

CHAPTER 3

TRANSLATING LATE MEDIEVAL LATIN

3.1 Translation theory

3.1.1 History and development of translation theory

“The truth is that there are no universally accepted principles of translation, because the only people who are qualified to formulate them have never agreed among themselves, but have so often and for so long contradicted each other that they have bequeathed to us a volume of confused thought which must be hard to parallel in other fields of literature.” (Savoy, 1968:44.) With this statement, Savoy summarises the essence of translation theory. It is virtually impossible to construct a linear development of the theory of translation as the concept of a “true translation” has varied considerably in the past decades. “True translation” was historically founded upon the focus within the translation itself and therefore wavered between text-focused and reader-focused translations. A text-focused translation aims at reproducing the grammar and syntax of the original language while a reader-focused translation aims at communicating the “message” of the text.

Modern translation theory is interdisciplinary and multidimensional, incorporating fields such as philology, ethnography, statistics and comparative literature (Bassnett-McGuire, 1980:40). The aim of modern translation theory is to strike a balance between a text-focused translation and a reader-focused translation. Such balance is only achieved when the “message” of the text is transferred while the translation is still bound to the text of the original language. Bassnett-McGuire (1981:14) distinguishes three types of translation. Intersemiotic translation is the process whereby the “message” of one set of signs or symbols is translated into another set of signs or symbols. Intralingual translation is the process whereby one text is translated to another form within the same language. The third type of translation, termed interlingual translation or translation

“proper”, is the process whereby the text is translated from one language to another. This chapter will be confined to interlingual translation as the text of Bartolus was translated from medieval Latin to modern legal English.

3.1.2 Approaches to translation

There are usually two languages involved in interlingual translation. The language in which the text originally occurs is referred to as the source language, while the language into which it is translated is referred to as the target language. Nida and Taber (1982:12) define translation as the reproduction into the target language of the closest natural equivalent of the source language “message”. The first consideration is the meaning of the text while the second consideration is style. Reproducing the “message” thus requires grammatical and lexical adjustments, as no two languages are sufficiently similar. The translator should therefore be sensitive towards the cultural peculiarities of a given language and time frame so as not to detract from the value of the translation. The translator should further take care to produce a translation which is natural in a linguistic rather than cultural sense, but without regressing into awkward grammatical constructions alien to the target language reader.

Savoy (1968:26) states that the process of translation implies continuous decision-making on the part of the translator as to which equivalent of a given word to use. The translator is obliged to use the closest natural equivalent, but in doing so he has to be sensitive towards the probable thoughts of the original author, the original readers, the source language readers as well as the historical and biographical details of the author. This complex process can be broken down into three steps:

- i) What does the author say?
- ii) What does the author mean?
- iii) How does the author say it?

Nida and Taber (1982:12) set a list of priorities for achieving a successful translation. The first of these priorities places contextual consistency above verbal consistency. The choice of the correct word or phrase depends largely upon the context within which it is utilised as languages differ in grammar and syntax. The second priority places dynamic equivalence above formal correspondence. The concept of “dynamic equivalence” has aroused much debate in translation studies, but for the purpose of this dissertation, it will be assumed to refer to the intelligibility of the translation. Intelligibility of the translation is not, as is conventionally assumed, dependent solely upon the sentences used in the translation, but rather upon the total impact of the “message” of the text upon the reader in the target language.

Van der Westhuizen (1988:7) indicates that a dynamic equivalent translation consists of two main components, namely an intelligent reading of the text as well as competent writing of the text. The translator should, by way of intelligent reading, ensure that the text, which is being translated, forms a logically coherent entity. This does not, however, grant the translator *carte blanche* to “clarify” incoherent passages. It further requires that the translator should have sufficient knowledge, especially when the text is of scientific or technical nature, of the subject matter to avoid incorrect terminology and confusing statements. Competent writing entails that the translator should fully understand the meaning of the text so that the reformulation of the “message” into the target language does not detract from the value of the translated text. Dynamic equivalence as an approach to translation should be qualified when applied to medieval legal texts. Legal science is by nature a “word” science where the interpretation of technical terms is vital to the understanding of a given passage. Since most common law translations are used as evidence in court cases, the translator should not apply dynamic equivalence in such a manner that the translation, being too “dynamic”, jeopardises the meaning and value of the overall work.

