Exploring the use of the Louisiana Civil Code as a source of English translations for Spanish legal terms

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Abbreviations

CmLFE	common law functional equivalent
LCC	Louisiana Civil Code
SCC	Spanish Civil Code
SL	source language
TL	target language

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Declaration

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Abstract

What do translators do when faced with legal terms that have no equivalents in the target system? There are, of course, a number of strategies available for dealing with this inevitable and common problem arising primarily from the differences in national legal systems. This paper examines one of them: using a third legal system, in this case, Louisiana, as a source of English equivalents for Spanish legal concepts. As Louisiana, a mixed common and civil law system, is based on Spanish law, and as both Spain's and Louisiana's early civil codes borrow heavily from the Napoleonic code, the two systems are likely to still share some common ground, and Louisiana law is potentially a fertile source of authoritative English equivalents for Spanish legal terms. Specifically, this paper investigates using the Louisiana Civil Code to find translations for property law terms—a noted area of common and civil law disparity—from the Spanish Civil Code in the context of three scenarios drawn from the literature in which such an approach may be useful: 1) non-equivalence 2) partial equivalence when a source-language orientation is required and 3) near equivalence for international audiences, which takes into account the growing phenomenon of English as the legal lingua franca. The strategy is found to be useful in all three scenarios and particularly so in the first owing to the lack of other solutions. The paper also finds that some English civil law terms (e.g., immovables/movables) have been absorbed in some way into the consciousness of common law legal English, which may be an important factor in determining the usability of Louisiana terms as translations in certain scenarios. The study also highlights the importance of taking a functionalist approach to the translation process in which the translation strategy at the word level is determined by the communicative situation, which contrasts slightly with the view gleaned from the literature that functional equivalents should be the default first-choice.

(Word count: 320)

Introduction

As law is a national phenomenon (Cao, 2007) and legal language is system bound (Cao, 2007; De Groot, 1991; Sarcevic, 1997), "terminological incongruity between legal systems" (Biel, 2007, p. 155) is an inevitable and key challenge in legal translation (Biel, 2007). This is true in all language pairs but particularly when the boundaries of not only different legal systems but also different legal families are crossed, such as when translating from civil law to common law, as the incongruity owing to "systemic differences", which "are a major source of difficulty" (Cao, 2007, p. 28), is even greater. This challenge is further compounded when translating into a language such as English that spans different legal systems and different types of jurisdictions (common law, civil law and mixed systems) (De Groot, 1996) and is increasingly being used as the lingua franca by lawyers internationally (Goddard, 2009) as the translator needs to take into account that there is not one legal English but rather a range of them for different jurisdictions and purposes (De Groot, 1996).

So, what do translators do when they come across concepts that do not exist in the target legal system? Depending on the communicative situation, i.e., the translation purpose and the audience (Sarcevic, 2000), translators have a range of source-language (SL) and target-language (TL) orientated strategies at their disposal (Biel, 2008), including using a third legal system as a source of translations (Sarcevic, 1997), which is the strategy investigated in this paper. Louisiana is the third legal system explored. As Louisiana's legal system is based on Spanish law (Feliu, Kim-Prieto and Miguel, 2010) and continental civil law in general—also having strong French influences (Trahan, 2003), and as it is currently a mixed civil and common law system (Cao, 2007), the hypothesis of this paper is that there may still be enough concepts in common between the Spanish and Louisiana legal systems for Louisiana law to be a good source of authoritative English translations for Spanish legal concepts for which there are no adequate common law equivalents in certain communicative situations. Thus, the research aim of this paper is to explore the use of Louisiana law as a source of translations for Spanish legal terms. Specifically, terms from the Louisiana Civil Code (LCC) will be assessed as translations for property terms taken from three books of the Spanish Civil Code (SCC) to enable drawing conclusions on the use of this strategy in three scenarios drawn from the literature for when such an approach may be useful.

Firstly, the literature is reviewed in Chapter 1 to establish what options translators have in the face of non-equivalence and to establish a theory framework for contextualising the strategy examined in this paper and determining in what situations it may be useful and assessing it. The methodology is outlined in Chapter 2, which essentially entails evaluating the translations found in the LCC for the Spanish property terms against criteria drawn from the literature in the context of three scenarios that combine Sarcevic's (1997) classification of equivalence with specific communicative situations in which using these terms (strictly, neologisms from a third system) may be useful. The results are presented in Chapter 3. In Chapter 4, examples are used to illustrate particular points on the usefulness and possible pitfalls of this strategy in the context of the three scenarios defined. The conclusion in Chapter 5 makes some generalisations about the strategy and when it might be useful as one of a number of tools at the translator's disposal under a functionalist approach to the translation process. Finally, recommendations for further research are made in Chapter 6.

1. Literature review

a. Classifying equivalence

Terminological incongruency is an ever-present problem in legal translation (Sarcevic, 1997). Cao (2007) notes that legal concepts are nearly always different, while De Groot and Van Laer (2008) suggest that "full equivalence occurs only where the source language and the target language relate to the same legal system" (p. 2). Equivalence varies, and a continuum of incongruity exists that runs from "identical concepts (very rare) or near equivalence to conceptual voids" (Biel, 2006). As shown in Table 1, Sarcevic (1997) makes a distinction between non-equivalence, partial equivalence and near equivalence based on the degree of intersection or inclusion of the essential ("vital, necessary") and the accidental ("additional, possible, but not inevitable") (Sarcevic, 1997, p. 237) characteristics of source terms and possible TL or 'functional' equivalents. Intersection refers to the coincidence of characteristics in the two terms, while inclusion refers to when one of the terms (term A) contains all the characteristics of the other (term B) and is the degree to which term B contains the characteristics of term A.

Degree of equivalence	**Intersection of <u>essential</u> characteristics**	**Intersection of <u>accidental</u> characteristics**	**Inclusion (term A characteristics contained in term B)**
Non-equivalence	Few or none	--	Few or no essential (exclusion)
Partial equivalence	Most	Some	Most essential; some accidental
Near equivalence	All	Most	All essential; most accidental

Table 1. Sarcevic's (1997) classification of equivalence.

Cao (2007) proposes that legal concepts have linguistic, referential and conceptual dimensions and makes a distinction between concepts that simply do not exist in the TL, in which case there is no linguistic or conceptual equivalence, and those for which there is partial equivalence, for which there is linguistic but not functional equivalence because the conceptual and referential dimensions (i.e., "how [the term] is realised in the legal system and how it is understood by the users of the language" (Cao, 2007, p. 55)) are too different. Many authors maintain that equivalence is relative (Cao, 2007; De Groot and Van Laer, 2008; Koller, 1995 in Cao, 2007) and that it is futile to search

for absolute equivalence (Cao, 2007). According to Cao (2007), "translating legal texts is a relative affair", and "translators decide on the specific degree of equivalence they can realistically aim for in a specific text" (p. 33). Thus, it appears that non-equivalence is a central challenge in legal translation, and that the first part of the problem is to identify that it exists and to what extent. How do translators deal with non-equivalence once they have established to what degree it exists?

b. The traditional approach and the advent of *skopos* and functionalism

Historically, legal translation was literal in recognition of the complexity of legal language (Garzone, 2000). The aim was to preserve the "letter of the law" and legal translators were traditionally "bound by the principle of fidelity to the source text" (Sarcevic, 2000, p. 3), which led to target texts that adhered as close as possible to the source in both "form and substance". Since the 1980s, however, there has been a move away "from focussing exclusively on linguistic aspects" and giving priority to the source text over the target (Garzone, 2000, p. 1). This change came with the advent of Vermeer's *skopos* model and Nord's functionalist approach (Garzone, 2000; Kocbek, 2008), which influenced the field of translation and saw the needs of the receiver come to the fore (Chromá, 2007). *Skopos* theory assumes that texts can be translated in different ways for different audiences (Sarcevic, 2000). It "modernized translation theory" (Sarcevic, 2000, p.2), and this discipline-wide change of tack resulted in a greater focus on pragmatic aspects (Sarcevic, 2000). Translation came to be seen as an intercultural transfer and a series of communicative situations (Nord, 2005) under what is known as the functionalist approach in which "the source text is no longer to be seen as the only standard for judging a translation" (Garzone, 2000, p. 29); rather, the translation is assessed in terms of its adequacy to the purpose (Garzone, 2000). Functionalism was also applied to legal translation (Garzone, 2000), and "modern approaches to legal translation fall within the ambit of so-called functionalist and communicative translation theories" (Chromá, 2007, p. 200). Chromá (2007) succinctly sums up the essence of the paradigm shift in stating that under a functionalist approach, it is "not the source text but the ultimate recipient and the purpose of the translation [that] determine the translational methods and techniques" (p. 200). Therefore, how a text is translated is determined by the communicative situation (Kocbek, 2008; Nord,

2005), based on which the translator decides how to best deal with the different challenges, including non- and partial equivalence (Garzone, 2000).

c. SL-orientation vs. TL-orientation

In terms of the strategies for solving the problem of terminology incongruity, a distinction is often made between a SL-orientation and a TL-orientation, also referred to as "domesticating" and "foreignising", according to Biel (2008), who defines these approaches as follows:

> In general, translation strategies range from **foreignising** (SL-oriented equivalents) to **domesticating** (TL-oriented equivalents) where the former "seeks to evoke a sense of the foreign" while the latter involves assimilation to the TL culture and is intended to ensure immediate comprehension (Venuti 1998). (Biel, 2008, p. 24)

Indeed, these two approaches are often placed at the ends of a continuum (Biel, 2009; Harvey, 2003) on which the different translation techniques can be placed, as is shown in Table 2, which is adapted from Biel (2009, p. 7).

STRATEGIES			
Foreignising / SL-orientation			**Domesticating / TL-orientation**
- Transcription: borrowing and naturalisation	- Literal equivalent - Neologism (De Groot) - Linguistic equivalent (Sarcevic)	- Descriptive equivalent	- Functional equivalent - Natural equivalent (Sarcevic)

Table 2. Strategies on the SL- to TL-orientation continuum (Biel, 2009, p. 7).

The debate over which approach is preferable "is long-standing in translation practice" (Venuti cited in Biel, 2009, p. 7) and usually comes down to comparing using functional equivalents—also referred to as TL-oriented equivalents (Biel, 2006)—with using literal equivalents and other alternatives. SL-oriented approaches require more knowledge or work from the audience (Jamieson, 1996). Harvey (2003) concludes that TL methods work better for laypeople while SL methods are preferable for lawyer audiences. Perhaps even more useful is Kierzkowska's (cited in Biel, 2009) classification of near and far audiences: near audiences "have a relatively good knowledge of the SL culture" and warrant using "SL-oriented equivalents of legal terms […] to emphasize differences", whereas far audiences do not; they require "TL-oriented

equivalents to capitalize on similarities" (p. 7). One of the advantages of a SL-orientation is that it makes the audience aware of the incongruities between concepts (Biel, 2009). In contrast, a TL-orientation can mislead the reader "by creating an impression of identicalness of legal concepts" (Biel, 2009, p. 9). Jamieson (1996) warns about the risk entailed in using TL-methods of betraying the values of an exotic legal system, and Harvey (2003) considers that, from an ideological point of view, the imposition of the TL structure on the SL in TL methods "implicitly asserts the pre-eminence of the TL culture over the SL culture, presupposing that a foreign legal system is best perceived through the perspective of one's own system" (p. 3). In a similar vein, Chesterman (cited in Kocbek, 2008) sees translation as a way of transferring knowledge and ideas. He believes that this purpose is best served by SL methods that more faithfully make foreign concepts available in the target system. Of course, the main advantage of TL methods is comprehensibility and readability, which Alcaraz and Hughes (2002) believe, in line with the *skopos* tradition, should be the aim of legal and all translation. Indeed, the "whole point of the cross-cultural communication" (Jamieson, 1996, p. 122) can be lost if a translation becomes too SL-focused and comes to resemble a "ritualistic incantation" (Jamieson, 1996, p. 125). Although, as Jamieson (1996) states, regardless of the approach chosen, a balance needs to be found:

> A target-oriented translation that subverts its source in the short run is no less traitorous to its targeted readers in the long run. Likewise a source-oriented translation that balks at the jump between the two cultures lets down its readers by simply failing to translate. (Jamieson, 1996, p. 122)

d. The paradox of English as a lingua franca

A relevant factor in the question of using a SL- or TL-orientation is the fact that English has become the lingua franca for jurists internationally (Ajani and Rossi, 2006, p. 82), which is somewhat of a paradox given that legal English is embedded in common law and does not offer "suitable equivalent[s] for many terms and notions existing in legal systems belonging to the so-called continental legal family" (Kocbek, 2008, p. 68). In fact, the great mismatch and incongruity between these two families make it "impossible to find the one and only 'proper' equivalent" (Biel, 2006). Thus, accuracy may be inherently limited by using common law English to render civil law concepts. A

further implication of this phenomenon concerns understandability, which may be hindered when English legal terms heavily embedded in common law are used for international audiences (Goddard, 2009). Such audiences may be better served by another type of legal English.

e. Functional equivalents: the preferred approach

According to Sarcevic (1997), a functional equivalent is "a term designating a concept or institution of the target legal system having the same function as a particular concept of the source legal system" (p. 236). While not all authors share Weston's (1991) view that using functional equivalents is "the ideal method of translation" (p. 23), most concede that it should be—and is, in practice (Garzone, 2000)—the first option for dealing with terminology incongruity (Biel, 2008; De Groot and Van Laer, 2008; Sarcevic, 1997): "As a rule, the search for equivalents in law begins as a search for the closest equivalent concept in the TL" (Sarcevic, 1998, p. 307). In the context of *skopos* theory and receiver orientation, functional equivalents are preferred because they are easy to understand and "approximate the SL culture by evoking well-internalized concepts" (Biel, 2009, p. 9). The strategy does, however, have its limitations. Functional equivalents are usually partially equivalent (Sarcevic, 1997) and, therefore, there is a risk that they may not be "sufficiently accurate" (Justice Pigeon cited in Sarcevic, 1997, p. 236). Indeed, this approach "may map too much system-specific knowledge that is not connected with the SL concept and may suggest that the TL and SL concepts are identical" (Biel, 2009, p. 9), which ties in with the doubts noted above about TL-methods, which, on most counts, are equally levelled at functional equivalents. De Groot and Van Laer (2008) maintain that for a TL term to be considered equivalent, there must also be "a similar systematic and structural embedding" (p. 6), which mirrors Sarcevic's (1998) observation that possible functional equivalents should be rejected where there are "significant structural differences" (p. 445). In fact, Sarcevic (1997) maintains that there is a lack of criteria for the difficult yet extremely important task of determining the acceptability of functional equivalents and proposes that equivalents need to correspond with the source term in the areas of "structure/classification, scope of application, and legal effects" (p 242).

Despite these drawbacks, using functional equivalents does appear to be overwhelming seen as the default preference for translating partially equivalent terms, which may somewhat contradict the functionalist approach to the translation process discussed above to which most authors also subscribe. Under functionalism, the purpose and the audience dictate the approach required at the word level (i.e., SL- or TL-orientation) (Garzone, 2000) and, therefore, using functional equivalents is not a given. Indeed, the "context and the goal of the translation" (De Groot (1991) cited in Goddard, 2009, p. 180) may in some cases dictate using one of the following alternative methods or "subsidiary solutions" (De Groot and Van Laer, 2008, p. 6) over functional equivalents. (The classification of these solutions as 'alternative' and 'subsidiary' found in the literature reinforces the idea of functional equivalents being the default solution.) Furthermore, the translator must also resort to these 'residual' solutions when the purpose and audience of the translation requires using functional equivalents but no suitable one can be found.

f. Subsidiary solutions

i) Preserving the source term (transcription)

According to De Groot and Van Laer (2008), preserving the source term occurs where there is "no translation and the source term or its transcribed version is used" (p. 6). This strategy is also known as **transcription** (Biel, 2009) and using **borrowings** (Sarcevic, 1997) or **loan words** (Baker, 1992). According to Biel (2009), it is "usually motivated by a large incongruity or untranslatability of TL concepts" (p. 7). Weston (1991) notes that it is inevitable that some SL terms will "defy translation in the strict, narrow sense because nothing truly comparable to the corresponding concept exists in the TL culture and a literal translation makes no sense" (p. 26). Many authors classify **naturalisations** (i.e., naturalised borrowings (Sarcevic, 1997)) as transcriptions, although De Groot and Van Laer (2008) maintain that it is "preferable to qualify such a linguistically adapted term as a neologism" (p.4). The main advantage of using transcriptions is that it is "referentially unambiguous" (Harvey, 2003, p. 5). Biel (2009) states that it represents a "safe" option for the translator "as it allows him or her to avoid liability for inaccuracy" although "accuracy is achieved at the expense of comprehension" (p. 8), which may be why lawyers prefer them more than linguists do (Sarcevic, 1997). As it is a SL-oriented method (see Table 2), transcription "does not

capitalise on the TL knowledge" (Biel, 2009, p. 8), and De Groot and Van Laer (2008) warn that the purpose of the translation may be defeated if the text becomes "a collection of foreign-language words glued together by prepositions, adverbs and verbs from the target language" (De Groot and Van Laer, 2008, p. 8). How understandable borrowings are will also be influenced by how etymologically similar the SL and TL are (De Groot and Van Laer, 2008, p. 6) and how well-known the SL is to the target audience (Biel, 2009).

