosecuted criminally.

原文：第二节 违反合同的民事责任

第一百一十一条 当事人一方不履行合同义务或者履行合同义务不符合约定条件的，另一方有权要求履行或者采取补救措施，并有权要求赔偿损失。

译文：Section II Civil Liability for Breach of Contract

Article 111. If a party fails to fulfill its contractual obligations or violates the terms of a contract while fulfilling the obligations, the other party shall have the right to demand fulfillment or the taking of remedial measures and claim compensation for its losses. (LAB)

Section 2: Civil Liability for Breach of Contract

Article 111. If one party fails to fulfill its contractual obligations or if the performance of such contractual obligations fails to comply with the agreed conditions, the other party shall have the right to demand performance or to take remedial measures and shall also have the right to claim damages. (CCH)

Section 2: Civil Responsibility for Breach of Contract

Article 111. When one party does not perform its contractual obligation, or does not perform its obligation in accordance with the stipulated conditions, the other party has the right to demand performance or take remedial measures and also has the right to demand compensation for losses. (CLR)

述评：(1) “(另一方)有权”，LAB 和 CCH 均作“shall have the right to”，不合原意，是误译；CLR 作“has the right to”，吻合原意，是正解。

(2) 试译如下：

For a party's non-performance of a contractual obligation or his superficial performance unfaithful to contract stipulations, the other party may demand specific performance or remedies, and may also demand the resulting losses.

原文：第一百一十二条 当事人一方违反合同的赔偿责任，应当相当于另一方因此所受到的损失。当事人可以在合同中约定，一方违反合同时，向另一方支付一定数额的违约金；也可以在合同中约定对于违反合同而产生的损失赔偿额的计算方法。

译文：Article 112. The party that breaches a contract shall be liable for

compensation equal to the losses consequently suffered by the other party. The parties may specify in a contract that if one party breaches the contract it shall pay the other party a certain amount of breach of contract damages; they may also specify in the contract the method of assessing the compensation for any losses resulting from a breach of contract. (LAB)

Article 112. The liability for damages of a party in breach of contract shall correspond to the loss sustained as a result by the other party. The parties may agree in the contract that if one party breaches the contract it shall pay a fixed amount to the other party as a default payment. The parties may also agree in the contract on a method of calculation of damages for breach of contract. (CCH)

Article 112. The extent of responsibility for compensation arising from a breach of contract by one party should correspond to the loss suffered by the other party there from. Parties may stipulate in their contract that when one party breaches the contract, the other party shall be paid a fixed amount of [liquidated] damages; they may also stipulate in the contract the method of computation for compensation for losses arising from the breach of contract. (CLR)

述评：（1）本条第一款中的“应当”，LAB 与 CCH 均作“shall”是正译；CLR 作“should”是误译。

（2）此处“违约金”三字，三种译本有三个译名，可见法律英译之一难。就此三种译名而论，自以 CCH 之作“a fixed amount (to the other party) as a default payment”为是。于兹场合，如借用英美法用语，自然可作“liquidated damage”如 CLR 所译，或作“penalty”。但此译名，在英美读者很容易把它作英美法上的理解，其去中国法也远矣。这正如鲁迅所指出过的——译得越顺越容易让人上当的适例。至于 LAB 的译名“a certain amount of breach of contract damages”则已判定其为“损害赔偿”了——而且是“定额违约损害赔偿金”了。

（3）立法原文犯了偷换概念或者犯了偷换字眼的错误：由于违反“合同”而引起的竟不是“违合同金”而摇身一变，变成了违反“契约”的“违约金”了——一回儿“合同”、一回儿“契约”，自相矛盾。对此，三种译本都能深明大义，纠正了立法者的败笔——“合同”、也好、“契约”也好，这两个异化出来的概念仍然把她们同化回去：contract。

原文：第一百一十三条 当事人双方都违反合同的，应当分别承担各自应负的民事责任。

译文：Article 113. If both parties breach the contract, each party shall bear its respective civil liability. (LAB)

Article 113. In the case of breach of a contract by both parties to the contract, each party shall bear its respective civil liability. (CCH)

Article 113. When both parties have breached the contract, each party should separately undertake the respective civil responsibility it should bear. (CLR)

述评：（1）除 CLR 以“should”误译“应当”外，就是“respective”之滥用即“overuse”（特别是主语是“each party”而不是“both parties”）：

respective; respectively. Both of these terms are overused in legal prose. Often they add absolutely nothing, as here: “Appellee’s and appellant’s respective citizenships of France and Georgia therefore supported diversity jurisdiction.”...Delight in these words is a widespread but depraved taste; like soldiers

and policemen, they have work to do, but, when the work is not there, the less we see of them, the better; of ten sentences in which they occur, nine would be improved by their removal.

--A dictionary of Modern Legal Usage

(2) 试译如下, 请批评指正:

Each of the two parties in breach of a contract shall bear his (own) civil liability.

