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Interpreting law:
text understanding – text application – working with texts

1. Juridical, philosophical and philological (linguistic) hermeneutics

In the theory of continental law, interpretation is a core concept and the subject of a sustained and lively professional discourse. In German, "Auslegung" is the most frequently used notion, which comprises both the aspects of 'explication' and of 'interpretation' of the law-text. In the German discussion of the last 30 years the hermeneutic concept of "application" (following the German master-philosopher H. G. Gadamer) has been transferred to the juridical discourse about the methods of legal interpretation. The "text of the law" has to be "applied" to the "case", which has to be decided by the judges. "Interpretation of law" appears, following this outline, in the form of the "application of the law text to a particular case".

In this paper I first want to discuss the concept of "application" with respect to its usefulness within the framework of a linguistic theory of legal text-interpretation. Then I will focus on the specific characteristics of juridical interpretation and mark its place within the conceptual trias "meaning of a text", "text understanding, "working with texts". The point of view taken is a specific linguistic one, based on thorough research about the theory and practice of legal interpretation in German law during the last two decades.[1]

Gadamers concept of "application" was willingly adopted by German philosophers of law (resp. law-interpretation). And it is ironic that Gadamer only used a term coined by himself in the theory of law-interpretation, while leaving it completely unexplained in his own works. For the theorists of law this re-importation worked as a reinforcement of own ideas, spoken from the mouth of the most famous contemporary German philosopher. This reinforcement and confirmation was willingly adopted, because it did fit well in the tendencies to strengthen the so called "teleological method of law interpretation" instead of the laborious "grammatical method" or the search for the historically attested "intention of the legislator".

More important for the theoretical discussions of those days than Gadamer's adoption of the former juridical concept of "application",

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[1] For more details cf. Busse 1991, 1992, 1993, 2002.

however, seems to be his use of the concept of "Vorverständnis" (preconception). This concept fits best into the everyday work of legal practitioners, where the canonical juridical knowledge - collected, formed and transported by the commentaries of the great law-books - plays the predominant role in law-interpretation and case-decision. The juridical form of the *ars interpretandi* thus becomes exemplary for text-interpretation as such. The dependency of interpretation in relation to previous knowledge seems to be clear in law-interpretation, but remains overlooked in respect to everyday interpretation and text-understanding. So the problem of possessing the *adequate knowledge*, which is a necessary precondition for the *adequate understanding* of a word or text, remains an unsolved task for every semantic theory. We can learn a lot about how this knowledge works in the understanding of words or texts by analysing and describing the process of juridical law interpretation. The adequate description of what I call the meaning-relevant knowledge is the most important precondition for an adequate linguistic theory of meaning. The present paper is part of the efforts of some linguists (as, for example, Charles Fillmore[2]) to develop an adequate semantic theory which does not (as most mainstream semantic theories) neglect the complete range of the meaning-relevant knowledge. It may be seen as part of what some colleagues call "linguistic hermeneutics".

2. Text-meaning and text-application

The term "application" insinuates a dualism, a relation of externality, which cannot be accepted at face value. On one side stands the text, being what it is (and what its functions and achievements are), isolated and autonomically. On the other side, there is a situation of everyday life, a case to be decided by the legal practitioners, to which the text (or part of the text) "can be applied". Starting from the assumption, that "situations" (as "texts") are no quasi-natural entities, whose existence is independent of the act of human recognition, the core question has to be asked in a different way: Which relation has to be assumed between the "situation of everyday life" on the one hand and the "text-meaning" on the other.

Let us have a look at an example:[3] The German word "*wegnehmen*" (take away) in the criminal law paragraph on theft (§ 242 StGB) implies a syntactic-semantic frame which contains at least the agent (the person, who does the deed of taking away), an affected object (the thing, that is taken away) and another person as opponent (sometimes called the "counter-agent" – contra-agens), that is, that person from whom the thing is taken away). I can picture a controversial discussion about the question of whether or not those frames of relevant knowledge should be considered parts of the "literal" (or "linguistic") meaning of the word. A precise look at the conditions of applicability for the expression "*to take*

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[2] Cf. Fillmore 1977a, 1977b, 1982.
[3] For more details cf. Busse1992, 119 ff.

away" (or "*wegnehmen*") shows that they comprise far more than most linguists would be inclined to count as part of the "lexical meaning" of a lexeme. For example, the expression "*to take away*" implies that the person from whom a thing is taken is not identical with the person removing the object(i.e. the non-identicality of agent and counter-agent). Thus one could dispute whether (following a "classical" case of German jurisdiction about theft) the sole owner of a so-called "one-man-limited company" has taken away money from another (legal person) when he has taken money out of the cash box of his own company. It is clear, in this case, that the semantics of "*to take away*" are closely related to the semantics of the expression "*from another*". But it is easy to show that this relation is incorporated in the meaning of the expression "*to take away*" by itself. (A test case such as: "**John has taken the book away from himself*" shows that "*take away*" always implies that counter-agent and agent are two different persons).