ii) Paraphrasing

Paraphrasing entails spelling out the meaning of the source term in neutral or generic terms in the TL (Sarcevic, 1997). It is also referred to as using **descriptive paraphrases, definitions** (Sarcevic, 1997), **descriptive equivalents** (Biel, 2009) and **glosses** (Harvey, 2003). As can be seen in Table 2, it is the most TL-oriented strategy after functional equivalents (Biel, 2009). Harvey (2003) claims that, ideologically speaking, paraphrasing can be seen as a compromise between functional and literal equivalence. Sarcevic (1997) notes that it may be the ideal method but also warns that it is not always trusted nor widely used and should only be attempted by "skilled translators with legal training" as it partly constitutes drafting (Sarcevic, 1997, p. 254). Its major disadvantage is its length (Biel, 2009), as De Groot and Van Laer (2008) also note:

> The desirability and the usefulness of paraphrasing as a subsidiary solution are contingent on the length and complexity of the paraphrase, and the purpose of the translation. (De Groot and Van Laer, 2008, p. 7)

iii) Neologisms

De Groot and Van Laer (2008) define a neologism as a term:

> …used in the target language that does not form part of the terminology of the target language legal system, if necessary in combination with an explanatory footnote. (De Groot and Van Laer, 2008, p. 7)

Thus, neologisms include **neutral terms** (Sarcevic, 1997) and **literal equivalents** (Sarcevic, 1997), which are also referred to as **formal equivalents** (Biel, 2009), **literal translation** (Cao, 2007) and **word-for-word translation** (Cao, 2007), as they do not

form part of the "target language legal system". De Groot (1996) justifies such a narrow definition owing to the system-based nature of legal language. Importantly, under this definition, English civil law terms are neologisms when used in common law English, as are ordinary words (De Groot and Van Laer, 2008 p.7). Cao (2007) notes that while literal equivalents are normally discouraged in translation, they are sometimes unavoidable in legal translation, and Sarcevic (1997) believes that "literal equivalents should be used only when there is no acceptable functional equivalent" (p. 259) (which, incidentally, is a further illustration of the tendency to regard functional equivalents as the default first-choice). Good literal equivalents are "sufficiently transparent to awaken associations in readers" and not "unnatural [or] absurd" (Sarcevic, 1997, p. 260) sounding, which they are sometimes criticised of being (Sarcevic, 1997). In general, neologisms must be transparent enough to be understood by a lawyer in the TL (De Groot and Van Laer, 2008). Furthermore, false friends need to be avoided (Biel, 2009), and the use of neologisms should be tempered by the extent to which any "established equivalents" (Molina and Hurtado Albir, 2002, p. 510) (i.e., terms "adopted by a speech community" (Biel, 2008, p. 26)) occur or prevail. Therefore, as De Groot and Van Laer (2008) state:

> The neologism must be chosen in such a way that the content of the source term is shown to some extent, without using a term which is already used in the target language legal system. (De Groot and Van Laer, 2008, p.8)

g. Neologisms from a third system

Sarcevic (1997) classifies using terms from a third system as one of three types of neologism (the other two being using ordinary terms from the target system and creating new terms). She also makes reference to using Louisiana and Scottish law as a source of civil law language. De Groot (1996) suggests using Scottish law as a source of neologisms as it is much closer to the Roman law tradition than the English and Welsh system. Although De Groot and Van Laer (2008) insist that legal translation is about translating "the legal language of a specific legal system into the legal language of a particular other legal system" (p. 8), they also maintain that where there is no adequate functional equivalent, the translator may "employ as neologisms acceptable equivalents from another legal system" (p. 8):

> Often terms can be used which, although they do not function in the target language legal system as legal terms, do function in another legal system which uses the same language as its legal language. (De Groot and Van Laer, 2008, p. 8)

De Groot and Van Laer (2008) advise signposting that neologisms from a third system are being used in the translation and stress that the same criteria for using other neologisms apply, i.e.: that the terms are transparent and understandable to the target audience and that footnotes may be required (De Groot and Van Laer, 2008, p. 8). While there is little research on specifically using the Louisiana legal system as a source of neologisms for translations into common law English, Dahl uses the LCC as a source for his bilingual Spanish<>English dictionary (López, 1999). López (1999) questions why Dahl uses the LCC as a source as it is also based on French as well as Spanish law (López, 1999, p. 109). However, should this warrant ruling the LCC out as a source?

h. Louisiana as a third system

> If one were to conceive of Louisiana's private law as a "natural person," then it would not be unfair to say that the "parents" of that person are *le droit civil* of France and el *derecho civil* of Spain. (Trahan, 2003, p. 1019)

What use could Louisiana law and the LCC be as sources of Spanish translations if they are based on both French and Spanish law? Firstly, there was significant overlap between French and Spanish law (Trahan, 2003), both when Louisiana law was first encoded and also subsequently, at least in the case of private law, as the French Civil Code of 1804 had a significant influence on both Spain's first civil code of 1889 (Tetley, 2000) and on Louisiana's first civil code, known as the Digest of 1808 (Trahan, 2003). Secondly, the Louisiana Civil Code may have even been influential in the drafting in the Spanish Civil Code (Herman, 1982). Parise (2008) states that reference was made to 1,103 articles of Louisiana's 1825 code in the rationale for Spain's draft civil code of 1851, a predecessor to Spain's first civil code, the Civil Code of 1889. Thirdly, the Louisiana legal system was primarily based on the Spanish laws in force at the time of the Louisiana Purchase (Feliu, Kim-Prieto and Miguel, 2010). Although the French regained power three years prior to US possession, almost no Spanish law had been repealed (Yiannopoulos, 2008), and it was precisely the Spanish law still in force

that was to be encoded in Louisiana's Digest of 1808 (Pascal, 1971). However, as the drafters, Louis Moreau Lislet and James Brown, left no indication as to the sources of the code, and as their work evidently borrows from the Napoleonic Code of 1804 for its structure (Palmer, 2003), there has been debate over whether Spanish law was actually encoded (Yiannopoulos, 2008) (some even dispute that the original French law of the territory was effectively repealed during Spanish rule (from 1762-1800) (Tucker, 1955)), and it has been long argued whether Louisiana's Digest of 1808 is primarily French or Spanish in terms of its substance in what Feliu, Kim-Prieto and Miguel (2010) describe as the "now-famous Batiza-Pascal debate" (p. 2) in reference to the heated academic back-and-forth had during the 1970s by two of the main proponents of the opposing views. In his exhaustive linguistic analysis that set alight this famous debate, Batiza (1971) showed just how heavily Louisiana's first code, which was drafted in French and translated into English (Yiannopoulos, 2008), borrows directly from the French code. Pascal (1971) maintains, however, that French phraseology (form) was used to encode Spanish law (substance), and that:

> …the Digest of 1808, though written largely in words copied from, adapted from, or suggested by French language texts, was intended to, and does for the most part, reflect the substance of the Spanish law in force in Louisiana in 1808. (Pascal, 1971, p. 609)

As Cairns (2009) points out, this debate "has never been satisfactorily resolved" (p. 36) and has since been put to one side. However, the fact that this debate could exist and go unresolved suggests that the early versions of the LCC captured, by and large, the substance of both Spanish and French law. Indeed, most authors recognise the important influence of both sources, at least in private law, as Spanish law appears to have had, initially anyway, more influence in public law (Rabalais, 1982). Therefore, as the other important source of Louisiana law (at least in terms of form), French law, overlaps with Spanish law, and as both the civil codes of Spain and Louisiana are based on the same sources (i.e., Spanish law and the French Civil Code), there is likely to be some shared or similar content in the Louisiana and Spanish codes, even in today's revisions, which could make the LCC a useful source of neologisms for non-equivalent Spanish legal terms, in particular, those from the SCC.

2. Methodology

In reviewing the literature, it appears that using civil law terms from Louisiana law (i.e., neologisms from a third-system) may be useful in different scenarios according to the degree of equivalence between source and target concepts and the communicative situation (i.e., the audience and purpose). The literature also provides criteria for assessing neologisms and a framework for comparing them against solutions found with other strategies. Therefore, to achieve the aim of this paper and explore the use of the LCC as a source of English translations for Spanish terms, equivalents found in the LCC for Spanish legal terms will be assessed against the criteria for neologisms found in the literature and compared to other solutions in the context of the following three scenarios, which combine Sarcevic's (1997) three categories of equivalence with specific communicative situations.

a. Definition of the three scenarios

i) **Non-equivalence in all communicative situations (i.e., any audience, SL- or TL-orientation).** In this scenario, the translator finds that there is no adequate common law functional equivalent (CmLFE) for the Spanish term in the English and Welsh legal system. Thus, the source concepts are "linguistically or conceptually absent" (Cao, 2007, p. 55) in the TL or there is a significant mismatch of essential characteristics (i.e., non-equivalence (Sarcevic, 1997)) between any linguistically similar terms.

ii) **Partial equivalence in communicative situations that require a SL-orientation.** In this scenario, the translator finds that there is a partially equivalent common law term (Sarcevic, 1997) (i.e., a functional equivalent for which there is some degree of incongruity with the Spanish term), but the purpose of the translation or the type of audience may mean that this term is inadequate, usually because it is not sufficiently accurate in some respect. It may be linguistically comparable but may lack conceptual or referential components (Cao, 2007) or there may be a mismatch of some essential characteristics (Sarcevic, 1998). There may also be a lack of correspondence in terms of "structure/classification, scope of application" or "legal effects" (Sarcevic, 1997, p. 241). This scenario may arise, for instance, if the purpose of translation is to

provide specific information on a Spanish legal matter to a near audience (i.e., people with a relatively good understanding of the Spanish legal system, e.g., academics, expatriates or lawyers, the latter of whom may not necessarily be familiar with the Spanish system).

iii) **Near equivalence but no transparency in a very specific communicative situation: international or neutral audiences.** In this scenario, while there is a TL near-equivalent (Sarcevic, 1997) available for the translator to use, there is a lack of both linguistic equivalence and transparency in meaning between the terms as the CmLFE is opaquely embedded in the common law system of England and Wales, which may be confusing for an international audience. In such a communicative situation, it may be useful to a use an LCC equivalent that more transparently renders the source concept, either in terms of meaning or because it is linguistically similar—to the source term and possible even to a term known to an international audience, who may be more familiar with civil law systems.

Thus, LCC equivalents will be classified and tested in the context of these three scenarios, which will facilitate drawing conclusions about exactly when the translator may want to use the LCC as a resource for researching terms under a functionalist framework.

b. Selection of the source text and terms

The source examples examined will be property law terms (including contract terms related to property) taken from three books of the SCC: Book II, on property, ownership and its modifications; Book III, on the different ways of acquiring ownership; and Book IV, on obligations and contracts. Fragments of the source text containing the terms examined are attached in Appendix C. The SCC was chosen for three reasons. Firstly, there is a high density of legal terms in the SCC, which will make the exercise more manageable as it reduces both the number of source texts required and the criteria for choosing them while hopefully providing enough examples for each scenario to be able to draw conclusions. Secondly, terms in the SCC are often defined, as also occurs in the LCC, which will simplify the process of compiling definitions and facilitate comparing the components of possible equivalents more accurately. As noted by Sarcevic (1990),

obtaining definitions from the legislation is preferable because monolingual dictionaries are often insufficient for establishing the "constituent characteristics of the concepts being analysed" (p. 441). Thirdly, as the LCC and SCC have shared roots, there should be some degree of congruity between concepts. The terms chosen will come from only one—albeit broad—domain to narrow the scope of the research. Property law was chosen as it was identified as an area in which an approach such as this may be useful given that, as Sarcevic (1997) points out, there is a significant gap between civil and common law legal structure in property law. It is also an area of noted Spanish and French influence in Louisiana law (Palmer, 2003; Rabalais, 1982).

c. Criteria for selecting terms

Terms will be selected with the aim of demonstrating how the LCC might be useful in the three scenarios and highlighting any pitfalls that translators need to be aware of. Thus, the examples will be chosen to demonstrate different points and conclusions, making the study qualitative; i.e., the proportion of terms falling into the three scenarios will not be representative in any way, not even for the text used.

d. Criteria for assessing terms

The following criteria will be used to make a qualitative judgement on the adequacy of the LCC equivalents. They are drawn from the literature on neologisms and equivalence and are seen to be valid points that the translator should consider in deciding whether to use LCC neologisms as equivalents.

- Semantic equivalence (Sarcevic, 1997). Does the LCC term have the same essential components (Sarcevic, 1997) as the corresponding Spanish term? Is it conceptually and referentially equivalent (Cao, 2007)?
- Linguistic equivalence (Cao, 2007). Is the term linguistically similar to the Spanish term? Greater linguistic equivalence increases the transparency of the source term in the translation (Biel, 2009).
- Transparency (in meaning) (Sarcevic, 1997). Is the term transparent enough to be understood by a lawyer in the TL (De Groot and Van Laer, 2008)? Transparency is an important criterion for neologisms (De Groot and Van Laer, 2008), particularly for international audiences (Goddard, 2009). For the purposes of these criteria, a distinction is made between linguistic equivalence

(the previous criterion) and transparency in meaning, although transparency is often used to refer to both concepts in the literature.

- Awkwardness or clumsiness (Sarcevic, 1997), absurdity (Weston, 1991). Does the term sound out of place or break any common style or grammar conventions? Does the term make sense (Biel, 2009; Sarcevic, 1997; Weston, 1991)?
- False friends. Might the LCC term be confused with an established TL concept (Biel, 2009; Weston, 1991)?
- Established equivalents. Are there any established equivalent translations (Molina and Hurtado Albir, 2002) for the SCC term? What are their TL statuses (De Groot and Van Laer, 2008)? Established equivalents are likely to be paraphrases or even the LCC terms themselves in the first scenario and CmLFEs in the second and third scenarios. Bilingual dictionaries, primarily West III's *Spanish-English Dictionary of Law and Business* (2012), will be used for identifying established equivalents and other solutions.
- CmLFEs and other solutions. How do the LCC equivalents compare to the CmLFEs (in the case of the second and third scenarios) or the other solutions (in all three scenarios), regardless of whether these alternatives are established equivalents? Based on De Groot and Van Laer's (2008) definition of legal language being the language used in a given legal system, only terms that are strictly part of the legal language used in England and Wales will be considered CmLFEs.

e. Term and data compilation

Below are the tables to be used for compiling the data and analysing the terms. Table 3 will be used for compiling the term data for the criteria (the shaded items are the criteria defined above), and Table 4 is an example of the term entry forms to be used for the definitions.

LCC Criteria													
SCC Term	LCC Term	Type of Neologism	Scenario	Semantic Equivalence	Linguistic Equivalence	Transparency (meaning)	Awkwardness, absurdity	False friend	Established equivalents	CmLFE	Other translations	Observations	Conclusion(s)

Table 3. Criteria for analysing terms.

Term 1	Term	Definition	Source
SCC term			
LCC term			
CmLFE			

Table 4. Term definitions.

f. Discussion

Of the terms examined, examples will be discussed based on the relevant points that can be drawn from them in the context of the three scenarios (loosely classified in the "Conclusion(s)" column in Table 3). Both examples demonstrating why LCC terms may be useful as translations and those highlighting potential pitfalls that the translator needs to be aware of will be discussed. Based on these points, an attempt will be made to make generalisations on the use of LCC equivalents as translations.

g. Limitations

One possible drawbacks of using the SCC as the source text is that as it is one of the instruments that define the Spanish legal system, it will inevitably always be foreign to the legal language of any other system. Consequently, this may be conducive to favouring SL-oriented methods for translating terms. In addition, another feature of the source text that might constitute a limitation is that it is somewhat context neutral as it primarily defines concepts rather than 'uses' or 'applies' them. In contrast, other types

of documents might provide more specific context that would more firmly push the terms in one semantic direction or another. Another perceived limitation of the methodology is that as a fair number of examples (around 30) will be examined, term research will tend to be superficial rather than in-depth, which will increase the potential for inaccuracies and not arriving at definitive solutions for specific terms. However, the decision was made to examine a larger number of terms to facilitate making generalisations, which is in line with the aim of the research of exploring the use of the method in general rather than arriving at definitive and exhaustive solutions for a reduced number of terms.

3. Findings

A somewhat surprisingly high degree of semantic, linguistic and structural equivalence was found between the SCC and LCC terms in each of the scenarios. While the linguistic equivalence—which meant that most of the neologisms found were literal equivalents—was expected as linguistic similarity between source and LCC terms was one of the main strategies for identifying possible equivalents (as it would be for a translator working under normal conditions), the semantic and structural equivalence was not a given. The equivalence across these three aspects confirms that there is at least some degree of similarity in both form and content between the two civil codes and, consequently, private law in both jurisdictions, which was expected given the shared origins. Such a high degree of correlation bodes well for the usefulness of the LCC as a source of translations, particularly in the case of the non-equivalent scenario i, for which there turned out to be a higher-than-expected occurrence of terms found given the length of the text and that non-equivalent terms are generally less common than partially equivalent terms (Sarcevic, 1997). While this apparently high number of non-equivalents was undoubtedly partly owing to the nature of the text, with its high density of system-specific terms (it was chosen partly for this reason: to provide enough examples in each scenario), and while, in practice, the translator may not come across non-equivalent terms as often, it does demonstrate that English translations for non-equivalent Spanish terms can be found in the LCC.

Almost none of the terms were found to be awkward or absurd, which is probably owing to the fact that Louisiana is an English-speaking jurisdiction and also that some interference has occurred between English common and civil law systems, particularly in the US (Levasseur, 2006). In fact, a number of the LCC terms turned out to be established equivalents and some appeared to have been assimilated by common law English, which, to some extent, validates using Louisiana as a third-system source of translations. These and other aspects are developed further in the following chapter with examples from the three scenarios.