Nida and Taber (1982:33) describe a threefold process of translation. In the first stage, the “message” of the text is analysed in the source language with reference to the grammatical and syntactical relationships of words and phrases. During the second stage,

the analysed “message” is broken down into kernel sentences and provisionally transferred in the mind of the translator into the target language. In the final stage, the message is restructured in the grammar and syntax of the target language to ensure a natural linguistic translation. It is important to realise that grammar in itself and the positioning of words in sentences contribute to the meaning of the translation and therefore the context within which a word occurs is vital for correct translation.

3.2 Translation in practice

When translating late medieval Latin, the choice of text to be used as the basis for translation is crucial to the success of the translation as early reproductions of texts increase the incidence of errors. The translator should therefore strive to ensure that the text chosen for translation is relatively unambiguous. In the case of the *Tyberiadis*, several printed copies of the text exist in South African libraries, yet most of these date from the sixteenth and seventeenth century. The original *Tyberiadis* was written in 1355 and, as far as could be ascertained, hand written copies of the text only exist in the Vatican library and the libraries of Torino, Toledo and Brussels (Feenstra, 1962:234; Van de Kamp, 1936:85). As these original texts could not be compared with the text chosen for translation, the earliest printed editions of the *Tyberiadis* were obtained to compare not only the grammar of the different editions but also the citations and palaeography. The text chosen for translation is a reproduction of a 1576 Bologna edition in possession of the Torino library (**BT**).¹ It was compared to a 1590 Venice edition in the Ferdinand Postma library of the Potchefstroom University for Christian Higher Education (**VP**), a 1515-1517 Lyon edition in the library of the University of Stellenbosch (**LS**) and a 1581 Lyon edition in the library of the University of Leiden (**LL**).

Once the comparison had been completed, variances in citations, abbreviations and palaeography were analysed. Where variances were obviously incorrect or corrupt they were eliminated and the most plausible alternatives, originating from the different editions, were chosen. This method of textual criticism² implies a conscious decision-making process on the part of the translator as to the most plausible reading of the text.

There are various pitfalls when deciding upon the authority of one text above another. It is in the first instance unscientific to regard the earlier printed edition as authoritative, since corruptions within a given text occur both horizontally in editions of the same period and vertically in later editions. The majority should further not influence the translator. By following the reading of the majority, the translator can be easily misguided by a family of texts originating from one corrupt manuscript. When comparing texts, therefore, the translator has to consciously decide, taking into account factors such as the context of the passage, surrounding citations and the train of thought in the original author's argument, to establish an authoritative reading of a corrupt passage.

The next step in this study was to provisionally transcribe abbreviations, citations and palaeography and to insert citations from the *Corpus Iuris Civilis* as well as the *glossae*. These citations proved to be the key to the understanding of the text as the author quotes extensively from the *Corpus Iuris Civilis* using the exact words and sentence structure. Once these citations had been identified within the text and their critical translations thereof examined, the complete text of Book One was translated into English. The aim of this translation is "dynamic equivalence" implying that certain grammatical as well as lexical adjustments had to be made to the English translation to reproduce the "message" of the text in modern English. Once this process had been completed, citations were verified once again within the context of the English translation.

3.3 Late medieval Latin

While most historians accept 1300 AD as the beginning of the Italian *Renaissance*³, the same unanimity is not to be found regarding the nature and classification of fourteenth century Latin. Perosa and Sparrow (1979:xxvi) regard the Latin language of the fourteenth century as *Renaissance* Latin, whereas Hélin (1949:4) classifies it as late medieval Latin.

Medieval Latin is unique in the sense that its genesis occurred, not at the zenith of an empire as with most languages, but rather in its dying moments. It was not merely a continuation of Latin beyond antiquity, but in a sense it developed into a language of its own. Medieval society consisted chiefly of two classes influencing spoken Latin in various ways. At the one end highly educated scholars of church and state continued to adhere to grammatical and syntactical rules of classical Latin, while at the other end, uneducated classes were rapidly reshaping Latin into various Romance languages. Curtius (1936:35) indicates that the major syntactical and lexicological changes in the Latin language occurred during the eighth century when spoken Latin changed so dramatically that the uneducated classes could hardly understand semi-classical ecclesiastical Latin used during the mass. The Carolingian *renaissance* of the ninth century, however, reshaped Latin into the *lingua franca* of the educated classes; a position which Latin occupied until the end of the sixteenth century (Curtius, 1936:35).