原文: 第一百一十四条 当事人一方因另一方违反合同受到损失的, 应当及时采取措施防止损失的扩大; 没有及时采取措施致使损失扩大的, 无权就扩大的损失要求赔偿。

译文: Article 114. If one party is suffering losses owing to the other party's breach of contract, it shall take prompt measures to prevent the losses from increasing; if it does not promptly do so, it shall not have the right to claim compensation for the additional losses. (LAB)

Article 114. If one party suffers damage as a result of breach of contract by the other party, it shall take immediate measures to prevent the damage from extending. If it fails to take immediate measures and the damage does extend, it shall have no right to claim compensation for the additional damage. (CCH)

Article 114. When one party has sustained loss due to a breach of contract by the other party, it shall take prompt measures to prevent an extension of the loss; has no right to demand compensation for the extended losses. (CLR)

述评: “防止损失”哪有不“采取措施”的? 可见, “采取措施”可有可无, 与实质涵义无涉, 因此可译可不译。可译可不译则不译。又, 本条译文从整体上看, 嫌重复拖沓。为求文字之简练, 试译如下, 请指正:

A party suffering damages owing to the other party's breach of contract shall promptly prevent the damages from extending; failing which, he may not claim for the extended part of the damages.

原文: 第一百一十五条 合同的变更或者解除, 不影响当事人要求赔偿损失的权利。

译文: Article 115. A party's right to claim compensation for losses shall not be affected by the alteration or termination of a contract. (LAB)

Article 115. Modification or termination of a contract shall not affect the rights of the parties to claim damages. (CCH)

Article 115. Modification or termination of a contract does not affect the parties' rights to demand compensation. (CLR)

述评: (1) LAB 和 CCH 两译文中的“shall”于原文无据, 属误译; CLR 不作“shall”而作“does”切合原意原文, 是正译。

(2) “解除”本身不就是“termination”即“终止”; 三译均以“termination”译“解除”犹以“白马”译“马”, 显有未当。

(3) 试译如下:

No modification or revocation of a contract may prejudice the parties' claims for damages.

原文: 第一百一十六条 当事人一方由于上级机关的原因, 不能履行合同义务的, 应当按照合同约定向另一方赔偿损失或者采取其他补救措施, 再由上级机

关对它因此受到的损失负责处理。

译文：Article 116. If a party fails to fulfill its contractual obligations on account of a higher authority, it shall first compensate for the losses of the other party or take other remedial measures as contractually agreed and then the higher authority shall be responsible for settling the losses it sustained. (LAB)

Article 116. If a party is unable to fulfill its contractual obligations as a result of the actions of a higher authority it shall, as agreed in the contract, compensate the other party or adopt other remedial measures, following which the higher authority shall be responsible for handling the loss it will consequently have sustained. (CCH)

Article 116. When one party is unable to perform its contractual obligations due to reasons stemming from a higher-level agency, it should compensate losses suffered by the other party in accordance with the provisions of the contract or it should take other remedial measures. Thereafter, the higher-level agency bears responsibility to handle the losses the party has thereby suffered. (CLR)

述评：(1) CLR 以两个“should”译原文第一句中的一个“应当”都是误译；而 LAB 与 CCH 君作“shall”是正译。

(2) 犹第 114 条述评所指出的，本条原文“采取……补救措施”中“采取措施”乃言之无物的立法套话，也是可有可无，故英译时可置之不理。其可无之强有力的证据，就在同条上文——上文何以只作“向另一方赔偿损失”而何以不作“向另一方采取赔偿损失措施”呢？！！而且，何不同下文配套“补救措施”呢？！！上列述评的话非常必要：因为它对翻译的理解方面直接有关。对了——笔者在最后一句中用的是“对”，而所讨论的原文中“向另一方……采取其他措施”而不是“对另一方……采取其他措施”呢？

(3) 原文“按照合同约定”的“约定”又是多余的，即可有可无的，坚决不予译出，以正译风。

(4) 原文“不能”，LAB 作“fails to”不如 CCH 与 CLR 之作“unable to”；“fails to”译“未能”，也许较以之译“不能”为好。

(5) “If” clause 先行时应在其末尾使用逗号（如 LAB）；不用逗号（如 CCH）此处虽无大碍，却不便快速阅读。

(6) 取长补短，试译如下：

Unable to fulfill its contractual obligations owing to its higher agency, a party shall, as contracted, compensate the other party for, or otherwise remedy, the losses before the agency is to take care of the losses the (first) party suffers as a result.

原文：第三节 侵权的民事责任

第一百一十七条 侵占国家的、集体的财产或者他人财产的，应当返还财产，不能返还财产的，应当折价赔偿。损坏国家的、集体的财产或者他人财产的，应当恢复原状或者折价赔偿。受害人因此遭受其他重大损失的，侵害人并应当赔偿损失。

译文：Section III Civil Liability for Infringement of Rights

Article 117. Anyone who encroaches on the property of the state, a collective or another person shall return the property; failing that, he shall reimburse its estimated price. Anyone who damages the property of the state, a collective or another person

shall restore the property to its original condition or reimburse its estimated price. If the victim suffers other great losses therefrom, the infringer shall compensate for those losses as well. (LAB)

Section 3: Civil Liability for Infringement of Rights

Article 117. If State or collective property or the property of another person is seized, it shall be returned. If the property is unable to be returned, monetary compensation of an equivalent value shall be paid. If State or collective property or the property of another person is damaged, such property shall be restored to its original state or monetary compensation of an equivalent value paid. Should the victim sustain further serious damage as a result, the infringing person shall also pay compensation for such damage. (CCH)

Section 3: Civil Responsibility for Torts

Article 117. One who misappropriates State or collective property or another's property should return the property; when it is impossible to return the property, the equivalent value should be paid in compensation. One who damages State or collective property or another's property should restore it to its original condition, or the equivalent value should be paid in compensation.