In terms of the data itself, the table listing the 31 terms examined and the criteria for analysing them is attached in Appendix A. Appendix B contains the term entry forms

with the definitions for the Spanish, LCC and, where applicable, CmLFE terms. Taking into account that the study was not empirical and that the data is not representative of term incidence in the scenarios, the breakdown of the terms examined by scenario was as follows: 12 terms in scenario i, 19 in ii, and 18 in iii. Some terms were found to belong to more than one scenario, and there was a significant overlap of terms classified in both the second and third scenarios. This was because any term qualifying for scenario ii for which the CmLFE was not transparent also qualified for scenario iii. However, neither group could be considered a subcategory of the other as there were terms classified exclusively in each group. The fact that terms could be classified in more than one scenario reflects the importance that the communicative situation plays in translation at the word level under a functionalist approach to the translation process.

4. Discussion: How useful is the strategy?

In accordance with the aim of this paper, this Chapter examines the findings in an attempt to make generalisations about the use of LCC equivalents as translations for Spanish legal terms in the context of the three scenarios identified in the literature and defined in the Methodology. Potential pitfalls for the three scenarios are discussed in the last section.

a. The three scenarios

i) Non-equivalence

Using the LCC as a resource was expected to prove most valuable in this first scenario in which there are no CmLFEs and usually few other options to render the source term, and, in general, this did seem to be the case. However, while this scenario was defined to cover all communicative situations, the findings point to the approach being more appropriate when a SL-orientation is required as the obscurity of some terms might discount using them for other purposes. However, even in this case, owing to the lack of other alternatives, the LCC term may still be the best option.

Authoritative

In this scenario, the LCC terms examined were generally found to be the most authoritative solutions as their usages and meanings can be verified in an English-speaking legal system, which would serve the translator as excellent justification for using them in a working situation. For example, in using the LCC term "redemption" as the translation for *retracto convencional*, which is a civil law concept for "the right a seller may reserve to take back the thing sold by repaying the purchase price" (Kinsella and Rome, 2011, p. 66), where necessary, the translator could provide a definition or reference to the Louisiana definition as either a note to the client or a footnote as De Groot and Van Laer (2008) suggest for introducing neologisms with which the audience may not be familiar. Such a solution would probably be less awkward than using a paraphrase such as "contractual right to recover a thing sold to someone else" (West III, 2012, p. 446), which may, in fact, serve as a good basis for a definition used in a note. However, in this particular case, Dahl's (1999) suggestion of "redemption by

agreement" (p. 435), which adds a neutral term (Newmark, 1988), may be preferable as it is more transparent in meaning and may avoid—depending on the context—any possible confusion with the concept of "equity of redemption" that relates specifically to mortgages. Consequently, this is an example of how an LCC term can be used in combination with another strategy (De Groot and Van Laer, 2008); in this case, to avoid introducing a potential false friend. False friends are discussed further in "Potential pitfalls".

Semantic equivalence

The high degree of semantic correlation found between the LCC and the Spanish terms examined makes the former potentially good translations. For example, the definition of the LCC equivalent for *lesión* with respect to co-owners, "lesion among co-owners", is nearly identical to the Spanish SCC definition. In addition, the structural equivalence for these two terms that slot into the same position in the Spanish and Louisiana systems—in contrast to common law's frame of reference for joint ownership, which is quite different—makes the LCC term a good option over alternative solutions. Thus, although this term may be a little awkward in that it is not transparent in meaning, introducing it as a neologism is probably warranted if the audience in question can be expected (and helped) to understand it, which may require using the LCC term in combination with other solutions, such as a neutral term, footnote or gloss (De Groot and Van Laer, 2008). In this case, the LCC term would obviously be useful where a SL-orientation is required and accuracy is paramount. Indeed, it is probably also the best solution in communicative situations requiring a TL-orientation given that the only other real strategy available, the paraphrase, is unlikely to be more efficient and will be far less so if the term is repeated or central to the text.

No adequate alternative

LCC terms may also be useful in this scenario when the usual translations—paraphrases or otherwise—are inadequate. This was found to be the case with the Spanish term *precio alzado*, which is also referred to as *cuerpo cierto* in property law documents (see Appendix D). It is a unique civil law concept used particularly in the sale of real estate

entailing the sale of "a certain described body for a lump price" (Dameron, 1939, p. 608). The key to this concept (as can be seen in the definitions in Appendix B) is that the price of the property is not dependent on any explicit measurement of the property (e.g., area in m2). In the LCC, this same concept is referred to as a "lump sale", although reference is also made to "lump price", which is close to the solution suggested by West III (2012) of "lump sum". However, as they are so similar, it may be preferable to use the LCC term of "lump sale" given that it could be considered more authoritative as it is actually used in an English-speaking jurisdiction. The main problem with this concept, however, arises when it is referred to as *cuerpo cierto*, as in the agreement in Appendix D. In this case, it is often translated as "as is condition" (West III, 2012, p. 178), which is inaccurate because it does not adequately reflect the essential component of how the property sold is delimited. It is, in fact, misleading, as it skews the focus toward the property's condition, which is not an essential or even an accidental component of the source term. There are other renderings of this term, such as "definite object" (Moreno, 1988, p. 234), and this term also represents a case of where there are multiple options, of which none may be adequate, which is similar to the situation described by Biel (2008) where there is no established equivalent and the translator has to "conduct terminology mining" (p. 26) to find one. In such an instance, as in this case, any equivalent LCC term could be seen to be the best solution as it harmonises the concept in a term for which there can be no doubt over the meaning. This situation may not occur often, but when it does, the LCC and English civil law terms in general may prove extremely useful.

Established equivalents

In addition to the paraphrases offered as solutions for the source terms in bilingual dictionaries, the LCC terms themselves were sometimes also suggested as translations in this scenario. This occurred, for instance, with *frutos* ("fruits") and *anticresis* ("antichresis"). These LCC terms appear to be established equivalents that form part of the consciousness of common law English, even if only for describing foreign or Roman law concepts. Consequently, these terms should be familiar to common law audiences. The fact that they are Roman law concepts undoubtedly contributes to their universality, which, of course, does not detract from the usefulness of the LCC for

finding them as translations. De Groot (1996) notes that using Roman law concepts is an acceptable option provided that "such historical legal concepts are still known and will be recognised" (p. 378). However, while term unfamiliarity is a valid concern when a TL-orientation is required, it may be useful in the case of SL-orientation, as it marks the concepts as 'foreign' (Biel, 2008).

LCC term vs. the paraphrase

Thus, in this scenario, as there are no comparable TL equivalents, terms generally, as Weston (1991) states, "defy translation" (p. 26) in the strict sense. Consequently, the translator is usually faced with the choice of using a paraphrase or an LCC term (where one is available). For the reasons discussed above, in most cases, the LCC terms would be preferable, although the exception to this is perhaps where the communicative situation demands a TL-orientation where the paraphrase is short enough to be acceptable—excessive length being the main disadvantage of paraphrases (Biel, 2009). For example, given its transparency in meaning, "income from property" (West III, 2012, p. 270) might be preferable to the LCC term "civil fruits" as a translation for *frutos civiles* for certain translation purposes. Such a rendering, however, glosses over and obscures the fact that *frutos civiles* is a specific Spanish legal concept that has a certain place in the Spanish system with relation to other concepts (e.g., *frutos, frutos industrials, usufructo*), which reflects one of the key drawbacks of TL strategies in general (Biel, 2009). The other problem with paraphrases that may on some occasions make them less attractive in this scenario is that using them approaches legal drafting and requires deeper legal knowledge and skills from the translator (Sarcevic, 1997). Consequently, the LCC term may be a safer option. Furthermore, SL-oriented strategies are considered useful for transferring ideas and knowledge (Chesterman cited in Kocbek, 2008), which is particularly relevant to this scenario and also to the second as non- and partially equivalent concepts may constitute new ideas in the TL. Thus, the LCC terms should prove very useful when transferring ideas is the purpose of the translation as—in contrast to TL methods—there is no watering down or domesticating of the source concept, which is left accessible to the audience. The other option available to the translator in this scenario is to use a borrowing, although this strategy was not found to be useful in most cases as the LCC terms can already be regarded as

naturalised borrowings (e.g., "lesion", "antichresis" and "fruits"), which, in most cases, are linguistically equivalent to the source terms, with the advantage that they are English words for which the audience can easily find definitions. Furthermore, in the cases examined where the LCC was less equivalent linguistically (e.g., "redemption" for *retracto convencional*), the borrowing did not appear to be easily understandable in the TL, which is a necessary criterion for using borrowings, according to De Groot and Van Laer (2008), who warn that:

> … [an] untranslated term from the source language in the target language must be avoided, particularly where there is little or no etymological correspondence between the two languages. (De Groot and Van Laer, 2008, p.6)

One exception to this last point might be expatriate audiences, for whom anything but a direct borrowing for certain non-equivalent Spanish legal terms they are familiar with may cause confusion. Indeed, in general, this type of near audience poses an interesting challenge for the translator that may require using a combination of transcriptions and paraphrases or glosses, because, while expatriates generally have a good knowledge of the source culture and language, the translator cannot assume that they have the legal background of other near audiences, such as academics and lawyers.

ii) Partial equivalence, SL-orientation

For this scenario, in which the translator finds partially equivalent CmLFEs that may not be adequate when the communicative situation demands a SL-orientation, examples were found to suggest that the LCC might be useful as a source of equivalents. In this scenario (and in the third), assessing the terms normally came down to determining the merits of the corresponding CmLFEs and weighing them up against those of the LCC terms.

Semantic accuracy

While the LCC terms were generally found to nearly or fully mirror the meaning of the Spanish legal terms, the CmLFEs often did not. While "life estate", for example, is often suggested as a translation for *usufructo* (West III, 2012, p. 499), it may not be ideal when accuracy is required because some semantic components, which may be

essential in certain contexts, do not coincide. For instance, in contrast to "life estate", "usufruct" (the LCC term) and *usufructo* do not necessarily run for the term of the usufructary's life. Other inaccurate CmLFEs include using "tenancy in common" and "joint tenancy" for *comunidad de bienes* because while these equivalents are semantically close (more so the former) and might be adequate for TL-orientated purposes, they do not have all the same components as the source term, particularly when it comes to survivorship. Whereas these common law terms, according to their definitions, determine when there is survivorship (i.e., it exists for "joint tenancy" but not for "tenancy in common"), survivorship in the two civil law systems is governed by the law on succession and cannot be determined solely based on the type of ownership agreement. In this case, the LCC terms of "ownership in indivision" and "co-ownership" are equivalent and semantically accurate translations for *comunidad de bienes*. In this type of example, there is a mismatch of essential characteristics (Sarcevic, 1997) between the Spanish terms and the CmLFEs or, in other words, a lack of conceptual and referential equivalence (Cao, 2007), which means that the LCC terms will probably be preferable where accuracy is important. These examples also bear out Justice Pigeon's warning against relying automatically on CmLFEs because some "may not be sufficiently accurate" (cited in Sarcevic, 1997, p. 236).

Structural accuracy

In addition to semantic equivalence, the previous examples also demonstrate the high degree of structural equivalence found between Spanish and Louisiana law, which is another reason for sometimes choosing LCC terms over CmLFEs, because, as Sarcevic (1998) notes, where concepts fall in the structure of a legal system is important as it can imply "that a certain set of rules will be applicable and that others are to be excluded" and that "translating source terms with functional equivalents which do not belong to the same branch of law should be avoided if possible" (p. 444). Indeed, a common source of incongruity between civil and common law systems is structural or systemic non-equivalence (Sarcevic, 1997), which was also amply illustrated by the *servidumbre* [servitude] examples examined. Spanish and Louisiana law classify such rights and obligations into exactly the same structure of personal and property servitudes, whereas, while common law roughly covers the same concepts—although not always, especially

with regard to personal servitudes, it does so under a different structure. “Life estate”, for instance, is not considered an easement (the CmLFE for *servidumbre*), whereas the approximate Spanish equivalent, *usufructo* [usufruct], is classed as a personal servitude. Furthermore, and logically—given the structural incongruity, inconsistencies were found in the suggestions offered by bilingual resources for these terms. For example, West III (2012) suggests that a *servidumbre personal* [personal servitude] is an “easement in gross”, but, in fact, an “easement in gross” appears to more closely correspond to civil law’s “right of use”, one of three types of “personal servitudes”; the other two being “usufruct” and “habitation”. This type of inconsistency arises purely because the common law and civil law systems are organised differently. The process of finding CmLFEs is similar to trying to fit a set of square pegs into a set of round holes: none of them will ever fit exactly, even though they roughly cover most of the same space. They are close but not the same, which is evidently an important consideration when accuracy is required. So, where there are structural differences, even for areas in which the CmLFEs are close to being semantically equivalent—as occurs with *servidumbres* and “easements” (with the exception of *servidumbre legal* and perhaps *servidumbre voluntaria*)—the best solution may be to use translations that mirror the same structure (e.g., the LCC terms), especially when a number of the terms appear in the one text, and even more so in the case of examples such as “servitude” that are fairly universally understood in the TL in the same sense. Furthermore, in not using the CmLFE (where there is structural non-equivalence but also in the case of any kind of partial equivalence), the translator avoids the ideological problem identified by Harvey (2003) of imposing the target system on the source system, which may “inevitably lead to confusion of the reader … [who], accustomed to a different system, will automatically approach the text from his own frame of reference” (Rayar, 1988, p. 542, cited in Biel, 2008, p.25).

LCC established equivalents

As in the first scenario, some of the LCC terms appeared to be established equivalents and, to some extent, to have been absorbed into or to be historical terms long recognised in the target system without being part of it. In addition to the abovementioned “servitude” and similar examples, the LCC equivalents for the Spanish terms of

comodato and *mutuo*, loan concepts originating from Roman law (*Enciclopedia Jurídica*, 2012), were other, slightly different, examples of this type. Although *mutuo* does not appear in the SCC, it is defined in the SCC in Article 1740 and is a Spanish legal term (Arco Torres, 2009). As can be seen in Appendix A, for both these terms there are two LCC options: a term transparent in meaning ("loan for use" and "loan for consumption") and another that is linguistically equivalent ("commodatum" and "mutuum"). Semantically, *mutuo* and *comodato* are actually close to the CmLFEs of "loan" and "gratuitous bailment", respectively. Under more restricted common law definitions, "loan" only refers to money lending (HM Revenue & Customs, no date), although the most significant difference between "loan" and "mutuum" may be that "loan" is generally broader in meaning and a hypernym for "mutuum". In the case of *comodato*, the CmLFE poses equivalence problems in legal structure as it falls under types of bailments and not, as commodatum does, under types of loans. Both terms were classified in both scenarios ii and iii. In the second scenario, for near audiences when a SL-orientation is required, the LCC options could be useful for highlighting the underlying structure of the Spanish system and providing a transparent link to it (Sarcevic, 1997), particularly in a text where the two concepts appear together. For the third scenario of international audiences, the translator has two LCC options: the Latinate terms "commodatum" and "mutuum", which might be useful for civil law audiences, and the transparent terms "loan for consumption" and "loan for use", which might better suit neutral audiences or even lay or UK domestic audiences. Obviously, although there may be little point in straying from "loan" as the translation for *mutuo*, if the source text uses *mutuo* instead of *préstamo* [loan], there may be reason to maintain the distinction in the translation, particularly for near audiences. In any case, these LCC terms will probably be useful in a range of communicative situation given that they are accessible in common law English because they are historical concepts from Roman law (De Groot, 1996).

Borderline cases

A number of terms were found for which it was difficult to determine whether there was a significant semantic difference between the Spanish terms and the CmLFEs, which reflects Sarcevic's (1997) comment that determining the equivalence of terms is a

challenging task. One such example was *bien inmueble* [immovable property], which, consequently, also affects *bien mueble* [movable property] as the three systems classify the latter in terms of what immovable property is not. The concepts are roughly the same, and, for most contexts, the common law terms "real" and "personal property" would probably suffice. It does appear, however, that in contexts that demand accuracy, as the Spanish and LCC terms more precisely define what immovable property is, it may be preferable to use the LCC terms, as there may be differences in essential characteristics in some contexts. For instance, some elements classed as "immovable" in the Spanish and LCC definitions (see Appendix B), such as "machinery" or "instruments" (even though they are used directly in the operations or activity undertaken on the land or in the building), might not be classified as "real property" under common law. Indeed, with this particular term, there is an additional aspect to consider. As "immovable" and "movable property" are both also terms that have been absorbed into common law to some extent, particularly in the US (Levasseur, 2006), care needs to be taken that the meaning has not changed in the TL system. This aspect is discussed further in the "Potential pitfalls". Regardless of the problems that may be associated with the specific example of *bien inmueble*, in general, in these borderline cases, where there is some doubt over the propositional components of the CmLFEs, using LCC terms could be seen as similar to the "safe" option that Biel (2009) refers to in relation to transcriptions, which could make them the best option for a given communicative situation.

Thus, in general in this scenario—where accuracy and a SL-orientation are required, it does appear that the LCC may be a useful resource as the LCC terms, owing to their high degree of semantic and structural equivalence, may prove to be the best solutions where there is a mismatch of essential semantic or structural components between source terms and potential CmLFEs.

iii) Near equivalence, international or neutral audiences

Based on the terms examined, it also appears that in this third scenario there might be advantages in using the LCC terms when the translator believes that the CmLFEs might be obscure for international audiences, especially those receivers more familiar with civil law systems.

