

V Congresso Internacional da ABRATES
Associação Brasileira de Tradutores e Intérpretes
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TRADUÇÃO JURÍDICA E CHOQUE CULTURAL

Luciana Carvalho
luciana.carvalho@tradjuris.com.br

TRADUÇÃO JURÍDICA E CHOQUE CULTURAL

Choques culturais podem provocar efeitos indesejados na comunicação entre sujeitos de visão de mundo diferentes. Para explorar um pouco desse território, abordaremos aspectos culturais da tradução jurídica entre o inglês e o português, bem como diversos pontos de choque em potencial com o intuito de trazer à tona aos operadores da tradução as sutilezas culturalmente marcadas de sua atividade.

- ▶ 10h45 às 11h45 – Auditório Principal

We will talk about:

1. Culture
2. Worldview
3. Culture Clash
4. Legal Systems
5. Law Language
6. Legal Translation

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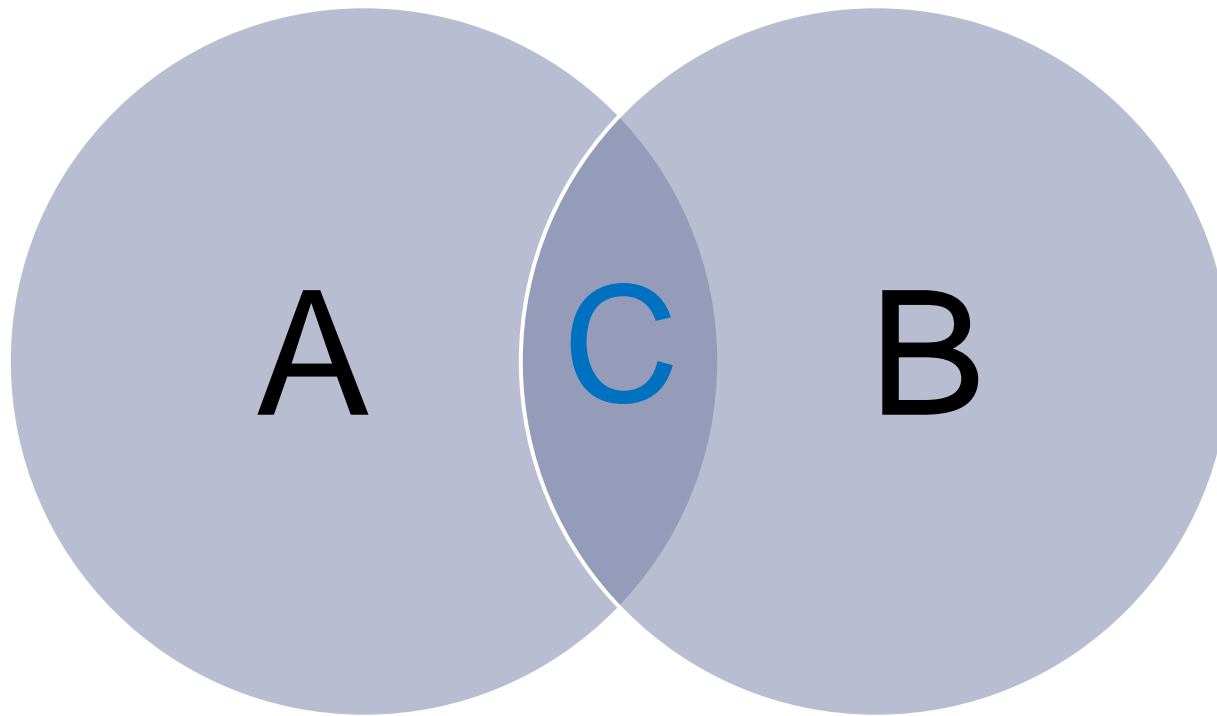


The only Universal Truths that all religions agree upon

1. What is Culture?



Shared Dimension



Shared Dimension

- ▶ Economic goals
- ▶ Political systems
- ▶ Social organization
- ▶ Development levels

