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LEGAL, LINGUISTIC, AND CULTURAL ASPECTS IN INTERNATIONAL COMMERCIAL ARBITRATION DISCOURSE: A CORPUS-BASED STUDY OF ARBITRAL AWARDS

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INTRODUCTION

1.1 Background

In the current context of globalization of trade and commerce, there has been an increase in the number of business deals and contracts being made at international level, especially in recent decades. Such an increase has led to an equally great number of disputes between parties coming from different countries (Bhatia *et al*. 2018, 1). As a consequence, legal issues do not confine themselves merely at national level, but rather take an increasingly international perspective (Gotti 2008a, 221; Bhatia, Candlin and Engberg 2008, 5). This phenomenon is a key driver behind the global success of international commercial arbitration, which can be defined as "a means by which international disputes can be definitely resolved, pursuant to the parties' agreement, by independent, non-governmental decision makers" (Born 2001, 1) and is nowadays the most widely used Alternative Dispute Resolution (ADR)[1] method (Bhatia *et al*. 2018, 1).

International arbitration is increasingly considered as a cost-effective and efficient alternative to litigation for resolving commercial disputes. Conflicting parties who resort to arbitration decide to have their dispute settled outside a judicial system by a third-party – namely, a single arbitrator or a tribunal composed of more than one arbitrator – instead of going through litigation in public courts (Moses 2017, 1).

As briefly mentioned above, one of the main aims of such a procedure is to allow the resolution of disputes for parties with diverse legal and cultural backgrounds without resorting to litigation. Over the past decades, international arbitration has significantly evolved, enabling parties from different linguistic, legal, and cultural backgrounds to engage in this alternative dispute resolution method. Moreover, arbitration aims at offering a

[1] The acronym 'ADR' stands for 'alternative dispute resolution' and refers to other dispute resolution methods, aside from litigation and arbitration, which can be used by parties to resolve disputes. According to Moses (2017, 14), in Europe and throughout most of the world, ADR refers to dispute resolution methods that exclude both litigation and arbitration. In contrast, in the United States, ADR encompasses all kinds of dispute resolution methods other than litigation, thus including arbitration as well. With the exception of arbitration and litigation, in most cases, the other methods of dispute resolution are not binding. These include mediation, conciliation, neutral evaluation, expert determination, etc.

procedure that is efficient, expeditious, confidential and, most importantly, universally enforceable – just like court decisions (Bhatia *et al*. 2012, 2).

The final outcome of the arbitration procedure is the so-called arbitral award, representing the arbitration tribunal's determination on the merits. In the majority of cases, arbitral awards are not only binding upon the parties but are also enforceable against them and recognizable in other states (Moses 2012, 190). This recognition and enforcement, often facilitated through the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards[2] – commonly known as the New York Convention – extends to 172 Contracting States, underscoring its widespread international applicability. As stated by Article 1(2) of the New York Convention,

> The term "arbitral awards" shall include not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted.

Arbitral awards may also be defined as

> [T]he decision of the arbitrator based upon the submissions made to him in an arbitration. It can be made orally, but an oral award is not covered by the provisions of the Arbitration Act 1996 ("the 1996 Act") and oral awards are rare, or an exceptional ad hoc measure in conditions of urgency – followed by the same in writing. An award must be the consequence of an arbitrator deciding as between opposing contentions, having weighed the evidence of submissions. (Turner 2005, 9)

Arbitral awards represent "a complex discursive artefact which has the main purpose of announcing the arbitrator's or the arbitral tribunal's decision" (Bhatia, Garzone and Degano 2012, 1). As a result, arbitral awards play a prominent role in shedding light on the evolution of international arbitration procedures in recent times.

A decade ago, the genre of arbitral awards was considered a "relatively unexplored genre" (Bhatia, Garzone and Degano 2012, 1), largely due to the historical perception of arbitration as a highly protected practice. However, a notable transformation has occurred in recent years, marked by an "ongoing commitment to transparency" (Mourre and Vagenheim 2023,

[2] United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 ("New York Convention") Available at https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/new-york-convention-e.pdf. The New York Convention is described more in detail in Section (...).

261, based on LCIA 2023[3]), which involves the publication of arbitral awards. As Bhatia pointed out, "in order to be rigorous in our investigation, we require not only access to actual data from practice, but also an engagement of the professional community in research collaboration" (2010a, 468). The need to have access to arbitral awards has indeed been detected by several scholars[4] and for several reasons. For instance, in recent decades it has been argued that the publication of arbitral awards could be used as 'educational samples' that could be used for the training of young arbitrators, as well as a way to promote consistency in the reasoning of arbitral awards at international level (Bhatia 2010a, 475). The publication of arbitral awards and the greater transparency could also facilitate the development of the law and the practice of arbitration (Bhatia, Candlin and Sharma 2009, 11) and it could "set the basis for allowing arbitrators, practitioners, and academics to understand, discuss, and provide constructive criticisms of awards" (Bhatia 2013, 75). In a similar vein, Zlatanska (2015, 27-32) points out that the publication of arbitral awards could be positive for a number of reasons, including the fact it could:

1. Contribute to the uniform development of international law – including the *lex mercatoria*[5];
2. Increase the foreseeability of outcomes, thus contributing to certainty and predictability in international business practices;
3. Promote consistency, in the sense that divergent decisions could be prevented by avoiding to threaten the credibility, the reliability and the authority of international arbitration;
4. Increase transparency and fairness by enabling the public "to see that justice is done", thus strengthening the legitimacy of the system;
5. Help the training of new arbitrators, who would be able to learn how other arbitrators deal with certain types of situations and the types of reasonings that are produced;

[3] LCIA Releases Challenge Decisions Online. Available at https://www.lcia.org//News/lcia-releases-challenge-decisions-online.aspx.

[4] While confidentiality in the arbitral process offers certain advantages, it simultaneously poses a challenge for practitioners, decision-makers, and academics seeking relevant precedents (Born 2001, 48; Moses 2017, 200). Arbitration-related publications indeed constitute a particularly interesting field of research for discourse analysts (Catenaccio 2016, 163). Arbitration awards, specifically, represent a compelling object of investigation as they not only state the final decision of the arbitration proceedings but also explain the circumstances that prompted the arbitration. This is achieved by providing justifications and relying on hard facts and reasoning (Bhatia, Garzone and Degano 2012, 1).

[5] Lex mercatoria, which translates to 'merchant law' in Latin, denotes a set. Of commercial legal principles that evolved during medieval Europe alongside the growth of trade and commerce. It was primarily concerned with regulating commercial transactions and resolving disputes between merchants involved in international trade (Slomanson 2004, 238).

6. Help ensure high-quality decision-making by arbitrators;
7. Help prevent conflicts of interests;
8. Allow external analysis of the arbitrators' decisions, thus preventing misconduct and misapplications of the law;
9. Allow parties to identify the best-suited arbitrators to deal with their case;
10. Enhance the reputation of a specific arbitral institution if the award was rendered by it.

Other scholars have recently reaffirmed the need to publish arbitral awards to contribute to the development of law (Resnik, Garlock and Wang 2020, 612) and to allow the public to corroborate that decision making is based on the "application of legal principles and objective factual assessments, thus increasing confidence that the arbitral process is fair and legitimate" (Mourre and Vagenheim 2023, 265, based on Wetmore 2022, 694).

Over the last few years, several scholars, researchers and legal experts have therefore advocated such a shift in the arbitral culture, precisely from secrecy to transparency (Mourre and Vagenheim 2023, 260), thus allowing the publication of a restricted number of arbitral awards. Specifically, in 2019 there has been an important change in the ICC[6] policy that developed to allow for the publication of arbitral awards in their entirety – either sanitized or not, depending on the parties' preference. This relatively new and groundbreaking ICC policy[7] of publication of awards has been facilitated by the establishment of Jus Mundi, an "international legal search engine using artificial intelligence to make international law and arbitration more transparent and accessible worldwide"[8], launched in 2019. Since its inception, Jus Mundi has made several partnerships with arbitral institutions and associations worldwide. Through these collaborations, Jus Mundi offers access to exclusive legal information and content, including arbitral awards. Notably, thanks to the 2022 partnerships, the search engine provided +4,800 exclusive commercial arbitration documents through its database[9], accessible through either free trial or other subscription options. Thanks to these policy changes, the advent of Jus Mundi, and its collaborative efforts, a substantial number

[6] ICC International Court of Arbitration. Available at https://iccwbo.org/dispute-resolution/dispute-resolution-services/icc-international-court-of-arbitration.

[7] ICC. Publication of ICC Arbitral Awards with Jus Mundi. Available at https://iccwbo.org/dispute-resolution/resources/publication-of-icc-arbitral-awards-jus-mundi-not-icc-publication/.

[8] Jus Mundi. General Terms of Sale and Subscription. Available at https://jusmundi.com/en/terms-of-subscription#:~:text=Jus%20Mundi%20(%E2%80%9CJus%20Mundi%E2%80%9D,more%20transparent%20and%20accessible%20worldwide.

[9] Jus Mundi. Jus Mundi's Global Partnerships in 2022. Available at https://dailyjus.com/news/2023/09/jus-mundis-global-partnerships-in-2022.

of arbitral awards rendered by arbitral institutions and tribunals from all over the world are now accessible to the general public.

Given the historical lack of easy accessibility to arbitral awards, posing challenges for researchers and practitioners seeking discursive data on international commercial arbitration practices, the recent ICC policy change and the establishment of the Jus Mundi search engine represent a pivotal stride toward the 'democratization' of access to legal knowledge through technology[10]. This development not only addresses the longstanding difficulty in obtaining such information but also marks a crucial step in enhancing accessibility to discoursal data. The publication of a curated selection of arbitral awards and the ensuing availability of discoursal data signify a noteworthy milestone for researchers in both the legal field and linguistic and genre analysis (e.g., Swales 1990; Bhatia 1993).

It is worth noting that there is still room for further steps to achieve an even greater democratization in the accessibility of arbitral awards. Nevertheless, the current availability of these awards on the Jus Mundi search engine already facilitates research and analyses on a substantial number of arbitration texts and procedures.

For the purposes of this study, it was therefore possible to collect a limited number of arbitral awards – drafted in English – through the Jus Mundi search engine and to analyze them, thus allowing this study to focus on the genre of arbitral awards. Specifically, the analysis is carried out on a corpus of arbitral awards that have been rendered by prominent arbitral institutions, including the American Arbitration Association (AAA), the London Court of International Arbitration (LCIA), the Hong Kong International Arbitration Centre (HKIAC), the Camera Arbitrale di Milano (CAM) (Milan Chamber of Arbitration), the Swiss Arbitration Centre (SAC), the Singapore International Arbitration Centre (SIAC), and the ICC International Court of Arbitration.

Through the collection of the aforementioned arbitral awards, it was possible to collect the related data and to conduct a linguistic analysis on such texts both on a quantitative and a qualitative level. This study operates within the field of corpus linguistics (McEnery and Wilson, 1996; Baker 2006, 2010; McEnery and Hardie 2012; Stefanowitsch 2020; Egbert, Biber and Gray 2022). It is acknowledged that both the *lex arbitri* – namely, "the law governing the arbitral proceedings", also referred to as "the procedural law of the arbitration, the curial law [...] or the *loi de l'arbitrage*" (Born 2001, 43) – and the applicable law of the arbitration affect various aspects of the arbitral proceedings (Cordero-Moss 2021, 98), including the way procedures are conducted and the way arbitral awards are drafted.

[10] Jus Mundi. Available at https://jusmundi.com/en.

However, this study specifically focuses on the role of the applicable law of the arbitration – whether civil law or common law – and the influence of cultural differences on the professional reasonings articulated in the arbitral texts (Hafner 2011, 119). The assertion posited is that, even in the era of globalization, these cultural differences continue to manifest as cultural variations in the form of reasoning.

The linguistic choices adopted in arbitration texts are often "greatly influenced by the cultural environment in which these texts have been produced" (Gotti 2008a, 232). More specifically, Gotti (2008a, 233) notes that "[t]he different legal system may determine the adoption of different textual strategies on the drafter's part". Legal discourse is indeed shaped by the legal system within which it evolves. As Bhatia (1993, 245) highlights in his work,

> It is generally agreed that common law, which forms the basis for all legislation in the UK, and the civil code, which is the basis for most of the Continental legislation, including the French, are different in two main aspects. First, the civil code prefers generality whereas the common law goes for particularity. And, second, the civil code draftsman is *eager to be widely understood by the ordinary readership*, whereas the common law draftsman seems to be more *worried about not being misunderstood by the specialist community*.

Such a difference in linguistic and textual realization is owed to important conceptual differentiations stemming back to civil law and common law, namely the two most widely dispersed legal traditions of the world. This is argued by Gotti (2008a, 235) as well, who highlights that

> In the civil law system the judiciary is entrusted with the task of construing, interpreting and applying the general principles outlined in the civil code to specific real-life situations. This requirement therefore privileges stylistic choices such as generality and simplicity of expression. The common law system, instead, is based on the principle of precedence, by means of which the decisions taken by one judge become binding on all subsequent similar cases. This system in consequence regards certainty of expression as the most valued quality in legal drafting.

It is therefore common ground that legal discourse differs in terms of linguistic and textual realizations on the basis of the legal system involved. This aligns with Fairclough and Wodak's assertion on the importance of context, emphasizing that "discourse is not produced without context and cannot be understood without taking the context into consideration"

(1997, 276, based on Duranti and Goodwin, 1992). This study is therefore based on the "methodological assumption that texts and genres can be investigated only within the context of the institutional and professional practices in which they originate" (Bhatia, Garzone and Degano 2012, 1). Accordingly, this study conducts a linguistic analysis on a corpus of arbitration awards, rendered by several arbitration seats located in different legal systems and subject to different applicable laws. The analysis carefully considers the contextual elements of international commercial arbitration, encompassing the arbitral institutions, the legal systems, and the applicable laws involved.

1.2 Research questions, goals and enabling objectives

This study aims at conducting a linguistic analysis on a corpus of arbitral awards rendered by different arbitral institutions that are based in different countries, shedding additional light on the genre of arbitral awards. The awards under analysis are examined from a linguistic and textual point of view. Furthermore, this study aims at investigating the differences between the various subcorpora of the Main Corpus (see Chapter 4) and at assessing how such differences are connected to the choice of the applicable law of the different awards. The following main research questions are therefore formulated in consideration of the background of this study and of the importance of the elements described in the previous section:

1. What are the linguistic, cultural and legal differences between the civil law and the common law arbitral awards generated in the arbitral institutions under consideration?
2. To what extent do common law and civil law features influence the arbitration awards?

This study serves as a pilot investigation that aims at providing a preliminary analysis to be used as the groundwork for subsequent, more extensive investigations involving a larger dataset, potentially sourced from Jus Mundi or other relevant databases. The project design is guided by two primary objectives:

- To analyze the arbitral awards under consideration on both qualitative and quantitative levels in order to describe the genre and the language used;
- To compare the arbitral awards under consideration, with a focus on discerning differences related to civil law and common law features.

The initial hypothesis of the study is that differences in arbitral texts arise from the profound influence of practitioners and legal experts who are deeply influenced by both their legal traditions (Bhatia 1993, 245) and the linguistic and cultural nuances of their country of origin (Gotti 2008a, 235). As a result, the applicable law of each arbitration case turns out to be particularly crucial for the drafting of the arbitration text, thus affecting it both at the linguistic and at the textual level.

To achieve the aforementioned goals, the following enabling objectives have been established:

- To collect a corpus of arbitral awards whose applicable laws are from both common law and civil law countries;
- To provide an overview of specialized languages, particularly focusing on the main features of legal English, the language in which all considered arbitral awards are drafted;
- To investigate the context of international commercial arbitration, along with the institutional and professional context in which the arbitral awards under analysis have been rendered;
- To use software packages generally employed in the field of corpus linguistics in order to obtain quantitative data and conduct quantitative analysis.

1.3 Outline of chapters

This study is organized into six chapters, each of which contains several levels of divisions. Specifically, the second-level divisions are referred to as 'sections' (e.g., 1.2), the third-level divisions as 'subsections'(e.g., 1.2.1), and the fourth-level divisions as 'paragraphs' (e.g., 1.2.2.1). This study first discusses the theoretical framework by providing an overview of the literature review (Chapters 2 and 3). Subsequently, it provides the description of the methodology employed to conduct the study, including the collection and preparation of the materials used (Chapter 4). In the following chapter, details regarding the analysis conducted and the results obtained are presented (Chapter 5). Finally, Chapter 6 provides a synthesis of the obtained results and draws conclusions based on them.

In Chapter 2, the significance of acknowledging specialized discourse as a multifaceted phenomenon, characterized by the presence of diverse specialized languages and genres, is emphasized. The development and application of English for Specific Purposes (ESP) are discussed, followed by a systematic outline of the main features of specialized discourse according to Gotti's typology (2011a), which involves lexical, syntactic, and textual features. Following this, the chapter delves into the intricate interplay between language and law, adopting a genre-based perspective (Bhatia 2004, 2014). It underscores the global significance of legal English, identifying specific lexical and syntactic features. The paramount importance of genre analysis, particularly within legal genres, is then emphasized. Notably, this study centers on the legal genre of arbitral awards, utilizing the framework established by Bhatia and Lung (2012) for analysis and discussion.

Chapter 3 delves into the contextual analysis of the legal texts under examination. This exploration is based on the methodological premise that genres can be thoroughly examined only within the framework of the institutional and professional practices from which they stem (Bhatia, Garzone and Degano 2012). Therefore, this chapter begins by defining international commercial arbitration and outlining its fundamental characteristics. It then traces the origins of commercial arbitration, offering a brief overview of its historical development. Following this, the chapter examines the evolution of the legal framework surrounding international commercial arbitration in the early 20th century. Lastly, it provides a comprehensive overview of the current international arbitration frameworks within the common law and civil law legal systems under scrutiny, including the United States, the United Kingdom, Singapore, Hong Kong, France, Italy, and Switzerland.

Chapter 4 presents a detailed account of the methodology employed to carry out the search and analysis in this research. It outlines the corpus under examination, elucidating its

collection, preparation, and composition processes. Additionally, preliminary methodological insights are provided, offering a broad overview of corpus linguistics methods and the software employed for research and analysis. This chapter further delineates the methodological framework adopted in this research, along with the specific methodology and data retrieval techniques employed for each of the lexical and syntactic features under analysis.

Chapter 5 contains the analysis and findings of this study. It delves into the lexical and syntactic choices adopted within the arbitral awards under examination. In the context of this study, it was crucial not only to recognize lexical and syntactic features of legal English but also to identify those most relevant for discerning disparities between common law and civil law drafting conventions, in order to address the research questions posed. Consequently, the focus was narrowed to analyze specific features that could potentially serve as indicators of differences in drafting styles between common law and civil law. This selection process drew upon prior analyses conducted by Gotti (2008a) and Bhatia, Candlin, and Engberg (2008), which outlined distinctions between traditional common law and civil law approaches. As a consequence, this chapter specifically addresses the research questions posited in this introductory chapter and scrutinizes the following categories of features: binomials and multinomials, archaisms, Latinisms, and terms of French/Norman origin, nominalizations, complex prepositions, modal auxiliaries, sentence length and complexity, impersonal structures, and passive constructions.

Chapter 6 provides an interpretation of both quantitative and qualitative data illustrated and discussed in Chapter 5, culminating in conclusions regarding the disparities between common law and civil law subcorpora. It also discusses the limitations of the study and provides insights into potential avenues for further research, suggesting directions for exploring related topics or expanding upon the current investigation.

CHAPTER 2

SPECIALIZED LANGUAGES

This chapter underscores the importance of considering specialized discourse as a multifaceted phenomenon characterized by the existence of diverse specialized languages and genres (Gotti 2011a; Bhatia 1987a, 1993, 2006). As a starting point, Section 2.1 provides an introduction to specialized languages, offering an overview of the development and application of English for Specific Purposes (ESP) (2.1.1). Subsequently, Section 2.2 systematically outlines the overarching features of specialized discourse based on Gotti's typology (2011a), encompassing salient lexical (2.2.1), syntactic (2.2.2), and textual (2.2.3) characteristics. Proceeding to Section 2.3, the chapter expounds upon the intricate relationship between language and law, adopting a genre-based perspective (Bhatia 2004, 2014). Section 2.4 subsequently highlights the global importance of legal English, pinpointing specific features discernible at both the lexical (2.4.1) and syntactic (2.4.2) levels. Ultimately, in Section 2.5, the emphasis is placed on the crucial role of genre analysis, particularly focusing on legal genres. Indeed, this study focuses on the legal genre of arbitral awards, explicated in detail in Subsection 2.5.1.

2.1 Introducing specialized languages

This study focuses on the discourse of commercial arbitration, delving into the language of law as a specialized form of communication. Since this study specifically focuses on the genre of arbitral awards and aims at conducting the linguistic analysis of the Main Corpus of collected awards (see Chapter 4), it is first important to specify what is meant by both 'specialized language' and 'legal language', as they are foundational concepts crucial to this study[11].

The interest in register for special purposes gained prominence after World War II, specifically through studies conducted by the London School and its main exponents, including John Rupert Firth (1890-1960). This period marked a significant shift in

[11] It is important to specify that, although it is acknowledged that in linguistics 'specialized' and 'discourse' constitute two different concepts, in this study 'specialized discourse' and 'specialized languages' are both used to refer to the "specialist use of language in contexts which are typical of a specialized community stretching across the academic, the professional, the technical and the occupational areas of knowledge and practice" (Gotti 2011a, 24).

perspectives as language. Previously regarded as a singular, non-contextualized system, language began to be recognized as "a means of communication that is highly flexible and easy to use in several contexts" (Maglie 2004, 9). This shift was propelled by the evolution of linguistic studies spanning the 19th to the 20th century.

In the 19th century, language was considered as a single system, studied from a static and impersonal standpoint. This perspective was largely influenced by Ferdinand de Saussure's (1857-1913) theory of '*une langue une*' (de Saussure, 1916), which distinguishes between *langue* – "a social product of the faculty of speech and a collection of necessary conventions that have been adopted by a social body to permit individuals to exercise that faculty" (Sanders 2004, 78) – and *parole* – "an individual act [that] is wilful and intellectual" (Sanders 2004, 78).

While valuable, De Saussure's theory faced criticism by several scholars who considered it paradoxical as within such a theory "*langue* is presented as a social fact which is in some way independent of social use" (Widdowson 1979, 10). Furthermore, scholars such as Bakhtin and his followers considered that de Saussure's theory did not adequately account for the "fluidity of vernacular dialogue" (Maglie 2004, 8).

Noam A. Chomsky (1928-) also contended that linguistic studies should not be concerned with linguistic variation but rather should prioritize the study of linguistic structure (Chomsky 1957, 15). In his work, Chomsky identifies two main elements by analyzing language, i.e. 'competence' – which is the idealized capacity of the user with regard to the rules of grammar – and 'performance' – which is the production of such an idealized capacity in utterances. However, this theory has also faced some criticism. His linguistic analysis centers on the study of grammar, which is "idealized as an abstract system whose personal, socio-cultural, geographical and contextual factors are ignored" (Maglie 2004, 9).

As noted earlier, the post-World War II era marked a shift in perceiving language as a flexible means of communication, largely credited to Firth and the scholars of the London School. Moreover, this period saw the emergence of the concepts of context and social roles as fundamental considerations in linguistics:

> The multiplicity of social roles we have to play as members of a race, nation, class, family, school, club, as sons, brothers, lovers, fathers, workers, churchgoers, golfers, newspapers readers, public speakers, involves also a certain degree of linguistic specialization. Unity of language is the most fugitive of all unities whether it be historical, geographical, national, or personal. There is no such thing as 'une langue une' and there never has been" (Firth 1957: 29, quoted in Maglie 2004, 10).

As a matter of fact, there is a growing recognition that the degree of 'specialization' in language can vary depending on the social role and the specific situation at hand.

These studies laid the foundational groundwork for Michael Halliday's (1925-) exploration of registers and systemic functional grammar. According to Halliday's theory, language is not merely a collection of sentences but rather represents an exchange of meanings in various interpersonal contexts (Halliday 1978, 2). Furthermore, Halliday posits that language is intricately woven into the social system, thus being subject to both variation according to the 'user' and variation according to 'use'. The former type of variation refers to the variation in accent and dialect, whereas the latter refers to the register variation, which produces variation in meaning. Specifically, register is "the language you are speaking at a particular time, determined by what you and others are doing there and then, that is, by the nature of the ongoing social activity" (Maglie 2004, 10).

In line with Halliday, McIntosh and Strevens state, "language varies as its function varies; it differs in different situations. The name given to a variety of a language distinguished according to its use is register" (1964, 87). The situation in which social activities take place assumes a fundamental aspect. Specifically, the concept of 'context of situation', which was originally suggested by Malinowski (1923) and elaborated by Firth (1957), implies that

> language comes to life only when functioning in some environment. We do not experience language in isolation – if we did we would not recognize it as language – but always in relation to a scenario, some background of persons and actions and events from which the things which are said derive their meaning (Halliday 1978, 28).

Within any context situation, the relevant aspects to predict the linguistic features that are usually associated with it are referred to as field, tenor, and mode. These elements serve as the "basis for deriving the features of the text from the features of the situation" (Trosborg 1997, 17, based on Halliday and Hasan 1990, 22) and are described as follows (Doughty *et al*. 1972, 185-6, quoted in Halliday 1978, 33):

> Field refers to the institutional setting in which a piece of language occurs, and embraces not only the subject-matter in hand but the whole activity of the speaker or participant in a setting [we might add: 'and the other participants']...
>
> Tenor… refers to the relationship between participants… not merely variation in formality… but… such questions as the permanence or otherwise of the relationship and the degree of emotional charge in it…

> Mode refers to the channel of communication adopted: not only the choice between spoken and written medium, but much more detailed choices [we might add: 'and other choices relating to the role of language in the situation']...

As it can be noticed, since the post-war period, scholars have progressively acknowledged the importance of studying language in connection with the variables of person-environment-context of communication (Maglie 2004, 11). This acknowledgement stems from the understanding that "all language is language-in-use, in a context of situation, and all of it relates to the situation" (Halliday 1978, 33).

The aforementioned studies have laid the foundations of 'LSP', an acronym for 'language for special purposes'. In order to illustrate what LSP entails, it is first necessary to mention that the latter is usually described in contrast with LGP, which stands for 'language for general purposes' and refers to the language that is used every day in ordinary situations for common communication. As a result, LSP refers to the language employed to discuss specialized fields of knowledge, and it is therefore "more accurate to talk about LSP in the plural (i.e. languages for special purposes) since different LSPs are used to describe different areas of specialized knowledge" (Bowker and Pearson 2002, 25).

In LSP, the context in which discourses originate and the relationship between the various contextual factors take on a fundamental role. In this regard, specialized discourse is examined by Trosborg (1997, 16) according to a coordinate system in which the horizontal line shows the disciplinary domains in which language can be divided – such as scientific language, legal language, medical language, and so on – and the vertical line indicates the specific 'layer' of the domain[12] under consideration. Such a coordinate system is shown in Figure 2.1 below.

[12] As Trosborg (1997, 16) states, the 'layer' of a specific domain is defined according to sociological functions and produces several functional styles, i.e. scientific, literary, colloquial, and so on.

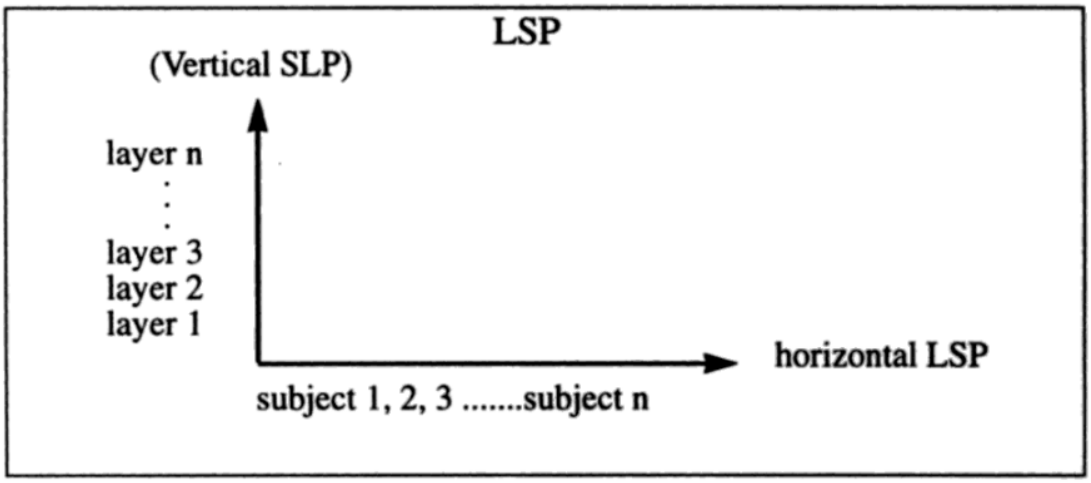


Figure 2.1: Coordinate system for the representation of specialized discourse (Trosborg 1997, 16).

Before delving into the specificities of LSPs, it is crucial to acknowledge the historical disagreement surrounding the notion of specialized discourse (Gotti 2011a, 9-10). While some authors distinguished specialized discourse from general language based on specific features that characterize it, others considered these distinctive traits negligible. This differing perspective led some scholars to minimize formal differences between the two types of discourses. It is true that most LGP words are used in LSP conversations; however, LSP does not merely employ specialized terms, but also combines them "in a special way" (Bowker and Pearson 2002, 26). As Gotti (2011a, 18) states,

> there is far more than a straightforward lexical distinction at the root of specialized discourse. The mere identification of marked elements is not enough to account for their origin or for the rationale which has led to their appearance. Register analysis has helped, on the other hand, to shift the researchers' focus from a chiefly statistical-quantitative approach (which continues to this day, also thanks to a digital word-processing technology) to a mainly 'qualitative' approach, which seeks to identify the peculiarities of specialized texts in a perspective that is not only microlinguistic but takes into account the discourse in which they are embedded.

As a result, specialized languages are characterized by a combination of elements such as terminology, collocations, and stylistic features.

Furthermore, in the literature other contrasting viewpoints have emerged. Some scholars considered specialized discourse as a homogenous entity with shared traits, while others contested this view, asserting that specialized discourse does not constitute a single type of

discourse to be treated as a whole, but rather as a heterogeneous group in which different genres should be considered separately and through different approaches (Gotti 2011a, 10). The latter perspective seems to correspond to the truth, as subsequent studies[13] have confirmed that each specialized genre provides specific results that cannot be extended to other kinds of genres, even when they belong to the same field.

The terminology employed to define the object of specialized discourse has also represented a controversial matter. For instance, the expression 'specialized discourse' has often been compared to the notion of 'restricted language'[14]. However, the latter refers to "particular restricted codes that employ certain sentences of general language in specialized communication" as in "the case, for example, of flight control communication, based on the exchange of standard messages using set phrases with a set of agreed variants" (Gotti 2011a, 22).Therefore, it is not appropriate to use the expression 'restricted language' when referring to the concept of specialized discourse.

The expression 'special languages' has also been compared to the notion of 'specialized discourse'. Scholars like Cortelazzo (1994, 8) and Scarpa (2001, 1) use the expression *lingua speciale* (special language) to refer to languages that are indeed considered as 'special' as they encompass the communicative needs of a restricted number of speakers in addition to fulfilling referential needs, i.e. specialized lexicon. However, Gotti observes that the label 'special languages' should be reserved for "languages with special rules and symbols deviating from those of general language" such as "Code Q, which is frequently used in the telecommunications sector[15]" or to "languages sharing the communicative conventions of a given language but also possessing other conventions which are not part of these resources" (2011a, 23).