When an injured party suffers serious losses as a result, the injurer should also pay compensation for the losses. (CLR)

述评：（1）法律英译的译文语言既不能太土（太土则无法沟通）又不能太洋（太洋则洋人读者易于把中国法同英美法等量齐观）。上列三译中原文“第三节……”的英译，LAB 与 CCH 偏土，而 CLR 则似乎太洋；在两种译法间保持平衡起见，拟译之为：

Civil Liability for Tortious Acts

是否弄巧成拙？请指正。

（2）任意改动条文的款数，有碍条文引用效率，故此风必须狠煞。本条原文为三款条文，只有 CCH 一款仍维持原文之三款结构；其他两家均擅自变更原文的三款结构为两款结构——LAB 把原文二、三两款并为一款，CLR 把原文一、二两款并为一款，其任意性可见。比如说，有涉外律师在其诉讼或非讼文书中用英文表示“《民法通则》第 117 条第三款”，对方英美当事人或其代理人去查 LAB 或 CLR 译本，结果发现：该条总共才一、二款，哪来的“第三款”呢？！

（3）本条原文为主动语态而且法律英语的要领之一是尽量不用被动语态。但 CCH 却偏要在此用被动语态，不但使译文中连“应当返还财产”的义务人是何等人人都不得而知，而且还出现了一个莫名其妙的“another person”——上文根本没有出现过“one (person)”或“a(ny) person”哪来的“another person”！？！

（4）原文的两个“应当”又被 CLR 误译为“should”、被 LAB 和 CCH 正译为“shall”了。

（5）为力求简练精确，试译如下：

Article 117. A person in illegal possession of state, collective, or another person's property shall return it or, if the return is impossible, pay its price.

A person shall restore to the original condition of, or, if no restoration is possible, pay the price for, whatever state, collective or another person's property he damages.

The culprit under the preceding paragraphs shall also pay damages

to the victim(s) suffering great loss(es) thereunder.

中华人民共和国《民法通则》AAA 英译本比较评析

陈忠诚

原文：第四节 承担民事责任的方式

第一百三十四条 承担民事责任的方式主要有：

- (一) 停止侵害；
- (二) 排除妨碍；
- (三) 消除危险；
- (四) 返还财产；
- (五) 恢复原状；
- (六) 修理、重作、更换；
- (七) 赔偿损失；
- (八) 支付违约金；
- (九) 消除影响、恢复名誉；
- (十) 赔礼道歉。

以上承担民事责任的方式，可以单独适用，也可以合并适用。

人民法院审理民事案件，除适用上述规定外，还可以予以训诫、责令具结悔过、收缴进行非法活动的财物和非法所得，并可以依照法律规定处以罚款、拘留。

译文： Section IV Methods of Bearing Civil Liability

Article 134. The main methods of bearing civil liability shall be:

- (1) Cessation of infringements;
- (2) Removal of obstacles;
- (3) Elimination of dangers;
- (4) Return of property;
- (5) Restoration of original condition;
- (6) Repair, reworking or replacement;
- (7) Compensation for losses;
- (8) Payment of breach of contract damages;
- (9) Elimination of ill effects and rehabilitation of reputation; and
- (10) Extension of apology.

The above methods of bearing civil liability may be applied exclusively or concurrently. When hearing civil cases, a people's court, in addition to applying the above stipulations, may serve admonitions, order the offender to sign a pledge of repentance, and confiscate the property used in carrying out illegal activities and the illegal income obtained therefrom. It may also impose fines or detentions as stipulated by law. (LAB)

Section 4: Methods of Assuming Civil Liability

Article 134. The main methods of assuming civil liability are:

- (i) stopping the infringement;
- (ii) removing the obstacle;
- (iii) eliminating the danger;
- (iv) returning the property;
- (v) restoring to original condition or state;
- (vi) repairing, reconstructing or replacing;
- (vii) compensating for damage;

- (viii) making a default payment;
- (ix) eradicating effects, restoring reputation;
- (x) making an apology.

The above methods of assuming civil liability may be applied individually or in combination.