International Law

«**signatory**»

instead of

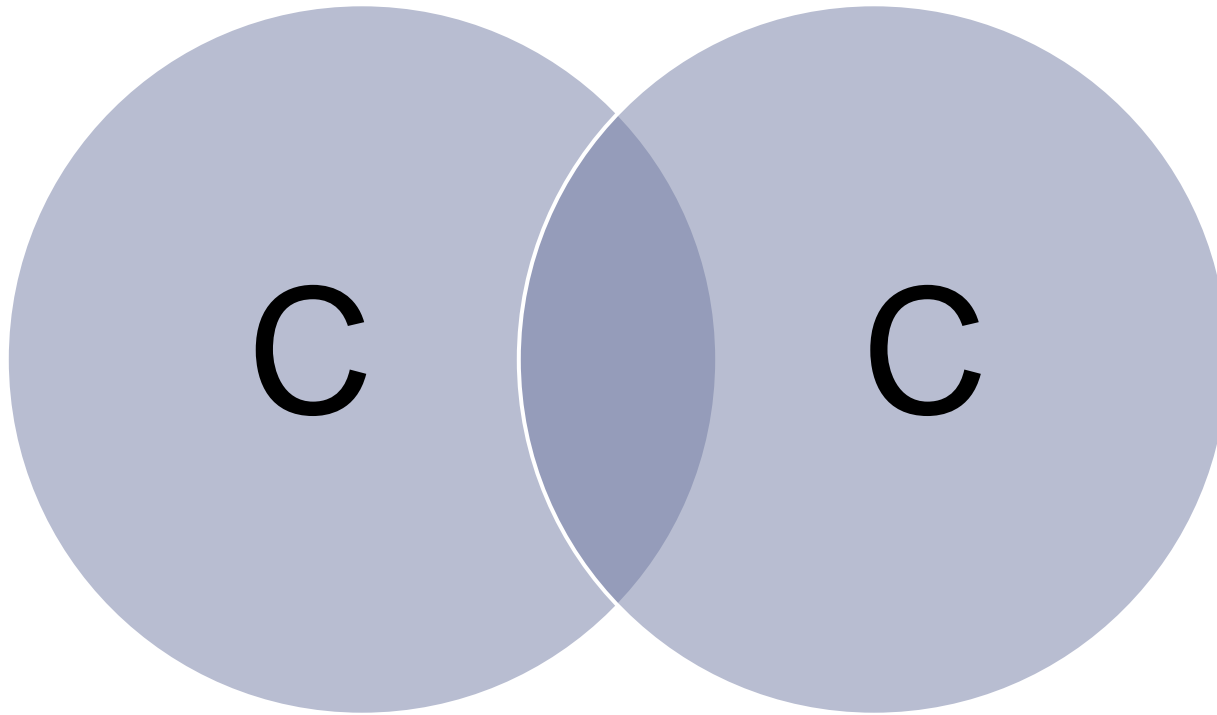
«**party**»

«**ratification**»

instead of

«**acceptance**»

Unshared Dimension



Unshared Dimension

Civil Law

- ▶ Roman Law
- ▶ Codes
- ▶ Continental Europe
- ▶ Latin America
- ▶ Brasil

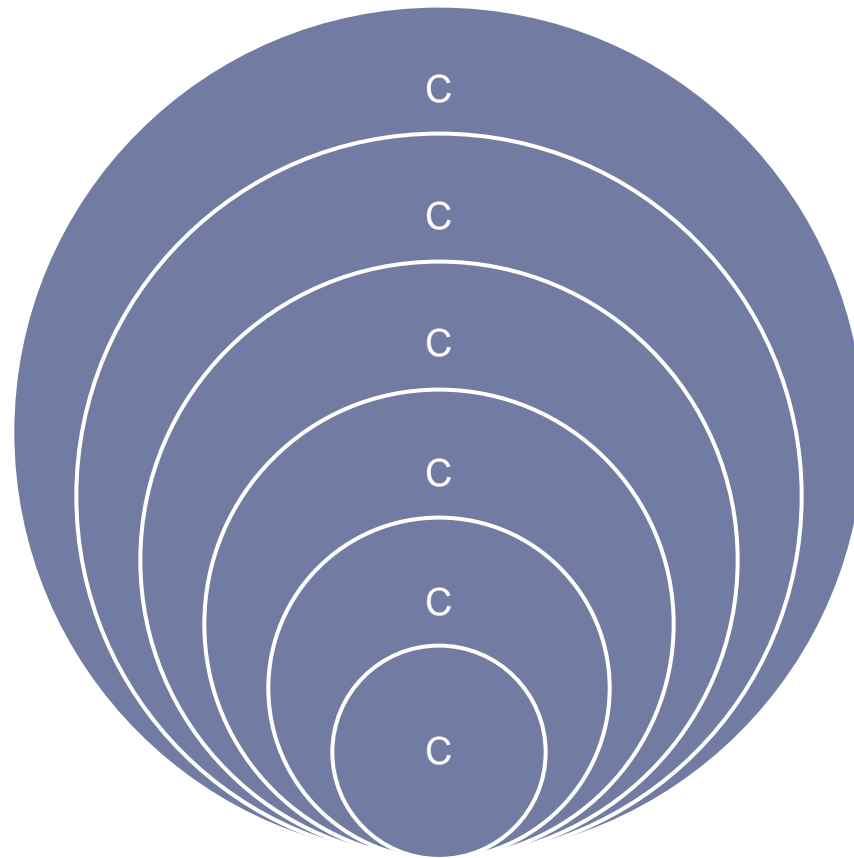
Common Law

- ▶ English Law
- ▶ Stare decisis
- ▶ England and
Wales
- ▶ The U.S.