More important with respect to the problem of application is the fact, that the meaning of "*take away*" implies, that the taken object has to be in a certain kind of relation to the person, from whom it is taken away. Suppose that at the Frankfurt Book Fair most publishing houses provide free book catalogues for the visitors. I might say: "*Most publishing houses have free catalogues on display*". However, the phrase *"Mr. Miller has taken away a book catalogue from Random House"* would appear to most speakers somehow inadequate if not clearly semantically incorrect. (I am not sure if it is so in English, but it is clearly the case with the German version.) If instead Mr. Miller had taken the last remaining piece of a very expensive gothic bible reprint, the quoted phrase would be very adequate. It is obviously an important part of our knowledge of the meaning of "*to take away*" to know whether the thing taken away is claimed as property by the person (or company, or institution) from which it is taken away, or if this person (company, institution) agrees with the act of taking away by the person who performs the act. This knowledge is a juridical, social and cultural knowledge and thus – understood as relevant for the adequate understanding of a word or phrase – extends the usual concept of linguistic (lexical) word-meaning beyond the limits normally accepted by mainstream linguists.

An adequate understanding of a word, a phrase, or a text is to a high degree dependant upon the knowledge which has to be used to make the mere sound (or letters) of the language-signs meaningful. This knowledge cannot be arbitrarily delimited to a sector that can be analysed by the restricted methods of contemporary mainstream linguistic semantics. Rather, semantic theories should be adapted to the adequate recognition of all the epistemic factors that are relevant for the full understanding of a word, or phrase, or text. In other words: in my view it is not possible to fence off "linguistic knowledge" from "encyclopaedic knowledge" and divide meaning-relevant knowledge strictly into two parts, each of which are located on one side of the fence. (A similar view of semantics has been developed by Charles Fillmore under titles such as "interpretive" or "understanding semantics".)

What conclusions can be drawn from these observations? Obviously the knowledge that is necessary or in a strict sense indispensable for making any word, phrase or text meaningful ranges over far more areas of our episteme than is granted by traditional theories of lexical meaning. For this knowledge the term "frame" has been established in semantic theory since the linguist Fillmore and the cognitive scientist Minsky invented it thirty years ago.[4] (I prefer to speak more precisely of "knowledge-frames" or "frames of meaning-relevant knowledge".) This concept is used to describe the fact, that in text-understanding each word or phrase evokes a whole scene, or a bundle of scenes, the cognitive actualisation of which is absolutely necessary to make any (full) sense of the words or phrase heard or read. According to this, lexical semantics provides us only with a glimpse and makes explicit only a (relatively small) part of the meaning-relevant knowledge, leaving the rest unexplained as the natural or self-evident everyday-knowledge, that normally will never be uncovered. In our example, the expression "to take away" in the context of the legal definition of theft, will be meaning-relevant only with a precise knowledge of both the everyday and legal aspects of property, persons, sameness and "otherness", and other related frames or concepts.

Let us return to our starting point, the concept of application. Every word or phrase has to be applied to a situation of everyday life or a part of it. In the classical theory of meaning the aspect of application is included in the concept of "extension" (in the sense of logical semantics as invented by Carnap) or "reference". Since every word has to be defined semantically in these two respects: "intension" and "extension" (or "sense" and "reference"), the aspect of "application" is a core part of every semantic definition. "Application" is just another word for what linguists call "reference" or "extension". According to this each meaning of a word is a related pair of a sign (sound- or grapheme-combination) and certain frame-combinations of knowledge about object-classes. Cognitive representations of object-classes in definite sign-object-class-relations are nothing other than anticipated acts of application. That is, they always already contain the criteria of application for the words used.

The hermeneutic concept of "application" insinuates an external relation (a relation of externality) between a text (a word, a phrase) and an everyday-life-situation to which it is "applied". Since situations of everyday life and their components (persons, objects, events, actions, qualities, states etc.) are generally a genuine part of the conditions and criteria for the "semantization" of language-signs (that is: of the cognitive filling of an empty form with epistemic content), the idea of an external relation between signs (or texts) and applications is completely erroneous. The concepts of "meaning" and "application" are internally related, they cannot be divided into two conceptually independent parts. To summarize: "lexical meaning" (or "text meaning") can be defined as "conventionalised applicability".

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[4] Cf. Fillmore 1977a, Minsky 1974.

I will now focus on another important aspect of legal text-interpretation. The situations of everyday-life which are the material and the object of legal decisions made by judges (or, in preparation of the trial, are anticipated by attorneys and lawyers) are not only part of a pre-defined and stable reality but are defined and constituted (or construed) along the lines of the professional juridical knowledge. Even the smallest aspects of the "case" to be decided are predetermined and predefined as entities of the juridical system of knowledge. This implies that in juridical contexts there is no goal or object of acts of application that is independent of legal definitions and predeterminations. Each connection established in an act of application of a legal word, phrase or text is a multi-threaded relation that not only binds a legal term to a specific part of reality, but confers the given decision-task to multiple legal and juridical determined categorisations.

Therefore text-related acts of application are multiple and very complex webs of relations, in which are interrelated texts (signs), parts of the knowledge about the reality (or realities) we live in, epistemic-categorial constructions, other texts (other signs), other categorical constructions etc. In my opinion there is only one single theoretical approach which is suitable for the adequate explanation and description of the structure of such webs of relations: the concept of frames developed in frame semantics and cognitive science during the last three decades. For a linguist working in the field of semantics it is very astonishing that the frame theory is still rejected by many if not most theories and scientists in linguistic semantics. My own research on legal semantics has taught me that there is no method for an adequate description of the meaning-relevant knowledge at work in legal texts other than the frame-semantic approach. Traditional lexical semantics (the so-called checklist-semantics) are completely unsuitable for the aims of understanding- or text-semantics, as has been shown with lots of examples by Charles Fillmore.