Another expression that has been used to refer to LSP is *linguaggi settoriali* (sector-specific languages) (Beccaria, 1973). This expression encompasses both the language for advertisement and the language for science, thus constituting a vague term since

[13] One of the most relevant studies is that of Mattila (2006, 4), in which the author acknowledges that legal language differs depending on the genre or discourse community in which it occurs. Indeed, in his work Mattila states that "[l]egal language can be divided into sub-genres, particularly according to the various sub-groups of lawyers. This is explained by the fact that the language of each sub-group of lawyers to some degree possesses particular characteristics (vocabulary, style). This is notably so as to the language of *legal authors*, *legislators* (laws and regulations), *judges*, and *administrators*, as well as *advocates*." Such a viewpoint also coincides with that of other scholars such as Trosborg, who considers LSP "as a range of domains which may be further divided into subdomains involving a number of sublanguages" (1997, 16).

[14] For instance, in his work Wallace (1981, 269) employs the expression 'restricted languages' to refer to specific fields of discourse such as legalese, journalese, and the language of linguistic theory.

[15] Specifically, special languages such as Code Q are different from standard languages. Furthermore, they are codes of communications that "use proper rules and particular symbols and whose number of messages available for communication is fixed and finite" (Maglie 2004, 17).

> "some of the *linguaggi settoriali* refer to the 'mode' used (for instance, newspaper and TV), others to the purpose (sport, literary criticism, advertisement) other to the social environment (underworld slang). It seems to imply a division within languages for special purposes hiding their interdisciplinarity at the lexical, morphosyntactical and textual level" (Maglie 2004, 17, based on Gotti 1991, 7-8).

Finally, the term 'microlingue' has also been used to refer to specialized discourse studies. Specifically, in 1981 Balboni uses the expression 'scientific-professional microlingues' to refer to

> *[M]icrolingue* (prodotte cioè dalla selezione all'interno di tutte le componenti della competenza comunicativa in una lingua) *usate nei settori scientifici* (ricerca, università) *e professionali* (dall'operaio all'ingegnere, dall'infermiere al medico, dallo studente di liceo al critico letterario) *con gli scopi di comunicare nella maniera meno ambigua possibile e di essere riconosciuti come appartenenti ad un settore scientifico o professionale.*
> [*Microlingues* (which are produced from a selection within all the components of communicative competence in a language) *that are used in both scientific fields* (research, university) *and professional fields* (from laborers to engineers, from nurses to medical doctors, from high school students to literary critics) *with the aim of communicating in the least ambiguous way possible and of being recognized as belonging to a scientific or professional field.* (Balboni 2000, 13)
> [my translation]

However, Gotti (1991) subsequently claimed in his work that such a term is also unsuitable to refer to specialized discourse "for its reference to a microcosm lacking the expressive richness of standard language" (Gotti 2011a, 23).

The most appropriate expression to refer to the area of study that draws "its strength from the description of language use in specialised academic and professional contexts" (Bhatia 2002b, 42) are therefore 'specialized discourse' or 'specialized languages'. According to Gotti, these terms reflect " more clearly the specialist use of language in contexts which are typical of a specialized community stretching across the academic, the professional, the technical and the occupational areas of knowledge and practice" (2011a, 24). By using this expression and the definition provided by Gotti, the focus is therefore directed toward three fundamental elements essential for the development of specialized discourse: the user, the

domain of use – i.e., the specific situation or context that is referred to – and the specific application of language in that particular field.

2.1.1 ESP development and application

When outlining LSP and its characteristics, it is important to specify that LSP should not be confused with 'ESP', which stands for 'English for Specific Purposes' and emerged as a branch of LSP during the 1960s. ESP is defined by Paltridge and Starfield as "the teaching and learning of English as a second or foreign language where the goal of the learners is to use English in a particular domain" (2013, 2). ESP has separated from the more general movement because of the escalating importance of English as a Lingua Franca[16] (ELF) in cross-linguistic professional negotiations. As Dudley and St. John (1998, 19) state

> The original flourishing of the ESP movement resulted from general developments in the world economy in the 1950s and 1960s: the growth of science and technology, the increased use of English as the international language of science, technology and business, the increased economic power of oil-rich countries and the increased number of international students studying in the UK, USA and Australia.

As a matter of fact, ESP students are usually adults who are quite proficient in English and need to improve their linguistic skills so as to "communicate a set of professional skills and to perform particular profession-related activities" (Rahman 2015, 24). For this reason, ESP focuses more on language in context than on grammar and language structures.
In ESP "English is not taught as a subject separated from the learners' real world (or wishes); instead, it is integrated into a subject matter area important to the learners" (Rahman 2015, 24). It follows that ESP differs from General English (GE) not only because of the difference of the learners involved and their skills but also because of the way courses are built and delivered.

[16] English as a Lingua Franca (ELF) refers to the movement that distinguishes itself from 'English as a Foreign Language' (EFL) teaching as it locates itself within a Global English paradigm (O'Regan 2014, 533) in which "people from different lingua-cultural backgrounds appropriate the resources of the [English] language and exploit its virtual meaning potential as required in different contexts and purposes" by showing themselves "capable of effective communication without conforming to the forms of Standard English or native speakers norms of usage" (Guido and Seidlhofer 2014, 7). Furthermore, ELF users belong to different lingua-cultural backgrounds, and therefore "naturally bring to their interactions assumptions based on the norms of usage and communicative behaviour of their own languages" (Guido and Seidlhofer 2014, 7).

Furthermore, ESP has traditionally been divided into two main branches, namely English for Academic Purposes (EAP) – which refers to "any English teaching that relates to academic study needs" – and English for Occupational Purposes (EOP) – which "involves work-related needs and training" (Rahman 2015, 25; Maglie 2004, 12). Such a classification can be visually represented in a tree diagram in which EAP and EOP are delineated based on their focus on academic or professional field, as illustrated in Figure 2.2.

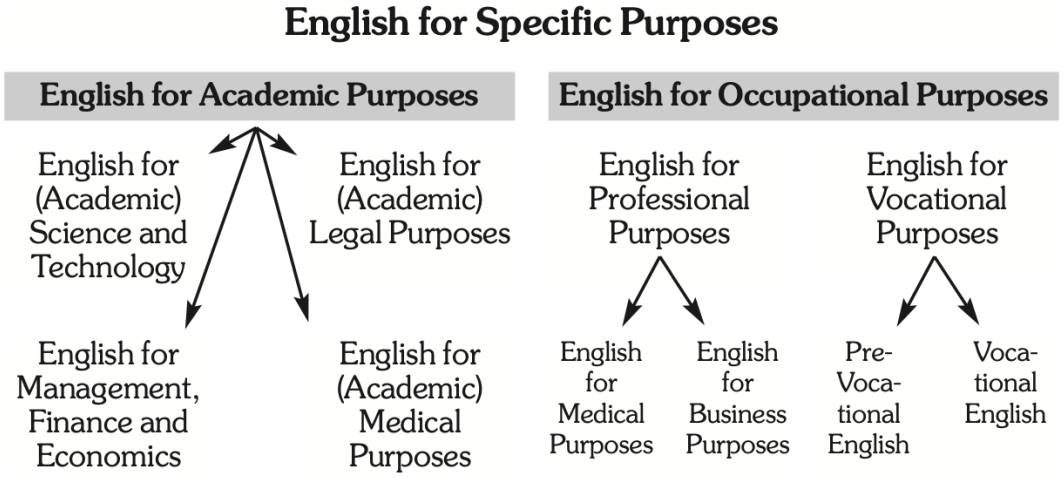


Figure 2.2: ESP classification by professional area (Dudley and St. John 1998, 6).

It is possible to identify different stages of development of ESP[17]. In his work, Johns (2013) identifies four historical periods of ESP development. In the first identified stage (1962-1981), ESP mainly focused on terminology and language at the sentence level (Hutchinson and Waters 1987, 10; Garzone, Heaney and Riboni 2016, 8). Indeed, "research tended to be descriptive, involving statistical grammar counts within written discourses" (Johns 2013, 7). As Swales noted, this type of research "had descriptive validity but little explanatory force" (1988, 59).

During the second phase of development, which occurred between 1981 and 1990, the attention shifted to the level above the sentence, thus including analyses of texts at the rhetorical and discourse levels. This marked a departure from the preceding stage, characterized by quantitative studies primarily centered on lexico-grammatical features at or below the sentence level (Maglie 2004, 14). Such a phase therefore involves the consideration of both the social context and the authorial purpose, thus striving for a 'multi-

[17] It must be pointed out that, as Hutchinson and Waters (1987, 9) emphasize in their work, ESP is not a "monolithic universal phenomenon" and, as a consequence, the stages that are described in this subsection might not be operating in all countries at the same time. For this reason, the brief overview of the stages of the ESP development is general in its focus.

layered' rather than a 'one-dimensional' description of textual form. As Swales states, "Work in ESP was by the middle 80s not merely interested in characterizing linguistic *effects*; it was also concerned to seek out the determinants of those effects" (1990, 3-4). As a matter of fact, in this period research "began to focus more on *text structure as a realization of the writer's communicative purpose* and less on the morpho-syntactical elements of the sentence level" (Maglie 2004, 16, based on McKinlay 1984).

Furthermore, in this period a great number of articles published in the *English for Special Purposes Journal* (ESPJ) focused on needs assessment, considered the cornerstone of ESP (Hutchinson and Waters, 1987; Robison, 1991; Dudley-Evans and St John, 1998; Flowerdew and Peacock, 2001). As Robinson (1991, 7) claims, "needs analysis is generally regarded as critical to ESP, although ESP is by no means the only educational enterprise which makes use of it". Robinson further observes that "ESP courses develop from a needs analysis, which aims to specify as closely as possible what exactly it is that students have to do through the medium of English" (1991, 3). Needs analysis[18] therefore constitutes a crucial process in developing ESP courses, as "it must be conducted prior to a language course and syllabus design, materials selection, teaching and learning methodology and evaluation" to develop courses that are "suitable, practical and successful for a particular context" (Rahman 2015, 26).

The foundation of ESP lies indeed in the importance attributed to learners, to their need for learning a specialized foreign language and to the learning context. Learners' needs therefore take on a central importance in the course design process. Maglie (2004, 11) observes indeed that ESP

[18] In ESP needs analysis, different components can be identified and employed to develop ESP courses. Specifically, many ESP scholars suggest that there are three fundamental components in ESP needs analysis, namely the Target Situation Analysis (TSA), the Learning Situation Analysis (LSA), and the Present Situation Analysis (PSA). The TSA refers to "forms of needs analysis, which centers on identifying the learners' language requirements in the occupational or academic setting" (Rahman 2015, 26, based on West 1994). The LSA refers to "why do learners want to learn" and involves identifying "effective ways of learning the skills and language" (Rahman 2015, 26, based on Dudley-Evans and St. John 1998). The PSA "seeks to ascertain what the students are akin to at the start of their language course, looking into their strengths and weaknesses" (Rahman 2015, 26, based on Robinson 1991). It can therefore be stated that the purpose of needs analysis is to set the existing ESP knowledge on a more scientific basis by developing methods for connecting language analysis to the learners' reasons for learning. As Hutchinson and Waters (1987, 12) state, "Given that the purpose of an ESP course is to enable learners to function adequately in a target situation, that is, the situation in which the learners will use the language they are learning, then the ESP course design process should proceed by first identifying the target situation and then carrying out a rigorous analysis of the linguistic features of that situation. The identified features will form the syllabus of the ESP course."

> has focused mainly on helping students learn the linguistic peculiarities of languages for specific purposes (from the grammar to the lexis of LSP, to certain discourse features of spoken and written texts and, finally, to the genres used within the LSP domain) which they must master in order to be considered competent members of the discourse communities they aspire to join.

In ESP, the primacy of need is therefore established. The emphasis is on needs analysis, text analysis and teaching students how to effectively communicate in their professional environment (Dudley and St. John 1998, 1).

The third stage (1990-2011) is identified by Johns (2013, 12) as the 'Modern age in ESP'. This is characterized by the establishment of new international journals[19], including the *Journal of Second Language Writing* (JSLW) in 1991 and the *Journal of English for Academic Purposes* (JEAP) in 2001, which focused, together with the *English for Special Purposes Journal* (ESPJ), on ESP research. During this period, there was also a dominance of genre analysis (Swales 1990, 2004; Bhatia 1993, 2004; Paltridge 2001; Hyland 2004) due to the increasing importance attributed to the socially-situated character of genres, namely to a social and pragmatic dimension of genres. Additionally, corpus research gained prominence during this stage, as ESP teaching methods were influenced by advancements in corpus linguistics and technological improvements in language analysis. As Bloch (2013, 385) points out, such advancements have been useful "first, as a tool for helping with traditional types of language learning and, second, as a space for creating new forms of communicating". Specifically, corpus linguistics has been influential in ESP for the purposes of "course and syllabus design, development of teaching materials, as well as for pedagogically-oriented ESP research, as all these activities can now be grounded in massive collections of data and supported by software for text analysis" (Garzone, Heaney and Riboni 2016, 8-9, based on Belcher, Johns and Paltridge 2011, 3-4), thus showing "how language is used in the context of particular academic genres" (Paltridge 2013, 351).

[19] As Johns (2013) highlights, the importance of the abovementioned international journals in the history of ESP development is the fact that "in many parts of the world, academics are now required to publish in international journals (preferably those on the Social Science Citation Index) in order to be promoted in their home institutions. This move results, in many cases, from the efforts on the part of the administrators of individual institutions and national educational organizations to boost university rankings internationally [...]. Not surprisingly, *English for Specific Purposes*, as well as other international publications (especially those on the SSCI), have experienced a rapid increase in international submissions" (Johns 2013, 13). It therefore becomes important for researchers to publish in SSCI journals, and quality submissions are expected in the future from all different countries.

The last stage (2012-) identified by Johns (2013, 18) is 'the future', which is mainly characterized by international authorship, multi-methodological approaches and growing attention to multimodalities[20]. This stage is also identified by Liu and Hu (2021) as the 'flourishing stage'[21], although in their work such a stage begins in the early 2000s. Liu and Hu's (2021, 108) data reveal that during this period there has been

> a tremendous expansion in the form of: (1) intensively researching previous charted areas (e.g., academic genres), often from a new perspective (e.g., cross-disciplinary variation); (2) inventively combining known research areas (e.g., lexical bundles and rhetorical structure) to open up to new avenues of research; and (3) staking out new territory (e.g., phrasal patterning and complexity).

Liu and Hu therefore outline five active areas of ESP research at this stage: disciplinary academic discourse, ethnolinguistic variation, academic vocabulary and formulaic language, metadiscourse in English and academic writing, and academic English in a global context.
In conclusion, with regard to the future of ESP, it is relevant to highlight the recent work by Zanola (2023). In her study, Zanola provides a comprehensive overview of the future perspectives offered by the evolution from ESP to the burgeoning use of English for Specific Academic Purposes (ESAP) and English for Scientific and Professional Purposes (ESPP) (Pinnavaia and Zanola 2023, 3). The conceptualization of ESPP arises from the necessity to equip adult English learners with linguistic and pragmatic competence, ensuring their adeptness in communication to prevent inadequate or inappropriate language use. This becomes particularly crucial in the context of the progressively international, multilingual, and multicultural nature of work and professional environments. The distinct needs of adult learners, whether in academia or professions, within natural sciences or humanities, markedly differ from those of younger students. Adult learners operating in English at work engage in advanced conversations, discuss topics demanding sophisticated skills, and are

[20] In the volume *Critical Graphicacy: Understanding Visual Representation Practices in School Science* edited by Roth *et al*. (2005), they illustrate how visual displays should be an important focus of ESP research and that visual images are used "to present data, illustrate abstract concepts, organize complex sets of information, facilitate the integration of new knowledge with existing knowledge, enhance information retention, mediate thinking process, and improve problem solving" (Roth *et al*. 2005, 208-9).

[21] The so-called 'flourishing stage' identified by Liu and Hu (2021, 97) – which therefore introduces a variety of research interests (e.g., move analysis, cross-disciplinary and cross-linguistic variation, lexical bundles, vocabulary lists, metadiscourse, and academic writing in a global context) – is preceded by the stages identified by them, namely the 'conceptualizing stage' (1970s-1990s), focusing on needs analysis, the 'maturing stage' (1990s-2000s), which is characterized by the development of major methodological approaches (e.g., genre-based, corpus-based, contextual, and critical approaches).

expected to share knowledge with colleagues, clients, customers, and other experts in their respective fields. Consequently, the primary challenges for these learners revolve around the quality of communication, understanding the communicative context, and selecting an appropriate register.

Zanola introduces ESPP as a novel research domain in English language and linguistics, dedicated to investigating the efficiency and effectiveness of both native and non-native English speakers in professional contexts. She advocates for the development of this research area within and beyond academia as a corrective measure to the European tradition of ESP. The aim is to reinforce the notion that this longstanding tradition of teaching and researching ESP can be revitalized and fortified to facilitate both personal and professional growth for learners. While the demands from professionals across various fields are substantial, and there is a considerable body of academic studies on the subject, specific research inquiries into written and oral communication requirements in second-language and foreign-language contexts for the world of work still appear to lack adequate and satisfactory answers.

2.2 General features of specialized discourse: overview

As briefly mentioned in the previous section, specialized discourse is not a homogeneous entity, but rather a heterogeneous one encompassing various languages and genres, each with its distinct characteristics. As Gotti (2011a, 25) points out, "Just as general language is not a uniform entity but contains many varieties, common rules and features of specialized discourse coexist with specific ones separating each variety from the others." As a result, specialized discourse cannot be considered as a monolithic phenomenon. Not only do different specialist fields produce various specialized languages, but each field can also be further subdivided into domains with unique characteristics (Trosborg 1997, 16).

Despite the heterogeneity, scholars have attempted to identify general traits that can be observed in specialized discourse. For instance, in his work, Hoffmann (1984) provides not only a definition of *Fachsprache* (LSP) but also presents a list of characteristics of specialized discourse. Originally, Hoffmann employs the term *Fachsprache* to refer to the type of communication that occurs within a specific domain (1984, 53, translated by Vlachopoulos in Vlachopoulos 2018, 427):

> *Fachsprache – das ist die Gesamtheit aller sprachlichen Mittel, die in einem fachlich begrenzbaren Kommunikationsbereich verwendet werden, um die Verständigung zwischen den in diesem Bereich tätigen Menschen (und die Popularisierung der fachlichen Inhalte sowie den Kontakt zu bestimmten Nicht-Fachleuten) zu gewährleisten.*
> [LSP is the sum of all the linguistic resources used in an area of professional communication to enable mutual understanding between professionals in the area (and to communicate the specialist content to the general public and maintain contact with selected lay people)]

Approximately a decade later, Hoffmann (1993) abandons the use of the term *Fachsprache* and employs the term *Fachkommunikation* (specialized communication), which he defines as follows (Hoffmann 1993, 614, translated by Vlachopoulos in Vlachopoulos 2018, 427):

> *Fachkommunication ist die von außen oder von innen motivierte bzw. stimulierte, auf fachliche Ereignisse oder Ereignisabfolgen gerichtete Exteriorisierung und Interiorisierung von Kenntnissystemen und kognitiven Prozessen, die zur Veränderung der Kenntnissysteme beim einzelnen Fachmann und in ganzen Gemeinschaften von Fachleuten führen.*
> [Specialised communication is the externalisation and internalisation, whether motivated or stimulated from the outside or from the inside, of knowledge systems and cognitive processes

related to specialised information, which leads to change in individual experts' knowledge systems and in the knowledge systems possessed by entire communities of specialists.]

This definition, along with the definition mentioned above and provided by Gotti (2011a, 24) on specialized languages that is mentioned in Section 2.1, focuses on the importance of a 'community of specialists' sharing specialized knowledge within a specific field and utilizing specialized language in that domain. Moreover, Hoffmann's definition suggests that specialized discourse "cannot focus solely on isolated linguistic features, such as individual words, syntactic structures, etc." but rather "provides a perspective that considers knowledge and the transformation of knowledge systems to be an integral part of domain-specific communication" (Vlachopoulos 2018, 427).

As previously mentioned above, Hoffmann (1984, 31, quoted in Gotti 2011a, 29) also provides a list of 'desirable qualities' of specialized discourse:

1. Exactitude, simplicity and clarity;
2. Objectivity;
3. Abstractness;
4. Generalization;
5. Density of information;
6. Brevity or laconism;
7. Emotional neutrality;
8. Unambiguousness;
9. Impersonality;
10. Logical consistency;
11. Use of defined technical terms, symbols and figures.

Such a list presents flaws in its structure, notably the inconsistency of certain categories, such as exactitude and simplicity, and the repetition of others, such as clarity and unambiguousness. Furthermore, such qualities are overly general, as "not all criteria mentioned by Hoffmann are applicable to all specialized languages, and likewise the criteria chosen for a given specialized language are not always applicable to its various genres" (Gotti 2011a, 30).

In his work, Gotti (2011a, 30) also reports that such a list presents inconsistencies, as some qualities may conflict with each other. As a matter of fact, it is not specified which quality is dominant in a situation of conflict. Sager *et al*. (1980, 314) discuss this issue by identifying

three main criteria that should be used to assess the effectiveness of communication in specialized discourse. The identified criteria include economy, precision, and appropriateness, and they are dominant in specialized discourse. According to Sager *et al*. (1980, 315): (1) the concept of economy deals "with all aspects of the reduction of effort in the transmission of information"; (2) the concept of precision is concerned with "the association of an expression with a well-defined region of the knowledge space"; (3) finally, appropriateness implies that the message should enable the audience "to localise accurately the area of knowledge which is the subject of the discourse, as well as achieving the intention in as effective a manner as possible". Such criteria are interdependent, as specialized communication achieves maximum efficacy of communication when they are all satisfied. However, if economy and precision conflict with each other, appropriateness is the one criterion to arbitrate between them, thus becoming the dominant one over the other two.

Since Sager *et al*. approach language by considering it the outcome of decisions made by specialists within a 'global semiotic dimension', Gotti considers their work as a landmark in specialized discourse studies and as "an effort to move beyond the mere description of linguistic phenomena" by offering "a practicable approach to their interpretation" (2011a, 31). In his comprehensive analysis, Gotti (2011a) proceeds to identify the main lexical, syntactic and textual features of specialized discourse. Such distinctive traits can be summarized as follows:

Lexical level:

- Monoreferentiality;
- Lack of emotion;
- Precision;
- Transparency;
- Conciseness;
- Conservatism;
- Ambiguity;
- Imprecision/fuzziness;
- Redundancy.

Syntactic level:

- Omission of phrasal verbs;
- Expressive conciseness;
- Premodification;
- Nominalization;

- Lexical density;
- Sentence complexity;
- Sentence length;
- Use of verb tenses;
- Use of the passive;
- Depersonalization;

Textual level:

- Anaphoric reference;
- Use of conjunctions;
- Thematic sequence;
- Argumentative patterns.

Acknowledging the diverse nature of specialized languages, it is evident that certain features may not universally apply and, in some instances, may even present contradictions, as will be elaborated in subsequent subsections and paragraphs. Each feature will be scrutinized individually.

This study recognizes the non-monolithic nature of specialized languages. Specialized discourse is considered as a heterogeneous phenomenon, and LSP is considered as an umbrella term that can be divided into various domains that involve linguistic diversification (Trosborg 1997, 15). As Gotti (2011a, 10) points out,

> [S]pecialized languages must be taken into consideration separately or grouped by level, genre, etc. The latter view is arguably confirmed by the findings of several studies and authors working with different texts, fields and specialized genres. The results drawn from one field cannot per se be extended to others; the findings of a given genre call for adjustment and additions if applied to another.

This study therefore considers legal language as a specific area of specialized languages. More specifically, it underscores the importance of discerning between different types of genres within the same legal domain (see Section 2.3).

2.2.1 Lexical features of specialized discourse

Specialized languages, as previously discussed, possess distinctive characteristics that differentiate them from general language. It is imperative to clarify that not all of these

characteristics are universally applicable to every specialized language. For instance, monoreferentiality is one of the most salient lexical features of specialized discourses identified by Gotti, and it indicates that each term is only assigned one referent and is "limited to the disciplinary field in which a term is employed" (Gotti 2011a, 33-34). This means that in a given context, each term is only allowed one meaning (Maci 2018, 27). Such a principle arose during the 17th-18th century as a response to the necessity to replace existing imprecise terms with new ones, which were usually drawn by classical languages in order to achieve greater monoreferentiality. Nevertheless, this principle does not occur in all specialized languages. For instance, in the case of legal or business languages, conservatism is preferred and "Old formulae are preferred to newly-coined words because of their century-old history and highly codified, universally accepted interpretations" (Gotti 2011a, 41).

Precision stands out as another important lexical feature in specialized discourse. Stemming from the need for accuracy that arose after the scientific revolution of the 17th century, precision dictates that "every term must point immediately to its own concept" (Gotti 2011a, 36). However, this conflicts with the needs of certain types of specialized languages. In legal language, for instance, a certain degree of vagueness and fuzziness is unavoidable (Endicott, 2000). On the one hand, legal texts require determinate and precise drafting, while, on the other hand, they need to be all-inclusive[22] (Bhatia 1987, 1). This is because "the draftsman tries to make its provision not only clear, precise and unambiguous, but all-inclusive too" (Bhatia 1993, 191) in order to "cover every relevant situation" (Bhatia *et al*. 2005, 10).

The lack of emotive connotations is another noteworthy feature of specialized discourse, particularly emphasized when monoreferentiality and precision are employed as they "carry within them a denotative meaning" (Maci 2018, 27). Indeed, the tone used in specialized discourse tends to be neutral "as its illocutionary force derives from the logical, consequential arrangement of concepts and of supporting evidence rather than the use of emphatic language" (Gotti 2011a, 35-36). However, if the pragmatic purpose is persuasive, as in the case of advertisements or argumentative texts, figurative and emotive language is employed to convince the audience.

Conciseness is a crucial aspect of specialized lexicon, closely connected with precision and monoreferentiality as well (Maci 2018, 27). It implies that "concepts are expressed in the shortest possible form", thus leading to a "reduction in textual surface" (Gotti 2011a, 40).

[22] As Bhatia observes, since legal texts need to be both precise and all-inclusive, it is not always an easy task to reconcile these two requirements. He points out that "One of the many linguistic devices which make this possible is the use of nominalizations, others include the use of qualificational insertions, complex-prepositions, syntactic discontinuities, binomial and multi-nomial expressions" (1993, 274).

Such a feature, however, is in contrast with the feature of redundancy, observed in some specialized languages occurring when "the number of lexemes employed is far higher than necessary" (Gotti 2011a, 50). This can be observed, for instance, in legal texts (Gustafsson, 1984). Indeed, in some cases texts contain two similar terms that refer to the same concept (see Paragraph 2.4.2.1). Such collocations contain "two synonyms, or near synonyms, [that] are coordinated, sometimes in quite extensive lists, but more usually in pairs: *made and signed, terms and conditions, able and willing*" (Crystal and Davy 1969, 208).

Finally, transparency, another important lexical feature of specialized discourse, is imperative for precision (Maci 2018, 28),. It refers to "the possibility to promptly access a term's meaning through its surface form" and it derives from the assumption that "as an idea should refer directly to the facts observed, likewise the terms used should immediately suggest the idea they express" (Gotti 2011a, 37-38). When making a text transparent, "the surface form of a lexical element, be it a word or an affix, immediately identifies a concept, freeing it from ambiguity and polysemy" (Maci 2018, 28).

The lexical features mentioned in this subsection are all typical of specialized discourse. However, the various existing specialized languages do not exhibit all these features. Indeed, some of them even contrast with each other: monoreferentiality contrasts with conservatism, the lack of emotion contrasts with the pragmatic function of some specialized texts that aim at persuading the audience, precision contrasts with imprecision and vagueness, conciseness contrasts with redundancy, and transparency contrasts with ambiguity.

2.2.2 Syntactic features of specialized discourse

Specialized discourse presents distinct patterns at the syntactic level as well. First of all, a crucial feature is represented by the omission of phrasal elements of sentences to enhance conciseness (Gotti 2011a, 68). This includes the omission of articles, verbs and prepositions, aligning with the principle of conciseness discussed in the previous subsection (2.2.1).

According to Gotti, expressive conciseness is another strategy that is often used in specialized texts to make sentences more succinct. This can occur through the "substitution of relative clauses with adjectives usually obtained by means of affixation" (Gotti 2011a, 69), through the omission of subject and auxiliary, or by turning the verb of the relative clause into its past participle form and placing it after the noun. This strategy also complies with the principle of conciseness as well as with the principle of transparency (see Subsection 2.2.1).

Premodification is another important syntactic feature in specialized discourse. In English, premodification entails a right-to-left construction that "shortens sentences and makes the noun phrase especially dense"[23] (Gotti 2011a, 73). More specifically, in such a process "lexical items with an adjectival function are left-dislocated with regard to the head-noun and, thus, *modify* the qualities or properties of the latter" (Maci 2018, 32). According to Biber *et al*. (1999), there are four types of noun premodification: (1) general adjective (e.g., foreign markets), (2) *ed*-participial modifier (e.g., restricted area), (3) *ing*-participial modifier (e.g., growing economy), (4) noun modifier (e.g., market forces). While premodification allows to make texts more concise, it is acknowledged that this feature might also lead to ambiguity[24] and losses of conceptual clarity.

Nominalization represents another important syntactic feature of specialized discourse that "involves the use of a noun instead of a verb to convey concepts relating to actions or processes" (Gotti 2011a, 77). Nominalization is included by Quirk *et al*. (1985) in the category of noun phrases. However, in his work, Bhatia (1993, 148) points out that nominalization should be distinguished from nominal expressions such as complex nominal phrases and nominal compounds. Nominalization complies with the principle of conciseness (see Subsection 2.2.1), as it allows for 'syntactic compression' and easier text construction and communication flow (Biber and Gray, 2013). This feature simultaneously enhances precision and all-inclusiveness. This is particularly true with regard to legal texts, in which case they are employed for a twofold reason:

> First, of course, to refer to the same concept or idea repeatedly and, as in academic and scientific discourse, this promotes coherence and saves the writer from repeating lengthy descriptions. Second, and perhaps more typically, it is a convenient device to refer to as many aspects of human behaviour as required and, at the same time, to be able to incorporate as many qualificational insertions as necessary at various syntactic points in the legislative sentence. The use of nominal rather than verbal elements is likely to provide 'more mileage' for the legislative writer, when one of his main concerns is to be able to cram detail after detail and qualification after qualification in his sentence. (Bhatia 1993, 275)

[23] As Gotti states, "A distinctive aspect of the right-to-left pattern is nominal adjectivation, i.e. the use of a noun to specify another with an adjectival function. This type of specification can cover such features as the material of which an item is made (e.g. *ferrite core, paper tape, silicon chip*), its use (e.g. *access arm, load program*), its function (e.g. *control byte*) and others" (2011a, 73).

[24] It is important to mention that in premodification cases, although at first glance they might appear to make the text more ambiguous, such an ambiguity is often just apparent "because specialist knowledge helps the addressee to rule out inappropriate meanings in the decoding process" (Gotti 2011a, 76).

By using nominalizations, legal texts therefore appear more compact and precise as well as all-inclusive. Furthermore, they also result in texts that present a high level of lexical density, an additional syntactic feature of specialized discourse involving "a high percentage of content words within a text" (Gotti 2011a, 81) and containing more complex sentences. As Gotti states, sentences containing nominalizations are

> simpler in terms of linearity because conceptual complexity is expressed by syntactic and semantic relations within noun phrases. Textual comprehension is easier, therefore, thanks to simplified surface structure but the lexical density of the sentence and the complex patterning of the noun phrases makes interpretation more demanding. (Gotti 2011a, 83)

Lexical density is not only a consequence of nominalizations, but also of premodifications. As Maci claims, the use of premodification "within a sentence with syntactical and semantic complexity at the noun-group level (micro-level) gives rise to greater syntactical and semantic complexity at the sentence level (macro-level)" (2018, 32). In addition, while nominalizations simplify the surface structure of sentences, the resulting lexical density and intricate arrangement of noun phrases make interpretation more demanding (Gotti 2011a, 83), thereby enhancing sentence complexity, an additional noteworthy syntactic feature identified by Gotti.