Unshared Dimension

- ▶ Plaintiff
- ▶ Pleading
- ▶ Minor /infant
- ▶ In camera
- ▶ Ex parte
- ▶ Inter partes
- ▶ Claimant
- ▶ Statement of case
- ▶ Child
- ▶ In private
- ▶ Without notice
- ▶ With notice

Dimensions inside one another



Legal English 'inside' English

1. Many common words have an uncommon meaning: «action» meaning «lawsuit»
2. Words from old English: «aforesaid»
3. Many Latin phrases: «ex parte»
4. Many old French phrases: «chose in action»
5. Extremely technical words: «negotiable instrument»
6. A legal jargon «inferior courts»
7. Formal words «the truth, the whole truth and nothing but the truth»
8. Words that have multiple meanings «negligence»
9. Attempt to be extremely accurate «all sums of money accounts claims and demands» «and no other purpose»

Fonte: Mellinkoff

Interpreting International Treaties

English Jurists

- Tend not to take into account all the preparatory work involved in drafting the treaty

Italian and French Jurists

- Tend to investigate the historical process involved in drafting the treaty and tend to accept its influence when determining the meaning of the agreement

2. What is Worldview?

- ▶ **Individual interpretation and re-presentation of reality**
- ▶ **Conveys a picture of the world** (not necessarily the world of the speaker or the audience)
- ▶ Image of the world created by **one's own interpretation**
- ▶ atário de sua realidade e da realidade transmitida por meio da imagem
- ▶ **Individual experience** of the world
- ▶ Worldview expressed and re-presented through language, arts, science.
 - ▶ Individual representation of the real world
 - ▶ Individual representation A v. Individual representation B
- ▶ **Numerous re-presentations of reality** through cultural concepts that present this reality

3. Culture Clash

▶ Causes:

- ▶ gap in shared knowledge
- ▶ unawareness of unshared knowledge

▶ Potential:

- ▶ provides room for learning
- ▶ builds mutual respect



4. What is a Legal System?

- ▶ re-presents the world presented in a certain jurisdiction
- ▶ reveals the way a certain group re-presents reality
- ▶ reveals the reality created by a certain jurisdiction
- ▶ reveals whether a certain group is patriarchal, capitalist, monogomic, peaceful, religious etc.

What would you think if you found this out about a certain Legal System?

Buying and selling to the government are controlled by legislation.

There are 5 lawyers for every engineer.

When judges commit a crime they are sentenced to mandatory retirement and are entitled to a lifelong pension paid by the State.

Many judges and prosecutors have just come out of law school.

Federal judges are appointed by the President.

Judges are former attorneys with over 20 years of practice.

What would you think if you found this out about a certain Legal System?

Children born out of wedlock are illegitimate.

The law states that after the commitment of three crimes, someone must be sentenced to life in prison.

A woman caught in the act of adultery ought to be stoned.

Same-sex marriages are not allowed.

The constitution bans nuclear weapons.

The constitution is more than 200 years old.