It may not be accidental that the most frequently used example in Fillmores work is a juridical relevant frame; he calls it the "commercial event"-frame centred around verbs like *buy*, *sell*, *pay, deliver*. The common epistemic background for the semantics of these verbs is a complex frame with open slots for different participators and actions which is focused from different specific viewpoints by the words or phrases used. No single verb or word can grasp or express the whole frame; yet all language users know this whole frame which is an essential part of their enyclopedic or everyday-life knowledge and which is automatically used in understanding any of the related words or phrases. A word like *buy* sets an epistemic focus on certain elements of the scene and fades out others, which remain nevertheless in the range of the actualised meaning-relevant knowledge. The elements in the phrase or text which are linguistically not focused on the frame as a whole are nevertheless present in the working memory of the recipients. Or, to quote Fillmore: words evoke frames or scenes.

There is no other area of linguistic communication where the working and the relevance of frame-based knowledge can be better shown than in

legal interpretation. In law and the philosophy or theory of law there exists a very old concept which is – viewed by modern theoretical approaches – nothing but a first form or prototype of knowledge-frames: the Roman concept of "institutions" (lat. "*institutiones*"), proliferated during centuries by Roman law and the foundation of all modern systems of law. Working with texts in law is the best example for the dependency of interpretation on complex and systematically structured frames of meaning-relevant knowledge. Juridical working with texts and words goes beyond the scope of every traditional linguistic or philosophical approach to semantics. Only by means of a model of frames, which exceeds the usual concept of lexical meaning, the specific characteristics of text-interpretation in law can be linguistically grasped and be described and analysed with linguistic methods.

3. Text-understanding or working with texts?

There are many reasons why the interpretation of law cannot directly be compared to the understanding or interpretation of texts in non-legal contexts. The factors which are crucial for the understanding or interpretation of a word or text not only entail quantities of meaning-relevant knowledge but goals and interests of the interpreting persons themselves. That is, text understanding is not only guided epistemically, i.e. by the available encyclopaedic knowledge of the recipients, but also volitionally, i.e. by their intentions and interests. This control by interests is obviously of great importance in those fields of text usage where the understanding or interpretation of texts is embedded in the processes of practical behaviour (aims, institutional tasks, predetermined action-sequences a.o.). Guidance by interests influences the understanding of texts mainly in that way, that it regulates and determines which frames are activated, and in which order and internal relationships (or structure) they are activated. The main difference between such an understanding in everyday life and in legal situations lies in the more active, deliberate and conscious character of the epistemic choices made by those working with legal texts. In the context of law these choices are strongly influenced by interests and goals and are integrated in a strategically oriented game of argumentation. The strategic function of each word or phrase in contexts of language use, where parts of language are important instruments or factors in acts of decision-making, results in the fact that the word- or text-meaning in those cases is extremely charged with an accumulation of knowledge frames and epistemic relations. This fact may be the reason for the concept of application, borrowed by the philosophical hermeneutics from the legal practice of text interpretation.

The juridical work of interpretation therefore cannot be measured by a normal concept of language- or text-understanding. It is really working with texts into which the elements of knowledge necessary for the achievement of the goals to be reached are integrated like in normal acts of

understanding, but in which some of the meaning-relevant knowledge frames are in an extreme form radicalised and expanded.

The concept of "application" of a text implies a primacy of the text over its interpretation and application: First there is the text and then its interpretation and application. This temporal and logical priority of the text does not take place in legal interpretation and working with texts. The picture is different: "the case searches the text suitable for it". That is: beginning with the case and a certain task of decision the juridical worker first of all has to find out, with which text (or text-group) the solution of the case aimed at can be carried out best. So the "application" has the priority over the "applied object" (the text). This is sometimes the case in another respect too. Since the knowledge of European law is often older than each still valid law text, it happens that the content of an interpretation (the epistemic features or elements that are activated) is older than the wording of the text itself. In other words: The text is only one form of notification of a content that is much older than this concrete realization.

A few remarks should be added. In legal interpretation it is typically the case that for the solution of a legal case not only a single, isolated text is used, but a whole conglomeration of texts or text-parts of different origin (from the same law, from another law, from high-court decisions, from legislative materials, from the commentaries etc.). This conglomeration is assembled to a new "decision-relevant" or "decision-preparing text". It is in itself a result of decisions previously made by the juridical workers and thus a result of the application of strategic options which are secondary to the knowledge of the case to be decided or solved. This implies that the text to be interpreted and applied is instrumental in relation to the problem or case to be solved. This form of instrumentality does not fit well the concept of "application". The text may be an instrument for whoever wants to solve a juridical problem or case (i.e. in relation to the goal of the legal working), but it is not an instrument in relation to the act of application. That is: between text and application there is no relation of instrumentality. The text is not at all an instrument in an act of application, but it is an instrument in the act of problem-solving or decision-making. For this reason, the concept of application is of little use in our context of discussion.

The conditions for an adequate understanding or interpretation of a text are mainly part of our knowledge of the world (the so called "encyclopaedic knowledge"). This knowledge includes the so called "linguistic knowledge", but it is not quite clear if or where a boundary can be drawn between the two types of knowledge. The format for the storing and actualising of the knowledge, that is needed for an adequate understanding is the format of "frames" (or schemata or scripts). The epistemical format of frames is that of predication frames. Most of our knowledge can be reduced to predication structures. Parts of the relevant knowledge frames are verbally expressed by usage of words of an existing language. The single words (or some aspects of the grammatical structure, as for example word order) have the function of evoking one or some related frames of knowledge. But the active part may not always

apply solely to the language signs. More often the language signs are expressed (and understood) in a pre-activated epistemic sphere (the hermeneutical term is horizon), i.e. a system of pre-activated frames in relation to which the words used function as a kind of pointer. The pointers select and focus parts of the meaning relevant knowledge, but this knowledge is not introduced by the words, but only emphasized. So the preactivated knowledge dominates the words and sentences used. In some kinds of text usage the role of the system of pre-activated knowledge frames can be predominant. Working with texts in legal contexts is the best example for this.