In specialized languages, sentences also tend to be longer than those in general language. This tendency is particularly evident in legal texts, where length is employed to minimize ambiguity and fuzziness (Gotti 2011a, 85), addressing the primary objective of averting misinterpretations and misunderstandings (Gustafsson 1975; Hiltunen 2001).

Finally, at the syntactic level specialized languages are also characterized by the use of specific verb tenses[25], the use of the passive voice – which "allows the thematic element to identify a given information, while new information is normally presented rhematically" (Gotti 2011a, 96) – and consequent depersonalization, which involves the omission of the subject-speaker and a reduction in direct references to the interlocutor.

Some of the discussed syntactic features comply with the principles characterizing specialized languages at the lexical level that are discussed in the previous subsection. For instance, the omission of phrasal elements and the use of premodification align with the

[25] According to Barber (1985, 8 quoted in Gotti 2011a, 90), in English scientific texts the following ten tenses are mainly used: Present Simple Active (64%), Present Simple Passive (25%), Future Simple Active (3.7%), Present Perfect Passive (1.7%), Present Perfect Active (1.4%), Past Simple Active (1.2%), Past Simple Passive (1.2%), Future Simple Passive (0.7%), Present Progressive Active (0.6%), Imperative (0.3%).

principle of conciseness, thus contrasting with other lexical features that are not compatible with such a principle, such as the principle of redundancy. As a result, the syntactic features described in this subsection, akin to the ones identified at the lexical level (Subsection 2.2.1), are not universally present in all types of specialized languages but only in some of them.

2.2.3 Textual features of specialized discourse

Important features are also used in specialized languages to increase textual cohesion[26]. For instance, according to Gotti (2011a) anaphoric references are an important textual feature of specialized languages, serving to improve clarity and to prevent ambiguity. As highlighted by Halliday and Hasan, in every language there are specific items that "have the property of reference", which "instead of being interpreted semantically in their own right, they make reference to something else for their interpretation" (1976, 31). Specifically, in English such items are personals, demonstratives and comparatives[27]. The entity to which reference is made can be identified through either situational reference or textual reference. Situational reference, or exophora, involves identifying the thing in the context of the situation, while textual reference, or endophora, identifies the thing within the surrounding text. Reference items can therefore be categorized as exophoric or endophoric. If they are endophoric, they can be either anaphoric or cataphoric, as illustrated in Figure 2.3.

[26] In linguistics, 'text' is the term used to refer to "any passage, spoken or written, of whatever length, that does form a unified whole" (Halliday and Hasan 1976, 1). Furthermore, a text is characterized by texture, which means that the text is described as a unity and, as a result, "there will be certain linguistic features present in that passage which can be identified as contributing to its total unity and giving it texture" (Halliday and Hasan 1976, 2). To this end, specific textual features can provide cohesion to sentences and, therefore, to a text.

[27] Such items signal that the information is "to be retrieved from elsewhere" (Halliday and Hasan 1976, 31). As a matter of fact, they represent an important linguistic tool for cohesion. As Halliday and Hasan further state, "What characterizes this particular type of cohesion, that which we are calling reference, is the specific nature of the information that is signalled for retrieval. In the case of reference the information to be retrieved is the referential meaning, the identity of the particular thing or class of things that is being referred to; and the cohesion lies in the continuity of reference, whereby the same thing enters into the discourse a second time" (1976, 31).

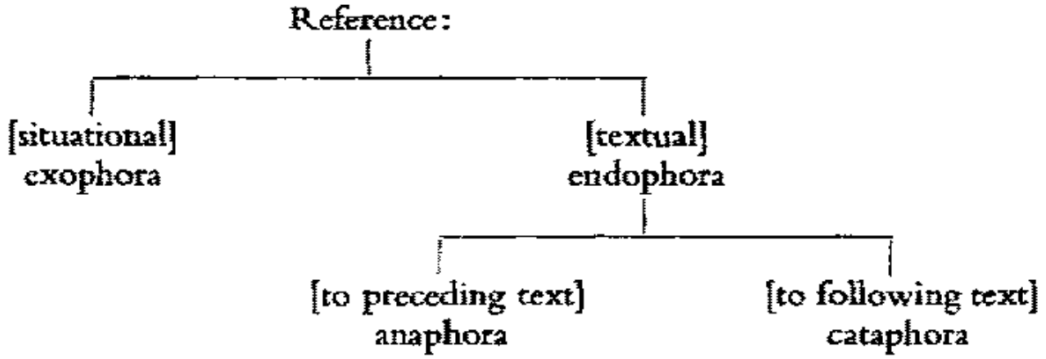


Figure 2.3: Exophoric and endophoric reference items (Halliday and Hasan 1976, 33).

Exophoric items are those items which do not explicitly name anything but rather signal "that reference must be made to the context of situation" (Halliday and Hasan 1976, 33). Exophoric reference, therefore, relies on the context for comprehension. On the contrary, endophoric references are general names used for reference within the text. However, in both cases a presupposition must be satisfied, namely that "the thing referred to has to be identifiable somehow" (Halliday and Hasan 1976, 33).

Anaphoric references refer to something mentioned earlier in the text, providing cohesion to specialized language texts. Instead, in cataphoric references the item refers to something mentioned later in the text.

Another textual feature contributing to cohesion is specialized languages, as well as to clarify "the purpose of the sentence that follows" (Gotti 2011a, 107), is the use of conjunctions. As Halliday and Hasan (1976, 226) claim

> Conjunctive elements are cohesive not in themselves but indirectly, by virtue of their specific meanings; they are not primarily devices for reaching out into the preceding (or following) text, but they express certain meanings which presuppose the presence of other components in the discourse.

The term 'conjunction' is defined by Malmkjaer as "an indeclinable part of speech that links other parts of speech, in company with which it has significance, by clarifying their meaning or relations" (1991, 248). As a matter of fact, they "contribute to a better understanding of the use of discourse and they affect the way how texts are perceived" (Leung 2005, 4). The most frequently used conjunctions (Leech and Startvik 1994, 264; Greenbaum and Quirk 1993, 263) are *and*, expresssing an additive relation; *or*, functioning as a disjunctive conjunction; and *but*, expressing an adversative relation although containing "within itself

also the logical meaning of 'and'" as it is "a sort of portmanteau, or shorthand form, of *and however*" (Halliday and Hasan 1976, 237).

The sequence of thematic items – topic, theme or point of departure (Halliday 1985, 38) – and rhematic items – which contain what is said about the theme and usually involves new information – is another important object of study in specialized discourse[28]. Usually, the theme is the subject and appears at the beginning of the sentence. This structure is also generally employed in specialized languages; however, in some cases "the specialist appears highly aware of the advantages of placing certain information items in thematic rather than rheumatic position or vice versa, and through skilful use of such devices he is able to enhance the text's pragmatic values" (Gotti 2011a, 111).

Furthermore, another crucial textual feature of specialized discourse is its argumentative pattern. Argumentation, as a general concept, involves reasoning and refers to the "process of arguing in favour of, or against, a point of view, a course of action, an opinion, etc." (Aarts 2001, 171). Within the field of specialized discourse, argumentation specifically involves a process of "reduction of certainty" (Gotti 2011a, 136).

Although the process of argumentation varies in different argumentative specialized texts, "there is an overall pattern underlying most texts" (Gotti 2011a, 131). Gotti argues that "Even in the hard sciences and in objective demonstrations, the role of evidence brought in favour of a given claim depends largely on the use of language" (2011a, 131). Swales also supports this perspective, stating that "It is sometimes thought that the facts 'speak for themselves' – that a scientist's description of natural reality, if it is carefully and completely done, is simply a reflection of that reality"; however, "[f]acts are constructed. Phenomena only acquire fact-like status by consensus and that consensus is only achieved by rhetorical persuasion" (Swales 1986, 17, quoted in Gotti 2011a, 132).

According to Walton, Reed and Macagno (2008, 1-2), there are three main forms of arguments: deductive, inductive and defeasible. The deductive argument is one in which "the premises, arranged on a general-to-particular pattern, preclude that the conclusion is false, therefore if the premises are accepted also the conclusion must be accepted, as is the case in the *modus ponens*" (Degano 2012, 142, based on Juthe 2005, 2). Secondly, the inductive argument is one in which the argument is formed "from a collected set of data to a statistical conclusion drawn from the data" (Degano 2012, 142, based on Walton, Reed and Macagno

[28] The terms 'theme' and 'rheme' derive mainly from the theory of Systemic-Functional Grammar. These concepts have been discussed since the 18th century, as in his work Weil (1844) refers to them as 'point of departure' and 'enunciation'. Furthermore, other linguists have referred to them as 'topic' and 'comment' (Bates, 1976), and 'topic' and 'dominance'(Erteschik-Shir, 1988). However, currently they are mostly referred to as 'theme' and 'rheme' due to Halliday's (1968, 1985) works.

2008, 10), thus arranging a particular-to-general pattern. Finally, the defeasible argument is characterized by the fact that it "is only plausible and is often resorted to in conditions of uncertainty and lack of knowledge" as it "supports inference under conditions of incompleteness by allowing unknown data to be presumed" (Walton, Reed and Macagno 2008, 10). Therefore, although this type of argument might initially be accepted, it can then be defeated once new evidence or information is provided (Walton, Reed and Macagno 2008, 7). The main difference between deductive or inductive arguments and defeasible arguments lies in the following:

> In deductive logic, if someone to whom an argument is directed accepts the premises of the argument, and the argument is deductively valid, that person must accept the conclusion. If he does not, he is in a position of inconsistency, a position that is logically untenable. However, defeasible schemes are not binding in this way, because it is open to the person to whom the argument is directed to ask critical questions about it before having to accept a conclusion. (Walton, Reed and Macagno 2008, 7)

Defeasible arguments, also referred to as presumptive or abductive, encompass argumentation from analogy, prominently employed in legal language, especially in Anglo-American law. Other forms of argumentation, such as the argument from precedent in law, which is typical of Anglo-American law, derive from this, making it particularly relevant for the purposes of this study (see Chapter 5).

2.3 Legal language

This study focuses on both language and law and on their "particular interrelation" (Galdia 2009, 63). The relationship between law and language is indeed very close[29]. As Gibbons states, the law is "such an important and influential institution", and it is "packed with language problems" (2004, 285). It is evident that law and language are inseparable; as Galdia (2009, 63) asserts, law cannot exist independently of language, emphasizing that law fundamentally relies on language. In a similar vein, Glogar emphasizes that "[l]anguage is not only essential for understanding the law and comprehending its content, it is the very foundation of the existence of law" (1082, 2023).

The philosophical interest in language in the legal context has been in the spotlight for a very long time. This is not only because effective linguistic communication aids legal professionals and stakeholders in grasping legal concepts but also because scrutinizing language in this context facilitates an understanding of "how legal directives can convey the kind of legal content they aim to convey" (Marmor 2014, 1). As Bhatia states, "Language plays an important role in the construction, interpretation, negotiation, and implementation of legal justice" (2006, 1).

'Legal language' is the label that is generally used to refer to "one of the languages for special purposes, as a result of which it has certain characteristics which differ from ordinary language, for example, on the level of syntax and style" (Mattila 2012, 27). While legal language possesses unique attributes as a specialized language, it is based on general language. However, in literature alternative expressions have been used to indicate this very concept, as Williams confirms by stating that "[b]ooks and articles which deal with law and language will tend to include expressions such as *legal language, the language of the law* or (less commonly) *the language of legal documents*" (2007, 23). The expression 'legal language' is used by Williams as "an umbrella term to refer to legal discourse in general" (2007, 23). However Trosborg, for instance, uses the expression 'the language of the law' to refer to the "language as realized specifically in legal documents, i.e. texts covered by the scope of statute law and common law, namely (i) legislation, and (ii) simple contracts and deed" (1995: 32), thus using it to refer to a specific area of legal language.

What emerges from various studies is that legal language is not a uniform or monolithic phenomenon (Glogar 1096, 2023), aligning with the nature of specialized languages, as discussed in Section 2.1. Tiersma affirms this by noting that "[e]ven if we limit ourselves to

[29] See *inter alia* Mellinkoff 1963; Maley 1994; Gibbons 1994, 2004; Sacco 2005; Kredens and Gozdz-Roszkowski 2007; Marmor 2014.

the written variety, there is substantial variation among different genres of documents" (1999, 141). Maley concurs, stating that there is not a single type of legal language but rather "a set of related legal discourses" (1994, 13). This perspective is consistent with Bhatia's (1987a, 227, also 1993, 187) thought as well, as he uses the expression 'legal language' as a term that

> encompasses several usefully distinguishable genres depending upon the communicative purposes they tend to fulfil, the settings or contexts in which they are used, the communicative events or activities they are associated with, the social or professional relationship between the participants taking part in such activities or events, the background knowledge that such participants bring to the situation in which that particular event is embedded and a number of other factors.

As a matter of fact, Bhatia asserts the significance of making genre distinctions, which can be observed in the different lexico-grammatical, semantico-pragmatic and discoursal resources employed in legal texts. To establish such genre distinctions, it is first fundamental to distinguish between spoken and written[30] texts, followed by the identification of various legal genres (Bhatia 1987a, 227) and the context in which the particular act is performed (Glogar 1105, 2023). Bhatia identifies some of the major genre distinctions in Figure 2.4:

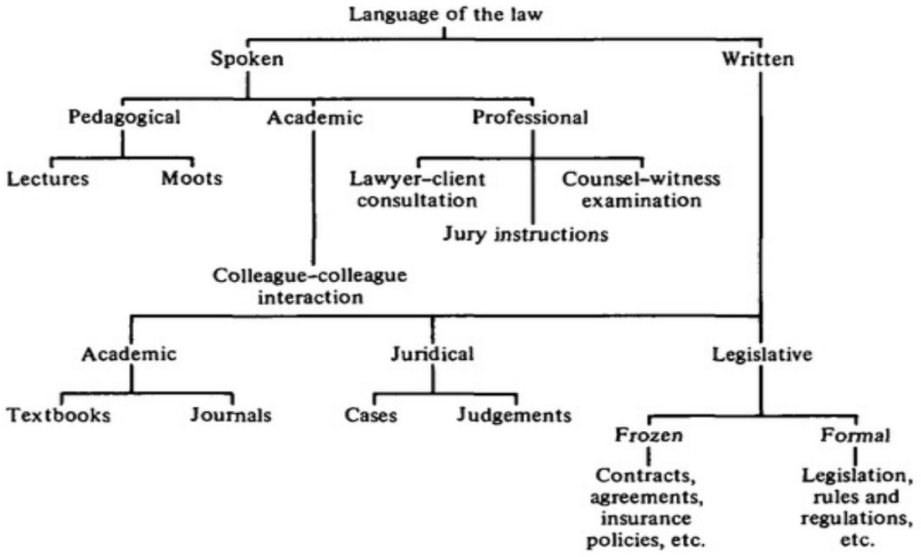


Figure 2.4: Language of the law: major genre distinctions (Bhatia 1987a, 227).

[30] According to Bhatia, legislative writing is "highly impersonal and decontextualized, in the sense that its illocutionary force holds independently of whoever is the 'speaker' (originator) or the 'hearer' (reader) of the document. The general function of this writing is directive, to impose obligations and to confer rights" (1993, 189).

Within the language of the law, various genres are therefore identifiable in different legal settings (Glogar 1096, 2023). Some of these include "cases and judgements in written form used in juridical settings; lawyer-client consultation, counsel-witness examination in spoken form and legislation, contracts, agreements, etc. in written form used in various professional settings" (Bhatia 1993, 187). The diverse legal genres enable the creation of distinct legal texts capable of maintaining "a model world of rights and obligations, permissions and prohibitions" (Bhatia 2006, 1).

Legal language is not only characterized by specific lexical, syntactic and textual features but also by specific technical terms. According to Mattila (2012, 27), legal terms should be distinguished from legal concepts, as their interrelation is complex in law (Galdia 2009, 114). Technical terms refer indeed to "the names of concepts, their external expression. Hence a term may be defined as the linguistic expression of a concept belonging to the notional system of a specialized language", whereas legal concepts refer to "abstract figures which are created by the human mind, that is entities formed by features which are peculiar to a matter or thing" (Mattila 2012, 27).

Legal concepts are intricately tied to specific legal systems and "often appear in one legal system or some legal systems" (Mattila 2012, 28). As Pozzo states, "Legal concepts – within a particular legal system – are the result of the stratification of different meanings which have been developed over the course of time, and identifying these meanings is the condition precedent to any translating operation" (2012, 95). This notion is reinforced by Gotti (2014, 194) who asserts that

> Although all legal documents in all languages address common issues, they do so in distinctive and also in overlapping ways, because of the different languages in which they are constructed and the cultural differences of the societies in question and of their legal systems. Indeed, legal terminology is so culture-bound (the reasons being at the same time historical, sociological, political and jurisprudential) that a satisfactory translation of all the legal terms of one text from one context to another is at times impossible.

Each legal system has its own historical and cultural development, which is closely related to the language employed within that system and, more precisely, to the way single words express meanings. For this reason, a direct transposition of elements from the source legal system to the target legal system is often unfeasible (Šarčević 1997, 13). This is the reason why legal translators must be equipped to identify various incongruencies among different legal systems. In this regard, familiarity with classifications by comparative lawyers

becomes invaluable. David (1985, 20-25), for instance, has proposed the following classification that aids in understanding similarities and differences in specific legal systems:

- Romano-Germanic law (continental civil law);
- Common law;
- Socialist law;
- Hindu law;
- Islamic law;
- African law;
- Far East law.

At a global level, fundamental distinctions exist between two major and widely prevalent legal families: the common law and the civil law. While a more comprehensive exploration of these legal families will be undertaken in Chapter 3, it is pertinent to highlight in this chapter one of the primary divergences, particularly concerning the significance accorded to case law, which holds paramount importance in common law legal systems. As noted by Alcaraz and Hughes (2002, 48), civil law is often characterized as 'codified law' as

> the major sources of its legal norms and rules are organized codes or collections. These are normally divided into a civil code, a penal code, an administrative code, a code of commercial law, and a written constitution that stands above them all as 'law of laws' setting out the basic rights and principles from which all the rest are held to flow.

In contrast, common law legal systems are

> partly based on the ancient rules of precedent or case-law (*derecho jurisprudencial, derecho cauístico, droit jurisprudentiel, Fallrecht*), i.e. the principle that the rules and judgements adopted by the higher courts in decided cases are binding in certain circumstances on lower courts hearing actions based on similar facts. (Alcaraz and Hughes 2002, 48)

Hence, analyzing and translating legal texts means more than focusing on single words. Similar to other areas of translation, the basic unit of translation is the text along with its context, and "[s]ince legal texts are subject to legal criteria, it follows that a theory for the translation of legal texts must take account of legal considerations" (Šarčević 1997, 5). Legal texts, which are therefore contingent on legal criteria, can be accurately comprehended and, consequently, translated only when the legal translator takes into consideration the type of

legal system and the legal culture in which the text originates. Indeed, legal systems exhibit variations and there is no standardized international legal terminology. As noted by Garzone, "[i]n all languages the language of the law has its own special style, conferred upon it by the use of peculiar vocabulary, recurrent syntactic features and phraseology, specific ritual formulas and a characteristic discursive organization" (Garzone and Salvi 2007, 10). Each legal system possesses its own legal terminologies, intertwining legal language with the legal system and culture of its origin. In a similar vein, Cortelazzo (1997, 37) asserts that

> *La lingua giuridica pare essere una delle lingue speciali più "nazionali" che esistano. L'omogeneizzazione internazionale della lingua giuridica, e soprattutto delle sue tipologie testuali, anche in nazioni simili dal punto di vista del sistema giuridico, è molto più scarsa che in gran parte delle altre lingue speciali, dove, forse anche per il riconoscimento di un'unica lingua di prestigio e di comunicazione internazionale, le differenze tra le diverse realizzazioni nazionali si sono molto attenuate.*
> [Legal language seems to be one of the most "national" specialized languages that exist. The international standardization of legal language, especially its textual types, is much scarcer even in nations similar from the point of view of the legal system than in most other specialized languages. In these other languages, perhaps due to the recognition of a single prestigious language for international communication, the differences between various national implementations have been greatly attenuated.]
> [my translation]

Despite this, certain features characterizing legal language can be identified across different legal languages in different legal systems (Cao 2007, 20):

- At the lexical level, legal language boasts a distinctive legal vocabulary. While each legal system possesses its unique lexicon, this terminology is universally technical and intricate across all legal languages, serving as a reflection of the law, culture, and history specific to the legal system it is associated with (Tiersma 2015, 13). It's essential to note that legal languages exhibit unique peculiarities that may lack equivalents in other legal languages. For instance, as highlighted by Cao (2007, 21), legal English, legal German and legal Chinese differ widely in terms of terminology. In legal English, the language is characterized by archaisms, word strings, words of over-precision (see Subsection 2.4.1). Legal German features an abstract lexicon abundant with nouns. Meanwhile, in legal Chinese, the words used are ordinary, though imbued with legal meanings.

- In all legal languages, syntax exhibits a formal and impersonal written style, with sentences typically characterized by complexity and considerable length (Salmi-Tolonen 2004, 1173; Cao 2007, 21). Such length and complexity stem from the intricate nature of legal topics, necessitating structures that reflect the complexity of the subject matter. Legal languages are also characterized by syntactical peculiarities. For instance, legal English is marked by the use of the passive voice, multiple negations, prepositional phrases and complex structures (Alcaraz and Hughes 2002, 19-22; Cao 2007, 21) (see Subsection 2.4.2). Legal language is indeed a very peculiar type of specialized language due to the specific arrangement of words within sentences. Hiltunen (2012, 41) notes this uniqueness regarding the characteristics of legal language used in the genre of statutes:

  > Legal syntax is distinctly idiosyncratic in terms of both the structure and arrangement of the principal sentence elements. The sentence constitutes the basic syntactic unit, and is traditionally constructed as a self-contained, context-free entity. [...] Such salient features as the length and complexity of sentences, the typical organization of clauses in complex patterns of parataxis (coordination) and hypotaxis (subordination), the preference for the passive voice over the active, the extensive use of nominalized verb forms, and the avoidance of grammatical ties across sentence boundaries, including pronominal anaphoric references, may all be due, in one way or another, to the special status of the sentence, which is of overriding importance in the drafting of statutes.

  However, Hiltunen emphasizes that sentence length alone should not be used as a yardstick to assess the level of complexity of a legal text. Short sentences may be equally difficult to understand. To evaluate complexity, the most suitable approach is to verify how sentences are constructed. More specifically, sentences are considered user-friendly if the flow of information is not repeatedly interrupted. However, this is not always possible and the legal drafter may sometimes be forced to make a "compromise between an ideal syntactic formulation and the desired information structure of a sentence" (Hiltunen 2012, 42).
- As the language of law is performative, another important feature of legal language is the recurrent use of performative markers. This explains the common occurrence of modals such as *may* and *shall*, as well as performative verbs such as *declare*, *announce*, *promise*, *undertake*, *enact*, *confer* or *amend* in legal English. Furthermore, ambiguity, vagueness and other uncertainties represent additional pragmatic

characteristics of legal languages, which often contribute to misunderstandings and conflicts (Cao 2007, 22).

- In terms of style, Smith highlights that legal style is the product of legal traditions, thought, and culture (1995, 190). Although in general terms all legal languages are characterized by impersonal style and declarative sentences which establish rights and obligations, each legal language has its distinctive style. For instance, as noted by Cao (2007, 22), German law tends to establish general principles that do not refer to specific cases but rather address abstract problems and issues that may arise. Consequently, the law is drafted in an abstract and conceptual manner. This way of thinking and drafting law is a crucial characteristic that distinguishes civil law countries like Germany from the approach of common law countries. As elaborated in subsequent chapters of this study (see Chapter 3 and 5), the common law has fundamental principles as well; however, such principles are encapsulated in individual precedents, which are court decisions considered particularly relevant and establishing the grounds for general principles that guide future court decisions (Campbell 1996; Gotti 2008b, 10; Criscuoli and Serio 2016, 267).

As Tiersma states, "[a]ll legal systems develop certain linguistic features that differ from those of ordinary language" (2012, 13). Similarly, Cao points out that "due to the differences in legal systems, many of the legal terms in one language do not correspond to terms in another" thus creating "the problem of non-equivalence, a major source of difficulty in translation" (Cao 2007, 20). This challenge arises because all legal languages are, to varying degrees, intricately connected with a specific legal system. As previously mentioned, this connection extends beyond the specialized vocabulary that distinguishes a particular legal language; it also encompasses other linguistic features unique to legal languages. For the purposes of this study, legal English is the most relevant legal language, and its main linguistic features will be described in the next subsection.

2.4 Legal English at the global level and its main features

English is nowadays the language of global communication, serving as a vehicular language in diverse environments and workplaces, including international organizations, government departments, import-export enterprises, media, computer science and technology, international business, and various other sectors. Its widespread use has established English as the *lingua franca* at the international level, owing to its prominence across a multitude of fields and industries.

The global status of English (Rao 2019, 66) is underscored by its recognition as a language with a special role in every country, a concept defined by Crystal (2003, 3). This entails that such a language takes on a special role within the communities of the countries of the world. Specifically, this can happen through two main different ways: in the first case, a specific country can make such a language the official language, used in government sectors and educational system[31]; in the second case, a country can make such a language the chief foreign language that is taught to children at school, even without official status (Crystal 2003, 4-6).

The spread of the English language throughout the world is described by Kachru in his Three Circles Model. In this model, the inner circle consists of the "traditional bases of English", namely those countries where English is learned as the main language such as Australia, Canada, Ireland, New Zealand, the US, the UK. The outer or extended circle includes countries where English holds a prominent role, as it is used in institutions and in the government sectors such as Singapore, India, Malaysia, Kenya. Finally, the expanding or extending circle includes those countries where English is recognized as an important language at the international level, such as China, Korea, Russia, Poland and many others.

The emergence of English as a global language is often attributed to its 'intrinsic linguistic factors'. Some specific factors are assumed to contribute to its attractiveness as an 'easy language' to learn. For instance, some examples include the lack of inflectional endings or the absence of grammatical gender and lexical tone (Crystal 2013, 166). However, linguists argue against these claims, asserting that "languages are equivalent in their structural complexity" (Crystal 2013, 156). Furthermore, historical perspectives reveal that both Latin and French served as international languages, with the former possessing various inflectional endings and three gender classes.

[31] In this case, a language can be made the only official language of a country or can be considered as official together with other official languages of the country in question.

As Crystal (2003, 59) asserts, languages become global due to the political and military power of its speakers. In the case of English, its current status as the global language can be traced back to the expansion of the British colonial power and the rise of the United States as the predominant economic power in the 20th century. This economic dominance remains a key driving force behind English's role as a global language.

English is therefore used in many different contexts and for many different professional purposes, including law and legal matters. As Riley and Sours (2012, 5) state,

> All over the world today lawyers are using English in their professional lives. Courts and arbitrators in national and international legal contexts are pronouncing their decisions in English. International organisations such as the United Nations and Amnesty International are using English as a vital instrument to achieve their objectives. In the corridors of the multilingual European Union, English is frequently the language of communication and it is one of the many languages of EU treaties and other authentic legal texts. In international trade English has become the lingua franca of modern times, permitting people and businesses around the world to interact successfully, frequently concluding contracts and resolving disputes in English even where their transaction has no link with an English-speaking country. At international level, English is not the official language or the language of the law: no language has that status. But it is certainly a major language in legal contexts in the world today.

At international level, an increasing number of legislation, contracts and other legal texts are therefore written in English.

Legal English is described as "a complex type of discourse" (Alcaraz and Hughes 2002, 4) as it possesses specific qualities that contribute to its inherent obscurity and vagueness (Endicott 2000, 2011; Bhatia *et al*. 2005; Engberg and Heller 2008; Williams 2005, 2006; Marmor 2018). According to Tiersma, in English legal texts "comprehension can be impaired by linguistic features that are not specifically legal" (1999, 203). For this reason, he identifies common traits of legal English that do not facilitate comprehension. This list includes technical and unusual vocabulary, archaisms, impersonal constructions, overuse of nominalizations and passives, modal verbs, multiple negation, long and complex sentences, and poor organization (Tiersma 1999, 203-210). In his later work, Tiersma, even points out that "[w]hat is particularly troubling is the stubborn persistence of archaic language and unnecessary legalese in precisely those contexts that most directly affect the rights of ordinary citizens" (2015, 31).

As can be noticed, legal English does not merely possess distinctive features at the lexical level but also at the syntactic level. Syntactic features are considered particularly characteristic of legal English compared to both ordinary language and other specialized languages. In this regard, Bhatia (1993, 195-202) presents a list of syntactic features that are typical of legal English, including above-average sentence-length, nominal character, complex prepositional phrases, binomial and multinomial expressions, initial case description, qualifications in legislative writing, and syntactic discontinuities. Other distinguished scholars (Mellinkoff 1963; Crystal and Davy 1969; Tiersma 1999, 2015; Hiltunen 1990; Bhatia 1993; Alcaraz and Hughes 2002; Gotti 2012a; Riley and Sours 2012) have extensively explored the general features of legal English. These features are discernible on two main levels, namely the lexical and the syntactic levels:

Lexical level

- Latinisms
- Terms of French/Norman origin
- Archaisms
- Repetition of specific words and expressions
- Performative verbs
- Auxiliary verbs *do* and *shall*
- Technical terms

Syntactic level

- Binomials and multinomials
- Long and complex sentences
- Passive constructions
- Impersonal constructions
- Nominalizations
- Complex prepositions

Legal English is therefore a complex type of discourse characterized by complex features. Its complexity has led to descriptions of legal English as abstruse, so much so that in the 1960s consumer movements arose with the goal of empowering ordinary citizens to be aware of their rights and to defend themselves against companies and government bodies. Various organizations were therefore established with the aim of abolishing bureaucratese, officialese and legalese so as to allow everyone to understand legal documents (Williams 2004, 115). As Alcaraz and Hughes (2002, 15) state,

> It is arguable that a justice system genuinely concerned to safeguard ordinary people's rights should find some means of administering the law in a language that those people can understand, and this is precisely the aim of the pressure groups and lawyers who are behind the 'Plain English Campaign'.

The Plain English Campaign arose in 1979, evolving into the broader 'Plain Language movement' by the mid-1980s. This movement gained traction across major English-speaking countries, including Canada, New Zealand, South Africa and Australia, the latter emerging as a leader in the initiative (Tiersma 1999, 221). Moreover, similar movements arose with regard to other languages besides English, as in the case of Swedish with the Plain Swedish Group (*Klarspråksgruppen*), the case of Italian with the *Progetto Chiaro!*, or the case of the European Union with the 'Fight the Fog' campaign conducted by members of the Translators' Service. Interestingly enough, as Williams (2004, 116) highlights, the objectives of such movements included different kinds of issues:

> The aims are generally much broader, and may include a desire to democratize government, extend legal rights, and encourage efficiency, also by providing courses which train people in the skills of text revision and in drafting handbooks and guidelines so as to bring the language of officialdom in its various guises (which may even include taking into account design and layout as well as language) closer to the ordinary citizen.

This is also confirmed by Cutts (2020, XVII) who states that

> clearer documents can improve people's access to services, benefits, justice, and a fair deal. If people understand what they're asked to read and sign, they can make better-informed choices and know more about their rights and duties. They might also see more clearly what business and government are doing.

Through the Plain Language movement, several proposals for reforming legal English have been put forward, including the following recommendations (Williams 2004, 117-123):

- The replacement of archaic, rarely used and foreign terms with different words that are used in everyday speech;
- The elimination of unnecessary words and expressions to avoid redundancy, "e.g. in the accumulation of verbs ('release, discharge and agree'), modal auxiliaries ('can,

shall or may') and prepositions ('for, upon, or by reason of'), all of which thicken the language and weigh it down" (Williams 2004, 121; Jackson 1995, 122);

○ The reduction of sentence length. However, this is a particularly controversial aspect, especially in the context of translation. As emphasized by Alcaraz and Hughes (2002, 21),

> Odd though it may seem, this forthright form of English writing may present difficulties for the translator, whose language may not tolerate the quickfire staccato of 'subject+verb+object', the dearth of connectors and the reiterative use of pronouns and deictics natural in everyday English. In other words, while complex sentences may need breaking down for translation, simple sentences may need building up.