5. What is Legal Language?

Describes actions, omissions, and events in the Law

Expresse a legal culture

Gives access to culture through legal language



- English
- Common law*
- American Law

- Portuguese
- Civil law*
- Brazilian Law

Legal English

Anglo-Saxon

- ▶ Bid
- ▶ Freedom
- ▶ Land
- ▶ Worth
- ▶ Theft

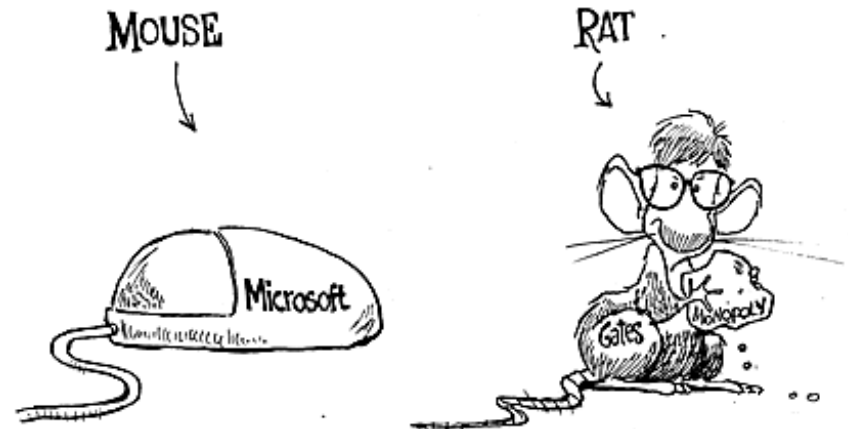
Norman French

- ▶ Offer
- ▶ Liberty
- ▶ Country
- ▶ Value
- ▶ Larceny

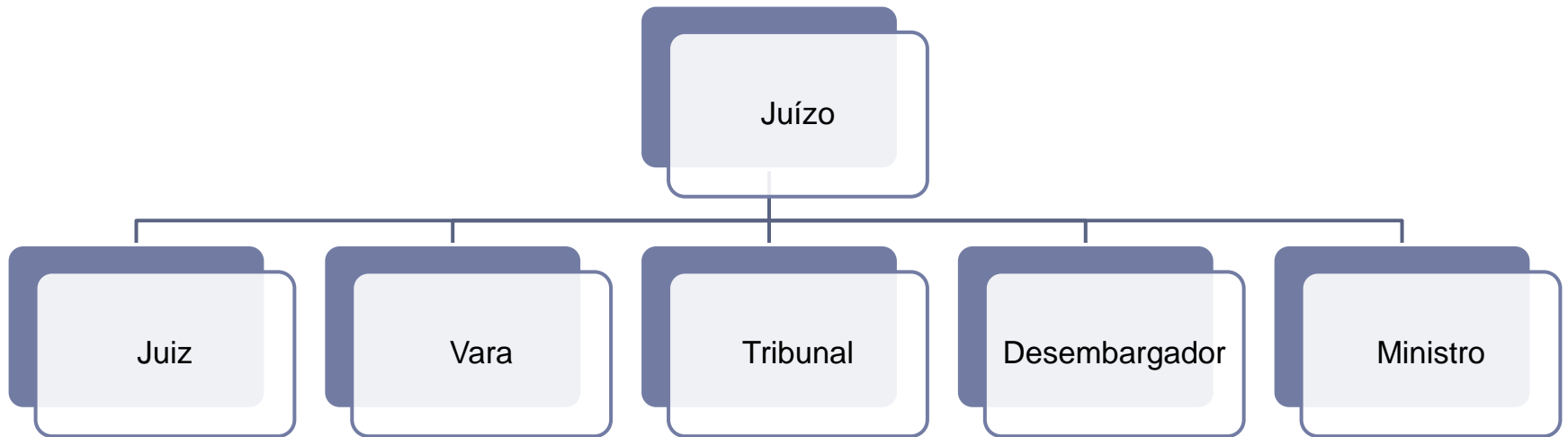
Terminology

- ▶ Creating meaning
- ▶ Re-presentation of reality
- ▶ Conveys cultural content

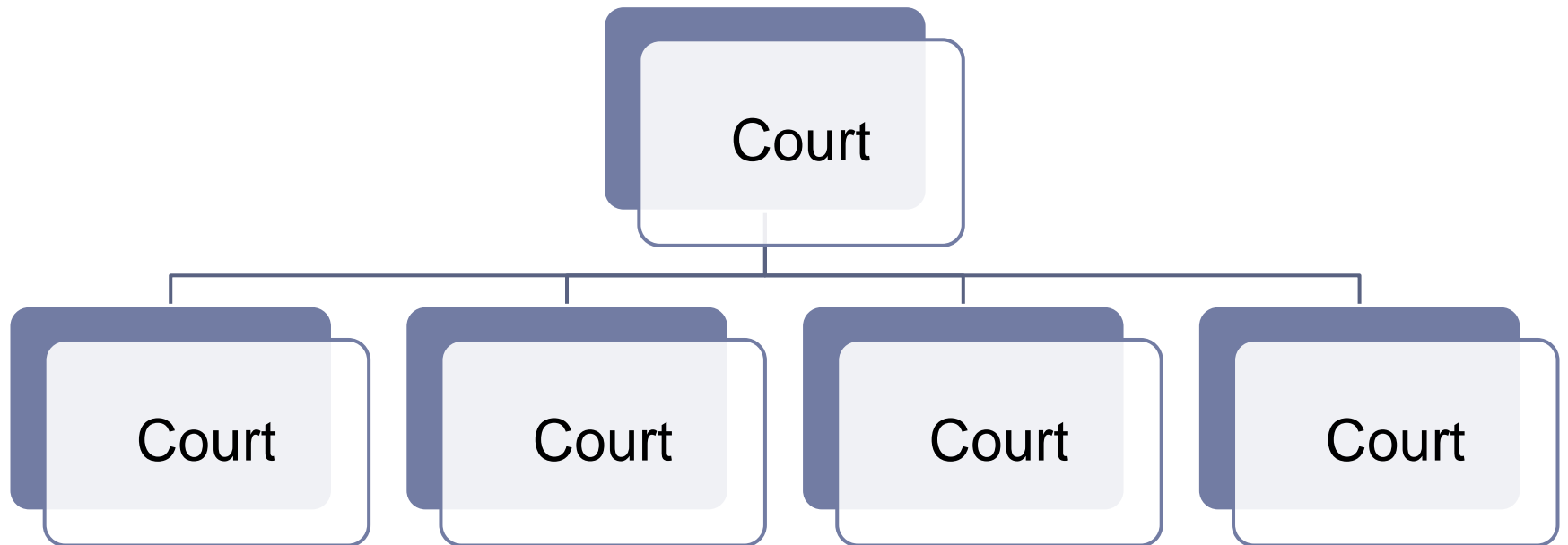
Terminology