Conversational analysts speak of the "degree of preparedness" for the participants of a communicative event. This idea can be applied to the interpretation of law texts in the context of juridical working. Presumable there is no other area of text usage, where the degree of preparedness for the interpreters is higher than in legal interpretation. A normal model of text understanding with respect to normal situations of text usage (as in everyday life) may be characterised by Fillmore's remark "words evoke frames". The process of text usage or working with texts in the juridical sphere had better be described just the other way round: "knowledge frames search for the suitable texts". In juridical working with texts a functionality takes place, which is completely different from the dealing with texts in everyday life situations of text understanding. Some features of juridical text-related working I will show in the last part of my reflections.

4. The case of legal interpretation

Working with texts for juridical purposes takes place or unfolds in the framework of institutionalised professional knowledge, in the continental law called "legal dogmatics". This knowledge, as a result of precedents, high court decisions and law science, determines the conditions for meanings and applicability of law texts in a way that is not transparent to non-professionals. In the working of legal dogmatics the so-called "leading opinion" itself becomes a kind of legal institution in continental, text-based law. It functions as a leading factor in legal argumentation and for text-interpretation and meaning-definition. The interpretation of law texts then takes place in a multi-stage procedure, where the interpretive work with the law text is only the first step. In a second step, the object of interpretation is not the law text, but interpretations and definitions pertaining to it. There may be 3, 4, 5, 6, even 7 levels of interpretation as can be shown with an interpretation of the paragraph on "theft" in German criminal law.

(I will try to translate literally, because every more idiomatic formulation in English will not represent the exact formulation and words and their problems. The most idiomatic wording in English includes the term "*property*", but the central point here is that the German equivalent does not include this word, which is nevertheless crucial for the interpretation and content of the paragraph.)

§ 242 German Criminal Law Codex (StGB)

"(1) That one, who takes away from another someone else's movable thing with the intention to appropriate it illegally will be punished by prison sentence up to five years or by fine."[5]
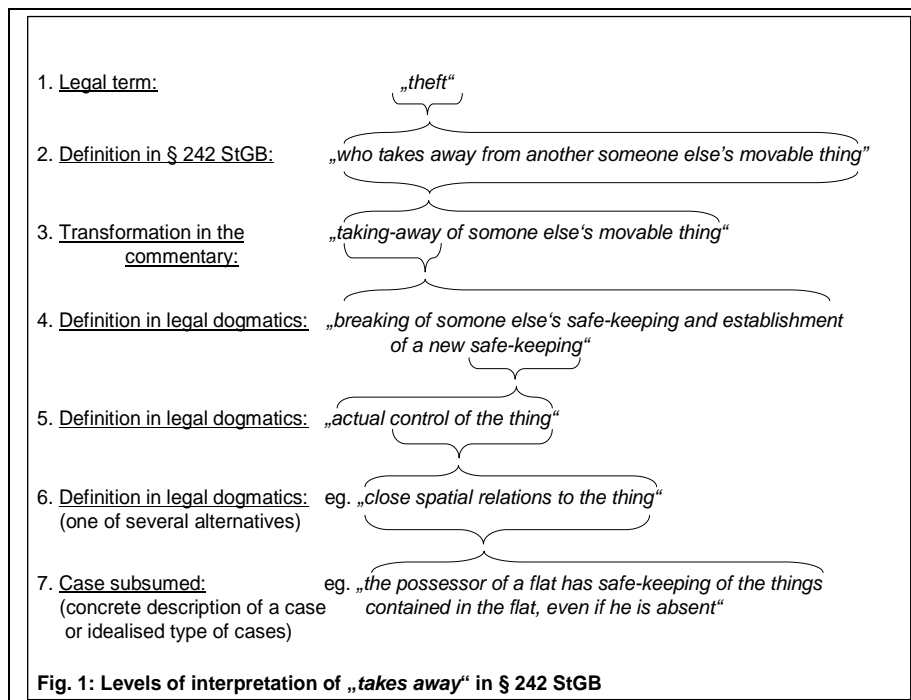
The meaning of this comparatively short and clearly formulated paragraph is in one of the big commentaries unfolded on 42 pages in more than 80 chapters. The text of the commentary contains more than 1.000 references to other law texts, to court decisions, to other commentaries and to scientific books. Seen from a linguistic point of view many of these references are an integral semantic part of the commentary's explication of the meaning of the law-term. The meaning of a law paragraph or term therefore unfolds in a huge, complex web of intertextual relations (or better spoken: "epistemic relations"). Among these references the high-court decisions play a dominant role, because the semantic determinations and definitions they contain have the function of institutionally pre-eminent precedents.