Linguistic equivalence

The high linguistic equivalence generally apparent between the Spanish and the LCC terms made the latter appear to be useful translations in this third scenario. Thus, while terms such as *confusión* and *predial* have adequate CmLFEs ("merger of title/extinguishment" and "real/property", respectively), the LCC terms of "confusion" and "predial" are linguistically more equivalent and may be useful for international audiences unfamiliar with the CmLFEs (Goddard, 2009). For common law audiences, where these LCC terms are not particularly transparent in meaning and a TL-orientation is the priority, it would be counterproductive to introduce them as neologisms when a suitable CmLFE exists for the given communicative situation. However, when the goal is to highlight the foreign nature of the text or a particular concept for near or expert receivers, such SL-oriented terms might be preferable (Biel, 2008) over the CmLFEs, even for common law audiences. In this instance, the key consideration is whether a TL lawyer would understand the introduced term (De Groot and Van Laer, 2008), which should be the case for the examples cited as Garner (2004) identifies "confusion" as an English alternative to "merger of rights"; and while "predial" (or "praedial") may not be commonly used in the target legal system, it is an English word (Garner, 2004).

Transparency (in meaning)

In other cases in this third scenario, the LCC terms were found to be transparent in meaning. For instance, the LCC equivalents for *dación en pago* and *inmueble*, "giving in payment" and "immovable", respectively, are both linguistically equivalent (the first, less so) and more transparent in meaning than the CmLFEs "accord and satisfaction" and "real property". In this case, as well as being useful for international audiences not entirely familiar with common law, this type of example might also be helpful in other situations, such as for non-expert common law audiences. So, in terms of both linguistic equivalence and transparency, the LCC may be able to provide more accessible alternatives than the CmLFEs for international audiences that may even also be useful for common law audiences, depending on the communicative situation.

b. Potential pitfalls: Aspects to take into account

Examining the LCC equivalents revealed a number of aspects that the translator should be aware of when using the LCC—or Louisiana civil law in general—as a source of translations. The following aspects are each relevant to one or more of the three scenarios.

Meanings of established equivalents

Firstly, it is important to thoroughly research any LCC established-equivalents. While finding that an LCC term is a civil law term that is already used as an established equivalent or that has been assimilated into the common law sphere in some way may validate using it as a translation as it is more likely to be familiar to the audience, its meaning may have changed since its adoption into common law, which is a phenomenon recognised by De Groot (1996). This may have occurred, for instance, with "movable/immovable", at least in the US. Levasseur (2006) notes the tendency of US common law to adopt civil law distinctions in property law (e.g., "corporeal/incorporeal", "movable/immovable") despite the fact that there may be underlying systemic differences. In such cases, the LCC term may lose its potential for capturing the structural essence of the Spanish term when used as a translation. Another related issue is the predominance of US common law English. This paper set out to focus on the English and Welsh system, although it was sometimes difficult to ascertain to what extent civil law concepts had been assimilated in that system given the prevalence of US common law material found. While this may be more a reflection of a lack of resources for this particular study and one of its shortcomings (discussed in Chapter 6), it is an aspect that a working translator will have to deal with and should take into account for translating into non-US common law.

False Friends

Similarly, as noted by De Groot (1996), the translator must be wary of false friends when assessing potential neologisms, in this case, LCC neologisms. For example, it was thought that terms such as "redemption" and "accession" could be confused with common law concepts in certain contexts (maybe less so in the case of "accession"

given that the civil law concept, in terms of property, appears to have been absorbed into common law). Thus, while this would ultimately be a question for the translator to decide according to the given context, it is an important aspect that needs to be taken into account when using the LCC for researching potential equivalents.

Lack of transparency

Some of the terms were found to be quite obscure. Although it will always be the communicative situation that determines whether such obscurity is an important factor and whether a more TL-oriented strategy is preferable, some terms, such as "lesion beyond moiety", which covers a very specific formula for when a sale contract may be rescinded, may always be a little awkward. The following comment made by De Groot and Van Laer (2008) on using neologisms from a third system is relevant here:

> If the translator suspects that the substance of the legal system, from which he or she wishes to borrow a term to serve as a neologism, and consequently also its legal terminology, are not known to the users of the target text, a reassessment is in order or an explanatory footnote must be added to the neologism. (De Groot and Van Laer, 2008, p. 8)

Thus, particularly where a TL-orientation is required, the translator must be extremely careful about introducing neologisms that the audience may not be familiar with where these terms are not particularly transparent in meaning. However, in the case of the first scenario of non-equivalent terms, even for a TL-orientation, the LCC term may still be the best solution, particularly if used in combination with other strategies as De Groot and Van Laer (2008) suggest. As discussed above, where a SL-orientation is preferred, this obscurity or awkwardness could be seen as an advantage as it will ensure that the target system is not imposed on the source system and that the audience understands that a foreign concept is being referred to (Harvey, 2003; Jamieson, 1996).

Semantic mismatch

It is also vitally important that the LCC terms and the Spanish terms have identical or close-to-identical semantic components. While there may be a case for using partially

equivalent CmLFEs in certain communicative situations (Cao, 2007), it makes no sense to do so with neologisms from a third system as it risks attaching inaccurate and misleading components to the original concept for no gain in understandability. In this study, apart from one exception, semantically non-equivalent LCC terms were not considered. In any case, a high degree of semantic equivalence was generally observed where there was linguistic equivalence. Of the terms examined, the only example of semantic non-equivalence was between *lesión (contratos)* and "lesion beyond moiety". Originally from Roman law, this term is restricted only to the sale of property by guardians and representatives in Spanish law, whereas it is broader in Louisiana law (incidentally, this term is more developed and similar to the LCC definition in at least one Spanish jurisdiction: Catalonia (Arco Torres, 2009)). However, even in these cases, the LCC term could serve as a basis for another solution (e.g., "lesion beyond moiety under tutorship"), although the translator will still have to deal with the previously mentioned problems with "lesion".

5. Conclusion

Thus, it does appear that the LCC and, by extension, Louisiana civil law may be useful resources for finding English translations to Spanish legal terms in certain scenarios. Firstly, at least in the case of the private law covered in the civil codes, there does seem to be enough similarities between Spanish and Louisiana law for the translator to expect that the Louisiana legal system may, on occasions, shed some light on and even provide translations for Spanish legal terms. Secondly, the translator may find this approach useful when there are no CmLFEs (scenario i in this paper); when the communicative situation requires a SL-orientation, even though partially equivalent CmLFEs exist (scenario ii); and when the translation is for an international or neutral audience (scenario iii), who may find the LCC terms more understandable than obscure CmLFEs. As the approach involves introducing neologisms into the target legal language, care needs to be taken in judging to what extent potential neologisms would be understood by the target audience. In this respect, to what extent the LCC term has already been absorbed into the consciousness of common law English—as a historical term or because of civil law interference or borrowing—is a key factor. For common law audiences in general and for both the first and second scenarios defined in this paper, this 'degree of absorption' may help to determine whether to use the LCC at all or whether to use it in conjunction with another solution, depending on the degree of SL- or TL-orientation required: while a familiar term may be useful for a TL focus, where a SL-orientation is required, it may be advantageous that the term is not known in the TL to highlight its foreignness and the fact that it refers to a unique and non-equivalent concept, providing that the translator can adequately and efficiently evoke the essential characteristics of the term in the given communicative situation. In the third scenario, this factor of 'absorption' is less important as international audiences will generally not rely on a common law frame of reference, or at least not to the same degree and not exclusively.

Given the relevance that the communicative situation of the audience and the purpose has in determining the translation strategy used at the word level (Chromá, 2007), this study also highlights the importance of taking a functional approach to the translation process, which contrasts slightly with the prevalent notion gleaned from the literature

that using functional equivalents should be the default first-choice over other 'residual' strategies. While in practice both approaches might often arrive at the same solution (i.e., using a CmLFE where one exists), on occasions, the result may be different, particularly, for example, where there is a need for a SL-orientation (scenario ii) or the translation is for an international audience (scenario iii). In these cases, taking a functionalist approach may mean arriving at a different solution to simply choosing the closest CmLFE, which may not, in fact, be that close or accurate. For Spanish-to-English translation, in some cases, this may mean using an appropriate civil law or LCC equivalent, while on other occasions, it may mean using another solution, such as a paraphrase or a borrowing. Consequently, this is how using LCC or Louisiana law terms should be considered: as one of a range of tools that translators have at their disposal to use according to the translation problem at hand under a functionalist approach to the translation process.

6. Limitations and recommendation for further research

At the most, this paper has barely scratched the surface in examining the use of Louisiana law as a third-system source of Spanish-to-English legal translations, which was always going to be the case given the space available and that the research aim was to 'explore the use' of the LCC. However, this tendency was further accentuated by the methodology, which (as mentioned in Section g in Chapter 2) chose superficiality over depth, and it was found that some of the translation problems examined could have been more thoroughly researched, particularly with regard to the CmLFEs in the target system of England and Wales, for which it was more difficult to find resources. This limitation may have led to inaccuracies or at least to not fully resolving some of the translation problems. Therefore, reaching definitive solutions was foregone to examine the use of the approach in different situations and to make generalisations. And while providing definitive answers is not always possible or even desirable as the communicative situation also plays an important role in determining the adequate solution to a particular translation problem—especially for partially equivalent and non-equivalent terms, it may have been possible to reach more definitive solutions by (1) examining fewer terms more closely, (2) more tightly defining the communicative situation(s) and (3) using a slightly 'less-neutral' source text.

However, the generalisations made did at least suggest that there may be some utility in using the LCC and Louisiana law as resources. Consequently, there is scope for further research, both for broadening it to include procedural law and other areas of private law and for going into more depth and further investigating the areas of private law examined in this paper. For instance, with respect to the structural equivalence found, while conducting a more thorough mapping of the equivalences of servitudes across the three systems (maybe in the context of the Roman law from which they all derive (Gale and Whatley, 1840)) would be an interesting and useful exercise that would complete the work started here, it may also be fruitful to examine the concepts of tutorship and succession, which also appear to be areas in which Spanish and Louisiana law coincide for which there is even a wider gulf with common law. Furthermore, while this research was qualitative, a more empirical study with a similar scope (i.e., a section of the SCC or another text) that gauges the incidence of terms in the different scenarios may be

useful to put this approach into perspective regarding how often the translator is likely to come across terms in the different scenarios and in particular in the non-equivalence scenario, which is when the strategy may prove most valuable. In addition, whereas this research examined private law because of the shared roots of the Louisiana and Spanish civil codes and owing to the suspected similarities between their current versions, Louisiana law may prove as useful, if not more so, for public law as many authors acknowledge the significant influence of Spanish law in the development of Louisiana procedural law (Rabalais, 1982). The similarities between civil law systems in general (Carlson, 2009) also means that there is scope for researching the use of Louisiana law for translating into English from the languages of other civil law systems, in particular, French, given the influence of French law in Louisiana (Palmer, 2003). With regard to legal translation theory, there may be scope for investigating the notion observed in the literature that functional equivalents should be the default first-choice strategy at the word level in the context of a functionalist approach and for possibly attempting to make a clearer distinction between functionalism at the word and the translation-process or macro levels.

Word count: 10,758

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Appendix A. Criteria table

LCC Criteria

SCC Term	LCC Term	Type of Neologism	Scenario	Semantic Equivalence	Linguistic Equivalence	Transparency (meaning)	Awkwardness, absurdity	False friend	Established equivalents	CmLFE	Other translations	Observations	Conclusion(s)
accesión	accession	LE	1	Yes	Yes	No	No	No	accession	accession		Civil law concept that appears to have been adopted by or at least known in English common law from Roman law.	FF, NE concept, CvLEE
anticresis	antichresis	LE	1	Yes	Yes	No	No	No	antichresis				NE concept, CvLEE
cuerpo cierto, precio alzado	lump sale	NT	1	Yes*	No	No	No	Maybe: "lump sum sale" for timber sale	No: multiple: lump sum, as is (West III, 2012), definite object (Moreno, 1988, p. 234)			* LCC term broader (not only real property). *cuerpo cierto* is not "as is"	NE concept, multiple but inadequate EE.
derechos de uso	right of use	LE	1, 2	Yes	Yes	Yes	No	Maybe		right of way, privilege, easements in gross, or profits in gross (Kinsella and Rome, 2011)		CmLFEs are hyponyms.	NE concept, accuracy, structure

Legend

NE: non-equivalent	EE: established equivalent	LL: Louisiana law	CvLEE: civil law established equivalent	FF: false friend
NT: neutral terms	LE: literal equivalent	NLE: non-literal equivalent	CmLFE: common law functional equivalent	T: transcription

LCC Criteria

SCC Term	LCC Term	Type of Neologism	Scenario	Semantic Equivalence	Linguistic Equivalence	Transparency (meaning)	Awkwardness, absurdity	False friend	Established equivalents	CmLFE	Other translations	Observations	Conclusion(s)
frutos	fruits	LE	1	Yes	Yes	Yes	No	No	fruits		proceeds, benefits (West III, 2012, p. 270)		NE concept, CvLEE
frutos civiles	civil fruits	LE	1	Yes	Yes	Yes	No	No	civil fruits		income from property (West III, 2012, p. 270)		NE concept, CvLEE
frutos naturales	natural fruits	LE	1	Yes	Yes	Yes	No	No	natural fruits	things produced naturally without cultivation (West III, 2012, p. 270)		How established are these equivalents (fruits)?	NE concept, CvL EE
habitación	habitation	T	1	Yes	Yes	No	Maybe	Maybe			right of occupancy/possession/habitation	Adding "right of" (i.e., right of habitation) may be useful.	NE concept, FF, structure
lesión (contratos)	lesion (beyond moiety)	T	1, 2	No*	Yes	No	Maybe	No		unconscionable bargain, disproportionate consideration (West III, 2012, p.325), catching bargain (Oxford Dictionary of Law, 2009, p.80)	laesio enormis (Garner, 2004, p. 2555), lesion beyond moiety under tutorship	* More developed in LL and Catalan law (both similar).	NE concept, accuracy
lesión (particiones)	lesion (among co-owners)	T	1	Close	Yes	No	Maybe	No					NE concept
retracto convencional	redemption	NLE	1	Yes	No	Yes	No	Maybe: equity of redemption			contractual right to recover a thing sold to someone else (West III, 2012, p. 446), redemption by agreement (Dahl, 1999, p. 435)		NE concept, authoritative

LCC Criteria

SCC Term	LCC Term	Type of Neologism	Scenario	Semantic Equivalence	Linguistic Equivalence	Transparency (meaning)	Awkwardness, absurdity	False friend	Established equivalents	CmLFE	Other translations	Observations	Conclusion(s)
servidumbre voluntaria	voluntary (conventional) servitude	LE	1, 2, 3	Yes	Yes	Yes	No	No		easement by agreement	easement by agreement of the parties (West III, 2012, p. 462)		NE concept, structure, transparency, accuracy
bien inmueble	immovable	LE	2, 3	Probable	Yes	Yes	No	No	immovable property	real property, real estate (West III, 2012, p. 90), land (Sparkes, 2009). [See Stuckey (2002, p. 796) for common law equivalents.]		Technically, Spanish term and CmLFE are NE (Levasseur, 2006). Different classification. [Also, there is disagreement of definition of "real property" in English (Sparkes, 2009).]	Transparency, accuracy, CvLEE
bien mueble	movable	LE	2, 3	Yes	Yes	Yes	No	No	movable property	personalty, chattel, (Kinsella and Rome, 2011, p. 44) personal property (West III, 2012, p. 91)		Both common and civil law tend to define movables in terms of what is not immovable. Given the differences in the components of immovable, there are also differences in common and civil equivalents for *mueble*.	Transparency, accuracy, CvLEE
codueño, comunero, copropietario, partícipe	co-owner	LE	2	Yes	Yes	Yes	No	No	joint owner	tenant in common, joint tenants (Conveyancing Warehouse, no date)		See *comunidad de bienes*.	Accuracy, structure
comodato	commodatum / loan for use	LE / NT	2, 3	Yes	Yes	Yes	Maybe	No	loan for use	gratuitous bailment			Transparency, CvLEE, accuracy

LCC Criteria

SCC Term	LCC Term	Type of Neologism	Scenario	Semantic Equivalence	Linguistic Equivalence	Transparency (meaning)	Awkwardness, absurdity	False friend	Established equivalents	CmLFE	Other translations	Observations	Conclusion(s)
comunidad de bienes	ownership in indivision / co-ownership	NT	2	Yes	No	Yes	No	No	joint ownership	tenancy in common (Gravois, 1991, p. 1263), joint tenancy (Alcaraz and Hughes, 2007, p. 712)	joint ownership of property (West III, 2012, p. 140), community property (Kinsella and Rome, 2011, p. 10)	Closest to "tenancy in common", except for survivorship component. See Gravois (1991) for differences.	Accuracy, structure
mutuo, simple préstamo	mutuum / loan for consumption	LE / NT	2, 3	Yes	Yes	Yes	Maybe	No	loan for consumption	loan		Ownership transferred in all concepts. "Loan" may be hypernym for mutuum or at least less specific.	Transparency, CvLEE, accuracy
servidumbre	servitude	LE	2, 3	Yes	Yes	Yes	No	No	servitude, easement	easement		2 or 3 depending on servitude. In general, "easement" may be narrower (e.g., does not include personal servitudes).	Structure, CvLEE, transparency
servidumbre aparente	apparent servitude	LE	2, 3	Yes	Yes	Yes	No	No		apparent easement (West III, 2012, p. 462)			Structure, transparency
servidumbre de paso	servitude of passage	LE	2, 3	Yes	Yes	Yes	No	No		right of way, access easement (West III, 2012, p. 462)			Structure, transparency
servidumbre legal	legal servitude	LE	2, 3	Yes	Yes	Yes	No	No		public easement (Garner, 2004, pp. 1548-1549)	statutory easement (West III, 2012, p. 462); easement of/by necessity (Alcaraz and Hughes, 2007, p.1016)?	Not "legal easement", which is not necessarily in benefit of the public and is used to contrast against "equitable easement". "Easement of/by necessity" may also lack public benefit component.	Structure, transparency, accuracy