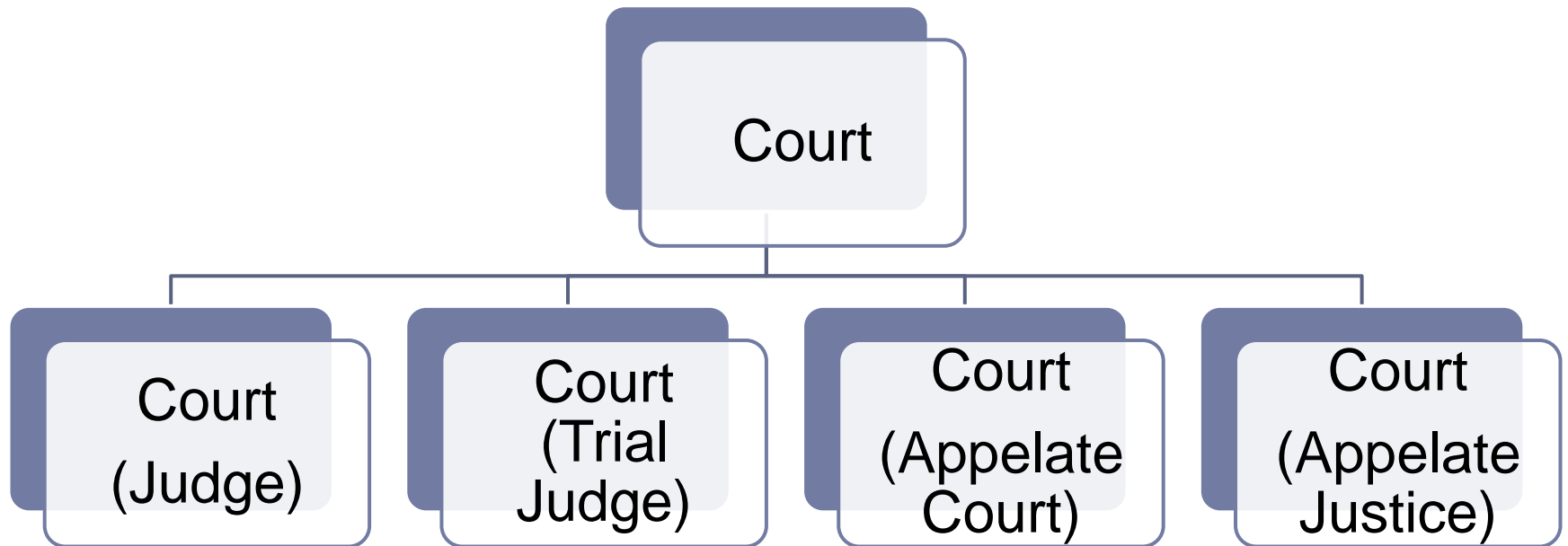
Content defined by culture



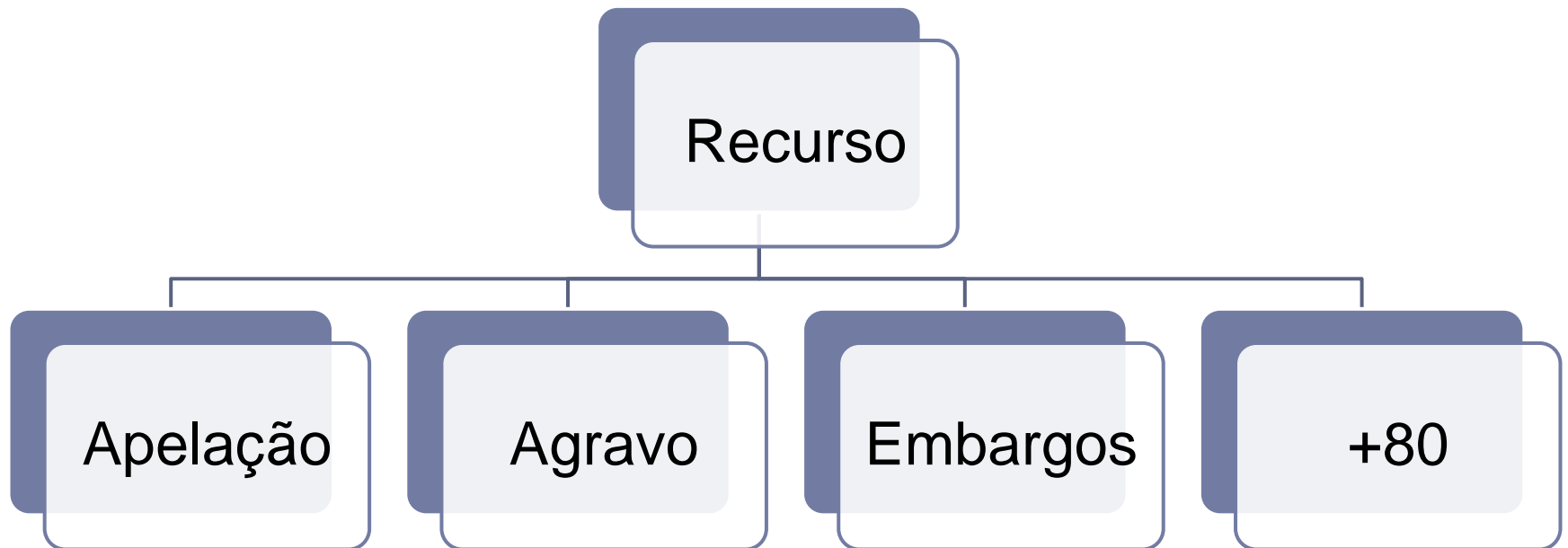
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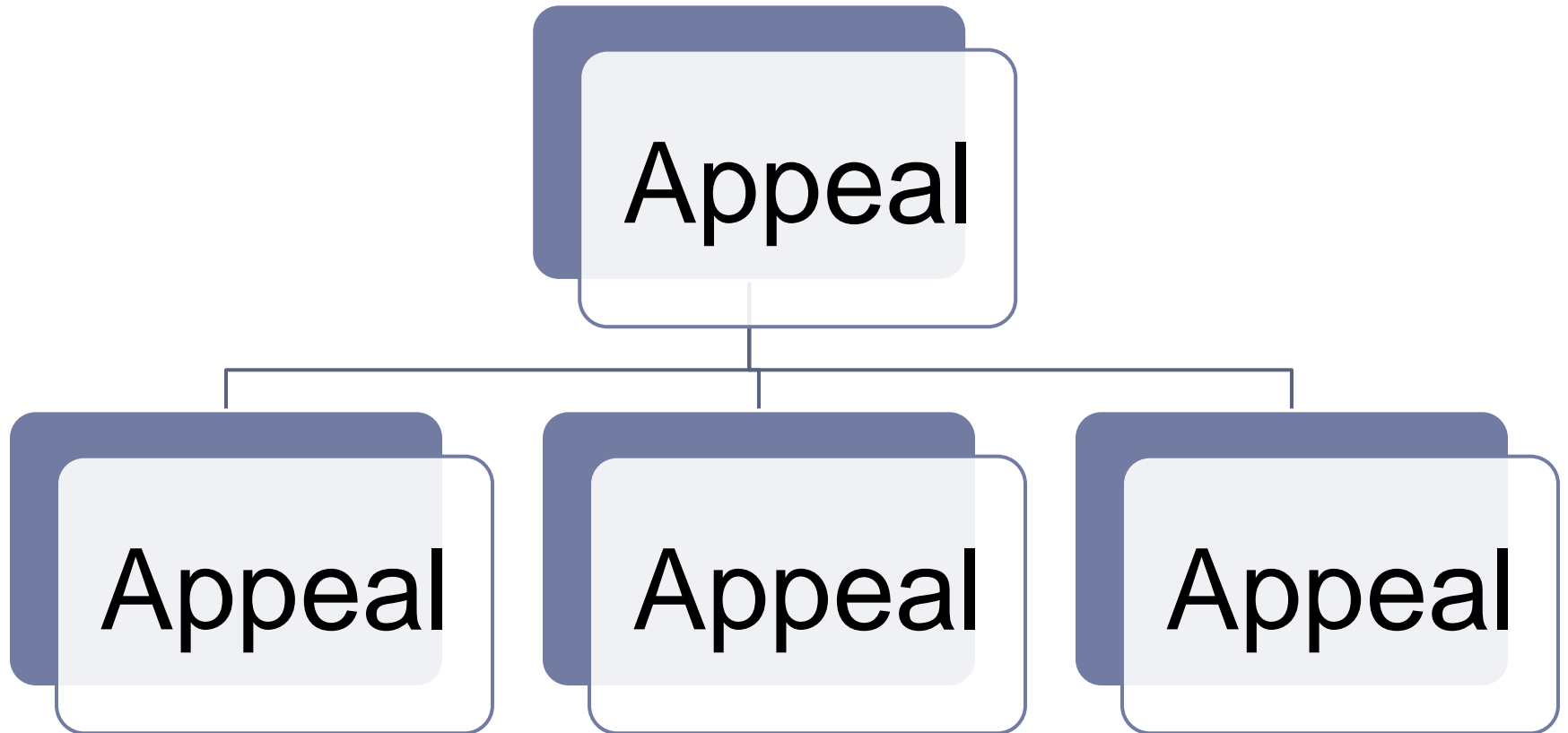
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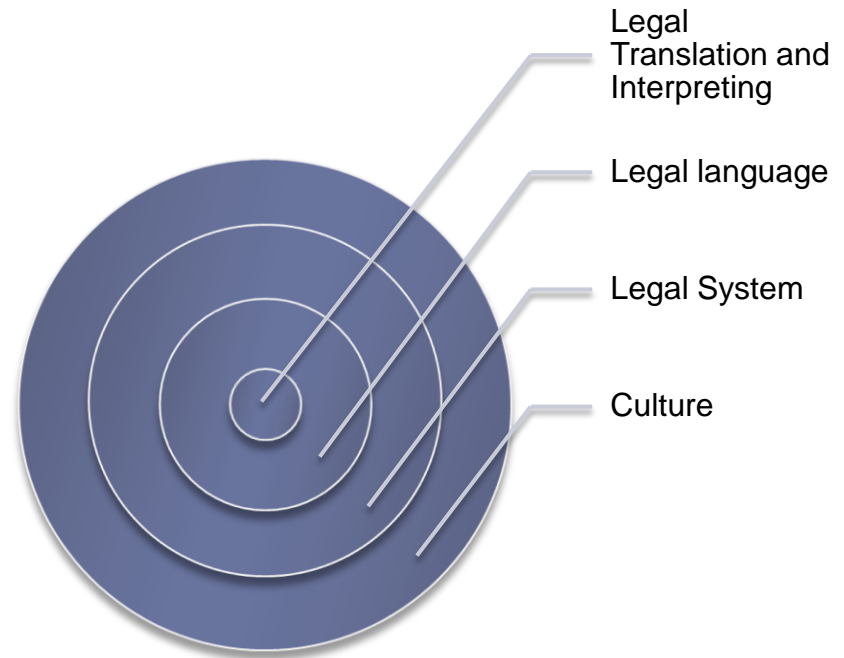