Language is continuously in a state of flux as various external and internal influences reshape the nature of its grammar and syntax. In like manner, medieval Latin adapted to its society to remain the professional and learned language of the day (Haskins, 1968:128). This adaptation was a direct result of the mutual influencing between spoken vernacular Latin and written semi-classical Latin (Thompson & Johnson, 1937:764). It implied adaptation of existing vocabulary *via* importation of words from vernaculars as well as the transformation of the meanings of existing words to cope with social and technological advances. Writers simplified rules of grammar and syntax either because they were semi-educated and incapable of adhering to classical grammar and syntax or because they were striving to remould Latin into a language, which more readers could understand. While spoken Latin underwent significant changes during the late medieval period, written Latin continued to adhere mainly to the classical tradition. It is especially evident in legal monographs that highly educated scholars with a well-grounded knowledge of classical syntax and grammar were continuing to produce works aimed at fellow scholars who were in turn capable of adhering to the same classical tradition. Works of legal scholars from Berytus and Byzantium, written in Greek, were having a

profound impact on the grammar and syntax of legal Latin and Greek elements within the *Corpus Iuris Civilis* led to the importation of Greek syntax into legal Latin.⁴

The writings of Bartolus date from the early *Renaissance* period in Italy. Grendler (1989:111) summarises learning during the early *Renaissance* as follows: “Neither the ‘Renaissance of the twelfth century,’ a northern phenomenon, nor the ‘pre-humanism’ or ‘proto-humanism’ prevalent in Northern Italian legal circles around 1300 had any impact on Italian schooling, especially pre-university education. Instead, fourteenth century Italian school curriculum followed a normative medieval curriculum that consisted of reading medieval authors and a few ancient poetic classics (or portions of them) and learning to write formal letters according to the principles of the *ars dictaminis*⁵”. Grendler (1989:112) further cites an extensive list, handed down by medieval grammarians and rhetoricians to be read in medieval schools (curriculum authors). These works were mainly used to teach Latin, the rules of grammar as well as Christian morality. Hugutio and Papias, both frequently cited by Bartolus, appear amongst these curriculum authors, justifying the inference that the author did indeed receive a medieval education.

Humanists of the fifteenth century sought to restore pedagogical grammar to its ancient roots by eliminating medieval manuals and speculative grammar. These were to be replaced by new elementary and comprehensive grammar manuals expressing their convictions that Latin grammar had to be based on ancient usage. Closer inspection shows, however, that grammarians of the later *Renaissance* still used medieval grammar manuals and included certain remnants of medieval grammar in their teachings, thereby creating a new, distinctive *Renaissance* tradition (Grendler, 1989:163). Education of jurists at the Italian universities was largely based upon grammar and rhetoric and as a matter of course implied a thorough knowledge of Latin as well as stylistic aptitude (Reynolds & Wilson, 1974:113). It is therefore safe to assume that Bartolus underwent similar training at the University of Bologna, remoulding his (vernacular) Latin into the medieval legal Latin of fourteenth century Italy.

3.4 Typographical aspects

Printing errors in early editions of medieval manuscripts cause unexpected problems in translation. In most cases, the archetype of the text is either non-existent or has not been researched conclusively, making it difficult if not impossible to trace the original typography. Relatively few printing errors occur in the 1576 Bologna edition of the *Tyberiadis*. Misprints represent all those instances where letters within words have been wrongly changed or omitted due to period spelling as certain consonants were no longer pronounced as *pulcris* instead of *pulchris* (Bartolus, *Tract. de flum.* I, *prooemium* [2]) or where scribal errors have caused ambiguity as in *intermoritur* instead of *interim oritur* (Bartolus, *Tract. de flum.* I, *prop.* vii [39]). In most instances where different editions were used to print separate copies, the punctuation can be wildly misleading as it differs with each edition. In the 1576 edition of the *Tyberiadis*, punctuation was found to be relatively unambiguous with the exception of references contained in long syntactical periods. As these references have been abbreviated according to titles of legal sources, it is often difficult to determine the end of a specific syntactical period. Where the logical coherence of a paragraph has been seriously affected due to misleading punctuation, the principle laid down by Kriel (1997:3) has been followed whereby the whole syntactical period has been evaluated regardless of punctuation, before deciding upon coherence.