Consequently, although many of the sentences in legal texts are excessively long, constructing shorter sentences might not be convenient for two main reasons. The first reason concerns the difficulty which might be generated for translators. The second reason concerns the fact that since the law has to provide rules that ensure certainty and avoid misinterpretation, then subordination, coordination and embedded clauses are often needed to achieve such a goal (Williams 2004, 122);

○ The reduction of the use of passive constructions, which represents an additional controversial aspect since such constructions are often adopted precisely with the aim of avoiding to specify the actor;

○ The reduction of the use of nominalization, which "has the effect of making [legal texts] overly abstract and impersonal, besides adding to the sheer volume of words (Williams 2004, 123). However, on the other hand it must be borne in mind that,

> An advantage of this reification of processes and actions is that it makes them much easier to organise into an argument. It also means that they can be qualified and modified more easily – adjectives are more productive and plentiful than adverbs, verb particles such as 'intended' and 'referred to' can be used, and nouns can modify other nouns (e.g. 'service payments') much more freely in English than one lexical verb can modify another lexical verb. (Gibbons 1994, 6f, cited in Jackson 1995, 120, and Williams 2004, 123)

Considering such proposals is crucial, particularly as they have the potential to prompt reflection among lawyers, drafters, and legal translators regarding the language employed in

legal texts. Implementation of these suggestions, when feasible, holds the promise of enhancing the clarity and accessibility of legal language.

However, as highlighted by Adler (2012, 71-73), there are both advantages and disadvantages with regard to plain legal language. With regard to the advantages, plain legal language is more precise, as demonstrated by advocates for plain language, who argue that legal concepts can be conveyed by greater clarity by eliminating unnecessary words and other features characteristic of traditional legal language. Furthermore, in plain legal language the absolute number of errors is reduced and it is not as necessary to translate legalese back into plain language for clients, thus making the process quicker and cheaper. Plain legal language is also considered as:

- More persuasive, as "there can be no persuasion if the document is not read and understood" (Adler 2012, 72);
- More democratic, as it is more accessible to the public;
- And, ultimately, less tedious and more elegant than legalese.

On the other hand, some disadvantages have been highlighted by Francis Bennion (2007, 63-68), a British authority on legislative drafting. Bennion argues that certain legal texts, such as statutes, are drafted with the explicit purpose of being the law rather than explaining it. He therefore perceives plain language as a potential threat to legal texts, and that the latter should purposefully contain an opaque language.

In this regard, Cao (2007, 99) provides a very interesting reflection on the Plain English movement by stating that,

> Suffice it to say that legal English and legal drafting are and will remain different from ordinary English. Legal language carries distinctive markers. Law and legal texts are complex because human affairs and human relations are complex. Legal texts, both statutes and private legal documents, can certainly be improved in terms of comprehensibility and accessibility. However, legal language is not everyday language but a technical language. As stated earlier, it is a special register peculiar to its situational use in the legal setting. It is naive to think that law can be written in a language that everyone can fully understand and appreciate without reference to the legal institutional parameters and cultural histories. In terms of translation, unnecessarily long and convoluted sentences and unclear meanings will make translation more difficult. They will reduce the chance of the correct meanings being conveyed in translation and increase the probability of ambiguity and other linguistic

uncertainty. It is a point that drafters, especially those drafting bilingual or multilingual legal texts, both private legal documents and legislation, should bear in mind.

As a result, it can be inferred that although legal texts might be improved and made more readable, in some cases complex terms, notions and sentences might be necessary to convey legal concepts.

2.4.1 Lexical features of legal English

2.4.1.1 Latinisms

Legal English bears the influence of various languages, with Latin playing a significant role (Mellinkoff 1963; Crystal and Davy 1969; Tiersma 1999; Alcaraz and Hughes 2002). This influence can be traced back to the development of English law in the Middle Ages when Latin served as the lingua franca in Europe for international communication, intellectual exchanges, science, and other vital domains. Consequently, legal English is marked by latinisms because "it has not escaped the influence of Roman law and the Latin in which it was administered" (Alcaraz and Hughes 2002, 5). Roman law, being a powerful and coherent written system, inevitably left its imprint on the texts and professional discourse of English lawgivers who shared a common culture with their counterparts elsewhere (Alcaraz and Hughes 2002, 5). Latinisms – together with other features that will be analyzed in the subsequent paragraphs of this chapter – have been the object of criticism and reforms presented by the Plain English movement (Williams 2004; Butt and Castle 2013). Examples of Latin expressions commonly used in legal English include: *prima facie, bona fide, res iudicata, ex aequo et bono, ipso iure, de facto, pro bono, subpoena*.

2.4.1.2 Terms of French/Norman origin

In addition to Latin, legal English incorporates words and expressions derived from other foreign languages, most notably French. With regard to French terms and expressions, they are also described as terms of Norman origin as a result of the Norman invasion of 1066 and the subsequent Norman domination of England. Most French words are still used today in

legal English and have become assimilated into English usage; however, specific terms have preserved their 'Frenchness', as in the example of *profits à prendre*[32] (Williams 2004, 112). Furthermore, the interaction between Old French, Norman, and Old English has influenced the rules of word-formation in Legal English. For instance, Alcaraz and Hughes highlight the impact of this linguistic contact by providing a list of the most common legal terms ending in '-age', which "came into the language via French and bear indemnity, prize, reward, contribution, and so on" (2014, 6): salvage; average; beaconage; towage; pilotage; demurrage; anchorage; damage.

2.4.1.3 Archaisms

Legal English often incorporates archaisms, including a clear preference towards the use of the suffix -eth, as seen in terms like 'witnesseth', meaning "to certify a legal document or a fact as a witness" (Riley and Sours 2012, 359). Additional archaisms include compound adverbs based on the deictics 'here', 'there', 'where', "often referring to the text or document in which they appear or to one under discussion" (Alcaraz and Hughes 2002, 9). Examples include: hereto; hereon; hereunder; hereby; herein; hereinbefore; thereof; whereof; whereas; aforesaid; hath been. The use of such expressions can be noticed, for instance, in Regulation (EU) 2021/887 of the European Parliament and of the Council of 20 May 2021 establishing the European Cybersecurity Industrial, Technology and Research Competence Centre and the Network of National Coordination Centres, which employs sentences like the following: "Having regard to the Treaty on the Functioning of the European Union, and in particular Article 173(3) and the first paragraph of Article 188 *thereof*, [...] *Whereas* [...]" [my emphasis].

Additional examples include prepositional phrases, such as: pursuant to; without prejudice to; subject to; at the motion/instance of; notwithstanding (Alcaraz and Hughes 2002, 9).

Similarly to Latinisms (see Paragraph 2.4.1.1), archaisms have also faced criticism and calls for reform from the Plain English movement, which views them as one of the elements that prevents "a full understanding of a legal text" and through which "the legal profession has managed to preserve its exclusionary hold over legal language" (Williams 2004, 117-118).

[32] The French expression profits à prendre indicates "the right of common, where one has the right to take the fruits of the property of another" (Williams 2004, 112).

2.4.1.4 Repetition of specific words and expressions

While drafting legal texts, the main objective is to produce precise and unambiguous sentences (Bhatia 1993, 80). This is reinforced by Crystal and Davy (1969, 202) who note that lexical items are often repeated in legal texts to avoid uncertainty and misinterpretation. Specifically, in legal English a notable occurrence of repeating specific words, expressions and syntactic structures is observed. Nouns are typically not substituted by pronouns or other types of anaphoric references, as can be noticed in the following example taken from Title I Article 1 of the Treaty on European Union 1992:

> *The Union* shall be founded on the present Treaty and on the Treaty on the Functioning of the European Union (hereinafter referred to as 'the Treaties'). Those two Treaties shall have the same legal value. *The Union* shall replace and succeed the European Community. [my emphasis]

Such repetitions are therefore used to make sure that there is the least possible uncertainty as to what is being referred to (Williams 2004, 113).
Moreover, common repetitions often include the following lexical items (Riley and Sours 2012, 362): in accordance with, in respect of, pursuant to, in pursuance of, implementation of, measures adopted by, deliver opinions at, ensure that the, be composed of, for the purpose of, by virtue of. An example of the repetition of the expression 'in accordance with' can be observed in recital (13) of the Regulation (EU) 2022/1280 of the European Parliament and of the Council of 18 July 2022 laying down specific and temporary measures, in view of Russia's invasion of Ukraine, concerning driver documents issued by Ukraine in accordance with its legislation:

> Since the objective of this Regulation cannot be sufficiently achieved by the Member States but can rather, by reason of the scale and effects of the action, be better achieved at Union level, the Union may adopt measures *in accordance with* the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). *In accordance with* the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
> [my emphasis]

2.4.1.5 Performative verbs

Performative verbs are ubiquitous in legal English. "Explicit performative utterances are those whose illocutionary force is made explicit by the verbs appearing in them" (Austin 1962, quoted in Alcaraz and Hughes 2002, 10). As highlighted by Alcaraz and Hughes, "The number of such [performative] verbs in a given language is necessarily quite small, but given the binding nature of legal relationships and judicial decisions, verbs of this type are used particularly frequently in legal texts and contexts" (2002, 11).

Performative verbs are particularly common in legal English because they enable individuals to establish or modify a state of affairs simply by stating it (Tiersma 1999, 104). Some of the most prevalent performative verbs include: agree, admit, recognize, allow, pronounce, declare, uphold, affirm, certify, overrule, do. The verb 'do' is especially recurrent in legal English, particularly in declarative sentences. Furthermore, 'do' "often fulfills the same function as *hereby*", as "[w]hen the legislature says or writes *we do enact* or *we hereby enact* (and assuming other aspects of the ritual are performed), it is actually enacting something into law merely by uttering those words" (Tiersma 1999, 104-105).

2.4.1.6 Modal auxiliary *shall*

An important feature of legal English is the recurrent use of the verb *shall*. As Palmer claims, "In a sense, *shall* is stronger than *must*, in that it does not merely lay an obligation, however strong, but actually guarantees that the action will occur" (1990, 74), making it a common formulaic form in regulations. Modal verbs, in general, "contribute crucially to the realisation of the speech acts that constitute a legal text's pragmatic force and legal validity" (Garzone 2013, 68). However, *shall* has a particularly relevant role in legal texts, with Kimble even asserting that "*shall* is the most important word in the world of legal drafting – contracts, wills, trusts, and the many forms of public and private legislation (from statutes to court rules to corporate bylaws)" because "*[s]hall* is the very word that is supposed to create a legal duty" (1992, 61).

Specifically, as Tiersma (1999, 105-6) observes, *shall* is usually employed in general English to express the future. However, in legal English it is used for several purposes, such as expressing a command or obligation, making declarations, articulating the terms of a contract, and indicating that something is intended to be legally binding (Bondi and Diani 2010, 10-11). As can be deduced, "Its function seems to depend on the type of document in which it occurs" (Tiersma 1999, 106). *Shall* is therefore used as a 'totem' in legal language

(Bowers 1989, 294, quoted in Tiersma 1999, 106) and this seems to be the reason for its pervasiveness in legal English.

The use of *shall* in legal discourse has been a subject of attention for institutional bodies, linguists, and philosophers of law, leading to significant debates and reflections (Garzone 2013, 68). Specifically, with the emergence of the Plain English movement, scholars have thoroughly investigated the use of *shall* (Palmer 1990; Garzone 2001, 2013; Williams 2005, 2006, 2009; Gotti 2011b; Garner 2023) and criticized it due its unambiguous nature. Kimble, for instance, suggested giving up on *shall* completely and to use *must* instead (1992, 69). In a similar vein, Asprey also proposed to abandon *shall* and to use the following alternatives (1992, 79):

- *Must* for the imperative shall, as in the case of obligation or duties to impose, or directions to make;
- *Will* for the simple future;
- The present tense for everything else, as in the case of statements of facts, legal results or agreements.

Garzone's (2013, 71) research indicates a recent decrease in the use of *shall* in UK legislative writing. It remains an intriguing prospect to observe how, and if, its use will further evolve in various legal genres in the future.

2.4.1.7 Technical terms

In Legal English, a plethora of technical (or legal) terms, not commonly used in general English or used with a different meaning, are prevalent (Tiersma 1999, 106). According to Mattila (2012, 33) legal terms may be created in three primary ways:

- An existing word in ordinary language (in the language in question) may acquire a specialized or enlarged meaning in legal contexts through spontaneous linguistic evolution;
- A term may borrowed from a foreign legal language;
- A new term or neologism may be created.

Furthermore, legal English includes terms derived from other professions, including commerce, technology, land surveying, and social work. It also includes words from the

register of style, such as ‘misrecollection’ instead of ‘forgetting’, and Latin expressions of a cultural nature, such as *in casu* (in the present case, in each particular case) or *ultima ratio* (the final argument) (Mattila 2012, 32).

The majority of technical terms in legal English are nouns, and the high percentage of nouns significantly contributes to the complexity and obscurity of legal texts. Additionally, other factors contribute to making legal English obscure, such as the presence of archaic words and phrases and of words of foreign origin (Mattila 2012, 32), as highlighted in the previous subsections of this chapter.

2.4.2 Syntactic features of legal English

2.4.2.1 Binomials and multinomials

Another recurrent feature in legal English is the tendency towards reduplication, where “two, and sometimes three near synonyms are combined” (Alcaraz and Hughes 2002, 9). Binomial or multinomial expressions, often associated with legal texts (Gustafsson 1975, 1984; Hiltunen 1990; Bhatia 1993), are defined by Bhatia as “a sequence of two or more words or phrases belonging to the same grammatical category having some semantic relationship or joined by some syntactic device such as ‘and’ or ‘or’” (1993, 197). As he further states, some examples include: signed and delivered, in whole or in part, to affirm or to set aside, under or in accordance with. In a similar vein, Malkiel defines binomials and multinomials as “[...] the sequence of two words pertaining to the same form-class, placed on an identical level of syntactic hierarchy, and ordinarily connected by some kind of lexical link” (1959, 113). In legal English, therefore, words are “often doubled or tripled in order to become more all-inclusive” (Riley and Sours 2012, 363). For this reason, in legal English the following doublets and triplets are often found with the aim of enhancing inclusiveness: act and deed; bind and obligate; execute and perform; force and effect; legal and valid; null and void; cancel, annul, and set aside; form, manner, and method; promise, agree, and covenant.

2.4.2.2 Long and complex sentences

As previously mentioned in Subsection 2.2.2, long and complex sentences are typical of specialized languages, particularly legal language. In legal English, long sentences are often found in statutes, jury instructions and other types of legal texts (Gustafsson 1975; Hiltunen 1984). The intention is to “place all information on a particular topic into one self-contained

unit", thus producing long sentences that are also very complex due to their particular structure made of "many conjoined and embedded clauses" (Tiersma 1999, 56). As a matter of fact, in legal texts a great amount of information is often included into a single, extended sentence, leading to a grammatically complex and long body of words, which "would be far more comprehensible if it were broken down into parts" (Tiersma 1999, 57).

Criticism from the Plain English movement has been directed at the excessive length of sentences in statutes. However, this remains a particularly controversial issue. On the one hand, the interest is that of "tackling bureaucratese or officialese by producing documents that can be more readily understood by the population at large" (Williams 2004, 121). Nevertheless, on the other hand, it is necessary to distinguish between different types of legal texts. As Williams further observes, "while long and complex sentences in, say, a government leaflet on entitlement to unemployment benefit may find little reason for justification, legal drafting obeys a rather different type of logic" and "follows well-established drafting rules", thus creating texts whose "underlying structure is in fact relatively straightforward to follow, even for the layperson, and it is difficult to see how anything would be usefully gained by breaking down the text into a series of shorter sentences" (2004, 122). As can be deduced, it is acknowledged that legal drafting can often result in unnecessarily long and complex sentences, but it is also important to recognize the contexts and the text types in which such sentences might be essential.

2.4.2.3. Passive constructions

As discussed in Subsection 2.2.1, while some specialized languages strive to be as precise as possible, legal language often intentionally embraces imprecision. In legal English, this intentional lack of precision is achieved through the use of passive constructions, which "often obscure the identity of the actor", and "whether done intentionally or not, it can only reduce precision" (Tiersma 1999, 75). In passive sentences, the grammatical subject corresponds to the object of the action, instead of being the actor, as it occurs in active sentences, thus producing obfuscation rather than precision. As Tiersma observes, the use of passive constructions can occur for legitimate reasons, as in the case of "Legislators and judges [who] want their commands to appear maximally objective, to give them the greatest possible rhetorical force" and, in the case of court orders, to "appear as authoritative as possible" (1999, 76)[33].

[33] As Tiersma further observes, judges usually begin orders with 'it is ordered', instead of 'I order' to make the statement as authoritative as possible (1999, 76).

Passive constructions have also been criticized by the Plain Language exponents (Asprey 2003, 102-103). However, Williams (2004, 122) observes that it is essential to consider the specific contexts in which legal texts are drafted. In certain situations, the use of passive constructions may become necessary to avoid specifying the actor.

2.4.2.4 Impersonal constructions

English legal texts tend to include several impersonal constructions. One of the main reasons for this is that specific legal texts, such as statutes and contracts "are meant to be of general applicability and address several audiences at once", and the use of such a kind of construction provides them with "an aura of objectivity" (Tiersma 1999, 68).
An alternative approach, commonly found in scientific and formal texts, is the use of the 'editorial we' – as in the case of the sentence 'we find'. While this construction may seem more impressive and objective, resembling the plural of majesty, it can also come across as pompous (Tiersma 1999, 68). Judges, therefore, often prefer to use the third person, as in 'this court finds'. In this way, the sentence "appears as an objective and powerful finding, made not by one frail human being, but endorsed by a venerable and powerful institution" (Tiersma 1999, 68), reinforcing the idea that judges represent the law and justice rather than being mere mortals.

2.4.2.5 Nominalizations

As discussed in Subsection 2.2.2, nominalizations, which involves using a noun derived from another word class, are another recurrent feature in specialized language, particularly in legal English. Like passive constructions (see Paragraph 2.4.3.3), nominalizations can also "have the effect of de-emphasizing or obscuring the identity of the actor" (Tiersma 1999, 77). However, Tiersma notes a legitimate reason for their use in legal texts, namely that "by allowing the actor to be omitted, they enable legal drafters to cover the possibility of anyone doing a specified act" (Tiersma 1999, 77), thus making the law as broad as possible.
According to certain exponents of the Plain English movement, in legal texts there is an excessive use of nominalizations, rendering them extremely abstract and impersonal (Williams 2004, 123). However, it has also been suggested that

> An advantage of this reification of processes and actions is that it makes them much easier to organise into an argument. It also means that they can be qualified and modified more

> easily – adjectives are more productive and plentiful than adverbs, verb particles such as 'intended' and 'referred to' can be used, and nouns can modify other nouns (e.g. 'service payments') much more freely in English than one lexical verb can modify another lexical verb (Gibbons 1994: 6f, cited in Jackson 1995: 120).

2.4.2.6 Complex prepositions

Complex prepositions represent a recurrent feature of legal English (Mellinkoff 1963; Bhatia 1993; Tiersma 1999, 2015), often consisting of "two or more words (e.g. because of, in addition to and in the case of)" (Adejare 2020, 216). Quirk *et al.* defines them as "a sequence that is indivisible both in terms of syntax and in terms of meaning", and further state that "Legal English is notable for complex prepositions, the following being among those found mainly in legalistic or bureaucratic usage: *in case of, in default of, in lieu of, in pursuance of, in respect of, on pain of*." (1985, 671-672). Complex prepositions are also defined by Bhatia (1993, 197) as a 'striking syntactic feature' of legal texts. In addition, Bhatia states that

> The use of complex prepositions rather than the simple ones, for example, 'by virtue of' instead of 'by', 'for the purpose of' in place of 'for', and 'in accordance with' or 'in pursuance of' instead of a simple preposition 'under' is rather preferred in legislative writing simply because the specialist community claims, with some justification, of course (see Swales and Bhatia, 1983), that the simple ones tend to promote ambiguity and lack of clarity. (Bhatia 1993, 197)

Prepositional phrases such as 'in accordance with' or 'according to' are also used in legal texts as a means to achieve textual mapping[34] (Gotti 2014, 201, based on Bhatia 1987b). This can be observed, for instance in Article 25(a) of the UNCITRAL Model Law on International Commercial Arbitration (see Chapter 3), which states that

> Article 25. Default of a party
> Unless otherwise agreed by the parties, if, without showing sufficient cause,
> (a) the claimant fails to communicate his statement of claim *in accordance with article 23(1)*, the arbitral tribunal shall terminate the proceedings.

[34] Textual mapping is used in legal texts as a "text-cohering device" and its primary function is "to signal that some aspect of the provision under discussion has been postponed and to refer to the location where it could be found" (Bhatia 1987b, 3). Furthermore, such a device is used to reduce legal content in a specific part of the text and, as a consequence, to reduce prolixity.

[my emphasis]

Nevertheless, certain exponents of the Plain English movement, including Garner (2023), point out that complex prepositional phrases should be avoided in legal English as they contribute to making sentences less plain.

2.5 Legal genres

As discussed in the previous sections, this study acknowledges that specialized discourse (Hutchinson and Waters 1987, 9; Trosborg 1997, 16; Gotti 2011a, 10) is not a uniform phenomenon. Legal language, specifically, cannot be regarded as monolithic (Bhatia 1987a, 227, also 1993, 187; Maley 1994, 13; Tiersma 1999, 141). Certain features, whether at the lexical or syntactic levels, cannot be considered recurrent across all types of legal texts; instead, they are specific to particular genres. Text is defined as "a unit of language use that is both grammatically cohesive and semantically coherent, is produced to communicate and has meaning in the context in which it is used" (Darics and Koller 2018, 10), whereas a text type, or genre, can be defined as "a conventional way of using language for a particular communicative purpose, with typical linguistic features that help to meet that purpose: where genres are concerned, form follows function" (Darics and Koller 2018, 10). Genres are also defined by Bhatia (1993, 49) as

> [a] recognizable communicative event characterized by a set of communicative purpose(s) identified and mutually understood by the members of the professional or academic community in which it regularly occurs. Most often it is highly structured and conventionalized with constraints on allowable contributions in terms of their intent, positioning, form and functional value. These constraints, however, are often exploited by the expert members of the discourse community to achieve private intentions within the framework of socially recognized purpose(s)

Genre analysis has therefore been described as "the study of situated linguistic behaviour in institutionalized, academic or professional settings", and for this reason genres "cut across disciplines in an interesting manner" (Bhatia 2014, 34-35). As Bhatia further states, discourse variation in such settings has been analyzed in terms of registers and more recently as genres, although "both of them take into account some aspects of disciplinary variation" (2014, 35). The concepts of register, discipline and genre[35] are therefore fundamental in the study of discourse and linguistic variation, and the interrelationship between them can be represented in Figure 2.5.

[35] According to Bhatia (2014, 35), the term 'discipline' refers to the "content", whereas 'register' refers to "the language associated with it".

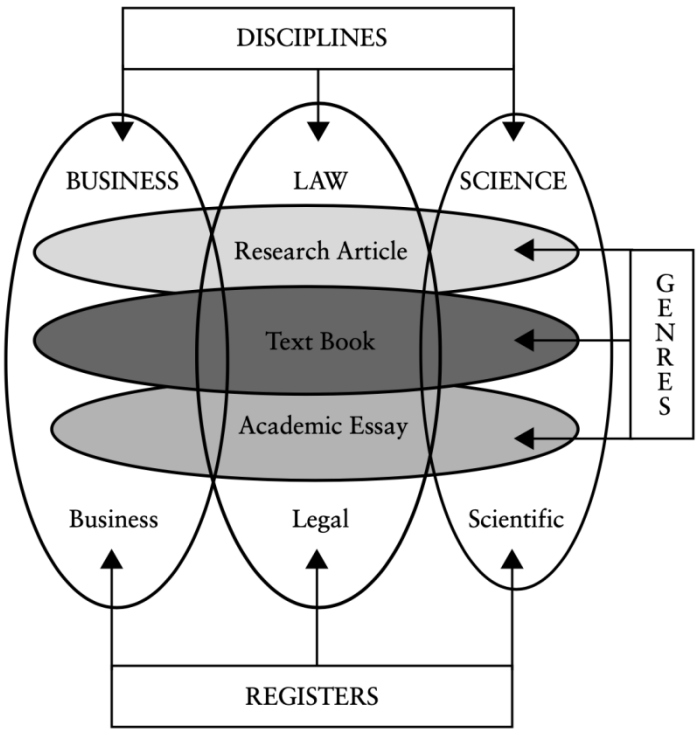


Figure 2.5: Registers, genres and disciplines in academic discourse (Bhatia 2014, 36).

Bhatia, in his work, adopts a genre-based perspective by posing a fundamental question: "*why does a particular use of language take the shape it does?*" (2014, 26). Although his focus remains on a more specific genre-based approach, he considers both registers – identified by Halliday *et al*. (1964) on the basis of three contextual factors, namely field of discourse, mode of discourse and tenor of discourse (see Section 2.1) – and disciplines – which "invariably display predominant characteristics of the subject matter that they represent" (Bhatia 2014, 35). Biber and Conrad (2019) assert indeed that texts can be examined from register, genre and style perspectives. As a matter of fact, they further observe that

> In the *genre* perspective, the focus is on the linguistic characteristics that are used to structure complete texts, while in both the *register* perspective and the *style* perspective, the focus is on the pervasive linguistic characteristics of representative text excerpts from the variety. (Biber and Conrad 2019, 15)

While recognizing Biber and Conrad's notions of register and style perspectives, this study employs the genre perspective, placing emphasis on the linguistic features that structure the entire text under analysis (Biber and Conrad 2019, 16).

In this study, the genre-based view is therefore adopted to contextualize legal texts that are collected in the Main Corpus. The methodological assumption (see Chapter 4) posits that texts and genres need to be investigated within the context of the practices, both institutional and professional, in which they are developed (Bhatia, Garzone and Degano 2012, 1). This is because "[g]enres are the products of disciplinary cultures"[36] (Bhatia 2006, 6).

Furthermore, this study considers legal language as a heterogeneous phenomenon and emphasizes the importance of distinguishing among different types of legal genres. According to Bhatia, "[i]t is through a variety of legal genres that an attempt is made to create and maintain a model world[37] of rights and obligations, permissions and prohibitions" (Bhatia 2006, 1). Such a model world is regulated through legislation, which represents the primary legal genre within the complete 'system of legal genres' (see Figure 2.6) elaborated by Bhatia, building on Bazerman[38] (1994).

Bhatia designates legislation as the primary legal genre due to its composition "with mathematical precision, the object (though not always attained) being, in effect, to provide a complete answer to virtually every question that can arise" (Sir Charles Davis, quoted in Renton, 1975, also in Bhatia 2006, 1). Furthermore, legislation exhibits several lexico-grammatical and discoursal features not usually present in other types of legal genres.

Legislation is intricately connected with the secondary type of legal genres, including judgements and cases. This connection arises from the relationship between the model world and the so-called 'real world', which is made of legal judgments that "can be viewed as attempts to enforce legislative intentions to bring the real world closer to the model world" (Bhatia 2006, 4). According to Bhatia (1993, 309)

> Legal cases and legislation are complementary to each other. If cases, on the one hand, attempt to interpret legal provisions in terms of the facts of the world, legislative provisions, on the other hand, are attempts to account for the unlimited facts of the world in terms of legal relations.

The secondary legal genres encompass both judgements and cases. Typically, these genres begin with the establishment of facts and culminate in a judgment indicating the legal action

[36] Such disciplinary cultures include, for instance, "legislation, cases, judgements, discussion notes, briefs, etc., which are often largely associated with legal culture alone" (Bhatia 2014, 26).

[37] In Bhatia's work, the so-called 'model-world' is "designed to be consistent with the vision that individual states or nations have of the society they wish to create; however, in practice, it is often constrained by the socio-political realities of individual national cultures" (2006, 1).

[38] Bazerman defines the 'system of genres' as "the interrelated genres that interact with each other in specific settings (1994, 97).

determined by the court. Additionally, within this category are oral courtroom negotiation of justice, or courtroom genres. These genres unfold in formalized professional environments where participants engage in asking questions to witnesses, necessitating the negotiation and maintenance of social relations (Bhatia 2006, 3).

The remaining two categories of legal genres include the target genres and the enabling academic genres. Target genres include various professional documents such as property conveyance documents, contracts, agreements. These genres are "based on the inter-discursive formations of legislative and judicial expressions, and therefore share the same concerns of clarity, precision, unambiguity, and all-inclusiveness, leading to certainty of legal effect" (Bhatia 2006, 6). Enabling academic genres, instead, include textbooks, moots, examination essays, pleadings, legal problems, critical essays, and so on. These genres are used to train future legal professionals and experts.

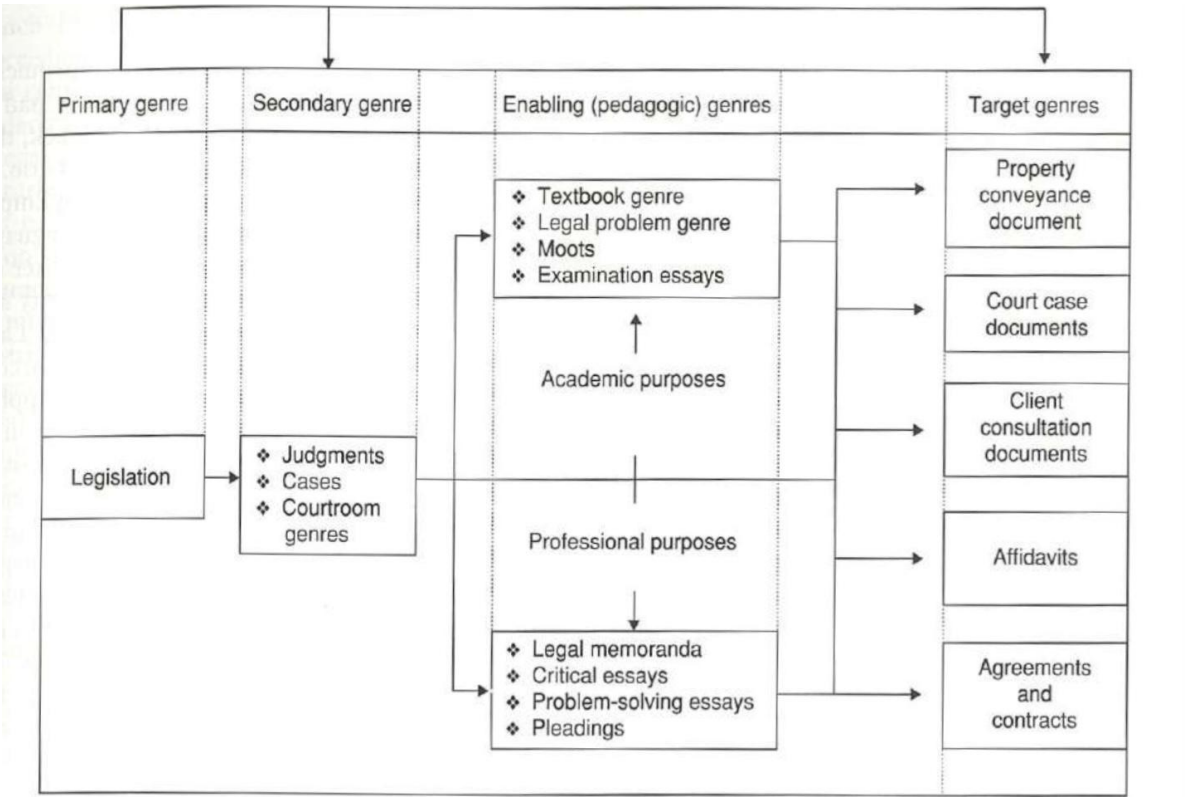


Figure 2.6: Genre systems in law (Bhatia 2006, 7).