When trying a case, the People's Court may, in addition to applying the above provisions, issue a reprimand, order the signing of a statement of repentance, take possession of the property involved in any illegal activities and of any illegally obtained income and may also impose a fine or detain the person concerned in accordance with the provisions of the law. (CCH)

Section 4: Means of Undertaking Civil Responsibility

Article 134. The principal means of undertaking civil responsibility are:

- (1) to cease infringement;
- (2) to remove the impediment;
- (3) to eliminate the danger;
- (4) to return the property;
- (5) to restore to original condition;
- (6) to repair, to restore or to replace;
- (7) to compensate for losses;
- (8) to pay [liquidated] damages;
- (9) to eliminate the [false] impression, to restore the reputation;
- (10) to make an apology.

The above means of undertaking civil responsibility may be applied individually or in combination. When trying civil cases, the people's court may in addition to applying the above provisions, issue a reprimand, order the undertaking of a repentance, confiscate the property used in illegal acts and illegal gains thereby derived, and

any-in accordance with the provisions of the law-also impose a fine or detention.
(CLR)

述评：试以译代评如下，请指正：

Section 4: Forms of Civil Liability

Article 134. The main forms of civil liability are to:

- (1) stop infringement;
- (2) remove the obstacle;
- (3) eliminate the danger;
- (4) return the property;
- (5) restore the status quo anto;
- (6) do one, two, or three, as the case may require, of the following: repair, restore and replace;
- (7) pay the damages;
- (8) pay for breach of contract;
- (9) rehabilitate;
- (10) apologize.

The preceding forms may be taken separately or jointly.

In addition to the foregoing, the People's Court headling the case may subject the wrong-doer to reprimand, signed repentance, deprivation of his property used in the wrong-doing and his unlawful income as well as to fine or detention or both.

对上列试译作补充说明如下：

甲. 本条为三款条文，故译文也必须保持三款（CLR 和 LAB 译作双款条文是错误的）；

乙. 原文“审理”应作包括判决在内的审判活动，因此前引三家译本译作“trying”和“hearing”应该说没有译透。

丙. 人民法院之“处以罚款、拘留”在法律制度上能不“依照法律规定”吗?! 不能! 因此, 此乃立法废话, 故不译而无损于立法原意。

丁. 原文在“罚款”与“拘留”之间只用顿号而既不用“和(与)”, 又不用“或(者)”, 使含义模糊不清, 殊不足取。“试译”之处理, 采取了一种所谓的“极”办法, 使译文具有较大的适应性而不背立法原意。

戊. 请从前列三译和上列试译中指出精确简练的途径。

原文: 第七章 诉讼时效

第一百三十五条 向人民法院请求保护民事权利的诉讼时效期间为二年, 法律另有规定的除外。

译文: CHAPTER VII Limitation of Action

Article 135. Except as otherwise stipulated by law, the limitation of action regarding applications to people's court for protection of civil rights shall be two years. (LAB)

Chapter VII—Limitation of Actions

Article 135. The period of limitation of actions on a request to the People's Court for the protection of civil rights is two years, unless otherwise stipulated by the law. (CCH)

Chapter Seven: Limitations on Bringing Actions

Article 135. The period of limitation on bringing an action in the People's Courts requesting protection of civil rights is two years, except where the law otherwise provides.

述评: (1) 本章见于各条的诉讼时效不一, 故英语译名以使用复数 (CLR) 为是, 以使用单数为非。

(2) “法律另有规定”的“规定”, LAB 和 CCH 作“stipulated”都错了; CLR 作“provides”才是对的。

(3) CLR 和 CCH 把“为两年”作“is two years”是对的; LAB 作“shall be two years”是错的。

(4) LAB 中的“regarding applications”真是劳民伤词！至少也必须精简为“applying”才是！

(5) 试译如下，请指正：

Chapter Seven: Limitations on Bringing Actions

Article 135. The period of limitation on bringing an action in a competent People's Court for protection of civil rights is two years, unless otherwise provided by the law.

原文：第一百三十六条 下列的诉讼时效期间为一年：

- (一) 身体受到伤害要求赔偿的；
- (二) 出售质量不合格的商品未声明的；
- (三) 延付或者拒付租金的；
- (四) 寄存财物被丢失或者损毁的。

译文：Article 136. The limitation of action shall be one year in cases concerning the following:

- (1) Claims for compensation for bodily injuries;
- (2) Sales of substandard goods without proper notice to that effect;
- (3) Delays in paying rent or refusal to pay rent; or
- (4) Loss of or damage to property left in the care of another person. (LAB)

Article 136. In the following cases, the period of limitation of actions shall be one year:

- (i) demand for compensation for bodily harm;
- (ii) sale of a substandard item not declared to be such;
- (iii) delay in or refusal of a payment of rent;
- (iv) loss of or damage to a deposited article. (CCH)

Article 136. The period of limitation for bringing the following actions is one year:

- (1) actions demanding compensation for bodily injury;
- (2) actions [arising from] sales of sub-standard merchandise without [full] disclosure;
- (3) actions [arising from] delay or refusal to pay rent;
- (4) actions [arising from] loss or damage to property deposited. (CLR)

述评：（1）同是“诉讼时效”一语，同是 CLR 这一个译本，其在 135 条中译作“the period of limitation on bringing an action”，而其在第 136 条中却译作“the period of limitation for bringing the (following) action”，介词同一关系竟从不同视角出发而使用了不同的介系词“on”和“for”。自应从同一视角出发，使用同一个介系词：“on”（较“for”要妥帖）。