LCC Criteria

SCC Term	LCC Term	Type of Neologism	Scenario	Semantic Equivalence	Linguistic Equivalence	Transparency (meaning)	Awkwardness, absurdity	False friend	Established equivalents	CmLFE	Other translations	Observations	Conclusion(s)
servidumbre negativa	negative servitude	LE	2, 3	Yes	Yes	Yes	No	No		negative easement. (Garner, 2004, p. 1546)			Structure, transparency
servidumbre no aparente	nonapparent servitude	LE	2, 3	Yes	Yes	Yes	No	No		discontinuous easement, nonapparent easement (Garner, 2004, p. 1547)			Structure, transparency
servidumbre positiva	affirmative servitude	LE	2, 3	Yes	Yes	Yes	No	No		affirmative easement			Structure, transparency
servidumbre predial	predial servitude	LE	2, 3	Yes	Yes	Yes	No	No		appurtenant easement (Kinsella and Rome, 2011, p. 74).	Easement that runs with the land (West III, 2012, 462)	Seem to be very similar (differences?)	Structure, transparency
usufructo	usufruct	LE	2, 3	Yes	Yes	No	No	No	usufruct, life estate (West III, 2012, p. 499)	life estate (West III, 2012, p. 499)		"Life estate" is narrower in that it is for someone's life; usufruct is more flexible. "It is similar to the common law's life estate, although the usufruct need not last for life." (Kinsella and Rome, 2011, p.85)	Accuracy, structure, transparency
usufructuario	usufructuary	LE	2, 3	Yes	Yes	No	No	Maybe: US use of usufructuary	usufructuary (esp. in the US), life tenet (West III, 2012, p. 499)				Accuracy, structure, transparency

LCC Criteria

SCC Term	LCC Term	Type of Neologism	Scenario	Semantic Equivalence	Linguistic Equivalence	Transparency (meaning)	Awkwardness, absurdity	False friend	Established equivalents	CmLFE	Other translations	Observations	Conclusion(s)
confusión	confusion	LE	3	Yes	Yes	No	No	No	confusion, merger	merger of title, merger of rights, extinguishment (Kinsella and Rome, 2011, p. 12)			Transparency, CvLEE
dación en pago	giving in payment	NT	3	Yes	Yes	Yes	No	No		accord and satisfaction (West III, 2012)	deed in lieu of payment, foreclosure		Transparency
predial	predial	LE	3	Yes	Yes	Yes	No	No	predial, property	property (West III, 2012, p. 397), real			Transparency

Appendix B. Term definition entries

1	Term	Definition	Source
SCC term	accesión	La propiedad de los bienes da derecho por accesión a todo lo que ellos producen, o se les une o incorpora, natural o artificialmente.	SCC, Art. 354
LCC term	accession	The ownership of a thing includes by accession the ownership of everything that it produces or is united with it, either naturally or artificially, in accordance with the following provisions.	LCC, Art. 482
CmLFE	accession	The right to all that one's own property produces, e.g., the fruit of trees or the young of animals, and to all that becomes added to or incorporated with it either naturally or artificially, e.g., land formed by gradual deposits of soil … or buildings erected on, or trees, vines, etc., planted in one's ground.	Oxford Dictionary of Law, 2009

2	Term	Definition	Source
SCC term	anticresis	Por la anticresis el acreedor adquiere el derecho de percibir los frutos de un inmueble de su deudor, con la obligación de aplicarlos al pago de los intereses, si se debieren, y después al del capital de su crédito.	SCC, Art. 1881
LCC term	antichresis	The antichresis shall be reduced to writing. The creditor acquires by this contract the right of reaping the fruits or other revenues* of the immovables to him given in pledge, on condition of deducting annually their proceeds from the interest, if any be due him, and afterwards from the principal of his debt.	LCC, Art. 3176
CmLFE	n/a		

3	Term	Definition	Source
SCC term	bien inmueble	Son bienes inmuebles: 1. Las tierras, edificios, caminos y construcciones de todo género adheridas al suelo. 2. Los árboles y plantas y los frutos pendientes, mientras estuvieren unidos a la tierra o formaren parte integrante de un inmueble. 3. Todo lo que esté unido a un inmueble de una manera fija, de suerte que no pueda separarse de él sin quebrantamiento de la materia o deterioro del objeto. 4. Las estatuas, relieves, pinturas u otros objetos de uso u ornamentación, colocados en edificios o	SCC, Art. 334

		heredades por el dueño del inmueble en tal forma que revele el propósito de unirlos de un modo permanente al fundo. 5. Las máquinas, vasos, instrumentos o utensilios destinados por el propietario de la finca a la industria o explotación que se realice en un edificio o heredad, y que directamente concurran a satisfacer las necesidades de la explotación misma. 6. Los viveros de animales, palomares, colmenas, estanques de peces o criaderos análogos, cuando el propietario los haya colocado o los conserve con el propósito de mantenerlos unidos a la finca, y formando parte de ella de un modo permanente. 7. Los abonos destinados al cultivo de una heredad, que estén en las tierras donde hayan de utilizarse. 8. Las minas, canteras y escoriales, mientras su materia permanece unida al yacimiento y las aguas vivas o estancadas. 9. Los diques y construcciones que, aun cuando sean flotantes, estén destinados por su objeto y condiciones a permanecer en un punto fijo de un río, lago o costa. 10. Las concesiones administrativas de obras públicas y las servidumbres y demás derechos reales sobre bienes inmuebles.	
LCC term	immovable	Article 462: Tracts of land. Tracts of land, with their component parts, are immovables. Article 463: Component parts of tracts of land. Buildings, other constructions permanently attached to the ground, standing timber, and unharvested crops or ungathered fruits of trees, are component parts of a tract of land when they belong to the owner of the ground. Article 464: Buildings and standing timber as separate immovables. Buildings and standing timber are separate immovables when they belong to a person other than the owner of the ground. Article 465: Things incorporated into an immovable. Things incorporated into a tract of land, a building, or other construction, so as to become an integral part of it, such as building materials, are its component parts. Article 466: Component parts of a building or other construction. Things that are attached to a building and that, according to prevailing usages,	LCC, Arts. 462-467

		serve to complete a building of the same general type, without regard to its specific use, are its component parts. Component parts of this kind may include doors, shutters, gutters, and cabinetry, as well as plumbing, heating, cooling, electrical, and similar systems. Things that are attached to a construction other than a building and that serve its principal use are its component parts. Other things are component parts of a building or other construction if they are attached to such a degree that they cannot be removed without substantial damage to themselves or to the building or other construction. Article 467: Immovables by declaration. The owner of an immovable may declare that machinery, appliances, and equipment owned by him and placed on the immovable, other than his private residence, for its service and improvement are deemed to be its component parts. The declaration shall be filed for registry in the conveyance records of the parish in which the immovable is located.	
CmLFE	real property	England & Wales common law: Real property: "Freehold land and incorporeal hereditaments." US common law: Real property "Land and anything growing on, attached to, or erected on it, excluding anything that may be severed without injury to the land. • Real property can be either corporeal (soil and buildings) or incorporeal (easements). — Also termed realty; real estate; fast estate."	*Oxford Dictionary of Law*, 2009, p. 453; Garner, 2004, p. 3845

4	**Term**	**Definition**	**Source**
SCC term	bien mueble	Se reputan bienes muebles los susceptibles de apropiación no comprendidos en el capítulo anterior, y en general todos los que se pueden transportar de un punto a otro sin menoscabo de la cosa inmueble a que estuvieren unidos.	SCC, Art. 335
LCC term	movable	All things, corporeal or incorporeal, that the law does not consider as immovables, are movables.	LCC, Art. 475
CmLFE	personalty, chattels (Kinsella and Rome,	(personal property) "All other kinds of property" (personal property) "Any movable or intangible thing that is subject to ownership and not classified	Oxford Dictionary of Law, 2009, p.

	2011, p. 44), personal property (West III, 2012, p. 91)	as real property. — Also termed personalty; personal estate; movable estate; (in plural) things personal."	432; Garner, 2004, p. 3844

5	Term	Definition	Source
SCC term	codueño, comunero, copropietario, partícipe	comunero: "Titular de parte indivisa con otro u otros en un inmueble, derecho o cosa."	Arco Torres, 2009, p. 111
LCC term	co-owner	Ownership of the same thing by two or more persons is ownership in indivision. In the absence of other provisions of law or juridical act, the shares of all co-owners are presumed to be equal.	LCC, Art. 797
CmLFE	tenant in common	One of two or more tenants who hold the same land by unity of possession but by separate and distinct titles, with each person having an equal right to possess the whole property but no right of survivorship.	Garner, 2004, p. 4589

6	Term	Definition	Source
SCC term	comodato	El comodante conserva la propiedad de la cosa prestada. El comodatario adquiere el uso de ella, pero no los frutos; si interviene algún emolumento que haya de pagar el que adquiere el uso, la convención deja de ser comodato.	SCC, Art. 1741
LCC term	commodatum, loan for use	The loan for use is a gratuitous contract by which a person, the lender, delivers a nonconsumable thing to another, the borrower, for him to use and return.	LCC, Art. 2891
CmLFE	gratuitous bailment	bailment: "The transfer of the possession of goods by the owner (the bailor) to another (the bailee) for a particular purpose. … A bailment for which the bailor receives no reward (e.g., the loan of a book to a friend) is called gratuitous bailment."	Oxford Dictionary of Law, 2009, p. 53

7	Term	Definition	Source
SCC term	comunidad (de bienes), condominio	Hay comunidad cuando la propiedad de una cosa o de un derecho pertenece pro indiviso a varias personas.	SCC, Art. 392
LCC term	ownership in indivision, co-ownership	Ownership of the same thing by two or more persons is ownership in indivision. In the absence of other provisions of law or juridical act, the shares of all co-owners are presumed to be equal.	LCC, Art. 797
CmLFE	tenancy in common (Gravois, 1991, p. 1263), joint tenancy (Alcaraz and Hughes, 2007, p. 712)	tenancy in common: "A tenancy by two or more persons, in equal or unequal undivided shares, each person having an equal right to possess the whole property but no right of survivorship. — Also termed common tenancy; estate in common." joint tenancy: "A tenancy with two or more coowners who take identical interests simultaneously by the same instrument and with the same right of possession. • A joint tenancy differs from a tenancy in common because each joint tenant has a right of survivorship to the other's share."	Garner, 2004, p. 4587; Garner, 2004, p. 4585

8	Term	Definition	Source
SCC term	confusión	Artículo 1192: Quedará extinguida la obligación desde que se reúnan en una misma persona los conceptos de acreedor y de deudor. Se exceptúa el caso en que esta confusión tenga lugar en virtud de título de herencia, si ésta hubiese sido aceptada a beneficio de inventario. Artículo 1193: La confusión que recae en la persona del deudor o del acreedor principal, aprovecha a los fiadores. La que se realiza en cualquiera de éstos no extingue la obligación. Artículo 1194: La confusión no extingue la deuda mancomunada sino en la porción correspondiente al acreedor o deudor en quien concurran los dos conceptos.	SCC, Arts. 1192-1194
LCC term	confusion	When the qualities of obligee and obligor are united in the same person, the obligation is extinguished by confusion.	LCC, Art. 1903
CmLFE	merger of rights	The merger of rights and duties in the same person, resulting in the extinction of obligations; esp. the blending of the rights of a creditor and debtor, resulting in the extinguishment of the creditor's	Garner, 2004, p. 3135

		right to collect the debt. • As originally developed in Roman law, a merger resulted from the marriage of a debtor and creditor, or when a debtor became the creditor's heir. — Also termed confusion; confusion of debts; confusion of rights.	

9	Term	Definition	Source
SCC term	dación en pago	The giving in payment is an act by which a debtor gives a thing to the creditor, who is willing to receive it, in payment of a sum which is due.	Dahl, 1999, p. 123
LCC term	giving in payment	Giving in payment is a contract whereby an obligor gives a thing to the obligee, who accepts it in payment of a debt.	LCC, Art. 2655
CmLFE	accord and satisfaction	An agreement to substitute for an existing debt some alternative form of discharging that debt, coupled with the actual discharge of the debt by the substituted performance. • The new agreement is called the accord, and the discharge is called the satisfaction.	Garner, 2004, p. 49

10	Term	Definition	Source
SCC term	derechos de uso	El uso da derecho a percibir de los frutos de la cosa ajena los que basten a las necesidades del usuario y de su familia, aunque ésta se aumente.	SCC, Art. 525
LCC term	right of use	The personal servitude of right of use confers in favor of a person a specified use of an estate less than full enjoyment.	LCC, Art. 639
CmLFE	right of way, privilege, easements in gross, profits in gross	right-of-way: "The right to pass through property owned by another." easement in gross: "An easement benefiting a particular person and not a particular piece of land. • The beneficiary need not, and usu. does not, own any land adjoining the servient estate. Cf. easement appurtenant." profit in gross: "A profit exercisable by the owner independently of his or her ownership of land."	Garner, 2004, p. 4129; Garner, 2004, p. 1547; Garner, 2004, p. 3825;

11	Term	Definition	Source
SCC term	frutos	Todo producto o utilidad que constituye el rendimiento de la cosa conforme a su destino económico y sin alteración de su sustancia.	Arco Torres, 2009, p. 261

LCC term	fruits	Fruits are things that are produced by or derived from another thing without diminution of its substance. There are two kinds of fruits; natural fruits and civil fruits.	LCC, Art. 551
CmLFE	n/a		

12	Term	Definition	Source
SCC term	frutos civiles	Son frutos civiles el alquiler de los edificios, el precio del arrendamiento de tierras y el importe de las rentas perpetuas, vitalicias u otras análogas.	SCC, Art. 355
LCC term	civil fruits	Civil fruits are revenues derived from a thing by operation of law or by reason of a juridical act, such as rentals, interest, and certain corporate distributions.	LCC, Art. 551
CmLFE	n/a		

13	Term	Definition	Source
SCC term	frutos naturales	Son frutos naturales las producciones espontáneas de la tierra, y las crías y demás productos de los animales.	SCC, Art. 355
LCC term	natural fruits	Natural fruits are products of the earth or of animals.	LCC, Art. 551
CmLFE	n/a		

14	Term	Definition	Source
SCC term	habitación	La habitación da a quien tiene este derecho la facultad de ocupar en una casa ajena las piezas necesarias para sí y para las personas de su familia.	SCC, Art. 524
LCC term	habitation	Habitation is the nontransferable real right of a natural person to dwell in the house of another.	LCC, Art. 630
CmLFE	n/a		

15	Term	Definition	Source
SCC term	Lesión (particiones)	Podrán también ser rescindidas las particiones por causa de lesión en más de la cuarta parte, atendido el valor de las cosas cuando fueron adjudicadas.	SCC, Art. 1074

LCC term	lesion among co-owners	An extrajudicial partition may be rescinded on account of lesion if the value of the part received by a co-owner is less by more than one-fourth of the fair market value of the portion he should have received.	LCC, Art. 814
CmLFE	n/a		

16	Term	Definition	Source
SCC term	lesión (rescisión de los contratos)	Son rescindibles: 1. Los contratos que pudieren celebrar los tutores sin autorización judicial, siempre que las personas a quienes representan hayan sufrido lesión en más de la cuarta parte del valor de las cosas que hubiesen sido objeto de aquéllos. 2. Los celebrados en representación de los ausentes, siempre que éstos hayan sufrido la lesión a que se refiere el número anterior.	SCC, Art. 1291
LCC term	lesion beyond moiety	The sale of an immovable may be rescinded for lesion when the price is less than one half of the fair market value of the immovable. Lesion can be claimed only by the seller and only in sales of corporeal immovables. It cannot be alleged in a sale made by order of the court. The seller may invoke lesion even if he has renounced the right to claim it.	LCC, Art. 2589
CmLFE	unconscionable agreement	An agreement that no promisor with any sense, and not under a delusion, would make, and that no honest and fair promisee would accept. • For commercial contexts, see UCC § 2-302. — Also termed unconscionable contract; unconscionable bargain.	Garner, 2004, p. 211

17	Term	Definition	Source
SCC term	mutuo, simple préstamo	Artículo 1740. Por el contrato de préstamo, una de las partes entrega a la otra, o alguna cosa no fungible para que use de ella por cierto tiempo y se la devuelva, en cuyo caso se llama comodato, o dinero u otra cosa fungible, con condición de devolver otro tanto de la misma especie y calidad, en cuyo caso conserva simplemente el nombre de préstamo. El comodato es esencialmente gratuito. El simple préstamo puede ser gratuito o con pacto de pagar interés.””	SCC

		Artículo 1753. El que recibe en préstamo dinero u otra cosa fungible, adquiere su propiedad, y está obligado a devolver al acreedor otro tanto de la misma especie y calidad.	
LCC term	mutuum	The loan for consumption is a contract by which a person, the lender, delivers consumable things to another, the borrower, who binds himself to return to the lender an equal amount of things of the same kind and quality.	LCC, Art. 2904
CmLFE	loan, simple loan	The key definition of a loan relationship is that it is a: - money debt - arising from a transaction for the lending of money Both elements have to be present for the arrangement to be a loan relationship. Neither part of the definition is itself defined in the legislation, although 'loan' is said to include 'any advance of money'. Broadly, whether something is a 'debt' and involves the 'lending of money' will be determined by case law.	HM Revenue & Customs, no date