Given the importance attributed to genres, particularly legal genres, the following subsection focuses on the genre of arbitral awards, the object of analysis of this study.

2.5.1 Arbitral awards

This study adopts the genre-based approach employed by Bhatia and Lung (2012) in their examination of arbitral awards. They consider "genre as a "typical staged, goal-oriented" (Martin 1985) "social action" (Miller 1984) serving a specific communicative purpose" (Swales 1990; Bhatia 1993)". Bhatia and Lung (2012, 23) assert that there has been relatively scant research on arbitration discourse. They contend that the work in which they contribute (Bhatia, Garzone, and Degano, 2012) aims to address this gap by concentrating on the specific genre of arbitral awards.

Arbitration and the institutional context of arbitral awards will be analyzed more in detail in Chapter 3; however, it is already worth noting that international arbitration stands out as the most commonly used Alternative Dispute Resolution (ADR) method used by parties to settle their disputes without resorting to courts. Such a practice has "developed in a manner to allow parties from different linguistic, legal and cultural backgrounds to resolve their disputes with minimum interference from the courts" (Bhatia, Candlin and Gotti 2012, 3). Previous studies have explored the different sociocultural backgrounds and their effects on the arbitration discourse (e.g., Candlin, Engberg and Trosborg 2003; Bhatia, Candlin and Engberg 2008; Bhatia, Candlin and Gotti 2012) and the role of cultural differences in the discourse of professional reasoning in the arbitration process (Hafner 2011). Specifically, with regard to the latter, in international arbitration the diverse origins of participants and arbitrators contribute to varied knowledge and assumptions in the arbitration process. This diversity gives rise to cross-cultural differences in the professional reasoning contained in arbitral awards (Hafner 2011, 118). However, it is particularly new and relevant, both for scholars and practitioners, that in the last few years increased accessibility to data, facilitated by platforms, such as the Jus Mundi search engine, has enabled both practitioners and scholars to retrieve arbitral awards from institutions across the globe (refer to Chapter 4 for further details).

The resolution of arbitration disputes involves indeed the issuance of an arbitral award by a neutral third party, serving as the final decision of the arbitral tribunal. Typically, the tribunal consists of either a single, impartial arbitrator or three impartial arbitrators. Notably, the arbitral award is legally binding and, with only limited grounds related to procedural issues, it is enforceable and generally immune to challenges in a court of law (Bhatia, Candlin, and Gotti 2012, 4).

According to Frade, it is possible to "talk about 'genre' associated with the arbitration process", but it is also possible to understand such a process "as a series of moves[39] instantiated in subgenres and smaller genres embedded in a stabilized macro-speech act, resulting in what Bazerman (1994) calls a system of genres" (2012, 45). In this regard, Frade identifies some major international arbitration rules and legislation as hierarchical systems of genre, as illustrated in Figure 2.7 below.

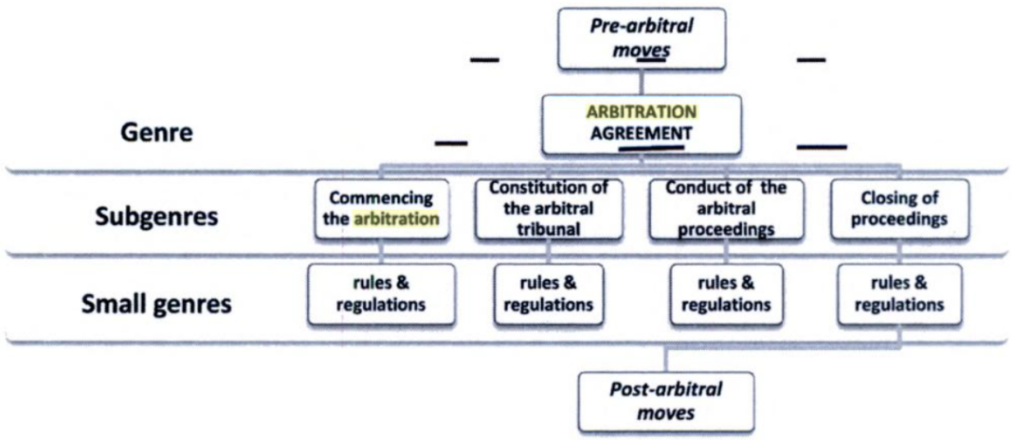


Figure 2.7: International arbitration system of genres (Frade 2012, 47).

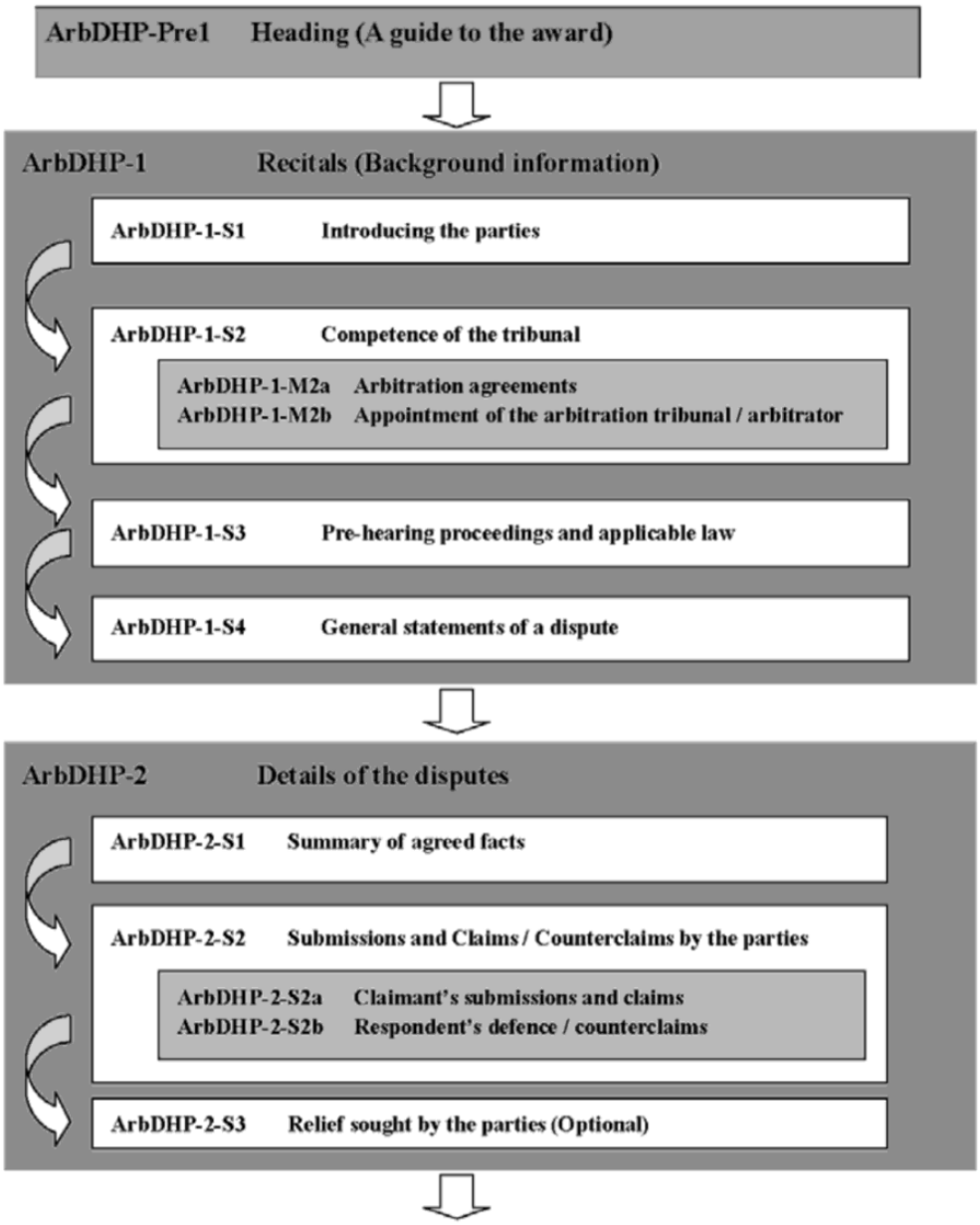
Based on Figure 2.7, it can be stated that "[i]nternational arbitration is a highly specialized discourse domain with specific moves and specific rules governing the success of those moves" (Bazerman 1994, 97, quoted in Frade 2012, 48). As Frade (2012 49) further observes

> Broadly speaking, an arbitration process will not be initiated unless there is an agreement between the parties; the agreement, in turn, will not be valid unless there is appointment of an arbitration tribunal to conduct arbitral proceedings; arbitral proceedings will not be conducted unless some governing rules are stated and an ward is made and, finally, the arbitration will not be completed unless and until the award is enforced.

In such a complex procedure, the arbitral award represents the closing of the arbitration proceedings. It is a "conventionalized genre" (Frade 2012, 57) whose tendency is that of relying "more on content rather than formal features of writing" (Tessuto 2008, 182, quoted in Frade 2012, 57). Furthermore, the award generally articulates "the 'reasons' and/or the

[39] In this study, the term 'move' is used as a synonym for 'act' or 'development' – instead of as Swales' (1990) rhetorical concept. Furthermore, 'move' can be defined as "the elements of which a text is made up" (Darics and Koller 2018, 17). In moves analysis, the first stage is to identify the distinctive units of a text and the communicative purpose of each of these units. The second stage entails a thorough analysis of the linguistic choices – such as the lexical and grammatical choices – that allow to realize the communicative purpose of the move.

'basis' for the decision", which entails that it has to "make clear what the legal authority of the document is, who the parties are, and what they are required to do, what the legal basis for that requirement is and why that legal basis applies to the matter" (Frade 2012, 57). As discussed by Bhatia and Lung (2012), typical rhetorical and cognitive patterns can be identified in arbitral awards. Specifically, he identifies the presence of discursive hierarchical patterning (DHP) in various arbitral awards collected from different countries, outlining four distinct patterns (see Figure 2.8 below):



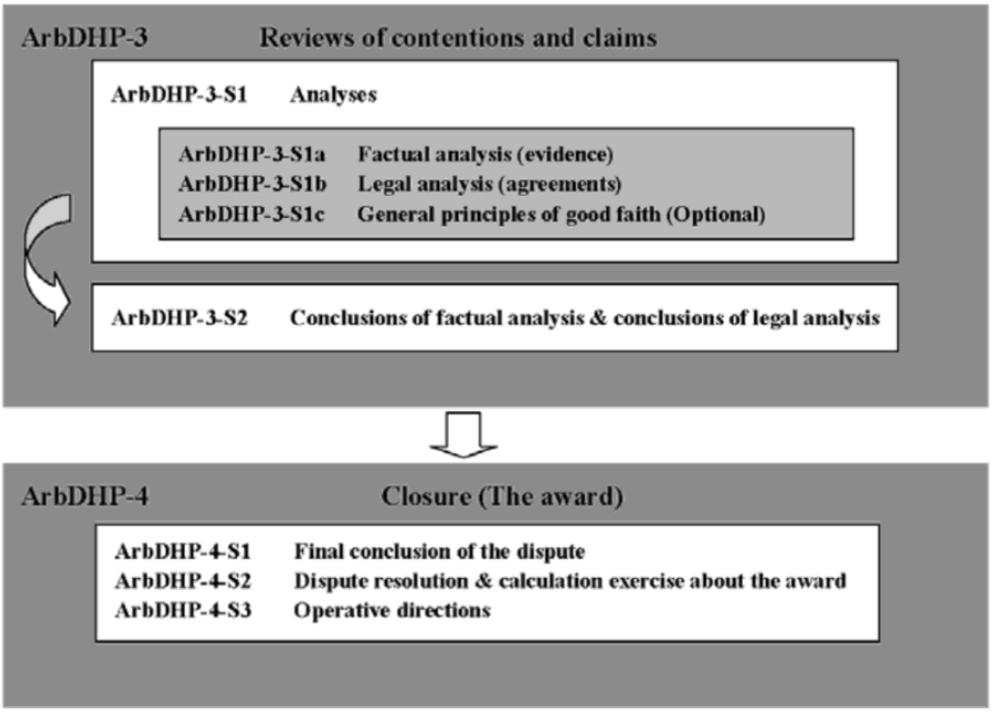


Figure 2.8: Discursive hierarchical patterning in arbitration awards (Bhatia and Lung 2012, 25-26).

As depicted in Figure 2.8, the pre-opening Move 'Heading' is referred to as 'ArbDHP-Pre-1' and it introduces the award by providing a concise overview, featuring details about the arbitration tribunal's identification, the legislation under which the proceedings are conducted, the date, the names of the parties involved and their status (claimant or respondent), the seat of arbitration.

Subsequently, the first Move 'Recitals' (ArbDHP-1) provides background information on the award. This encompasses the context of the dispute and involves four steps:

1. 'Introducing the parties' (ArbDHP-1-S1), thus providing information on the historical account of the dispute and assigning functional roles to the parties;
2. 'Competence of the tribunal' (ArbDHP-1-S2), which "establishes the competence or jurisdiction of the tribunal to arbitrate the dispute" (Bhatia and Lung 2012, 28);
3. 'Pre-hearing proceedings and applicable law' (ArbDHP-1-S3), whose communicative purpose is that of "testifying firstly that a number of matters have been agreed on and settled in the pre-hearings; secondly, that the parties are ready to proceed with the hearing; thirdly, to explicitly re-state that the parties' agreement on the applicable law in the arbitration concerned" (Bhatia and Lung 2012, 30);
4. 'General statements of a dispute' (ArbDHP-1-S4), which explains the main issues by outlining the essence of the dispute.

The second Move 'Details of the dispute' (ArbDHP-2) involves three other steps:

1. 'Summary of agreed facts' (ArbDHP-2-S1), which focuses on the so-called material facts by offering "a recap of the documentary evidence supplied by the parties" often including dates and agreement numbers "in a clear, concise and chronological manner" (Bhatia and Lung 2012, 32);
2. 'Submission and claims and/or counterclaims by the parties' (ArbDPH-2-S2), in which parties present claims – "a statement of injury along with a request for compensation" (Bhatia and Lung 2012, 33) – or counterclaims. As a matter of fact, this step involves two sub-moves, namely the 'Claimant's submissions and claims' (ArbDHP-2-S2a) and the 'Respondent's defence / counterclaims' (ArbDHP-2-S2b). This is because the "claim is presented by the party demanding arbitration, and the respondent files a Response to the Demand which may or may not include a claim for compensable injuries" (Bhatia and Lung 2012, 33);
3. 'Relief sought by the parties' (Optional) (ArbDHP-2-S3), which is optional and therefore, if applicable, it follows the preceding steps by providing a statement of the arbitrators including the relief sought by both the Claimant and the Respondent.

After having provided the details of the dispute, the third Move 'Reviews of contentions and claims' (ArbDHP-3) provides an analysis of the previously presented information.This entails a comprehensive analysis of "both the facts and the law by assessing the evidence, and at the same time discussing the range of factual and legal issues involved" (Bhatia and Lung 2012, 36). It involves the following steps:

1. 'Analyses' (ArbDHP-3-S1), which in its turn involves the following sub-steps:
    a. 'Factual analysis' (ArbDHP-3S1a), which provides "a consideration of the facts of the award and any evidence offered" (Bhatia and Lung 2012, 37);
    b. 'Legal analysis' (ArbDHP-3S1b), which identifies the legal issues presented and contested, and the governing law applying to the facts of the case at hand is determined;
    c. 'General principles of good faith' (Optional) (ArbDHP-3S1c), which is optional and involves the important principle of Good Faith that is often used in contract law. Such a principle involves "being honest in one's purpose and sincere in one's speech as well as the expectation of such qualities in others" (Pound 1922, 188, quoted in Bhatia and Lung 2012, 39).
2. 'Conclusions of factual analysis & conclusions of legal analysis' (ArbDHP-3-S2), which summarizes the conclusions of both the factual and the legal analyses that have been previously described.

Finally, the fourth Move ‘Closure (The award)’ (ArbDHP-4) involves three steps:

1. ‘Final conclusion of the dispute’ (ArbDHP-4-S1), in which the tribunal makes the final decision on the dispute at hand;
2. ‘Dispute resolution and calculation exercise about the award’ (ArbDHP-4-S2), including information on whether the claimant’s claims are granted or denied with justifications, and information on the calculation exercise by establishing the amount awarded on the claim;
3. ‘Operative directions’ (ArbDHP-4-S3), which provides directions for disposing the costs of arbitration.

In conclusion, as briefly touched upon earlier and to be further elucidated in Chapter 4, arbitral awards have traditionally adhered to the principle of confidentiality due to the frequent involvement of commercially sensitive information, such as trade secrets, in international commercial arbitration proceedings (Hafner 2011, 119). However, this principle is gradually becoming less absolute, leading to an increased accessibility of arbitral awards to the general public. This development is important for a twofold reason:

1. It facilitates practitioners and scholars in accessing pertinent data;
2. It enables in-depth investigation, analysis, and comparison of the professional reasonings of arbitrators involved in disputes settled across different regions of the world and applying different laws.

CHAPTER 3

INTERNATIONAL COMMERCIAL ARBITRATION: THE CONTEXT

As briefly outlined in Chapter 1, this study is grounded in the methodological assumption that texts and genres can only be effectively examined within the context of the institutional and professional practices from which they originate. As articulated by Bhatia, it is important to maintain "a balance between the study of linguistic form, on the one hand, and the study of context, in a broad sense of socio-cultural factors, to focus on why members of specific disciplinary cultures use the language the way they do and what makes this form possible" (Bhatia 2002a, 23). Context plays a pivotal role in unraveling how linguistic elements contribute to the overall meaning of a discourse.

Consequently, this chapter defines international commercial arbitration and elucidates its key characteristics to establish the institutional backdrop for the linguistic analysis conducted in this research. Section 3.1 starts introducing international commercial arbitration defining characteristics. In Section 3.2, the roots of commercial arbitration are illustrated by providing a brief overview of its historical background. Subsequently, Section 3.3 illustrates the evolution of the international commercial arbitration legal framework in the early 20th century. In Section 3.4, the goal is to provide a general overview of the current international arbitration frameworks in the common law and civil law legal systems under analysis, namely the United States (3.4.1), the United Kingdom (3.4.2), Singapore (3.4.3), Hong Kong (3.4.4), France (3.4.5), Italy (3.4.6), and Switzerland (3.4.7).

3.1 Main features of commercial arbitration

Arbitration has been conceptualized in various ways by scholars. As highlighted in Section 1.1, according to Born (2021, 1), arbitration serves as a method for conclusively settling international disputes based on the parties' mutual agreement, with decisions made by impartial, non-governmental authorities. Moses defines arbitration as "a private system of adjudication" in which "[p]arties who arbitrate have decided to resolve their disputes outside any judicial system" producing "a final and binding decision, producing an award that is enforceable in national court" (2017, 1). DeVries provides an alternative definition,

describing arbitration as "a mode of resolving disputes by one or more persons who derive their power from the agreement of the parties and whose decision is binding upon them" (1982, 42-43).

As can be noticed, distinctive common elements stand out in the definitions provided above. In all instances, arbitration is identified as a method of dispute resolution. Furthermore, there is a common theme of party agreement to resolve disputes through arbitration. Additionally, the decision-making authority is consistently vested in one or more individuals agreed upon by the parties. Finally, the decisions reached through arbitration are binding.

Scholars such as Born (2001, 1) and Moses (2017, 2-3) outline distinctive characteristics that define commercial arbitration:

1. Firstly, they characterize commercial arbitration as consensual, emphasizing that, in most instances, parties must mutually agree to resolve their disputes through arbitration. Unlike litigation, where parties are often compelled to participate in a court process, arbitration occurs only when all involved parties agree to submit their dispute to arbitration. Consensual arbitration typically involves a contractual agreement between the parties, which is "the relinquishment of an important right – to have the dispute resolved judicially – and creates other rights", namely "the rights to establish the process for resolving the dispute" (Moses 2017, 18). This agreement outlines the terms and conditions governing the resolution of the dispute through arbitration instead of the traditional court system. The consensual nature of arbitration provides parties with the autonomy to choose their dispute resolution mechanism, and it reflects a commitment to resolving conflicts outside of the formal court system. It is this voluntary agreement that makes arbitration consensual, distinguishing it from other forms of dispute resolution that may be imposed or mandated by law. As noted by Born (2001, 5), international arbitration agreements should address various significant issues, including the situs of the arbitration, the applicable institutional or other procedural rules, the method of selecting the arbitrators, the number of arbitrators, the applicable substantive law[40], and the language of the arbitration. Moreover, it is crucial for such an agreement to be valid.

[40] In this regard, it is important to highlight that various layers of laws may come into play in the realm of international commercial arbitration. As clarified by Moses (2017, 59, 69), parties typically opt for a specific law to govern the contract, known as substantive law. Conversely, the law governing the arbitration procedure often differs and is typically a national law, specifically the arbitration law at the location of the arbitration, commonly referred to as *lex arbitri*. Additionally, even though the *lex arbitri* typically addresses the formal validity of the arbitration agreement, the laws governing the substantive validity of such an agreement could vary and be drawn from a range of legal sources.

To establish the actual consent of the parties, "many national laws, as well as the New York Convention, require that an arbitration be in writing" and "be signed by both parties" (Moses 2017, 19-20).

2. Secondly, it is argued that arbitrations are resolved by non-governmental decision makers. This is attributed to the fact that arbitrators are typically private individuals chosen by the parties involved in the dispute. They may be legal professionals or individuals with specific knowledge relevant to the dispute (Helm, Wistrich and Rachlinski 2016, 667). The arbitral tribunal, typically composed of either one or three arbitrators appointed to resolve a dispute through resolution, plays a crucial role in ensuring a fair and impartial resolution of disputes (Fortese and Lemmi 2015, 112). In a three-member tribunal, each party usually appoints one arbitrator. The appointed arbitrators then collaborate to select the presiding arbitrator, who often serves as the chair of the tribunal (Robin 2014, 136). If the parties opt for a sole arbitrator, they typically agree on the appointment together or follow a designated process, such as selecting an arbitrator from a pre-established list. In cases where the arbitration is administered by an arbitral institution, the institution may play a role in the appointment process, either by directly appointing arbitrators or assisting the parties in their selection (Moses 2017, 126-133). Expanding on Moses' perspective, she asserts that arbitrators exhibit a high degree of thoughtfulness and consideration towards the involved parties. This is attributed to the fact that "arbitrators are chosen by the parties and, of course, they would like to be chosen again" (Moses 2017, 2). Arbitrators are also bound by the obligation to be impartial and independent in their role (Al-Hawamdeh, Dabbas and Al-Sharariri 2018, 66). According to Moses, impartiality "means that the arbitrator is not biased because of any preconceived notions about the issues and has no reason to favor one party over another", whereas independence "means that the arbitrator has no financial interest in the case or its outcome" (2017, 135-36). However, independence may also entail that the arbitrator is not reliant on any party for personal benefits, such as employment or client referrals, and that arbitrators do not maintain a close business or professional relationship with any of the parties. Furthermore, arbitrators have the obligation to render an enforceable award (Moses 2017, 145) and they may be required under local law to act with due care, to treat parties equally, and to give each party a full opportunity to present its case[41].

[41] See, e.g., the UNCITRAL Model Law, arts. 12, 14, 18.

3. Thirdly, arbitration results in a binding award, which is capable of enforcement through national courts. The term 'binding' underscores the legal obligation of the parties to adhere to the decision made by the arbitrators. Parties enter into arbitration agreements with the understanding that the resulting award will be binding. The enforceability of the award is supported by national laws and international conventions, such as the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (see Section 3.3). The binding nature of the award is rooted in the consensual agreement of the parties to submit their dispute to arbitration and abide by the decision of the arbitrators. This is a key distinction from non-binding forms of alternative dispute resolution, such as mediation. However, while binding, arbitration awards are not immune to challenges. As Moses (2017, 205) states, in the majority of jurisdictions, grounds for challenging arbitration awards typically fall into two broad categories: jurisdictional and procedural. Jurisdictional challenges are often raised at the beginning of arbitration proceedings rather than after the award is issued. Laws in many places may deem a party to have waived the right to challenge jurisdiction if not done at the outset. It is more efficient to address jurisdictional concerns early in the arbitration process to avoid wasting time, effort, and resources. Boycotting proceedings is not recommended (Blackaby *et al*. 2015, 354-355), as even if a party challenges the award later, enforcement may still occur, and costs may be awarded against them. Therefore, it is generally advisable for a party to raise jurisdictional challenges at the start of arbitration, and if unsuccessful, participate in the process. Awards are commonly challenged on procedural grounds, with many arbitration laws requiring adherence to certain standards of due process[42]. Additionally, national courts may independently assess two key grounds, namely whether the subject matter is arbitrable (Bantekas 2008, 193) and whether the award contradicts the public policy of the state. While the definition of public policy varies across jurisdictions (Bockstiegel 2008, 125), in most cases, an award may be annulled if it fails to align with fundamental principles of justice, honesty, and fairness. Instances of corruption, fraud, or a lack of integrity in the process may be deemed violations of public policy, warranting the annulment of the award (Moses 2017, 206).

[42] For instance, Article 34 of the UNCITRAL Model Law specifies that a party can raise a challenge based on particular grounds, all of which pertain to various aspects of due process (Moses 2017, 206).

Various types of awards exist (Moses 2017, 190-191). The term 'final award' typically refers to the tribunal's decision that resolves all remaining disputes between the parties. A second type is the 'interim award', issued during arbitration proceedings before a final decision on the merits with the purpose of dealing with urgent matters that cannot wait until the conclusion of the arbitration. It's worth noting that although the term 'interim award' is sometimes used interchangeably with 'partial award', they are distinct. A partial award is issued when the arbitral tribunal resolves specific issues within the overall dispute, leaving other issues to be resolved later in the proceedings. This type of award is often used when certain aspects of the dispute are ready for resolution, even if the entire dispute has not been fully heard or decided. Additionally, parties can opt for a voluntary settlement through consent at any point, resulting in a 'consent award' that eliminates the need for an arbitral decision. Lastly, a 'default award' may be issued when one party fails to participate in the proceedings.

Ultimately, a crucial consideration in handling arbitral awards revolves around the significance that is placed on maintaining the confidentiality of such awards. Within the arbitral sphere, a dilemma exists between the inclination to keep awards confidential[43] (e.g., Noussia 2010, 169-171) and the inclination to make them widely accessible for use as guidelines, if not precedents (Moses 2017, 200) (see Chapter 4). Arbitration proceedings often provide a higher degree of confidentiality compared to court litigation (Zlatanska 2015, 26), thus allowing the parties to keep the arbitration and its details private, safeguarding sensitive information from public disclosure. However, as many scholars suggest (e.g., Bhatia 2010a, 575; Moses 2017, 200; Susan and Srivastava 2022, 21-27), access to information about how similar cases have been decided can enhance the effectiveness of settlement discussions for parties. Furthermore, in recent decades, there has been an argument that the publication of arbitral awards could serve as 'educational samples', contributing to the training of young arbitrators and promoting consistency in the reasoning of arbitral awards at the international level. This topic holds particular interest and relevance for the purposes of the study, and it will be explored in greater detail in Chapter 4.

4. Finally, according to Born (2001, 1) flexibility is a key characteristic of arbitration. As Webster and Bühler state, "One of the fundamental principles that forms the basis

[43] As noted by Noussia (2010, 1), confidentiality in arbitral proceedings does not pertain to third parties' ability to observe the proceedings without the consent of the disputing parties and the arbitrator. Instead, it lies in the parties' ability to disclose documents and information used or connected to the arbitration.

and runs through most aspects of modern international arbitration is party autonomy" (2005, 15). As a matter of fact, parties in arbitration have the freedom to shape the procedural aspects of the dispute resolution process. They can tailor the arbitration proceedings to suit the specific requirements of their case, subject to any mandatory legal provisions or the rules of the chosen arbitral institution. Furthermore, arbitration often allows for faster resolution of disputes compared to litigation. The flexibility to set timelines and deadlines helps expedite the arbitration process, making it an attractive option for parties seeking quicker outcomes (Lecaj and Curri 2021, 98). Additionally, arbitration procedures are generally less formal than court proceedings (Lecaj and Curri 2021, 99), which is a factor that often contributes to providing the parties with a more relaxed and collaborative environment for presenting their cases. Finally, in most cases parties can choose the venue or seat of arbitration, providing flexibility in selecting a neutral or convenient location. They can also determine the language(s) in which the proceedings will be conducted (Lecaj and Curri 2021, 99), facilitating communication and understanding.
However, it is crucial to bear in mind that although parties have considerable freedom to tailor their arbitration procedure, there is a need to strike a balance. Excessive customization or provisions that undermine fundamental principles of fairness and due process may be open to scrutiny and challenge. This could lead to the setting aside of the award, invoking the grounds for challenge outlined in point 3 of this section.

3.2 A brief overview of the historical background of commercial arbitration

As illustrated in the previous section, arbitration therefore represents a private process providing an alternative to traditional litigation in national courts. The roots of commercial arbitration, somewhat shrouded in obscurity (Wolaver 1934, 132), are sometimes traced to early reports from the Middle East and from convincing examples of agreements to arbitrate future disputes in ancient Egypt. Furthermore, commercial arbitration was a common method for resolving disputes in ancient Greece (Emerson 1970, 156). This was primarily driven by the congestion and backlog issues experienced by ancient Greek courts, "which led to the use of arbitrators, retained from other city states (rather like foreign engineers or mercenaries), to resolve pending cases" (Born 2021, 23). Furthermore, as Roebuck asserts, in ancient Greece "Arbitration was the natural and regular process of choice for those who could not afford litigation, were afraid of its outcome, preferred privacy, or were manipulating the alternatives" (2001, 45-46).

Arbitration played a crucial role in resolving commercial disputes even during the Roman era "because of the deficiencies in the state court systems" (Kidane 2017, 24). Furthermore, in both ancient Greece and Rome, awards resulting from arbitration were characterized as "reasoned, binding and apparently subject to little subsequent judicial review" (Born 2021, 24).

In the post-Classical era, arbitration gained increasing favor. Historical records suggest that arbitration continued to hold a vital position in handling commercial matters during the Byzantine period, in Egypt and elsewhere. The increasing use of arbitration can be attributed, in part, to shortcomings observed in state court systems, which were described as "unreliable, cumbersome and costly" (Born 2021, 26).

During the Middle Ages, arbitration continued to be widely employed in many European regions (David 1985, 85-65), such as England, Germany, Switzerland, Northern Italy and France. It emerged as an autonomous method of dispute resolution operated by merchants for merchants (Martin and Hunter 1985, 84, quoted in Brekoulakis 2016, 7), particularly within the context of "merchant guilds, trade fairs, or other forms of commercial or professional organizations" (Born 2021, 27). Evidently, commercial arbitration was extensively employed in these European regions during the Middle Ages. Supporting this observation, early codifications of procedural law from the 14th, 15th, and 16th centuries explicitly incorporated arbitration as an alternative to local court proceedings.

As international trade surged during Europe's early modern era, the arbitration of private commercial disputes emerged in tandem. Merchants opted to resolve conflicts in specialized tribunals in Mediterranean ports. Specifically, they turned to the application of *lex mercatoria* – a set of customary laws established by traders – for their domestic or international business affairs (Slomanson 2004, 238). Lex mercatoria, encompassing customary commercial law, rules of evidence and procedure, and general commercial principles, not only shaped trade regulations but also left an indelible mark on the legal culture of emerging states and nations throughout Europe, "ultimately providing the foundations of nowaday's international commerce and arbitration" (Szalay 2016, 9).