（2）见第 135 条述评之（3）。

（3）本条的原文“下列诉讼”，乍一看可能以 CCH 译作“in the following cases”为简练，以 LAB 译作“in cases concerning the following”多了一个“concerning”为不简练。其实，CCH 此译对其下 4 项来说，除第（i）有“demand”一词在为例外外，其余（ii）、（iii）和（iv）三项来说都有语病；而 LAB 中“多余的”“concerning”却正是为了防止这一语病而精心用上的。但是我们认为三译中以 CLR 所译“the following actions”最为可取。

原文：第一百三十七条 诉讼时效期间从知道或者应当知道权利被侵害时起计算。但是，从权利被侵害之日起超过二十年的，人民法院不予保护。有特殊情况的，人民法院可以延长诉讼时效期间。

译文：Article 137. A limitation of action shall begin when the entitled person knows or should know that his rights have been infringed upon. However, the people's court shall not protect his rights if 20 years have passed since the infringement. Under special circumstances, the people's court may extend the limitation of action. (LAB)

Article 137. The period of limitation of actions shall be calculated from the time it was known, or should have been known, that a right was infringed upon. If more than twenty years have passed, however, since the date of the infringement of the right, the People's Court shall offer no protection. The People's Court may, under special circumstances, extend the period of limitation of actions. (CCH)

Article 137. The period of limitations for bringing an action is calculated from the time when the person whose rights have been infringed knows or should have known [of the infringement]. However, if it has been over twenty years from the day the rights were infringed, the people's court will not provide protection. Where there are special circumstances, the people's court may extend the period of limitation for

bringing an action. (CLR)

述评：（1）本条只是一种法律制度而不是责成义务人承担义务；因此，LAB 和 CCH 所用的“shall”都是不对的，而 CLR 不用“shall”则是对的。

（2）原文所规定的主题既然是“诉讼时效期间”而不仅是“诉效时讼”则译文自须将“期间”以明文译出。因此，CCH 与 CLR 均作“period of limitation(s)”是对的；LAB 置“period”于不顾而仅作“limitation”是不合原意的。

（3）原文对于“知道或者应当知道”以谁为准未作明文交代，不能不说是立法文字之不足。在这立法原文先天不足的情况下，两个译本均承担起译者的天职，为之 supply 主体：“the entitled person”（LAB）和“the person whose rights have been infringed”（CLR）要比 CCH 之不 supply 任何主体而泰然以被动语态译出为好。只是以上所译的两个主体都不合理想。依笔者之见，似译作“the victim”或“the wronged party”为好。

（4）原文“人民法院不予保护”LAB 与 CCH 以“...shall...”译之固然不对；CLR 作“the people’s court will not provide protection”似亦不够贴切，建议译作“the people’s court is to provide no protection.”

原文：第一百三十八条 超过诉讼时效期间，当事人自愿履行的，不受诉讼时效限制。

译文：Article 138. If a party chooses to fulfill obligations voluntarily after the limitation of action has expired, he shall not be subject to the limitation. (LAB)

Article 138. If an interested party is willing to perform its obligations after the period of limitation of actions has been exceeded, it shall not be restricted by the limitation of actions. (CCH)

Article 138. After the period of limitation for bringing an action has expired, parties who voluntarily perform are not bound by the limitation on bringing an action. (CLR)

述评：以译代评如下，请指正：

The limitation on bringing an action does not prejudice a party’s voluntary performance after the period of the limitation has elapsed.

原文：第一百三十九条 在诉讼时效期间的最后六个月内，因不可抗力或者其他障碍不能行使请求权的，诉讼时效中止。从中止时效的原因消除之日起，诉讼时效期间继续计算。

译文：Article 139. A limitation of action shall be suspended during the last six months

of the limitation if the plaintiff cannot exercise his right of claim because of force majeure or other obstacles. The limitation shall resume on the day when the grounds for the suspension are eliminated. (LAB)

Article 139. If, within the final six months of the period of limitation of actions, the right to request protection of civil rights is unable to be exercised due to reasons of force majeure or other obstacles, the limitation of actions shall be suspended. Calculation of the period of limitation of actions shall continue from the date on which the reason for the suspension of the limitation of actions is eliminated. (CCH)

Article 139. During the last six months before the period of limitation for bringing an action [runs], if because of force majeure or other obstacles, the right to request [that an action be brought] cannot be exercised, the [running of the] limitation on bringing an action is suspended. Beginning from the day when the reason for this suspension of the [running of the] limitation on bringing an action is eliminated, the period of limitation on bringing an action continues to run. (CLR)

述评：以译代评如下，请指正：

A force majeure or any other obstructive happenstance taking place during the last six months of the period of limitation (on bringing an action) and barring the exercise of a right to claims serves to suspend the running of the period, which resumes on the day when the cause of suspension disappears.