Content defined by culture



6. What is Legal Translation and Legal Interpreting?

- ▶ A kind of legal language that involves:
 - ▶ Cultural exchange
 - ▶ At least two different languages
 - ▶ Exchange of legal knowledge
 - ▶ As many worldviews as there are people involved in the exchange: speaker, audience, translator, client..



Legal Language & Legal Translation

- ▶ Language
 - ▶ **Terminology**
 - ▶ Grammar
 - ▶ Pragmatics
- ▶ Legal Culture
 - ▶ Legal Systems
 - ▶ Social conventions
- ▶ Worldviews
 - ▶ Behaviors
 - ▶ Values

Legal Translation

- ▶ **Cross-cultural competence**
 - ▶ shared and unshared knowledge
 - ▶ worldviews
- ▶ **Strategies for dealing with unshared dimensions**
 - ▶ translation and interpreting strategies
- ▶ **Reorganizing target language**
 - ▶ input from the source language/culture + cross-cultural competence
- ▶ **Undesired effects**
 - ▶ stability
 - ▶ instability
- ▶ **Translation**
 - ▶ marked
 - ▶ unmarked



Cases

Case 1 – Brazilian witness being examined by an American lawyer

▶ **American Lawyer:** *Were you at the company when Mr. Mattos came to talk to the CEO?*

▶ **Interpreter :** *O senhor estava na empresa quando o Sr. Marcos Mattos comparecia para falar com o Presidente?*

▶ **Testemunha:** *No dia 23 de março, eu fui trabalhar de ônibus, pois era dia do meu rodízio. Eu trabalho na contabilidade com o Pedro Borges, fazendo relatórios, planilhas. A gente sempre fica até mais tarde.*

▶ **Interpreter :** *On March 23, I went to work by bus, because it was my plate restriction day. I work in the accounting departement with Mr. Borges, we prepare reports, spreadsheets. And we always work late.*