However, as noted by Kidane (2017, 24), the development of arbitration did not progress seamlessly but rather encountered opposition during what has been termed as "Dark Ages" (Slomanson 2004, 238). In the context of common law traditions, particularly in England (Kidane 2017, 24; Born 2021, 32-37), the 1698 Arbitration Act aimed to enhance trade and the effectiveness of arbitrators' awards by allowing parties to establish arbitration agreements as a rule of court. Despite these legislative efforts, English common law initially considered arbitration agreements revocable, thus limiting their enforceability. It was only through the 1833 Civil Procedure Act that the principle asserting the irrevocability of an arbitration agreement that was made a rule of court was reaffirmed. Subsequently, the 1854 Common Law Procedure Act affirmed the permanence of arbitration agreements, although it introduced judicial review of arbitration awards. The 1889 English Arbitration Act, also adopted by the Commonwealth nations, retained the court's authority to review certain questions of law. This Act endured for over half a century before being succeeded by England's Arbitration Act of 1950 and 1996, which "progressively lessened the courts' involvement while still maintaining some level of oversight" (Kidane 2017, 25).

As discussed by Born (2021, 39-49) in his work, the evolution of commercial arbitration in the United States during the 18th and 19th centuries closely mirrored the trajectory observed in England during the same period. Initially, arbitration was widely used to settle disputes, especially in colonial and early republican periods. However, in the 19th century, there was a significant increase in judicial and legislative hostility towards arbitration agreements, influenced by a radical interpretation of historic English common law authority. Despite this hostility, "the use of commercial arbitration developed during the colonial and postrevolutionary periods" (Benson 1995, 483). By the late 19th and early 20th centuries, U.S. judicial and legislative attitudes towards commercial arbitration began to shift. Courts began to question the earlier hostility, and commercial pressure for reform led to legislative changes. In 1920, New York introduced legislation supporting the validity and specific

enforcement of arbitration agreements, followed by the Federal Arbitration Act (FAA) in 1925. These changes “enacted a sea change from the American common law by instituting a default rule that contracts to arbitrate should be enforced by the courts” (Born 2021, 49).

The development of arbitration faced resistance in civil law countries as well (Kidane 2017, 25). In France, the historical progression of arbitration paralleled that of England as well (Born 2021, 37-39). Initially, the Edict of 1560 and merchant practices led to widespread use of arbitration for commercial dispute resolutions. During the French Revolution, arbitration gained enhanced dignity, aligning with notions of social contract and democratic choice. It was perceived as a reasonable means for dispute resolution and even achieved constitutional status in 1793 and 1795. However, as David (1985, 90) states, the revolutionary sentiment eventually turned against arbitration, viewing it as a threat to the rule of law and revolutionary authority. The Napoleonic Code of Civil Procedure in 1806 imposed strict restrictions on arbitration agreements, rendering future dispute agreements generally unenforceable (Kidane 2017, 25). It took approximately eight decades for this hostility to ease, first in international cases and later in domestic ones. France’s ratification of the Geneva Protocol of 1923 marked a turning point, making agreements to arbitrate future international commercial disputes fully enforceable in French courts (Born 2021, 39).

In line with the aforementioned nations, arbitration appears to have followed a similarly uncertain path in the Middle East, Asia, and Africa. According to Born (2021, 52-56), despite historical traditions of longstanding reliance on settling disputes through arbitration, this method encountered general distrust in these regions during the 20th century. Political attitudes in these regions often limited the effectiveness of arbitration agreements and rejected the finality of arbitral awards. It was only in the 1980s and 1990s that the vast majority of the countries in these regions began to adopt the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (see Section 3.2), thereby enhancing the role of arbitration in the resolution of commercial disputes.

As elucidated in this section, the enduring presence of arbitration across global legal traditions remains a testament to its resilience, prevailing despite resistance during certain historical epochs. Particularly noteworthy is its pivotal role in the 20th century, a period marked by the widespread recognition of arbitration's significance. This acknowledgment led to the establishment of crucial frameworks, including international arbitration conventions, national arbitration legislation, and institutional arbitration rules. Additionally, the cooperative engagement of national courts in numerous well-developed jurisdictions played a supportive role, further solidifying arbitration's stature in the legal landscape (Born

2021, 57). This transformative evolution is comprehensively expounded upon in the subsequent section.

3.3 Evolution of the international commercial arbitration legal framework in the 19th and 20th centuries

According to Caron and Caplan, "The construction of the international arbitration framework is one of the great legal accomplishments of the twentieth century" (2013, 2). In alignment with this perspective, Brekoulakis (2016, 7) claims that the late 19th and early 20th centuries marked a significant period of development for arbitration. During this period, arbitration gained increasing recognition as an efficient and effective dispute resolution method (Brekoulakis 2016, 8), a sentiment reflected in the substantial legal advancements in the codification of arbitration laws globally (Martin and Hunter 1985, 84). In the United States, arbitration laws were enacted at both the federal level, exemplified by the Federal Arbitration Act (FAA), and state level. Similarly, across Europe, several countries took strides in codifying arbitration laws during the 19th century. France, for instance, incorporated arbitration provisions into the Code of Civil Procedure of 1806, with subsequent legal developments continuing to shape the landscape of arbitration in the country (Seppala 1982, 749-750). Likewise, other European jurisdictions, including Germany, Austria, the Netherlands, and Italy, integrated arbitration laws into their national codes of civil procedure, as the initial perception of arbitration was that of "a distinct legal field" rather than "an integral part of other areas of law" (Brekoulakis 2016, 8).

The impetus for the codification of arbitration laws during the 19th century often stemmed from a desire to establish a legal framework that would facilitate the enforcement of arbitration agreements and awards, promote commercial dispute resolution, and provide parties with a viable alternative to traditional litigation. These early efforts in codifying arbitration laws laid the foundation for the contemporary arbitration framework. As will be described in this section, over the years international conventions and treaties further contributed to the global acceptance and enforcement of arbitration agreements and awards, making arbitration a widely recognized and utilized method for resolving disputes.

According to Born (2021, 57-58), the drive behind these diverse legal advancements was the international business community, the primary user of the arbitral process, finding receptive audiences in national legislatures and judiciaries eager to promote international dispute resolution mechanisms. The initiation of modern-era international commercial arbitration treaties can be traced back to the Montevideo Convention 1889, signed by several Latin American states, inaugurating the beginning of a tradition of multilateral conventions. Subsequent to the Montevideo Convention, the Hague Convention of 1899 on the Pacific

Settlement of Disputes and the Hague Convention of 1907 on the Pacific Settlement of International Disputes were introduced, attempting to facilitate the arbitration-based resolution of inter-state disputes.

However, it was only in the 1920s that the foundations of the contemporary legal framework for international commercial arbitration were firmly established. In 1919, the International Chamber of Commerce[44] (ICC) was established. Thanks to the ICC (Shalakany 2000, 430), in 1923 major trading nations negotiated the Geneva Protocol on Arbitration Clauses in Commercial Matters. This Protocol laid the groundwork for the contemporary international arbitration process and was complemented by the Geneva Convention for the Execution of Foreign Arbitral Awards in 1927. Both instruments, despite imperfections (Van den Berg 1981, 7), established "the basic principles of the presumptive validity of international arbitration agreements and arbitral awards, and the enforceability of arbitration agreements by specific performance, as well as recognition of the parties' autonomy to select the substantive law governing their relations and to determine the arbitration procedures" (Born 2021, 62). Moreover, both of these instruments "inspired and paralleled national legislation and business initiatives" (Born 2021, 62) aimed at enhancing the legal framework governing international commercial arbitration agreements.

The devastation of World War II imposed a pause on the evolution of arbitration legal frameworks for international commercial arbitration. Despite this setback, the dedication to establishing an international legal framework for international commercial arbitration endured. In 1958, this commitment materialized in the form of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (hereafter referred to as the 'New York Convention'). Widely regarded as the most significant contemporary international agreement in the realm of commercial arbitration, the New York Convention governs the enforcement of both arbitration agreements and awards. The global significance of this convention is underscored by the extensive participation of numerous countries as

[44] The ICC's primary goal is to advance the development of a global economy marked by openness, firmly believing that international commercial interactions contribute to both increased worldwide prosperity and peace among nations. All activities of the ICC aim: "to promote international trade, services and investment, while eliminating obstacles and distortions to international commerce; to promote a market economy system based on the principle of free and fair competition among business enterprises; to foster the economic growth of developed and developing countries alike, particularly with a view to better integrate all countries into the world economy" (Preamble of the Constitution of the International Chamber of Commerce (ICC) available at https://iccwbo.org/icc-constitution/).

parties to it[45] (Moses 2017, 8). In essence, the New York Convention, as outlined by Born (2001, 21):

1. Mandates national courts to recognize and enforce foreign arbitral awards, with specified exceptions;
2. Requires national courts to acknowledge the validity of arbitration agreements, with specified exceptions;
3. Directs national courts to refer parties to arbitration when a valid agreement to arbitrate, subject to the Convention, has been entered into.

The New York Convention is often considered as the "'single most important pillar on which the edifice of international arbitration rests' and one which 'perhaps could lay claim to be the most effective instance of international legislation in the entire history of commercial law'" (Redfern and Hunter 2004, 133). The New York Convention introduced several noteworthy improvements to the framework established by the Geneva Protocol and Geneva Convention for the enforcement of international arbitration agreements and arbitral awards. Born (2021, 97) succinctly summarized these improvements as follows:

> Particularly important were the the shifting of the burden of proving the validity or invalidity of arbitral awards away from the party seeking enforcement to the party resisting enforcement, its recognition of substantial party autonomy with respect to choice of arbitral procedures, the procedural law governing the arbitration and law applicable to the arbitration agreement, and its abolition of the previous "double exequatur" requirement (which had required that the arbitral awards be confirmed in the arbitral seat before being recognized abroad).

[45] Initially, the ratification of the New York Convention was limited, with South American states, in particular, displaying reluctance until the 1980s. This hesitancy was largely attributed to a general skepticism and aversion towards international commercial arbitration. However, in 1975, the United States and most South American nations engaged in negotiations leading to the creation of the Inter-American Convention on International Commercial Arbitration, commonly known as the 'Panama Convention'. This was ratified by seventeen South or Central American countries and the United States, by "making arbitration much more acceptable in Latin American countries" (Moses 2017, 8). As Born (2021, 105) states, while sharing similarities with the New York Convention, the Panama Convention introduces notable innovations by stipulating that in cases where the parties have not explicitly agreed to any institutional or other arbitration rules, the rules of the "Inter-American Commercial Arbitration Commission" ("IACAC") will apply. The Commission, in turn, has adopted rules closely resembling the UNCITRAL Arbitration Rules. The Convention also incorporates provisions pertaining to the constitution of the arbitral tribunal and the parties' freedom to appoint arbitrators of their choosing, regardless of nationality. However, a notable deviation from the New York Convention is observed in the Panama Convention's omission of provisions explicitly addressing judicial proceedings brought in national courts in violation of an arbitration agreement.

Nevertheless, it is also recognized that the New York Convention

> does not provide for an overall regulation of international commercial arbitration as do, for example, the Washington Convention of 1965[46] and, to a lesser extent, the European Convention of 1961[47]. Nor is the Convention a uniform law on arbitration like, for instance, the European Uniform Law of 1966[48]. Rather, the New York Convention is in essence limited to two aspects of international commercial arbitration: the enforcement of those arbitration agreements which come within its purview (Art. II(3)) and the enforcement of foreign arbitral awards (Arts. I and III-VI). (Van den Berg 1981, 9-10)

The primary emphasis of the New York Convention is therefore on the recognition and enforcement of arbitration agreements and arbitral awards, with a notable omission of specific provisions addressing the procedures of international arbitrations.
Nevertheless, the New York Convention stands as the first component among the three major strands in the evolution of the legislative framework for international arbitration in recent decades, alongside the following two strands:

[46] The Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States (1965), also known as the 'ICSID Convention' due to its establishment of the International Center for the Settlement of Investment Disputes (ICSID), was advocated by the World Bank with the aim of encouraging investors to engage in investments in developing countries. It facilitates the resolution of disputes by providing the opportunity for both the country and the investor to arbitrate any disagreement directly. This arbitration can occur either pursuant to an arbitration agreement in a state contract or through a bilateral investment treaty that includes a clause whereby the state consents to arbitrate with investors covered by the treaty (Moses 2017, 9).
[47] The European Convention on International Commercial (1961) is a supplement to the New York Convention in the contracting states. It addresses various general matters concerning the rights of parties in arbitration and outlines specific, restricted circumstances under which the setting aside of an award under the national law of one Contracting State can serve as a ground for refusing to recognize or enforce the award in another Contracting State (Moses 2017, 8).
[48] The European Convention Providing a Uniform Law on Arbitration (1966) was enacted with the aim of implementing a uniform law on arbitration in civil and commercial matters, aiming to foster greater unity and facilitate commercial relations among its member states by adopting common rules in the legal domain. However, scholars such as Sanders (1981) expressed skepticism about the effectiveness of this uniform law in achieving harmonization since during the negotiations of such a uniform law each delegation sought to incorporate as much as possible of the peculiarities of its own law. As he further states, "[e]ach country has its own traditions and traditions are strong" (Sanders 1981, 67). Instead, Sanders proposed the adoption of a model law for international commercial arbitration, suggesting that legislators in respective countries could then incorporate a dedicated chapter on international commercial arbitration into their Arbitration Acts based on such a model law. This section outlines the creation of a model law in this context (the UNCITRAL Model Law on International Commercial Arbitration of 1985).

- National arbitration statutes, which refers to the national laws governing the private arbitral arrangement, providing a regulatory framework. Notably, UNCITRAL[49] significantly played a substantial role in this aspect by adopting the Model Law on International Commercial Arbitration in 1985.
- UNCITRAL Arbitration Rules, introduced in 1976 and subsequently revised in 2010, 2013 and 2021, offer a set of guidelines for the conduct of arbitration proceedings on an international scale.

Regarding the second strand, the UNCITRAL Model Law, currently adopted in 88 States in a total of 121 jurisdictions[50], was initially adopted in 1985, with subsequent amendments in 2006. The UNCITRAL Model Law had to serve as "a model of domestic arbitration legislation, harmonizing and making more uniform the practice and procedure of international commercial arbitration while freeing international arbitration from the parochial law of any given adopting state" (Hoellering 1986, 327). Its creation was driven by the objective of assisting states in reforming and modernizing their arbitration laws. The main goal was to reduce divergences and ambiguities[51] in the interpretation of the New York Convention while minimizing potential conflicts between national laws and arbitration rules[52]. As Born notes, "the Model Law and its revisions represent a significant further step, beyond the New York Convention, towards the development of a predictable "pro-arbitration" legal framework for commercial arbitration" (2021, 119).
Furthermore, it is crucial to emphasize that the drafting of the Model Law was guided by the following underlying principles (Hoellering 1986, 328-):

1. Party autonomy: The entire framework of the Model Law provides for a wide scope of party autonomy, recognizing it as a fundamental UNCITRAL principle.
2. Consistency with the New York Convention and the UNCITRAL Rules: The drafting of the Model Law was driven by the objective of promoting alignment with and

[49] The United Nations Commission on International Trade Law (UNCITRAL) was created in 1966 by the UN General Assembly through Resolution 2205 (XXI). Among its objectives, one of such goals includes the preparation or promotion or adoption of new international conventions, model laws and uniform laws (Caron and Caplan 2013, 2).
[50] Status: UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006. Available at https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration/status.
[51] Specifically, the Model Law delineates the restricted scope of national court interference in the arbitral process, clarifies the grounds for annulling international arbitral awards, and prescribes the types and extent of judicial support for international arbitrations (Born 2021, 119).
[52] Report of UNCITRAL on the Work of Its Twelfth Session, 34 UN GAOR Supp. (No. 17), at paras. 78-80, UN Doc. A/34/17 (1979), quoted in Hoellering 1986, 328.

adherence to the policies and principles that underlie both the New York Convention and the UNCITRAL Arbitration Rules, which should be maintained and promoted due to their success and widespread recognition across numerous countries.

3. Scope - Broad definitions of 'International' and 'Commercial': From the outset, a purposeful decision was made to limit the Model Law's applicability strictly to international commercial arbitration. This choice arises from recognizing the special requirements associated with transnational dispute resolution and the varied interpretations of the term 'commercial' across different jurisdictions. To provide clarity and certainty in the realm of dispute settlement for international commercial transactions, the Model Law adopts broad definitions, aiming to encompass a wide range of scenarios within the global context.
4. Limited court intervention: Another important objective was to establish a balanced relationship between arbitration and the courts. In the Model Law, courts are primarily designated to offer support and assistance to the arbitral process, with the intention of avoiding interference.
5. Broad arbitrator authority: According to the Model Law, arbitrators are provided with greater authority and power to make specific decisions, restricted solely by contrary agreement of the parties.

Regarding the third strand, the UNCITRAL Arbitration Rules, formulated through the collaborative efforts of esteemed experts representing different legal systems worldwide, were officially adopted in 1976 (Caron and Caplan 2013, 5). The UNCITRAL Arbitration Rules underwent revision in 2010, prompted by an article authored by Peter Sanders (2004), the primary drafter of the 1976 Rules. The Working Group responsible for amending the Rules exercised great care in their updates, ensuring alignment with the changes observed in arbitral practice over the past thirty years. Their objective was to tailor the Rules to the changing dynamics of arbitration, emphasizing adaptability rather than introducing unnecessary complexity. As a result, these Rules have "emerged globally as the dominant and most influential set of arbitration rules" (Caron and Caplan 2013, 2).

Since 1980, numerous developed jurisdictions have enacted modern arbitration statutes, signifying a clear and definitive acknowledgement of the international acceptance of the arbitral process. These national arbitration statutes have undergone gradual refinement, reflecting a persistent dedication "to international arbitration as a means of resolving transnational commercial disputes - and thereby promoting international trade - and to continually improving the arbitral process in response to changing conditions and emerging

(or re-emerging) critiques" (Born 2021, 63). Born (2021, 110) additionally notes that in civil law jurisdictions, early arbitration legislation was often integrated into the national Code of Civil Procedure, a practice that persists in several jurisdictions to this day. Conversely, in common law jurisdictions, the inclination historically has been and continues to be the enactment of separate legislation specifically addressing arbitration.

The subsequent section will delve into the current international commercial arbitration frameworks of specific common law and civil law countries, which are pivotal for the purposes of this study. Such countries include the United Kingdom, the United States, Singapore, Hong Kong, France, Switzerland and Italy.

3.4 Current international commercial arbitration frameworks in common law and civil law systems

This section presents an examination of the existing international commercial arbitration frameworks in civil law and common law countries, focusing on those relevant to the study's scope. After providing an overview of the key characteristics of both civil law and common law legal traditions, the discussion explores the specific international commercial arbitration frameworks in selected jurisdictions within these traditions. This set of jurisdictions encompasses common law countries, specifically the United Kingdom (3.4.1), the United States (3.4.2), Singapore (3.4.3), and Hong Kong (3.4.4), alongside civil law countries, namely France (3.4.5), Switzerland (3.4.6), and Italy (3.4.7).

Civil law and common law exhibit numerous distinctions, and a comprehensive exploration demands a dedicated and extensive study involving in-depth analysis and explanations. Therefore, this section endeavors to provide a concise overview, emphasizing representative examples that illustrate the disparities between civil law and common law. The examples presented aim to offer insight into the diverse legal concepts characterizing these two major legal traditions, laying the groundwork for the subsequent examination on the civil law and common law countries discussed in the following subsections.

Each legal system possesses distinct characteristics. However, they can be classified into groups of legal families sharing common features in terms of legal history, legal thinking, and positive rules (Siems 2018, 50). The two primary legal families or traditions worldwide are the civil law and the common law (e.g., Cappelletti 1981, 381; Sacco 1991, 4; Mattei and Monateri 1997, 2; Schlesinger 1998, 390; Mattei and Pes 2008, 267; Kauffmann 2013, 36). Summarizing the differences and similarities between civil law and common law systems is a complex task; however, it can be asserted that the main distinctions or *loci oppositionis* (Mattei and Pes 2008, 273) between the two revolve around their origins, sources of law, the role of precedent, and the approach to making legal decisions. These points are briefly elaborated upon below:

1. To comprehend the distinction between civil and common law, it proves beneficial to look into the historical foundations of both legal traditions. Civil law traces its roots back to Roman law, encompassing the legal system derived from the jurisprudence practiced in the Roman Empire, notably articulated in the compilations

by Justinian and his successors collectively known as the *Corpus Iuris Civilis*[53] (Garzone 2007, 15). Subsequently, under the influence of this legacy, civil law has undergone development in Continental Europe and various other regions across the world. A distinctive characteristic of civil law lies in its embodiment within civil codes, described as comprehensive statutes with a systematic, authoritative nature that serves as a guiding framework outlining the rights and duties of individuals (Pejovic 2001, 9). The majority of civil codes was enacted during the 19th and 20th centuries (Siems 2018, 51), including notable examples such as the French Civil Code of 1804, Austrian Bürgerliches Gesetzbuch of 1811, German Bürgerliches Gesetzbuch of 1896, Japanese Minpo of 1896, Swiss Zivilgesetzbuch of 1907, and Italian Codice Civile of 1942. Despite variations among the civil codes of different countries, common features bind them together. These codes regulate practical scenarios comprehensively, and in cases not explicitly addressed, courts are tasked with applying general principles to fill the gaps in the legal framework (Pejovic 2001, 7).

Conversely, the common law evolved primarily through the adjudication of specific disputes by judges, retaining noticeable traces of its historical origins (Garzone 2007, 4). The common law system in England originated in 1066 after the Norman conquest (Kauffmann 2013, 36), with William the Conqueror establishing a feudal system of land ownership and a court system. Standardized forms of action, known as 'writs'[54], became the foundation of common law (Criscuoli and Serio 2016, 109-112). Initially, royal influence was significant, but in the 17th century, Parliament intervened to protect property rights and establish a more independent judiciary. Over time, judges developed more detailed judgments, transforming the procedural origins of writs into substantive rules (Siems 2018, 52).

2. Another crucial difference between civil law and common law concerns the sources of law. Both civil law and common law recognize statutes as politically legitimized sources of law (Mattei and Pes 2008, 273). However, in civil law, the primary sources

[53] The *Corpus Iuris Civilis* is the collection of normative material and jurisprudential material of Roman law, established by the Byzantine Emperor Justinian I to reorganize the legal system of the Byzantine Empire.

[54] The so-called 'writ' served as the essential tool through which royal justice could exclusively operate. It also served as the means by which the king could intervene in 'lower justice' (Criscuoli and Serio 2016, 111). Essentially, the 'writ' was an order from the sovereign, drafted in the form of a letter, written in Latin on parchment, and authenticated by the royal seal. The 'writ' was "addressed to the sheriff or other officer of the law, or directly to the person whose action the court desires to command, either as a commencement of a suit or other proceeding or as incidental to its progress and requiring the performance of a specific act, or giving authority to have it done" (Kyle 1952, 1).

of law are written codes and statutes enacted by legislatures (Kauffmann 2013, 36). The fundamental principles and rules are encapsulated within these codes and statutes, serving as the primary sources applied by the courts. As a result, codes and statutes take precedence, relegating case law to a secondary position as a source of law.

In contrast, the common law system predominantly relies on the creation of law through judicial decisions, considering them as the primary repositories of common law (Pejovic 2001, 10). As previously mentioned, during the 19th century, civil law countries undertook the codification of various legal branches, prioritizing abstract, systematic, and self-contained treatments. Such codes were "founded on the belief that a rational, systematized, and comprehensive legal system would be an improvement on traditional law" (Glendon *et al*. 2016, 54). This codification approach aimed to anticipate "as completely as possible all relevant issues in particular branches of law" (Siems 2018, 53). In contrast, common law countries, with exceptions such as the United States' Uniform Commercial Code[55], have tended to consolidate case law without a comparable systematic framework. As noted by Glendon *et al*., in common law systems "[t]he judiciary believes that due accord to social change is illustrated by the development of common law decisions" (2016, 363).

Over the past two centuries, the interpretation of civil law codes has evolved, moving beyond a strict adherence to the literal text. Contemporary methods involve considering historical background (exegetical method) and the law's objective purpose (teleological method) (Siems 2018, 54). On the other hand, common law statutory interpretation traditionally adheres to the literal rule, focusing on the text unless the outcome would be absurd (golden rule) or fails to adequately address the law's intended remedy (mischief rule) (Criscuoli and Serio 2016, 374-375). However, similar to civil law countries, there has been a trend in common law towards incorporating legislative history and purpose into interpretation (Siems 2018, 55).

3. It is also essential to note that common law tends to adopt a more restricted statutory interpretation due to its reliance on case law as the primary source. In both civil and common law systems, judgments carry binding force among the parties involved in

[55] As highlighted by Siems (2018, 53-54), Mattei and Pes (2008, 273), the United States' Uniform Commercial Code represents an exception. Generally, codifications in common law countries are rare and have predominantly been ex-post consolidations of previous case law treated as statutes (Kauffmann 2013, 38), with limited efforts to systematize the topics.

the trial, a principle known as *res iudicata*. However, the distinctive feature of common law countries lies in the broader influence of judgments (Siems 2018, 66). In these jurisdictions, legal decisions not only conclusively resolve individual cases but also establish precedents for future ones (Kauffmann 2013, 34), a concept encapsulated in the 'doctrine of *stare decisis*', also known as the 'doctrine of binding precedent' or 'English doctrine of precedent'. Specifically, in English law, this rule states that precedents, under certain conditions, are binding, meaning they must be followed for subsequent similar cases. However, this rule is not absolute for two reasons: first, it is closely tied to the hierarchy of courts, as the binding force applies more strongly to precedents from Superior Courts, given their greater authority; secondly, the binding or normative force of a judgment only concerns a part of its content, namely its core reasoning or *ratio decidendi* (Criscuoli and Serio 2016, 268-269).

Diverging from the common law tradition, civil law countries typically operate on the premise that prior court decisions lack binding authority, and case law is not considered a primary legal source (Pejovic 2001, 11). Consequently, judges in civil law systems have more freedom to interpret and apply statutes without strict adherence to precedents[56]. However, this assertion requires clarification, as specific laws in certain civil law jurisdictions confer binding status on decisions from supreme courts. Furthermore, in common law courts, the examination of precedents involves a detailed analysis to extract the *ratio decidendi* and a thorough consideration of the facts. In contrast, civil law countries often extract legal principles from court rulings, minimizing the relevance of the specific facts for future cases (Siems 2018, 67-68; Mattei and Pes 2008, 273).

4. Other important differences between civil law and common law concern the courts and civil procedure. While both legal traditions involve professional judges, common law countries often exhibit a higher prevalence of juries (Mattei and Pes 2008, 276). Historically, juries in the common law tradition played a substantial role in fact-finding for both civil and criminal cases. However, in many common law jurisdictions, civil law juries have largely disappeared, except in the United States, where the jury is considered integral to their culture and democracy. Conversely, in civil law countries, the use of juries has varied, mostly being limited to criminal trials

[56] It is important to highlight that while in common law courts have the double purpose of solving the individual conflict and developing the law, the civil law judge has the task of identifying the legal rule, interpreting it, and applying it to the case at hand . As a result, the civil law judges have to implement the law rather than actively contributing to its development (Siems 2018, 56).

(Siems 2018, 60).

Regarding trials, within the common law, they are marked by a single oral event where all evidence is presented (Glendon *et al*. 2016, 331-332). This focus on orality is closely associated with the common law countries' frequent use of juries. In contrast, civil law countries traditionally favor written proceedings, giving preference to written communications over oral testimony (Glendon *et al*. 2016, 145) and dividing the trial into multiple procedural steps (Siems 2018, 61). Additionally, the roles of participants differ in civil law and common law trials. In civil law countries, the judge is often perceived as more managerial, providing guidance to the parties and having a duty to possess a comprehensive understanding of the law. On the contrary, in common law countries, the judge is traditionally viewed as more neutral (Siems 2018, 62-63). Furthermore, common law trials adhere to an adversarial system where parties actively participate and are considered "adversaries leading the proceedings" (Pejovic 2001, 20). Through the discovery of documents, parties disclose documents and information deemed relevant to the matter at hand, enabling the judge and the counterparty to access that information. In contrast, civil law trials are regarded as inquisitorial as they are less confrontational. In such a procedure, the judge takes an active role in clarifying the issues and examining the witnesses (Glendon *et al*. 2016, 145). Finally, concerning the evidence, in common law, parties play a substantial role in questioning witnesses, appointing expert witnesses, and presenting documents, while in civil law countries, judges bear a greater responsibility for fact-finding and establishing the truth (Pejovic 2001, 21-22).

5. In conclusion, a final consideration pertains to the drafting of judgments in civil law and common law countries, a matter of particular relevance for the subsequent chapter of this study where these differences are explored. As noted by Gotti, "Important elements of a particular legal system are its drafting tradition and stylistic conventions" (2008a, 234). In essence, civil law countries are predominantly characterized by generality, while common law exhibits a preference for particularity (Gotti 2008a, 235). This observation is echoed by Siems, who asserts that "Common law judgments give a detailed account of the facts, and the reasoning is inductive, discursive and pragmatic", also including, in some instances, "a detailed treatment of previous cases" (2018, 65). In contrast, "The style of judgments in civil law countries reflects their more deductive mode of reasoning [...], [thus being] more

> formalistic, austere and abstract than in common law countries" (2018, 65). These stylistic differences will be further examined and discussed in Chapter 5.

The highlighted distinctions contribute to a nuanced comprehension of the two major legal traditions of the world, revealing historical, procedural and cultural differences. Such differences have often been invoked "to mean a clash of legal processes - such as the different procedures used in civil law and common law countries" (Trakman 2007, 1). These clashes are particularly evident within the global framework of international commercial arbitration framework, where the arbitration method serves as a bridge between parties and arbitrators from different parts of the world, as previously highlighted in Chapter 1.
International commercial arbitration is purportedly detached from any specific legal system (Colombo 2023, 172, based on Kaufmann-Kohler 2003). Nevertheless, the codes, laws and guidelines governing it, established by organizations like the International Bar Association (IBA)[57] and the International Chamber of Commerce (ICC)[58], have been formulated against the background of common law and civil law principles (Trakman 2007, 1). The approach in balancing these two significant legal traditions assumes that together, they constitute a composite legal framework governing international commercial arbitration. This assumption has resulted in decades of meticulous work that has enshrined doctrines, principles, rules of law and procedures, creating a hybrid legal framework. Trakman's analysis leads to the conclusion that international commercial arbitration is a dynamic blend of diverse legal cultures, as it does not emerge from a singular, decisive, and pre-existing arbitral culture (Trakman 2007, 12). However, he also emphasizes that

> it should not be blindly assumed that international commercial arbitration has simply replicated an amalgam of these traditions. As a matter of practice, Common and Civil Law traditions vary markedly from country to country, as well as over time and space. (Trakman 2007, 13)

Important distinctions, therefore, need to be made with regard to single jurisdictions and their respective frameworks for international commercial arbitration. In the following subsections, the international commercial arbitration frameworks of specific common law (United Kingdom, United States, Singapore and Hong Kong) and civil law (France, Switzerland and Italy) jurisdictions are explored. A comprehensive overview is presented

[57] International Bar Association. The Global Voice of the Legal Profession. Available at https://www.ibanet.org/.
[58] International Chamber of Commerce. Available at https://iccwbo.org/.

for each jurisdiction, offering valuable insights into the contexts surrounding the collected arbitral awards constituting the Main Corpus, which serves as the focal point of this study.

3.4.1 United Kingdom

The United Kingdom has become a significant center for international commercial arbitration, experiencing increased popularity over the past decades. This growth is attributed to the widespread use of English in international business and the development of London as a global financial and business center (Born 2021, 127). Furthermore, the United Kingdom is a signatory to the New York Convention[59], with its application extending to both England and Wales, as well as other parts of the United Kingdom. Additionally, the United Kingdom is home to several arbitration institutions administering international arbitrations, including the London Court of International Arbitration (LCIA) and the Chartered Institute of Arbitrators (CIArb). These institutions play a crucial role in facilitating and administering arbitrations. In particular, the LCIA holds significant relevance on the global stage and stands as the second most widely utilized European institution in the field of international commercial arbitration. Notably, it holds the distinction of being the oldest international arbitration institution, with its establishment dating back to 1892 (Moses 2017, 12).