3.5 Syntactical aspects

The “commentators” have frequently been criticised for their “barbaric” and “uncouth” use of Latin (Von Savigny VI, 1956:14). During the fifteenth century, humanists strove to convert Latin to its classical form, thereby negatively influencing the development of the language (Haskins, 1968:129). In the eyes of humanists, the Latin used by the “commentators” would naturally be regarded as “barbaric” since it did not wholly conform to classical usage. Bartolus’ use of Latin, although not in the same league as that of Alphenus, is far superior to most of his legal contemporaries. The Latin of the *Tyberiadis* represents a synthesis between classical usage and certain deviations. The classical elements in Bartolus’ Latin may be ascribed to the classical revival of the

twelfth century as well as the genesis of the Italian *Renaissance* at the beginning of the fourteenth century and its subsequent impact on schooling in Italy (Haskins, 1968:129).

Syntactical deviations in the Latin of the *Tyberiadis* may be divided into three categories:

- Confusion of *modi* within one sentence⁶

*Ecce apportavi tibi calamum; quo mensuras, et figuras facies circulares, et regulam; qua lineas ducas, figurasque formes (Bartolus, *Tract. de flum. I, prooemium* [2]).*

*Puto autem, quod talis alluvio in nullis bonis sit, sed occupanti conceditur, sicut in alluvione; quae agris limitatis accedit, ut ff. de flu. l. i. § si Insula. Et. § seq. (Bartolus, *Tract. de flum. I, Nostro*, § 5 in fine [13]).*

- Alternatives to indirect statements (accusative and infinitive construction)⁷

*Probatur: flumina publica sunt; quae perpetua sunt (Bartolus, *Tract. de flum. I, Flumen*, § 1[14]).*

*Bartole; cognosco quod modicum Dei habes: times enim de beneficio derideri? (Bartolus, *Tract. de flum. I, prooemium*).*

- Logical extensions of grammatical constructions

*Ac figuras secundi libri formare complevi (Bartolus, *Tract. de flum. I, prooemium* [4]).*

*Si enim poneretur simpliciter totam alluvionem esse dimissam; qualiter fienda sit divisio, apparet ex dictis in tribus praecedentibus figuris (Bartolus, *Tract. de flum. I, prop. vi* [38]).*

3.6 Lexicological aspects

There is no doubt that legal writing requires specialised vocabulary necessitated by the nature of legal science. The *Tyberiadis* is mostly concerned with proprietary rights and the technical legal terms occurring in it, are used in connection with either the acquisition or protection of proprietary rights such as ownership. A lexicological analysis of these words will support this view.

3.6.1 Words with specialised legal meanings

The distinction between *ager*, *fundus* and *praedium* is prevalent throughout the whole of the *Tyberiadis*. Bartolus' distinction between these terms is a continuation of the distinction found in D 50 16 211⁸. According to this text, *fundus* denotes a larger piece of property with buildings (estate), while *ager* denotes a field, devoid of building, usually of rural location.⁹ *Praedium* is used as a generic term (property) meaning either *fundus* or *ager* depending on the context in which it was used. Other words used with legal implications are *subditores* (serfs), *territorium* (jurisdiction of a city-state).

3.6.2 Words peculiar to late medieval Latin

From a lexicological analysis of the first book of the *Tyberiadis*, the following nouns and adjectives have been highlighted as being peculiar to late medieval Latin or exhibiting revised meanings:¹⁰

Nouns:

- Architectica* –ae, f. Architecture (Bartolus, *Tract. de flum.* I, *praefatio ad propositiones* [26])
- Censitor* –oris, m. Censor (Bartolus, *Tract. de flum.* I, *Acquiritur nobis*, § 4 [18])
- Cucurbita* –ae, f. Gourd, cup (Bartolus, *Tract. de flum.* I, *Per alluvionem autem id videtur adiici*, pr. [21])

<i>Doga</i> –ae, f.	Type of vessel, perhaps a measure (Bartolus, <i>Tract. de flum.</i> I, <i>prop.</i> xv [50])
<i>Lectura</i> –ae, f.	Lecture (Bartolus, <i>Tract. de flum.</i> I, <i>prooemium</i> [2])
<i>Modicus</i> –i, m.	A small amount (Bartolus, <i>Tract. de flum.</i> I, <i>prooemium</i> [2])
<i>Organum</i> –i, n.	Bodily organ (Bartolus, <i>Tract. de flum.</i> I, <i>Per alluvionem id videtur adiici</i> , § 1 [21])
<i>Planus</i> –i, m.	Plain (Bartolus, <i>Tract. de flum.</i> I, <i>Agro</i> , § 13 [10])
<i>Veges</i> –etis, f.	Wine vessel (Bartolus, <i>Tract. de flum.</i> I, <i>prop.</i> xv [50])