18	**Term**	**Definition**	**Source**
SCC term	precio alzado /cuerpo cierto	En la venta de un inmueble, hecha por precio alzado y no a razón de un tanto por unidad de medida o número, no tendrá lugar el aumento o disminución del mismo, aunque resulte mayor o menor cabida o número de los expresados en el contrato. Esto mismo tendrá lugar cuando sean dos o más fincas las vendidas por un solo precio; pero, si, además de expresarse los linderos, indispensables en toda enajenación de inmuebles, se designaren en el contrato su cabida o número, el vendedor estará obligado a entregar todo lo que se comprenda dentro de los mismos linderos, aun cuando exceda de la cabida o número expresados en el contrato; y, si no pudiere, sufrirá una disminución en el precio, proporcional a lo que falte de cabida o número, a no ser que el contrato quede anulado por no conformarse el comprador con que se deje de entregar lo que se estipuló.	SCC, Art. 1471
LCC term	lump sale	Article 2458. When things, such as goods or produce, are sold in a lump, ownership is transferred between the parties upon their consent,	LCC

		even though the things are not yet weighed, counted, or measured. Article 2494. Sale of immovable for lump price. When the sale of an immovable has been made with indication of the extent of the premises, but for a lump price, the expression of the measure does not give the seller the right to a proportionate increase of the price, nor does it give the buyer the right to a proportionate diminution of the price, unless there is a surplus, or a shortage, of more than one twentieth of the extent specified in the act of sale. When the surplus is such as to give the seller the right to an increase of the price the buyer has the option either to pay that increase or to recede from the contract. Article 2495. Sale of a certain and limited body or of a distinct object for a lump price. When an immovable described as a certain and limited body or a distinct object is sold for a lump price, an expression of the extent of the immovable in the act of sale does not give the parties any right to an increase or diminution of the price in case of surplus or shortage in the actual extension of the immovable.	
CmLFE	n/a		

19	**Term**	**Definition**	**Source**
SCC term	predial	adj. Perteneciente o relativo al predio. Servidumbre predial.	RAE
LCC term	predial	adj. Of, consisting of, relating to, or attached to land <predial servitude>. — Also spelled praedial.	Garner, 2004, p. 3731
CmLFE	property, real	adj. Relating to land	Oxford Dictionary of Law, 2009, p. 453

20	Term	Definition	Source
SCC term	retracto convencional	Tendrá lugar el retracto convencional cuando el vendedor se reserve el derecho de recuperar la cosa vendida, con obligación de cumplir lo expresado en el artículo 1518 y lo demás que se hubiese pactado.	SCC, Art. 1507
LCC term	redemption	The parties to a contract of sale may agree that the seller shall have the right of redemption, which is the right to take back the thing from the buyer.	LCC, Art. 2567
CmLFE	n/a		

21	Term	Definition	Source
SCC term	servidumbre	Artículo 530: La servidumbre es un gravamen impuesto sobre un inmueble en beneficio de otro perteneciente a distinto dueño. El inmueble a cuyo favor está constituida la servidumbre, se llama predio dominante; el que la sufre, predio sirviente. Artículo 531: También pueden establecerse servidumbres en provecho de una o más personas, o de una comunidad, a quienes no pertenezca la finca gravada.	SCC
LCC term	servitude	A charge on a thing in favor of either a person, as in the case of a personal servitude, or in favor of another estate, as in the case of a predial servitude.	Kinsella and Rome, 2011, p. 73
CmLFE	easement	An interest in land owned by another person, consisting in the right to use or control the land, or an area above or below it, for a specific limited purpose (such as to cross it for access to a public road). • The land benefiting from an easement is called the dominant estate; the land burdened by an easement is called the servient estate. Unlike a lease or license, an easement may last forever, but it does not give the holder the right to possess, take from, improve, or sell the land. The primary recognized easements are (1) a right-of-way, (2) a right of entry for any purpose relating to the dominant estate, (3) a right to the support of land and buildings, (4) a right of light and air, (5) a right to water, (6) a right to do some act that would otherwise amount to a nuisance, and (7) a right to place or keep something on the servient estate.	Garner, 2004, pp. 1545-1546

22	Term	Definition	Source
SCC term	servidumbre de paso	El propietario de una finca o heredad, enclavada entre otras ajenas y sin salida a camino público, tiene derecho a exigir paso por las heredades vecinas, previa la correspondiente indemnización. Si esta servidumbre se constituye de manera que pueda ser continuo su uso para todas las necesidades del predio dominante estableciendo una vía permanente, la indemnización consistirá en el valor del terreno que se ocupe y en el importe de los perjuicios que se causen en el predio sirviente. Cuando se limite al paso necesario para el cultivo de la finca enclavada entre otras y para la extracción de sus cosechas a través del predio sirviente sin vía permanente, la indemnización consistirá en el abono del perjuicio que ocasione este gravamen.	SCC, Art. 564
LCC term	servitude of passage	The servitude of passage is the right for the benefit of the dominant estate whereby persons, animals, or vehicles are permitted to pass through the servient estate. Unless the title provides otherwise, the extent of the right and the mode of its exercise shall be suitable for the kind of traffic necessary for the reasonable use of the dominant estate.	LCC, Art. 705
CmLFE	right of way, access easement (West III, 2012, p. 462)	The right to pass through property owned by another. 1. A right-of-way may be established by contract, by longstanding usage, or by public authority (as with a highway). [...] 2. The right to build and operate a railway line or a highway on land belonging to another, or the land so used. [...] 3. The right to take precedence in traffic. [...] 4. The strip of land subject to a nonowner's right to pass through. — Also written right of way.	Garner, 2004, pp. 4129-4130

23	Term	Definition	Source
SCC term	servidumbre legal	Las servidumbres impuestas por la ley tienen por objeto la utilidad pública o el interés de los particulares.	SCC, Art. 549
LCC term	legal servitude	Legal servitudes are limitations on ownership established by law for the benefit of the general public or for the benefit of particular persons.	LCC, Art. 659
CmLFE	public easement (West III, 2012, p. 462), legal	public easement: An easement for the benefit of an entire community, such as the right to travel down a street or a sidewalk. legal easement: A legal easement "binds the	Garner, 2004, pp. 1548-1549; HIP-Consultant,

	easement (HIP-Consultant, 2010)	world"; this means it is exercisable against any owner of the servient land regardless of whether they are put on notice of it.	2010

24	Term	Definition	Source
SCC term	servidumbre negativa	…y negativa la que prohíbe al dueño del predio sirviente hacer algo que le sería lícito sin la servidumbre.	SCC, Art. 533
LCC term	negative servitude	Negative servitudes are those that impose on the owner of the servient estate the duty to abstain from doing something on his estate. Such are the servitudes of prohibition of building and of the use of an estate as a commercial or industrial establishment.	LCC, Art. 706
CmLFE	negative easement	An easement that prohibits the servient-estate owner from doing something, such as building an obstruction.	Garner, 2004, p. 1546

25	Term	Definition	Source
SCC term	servidumbre predial	La servidumbre es un gravamen impuesto sobre un inmueble en beneficio de otro perteneciente a distinto dueño. El inmueble a cuyo favor está constituida la servidumbre, se llama predio dominante; el que la sufre, predio sirviente.	SCC, Art. 530
LCC term	predial servitude	A predial servitude is a charge on a servient estate for the benefit of a dominant estate. The two estates must belong to different owners.	LCC, Art. 646
CmLFE	easement appurtunent (West III, 2012, p. 462)	An easement created to benefit another tract of land, the use of easement being incident to the ownership of that other tract. — Also termed appurtenant easement; appendant easement; pure easement; easement proper.	Garner, 2004, p. 1547

26	Term	Definition	Source
SCC term	servidumbre aparente	Aparentes las que se anuncian y están continuamente a la vista por signos exteriores que revelan el uso y aprovechamiento de las mismas.	SCC, Art. 532
LCC term	apparent servitude	Apparent servitudes are those that are perceivable by exterior signs, works, or constructions; such as a roadway, a window in a common wall, or an aqueduct.	LCC, Art. 707
CmLFE	apparent easement (West III,	A visually evident easement, such as a paved trail or a sidewalk.	Garner, 2004, p. 1546

	2012, p. 462)		

27	Term	Definition	Source
SCC term	servidumbre no aparente	No aparentes las que no presentan indicio alguno exterior de su existencia.	SCC, Art. 532
LCC term	nonapparent servitude	Nonapparent servitudes are those that have no exterior sign of their existence; such as the prohibition of building on an estate or of building above a particular height.	LCC, Art. 707
CmLFE	Discontinuous easement, nonapparent easement (Garner, 2004, p. 1546)	An easement that can be enjoyed only if the party claiming it deliberately acts in some way with regard to the servient estate. • Examples are a right-of-way and the right to draw water. — Also termed discontinuing easement; noncontinuous easement; nonapparent easement; (in Louisiana) discontinuous servitude. Cf. continuous easement.	Garner, 2004, p. 1546

28	Term	Definition	Source
SCC term	servidumbre positiva	Se llama positiva la servidumbre que impone al dueño del predio sirviente la obligación de dejar hacer alguna cosa o de hacerla por sí mismo.	SCC, Art. 533
LCC term	affirmative servitude	Affirmative servitudes are those that give the right to the owner of the dominant estate to do a certain thing on the servient estate. Such are the servitudes of right of way, drain, and support.	LCC, Art. 706
CmLFE	affirmative easement	An easement that forces the servient-estate owner to permit certain actions by the easement holder, such as discharging water onto the servient estate. — Also termed positive easement.	Garner, 2004, p. 1546

29	Term	Definition	Source
SCC term	servidumbre voluntaria	Todo propietario de una finca puede establecer en ella las servidumbres que tenga por conveniente, y en el modo y forma que bien le pareciere, siempre que no contravenga a las leyes ni al orden público.	SCC, Art. 594
LCC term	voluntary (conventional) servitude	…voluntary or conventional servitudes are established by juridical act, prescription, or destination of the owner.	LCC, Art. 654
CmLFE	easement by agreement (Alcaraz and	an easement negotiated by the property owner and the party in need of the easement	Quiz1et, 2012

	Hughes, 2007, p. 1016)		

30	Term	Definition	Source
SCC term	usufructo	Artículo 467. El usufructo da derecho a disfrutar los bienes ajenos con la obligación de conservar su forma y sustancia, a no ser que el título de su constitución o la ley autoricen otra cosa. Artículo 468. El usufructo se constituye por la ley, por la voluntad de los particulares manifestada en actos entre vivos o en última voluntad, y por prescripción. Artículo 469. Podrá constituirse el usufructo en todo o parte de los frutos de la cosa, a favor de una o varias personas, simultánea o sucesivamente, y en todo caso desde o hasta cierto día, puramente o bajo condición. También puede constituirse sobre un derecho, siempre que no sea personalísimo o intransmisible. Artículo 470. Los derechos y las obligaciones del usufructuario serán los que determine el título constitutivo del usufructo; en su defecto, o por insuficiencia de éste, se observarán las disposiciones contenidas en las dos secciones siguientes.	SCC
LCC term	usufruct	Usufruct is a real right of limited duration on the property of another. The features of the right vary with the nature of the things subject to it as consumables or nonconsumables.	LCC, Art. 535
CmLFE	life estate	An estate held only for the duration of a specified person's life, usu. the possessor's. • Most life estates — created, for example, by a grant "to Jane for life" — are beneficial interests under trusts, the corpus often being personal property, not real property. — Also termed estate for life; legal life estate; life tenancy.	Garner, 2004, p. 1658

31	Term	Definition	Source
SCC term	usufructuario	El usufructuario tendrá derecho a percibir todos los frutos naturales, industriales y civiles, de los bienes usufructuados. Respecto de los tesoros que se hallaren en la finca será considerado como extraño.	SCC, Art. 471

LCC term	usufructuary	The usufructuary is entitled to the fruits of the thing subject to usufruct according to the following articles.	LCC, Art. 550
CmLFE	life tenet	A person who, until death, is beneficially entitled to property; the holder of a life estate. — Also termed tenant for life; life-owner.	Garner, 2004, p. 2712

Appendix C. Fragments from the Spanish Civil Code

This appendix contains some of the articles from the SCC from Books II, III and IV where the terms examined appear. Some of the instances of the terms examined are highlighted in blue.

Libro II: Título I

LIBRO SEGUNDO

DE LOS BIENES, DE LA PROPIEDAD Y DE SUS MODIFICACIONES
TÍTULO PRIMERO
De la clasificación de los bienes
DISPOSICIÓN PRELIMINAR

Artículo 333
Todas las cosas que son o pueden ser objeto de apropiación se consideran como bienes muebles o inmuebles.

CAPÍTULO PRIMERO

De los bienes inmuebles

Artículo 334
Son bienes inmuebles:
1. Las tierras, edificios, caminos y construcciones de todo género adheridas al suelo.
2. Los árboles y plantas y los frutos pendientes, mientras estuvieren unidos a la tierra o formaren parte integrante de un inmueble.
3. Todo lo que esté unido a un inmueble de una manera fija, de suerte que no pueda separarse de él sin quebrantamiento de la materia o deterioro del objeto.
4. Las estatuas, relieves, pinturas u otros objetos de uso u ornamentación, colocados en edificios o heredades por el dueño del inmueble en tal forma que revele el propósito de unirlos de un modo permanente al fundo.
5. Las máquinas, vasos, instrumentos o utensilios destinados por el propietario de la finca a la industria o explotación que se realice en un edificio o heredad, y que directamente concurran a satisfacer las necesidades de la explotación misma.
6. Los viveros de animales, palomares, colmenas, estanques de peces o criaderos análogos, cuando el propietario los haya colocado o los conserve con el propósito de mantenerlos unidos a la finca, y formando parte de ella de un modo permanente.
7. Los abonos destinados al cultivo de una heredad, que estén en las tierras donde hayan de utilizarse.
8. Las minas, canteras y escoriales, mientras su materia permanece unida al yacimiento y las aguas vivas o estancadas.
9. Los diques y construcciones que, aun cuando sean flotantes, estén destinados por su objeto y condiciones a permanecer en un punto fijo de un río, lago o costa.

10. Las concesiones administrativas de obras públicas y las servidumbres y demás derechos reales sobre bienes inmuebles.

CAPÍTULO II

De los bienes muebles

Artículo 335

Se reputan bienes muebles los susceptibles de apropiación no comprendidos en el capítulo anterior, y en general todos los que se pueden transportar de un punto a otro sin menoscabo de la cosa inmueble a que estuvieren unidos.

Artículo 336

Tienen también la consideración de cosas muebles las rentas o pensiones, sean vitalicias o hereditarias, afectas a una persona o familia, siempre que no graven con carga real una cosa inmueble, los oficios enajenados, los contratos sobre servicios públicos y las cédulas y títulos representativos de préstamos hipotecarios.

Artículo 337

Los bienes muebles son fungibles o no fungibles.
A la primera especie pertenecen aquellos de que no puede hacerse el uso adecuado a su naturaleza sin que se consuman; a la segunda especie corresponden los demás.
[…]

Libro II: Título II

De la propiedad
CAPÍTULO PRIMERO

[…]

CAPÍTULO II
Del derecho de accesión
Disposición general

Artículo 353

La propiedad de los bienes da derecho por accesión a todo lo que ellos producen, o se les une o incorpora, natural o artificialmente.

SECCIÓN PRIMERA

Del derecho de accesión respecto al producto de los bienes

Artículo 354

Pertenecen al propietario:
1. Los frutos naturales.
2. Los frutos industriales.
3. Los frutos civiles.

Artículo 355

Son frutos naturales las producciones espontáneas de la tierra, y las crías y demás productos de los animales.
Son frutos industriales los que producen los predios de cualquier especie a beneficio del cultivo o del trabajo.
Son frutos civiles el alquiler de los edificios, el precio del arrendamiento de tierras y el importe de las rentas perpetuas, vitalicias u otras análogas.

Artículo 356

El que percibe los frutos tiene la obligación de abonar los gastos hechos por un tercero para su producción, recolección y conservación.

Artículo 357

No se reputan frutos naturales, o industriales, sino los que están manifiestos o nacidos.
Respecto a los animales, basta que estén en el vientre de su madre, aunque no hayan nacido.

SECCIÓN SEGUNDA

Del derecho de accesión respecto a los bienes inmuebles

Artículo 358

Lo edificado, plantado o sembrado en predios ajenos, y las mejoras o reparaciones hechas en ellos, pertenecen al dueño de los mismos con sujeción a lo que se dispone en los artículos siguientes.
[…]

Artículo 382

Si por voluntad de uno solo, pero con buena fe, se mezclan o confunden dos cosas de igual o diferente especie, los derechos de los propietarios se determinarán por lo dispuesto en el artículo anterior.
Si el que hizo la mezcla o confusión obró de mala fe, perderá la cosa de su pertenencia mezclada o confundida, además de quedar obligado a la indemnización de los perjuicios causados al dueño de la cosa con que hizo la mezcla.

Artículo 383

El que de buena fe empleó materia ajena en todo o en parte para formar una obra de nueva especie, hará suya la obra, indemnizando el valor de la materia al dueño de ésta.
Si ésta es más preciosa que la obra en que se empleó o superior en valor, el dueño de ella podrá, a su elección, quedarse con la nueva especie, previa indemnización del valor de la obra, o pedir indemnización de la materia.
Si en la formación de la nueva especie intervino mala fe, el dueño de la materia tiene el derecho de quedarse con la obra sin pagar nada al autor, o de exigir de éste que le indemnice el valor de la materia y los perjuicios que se le hayan seguido.