中华人民共和国《民法通则》AAA 英译本比较分析（续）

（接总 33 期）

陈忠诚

原文：第一百四十九条 遗产的法定继承，动产适用被继承人死亡时住所地法律，不动产适用不动产所在地法律。

译文：Article 149. In the statutory succession of an estate, movable property shall be bound by the law of the decedent's last place of residence, and immovable property shall be bound by the law of the place where the property is situated. (LAB)

Article 149. With regard to the legal inheritance of property, the law of applied to personal property, while the law of the place in which real estate is situated shall be applied to such real estate. (CCH)

Article 149. In heritage by statutory succession of movables is subject to the law of the place where the immovable property is located. (CLR)

述评：

(1) LAB 与 CCH 不知是第几次了——滥用“shall”。

(2) “住所”不是“residence”而只能是“domicile”，请 LAB 注意；同理，CLR 作“resided”也是错的，而 CCH 作“domiciled”就对了。

(3) 以“statutory succession”译“法定继承”很对；但是，按具体词语具体翻译的原则，似以译作“intestate succession”更为具体——对继承法来说。

(4) 本条原文“遗产的法定继承”中“遗产的”三字，是立法废话——难道还有什么“非遗产的”法定继承不成？！CLR 有鉴于此，在翻译时置废话而不理，是动了脑筋的。但 LAB 与 CCH 上了原文废话的当——把废话也译了出来。表面形式上的“忠实”于原文文字而影响了译文的质量。结论是：LAB 与 CCH 要向 CLR 学习——删除译文中的“of an estate”(LAB) 和“of property”(CCH)

(5) “动产”与“不动产”之差就在一个“不”字之有无上。因此，在同一条文中，其译法两者必须同一：如果“动产”译作“moveables”，那么“不动产”就只好译作“immoveables”；“动产”译作“moveable property”，那么“不动产”就不得不译作“immoveable property”。LAB 和 CCH 就是按此译出的，故译平衡和谐、明确精当。CLR 违反了这一规律，动产作“moveables”而“不动产”却是“immoveable property”（而不是“immoveables”）了。应予以纠正。

(6) “……住所地法”和“……所在地法”如果使用有关的法律术语就不必像现有译文那样辛苦了。

(7) 试译如下：

In the case of intestacy, movables are governed by lex domicile of the deceased and immoveables-lex loci situs.

附：四种译文词数比较：

LAB 39 词

CCH 49 词

CLR 40 词

试译 19 词

原文：第一百五十五条 依照本章规定适用外国法律或者国际惯例的，不得违背中华人民共和国的社会公共利益。

译文：Article 150. The application of foreign laws or international practice in accordance with the provisions of this chapter shall not violate the public interest of the People's Republic of China. (LAB)

Article 150. Where this Chapter provides for the application of the law of a foreign country or of international practice, this must not be contrary to the public interest of the People's Republic of China. (CCH)

Article 150. Foreign laws or international custom applicable in accordance with the provisions of this chapter must not contravene the public interest of the People's Republic of China. (CLR)

述评：试以译代评：

No application of a foreign law or international custom under this Chapter may contravene the public interest of the People's Republic of China.

原文：第九章 附 则

第一百五十一条 民族自治地方的人民代表大会可以根据本法规定的原则，结合当地民族的特点，制定变通的或者补充的单行条例或者规定。自治区人民代表大会制定的，依照法律规定报全国人民代表大会常务委员会批准或者备案；自治州、自治县人民代表大会制定的，报省、自治区人民代表大会常务委员会批准。

译文：CHAPTER IX Supplementary Provisions

Article 151. The people's congresses of the national autonomous areas may formulate separate adaptive or supplementary regulations or provisions in accordance with the principles of this Law and in light of the characteristics of the local nationalities. Those formulated by the people's congresses of autonomous regions shall be submitted in accordance with the law to the Standing Committee of the National

People's Congress for approval or for the record. Those formulated by the people's congresses of autonomous prefectures or autonomous counties shall be submitted to the standing committee of the people's congress in the relevant province or autonomous region for approval. (LAB)

Chapter IX –Supplementary Principles

Article 151. The people's congress of a minority nationality autonomous area may, in accordance with the principles of the provisions of this Law, and incorporating the special characteristics of the local minorities, formulate adaptive or supplementary articles or regulations. Those formulated by the people's congress of a minority nationality autonomous region shall, in accordance with the provisions of the law, be reported to the Standing Committee of the National People's Congress for approval or for filling. Articles or regulations formulated by the people's congress of an autonomous prefecture or county shall be reported to the standing committee of the people's congress of the relevant province or autonomous region for approval. (CCH)

Chapter Nine: Supplementary Provisions

Article 151. The people's congresses of autonomous nationalities' regions may, based on the principles provided in this law and the characteristics of the nationalities in those regions, enact amending or supplementing special statutes or provisions. Those enacted by the people's congresses of autonomous regions will be submitted to the Standing Committee of the National People's Congress for approval or recording; those made by the people's congresses of autonomous prefectures or autonomous counties will be submitted to the standing committee of the provincial or autonomous region people's congress for approval. (CLR)