Adjectives:

<i>Intellectivus</i> –a –um	Discerning (Bartolus, <i>Tract. de flum.</i> I, <i>Per alluvionem id videtur adiici</i> , § 1 [21])
<i>Neutraliter</i>	Non-specific (Bartolus, <i>Tract. de flum.</i> I, <i>Quod</i> , pr. [5])
<i>Plagiosus</i> –a –um	Containing estuaries (Bartolus, <i>Tract. de flum.</i> I, <i>Agro</i> , § 8 <i>in fine</i> [9])

3.7 Definition and history of palaeography

The science of palaeography is concerned with the deciphering and dating of ancient and medieval handwriting. It is, however, not limited to handwriting in the conventional sense but also includes within its field of study the earliest printed editions of manuscripts. It is, as Seckel (1925:1) states, an exact science where hardly any margin of error is permissible as it operates within a fixed system of rules. Ancient and medieval copyists utilised a comprehensive system of signs and abbreviations when reproducing the text to save time as well as space. The medieval abbreviation system dates back to the system of Roman *sigla* (isolated letters representing a single word) and the so-called Tironian notes (Roman shorthand to record public speeches) (Cappelli, 1982:1).

3.8 Abbreviations and contractions

The system of abbreviations and contractions is vital to the understanding of medieval Latin palaeography. The frequency of abbreviations or contractions in medieval script depends considerably upon the character of the text as these signs were used more freely in technical works such as legal monographs. Abbreviation is defined as the shortening of a word by the omission or suspension of the end of the word or of certain letters from the end while contraction is defined as the shortening of a word by suspending letters from the body of the word, leaving the first and last letters intact. Cappelli (1982:1) indicates that all medieval abbreviations and contractions may be divided into one of six categories. Categories occurring most frequently in the text of Bartolus will be explained by utilising examples from the text.

3.8.1 Abbreviation by truncation

A word is abbreviated by truncation when only the first part of the word is actually written out, while an abbreviation sign replaces the omitted final letters. There are two categories of truncation signs. The general truncation sign indicates that a word has been abbreviated without specifying which letters have been omitted, while the special truncation sign always indicates which letters have been omitted. In the first book of the *Tyberiadis*, the truncation sign is exclusively used in the form of a horizontal stroke above a certain letter (*virgula/apex*) which, in its simplest form, indicates the omission of the final *m* or *n* as in *alluvionē* = *alluvionem*, *nō* = *non*, *cū* = *cum*, *riparū* = *riparum*. Another truncation sign occurring in the text is the dot or period used in the same manner in which it is still used today as in *Bart.* = *Bartolus*, *d.* = *dicta*, *not.* = *notandum*, *n.* = *enim*.

3.8.2 Contractions significant in themselves

These contractions indicate which elements of the word are missing, no matter which letter or symbol is placed above or joined to it as a ligature. The straight or slightly

curved line above a vowel (*virgula/apex*) also occurs here specifically representing the letter *n* within a word as in *inchoādi* = *inchoandi*, *cōcavitare* = *concovitate*, *mōtis* = *montis*, *dividēda* = *dividenda*. A symbol resembling the letter 9 or an inverted capital *C* indicates the omitted prefix *con-* or *cum-* as in *9cedo* = *concedo*, while the letter *p* with an apex denotes the prefix *prae-* as in *praeceđens*. The letter 7 or & is sometimes utilised instead of the co-ordinate conjunction *et*, while the letter *q* is used to denote the relative *qui* – *quae* – *quod*.

3.8.3 Abbreviations significant in context

The transcribing of palaeography is largely dependent upon the context in which it occurs. It is, therefore, important to analyse each sentence and compare possible meanings of similar signs to find the most plausible alternative. The colon, period and semicolon are used at the end of a word and when these signs are used in conjunction with the letter *-b*, they denote *-us* as in *quib;* = *quibus*. When they are used in conjunction with a *-q*, they represent the *-ue* of the enclitic *-que* as in *quaecunq;* = *quaecunque*, *usq;* = *usque*, *ibiq;* = *ibique*, and after the letter *-s* they denote *-is* as in *divis;* = *divisis*. Thompson (1912:88) indicates that the 3-sign developed from the earliest abbreviation, namely the full stop placed at level with the letters. A comma was added to the full stop and this later became the semicolon and the 3-sign developed from the eleventh century onwards used in the sense of a final *-et* as in *deb3* = *debet*.