CAPÍTULO III

Del deslinde y amojonamiento

Artículo 384

Todo propietario tiene derecho a deslindar su propiedad, con citación de los dueños de los predios colindantes.

La misma facultad corresponderá a los que tengan derechos reales.

Artículo 385

El deslinde se hará en conformidad con los títulos de cada propietario y, a falta de títulos suficientes, por lo que resultare de la posesión en que estuvieren los colindantes.

Artículo 386

Si los títulos no determinasen el límite o área perteneciente a cada propietario, y la cuestión no pudiere resolverse por la posesión o por otro medio de prueba, el deslinde se hará distribuyendo el terreno objeto de la contienda en partes iguales.

Artículo 387

Si los títulos de los colindantes indicasen un espacio mayor o menor del que comprende la totalidad del terreno, el aumento o la falta se distribuirá proporcionalmente.

CAPÍTULO IV

Del derecho de cerrar las fincas rústicas

Artículo 388

Todo propietario podrá cerrar o cercar sus heredades por medio de paredes, zanjas, setos vivos o muertos, o de cualquiera otro modo, sin perjuicio de las servidumbres constituidas sobre las mismas.

CAPÍTULO V

De los edificios ruinosos y de los árboles que amenazan caerse

Artículo 389

Si un edificio, pared, columna o cualquiera otra construcción amenazase ruina, el propietario estará obligado a su demolición, o a ejecutar las obras necesarias para evitar su caída.

Si no lo verificare el propietario de la obra ruinosa, la Autoridad podrá hacerla demoler a costa del mismo.

Artículo 390

Cuando algún árbol corpulento amenazare caerse de modo que pueda causar perjuicio a una finca ajena o a los transeúntes por una vía pública o particular, el dueño del árbol está obligado a arrancarlo y retirarlo; y si no lo verificare, se hará a su costa por mandato de la Autoridad.

Artículo 391

En los casos de los dos artículos anteriores, si el edificio o árbol se cayere, se estará a lo dispuesto en los artículos 1907 y 1908.

Libro II: Título III

De la comunidad de bienes

Artículo 392

Hay comunidad cuando la propiedad de una cosa o de un derecho pertenece pro indiviso a varias personas.

A falta de contratos, o de disposiciones especiales, se regirá la comunidad por las prescripciones de este título.

Artículo 393

El concurso de los partícipes, tanto en los beneficios como en las cargas, será proporcional a sus respectivas cuotas.

Se presumirán iguales, mientras no se pruebe lo contrario, las porciones correspondientes a los partícipes en la comunidad.

Artículo 394

Cada partícipe podrá servirse de las cosas comunes, siempre que disponga de ellas conforme a su destino y de manera que no perjudique el interés de la comunidad, ni impida a los copartícipes utilizarlas según su derecho.

Artículo 395

Todo copropietario tendrá derecho para obligar a los partícipes a contribuir a los gastos de conservación de la cosa o derecho común. Sólo podrá eximirse de esta obligación el que renuncie a la parte que le pertenece en el dominio.

Artículo 396

Los diferentes pisos o locales de un edificio o las partes de ellos susceptibles de aprovechamiento independiente por tener salida propia a un elemento común de aquél o a la vía pública podrán ser objeto de propiedad separada, que llevará inherente un derecho de copropiedad sobre los elementos comunes del edificio, que son todos los necesarios para su adecuado uso y disfrute, tales como el suelo, vuelo, cimentaciones y cubiertas; elementos estructurales y entre ellos los pilares, vigas, forjados y muros de carga; las fachadas, con los revestimientos exteriores de terrazas, balcones y ventanas, incluyendo su imagen o configuración, los elementos de cierre que las conforman y sus revestimientos exteriores; el portal, las escaleras, porterías, corredores, pasos, muros, fosos, patios, pozos y los recintos destinados a ascensores, depósitos, contadores, telefonías o a otros servicios o instalaciones comunes, incluso aquéllos que fueren de uso privativo; los ascensores y las instalaciones, conducciones y canalizaciones para el desagüe y para el suministro de agua, gas o electricidad, incluso las de aprovechamiento de energía solar; las de agua caliente sanitaria, calefacción, aire acondicionado, ventilación o evacuación de humos; las de detección y prevención de incendios; las de portero electrónico y otras de seguridad del edificio, así como las de antenas colectivas y demás instalaciones para los servicios audiovisuales o de telecomunicación, todas ellas hasta la entrada al espacio privativo; las servidumbres y cualesquiera otros elementos materiales o jurídicos que por su naturaleza o destino resulten indivisibles.

Las partes en copropiedad no son en ningún caso susceptibles de división y sólo podrán ser enajenadas, gravadas o embargadas juntamente con la parte determinada privativa de la que son anejo inseparable.

En caso de enajenación de un piso o local, los dueños de los demás, por este solo título, no tendrán derecho de tanteo ni de retracto. Esta forma de propiedad se rige por las disposiciones legales especiales y, en lo que las mismas permitan, por la voluntad de los interesados.
[Este artículo está redactado conforme a la Ley 8/1999, de 6 de abril, de Reforma de la Ley 49/1960, de 21 de julio, sobre Propiedad Horizontal, Disposición adicional única (BOE núm. 84, de 08-04-1999).]

Artículo 397

Ninguno de los condueños podrá, sin consentimiento de los demás, hacer alteraciones en la cosa común, aunque de ella pudieran resultar ventajas para todos.

Artículo 398

Para la administración y mejor disfrute de la cosa común serán obligatorios los acuerdos de la mayoría de los partícipes.
No habrá mayoría sino cuando el acuerdo esté tomado por los partícipes que representen la mayor cantidad de los intereses que constituyan el objeto de la comunidad.
Si no resultare mayoría, o el acuerdo de ésta fuere gravemente perjudicial a los interesados en la cosa común, el Juez proveerá, a instancia de parte, lo que corresponda, incluso nombrar un Administrador.
Cuando parte de la cosa perteneciere privadamente a un partícipe o a algunos de ellos, y otra fuere común, sólo a ésta será aplicable la disposición anterior.

Artículo 399

Todo condueño tendrá la plena propiedad de su parte y la de los frutos y utilidades que le correspondan, pudiendo en su consecuencia enajenarla, cederla o hipotecarla, y aun sustituir otro en su aprovechamiento, salvo si se tratare de derechos personales. Pero el efecto de la enajenación o de la hipoteca con relación a los condueños estará limitado a la porción que se le adjudique en la división al cesar la comunidad.

Artículo 400

Ningún copropietario estará obligado a permanecer en la comunidad. Cada uno de ellos podrá pedir en cualquier tiempo que se divida la cosa común.
Esto no obstante, será válido el pacto de conservar la cosa indivisa por tiempo determinado, que no exceda de diez años. Este plazo podrá prorrogarse por nueva convención.

Artículo 401

Sin embargo de lo dispuesto en el artículo anterior, los copropietarios no podrán exigir la división de la cosa común, cuando de hacerla resulte inservible para el uso a que se destina.
Si se tratare de un edificio cuyas características lo permitan, a solicitud de cualquiera de los comuneros, la división podrá realizarse mediante la adjudicación de pisos o locales independientes, con sus elementos comunes anejos, en la forma prevista por el artículo 396.

Artículo 402

La división de la cosa común podrá hacerse por los interesados, o por árbitros o amigables componedores nombrados a voluntad de los partícipes.

En el caso de verificarse por árbitros o amigables componedores, deberán formar partes proporcionadas al derecho de cada uno, evitando en cuanto sea posible los suplementos a metálico.

Artículo 403

Los acreedores o cesionarios de los partícipes podrán concurrir a la división de la cosa común y oponerse a la que se verifique sin su concurso. Pero no podrán impugnar la división consumada, excepto en caso de fraude, o en el de haberse verificado no obstante la oposición formalmente interpuesta para impedirla, y salvo siempre los derechos del deudor o del cedente para sostener su validez.

Artículo 404

Cuando la cosa fuere esencialmente indivisible, y los condueños no convinieren en que se adjudique a uno de ellos indemnizando a los demás, se venderá y repartirá su precio.

Artículo 405

La división de una cosa común no perjudicará a tercero, el cual conservará los derechos de hipoteca, servidumbre u otros derechos reales que le pertenecieran antes de hacer la partición. Conservarán igualmente su fuerza, no obstante la división, los derechos personales que pertenezcan a un tercero contra la comunidad.

Artículo 406

Serán aplicables a la división entre los partícipes en la comunidad las reglas concernientes a la división de la herencia.

Libro II: Título IV

De algunas propiedades especiales

[…]

Libro II: Título VI

Del usufructo, del uso y de la habitación

CAPÍTULO PRIMERO

Del usufructo

SECCIÓN PRIMERA

Del usufructo en general

Artículo 467

El usufructo da derecho a disfrutar los bienes ajenos con la obligación de conservar su forma y sustancia, a no ser que el título de su constitución o la ley autoricen otra cosa.

Artículo 468

El usufructo se constituye por la ley, por la voluntad de los particulares manifestada en actos entre vivos o en última voluntad, y por prescripción.

Artículo 469

Podrá constituirse el usufructo en todo o parte de los frutos de la cosa, a favor de una o varias personas, simultánea o sucesivamente, y en todo caso desde o hasta cierto día,

puramente o bajo condición. También puede constituirse sobre un derecho, siempre que no sea personalísimo o intransmisible.

Artículo 470

Los derechos y las obligaciones del usufructuario serán los que determine el título constitutivo del usufructo; en su defecto, o por insuficiencia de éste, se observarán las disposiciones contenidas en las dos secciones siguientes.

SECCIÓN SEGUNDA

De los derechos del usufructuario

Artículo 471

El usufructuario tendrá derecho a percibir todos los frutos naturales, industriales y civiles, de los bienes usufructuados. Respecto de los tesoros que se hallaren en la finca será considerado como extraño.

Artículo 472

Los frutos naturales o industriales, pendientes al tiempo de comenzar el usufructo, pertenecen al usufructuario.

Los pendientes al tiempo de extinguirse el usufructo, pertenecen al propietario.

En los precedentes casos, el usufructuario, al comenzar el usufructo, no tiene obligación de abonar al propietario ninguno de los gastos hechos; pero el propietario está obligado a abonar al fin del usufructo, con el producto de los frutos pendientes, los gastos ordinarios de cultivo, simientes y otros semejantes, hechos por el usufructuario.

Lo dispuesto en este artículo no perjudica los derechos de tercero, adquiridos al comenzar o terminar el usufructo.

Artículo 473

Si el usufructuario hubiere arrendado las tierras o heredades dadas en usufructo, y acabare éste antes de terminar el arriendo, sólo percibirán él o sus herederos y sucesores la parte proporcional de la renta que debiere pagar el arrendatario.

Artículo 474

Los frutos civiles se entienden percibidos día por día, y pertenecen al usufructuario en proporción al tiempo que dure el usufructo.

Artículo 475

Si el usufructo se constituye sobre el derecho a percibir una renta o una pensión periódica, bien consista en metálico, bien en frutos, o los intereses de obligaciones o títulos al portador, se considerará cada vencimiento como productos o frutos de aquel derecho.

Si consistiere en el goce de los beneficios que diese una participación en una explotación industrial o mercantil cuyo reparto no tuviese vencimiento fijo, tendrán aquellos la misma consideración.

En uno y otro caso se repartirán como frutos civiles, y se aplicarán en la forma que previene el artículo anterior.

[…]

CAPÍTULO II

Del uso y de la habitación

Artículo 523

Las facultades y obligaciones del usuario y del que tiene derecho de habitación se regularán por el título constitutivo de estos derechos; y, en su defecto, por las disposiciones siguientes.

Artículo 524

El uso da derecho a percibir de los frutos de la cosa ajena los que basten a las necesidades del usuario y de su familia, aunque ésta se aumente.

La habitación da a quien tiene este derecho la facultad de ocupar en una casa ajena las piezas necesarias para sí y para las personas de su familia.

Artículo 525

Los derechos de uso y habitación no se pueden arrendar ni traspasar a otro por ninguna clase de título.

Artículo 526

El que tuviere el uso de un rebaño o piara de ganado, podrá aprovecharse de las crías, leche y lana en cuanto baste para su consumo y el de su familia, así como también del estiércol necesario para el abono de las tierras que cultive.

Artículo 527

Si el usuario consumiera todos los frutos de la cosa ajena, o el que tuviere derecho de habitación ocupara toda la casa, estará obligado a los gastos de cultivo, a los reparos ordinarios de conservación y al pago de las contribuciones, del mismo modo que el usufructuario.

Si sólo percibiera parte de los frutos o habitara parte de la casa, no deberá contribuir con nada, siempre que quede al propietario una parte de frutos o aprovechamientos bastantes para cubrir los gastos y las cargas. Si no fueren bastantes, suplirá aquél lo que falte.

Artículo 528

Las disposiciones establecidas para el usufructo son aplicables a los derechos de uso y habitación, en cuanto no se opongan a lo ordenado en el presente capítulo.

Artículo 529

Los derechos de uso y habitación se extinguen por las mismas causas que el usufructo y además por abuso grave de la cosa y de la habitación.

Libro II: Título VII

De las servidumbres

CAPÍTULO PRIMERO

De las servidumbres en general

SECCIÓN PRIMERA

De las diferentes clases de servidumbres que pueden establecerse sobre las fincas

Artículo 530

La servidumbre es un gravamen impuesto sobre un inmueble en beneficio de otro perteneciente a distinto dueño.

El inmueble a cuyo favor está constituida la servidumbre, se llama predio dominante; el que la sufre, predio sirviente.

Artículo 531

También pueden establecerse servidumbres en provecho de una o más personas, o de una comunidad, a quienes no pertenezca la finca gravada.

Artículo 532

Las servidumbres pueden ser continuas o discontinuas, aparentes o no aparentes.

Continuas son aquellas cuyo uso es o puede ser incesante, sin la intervención de ningún hecho del hombre.

Discontinuas son las que se usan a intervalos más o menos largos y dependen de actos del hombre.

Aparentes las que se anuncian y están continuamente a la vista por signos exteriores que revelan el uso y aprovechamiento de las mismas.

No aparentes las que no presentan indicio alguno exterior de su existencia.

Artículo 533

Las servidumbres son además positivas o negativas.

Se llama positiva la servidumbre que impone al dueño del predio sirviente la obligación de dejar hacer alguna cosa o de hacerla por sí mismo, y negativa la que prohíbe al dueño del predio sirviente hacer algo que le sería lícito sin la servidumbre.

Artículo 534

Las servidumbres son inseparables de la finca a que activa o pasivamente pertenecen.

Artículo 535

Las servidumbres son indivisibles. Si el predio sirviente se divide entre dos o más, la servidumbre no se modifica y cada uno de ellos tiene que tolerarla en la parte que le corresponda.

Si es el predio dominante el que se divide entre dos o más, cada porcionero puede usar por entero de la servidumbre, no alterando el lugar de su uso, ni agravándola de otra manera.

Artículo 536

Las servidumbres se establecen por la ley o por la voluntad de los propietarios. Aquéllas se llaman legales y éstas voluntarias.

SECCIÓN SEGUNDA

De los modos de adquirir las servidumbres

Artículo 537

Las servidumbres continuas y aparentes se adquieren en virtud de título, o por la prescripción de veinte años.

[…]

Artículo 548

Si el predio dominante perteneciera a varios en común, el uso de la servidumbre hecho por uno impide la prescripción respecto de los demás.

CAPÍTULO II

De las servidumbres legales

SECCIÓN PRIMERA

Disposiciones generales

[…]

De la servidumbre de paso

Artículo 564

El propietario de una finca o heredad, enclavada entre otras ajenas y sin salida a camino público, tiene derecho a exigir paso por las heredades vecinas, previa la correspondiente indemnización.

Si esta servidumbre se constituye de manera que pueda ser continuo su uso para todas las necesidades del predio dominante estableciendo una vía permanente, la indemnización consistirá en el valor del terreno que se ocupe y en el importe de los perjuicios que se causen en el predio sirviente.

Cuando se limite al paso necesario para el cultivo de la finca enclavada entre otras y para la extracción de sus cosechas a través del predio sirviente sin vía permanente, la indemnización consistirá en el abono del perjuicio que ocasione este gravamen.

Artículo 565

La servidumbre de paso debe darse por el punto menos perjudicial al predio sirviente, y, en cuanto fuere conciliable con esta regla, por donde sea menor la distancia del predio dominante al camino público.

Artículo 566

La anchura de la servidumbre de paso será la que baste a las necesidades del predio dominante.

Artículo 567

Si, adquirida una finca por venta, permuta o partición, quedare enclavada entre otras del vendedor, permutante o copartícipe, éstos están obligados a dar paso sin indemnización, salvo pacto en contrario.

[…]

CAPÍTULO III

De las servidumbres voluntarias

Artículo 594

Todo propietario de una finca puede establecer en ella las servidumbres que tenga por conveniente, y en el modo y forma que bien le pareciere, siempre que no contravenga a las leyes ni al orden público.

Artículo 595

El que tenga la propiedad de una finca, cuyo usufructo pertenezca a otro, podrá imponer sobre ella, sin el consentimiento del usufructuario, las servidumbres que no perjudiquen al derecho del usufructo.

Artículo 596

Cuando pertenezca a una persona el dominio directo de una finca y a otra el dominio útil, no podrá establecerse sobre ella servidumbre voluntaria perpetua sin el consentimiento de ambos dueños.

Artículo 597

Para imponer una servidumbre sobre un fundo indiviso se necesita el consentimiento de todos los copropietarios.