The LCIA functions as the ultimate authority for ensuring the proper application of the LCIA Rules (Moses 2017, 12). More specifically, LCIA operates within a three-tiered structure, comprising three levels of administration: the Company, the LCIA Court, and the Secretariat. The Company oversees the management of LCIA affairs, develops the institution's business, and ensures its compliance with applicable company law. The LCIA Court, on the other hand, has to ensure the proper application of the LCIA Rules in arbitrations and holds the responsibility of appointing arbitrators for disputes and setting Arbitration Costs. Finally, the Secretariat is headed by the Registrar and is located at the International Dispute Resolution Centre (IDRC) in London (Turner and Mohtashami 2009, 2).

Traditionally, cities like London, Paris, New York, and Geneva have been recognized as primary 'seats' for international arbitrations. However, Singapore (3.4.3) and Hong Kong (3.4.4) are gaining popularity as viable alternatives (Bhatia 2018, 7). Consequently, in

[59] New York Arbitration Convention. Contracting States. Available at https://www.newyorkconvention.org/countries.

response to the evolving scenery, the LCIA has advocated for the 2020 arbitration rules[60] to remain an up-to-date and flexible option in this competitive landscape (Richman 2021, 2).

The key legal framework governing both international and domestic arbitrations in England, Wales, or Northern Ireland is the English Arbitration Act of 1996, which deviates from historical common law approaches in favor of greater codification. This departure from the common law tradition positions England as having a more extensive legal framework for international arbitration compared to many civil law jurisdictions (Born 2021, 127-128). Although the 1996 Act is not directly derived from the UNCITRAL Model Law[61], it is substantially influenced by it and incorporates provisions based on its principles. This legislation comprehensively addresses arbitration matters, providing a detailed statutory framework that articulates international arbitration law.

Prior to the enactment of the 1996 Act, the Arbitration Act of 1979, among previous arbitration legislation in the 20th century, had established a regulated legal regime with judicial involvement in the arbitral process. The 1996 Act aimed to address criticisms and significantly improve the legislative framework for international arbitration in England by consolidating existing provisions and introducing a modern, pro-arbitration regime (Born 2021, 129). Key provisions of the 1996 Act include the separability[62] of arbitration agreements, the validity of arbitration agreements, and the stay of court proceedings related to valid arbitration agreements (Aeberli 2005, 259). The Act empowers arbitrators with broad freedom in conducting proceedings, minimizing judicial interference. It also allows English judicial assistance to arbitrations seated in England, including taking evidence and granting provisional measures. Furthermore, the Act facilitates the recognition and enforcement of foreign arbitral awards by incorporating the provisions of the New York Convention (Born 2021, 129-131).

In the pursuit of maintaining a competitive edge in international arbitration, various nations have more recently enacted or revised their arbitration laws. Acknowledging this, in March 2021, the Ministry of Justice entrusted the Law Commission to undertake a comprehensive

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[60] LCIA Arbitration Rules 2020. Available at https://www.lcia.org/Dispute_Resolution_Services/lcia-arbitration-rules-2020.aspx.

[61] Status: UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006. Available at https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration/status.

[62] The separability principle, also known as the doctrine of separability or autonomy principle, is a fundamental concept in international arbitration. It refers to the notion that an arbitration agreement is considered separate and distinct from the underlying contract in which it is contained. This principle recognizes the autonomy of the arbitration clause, meaning that the validity and existence of the arbitration agreement are independent of the validity of the overall contract. It helps ensure that disputes about the main contract do not automatically undermine the validity of the arbitration agreement (Moses 2017, 19; Feehily 2018, 356).

review of the Arbitration Act 1996, which has now surpassed 25 years since its enactment. Commencing the review in January 2022, the Law Commission released its initial consultation paper in September 2022, followed by a second consultation paper in March 2023. The final report, accompanied by a draft Bill, was published in September 2023. The Law Commission's conclusive findings highlighted that, overall, the Arbitration Act 1996 functions effectively, negating the necessity for a comprehensive overhaul. However, recognizing the evolving landscape, the Law Commission proposed targeted reforms, a set of recommendations that were subsequently accepted in their entirety by the Government[63]. In conclusion, concerning confidentiality, the general approach of the United Kingdom mirrors the so-called 'classical view' on confidentiality, which remained unchallenged until the late 1980s, according to which "the private nature of arbitration obliges those participating in the proceedings to maintain confidentiality, without questioning its legal basis or scope" (Lembo and Guignet 2015, 4; see also Bennett and Hodgson 2016-2017, 104). This view is expressed in a 1991 case[64], which holds that if two parties agree to resolve their dispute in private, maintaining the confidentiality of the proceedings is essential. Exceptions to this duty are allowed in specific cases, such as when a party must submit a document obtained during arbitration to protect its interests against third parties or when disclosure is justified by a legitimate reason. An illustration of this is a company's obligation to reveal pertinent information to its shareholders, particularly when the resolution of a dispute has the potential to affect corporate accounts (Lembo and Guignet 2015, 4).

3.4.2 United States

The United States serves as an important center for international arbitration, with U.S. companies playing a particularly significant role in the global arbitral landscape. Although the U.S. legal system is characterized by delays, jury trials and discovery procedures, the country has consistently maintained its appeal as a preferred international arbitral venue for the last decades (Born 2021, 132).

As Born (2021, 134-139) highlights, the international arbitration framework in the United States is primarily governed by the Federal Arbitration Act (FAA)[65], enacted in 1925, aimed

[63] Arbitration Bill. Explanatory Notes. Available at https://bills.parliament.uk/publications/53039/documents/4029#:~:text=It%20published%20its%20final%20report,of%20recommendations%20for%20targeted%20reform.

[64] *Dolling Baker v. Merrett* (1991) 1 WLR 1205.

[65] The United States is a combination of both common law and statutory law, the latter consisting of written laws passed by legislative bodies, such as the U.S. Congress and state legislatures. Such laws are often organized into codes, providing a systematic arrangement of legal rules. The United States

to reverse the historical hostility of U.S courts towards arbitration agreements and make them valid, irrevocable, and enforceable. Notably, the FAA is characterized by its conciseness, comprising only a handful of sections. The simplicity and brevity of the FAA significantly enhance its clarity and effectiveness in establishing a federal policy favoring the enforcement of arbitration agreements. The first chapter of the FAA deals with domestic arbitration. Subsequently, the second and third chapters, enacted after U.S. ratification of the New York and Panama Conventions, respectively, focus on international arbitration. They incorporate New York Convention terms and address the enforcement of arbitration agreements and awards. The United States is thus a party to the New York Convention[66], facilitating the recognition and enforcement of arbitral awards internationally. Furthermore, it is important to note that the United States, at the federal level, has not adopted the UNCITRAL Model Law, and the FAA is not based on it. However, certain individual U.S. states, such as California and Connecticut, have enacted legislation based on the Model Law within the context of arbitration[67].

The Federal Arbitration Act (FAA) encompasses various crucial aspects, such as the presumption of separability of arbitration clauses, the competence-competence doctrine[68], and the interpretation and validity of international arbitration agreements. Additionally, it addresses the autonomy of parties in arbitral procedures and outlines the procedural powers granted to tribunals. Beyond its explicit provisions, the FAA serves as the foundation for a rather extensive 'federal common law' of arbitration (Born 2021, 137), thereby establishing a body of federal law that governs the enforceability and interpretation of arbitration agreements. In essence, the FAA establishes a set of rules and principles that uniformly apply

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Code (USC) is a compilation and codification of the permanent federal laws of the United States, and it includes the Federal Arbitration Act (FAA), which can be found in Title 9, Section 1 seq. (9 U.S.C. § 1 *et seq.*). Available at https://www.govinfo.gov/content/pkg/USCODE-2011-title9/html/USCODE-2011-title9.htm.

66 New York Arbitration Convention. Contracting States. Available at https://www.newyorkconvention.org/countries.

67 Status: UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006. Available at https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration/status.

68 The competence-competence principle, also known as *kompetenz-kompetenz*, is a fundamental concept in international arbitration. It refers to the authority of an arbitral tribunal to determine its own jurisdiction, including the power to rule on objections to the existence or validity of the arbitration agreement. In essence, the competence-competence principle allows the arbitral tribunal to decide whether it has the authority to hear and decide a particular dispute. This principle is based on the idea that parties to an arbitration agreement have chosen to resolve their disputes through arbitration, and the arbitral tribunal is best positioned to determine the scope and validity of its own jurisdiction. Overall, the competence-competence principle is a cornerstone of modern arbitration practice, promoting the autonomy and effectiveness of the arbitral process (Kleinheisterkamp 2011, 153-154).

across the United States in arbitration cases, favoring arbitration with its federal guidelines. Its provisions and principles take precedence over conflicting state laws that might otherwise govern arbitration agreements. Indeed, the FAA preempts inconsistent U.S. state laws, especially those attempting to invalidate interstate and international arbitration agreements (Szalai 2016, 118-121). As a result, the FAA promotes consistency and uniformity in the enforcement of arbitration agreements throughout the country.

Despite occasional suggestions to revise or replace the FAA, especially concerning international arbitration, the prevailing expectation is that the current pro-arbitration legal framework in the United States will endure as "it is highly developed, through judicial decisions, and [...] legislation would likely produce a worse (not better) result" (Born 2021, 139). Nevertheless, scholars specializing in arbitration have long been urging the Congress to consider amendments to the FAA in various ways or forms. They posit that entities benefiting from the current state of arbitration law effectively prevent the issue from reaching the congressional agenda. While Congress has not undertaken a comprehensive overhaul of the FAA, in 2022 it has passed legislation regulating arbitration in specific areas like mortgage lending and cases involving sexual harassment (Blankley 2022, 154).

Navigating the role of the FAA within the U.S. legal system presents a nuanced landscape. While state laws attempting to invalidate interstate and international arbitration agreements are preempted by the FAA, matters related to the formation of arbitration agreements in domestic contexts are governed by state contract law. On the international front, federal common law, influenced by the New York Convention, takes precedence in regulating the formation and validity of international arbitration agreements. Beyond these intricacies, U.S. state law applies to arbitration agreements and awards only in situations where both the New York Convention and the FAA are inapplicable. This is the case, for example, when the agreement or award does not have an impact on interstate or foreign commerce (Born 2021, 140-141).

Moreover, at the state level in the U.S., legislation addressing commercial arbitration has been implemented, with the majority adopting versions of the Uniform Arbitration Act (UAA) of 1955[69]. These state laws align with the FAA but include additional provisions

[69] According to Heinsz (2001, 1-2), the Uniform Arbitration Act (UAA) was introduced in 1955 with the aim of guaranteeing the enforceability of agreements to arbitrate and ensuring the finality of arbitration awards, especially in the presence of frequently hostile state laws. Similarly to the Federal Arbitration Act (FAA), the UAA serves as a concise procedural framework governing the enforcement of arbitration awards, the appointment of arbitrators, the conduct of arbitration hearings, methods for compelling testimony and evidence, and the reviewability of arbitration awards. Furthermore, the UAA has successfully achieved its objective of overcoming courts' unfavorable and adverse common law attitudes. Indeed, in contemporary times, arbitration stands out as a primary

similar to the UNCITRAL Model Law (Heinsz 2001, 1). Additionally, certain U.S. states have enacted legislation designed to address perceived gaps within the U.S. federal framework for international arbitration. However, these statutes and state law have generally played a secondary role in the international arbitral process (Born 2021, 143).

Several prominent arbitration institutions operate in the United States, providing services for the resolution of domestic and international disputes. Specifically, the American Arbitration Association (AAA) stands as one of the oldest and most renowned arbitration institutions in the United States, having been founded in 1926. This institution offers a comprehensive array of services for resolving both domestic and international disputes, as noted by Born (2021, 160). In 1996, recognizing the growing need for specialized attention to international disputes, the AAA established an international division known as the International Centre for Dispute Resolution (ICDR) (Moses (2017, 10).

The ICDR, headquartered in the United States, extends its services globally. To foster the progress of arbitration and other alternative dispute resolution methods, the ICDR facilitates access to hearing facilities for parties through its network of 85 cooperative agreements with countries worldwide, encompassing various locations around the world (Salton 2021, 83).The administrative services provided by the ICDR encompass aiding in the appointment of mediators and arbitrators, scheduling hearings, and furnishing users with information regarding dispute resolution options, including settlement through mediation[70]. Finally, the ICDR Rules were updated in 2021[71] and aim to permit a maximum of flexibility and a minimum of administrative supervision.

In conclusion, it is important to note that the United States lacks a statutory duty of confidentiality in arbitration at the federal level, as neither the FAA nor the UAA contain provisions addressing confidentiality. However, established case law in the United States reinforces that confidentiality cannot be presumed in arbitration (Müller 2005, 218-219; Lembo and Guignet 2015, 6). Contrary to this, in accordance with Article 40 of the ICDR Rules[72], all parties involved in the arbitration process, including arbitrators, witnesses, and the ICDR itself, are obligated to maintain confidentiality regarding all information related to the arbitration and the resulting award. Article 40.4, however, states that unless a party formally objects in writing within six months of the award, the ICDR reserves the right to

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mechanism favored by both courts and parties for the resolution of disputes across various legal domains.

[70] About the AAA and ICDR. https://www.adr.org/about.

[71] ICDR. International Dispute Resolution Procedures (Including Mediation and Arbitration Rules). Available at https://www.adr.org/sites/default/files/ICDR_Rules_0.pdf.

[72] ICDR. International Dispute Resolution Procedures (Including Mediation and Arbitration Rules). Available at https://www.adr.org/sites/default/files/ICDR_Rules_0.pdf.

publish selected awards, orders, decisions, and rulings. In such cases, these publications will be edited to conceal the identity of the parties and other identifying details.

3.4.3 Singapore

Singapore has been known for having a well-established and robust legal framework for international commercial arbitration. Being a party to the New York Convention[73], Singapore aligns itself with international arbitration standards, and the primary legislation governing arbitration within the country is the International Arbitration Act (IAA). The IAA incorporates the UNCITRAL Model Law[74], although with some modifications[75], providing a modern and internationally recognized legal framework for arbitration. The history of Singapore's statutory law is crucial for gaining insight into its contemporary arbitration legal framework, contributing to its recognition as a prominent global hub for arbitration. This journey can be traced back to the Arbitration Ordinance of 1809, established during British India's control of the Straits Settlements, including Singapore. The original ordinance remained in place for about 150 years until it was replaced by the Arbitration Act of 1953. Following Singapore's separation from Malaysia in 1965, the Act was renamed the Arbitration Act 1953. Both the Arbitration Ordinance 1953 and the Arbitration Act 1953

[73] New York Arbitration Convention. Contracting States. Available at https://www.newyorkconvention.org/countries.

[74] Status: UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006. Available at https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration/status.

[75] As Pillay (2004, 360) states, Part II of the IAA 1994 consolidates all the modifications to the UNCITRAL Model Law, with the Model Law itself annexed as the First Schedule to the Act without any amendments. This method facilitates a quick and clear understanding of the changes made to the Model Law. Such modifications include, for instance, the appointment of arbitrators (Article 10 Model Law), stay of proceedings (Article 8 Model Law), powers of the arbitral tribunal (Chapter V Model Law), arbitral jurisdiction (Article 16 Model Law), confidentiality of court proceedings arising from arbitrations. Notably, concerning confidentiality (Chong 2021, 99-100), Singapore places significant emphasis on party autonomy, providing parties with the freedom to decide whether their arbitration proceedings should be confidential. Nevertheless, certain provisions in Singapore's arbitration framework exhibit an inclination towards confidentiality. For instance, according to Sections 22 and 33 of the IAA 1994, upon a party's request, any court proceedings related to the arbitration, including enforcement, annulment, witness summonses, or evidence gathering, are to be conducted "otherwise than in open court", ensuring a private and confidential hearing without public disclosure of information. The duty of confidentiality is therefore generally implied and is considered as a fundamental doctrine of arbitration law. Ultimately, the procedural rules of the Singapore International Arbitration Centre (SIAC), which handles the majority of international arbitrations seated in Singapore, explicitly state that arbitrations are to be treated as confidential. In conclusion, although Singapore's arbitration law remains silent on the issue, seemingly granting complete party autonomy, the prevailing practice suggests a preference for confidentiality in arbitrations unless the parties stipulate otherwise.

were influenced by the United Kingdom's Arbitration Act of 1950, emphasizing significant judicial intervention (Pillay 2004, 356).

For over 40 years, the Arbitration Act 1953 applied to all arbitrations in Singapore without distinguishing between domestic and international cases. However, a significant shift occurred in 1995 with the introduction of the International Arbitration Act 1994 (IAA 1994)[76]. The inception of the IAA 1994 was influenced by three key factors: Singapore's aspiration to establish itself as an international arbitration center, the growing emphasis on party autonomy in international arbitrations over extensive judicial intervention, and the attractiveness of the Model Law as an internationally accepted framework for such arbitrations (Pillay 2004, 357).

Despite the introduction of the International Arbitration Act 1994 (IAA 1994) in 1995, domestic arbitrations in Singapore continued to be governed by the Arbitration Act 1953 (AA 1953) for an additional six years, untouched by the Model Law. In 2002, the AA 1953 was replaced by the new Arbitration Act 2001 (AA 2001), aligning domestic arbitrations with the Model Law. This phased adoption of the Model Law stemmed from a policy decision to assess its reception in international arbitrations before extending it to domestic cases (Pillay 2004, 357).

Amendments[77] to the IAA 1994 were made in 2001, serving to supplement and strengthen the existing framework. Subsequent amendments occurred in 2012, involving modifications to Chapter 143A and Chapter 10 of the 2002 Revised Edition. These changes allowed "the review of negative jurisdictional rulings" and clarified "the status of orders made by emergency arbitration" (Hopkins 2013, 286). In 2021, additional amendments were implemented (Salton 2021, 81), introducing a default procedure for appointing arbitrators specifically in three-member panel multi-party arbitrations. Claimants and respondents jointly appoint two arbitrators, who then jointly appoint the third. If there's a failure to appoint within the set timeframe, the president of the Court of Arbitration of the Singapore International Arbitration Centre (SIAC) intervenes. This addresses a gap in multiparty cases, aiming to streamline proceedings. The Revised IAA also empowers Singapore-seated arbitral tribunals to enforce confidentiality obligations akin to court orders, bolstering their ability to maintain confidentiality in arbitration.

[76] Singapore Statutes Online. International Arbitration Act (IAA) 1994. Available at https://sso.agc.gov.sg/Act/IAA1994.

[77] The 2001 amendments to the IAA 1994 comprise several changes, including modifications to Section 15 regarding opting out, the introduction of Section 19B, which addresses the arbitral tribunal's authority to reconsider or overturn an already issued award, and a modification in the definition of 'award' (Pillay 2004, 375).

A significant portion of the modifications in the regulatory framework for arbitrations in Singapore can be attributed to commercial motivations aligned with the Singapore government's aim to establish Singapore as a hub for international arbitration. According to Jensen (2020, 27), Singapore's swift rise as a prominent global disputes center can be primarily attributed to three key factors. Firstly, proactive government initiatives aimed at establishing and fostering dispute resolution play a pivotal role. Secondly, the practice of dispute resolution is tailored to meet commercial requirements. Thirdly, a forward-thinking approach that embraces new developments further contributes to Singapore's prominence in the global disputes landscape.

Additionally, as MacArthur highlights (2018, 173), another crucial factor contributing to Singapore's success is the government's provision of excellent infrastructure. Indeed, in 1991, the government established the Singapore International Arbitration Center (SIAC), which stands as a leading arbitration institution in the region and is known for maintaining a robust panel of international arbitrators. The SIAC Rules, most recently revised in 2023[78], present a comprehensive framework outlining procedures for the management of arbitrations. These rules cover various aspects, including the appointment of arbitrators, procedural conduct, and the enforcement of awards. Additionally, the SIAC operates through three main bodies: the Board of Directors, the Court of Arbitration of SIAC, and the Secretariat, which includes the Registrar. Ultimately, the SIAC maintains three overseas liaison offices that, while not involved in case administration, actively promote the SIAC as an arbitration institution (Salton 2021, 83).

3.4.4 Hong Kong

Hong Kong is acknowledged for its robust and respected infrastructure for international commercial arbitration. It became a party to the New York Convention in 1977[79], enabling the recognition and enforcement of foreign arbitral awards made in other countries of the convention in Hong Kong, and vice versa. As a Special Administrative Region (SAR) of China[80], Hong Kong operates as a distinct jurisdiction with its own legal system.

[78] SIAC. 7th Edition of the SIAC Rules. Available at https://siac.org.sg/siac-announces-public-consultation-on-the-draft-7th-edition-of-the-siac-arbitration-rules.

[79] New York Arbitration Convention. Contracting States. Available at https://www.newyorkconvention.org/countries.

[80] Hong Kong became a Special Administrative Region (SAR) of China in 1984 after the United Kingdom relinquished sovereignty to the People's Republic of China. Hong Kong's status as a SAR is a result of the 'one country, two systems' principle agreed upon between China and the United Kingdom when Hong Kong was handed over to China in 1997 (Mitter 2020, 42).

The governing law for arbitration in Hong Kong is the Arbitration Ordinance, Cap. 609 of the Laws of Hong Kong[81], providing a comprehensive and favorable framework for arbitration, as highlighted by Born (2021, 164).

The present version of the Arbitration Ordinance is the result of numerous amendments[82] it has undergone throughout its evolution. This legislative journey has been shaped by various factors, including adjustments in English law, proposals for local legal reform, responses to international arbitration law developments, and amendments prompted by Hong Kong's return to the sovereignty of the People's Republic of China (Moser and Cheng 2004, 22).

The present Arbitration Ordinance, Cap. 609, currently in force, therefore replaces the previous arbitration statute (Arbitration Ordinance Cap. 341), originally enacted in 1963 (Moser and Cheng 2008, 23). The earlier ordinance was structured around a dual framework, featuring an international arbitration regime aligned with the UNCITRAL Model Law and a domestic regime rooted in the English Arbitration Act 1950. Effective from 2011[83], the current Arbitration Ordinance establishes a unified regime for arbitration, removing the

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[81] Hong Kong e-Legislation. Cap. 609 Arbitration Ordinance. Available at https://www.elegislation.gov.hk/hk/cap609.

[82] In 1982, significant amendments were made to Hong Kong's arbitration framework, focusing on three main factors: pre-arbitration conciliation, the role and procedure of the courts, and arbitral procedure (De Speville 2014, 109-111). Subsequently, the Arbitration Ordinance 1996 introduced various provisions applicable to both domestic arbitrations governed by Part II of the Ordinance and international arbitrations governed by Part IIA and Schedule 5 (UNCITRAL Model Law) of the Ordinance. Furthermore, it aimed to address perceived gaps in the UNCITRAL Model Law. Afterwards, the Arbitration Ordinance 2000 amended Section 2GG, clarifying that the summary procedure for enforcement applies to awards, orders, and directions made either in or outside Hong Kong. This provided the court with the authority to summarily enforce awards from jurisdictions not covered by the New York Convention (Part IV) or the Arrangement (Part IIIA), such as Taiwan and Myanmar (Moser and Cheng 2004, 29). In 2011, the Arbitration Bill came into force, unifying the two regimes and effectively extending the application of the UNCITRAL Model Law (available at https://www.hkiac.org/arbitration/why-hong-kong/HK-arbitration-ordinance). In 2017, Hong Kong legislators introduced the Third Party Funding (TPF) Amendment, amending the Arbitration Ordinance to allow the use of third-party funding in both arbitration and mediation contexts (Zhang 2021, 57). Subsequently, in 2022, the Arbitration and Legal Practitioners Legislation played a role in establishing a more expansive and flexible range of fee frameworks for international arbitration in Hong Kong. Ultimately, in 2023, the Hong Kong Court of Final Appeal (HKCFA), in a landmark ruling in the case of C v D [2023] HKCFA 16, determined that pre-conditions to arbitrations outlined in multi-tiered dispute resolution clauses are to be considered matters of 'admissibility' rather than 'jurisdiction'. This ruling holds significance in relation to the provisions of the Arbitration Ordinance and underscores the pro-arbitration inclinations of the Hong Kong judiciary (Yang 2023, available at https://arbitrationblog.kluwerarbitration.com/2023/10/17/recent-developments-in-hong-kong-arbitration/). Given that Hong Kong continues to be a common law jurisdiction, and decisions in England and other common law countries hold persuasive authority in the courts of Hong Kong and before arbitral tribunals for procedural and substantive matters governed by Hong Kong law (Moser and Cheng 2004, 29-30), the aforementioned ruling by the Hong Kong Court of Final Appeal (HKCFA) in 2023 assumes particular significance.

[83] HKIAC. The Hong Kong Arbitration Ordinance. Available at https://www.hkiac.org/arbitration/why-hong-kong/HK-arbitration-ordinance.

distinction between domestic and international arbitration. As a matter of fact, both domestic and international are governed by the UNCITRAL Model Law.

Indeed, as briefly mentioned above, since 1990, Hong Kong's international arbitration regime has been based on the UNCITRAL Model Law[84], incorporated as the Fifth Schedule to the Ordinance. The Model Law was adopted in Hong Kong "almost verbatim with a number of additions", including mainly "clarifying that its scope was not merely limited to commercial matters and expressly granting power to award costs and interest" (Moser and Cheng 2004, 25). Notably, Chapters I to VII of the UNCITRAL Model Law have been incorporated into the Arbitration Ordinance.

The preeminent arbitral institution in Hong Kong is the Hong Kong International Arbitration Centre (HKIAC), a status reinforced by the enactment of the amendment to the Arbitration Ordinance 1996 (No. 75 of 1996) in 1997. This amendment designates the HKIAC as the authoritative body for appointing arbitrators under the Arbitration Ordinance, superseding the High Court in this capacity (Moser and Cheng 2004, 27). Established in 1985, the HKIAC has emerged as one of Asia's foremost international arbitration institutions. The HKIAC Rules, last updated in 2018[85], are crafted in alignment with the UNCITRAL Arbitration Rules (Born 2021, 164). Furthermore, the day-to-day operations are overseen by the Secretariat, while the HKIAC Council governs the organization (Salton 2021, 83).

Concerning confidentiality, arbitration proceedings are generally private and confidential in Hong Kong, particularly at the HKIAC. Parties are generally restricted from disclosing the outcome of an arbitration, except in specific circumstances[86]. Moreover, Section 18 of the Arbitration Ordinance[87] provides for the duty of confidentiality for both the arbitration proceedings and awards, with the exception being the parties' agreement, which can override this duty.

In conclusion, as observed by Born (2021, 164), occasional concerns have been expressed by potential users regarding the future stability and judicial independence in Hong Kong. Consequently, some parties have exhibited hesitancy in selecting the HKIAC for disputes involving Chinese entities. Nevertheless, in the last decades, the HKIAC has received positive reviews from several knowledgeable observers, and concerns about Hong Kong's

[84] Status: UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006. Available at https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration/status.

[85] HKIAC. 2018 Administered Arbitration Rules. Available at https://www.hkiac.org/arbitration/rules-practice-notes/hkiac-administered-2018.

[86] Hong Kong Arbitration FAQs. Available at https://www.hkiac.org/arbitration/why-hong-kong/hong-kong-arbitration-faqs#014.

[87] Hong Kong e-Legislation. Cap. 609 Arbitration Ordinance. Available at https://www.elegislation.gov.hk/hk/cap609.

future have somewhat diminished, particularly in cases not involving Chinese state-owned or equivalent entities. This has allowed Hong Kong to maintain its status as one of the most prominent arbitral institutions in the world.

3.4.5 France

France has gained recognition for its robust and arbitration-friendly legal framework, hosting a higher number of arbitrations than any other European jurisdiction. Being a party to the New York Convention[88], France facilitates the recognition and enforcement of arbitral awards across various countries. Notably, France has not formally adopted the UNCITRAL Model Law[89], although its principles have had a discernible impact on the development of French case law, contributing as a comprehensive set of generally accepted principles in international arbitration[90]. Notable distinctions exist between French law and the UNCITRAL Model Law, one example being the differentiation between domestic and international arbitration under French law.

The primary legal framework for international commercial arbitration in France is governed by the New French Code of Civil Procedure, adopted through decrees promulgated in 1980 and 1981, particularly in Book IV (Articles 1442 to 1527). Specifically, before the 2011 reform, Articles 1492 to 1497 (Title V) covered international arbitration, whereas Articles 1498 to 1507 (Title VI) covered the recognition, enforcement and grounds for refusal of arbitral awards made abroad or in international arbitration (Fouchard *et al*. 1999, 65).

In 2011, the French Ministry of Justice issued Decree n. 2011-48, initiating significant reforms to the rules of civil procedure governing arbitration. This marked a crucial development in French arbitration law, considered one of the most significant since the early 1980s (Castellane 2011, 371). The reforms, effective from 2011, aimed to enhance France's position as a leading forum for international arbitration by codifying principles developed through case law over the past three decades, making French arbitration law more accessible to international practitioners (Gaillard 2011, 1).

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[88] New York Arbitration Convention. Contracting States. Available at https://www.newyorkconvention.org/countries.

[89] Status: UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006. Available at https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration/status.

[90] Arbitration Guide. International Bar Association (IBA) Arbitration Committee. France, March 2012. Available at https://www.ibanet.org/MediaHandler?id=D44F7671-12B3-4FE5-8B59-9203D7EAD2AD.

In addition to codifying existing principles, the decree introduces some innovations aligning French arbitration law with practices in other jurisdictions. These changes contribute to making France a more arbitration-friendly jurisdiction, with a court system that actively supports and enforces arbitral awards. The legislation encompasses provisions specifically for domestic arbitrations, international arbitrations, and those applicable to both (Castellane 2011, 371-372). Overall, these reforms position France as a modern, effective, and accessible jurisdiction for international arbitration.

French law distinguishes between international and domestic arbitration, defining international arbitration as cases involving international trade interests. Both types of arbitration are governed by a combination of the French Code of Civil Procedure (CCP)[91], the Civil Code[92], international conventions (such as the New York Convention), and case law. Domestic arbitration is regulated by Articles 1442 to 1503 of the CCP and Articles 2059 to 2061 of the Civil Code, while international arbitration falls under Articles 1504 to 1527 of the CCP, incorporating specific provisions from domestic arbitration through reference, as outlined in Article 1506 of the CCP. International conventions are crucial, and case law from French Courts of Appeal and the *Cour de Cassation* plays a vital role, influencing reforms.

This legal framework strongly supports international commercial arbitration, emphasizing the autonomy of arbitration agreements and granting arbitrators significant powers, such as competence-competence (Born 2021, 121-122). Within this legal framework, French arbitration law places a strong emphasis on party autonomy and the freedom to conduct arbitration proceedings that align with the mutual expectations of the parties involved. This autonomy extends to determining crucial aspects such as the choice of law, procedural rules, and the selection of arbitrators. Nevertheless, it is important to note that certain mandatory provisions are still applicable, including restrictions on arbitrability (e.g., family or bankruptcy matters) and rules ensuring fair trials and due process.

Regarding the duty of confidentiality, the latter stands as one of the fundamental principles in arbitration, explicitly stated as a default rule in the French CCP[93]. Article 1464 of the French CCP explicitly declares that arbitration proceedings shall be subject to the principle

[91] Code de Procédure Civile. Available at https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006070716/.

[92] Code Civil. Available at https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006070721/.

[93] Code de Procédure Civile. Available at https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006070716/.

of confidentiality unless the parties specify otherwise. Additionally, Article 1479 requires that the deliberations of the arbitral tribunal shall be maintained in strict confidentiality.