3.9 Manner of citation

Feenstra and Rossi (1961:109) state the general rule of modern citation regarding medieval manuscripts, namely that any citation should progress from the larger to the smaller part of every source. First the title of the source should be mentioned, followed by the divisions and subdivisions of the work like the *pars*, *liber*, *titulus*, *capitulum* or *lex*, *paragraphus* and *versiculus*. The numbering of the critical edition is always used and in the instance where the number of the *paragraphus* or *versiculus* differs from that

of the critical edition, the phrase *nunc* is inserted together with phrases such as *in principio*, *circa medium*, *in fine* to assist the reader in finding the correct citation.

3.10 Citation in the late medieval monographs

Legal scholasticism in medieval Italy differed considerably from modern academic endeavour. The school of the “commentators” wrote comprehensive commentaries on Justinian’s codification adapting it to the circumstances of the day. In writing these commentaries and monographs, extensive use was made of the *Corpus Iuris Civilis* as well as medieval commentaries on Justinian’s codification. These references were cited in a manner peculiar to medieval legal scholasticism, providing only the necessary information to find the original source and not a verbal approximation of its contents (Bryson, 1975:4). In most cases the citation consists of the *siglum* of the legal work, the rubric of the *titulus* (the subdivision of the specific *liber*), the *initium* of the *lex* followed in certain circumstances by the *initium* of the *paragraphus* (Kantorowicz, 1970:82; Schrage, 1987:27). A citation such as *ff. de contrah. empt.*(D 18 1) *l. litora*.(51) would therefore refer to D 18 1 51. It later became more common to place the smallest unit first, thus first the *lex* followed by the *paragraphus* and only thereafter the rubric of the legal work as in *l. ait praetor*.(2) *.§ publici loci*.(3) *ne quid in loco publico* (D 43 8) which would refer to D 43 8 2 3. As Bryson (1975:5) states, numerals of the *libri*, *leges* and *paragraphi* were mostly avoided in medieval manuscripts for two reasons. Firstly the *initia* of the *leges* and *paragraphi* were better remembered by readers than mere numerals and secondly Roman numerals frequently led to copying errors. Where numerals were used, the final *i*. of the numeral was converted into a *j* as in *iii.* = *ij*.¹¹ Citations were, according to Kantorowicz (1970:83), usually in the ablative case and where it was dependant upon an ablative preposition such as *de*, it was read as a genitive as in *arg. l. servus in opus ff. de penis* = *argumento legis servus in opus Digestis de penis* (D 48 19 34). Where the *principium* was separately mentioned, it was referred to by the abbreviation *in pr.* and in case of longer *paragraphi*, phrases like *circa medium*, *in fine* were inserted or the specific sentence was referred to by the abbreviation *versi.* = *versiculo*. Where the *titulus* of a legal work is commented upon or cited in numerous

paragraphs, the rubric is not repeated, but replaced by the *siglum* of the legal work followed by *eo.* = *eodem*. The phrase *per totum* is used when the *titulus* is cited as a whole. *Ut, ut in, arg., dicitur in* or *facit* usually introduces citations, while *contra* or *fallit* introduces opposing passages. The main passage referred to is distinguished by the phrase *est casus legis*.

3.11 Particular citations

3.11.1 Roman legal sources¹²

The Institutes of Justinian is cited as *I., In., Inst., Insti., Instit.* followed by the rubric of the *titulus* and the *initium* of the *paragaphus* and sometimes the particular *versiculus* of the *paragaphus* as in *Instit. De re. divis.*(Inst 2 1) § *item lapilli* (18) = Inst 2 1 18. The Digest is cited as *ff.* The original citation consisted of a capital letter *D'* which later changed into the *ff.* sign (Gerbenzon, 1981:15; Schrage, 1987:27). This sign is followed by a rubric of the *titulus*, the *initium* or the number of the *lex* and the *initium* of the *paragaphus* as in *ff. de dam. Infec.*(D 39 2) *l. hoc amplius* (9) §. *j.* (1)= D 39 2 9 1. The first nine of the twelve books of Justinian's *Codex* are cited as *C.* followed by the rubric, *lex* and *paragaphus* as in *C. de rescin. vend.*(C4 44) *l. xij.*(12) *Non idcirco minus.* = C 4 44 12, while the last three books (*Tres Libri*) are cited as *C.* together with the number of the relevant *liber* to distinguish it from the remaining books. The *Authenticum* (*Novellae*) is cited as *in Auth.* followed by the rubric of the Novel and the *initia* of the first *capitulum* and the *paragaphus*. The *Authenticae* are extracts from the *Novellae* inserted after the relevant *Codex* texts. These are cited as *Authentica* followed by the number of the *lex* of the *Codex* to which it refers (Gerbenzon, 1981:15).