述评：（1）首先，立法原文“本法”两字乃用词不当。因为《民法通则》不同于《民法》。后者可称“本法”；前者不可称“本法”而只能作“本通则”。如有人主张可以称《民法通则》为“本法”，则完全可以对之提出下列修辞性问题而使之张口结舌，无法应对：

为什么要称《民法通则》而不称《民法》呢？！

（2）其次，原文之先天不足，引起了译文之后天失调：只有把《民法通则》译成“General Civil Law”的译本，才可在此以“this Law”译“本法”。其他译本都不能，否则就有前后矛盾、牛头不对马嘴之弊害。

（3）原文“报请”三种译本有两种译法：“shall be reported/submitted”（CCH/LAB）和“will be submitted”（CLR），自以后者略胜一筹。似宜译作“are to be reported/submitted”为是。

(4) 原文“依照法律规定”CLR 干脆不予译出，LAB 和 CCH 则形式地译了出来。这两种处理都不可取。其原因都在于没有吃透原文。吃透原文的关键在于译者要善于发现问题。这里的问题是：为什么原文冒号前后结构相同，基本含义亦同，但冒号前有“依照法律规定”而冒号后则无之？

与此同时，还要注意到另一个情况：原文冒号后“报”的落脚点只是“批准”；但冒号前却是“批准或者备案”，究竟是“批准”还是“备案”呢？法律规定要“批准”的就“批准”，法律规定得“备案”的就得“备案”！

由此可见，原文“依照法律规定”不但必须明文译出，而且必须在正确理解（不是说“报”要“依照法律”而是说究竟哪一种要“批准”、哪一种要“备案”务必“依照法律规定”）的基础上如实译来。

(5) 原文尚有有失简练精确之处。

综上所述，试译如下：

The people's congresses of the minority-nationality autonomous areas may, according to the principles of this law and taking into consideration the local minority-nationality specialties, enact adaptive or supplementary acts or regulations. Those enacted by the people's congresses of minority-nationality autonomous regions are to be reported to the National People's congress Standing Committee for its approval or record, as the law requires; those enacted by the people's congresses of minority-nationality autonomous prefectures or counties—to the standing committee of the people's congress of the relevant province or minority-nationality autonomous region for approval.

原文：第一百五十二条 本法生效以前，经省、自治区、直辖市以上主管机关批准开办的全民所有制企业，已经向工商行政管理机关登记的，可以不再办理法人登记，即具有法人资格。

译文：Article 152. If an enterprise owned by the whole people has been established with the approval of the competent authority of a province, autonomous region or centrally administered municipality or at a higher level and it has already been registered with the administrative agency for industry and commerce, before this Law comes into force, it shall automatically qualify as a legal person without having to re-register as such. (LAB)

Article 152. Enterprises under the ownership of the whole people which, before this Law came into force, were approved for establishment by the competent authorities at provincial, autonomous region, centrally administered municipality or

higher level and which are already registered with the industrial and commercial administrative authorities shall have the status of a legal person without having to re-register themselves as a legal person. (CCH)

Article 152. Enterprises under ownership by the whole people whose operation has been approved by competent authorities at the provincial, autonomous-regional or directly-administered municipal levels and above before this law takes effect, which have already registered with the Administration of Industry and Commerce, have the status of Juristic person without further registration as a juristic person. (CLR)

述评：（1）译文中所用的“municipality”[未必是“市”]，不如“city”[必定是“市”]确切。

（2）译文（CLR）中“and above”中的“and”乃“or”之误；“levels”为“level”之误。

（3）“enterprise”兼指“企”或“事”业；以之译“企业”不妥。

（4）译文中尚有不够洗练之处。

（5）试译如下，请指正：

Article 152. Its establishment approved of by the competent authority at or above the provisional, autonomous-regional or centrally-administered city level and registered with the competent administration for Industry and commerce—both before the operation of this Law, a for-profit enterprise is a qualified body corporate without further registration therefore.

原文：第一百五十三条 本法所称的“不可抗力”，是指不能预见、不能避免并不能克服的客观情况。

译文：Article 153. For the purpose of this Law, "force majeure" means unforeseeable, unavoidable and insurmountable objective conditions. (LAB)

Article 153. The term “force majeure” in this Law refers to objective circumstances which cannot be foreseen, avoided or over come. (CCH)

Article 153. The term “Force Majeure” as used in this law refers to objective situations that cannot be foreseen, avoided or overcome. (CLR)

述评：以上所译并无不可，以下所列只是另一种可能的译文，供参考：

Article 153. “Force Mejeure” under this Law refers to objective circumstances that cannot be foreseen, prevented or controlled.