La concesión hecha solamente por algunos, quedará en suspenso hasta tanto que la otorgue el último de todos los partícipes o comuneros.

Pero la concesión hecha por uno de los copropietarios separadamente de los otros obliga al concedente y a sus sucesores, aunque lo sean a título particular, a no impedir el ejercicio del derecho concedido.

Artículo 598

El título, y, en su caso, la posesión de la servidumbre adquirida por prescripción, determinan los derechos del predio dominante y las obligaciones del sirviente. En su defecto, se regirá la servidumbre por las disposiciones del presente título que le sean aplicables.

Artículo 599

Si el dueño del predio sirviente se hubiere obligado, al constituirse la servidumbre, a costear las obras necesarias para el uso y conservación de la misma, podrá librarse de esta carga abandonando su predio al dueño del dominante.

[…]

Libro III: Título III

CAPÍTULO VI

[…]

SECCIÓN CUARTA

De la rescisión de la partición

Artículo 1073

Las particiones pueden rescindirse por las mismas causas que las obligaciones.

Artículo 1074

Podrán también ser rescindidas las particiones por causa de lesión en más de la cuarta parte, atendido el valor de las cosas cuando fueron adjudicadas.

Artículo 1075

La partición hecha por el difunto no puede ser impugnada por causa de lesión, sino en el caso de que perjudique la legítima de los herederos forzosos o de que aparezca, o racionalmente se presuma, que fue otra la voluntad del testador.

Artículo 1076

La acción rescisoria por causa de lesión durará cuatro años, contados desde que se hizo la partición.

Artículo 1077

El heredero demandado podrá optar entre indemnizar el daño o consentir que se proceda a nueva partición.

La indemnización puede hacerse en numerario o en la misma cosa en que resultó el perjuicio.

Si se procede a nueva partición, no alcanzará ésta a los que no hayan sido perjudicados ni percibido más de lo justo.

Artículo 1078

No podrá ejercitar la acción rescisoria por lesión el heredero que hubiese enajenado el todo o una parte considerable de los bienes inmuebles que le hubieren sido adjudicados.

Artículo 1079

La omisión de alguno o algunos objetos o valores de la herencia no da lugar a que se rescinda la partición por lesión, sino a que se complete o adicione con los objetos o valores omitidos.

Artículo 1080

La partición hecha con preterición de alguno de los herederos no se rescindirá a no ser que se pruebe que hubo mala fe o dolo por parte de los otros interesados; pero éstos tendrán la obligación de pagar al preterido la parte que proporcionalmente le corresponda.

Artículo 1081

La partición hecha con uno a quien se creyó heredero sin serlo, será nula.

[…]

Libro IV: Título I

CAPÍTULO IV

De la extinción de las obligaciones

Disposiciones generales

Artículo 1156

Las obligaciones se extinguen:

Por el pago o cumplimiento.

Por la pérdida de la cosa debida.

Por la condonación de la deuda.

Por la confusión de los derechos de acreedor y deudor.
Por la compensación.
Por la novación.

[...]

SECCIÓN CUARTA

De la confusión de derechos

Artículo 1192
Quedará extinguida la obligación desde que se reúnan en una misma persona los conceptos de acreedor y de deudor.
Se exceptúa el caso en que esta confusión tenga lugar en virtud de título de herencia, si ésta hubiese sido aceptada a beneficio de inventario.

Artículo 1193
La confusión que recae en la persona del deudor o del acreedor principal, aprovecha a los fiadores. La que se realiza en cualquiera de éstos no extingue la obligación.

Artículo 1194
La confusión no extingue la deuda mancomunada sino en la porción correspondiente al acreedor o deudor en quien concurran los dos conceptos.
[…]

Libro IV: Título II

[…]

CAPÍTULO V

De la rescisión de los contratos

Art. 1290

Los contratos válidamente celebrados pueden rescindirse en los casos establecidos por la ley.

Art. 1291

Son rescindibles:
1. Los contratos que pudieren celebrar los tutores sin autorización judicial, siempre que las personas a quienes representan hayan sufrido lesión en más de la cuarta parte del valor de las cosas que hubiesen sido objeto de aquéllos.
2. Los celebrados en representación de los ausentes, siempre que éstos hayan sufrido la lesión a que se refiere el número anterior.
3. Los celebrados en fraude de acreedores, cuando éstos no puedan de otro modo cobrarlo que se les deba.
4. Los contratos que se refieran a cosas litigiosas, cuando hubiesen sido celebrados por el demandado sin conocimiento y aprobación de las partes litigantes o de la Autoridad judicial competente.
5. Cualesquiera otros en que especialmente lo determine la ley.

Son también rescindibles los pagos hechos en estado de insolvencia por cuenta de obligaciones a cuyo cumplimiento no podía ser compelido el deudor al tiempo de hacerlos.

Art. 1293

Ningún contrato se rescindirá por lesión, fuera de los casos mencionados en los números 1. y 2. del artículo 1291.

Art. 1294

La acción de rescisión es subsidiaria; no podrá ejercitarse sino cuando el perjudicado carezca de todo otro recurso legal para obtener la reparación del perjuicio.

Art. 1295

La rescisión obliga a la devolución de las cosas que fueron objeto del contrato con sus frutos, y del precio con sus intereses; en consecuencia, sólo podrá llevarse a efecto cuando el que la haya pretendido pueda devolver aquello a que por su parte estuviese obligado.

Tampoco tendrá lugar la rescisión cuando las cosas objeto del contrato se hallaren legalmente en poder de terceras personas que no hubiesen procedido de mala fe.

En este caso podrá reclamarse la indemnización de perjuicios al causante de la lesión.

Art. 1296

La rescisión de que trata el número 2. del artículo 1291 no tendrá lugar respecto de los contratos celebrados con autorización judicial.

Art. 1297

Se presumen celebrados en fraude de acreedores todos aquellos contratos por virtud de los cuales el deudor enajenare bienes a título gratuito.

También se presumen fraudulentas las enajenaciones a título oneroso, hechas por aquellas personas contra las cuales se hubiese pronunciado antes sentencia condenatoria en cualquier instancia o expedido mandamiento de embargo de bienes.

Art. 1298

El que hubiese adquirido de mala fe las cosas enajenadas en fraude de acreedores, deberá indemnizar a éstos de los daños y perjuicios que la enajenación les hubiese ocasionado, siempre que por cualquier causa le fuere imposible devolverlas.

Art. 1299

La acción para pedir la rescisión dura cuatro años.

Para las personas sujetas a tutela y para los ausentes, los cuatro años no empezarán hasta que haya cesado la incapacidad de los primeros, o sea conocido el domicilio de los segundos.

CAPÍTULO VI

De la nulidad de los contratos

Art. 1300

Los contratos en que concurran los requisitos que expresa el artículo 1261 pueden ser anulados, aunque no haya lesión para los contratantes, siempre que adolezcan de alguno de los vicios que los invalidan con arreglo a la ley.

[…]

SECCIÓN SEGUNDA. DE LA ENTREGA DE LA COSA VENDIDA

[…]

Artículo 1471.

En la venta de un inmueble, hecha por precio alzado y no a razón de un tanto por unidad de medida o número, no tendrá lugar el aumento o disminución del mismo, aunque resulte mayor o menor cabida o número de los expresados en el contrato.

Esto mismo tendrá lugar cuando sean dos o más fincas las vendidas por un solo precio; pero, si, además de expresarse los linderos, indispensables en toda enajenación de inmuebles, se designaren en el contrato su cabida o número, el vendedor estará obligado a entregar todo lo que se comprenda dentro de los mismos linderos, aun cuando exceda de la cabida o número expresados en el contrato; y, si no pudiere, sufrirá una disminución en el precio, proporcional a lo que falte de cabida o número, a no ser que el contrato quede anulado por no conformarse el comprador con que se deje de entregar lo que se estipuló.

[…]

Los gastos del contrato, si los hubiese pagado el comprador.

Los daños e intereses y los gastos voluntarios o de puro recreo u ornato, si se vendió de mala fe.

Artículo 1479.

Si el comprador perdiere, por efecto de la evicción, una parte de la cosa vendida de tal importancia con relación al todo que sin dicha parte no la hubiera comprado, podrá exigir la rescisión del contrato; pero con la obligación de devolver la cosa sin más gravámenes que los que tuviese al adquirirla.

Esto mismo se observará cuando se vendiesen dos o más cosas conjuntamente por un precio alzado, o particular para cada una de ellas, si constase claramente que el comprador no habría comprado la una sin la otra.

Artículo 1480.

El saneamiento no podrá exigirse hasta que haya recaído sentencia firme, por la que se condene al comprador a la pérdida de la cosa adquirida o de parte de la misma.

[…]

Si el vendedor obró de mala fe, deberá abonar al comprador los daños e intereses.

Artículo 1489.
En las ventas judiciales nunca habrá lugar a la responsabilidad por daños y perjuicios; pero sí a todo lo demás dispuesto en los artículos anteriores.

Artículo 1490.
Las acciones que emanan de lo dispuesto en los cinco artículos precedentes se extinguirán a los seis meses, contados desde la entrega de la cosa vendida.

Artículo 1491.
Vendiéndose dos o más animales juntamente, sea en un precio alzado, sea señalándolo a cada uno de ellos, el vicio redhibitorio de cada uno dará solamente lugar a su redhibición, y no a la de los otros, a no ser que aparezca que el comprador no habría comprado el sano o sanos sin el vicioso.
Se presume esto último cuando se compra un tiro, yunta, pareja o juego, aunque se haya señalado un precio separado a cada uno de los animales que lo componen.
[…]

CAPÍTULO VI.

DE LA RESOLUCIÓN DE LA VENTA

Artículo 1506.
La venta se resuelve por las mismas causas que todas las obligaciones, y además, por las expresadas en los capítulos anteriores, y por el retracto convencional o por el legal.

SECCIÓN PRIMERA. DEL RETRACTO CONVENCIONAL.

Artículo 1507.
Tendrá lugar el retracto convencional cuando el vendedor se reserve el derecho de recuperar la cosa vendida, con obligación de cumplir lo expresado en el artículo 1.518 y lo demás que se hubiese pactado.

Artículo 1508.
El derecho de que trata el artículo anterior durará, a falta de pacto expreso, cuatro años contados desde la fecha del contrato.
En caso de estipulación, el plazo no podrá exceder de diez años.

Artículo 1509.
Si el vendedor no cumple lo prescrito en el artículo 1.518, el comprador adquirirá irrevocablemente el dominio de la cosa vendida.

Artículo 1510.
El vendedor podrá ejercitar su acción contra todo poseedor que traiga su derecho del comprador, aunque en el segundo contrato no se haya hecho mención del retracto convencional; salvo lo dispuesto en la Ley Hipotecaria respecto de terceros.

Artículo 1511.
El comprador sustituye al vendedor en todos sus derechos y acciones.

Artículo 1512.

Los acreedores del vendedor no podrán hacer uso del retracto convencional contra el comprador, sino después de haber hecho excusión en los bienes del vendedor.

[…]

SECCIÓN SEGUNDA. DEL RETRACTO LEGAL

Artículo 1521.

El retracto legal es el derecho de subrogarse, con las mismas condiciones estipuladas en el contrato, en lugar del que adquiere una cosa por compra o dación en pago.

Artículo 1522.

El copropietario de una cosa común podrá usar del retracto en el caso de enajenarse a un extraño la parte de todos los demás condueños o de alguno de ellos.

Cuando dos o más copropietarios quieran usar del retracto, sólo podrán hacerlo a prorrata de la porción que tengan en la cosa común.

Artículo 1523.

También tendrán el derecho de retracto los propietarios de las tierras colindantes cuando se trate de la venta de una finca rústica cuya cabida no exceda de una hectárea.

El derecho a que se refiere el párrafo anterior no es aplicable a las tierras colindantes que estuvieren separadas por arroyos, acequias, barrancos, caminos y otras servidumbres aparentes en provecho de otras fincas.

Si dos o más colindantes usan del retracto al mismo tiempo será preferido el que de ellos sea dueño de la tierra colindante de menor cabida; y si las dos la tuvieran igual, el que primero lo solicite.

Artículo 1524.

No podrá ejercitarse el derecho de retracto legal sino dentro de nueve días contados desde la inscripción en el Registro, y en su defecto, desde que el retrayente hubiera tenido conocimiento de la venta.

El retracto de comuneros excluye el de colindantes.

Artículo 1525.

En el retracto legal tendrá lugar lo dispuesto en los artículos 1.511 y 1.518.

[…]

Libro IV: Título X

Del préstamo

DISPOSICIÓN GENERAL

Artículo 1740

Por el contrato de préstamo, una de las partes entrega a la otra, o alguna cosa no fungible para que use de ella por cierto tiempo y se la devuelva, en cuyo caso se llama comodato, o dinero u otra cosa fungible, con condición de devolver otro tanto de la misma especie y calidad, en cuyo caso conserva simplemente el nombre de préstamo.

El comodato es esencialmente gratuito.

El simple préstamo puede ser gratuito o con pacto de pagar interés.

CAPÍTULO PRIMERO
Del comodato
SECCIÓN PRIMERA
De la naturaleza del comodato

Artículo 1741
El comodante conserva la propiedad de la cosa prestada. El comodatario adquiere el uso de ella, pero no los frutos; si interviene algún emolumento que haya de pagar el que adquiere el uso, la convención deja de ser comodato.

Artículo 1742
Las obligaciones y derechos que nacen del comodato pasan a los herederos de ambos contrayentes, a no ser que el préstamo se haya hecho en contemplación a la persona del comodatario, en cuyo caso los herederos de éste no tienen derecho a continuar en el uso de la cosa prestada.

SECCIÓN SEGUNDA

De las obligaciones del comodatario
[…]

Libro IV: Título XV

De los contratos de prenda, hipoteca y anticresis
[…]

CAPÍTULO IV

De la anticresis

Artículo 1881
Por la anticresis el acreedor adquiere el derecho de percibir los frutos de un inmueble de su deudor, con la obligación de aplicarlos al pago de los intereses, si se debieren, y después al del capital de su crédito.

Artículo 1882
El acreedor, salvo pacto en contrario, está obligado a pagar las contribuciones y cargas que pesen sobre la finca.
Lo está asimismo a hacer los gastos necesarios para su conservación y reparación.
Se deducirán de los frutos las cantidades que emplee en uno y otro objeto.

Artículo 1883
El deudor no puede readquirir el goce del inmueble sin haber pagado antes enteramente lo que debe a su acreedor.
Pero éste, para librarse de las obligaciones que le impone el artículo anterior, puede siempre obligar al deudor a que entre de nuevo en el goce de la finca, salvo pacto en contrario.

Artículo 1884

El acreedor no adquiere la propiedad del inmueble por falta de pago de la deuda dentro del plazo convenido.

Todo pacto en contrario será nulo. Pero el acreedor en este caso podrá pedir, en la forma que previene la Ley de Enjuiciamiento civil, el pago de la deuda o la venta del inmueble.

Artículo 1885

Los contratantes pueden estipular que se compensen los intereses de la deuda con los frutos de la finca dada en anticresis.

Artículo 1886

Son aplicables a este contrato el último párrafo del artículo 1857, el párrafo segundo del artículo 1866, y los artículos 1860 y 1861.

Source: Kingdom of Spain (1889)

Appendix D. Purchase and Sale Agreement / Contrato de Compraventa

En Palma de Mallorca, a veintitrés de octubre de mil novecientos noventa y uno.

REUNIDOS

De una parte D. GUILLERMO RODRIGUEZ SALAS, mayor de edad, casado, vecino de esta ciudad, en la calle Blasco Ibáñez, 7, titular del D.N.I. 41.097.265.

Y de la otra D. JOAQUIN JOSE BIANCHI, mayor de edad, vecino de esta ciudad de Palma de Mallorca, calle Ramón Lulio, 40, titular del D.N.I. 43.021.476.

Ambas partes obrando en su propio nombre y reconociéndose mutuamente capacidad legal bastante para el otorgamiento del presente contrato.

EXPONEN

I.- Que D. GUILLERMO RODRIGUEZ SALAS es dueño de la siguiente unidad: NUMERO SIETE DE ORDEN.- Apartamento vivienda tipo IG, de la planta baja del edificio sito en Vía de la Cruz, zona segunda, manzana IX, de Santa Carmen, y el aparcamiento señalado con el nº 1G. Le pertenecen en virtud de la Escritura de Declaración de Obra Nueva otorgada el 21 de noviembre de 1.989, ante el Notario de Binisalem D. Domingo Bonito Jerez, nº 392 de su protocolo.

II.- Expuesto cuanto antecede, los señores comparecientes

OTORGAN

Primero.- D. Guillermo Rodríguez Salas VENDE a D. Joaquín José Bianchi, quien COMPRA, la finca descrita en el expositivo I, la cual se vende como cuerpo cierto y es recibida de plena conformidad por la parte compradora, en el estado en que se encuentra.

Segundo.- El presente contrato se regirá por las siguientes

CLAUSULAS

Primera.- El precio de la siguiente compraventa que se realiza libre de cargas y gravámenes, es de Once Millones Quinientas Mil pesetas (11.500.000 ptas.) el cual será satisfecho por la parte compradora de la siguiente forma:

a) Tres Millones Doscientas Ochenta y Seis Mil Doscientas Treinta y Seis pesetas (3.286.236 ptas.) satisfechas con anterioridad a este acto, según documento acreditativo de fecha 9 de octubre de 1.991.

[…]

Source: City University (2011)

Statement

I hereby declare that I prepared this dissertation independently without the help of anybody and that I did not use any publications other than those cited in the introduction, the research paper or the bibliography.

Date of submission

19 October 2012