3.11.2 Medieval commentaries on Roman law

The *Glossa Ordinaria* of Accursius is cited as *notatur, ut notat Accursius in glosa, in glosa ij.* or *in glosa que incipit*, followed by the number or the *initium* of the word of the text to which it refers as in *ideo gl. Insti. Eo. § praeterea dicit (exponendo super verbo*

adiecit) = Gloss M on Inst 2 1 20 concerning the word *adiecit*. In the text of Bartolus, most gloss references are to the compilation of Accursius with the exception of two references to an abridged commentary on the *Liber Extra* of Pope Innocentius IV by Bernard of Pavia known as the *Breviarium Extravagantium* (& not. *Per Inno. extra de test. c. in nomine, & in c. cum causam*) and a gloss on the Bible (*glos. scripturae divinae super illo versic. Psalmi*) respectively.

3.11.3 Other citations

Apart from references to legal sources, Bartolus also quotes classical authors. In Book One of the *Tyberiadis*, a single reference to Aristotle's *Ethics* is to be found in a somewhat over-generalisation concerning architecture (*ut dicit Arist. 1. Ethicorum*). Euclidean geometry forms the basis of the second part of the first book of the *Tyberiadis*. Bartolus uses Euclid's theorems and definitions to justify his conclusions regarding the equitable distribution of newly formed property amongst the respective riparian owners, yet these citations are ambiguous at best. Citations of Euclid's *Stoicheia* (*Elementa*) are vague (*ut patet primo lib. Euclidis*) making it difficult to determine the language in which it was consulted. Howardson (1989:223) indicates that Euclid's *Stoicheia* (*Elementa*) was known only to the Arab world until the first half of the twelfth century before being translated into Latin. The original Greek version of the text was unknown until it was printed in Basle in 1533. It therefore seems that Bartolus would rather have used the Latin text than the original Greek text. The earliest Latin translation of the thirteen books of the *Stoicheia* (*Elementa*), ascribed to Adelard of Bath and dating from the eighth century was therefore used for the purposes of this translation.

3.12 Verification of citations

The process of verification of citations in medieval manuscripts is an arduous one. Much depends upon the care with which the original text was reproduced as well as the clarity of the specific edition. The translator is often confronted with a host of problems, which will be discussed below. It is, in most cases, uncertain which editions of legal works

such as the *Corpus Iuris Civilis* the author used when writing the original text, therefore his citations may differ considerably, not only in the numbering of the paragraphs, but also in the word order of the *initia* of the *leges* and *paraphi* (Scott, 1978:199). The easiest way to verify citations from the *Corpus Iuris Civilis* is to use the *Indices Corporis Iuris Civilis*¹³, a set of four volumes containing all the *initia* of the *leges* as well as the *paraphi* together with numeral variances of *leges* and *paraphi* in earlier editions¹⁴. The complete rubrics of the *tituli* may be found in the alphabetical list in the critical edition of Krueger¹⁵. If, however, a supposed citation is not to be found in the *Indices*, the annotations of Krueger's critical edition supply valuable information on changed word order and numeral variances in previous editions. Finally, after having exhausted all other possibilities, it has to be accepted that the copyist could in certain circumstances not decipher the original citation and copied incorrectly¹⁶. Citations of this nature should be treated as such, but only after the specific reference has been compared with the earliest available text to verify its correctness.

¹ A photocopy of the text, edited by Guido Astuti, was initially supplied by Professor D.M. Kriel. See further the title page of the Astuti edition in the addendum.

² For various methods of textual criticism regarding classical and medieval texts, see Reynolds and Wilson (1974:186).

³ For a re-evaluation of the *Renaissance* concept, see Thorndike (1959:81).

⁴ Schulz (1953:300) indicates, however, that there is very little evidence to support the theory that "unclassical" Latin in the Justinianic codification may be ascribed exclusively to the influence of Greek syntax and grammar.

⁵ The *ars dictaminis* incorporated the theory and practice of prosaic letter composition. It was an important part of medieval schooling, largely based upon the art of letter writing laid down by Marcus Tullius Cicero in *De Inventione*. It comprised rigid rules and *formulae* and was especially prevalent at the University of Bologna (Grendler, 1989:114).