原文：第一百五十四条 民法所称的期间按照公历年、月、日、小时计算。

规定按照小时计算期间的，从规定时开始计算。规定按照日、月、年计算期间的，开始的当天不算入，从下一天开始计算。期间的最后一天是星期日或者其他法定休假日的，以休假日的次日为期间的最后一天。期间的最后一天的截止时间为二十四点。有业务时间的，到停止业务活动的时间截止。

译文： Article 154. Time periods referred to in the Civil Law shall be calculated by the Gregorian calendar in years, months, days and hours. When a time period is prescribed in hours, calculation of the period shall begin on the prescribed hour. When a time period is prescribed in days, months and years, the day on which the period begins shall not be counted as within the period; calculation shall begin on the next day. If the last day of a time period falls on a Sunday or an official holiday, the day after the holiday shall be taken as the last day. The last day shall end at 24: 00 hours. If business hours are applicable, the last day shall end at closing time. (LAB)

Article 154. Periods of time referred to in the Civil Law are calculated in terms of the hours, days, months and years of the Gregorian calendar.

Where a period is to be calculated by hour, the time shall be calculated from the time specified. Where a period is specified to be calculated in terms of days, years or months, the day of commencement shall not be included. The calculation shall start from the following day.

Where the final day of a period falls on a Sunday or other statutory holiday, the day after the holiday shall be deemed to be the final day of the period.

Closing time on the final day of a period shall be midnight (2400 hours). Where business hours apply, closing time shall be the time at which business activities cease. (CCH)

Article 154. The time limits as used in the civil law are calculated according to the Gregorian calendar in years, months, days and hours.

Where a time period provision is calculated in terms of hours, [the

calculation] begins from the time provided. Where the provision is calculated in terms of days, months or years, the time does not begin to run on that day but on the following day. If the last day of a time period is a Sunday or other legal holiday, the day after the holiday becomes the last day of the time period.

The last day of a time period ends at 2400 hours [midnight]. When business hours [are meant], [a day] comes to an end at the close of business. (CLR)

述评：（1）日期如何计算，乃客观叙述其制度，故 LAB 译文中的五个“shall”和 CCH 译文中的四个“shall”均属滥用；只有一种译文（CLR）不用“shall”，才是既符合原意又符合译文用法的。

（2）原文“民法”系泛指，故不宜用“the civil law”，更不能用“the Civil Law”——因为除了“民法通则”之外，没有一部“Civil Law”！因此“民法”在本条的具体上下文中，以译作“any civil legis-lation”为是。

（3）按原文，所计算的是规定的期间（年月日时）而不是期间的规定，因此译文 CLR 中一再出现的“provision is calculated”不但不合汉语原文而且连其译成的英语也是文理不通的。

（4）原文共有四款，但 CLR 译文却只有三款，这不是小事：其他文律文件提到该条第四款时，就无法找到了。

（5）结合对现有译文的其他考量，试译如下：

Article 154 In civil legislation, any time period is calculated by the Gregorian calendar in terms of year(s), month(s), day(s) and hour(s).

A time period required to be calculated in terms of hour(s) is calculated from the time specified. A time period required to be calculated in terms of day(s), month(s), or year(s) is calculated from the day following the first day specified which is counted out.

Being a Sunday or some other statutory holiday, the last day of a time period falls on the day following.

The last day of a time period terminates at 24:00 hours or, where business hours apply, at the end of business hours.

原文：第一百五十五条 民法所称的“以上”、“以下”、“以内”、“届满”，包括

本数；所称的“不满”、“以外”，不包括本数。

译文：Article 155. In this Law, the terms "not less than," "not more than," "within" and "expires" shall include the given figure; the terms "under" and "beyond" shall not include the given figure. (LAB)

Article 155. The terms “or more”, “or less”, “within” and “at the expiration of”, as used in the Civil Law include the number itself. The terms “prior to the expiration of”, and “beyond” do not include the number itself. (CCH)

Article 155. The terms “more than” (yishang), “less than” (yixia), “within”(yinei), “expiration of the term of” (jieman) include the number itself, “not yet reached” (buman) and “beyond” do not include the number itself. (CLR)

述评：(1) 上列三译文都采取把汉语的有关词语（在引号内的）意译成英语（也在引号内）词语。这种译法不论译对（LAB 和 CCH）还是译错（CLR）都是必须否定的：引号内的词语译对了，则全部译文成了同义反复，充其量亦仅多此一举，令人读后啼笑皆非，LAB 和 CCH 两译之弊就在于此；引号内的词语译错了，如 CLR 译文所示，则又与汉语原意不合：“more than X”或“less than X”是并不（如 CLR 所译）“include the number itself”（即“X”）的呀！

(2) 如果把引号内的词语以汉语音译处理，就可避免上列翻译上两难处境，似可略胜一筹。

原文：第一百五十六条 本法自一九八七年一月一日起施行。

译文：Article 156. This Law shall come into force on January 1, 1987. (LAB)

Article 156. This Law shall come into force on 1 January 1987. (CCH)

Article 156. This law becomes effective on the first day of January 1987. (CLR)

述评：“shall”的滥用如此执着（LAB 与 CCH 两家译文）更显得 CLR（用 becomes）之于最后一条译文不受“shall”病毒之害实属难能！

又鄙友时任密歇根大学法学院教授 Witmor Gray 氏与其同道 Henry Ruiheng

Zheng 君合译（原载 Law and Contemporary Problem Volume 52, Spring & Summer 1989）本亦不用“shall”，而仅作“goes into effect”。