The commentary of the quoted paragraph on theft includes references to 350 higher court decisions as a basis for its interpretation. The law text, the text of the commentary, the texts of the high court decisions, other relevant law texts, other relevant commentaries and scientific literature form a complex web of texts, which as a whole represents the interpretation and therefore the "meaning" of the quoted paragraph. Only this complex web of texts is suited to explain what the "meaning" of the paragraph is. It is obvious, that this form of institutionalised practice of explanation goes beyond the limits of a normal, every-day concept of "interpretation" and "text-meaning". Not only a word- or sentence-meaning in the usual sense will be unfolded here but a complex institutional practice of juridical working with this paragraph, which has a history of more than one century. In the end the explication of such a paragraph in a good commentary contains the complete juridical knowledge about the conditions of applicability and about the semantic ramifications of this paragraph. Because this phenomenon goes far beyond the limits of the usual concept of "word-meaning" or "sentence-meaning" I propose to use the concept of "frame" (or "knowledge-frame), or, more precisely, "frame-web", which has been well established in cognitive semantics, text linguistics, and theory of language processing for the last three decades. The institutional character of the meaning and interpretation of a law-text finds expression in the dependency of a text and it's interpretation or application to such a complex structure of epistemic frames, i.e, in a deeply structured framework of interrelated, institutional professional and semantic knowledge.

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[5] The informal "official" translation of the German Federal Ministry of Justice without any statutory force is: "Section 242 Theft (1) Whoever takes moveable property not his own away from another with the intent of unlawfully appropriating the property for himself or a third person, shall be punished with imprisonment for not more than five years or a fine. (2) An attempt shall be punishable."

The complexity of the meaning-relevant professional knowledge that has to be used for the adequate interpretation of the quoted paragraph on theft can be shown by reference to the multi-level character of the definition of the central words of this criminal-law paragraph. With regard to the central phrase "*to take away*" one can find up to six hierarchically graded levels of interpretation (see fig. 1). The seven-levels-process of interpretation of the expression *"to take away"* demonstrates the complexity of the meaning relevant knowledge that is a precondition for the adequate interpretation of this criminal law paragraph. It is important, that from one level to another there are intermediary acts of institutionally preformed interpretation and decision. The performance of those acts requires a comprehensive professional knowledge; it escapes all higher degrees of semantic or conceptual systematization, because the transitions from one level to another foremost have their roots not in linguistic regards but are founded in institutionally predetermined considerations of expediency (concerning the normative content or normative result strived for).

1. <u>Legal term:</u>   „*theft*"

2. <u>Definition in § 242 StGB:</u>   „*who takes away from another someone else's movable thing*"

3. <u>Transformation in the commentary:</u>   „*taking-away of somone else's movable thing*"

4. <u>Definition in legal dogmatics:</u>   „*breaking of somone else's safe-keeping and establishment of a new safe-keeping*"

5. <u>Definition in legal dogmatics:</u>   „*actual control of the thing*"

6. <u>Definition in legal dogmatics:</u> (one of several alternatives)   eg. „*close spatial relations to the thing*"

7. <u>Case subsumed:</u> (concrete description of a case or idealised type of cases)   eg. „*the possessor of a flat has safe-keeping of the things contained in the flat, even if he is absent*"

Fig. 1: Levels of interpretation of „*takes away*" in § 242 StGB

The attempt to depict the entire "meaning" of the quoted German criminal law paragraph on "theft" by the methods of frame-semantics vividly demonstrates the high degree of complexity of the knowledge necessary for an adequate interpretation (see the fig. in the appendix).[6]

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[6] The detailed analysis in the appendix follows the methodological outlines of frame-analysis as based on the analysis of predication structures. A similar approach has been formulated by Barsalou 1992. In linguistics the theoretical basis for such a type of analysis has been invented by the grammarian Lucien Tesnière 1959 and, later, by Charles Fillmore`s approach of "case frames".

The description of the knowledge necessary for the adequate interpretation of a given law text does not show the full picture of the actual processes working in the text-based juridical decision-making. A description from the opposite point of view must be added: not only "beginning with the law text and leading to the case" but also "beginning with the case and leading to the law text (or better: law texts)", the latter perspective being more important for juridical everyday-work. Having a look at this "direction of text-based working" and the linguistic conclusions to be drawn from its description it becomes obvious, that not only the explication of a given law text is highly complex in the way shown above, but that even for the solution of a simple juridical case a great number of texts and sub-texts has to be linked, which all together form a new "decision text", i.e. a conglomeration of interrelated subtexts being the basis for the juridical decision. The linguistic examination of a simple case (liability for faults or defects in the case of selling a used car) shows that for the solution of such an everyday-case (i.e., for the making of a court decision in accordance with the codified legal norm) more than 30 Paragraphs from different laws have to be taken into account. In the theory of juridical methods and law-interpretation as in hermeneutics the theoretical fiction of the "application of *one* normative text to *one* case" or of the "subsumption of one case under one normative text" is still supported. This idea is not adequate to the real practice of working with normative texts and concepts in contemporary German law. More adequately the interpretation of a law text is described as a complex algorithmic procedure, structured in stages or steps of decision, in which partially semantic or text-relating decisions have to be made again and again at numerous nodal points. The juridical work of law-interpretation can be likened more to a network of text pieces, aspects, guidelines and rules of explication, case elements, considerations of expediency, considerations of legal politics etc. than an interpretation or definition of meaning in the usual linguistic or hermeneutic sense.

A linguistic analysis of the practical juridical work mentioned reveals that linguistic core decisions do not always concern the law text itself. For example the expression "*operational*" (*betriebsbereit*), having a central function for the solution of the case of the defect used car mentioned, can not be found in any law text relevant for this case. Rather it has been formulated by judges in the course of the process of problem-solving as a kind of intermittent text between the law and the actual case. By interpreting and defining the meaning of this intermediary text, it is possible to determine a solution to this case. As an instrumental or intermittent text this expression itself is the result of translating acts by judges. That is, not the normative text (the text of the law invented by the legislator) is applied to the case, but this intermittent text invented by judges.