⁶ Beeson (1986:26) regards the breakdown in distinction between the indicative and subjunctive in subordinate clauses as one of the outstanding differences between classical and medieval Latin. An alternative explanation for a construction of this nature is to be found in Greek syntax where a sentence naturally progresses from a fact, expressed in the indicative mode, to a possibility, expressed in the subjunctive mode. Constructions of this nature, although of Greek origin, are often found in a latinised version in the *Corpus Iuris Civilis*.

⁷ The classical construction of an infinitive with a subject accusative, although still prevalent in medieval Latin, was largely displaced by a substantive clause introduced by *quod*, *quia*, *quoniam* or *ut* and followed by a finite indicative or subjunctive verb (Beeson, 1986:22).

⁸ *Fundi appellatione omne aedificium et omnis ager continetur; sed in usu urbana aedificia, "aedes", rustica, "villae" dicuntur. Locus vero sine aedificio in urbe, "area", ruro autem "ager" appellatur. Idemque ager cum aedificio "fundus" dicitur.* In the designation "estate", every building and field is included. But in common parlance urban buildings are called "aedes", rural buildings "villas". But a place without building is called an "area" in the city, in the country, however, a field. And similarly a field with a building is called an "estate" (Mommsen *et al.* IV, 1985:952).

⁹ Mommsen, Krueger and Watson's translation of the Digest uses the term "estate" as the English equivalent of *fundus*. Although "estate" seems rather grandiose and has various different semantic connotations, it was retained for the sake of consistency.

¹⁰ These examples of medieval Latin should not be regarded as an all-inclusive list representing the complete vocabulary of the *Tyberiadis*.

¹¹ As medieval society was not a strictly numerate society, the inclusion of numerical references was quite rare. It was common practice to quote the *initiae* of titles and paragraphs.

¹² For the purposes of this dissertation, the following translations of Roman legal sources have been used. The Institutes – Sandars, T.C. 1917. The Institutes of Justinian. London : Longmans; The Digest – Mommsen, T., Krueger, P. & Watson, A. 1985. The Digest of Justinian. 4 vols. Philadelphia : University of Pensilvania Press; The Codex and the Novels – Scott, S.P. 1932. The Civil Law. 17 vols. Cincinnati : The Central Trust Company Publishers. Sandars' translation of the Institutes, although not as recent as the Moyle or Thomas translation, has been preferred due to its citation of overlapping passages within the Institutes and the Digest. The Mommsen translation of the Digest has been found to be somewhat inaccurate and has therefore been supplemented by the new Dutch translation of the Digest, edited by Spruit, J.E., Feenstra, R. & Bongenaar, K.E.M. 1996. *Corpus Iuris Civilis*. Zutphen : Walburg Pers.

¹³ Nicolini, H. & d'Amico, F.S. 1964-1970. *Indices Corporis Iuris Civilis iuxta Vetustiores Editiones cum Criticis Collatas*. 4 vols. Milan : Giuffrè.

¹⁴ In the 1576 Bologna edition, all references to *leges* within the *Corpus Iuris Civilis* have been supplied with Roman numerals accompanying *initia*. These numerals have proved invaluable where *initia* are of relatively vague nature and the *Indices* supply numerous options. In the *Indices*, a citation such as *ff. de verborum signif. l. LX Locus* supplies two options D 50 16 27 and D 50 16 60, the latter being preferred since the numbering concurs with the original citation. Where numeral variations occur which correspond with the *editio vulgaris* cited in the *Indices*, the reference has been added next to the modern reference in the critical edition. The *editio vulgaris* cited in the *Indices* refers to a copy of the *Corpus Iuris Civilis* edited by Hugo da Porta and known as the *Littera Bononiensis*. See also Schrage (1987:16).

¹⁵ Krueger, P. 1892 - 1895. *Corpus Iuris Civilis (editio stereotypa)*. Vol 1 – Institutiones (Krueger, P.), vol 2 – Digesta (Mommsen, T.), vol 3 Novellae (Schoel, R & Kroll, G.). Berolini : Weidmann.

¹⁶ In Medieval scholasticism, copyists strove to simplify difficult and archaic texts, thereby committing numerous errors either because the original manuscript was illegible or already corrupt. For an extensive exegesis on the corruptions found in early manuscripts as well as their probable origin, see Reynolds and Wilson (1974:200).