▶ **American Lawyer :** *What is plate restriction day?*

▶ **Interpreter :** *O que é rodízio?*

▶ **Testemunha:** *Rodízio?! É o dia que o carro da gente não pode circular aqui em São Paulo.*

▶ **Intérprete:** *It is the day in the week you can't use your car in the city.*

▶ **American Lawyer :** *Why did you mention this? Were you at the company when Mr. Mattos came to talk to the CEO?*

▶ **Interpreter:** *Por que o senhor se referiu ao rodízio? O senhor estava na empresa quando o Sr. Marcos Mattos costumava comparecer para falar com o Presidente?*

▶ **Testemunha:** *No dia do meu rodízio eu vou trabalhar de ônibus e pego carona na volta! E, como eu disse, no dia 23 de março, fui trabalhar de ônibus. A gente costuma ficar até mais tarde por causa do trânsito, do rodízio.*

Case 2 – Arbitration

- ▶ **Mexican Arbitrator to Brazilian Counsel:** *Does Counsel have any further questions?*
- ▶ **Brazilian Counsel :** *No, Mister.*
- ▶ **Mexican Arbitrator to Brazilian witness:** *The chair would like to thank you for coming.*
- ▶ **Interpreter:** *O juízo agradece a sua colaboração.*
- ▶ **Brazilian witness to Mexican arbitrator:** *Sim, senhor. Posso ir?*
- ▶ **Interpreter :** *Yes, sir. May I leave?*
- ▶ **Mexican Arbitrator to Brazilian witness :** *Yes, sir.*

Case 3 – American businessman buying shoes from a Brazilian supplier

- ▶ **American businessman:** *How much are these shoes?*
- ▶ **Interpreter:** Qual o preço desse modelo?
- ▶ **Brazilian supplier:** *Esse modelo vem de Franca. É feito à mão. É fabricado pelo melhor fornecedor que nós temos. Todo em couro. Sente o cheiro. A sola também. Bate aqui. Temos mais de 5 cores. E temos condições de exportar para o mundo todo.*
- ▶ **Interpreter :** *This pair is hand-made in Franca....*
- ▶ **American businessman to the Interpreter:** *Are you sure you translated my question?*

Case 4 – Legal Conference

- ▶ **Lawyer introducing the next speaker:** *Estamos aqui com um querido colega e amigo pessoal. E é com muito prazer, satisfação e carinho que recebo aqui o ilustre representante do Ministério Público, o Sr. Dr. Sérgio Coutinho, que irá compartilhar conosco do seu brilhantismo em uma exposição sobre um tema que nos interessa a todos aqui. Um tema de suma importância e relevância que é a Ação Civil Pública.*
- ▶ **Intérprete:** *It is with great pleasure that I introduce our speaker today. Mr. Sérgio Queiroz is from the Public Ministry of São Paulo and will be talking to us about a special lawsuit in Brazil called the Public Class Action.*

Case 5 – Conversation between Prosecutors

- ▶ **Brazilian Prosecutor:** *We are very happy with the decision. In this case, the defendant was considered guilty and sentence was 20 years in prison.*
- ▶ **American Prosecutor :** *Congratulations. So he now stays in prison for the entire period?*
- ▶ **Brazilian Prosecutor :** *Oh, no. His lawyer appealed.*
- ▶ **American Prosecutor :** *But there is no stay of decision, right?*
- ▶ **Brazilian Prosecutor :** *Stay? No. We now wait for the appeal to be decided. He doesn't stay in prison yet.*
- ▶ **American Prosecutor :** *He doesn't? How long is the stay?*

- ▶ **Brazilian Prosecutor to the interpreter:** *20 years. Stay? What is*

Final remarks

- ▶ **Culture Clashes result from:**
 - ▶ Unshared knowledge
 - ▶ Unawareness of unshared knowledge
 - ▶ Differences in cultural content
 - ▶ Lack of cross-cultural competency
- ▶ **Legal Translation and Legal Interpreting:**
 - ▶ Cross-cultural knowledge
 - ▶ Legal language knowledge
- ▶ **Legal Translation and Legal Interpreting:**
 - ▶ Promote understanding
 - ▶ Change and transform the law through changes in language
 - ▶ Bring together legal cultures (e.g. common law e civil law)
- ▶ **Legal Language as an open system:**
 - ▶ New terms because of legal translation and legal interpreting
 - ▶ New possibilities, interpretations, through translation.

This pack is available @

1

- www.tradjuris.com.br

2

- Artigos & Publicações

3

- Culture Clashes in Legal Translation and Legal Interpreting

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Thank you for your attention.

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