It is furthermore noticeable, that decisions about interpretations (in the rare cases, where actually explicit considerations about the meaning of a single law-term are made) are in most cases not explicitly based on semantic criteria in the real sense but governed more or only by juridical

considerations concerning the legal goals aimed at (i.e. teleological goals or aims). That is, some decisions which function linguistically spoken as decisions of law explication cannot actually be seen as real acts of meaning explication or interpretation in narrower sense. The judges usually do not aim at an adequate interpretation and definition of the meaning of a word of the German language that occurs in the relevant law text (even if that may be the adequate linguistic description of this process), but they reflect on the juridical or legal effectiveness of this normative text, i.e. on the desired legal and social consequences (in our case concerning the sellers liability for compensation) which in turn is the result of more general wishes concerning normative aims and purposes. The result-oriented determinative definition of a legal term first of all is a determination of the legal function of the normative text (the law) concerned, i.e. of its institutional meaning or function, which has little or nothing to do with the meaning of the term "*meaning*" as usual in standard language or in mainstream linguistics, and that means, with the term *interpretation* in the normal sense too.

Juridical decision-making is fundamentally mediated by texts, linguistic acts and intertextual relations. These intertextual relations (or in a broader sense: relations between linguistic elements, linguistic acts included) are not actually contained in the relevant texts themselves. They are not solely comprehended and executed by the judges. Rather they are produced and constituted by (or in the course of) the process of juridical decision-making, which has to be taken as text-working in a broader sense. These relations always refer to the individual case and disperse beyond its limits into the realm of pure possibilities. Typical case constellations i.e. typical constellations of inter-textual networks can form solid frames of knowledge inside the practical juridical know-how. These knowledge frames can be seen from another point of view as networks of texts (or text-webs) since the entire work or juridical decision making takes place based on language, i.e. linguistic elements and texts. In this respect the analysis of text-based juridical decision-making is not a matter of pure epistemological analysis, but is rather an analysis of textual relations and textual functions, working with language and working with texts, and by this an important task for linguistics and the object of linguistic analysis.

One can then draw an analogy to the German term "Obersatz" ("major premise" in the Aristotelian logic) most frequent in the juridical methodology, which refers to the syllogism of decision finding, and call the entire constellation of decision relevant texts the "decision-text". Precisely in the construction of this decision-text do we find the core of the text-based juridical decision-making and consequently the problem of explication or interpretation as such. The specific character of juridical text work lies in the fact that intermittent decisions concerning seemingly harmless details of the entire complex (e.g. semantic decisions about the area of reference – extension – of a single law term) possibly result in serious changes of the whole decision-relevant text-web (i.e., the normative texts the decision is based on) and in this way may cause changes at seemingly very distant points of the algorithm of the steps of

the juridical checking procedure. It is further important to notice that a case which has to be decided can lie in the target area of different law texts or norm-agglomerations. This means it is erroneous to think that a law text itself carries the reference to reality (i.e., the reference and with it the core of its semantics), that itself delimits the extension of its concepts without any other influence. The "applicability" of a law-text therefore is not an inherent quality of this text itself but a result of its position within the framework of institutional functionalisms.

The juridical knowledge about law texts and their applicability to concrete cases therefore has little to do with "interpretation" or "explication" in the normal sense. It is rather knowledge about admitted *operations with text elements*, not about their "meaning" in the usual sense of this word. Nevertheless this knowledge has from a linguistic point of view counted as part of the reference of a comprehensive concept of "text meaning" for normative texts, even if this notion stretches the linguistic concept of "meaning" to its limits. According to assumption it is of little use to see the problem of law explication as a purely philological problem of "interpretation". In fact interpretive acts take place on all levels of the construction and application of the decision-text or rather its epistemic "filling". But the interpretation of a law as part of the preparation of a legal decision is not so much an act of singular interpretation or meaning-determination concerning particular text-elements or concepts, but evokes a complex framework between epistemic elements and linguistic acts, partly text-based, partly drawn or inferred from the general professional knowledge, of which the interpretive (e.g. reference-related or predicative) decisions comprise only a small part. A complete linguistic analysis of the juridical work of law-explication firstly would have to comprehend and describe this variety of decision-relevant linguistic acts and to connect it to the conceptions and possibilities of a general linguistic theory of semantics, text theory, and hermeneutics.

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<u>Appendix:</u>   **Frame-structure description for the meaning-relevant knowledge necessary for the adequate interpretation of the use of „*Diebstahl*" (*theft*) in the German language of law (in the format of a predication structure)**

<u>Central defining law-text:</u>

§ 242. Theft. [StGB = Strafgesetzbuch = German Criminal Law Codex]
"(1) That one, who takes away from another someone else's movable thing with the intention to appropriate it illegally will be punished by prison sentence up to five years or by fine."

<u>Central frames</u>

(1) <u>THEFT-frame:</u> TAKE AWAY$^{ACTION-1}$ {*who takes away*$^{AG\,[1]}$*, person/institution from which is taken away*$^{PAT\,[2]}$*, what was taken away*$^{AOB\,[3]}$ }

           AND^1 (predication-frame-linking)

(2) <u>INTENTION^1-frame:</u>   INTEND^{MOTIV} { [1], *appropriate*$^{action-2}$ { [1], [3] } }

           AND^2 (predication-frame-linking)

(3) <u>KNOWING^1-frame:</u>   KNOWING { IS RELATION-1^{QUAL} { *action-2*, *illegal^1* } }

           AND^3 (predication-frame-linking)

(4) <u>INTENTION^2-frame:</u>   INTEND^{MOTIV} { IS-RELATION-1^{QUAL} { *action-2*, *illegal^1* } }

<u>Real world scenes:</u> {Who takes away$^{[1]}$ takes away thing$^{[3]}$}

<u>Embedded frames</u>

(5) <u>[OBJECT] TAKEN AWAY-frame:</u>   IS-RELATION-2^{QUAL} {*[3], Thing$^{[4]}$, in legal respect^1* }

(6) <u>THING-frame:</u>   IS-RELATION-3^{QUAL} { *[3], someone else's$^{[5]}$, movable$^{[6]}$* }

(7) <u>SOMEONE ELSE'S-frame:</u>   IS-RELATION-4^{QUAL} { *[3], [5], for [1], to [2], in legal respect^2* }

(8) <u>MOVABLE-frame:</u>   IS-RELATION-5^{QUAL} { *[3], [6], in legal respect^3* }

(9) <u>APPROPRIATION-frame:</u>   APPROPRIATE$^{ACTION-2}$ { *who carries out the appropriation*$^{AG(=\,[1])}$, *recipient of the appropriation*^{BEN}, *appropriated object*$^{AOB(=\,[3])}$, *illegality of the appropriation*^{QUAL}, *relation between agent and recipient of the appropriation*^{REL}, *legal respect^4 of the relation between agent and recipient*^{QUAL} }

(10) <u>ILLEGALITY^1 OF THE APPROPRIATION-frame:</u>
     IS-RELATION-6^{QUAL} { *objectively illegal*, APPROPRIATE$^{ACTION-2}$ }
     (this frame can in legal respect be distinguished into:
         (10a) ILLEGALITY CONCERNING THE AGENT OF THE APPROPRIATION;
         (10b) ILLEGALITY CONCERNING THE RECIPIENT OF THE APPROPRIATION;
         (10c) ILLEGALITY CONCERNING THE OBJECT OF THE APPROPRIATION)

(11) <u>RELATION BETWEEN AGENT AND RECIPIENT OF THE APPROPRIATION^{REL}-frame:</u>
     IS-RELATION-7$^{IDENT.}$ { *agent of the appropriation*$^{AG(=\,[1])}$, *recipient of the appropriation*^{BEN}, *in legal respect*$^{QUAL\,4}$ }

(12) <u>LEGAL RESPECT^4 OF THE RELATION BETWEEN AGENT AND RECIPIENT OF THE APPROPRIATION^{QUAL}-frame:</u>
     IS ALWAYS GIVEN BY LEGAL DEFINITION^{QUAL} { IS-RELATION-7$^{IDENT.}$ { *agent of the appropriation*$^{AG(=\,[1])}$, *recipient of the appropriation*^{BEN} } }

(13) <u>LEGAL RESPECT^3 OF THE MOVABILITY OF THE THING^{QUAL}-frame:</u>
     FOLLOWS LEGAL DEFINITION^{QUAL} { IS-RELATION-4^{QUAL} { *[3], [6]* } }
     (This is a kind of frame typical for legal contexts; i.e. containing an open slot [legal definition] into which casuistic high-court assignment decisions have to be inserted, as e.g. „*GAS IS A MOVABLE THING*")

(14) <u>LEGAL RESPECT^1 OF THE QUALITY TO BE A THING OF THE OBJECT TAKEN AWAY^{QUAL}-frame:</u>
     FOLLOWS LEGAL DEFINITION^{QUAL} { IS-RELATION-2^{QUAL} { *[3], [4]* } }
     (This too is a law-typical frame with open slot [legal definition] into which casuistic high-court assignment decisions have to be inserted, as e.g. „*GAS IS A THING*", „*ELECTRICITY IS NO THING*" etc.)

(15) <u>LEGAL RESPECT^2 OF THE QUALITY OF BEING SOMEONE ELSE'S OF THE OBJECT TAKEN AWAY^{QUAL}-frame</u>
     IS-RELATION-8^{QUAL} { not { { PART OF THE PROPERTY^{QUAL} { *[3], of [1], in legal respect^4* } }
     AND   { IN THE SOLE PROPERTY^{QUAL} { *[3], of [1], in legal respect^4* } } }

(16) <u>LEGAL RESPECT^4 OF THE PROPERTY-QUALITY OF THE OBJECT TAKEN AWAY WITH REGARD TO THE AGENT OF THE TAKING AWAY^{QUAL}-frame:</u>
     FOLLOWS LEGAL DEFINITION^{QUAL} { IS-RELATION-8^{QUAL} { not { PART OF THE PROPERTY^{QUAL} { *[3], of [1]* } } }
     (This too is a law-typical frame with open slot [legal definition] into which assignment decisions concerning the very complex right of ownership of german civil law [BGB] have to be inserted as e.g. „*THE SOLE OWNER OF A SINGLE-PERSON LIMITED CORPORATION [GMBH] IST NOT THE OWNER OF THE PROPERTY OF THE LIMITED CORPORATION*" etc.)

(17) LEGAL RESPECT[4'] OF THE QUALITY TO BE THE SOLE OWNER OF THE OBJECT TAKEN AWAY
    WITH REGARD TO THE AGENT OF THE TAKING AWAY ^{QUAL}-frame:
       FOLLOWS LEGAL DEFINITION^{QUAL} { IS-RELATION-8^{QUAL} { not { SOLE PROPERTY^{QUAL} { *[3], of [1]* } } }
       (This too is a law-typical frame with open slot [legal definition] into which assignment
       decisions concerning the right of ownership of german civil law [BGB] have to be inserted
       as e.g. „*THE JOINT OWNER OF A IS NOT THE SOLE OWNER OF A THING.*")

(18) PROPERTY-frame [[with many other strongly ramificated sub-frames]]
       (This is the point or gateway, where the whole very complex German law of ownership
       becomes part – or a gigantesque sub-frame – of the *theft* frame in criminal law.)

(19) LEGAL DEFINITION OF THE *TAKE AWAY*$^{ACTION-1}$-frame:
       IS-RELATION-9$^{IDENT.}$ { TAKE AWAY$^{ACTION-1}$, breaking of someone else's safe-keeping }
    AND[4] (predication-frame-linking)
       IS-RELATION-10$^{IDENT.}$ { TAKE AWAY$^{ACTION-1}$, establishment of a new safe-keeping }

(20) SAFE-KEEPING-frame: IS-RELATION-11$^{IDENT.}$ { *SAFE-KEEPING, actual control of a thing* }

(21) ACTUAL CONTROL OF A THING-frame: CONTROLLING^{STATE} { *who controls the thing*$^{(= [2'])}$,
       thing controlled $^{AOB (= [3'])}$, *in legal respect*[5] }

(22) LEGAL RESPECT[5] OF THE ACTUAL CONTROL OF A THING ^{QUAL}-frame:
       FOLLOWS LEGAL DEFINITION^{QUAL} { IS-RELATION-12^{QUAL} { *[2'], [3']* } }
       (This too is a law-typical frame with open slot [legal definition] into which casuistic
       high-court assignment decisions have to be inserted, as e.g. „*THE OWNER OF A FLAT HAS
       SAFE-KEEPING OF THE THINGS CONTAINED IN THE FLAT EVEN IF HE IS IN HOLIDAYS*" etc.)

(23) ACTUALITY OF THE CONTROL OF THE THING^{QUAL}-frame:
       FOLLOWS LEGAL DEFINITION^{QUAL} { IS-RELATION-13^{QUAL} { *actual*^{QUAL}, *control of the thing*^{STATE} } }
       (This too is a law-typical frame with open slot [legal definition] into which casuistic
       high-court assignment decisions have to be inserted, as e.g. CLOSE SPATIAL RELATIONS
       BETWEEN THE PERSON WHO CONTROLLES THE THING AND THE CONTROLLED THING)

(24) BREAKING OF THE SAFE-KEEPING^{ACTION}-frame:
       IS-RELATION-13$^{IDENT.}$ { *BREAKING OF THE SAFE-KEEPING*^{ACTION}, *TAKE AWAY*$^{ACTION-1}$,
          in legal respect[6] }

(25) LEGAL RESPECT[6] OF THE BREAKING OF THE SAFE-KEEPING^{QUAL}-frame:
       FOLLOWS LEGAL DEFINITION^{QUAL} { IS-RELATION-13^{IDENT} { *BREAKING OF THE SAFE-KEEPING*^{ACTION},
          TAKE AWAY$^{ACTION-1}$} }
       (This too is a law-typical frame with open slot [legal definition] into which casuistic
       high-court assignment decisions have to be inserted)

(26) ESTABLISHMENT OF A SAFE-KEEPING^{ACTION}-frame
       IS-RELATION-14$^{IDENT.}$ { *ESTABLISHMENT OF A SAFE-KEEPING*^{ACTION}, *TAKE AWAY*$^{ACTION-1}$,
          in legal respect[6] }

(27) LEGAL RESPECT[6] OF THE ESTABLISHMENT OF A SAFE-KEEPING^{QUAL}-frame:
       FOLLOWS LEGAL DEFINITION^{QUAL} { IS-RELATION-14^{IDENT}
          { *ESTABLISHMENT OF A SAFE-KEEPING*^{ACTION}, *TAKE AWAY*$^{ACTION-1}$} }
       (This too is a law-typical frame with open slot [legal definition] into which casuistic
       high-court assignment decisions have to be inserted, as e.g.
       INTRODUCING A THING INTO THE OWN BODY-SPHERE [with sub-frames as: TO PUT A THING INTO
       THE COAT POCKET IS IN LEGAL RESPECT AN INTRODUCTION INTO THE OWN BODY-SPHERE)

Further professional legal sub-frames may be added in relation to single elements of the hyper-frame (or the elements of the sub-frames). A frame-semantic description can not definitely be finished in an objectivistic sense. The limitation of the frame-elements and sub-frames to be described follows pragmatic criteria.

Abbreviations:

AG   = AGENT (argument type)
AOB   = AFFECTED OBJECT (argument type)
BEN   = BENEFACTOR = someone (person, institution) who has profit of an action (argument type)
PAT   = PATIENS (argument type)

ACTION = ACTION-PREDICATE (predication type)
IDENT   = IDENTITY PREDICATE = specialised sub-type of QUALITY PREDICATE (predication type)
MOTIV   = MOTIVATION = EPISTEMIC PREDICATE (predication-type)
QUAL   = QUALITY OR PROPERTY PREDICATE referring to a thing, person, action etc. (predication type)
REL   = RELATION PREDICATE (predication type)
STATE   = STATE PREDICATE referring to a thing, person etc. (predication type)

INDEX-NUMBERS link the slots of different frames which are filled by the same elements; they show the relations between the different frames.