Ultimately, France is home to several prominent arbitration institutions that play a crucial role in administering international arbitrations. Foremost among them is the International Court of Arbitration, based in Paris[94] and operating under the auspices of the International Chamber of Commerce (ICC). It is essential to note that this Institution does not align with a conventional court structure, as it is not part of any judicial system. It was established in 1923 and it is an administrative body that acts in a supervisory and appointing capacity under the ICC Rules of Arbitration[95]. To this day, it is the world's leading international commercial arbitration institution. The members of the ICC International Court of Arbitration consist of legal professionals from all over the world. Furthermore, the ICC has a Secretariat, which is a permanent, professional administrative staff (Moses 2017, 11).

3.4.6 Switzerland

Switzerland has a well-established and respected framework for international commercial arbitration. The main legislation governing international commercial arbitration in Switzerland is the Swiss Private International Law Act of 1987 (PILA)[96]. Although Swiss arbitration law is not based on the UNCITRAL Model Law[97], there are no major differences between the two sets of rules.

In Switzerland, similarly to the situation discussed in Subsection 3.4.5 regarding France, there is a significant distinction between arbitrations concerning purely domestic disputes and arbitrations dealing with cross-border differences. The former is commonly referred to as national, internal or domestic arbitration, the latter as international arbitration. Domestic arbitration is governed by Part 3 of the Swiss Code of Civil Procedure of 2008 (CCP), which has been in force since 2011 and replaced the former Concordat on Arbitration of 1969

[94] Although the seat of the ICC International Court of Arbitration is in Paris, it administers arbitrations all over the world (Moses 2017, 11).

[95] The ICC Rules provide a broad procedural framework for the arbitral proceedings. This includes provisions for filing a request for arbitration and other initial written pleadings, constituting an arbitral tribunal, conducting the arbitration and making an award (Born 2021, 156) The ICC's latest Arbitration Rules went into effect in 2021.

[96] Swiss Federal Act on Private International Law. Available at https://www.fedlex.admin.ch/eli/cc/1988/1776_1776_1776/it.

[97] Status: UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006. Available at https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration/status.

(CA)[98]. In contrast, international arbitration is governed by Chapter 12 of the PILA (Fouchard *et al*. 1999, 76; Born 2021, 126).

Chapter 12 of the Swiss Law on Private International Law is a concise set of regulations characterized by a commitment to enhancing party autonomy in the context of international arbitration. This approach allows parties to have significant discretion in determining various aspects of the arbitration process. Specifically, Chapter 12 of the PILA grants parties the freedom to choose the composition of the arbitral tribunal (Art. 179(1) PILA), define the arbitral procedure (Art. 182(1) or Art. 183(1) PILA), and provides a limited possibility to waive recourse against the award (Art. 192 PILA). While emphasizing party autonomy, Chapter 12 of the PILA also recognizes the need for legal certainty in international arbitration. To strike a balance between these two expectations, the law establishes constitutional guarantees, including the independence of arbitrators and ensuring equal treatment of parties with the right to be heard in adversarial proceedings (Berger and Kellerhals 2021, 30).

Furthermore, Chapter 12 of the PILA streamlines the appeal process against the award, addressing criticism both in Switzerland and abroad. Unlike the former multi-level appeal system, the sole judicial authority for any recourse against the award under Chapter 12 of the PILA is the Swiss Federal Supreme Court. Additionally, parties have the option to waive recourse against the award, either in whole or in part, subject to specific conditions outlined in the law. The comprehensive list of grounds for challenge outlined in Article 190(2) of the PILA reflects the legislature's overarching intention to minimize challenges against international awards rendered in Switzerland (Berger and Kellerhals 2021, 31).

The PILA recently underwent recent revisions to better address the evolving demands of the international business landscape. The updated version of the law, known as the "Revised Act" or the "Revised PILA", took effect on January 1, 2021. Notably, Chapter 12 of the Revised PILA introduced new provisions aimed at modernizing and clarifying existing regulations while preserving the essential elements of the original version. As one of the world's premier international arbitration seats, the Revised PILA is anticipated to strengthen Switzerland's esteemed position in this regard. The four primary objectives of the Revised PILA include (Gabriel and Schmidgall 2022, 76):

[98] The Concordat on Arbitration of 1969 (CA) is a treaty between the cantons that aimed at unifying the law. This initiative arose due to the existence of as many arbitration laws as there are cantons in the country, stemming from the perception of arbitration as a procedural rather than a contractual matter. However, the attempt to establish uniformity through this law proved inadequate for the realm of international arbitration. Notably, the significant number of mandatory provisions, as outlined in Article 1, paragraph 3, posed a considerable impediment to the application of institutional arbitration rules, such as those governed by the ICC (Fouchard *et al*. 1999, 76).

1. Codifying the jurisprudence established by the Swiss Supreme Court in the realm of international arbitration;
2. Offering clarity on matters not explicitly addressed by the law;
3. Reinforcing party autonomy;
4. Sustaining and enhancing Switzerland's appeal as a preferred venue for international arbitration.

Regarding confidentiality, it is essential to note that while Chapter 12 of the PILA does not expressly establish a duty of confidentiality, Swiss commentators (e.g., Bucher and Tschanz 1988; Radjai 2009; Patocchi 2020) highlight an implicit obligation within the arbitration agreement to respect confidentiality. Furthermore, in Switzerland, arbitrators are expected to maintain the confidentiality of arbitration proceedings. They have an obligation to keep all information, encompassing facts, circumstances, deliberations, and tribunal votes, pertaining to the parties and the dispute strictly confidential.

Ultimately, in addition to its status as a party to the New York Convention[99], Switzerland boasts several renowned arbitral institutions. These include the Swiss Chambers' Arbitration Institution (SCAI), the Geneva Chamber of Commerce and Industry (CCI Geneva), and the Swiss Arbitration Centre (SAC). While the SAC may be comparatively less recognized than its counterparts, its inclusion in this research is justified by a unique aspect. A limited number of arbitral awards rendered by the SAC have been made accessible on the Jus Mundi search engine, thus allowing subscribers the opportunity to access a curated selection of arbitral awards, setting the SAC apart from the other two arbitral institutions. Specifically, the Swiss Arbitration Centre is an autonomous institution offering top-notch arbitration and mediation services on a global scale. Serving as a hub of expertise, the Swiss Arbitration Centre

> helps hundreds of companies and individuals resolve their disputes in a fair, private and effective manner. The Centre's services are available for any dispute, regardless of its nature, the nationality of the pastries, the place of arbitration and the applicable law. [...] The Centre is well known for its Swiss Rules, the golden standard for arbitration and mediation. As a platform of expertise, the Centre is supported by a global network of arbitration and ADR users, legal professionals, the Swiss Arbitration Association (ASA) and the chambers of commerce of Basel, Bern, Central Switzerland, Geneva, Neuchâtel, Ticino, and Zurich[100].

[99] New York Arbitration Convention. Contracting States. Available at https://www.newyorkconvention.org/countries.
[100] Swiss Arbitration Centre. An Overview. Available at https://www.swissarbitration.org/centre/.

3.4.7 Italy

Italy has a modern and well-established legal framework for international commercial arbitration. Furthermore, it is a party to the New York Convention[101], which facilitates the recognition and enforcement of arbitral awards in other member states. While Italian law is not based on the UNCITRAL Model Law[102], the underlying principles guiding Italian law in arbitration proceedings bear similarities to those outlined in the Model Law. Notably, divergences exist, such as the absence of a provision in Italy's legal framework excluding arbitrators' liability and the exclusion, under Italian law, of the arbitrator's authority to grant interim measures.

Arbitration in Italy is primarily governed by the provisions outlined in the Italian Code of Civil Procedure (CCP)[103], specifically Articles 806-840. Articles 806 to 831 deal with domestic arbitration, whereas Articles 832 to 840 deal with international arbitration. The initial iteration of the Italian CCP in 1942 imposed legislation that was notably unfavorable to arbitration. In response, alongside the established statutory or *rituale* arbitration, legal scholars and courts introduced the concept of *irrituale* or *libero* arbitration. This form of arbitration is characterized by the flexibility and freedom of the parties to agree on the rules and arbitral procedures without having to follow a predetermined set of rules (Laudisa 1998, 212). The Italian Supreme Court determined that this form of arbitration, which found widespread application in international disputes, fell within the scope of the New York Convention. Despite these efforts, the overall situation remained unsatisfactory until an initial legislative revision in 1983.

The more significant improvements came with a statute enacted in 1994, finally introducing a modern arbitration regime for Italy. This legislative update addressed the deficiencies in consistency and efficiency that were evident at all stages of arbitration proceedings. The new provisions pertaining to international arbitration (Articles 832 to 838) and foreign awards (Articles 839 and 840) streamline the enforcement of the latter and emphasize the autonomy of the former (Fouchard *et al*. 1999, 78-79).

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[101] New York Arbitration Convention. Contracting States. Available at https://www.newyorkconvention.org/countries.

[102] Status: UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006. Available at https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration/status.

[103] Codice di Procedura Civile. Available at https://www.gazzettaufficiale.it/sommario/codici/proceduraCivile.

Another notable revision occurred in 2006 through Legislative Decree No. 40 (Silvestri 2020, 49), which, among various changes, elucidated the process for appointing arbitrators in multi-party proceedings, addressed the consequences of failure to pay arbitrators' fees and stipulated that parties have the right to challenge an arbitral award on the grounds of a breach of legal principles only if it is expressly specified in the arbitration clause.

In 2021, the Chamber of Deputies endorsed an Enabling Act, put forth as a component of the Italian National Recovery and Resilience Plan. The Enabling Act aims to overhaul the sections of the Italian CCP regulating arbitration. More specifically, this legislation brings about a modernization of Italy's legal landscape of arbitration, specifically addressing (Pomari and Kotuby 2022, 346):

1. The legal guarantee of impartial and independent arbitrators;
2. The right of the parties to choose the law applicable to the dispute;
3. An arbitrator's power to award interim relief;
4. The management of parallel arbitration and litigation proceedings;
5. The recognition and enforcement of arbitral awards.

Following the enactment of these reforms, Italy has now established a modern arbitration law that incorporates ethical standards governing the conduct of arbitrators. However, its potential to emerge as a more prevalent choice for arbitral seats in international cases hinges on its capacity to rectify the perception of its judiciary, frequently perceived as slow (Alpa 2018, 313), through repeated instances and positive experiences in arbitration. As Pomari and Kotuby highlight,

> Like any legal service, this perception is sometimes a product of marketing, but more often a product of a marketable experience. Parties will feel more comfortable with a particular seat if they can see a long list of previous cases that have been held there, and successfully arbitrated to a fair and final conclusion. (Pomari and Kotuby 2022, 357)

Another important aspect concerns confidentiality. The reformed Italian arbitration law has not incorporated any standard provision on this matter. Consequently, Italy does not adopt a prescriptive approach to confidentiality, leaving a certain amount of flexibility to the parties (Gambarini and Gasparotti 2023, 4). Despite this, arbitral proceedings generally uphold a high level of confidentiality, with awards not being accessible to the public unless otherwise agreed upon by the parties. In certain instances, arbitral awards may be published in a

sanitized format, as seen in the case of the Milan Chamber of Arbitration (CAM). According to the CAM Rules[104],

> all the subjects involved in the arbitral proceedings are required, according to the Rules, to comply with the confidentiality of the proceedings and the award. The Chamber may publish the award in a sanitized format, in accordance with the Arbitration Rules and following the Guidelines drawn up by the Chamber itself in collaboration with LIUC - University of Castellanza.

Ultimately, Italy has several arbitration institutions that facilitate international commercial arbitration, such as the Milan Chamber of Arbitration (CAM). The CAM is based in Milan and is an independent organization providing administrative services, rules, and facilities for the conduct of arbitrations. The CAM has its own set of rules, recently updated in 2023 and governing the arbitration proceedings[105]. These rules outline the procedures for initiating arbitration, selecting arbitrators, conducting hearings, and rendering awards. While the CAM primarily serves the Italian business community, it also has an international focus and is open to parties from around the world, aiming to provide a neutral and efficient forum for the resolution of cross-border disputes[106].

3.4.8 Conclusive remarks

This chapter has provided an overview of the key defining characteristics of arbitration (3.1), tracing its historical background (3.2) and evolution over the past centuries (3.3). Ultimately, it delves into the current international commercial arbitration frameworks (3.4) within the common law and civil law legal systems under examination. Specifically, the analysis has explored the international commercial arbitration frameworks of specific common law and civil law countries, including the United Kingdom (3.4.1), United States (3.4.2), Singapore (3.4.3), Hong Kong (3.4.4), France (3.4.5), Switzerland (3.4.6), and Italy (3.4.7).
The analysis reveals that all countries under review stand out as prominent arbitral centers on a global scale. Furthermore, the chosen nations have actively pursued significant reforms, encompassing adjustments to both legislative frameworks and the arbitration rules of

[104] CAM. Why CAM Arbitration. Available at https://www.camera-arbitrale.it/en/arbitration/why-cam-arbitration.php?id=203.
[105] CAM Arbitration Rules. Available at https://www.camera-arbitrale.it/en/arbitration/arbitration-rules.php?id=64.
[106] CAM Arbitration. Available at https://www.camera-arbitrale.it/en/arbitration/index.php?id=5.

institutions. These changes were implemented as a proactive response to the dynamic shifts in the international arbitration landscape. These countries also boast robust infrastructure, featuring leading arbitral institutions that are among the preferred venues for disputing parties. In this context, Italy stands as the only legal system that currently lags behind its counterparts. However, as detailed in Subsection 3.4.7, Italy is actively advancing through significant reforms to its arbitration laws and updating the arbitration rules of its most dynamic arbitral institution, the CAM, which is making substantial progress in the international arbitration arena.

In conclusion, directing our attention to the pivotal issue of confidentiality, which holds particular significance in the context of this study, it becomes evident that the countries under examination exhibit varied approaches to addressing this matter. This diversity reflects the intricate nature of confidentiality—an inherently controversial topic eliciting ongoing discussions and considerations within the legal community. These debates have been instrumental in ushering in substantial changes in recent years. A notable development in this evolving landscape is the advent of advanced tools and platforms, such as the establishment of search engines like Jus Mundi (as will be discussed in detail in Chapter 4). This technological progression not only streamlines access to arbitral decisions and legal information but also contributes to fostering a more transparent and accessible arbitration environment. In navigating the contemporary landscape, it is foreseeable that the trajectory of international arbitration will continue to evolve. Anticipating further advancements in technology, legal frameworks, and the global arbitration community's collaborative efforts, the future holds promise for continued enhancements and refinements in the practice of international arbitration.

CHAPTER 4

CORPUS DESCRIPTION AND RESEARCH METHODOLOGY

In this research, an analysis has been conducted on a corpus of arbitral texts falling within the genre of arbitral awards. The examined arbitral awards have been rendered by prominent arbitral institutions, including the American Arbitration Association (AAA), the London Court of International Arbitration (LCIA), the Hong Kong International Arbitration Centre (HKIAC), the Milan Chamber of Arbitration (CAM) – namely, the most dynamic arbitral institution in Italy – the Swiss Arbitration Centre (SAC), the ICC International Court of Arbitration, the Singapore International Arbitration Centre (SIAC). Collecting these arbitral awards posed a significant challenge due to limited data accessibility. However, subscription to 'Jus Mundi – Academic Research' proved instrumental in overcoming this obstacle. This chapter provides a description of the corpus under consideration in Section 4.1 by illustrating how it was collected (4.1.1), how it was prepared (4.1.2), and how it is composed (4.1.3). Subsequently, preliminary methodological remarks are provided. The methodology employed for this study is both quantitative and qualitative, with the overarching methodological framework being corpus linguistics, as discussed in Section 4.2. In this section corpus linguistics is briefly introduced (4.2.1) and the software packages used to conduct the analysis are described (4.2.2). In the following section, the specific methodological framework employed to carry out this study is described (4.3). Finally, the extraction algorithms employed for each feature under analysis is described in (4.4).

4.1 Corpus description

4.1.1 Data collection

The analytical framework of this study is rooted in corpus linguistics, and this section outlines the corpus description with specific attention to the data collection process.

The concept of a corpus is central to this study, and while there is no universally accepted definition in corpus linguistics literature, it is generally understood as a collection or sample of texts (Egbert, Biber, and Gray 2022, 3). Within the framework of corpus methods in

linguistics, Baker asserts that "[a]ny text or collection of texts could be theoretically conceived of being a corpus" (2010, 95). However, McEnery and Wilson (2016) outline specific characteristics a corpus should possess. First of all, in order to create a corpus of a language variety, it should be "maximally representative of the variety under examination, that is, which provides us with as accurate a picture as possible of the tendencies of that variety, including their proportions" (p. 30). Moreover, a corpus usually consists of "a body of a finite size" (p. 30) and is generally available in "machine-readable" form (p. 31). Finally, there is a tacit understanding that a corpus "constitutes a standard reference for the language variety which it represents" (p. 32).

When determining the size of a corpus, various factors come into play, and there are specific reasons for creating a corpus of a particular size. Considerations such as the availability of texts, the financial and time constraints allocated to a project, and the feasibility of including certain texts in a corpus due to copyright restrictions or confidentiality[107] issues all play a role in defining the size of the corpus (Baker 2010, 96).

In this research, a corpus of a selection of arbitral texts has been built. Specifically, the corpus consists of texts belonging to the genre of arbitral awards rendered by prominent arbitral institutions. Such institutions include the American Arbitration Association (AAA), the London Court of International Arbitration (LCIA), the Hong Kong International Arbitration Centre (HKIAC), the Milan Chamber of Arbitration (CAM), the Swiss Arbitration Centre (SAC), the Singapore International Arbitration Centre (SIAC), the ICC International Court of Arbitration. The collection of arbitral awards was guided by the following specific criteria:

- Applicable law: The applicable law for each case was a primary consideration, often linked to the legal system of the country where the arbitral institution is seated. The applicable laws governing the arbitral awards under consideration include:
    - For AAA awards: Washington DC law, New York law, Texas law, Louisiana law, Pennsylvania law, Delaware law, California law, North Carolina law, Massachusetts law, Washington law;
    - For LCIA awards: England and Wales law;
    - For CAM awards: Italian law;
    - For SAC awards: Swiss law;
    - For HKIAC awards: Hong Kong law;

[107] As Zlatanska (2015, 25) states, in the field of arbitration confidentiality usually covers: (1) the very existence of the dispute and the commencement of arbitral proceedings; (2) the course of the proceedings; and (3) the award.

    - For ICC awards: French law;
    - For SIAC awards: Singaporean law;
- Diversity of legal systems: For the purposes of this study, arbitral awards were selected to ensure representation from laws belonging to both civil law and common law systems;
- Global significance of arbitral institutions: The focus was on prominent international arbitral institutions, recognizing their influential role in the field of commercial arbitration at global level.

As illustrated in Figure 4.1 below, the Main Corpus is divided into seven subcorpora: the AAA subcorpus, the LCIA subcorpus, the CAM subcorpus, the SAC subcorpus, the HKIAC subcorpus, the ICC subcorpus, and the SIAC subcorpus. All seven subcorpora contain arbitral awards that are drafted in English.

The corpus is designed to be comparable (Tognini-Bonelli 2001, 7; Leech 2007, 144; McEnery and Hardie 2012, 20) as it consists of similar samples of texts. Moreover, these texts are comparable in terms of genre and time of publication. To ensure such a comparability, the following criteria were employed to construct the corpus under analysis:

- Genre consistency: All texts in the corpus belong to the genre of arbitral awards, representing an intriguing and relatively unexplored type of legal genre (Bhatia and Lung 2012, 23);
- Time frame consistency: All arbitral awards were rendered between 2008 and 2023;
- Similar institutional settings: All arbitral awards were rendered by prominent global arbitral institutions (Born 2021, 156);
- Type of case consistency: All arbitral awards deal with commercial arbitration, thus covering topics such as wholesale trade, textile and fashion, food production, real estate, and related subjects;
- Language consistency: All arbitral awards are drafted in English;
- Authenticity: All the material included in the corpus is "taken from genuine communications of people going about their normal business" (Tognini-Bonelli 2001, 55), which in this specific case concerns genuine communication occurring in international commercial arbitration cases.

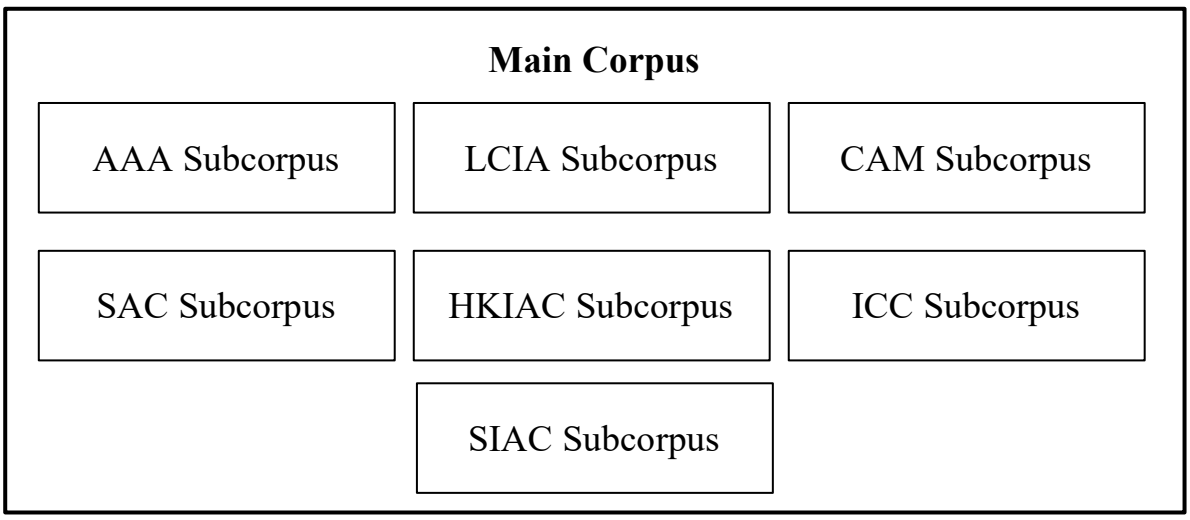

Figure 4.1: The Main Corpus of arbitral awards and its components.

As previously noted in this section, one of the main challenges faced in this research was the collection of the arbitral awards of the corpus under consideration. Until the 1990s, it was implied that arbitration proceedings were confidential by their own nature, and it was therefore presumed that arbitration was confidential per se (Corona 2011, 357, based on Burn and Pearsall 2009, 23). Historically, arbitration has been regarded as a highly protected practice, so much so that in 2012, Bhatia, Garzone and Degano described arbitral awards as a "still relatively unexplored genre" (2012, 1). In 2016, this is reconfirmed by Bhatia, who states that "[o]ften the hearing is held *in camera* and all the documents presented during the hearing and also the documents resulting from the hearing, including the award itself, are kept confidential" (2016, 72).

Therefore, for a long time, all documents related to arbitration proceedings, including the arbitral award, have been kept confidential as a common practice. As Bhatia (2016, 73) further states,

> There seems to be a general agreement among legal scholars, judges, and arbitration practitioners that there is a duty of confidentiality to be observed, which implies that parties in dispute shall not disclose any information in and about the arbitration process, including the award, to any third parties not involved in the process.

Some practitioners assert that it is their own responsibility to address the parties' needs in this regard. On this issue, Corona (2011, 358, based on Burn and Pearsall 2009 and Bhatia *et al*. 2008, 2009) states that

> Parties, they would argue, may fear negative effects on their business if trade secrets are disclosed to the public, even knowledge of the very existence of arbitration, not to mention the consequences of the publication of an award which may contain information that should have been kept confidential. However, confidentiality may have to give way to other competing interests, and disclosure to the public may be imposed on listed companies by market regulations, with obligation to inform their shareholders, auditors or insurers of claims made against them. To complicate the matter further, confidentiality seems to rank low as the most important attribute of arbitration among corporations.

It is worth noting that in certain instances, confidentiality may be established either through the *lex arbitri* or by incorporating a confidentiality clause into the arbitration agreement. However, confidentiality is often simply implied (Bhatia, Candlin, Sharma 2009, 2; Mourre and Vagenheim 2023, 260). In this regard, Bhatia points out that although both the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 and the European Convention on International Commercial Arbitration 1961 do not provide for an absolute duty of confidentiality, most arbitrators do not even negotiate the requirement of confidentiality, assuming that final documents will be kept confidential. In this regard, he observes that

> The present situation seems to be that the duty of confidentiality in arbitration is not absolute in all cases, and need not be assumed as such, but should be negotiable in the beginning of any arbitration process. However, in practice, most arbitrators and legal counsels treat it as assumed without any intention or effort to negotiate the requirement of confidentiality. (Bhatia 2016, 73)

As a result, "for many years, confidentiality in international commercial arbitration has been taken for granted" (Zlatanska 2015, 25), and discoursal data from actual arbitration practice has not been available. Such an inaccessibility of discursive data has therefore represented an actual challenge for new arbitrators and researchers, sparking debates that commenced in the 1990s[108].

However, most recently, a culture of transparency with regard to arbitral awards has arisen (Mourre and Vagenheim 2023, 260). Specifically, the development of the ICC policy[109] for

[108] *See Arbitration International* (1995) and the *ICC Bulletin* (2009), which devoted entire issues on the topic.

[109] In 2019 the ICC policy developed towards the complete publication of awards. Specifically, such a policy aims at "striking a balance between confidentiality and transparency by prioritizing consent. Awards are published no less than two years after their notification to the parties, except where a

the publication of arbitral awards, presented in an anonymized format, has been supported by Jus Mundi[110], an AI-powered search engine for international law and arbitration[111] that was established in 2019 and has formed partnerships with numerous arbitral institutions worldwide.

In order to carry out this study, a special subscription for universities known as 'Jus Mundi – Academic Research' – accessible on a university-wide basis – was obtained. 'Jus Mundi – Academic Research' is a "comprehensive, multilingual, user-friendly and intelligent search engine for international law and arbitration", encompassing international cases from more than 100 institutions globally, including the WTO, ICSID, ICC, ICJ, CAS, PCA, ICDR, IUSCT, ITLOS, SCC, LCIA, ICAC, RAC, SIAC, HKIAC, Mixed Claims Commissions, and ad hoc arbitration tribunals established under the UNCITRAL rules[112]. Indeed, one of the main goals of Jus Mundi is to serve as "a single source of comprehensive and reliable data for each area of international law and arbitration"[113].

On Jus Mundi, international law and arbitration materials, including arbitral awards, are now available to the general public. The subscription to Jus Mundi has allowed the collection of a limited number of authentic arbitral awards rendered by well-known international arbitral institutions for this study. All arbitral awards included in the corpus under analysis were therefore gathered through the use of 'Jus Mundi – Academic Research', with the only exception of some of the arbitral awards governed by Italian law. In this particular instance, three out of the nine arbitral awards were obtained through the official website of the Milan Chamber of Arbitration (CAM)[114], as they were not available on Jus Mundi.

The nature of the proceedings of all of the arbitral awards that constitute the object of this study is international. As provided by the definition included in Article 1(3) of the UNCITRAL Model Law,

> (3) An arbitration is *international* if:
>
> (a) the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States; or

confidentiality agreement governs the proceedings or where parties elect to opt out." (Mourre and Vagenheim 2023, 264)

[110] ICC x Jus Mundi Partnership. Available at https://jusmundi.com/en/partnership/icc

[111] About Us | Jus Mundi. Available at https://jusmundi.com/en/about

[112] Jus Mundi – Academic Research. Available at https://brill.com/display/db/jmun?contents=about

[113] Jus Mundi | Search Engine for International Law and Arbitration. Available at https://jusmundi.com/en

[114] Camera Arbitrale di Milano (CAM). Lodi Arbitrali e Decisioni. Available at https://www.camera-arbitrale.it/it/centro-studi-e-documentazione/risorse-ad-accesso-libero/lodi-arbitrali-e-decisioni.php?id=262

(b) one of the following places is situated outside the State in which the parties have their places of business:

(i) the place of arbitration if determined in, or pursuant to, the arbitration agreement;

(ii) any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected; or

(c) the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country.

[my emphasis]

Moreover, all cases included in the corpus are of commercial type, i.e., all cases deal with disputes, both contractual and non-contractual, arising from relationships of commercial nature. This is clearly defined[115] in an explanatory footnote of Article 1(1) of the UNCITRAL Model Law, which states that

> The term "*commercial*" should be given wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual or not. Relationships of a commercial nature include, but are not limited to, the following transactions: any trade transaction for the supply or exchange of goods or services; distribution agreement; commercial representation or agency; factoring; leasing; construction of works; consulting; engineering; licensing; investment; financing; banking; insurance; exploitation agreement or concession; joint venture and other forms of industrial or business cooperation; carriage of goods or passengers by air, sea, rail or road."
>
> [my emphasis]

Finally, the status of the cases included in the corpus under analysis is concluded.

Although it was possible to access arbitration documents made available to the general public over the last four years, the number of arbitral awards on the Jus Mundi search engine is still limited, especially for specific arbitral institutions. Such arbitral institutions include specifically the Camera Arbitrale di Milano (CAM), the Singapore International Arbitration Centre (SIAC), and the ICC International Court of Arbitration. Moreover, in some cases,

[115] It should be pointed out that both the definitions of 'international' and 'commercial' provided in the UNCITRAL Model Law are as broad and vague as possible so as to allow easy interpretations and translations into other languages and legal systems. Furthermore, this facilitates each legal system in applying such definitions to different actual cases, and this is because "general or vague language – most notoriously the word *reasonable* – leaves room to maneuver and is adaptable to unforeseen future circumstances" (Tiersma 1999, 3).

such as cases governed by Italian and French law, the documents available on the search engine were not drawn up in English but rather in Italian or French. As a consequence, for reasons of consistency, arbitral awards in languages other than English could not be included.

The primary methodological challenge thus revolved around the restricted number of arbitral awards gathered through 'Jus Mundi – Academic Research.' However, it is important to recognize that the ICC's relatively new policy and the establishment of Jus Mundi, along with its partnerships, have significantly enhanced the accessibility of arbitral awards from various global institutions. Thanks to these developments, there is now an increased ability to read a greater, albeit still limited, number of arbitral awards. This progress allows for a deeper exploration, understanding, and discussion of information related to real arbitration proceedings. As the Director of CAM-Milan, Stefano Azzali[116], states

> Making available anonymised awards, and thus the decisions of arbitral tribunals, while respecting the confidentiality of information on the parties, which is the prerogative of arbitration and our top priority, allows a process of 'democratisation of arbitration' to be initiated. The result is *an open door for the public to access arbitral proceedings, predictability of decisions, and access to practical information, which is useful for those who are already familiar with the tool, as well as for those who, despite not knowing it, are interested in approaching it*. Thanks to this agreement with Jus Mundi, CAM takes a further step towards spreading the culture of arbitration, a real asset in conflicts resolution for companies in order to build solid and profitable business relationships.
> [my emphasis]

Stefano Azzoli highlights that the ongoing process of 'democratization of arbitration' is an evolving process. It has been initiated, and further measures are expected to enable public access to arbitral proceedings. Consequently, the findings of this study are therefore to be interpreted as pilot. With the ongoing progress in the democratization of arbitration, it is foreseeable that in the future, an even larger volume of arbitration documents will be accessible. This development will facilitate the collection of additional data and the creation of more extensive corpora.

[116] CAM-Milan and Jus Mundi Announce Partnership for Sharing Non-Confidential Arbitration Awards. Available at https://blog.jusmundi.com/cam-milan-and-jus-mundi-announce-partnership-for-sharing-non-confidential-arbitration-awards/

4.1.2 Data preparation

The documents of the arbitral awards included in the corpus under investigation have been systematically organized into specific folders and relabelled. First, all arbitral awards belonging to a specific subcorpus were assembled into folders, each corresponding to cases governed by the same applicable law. For instance, awards falling under Italian applicable law were grouped into a designated folder. Subsequently, each arbitral award was named according to the year of conclusion of the case at hand (e.g., "2016"). This organizational structure facilitated the identification of cases sharing the same applicable law and allowed for the discernment of the years involved.

Initially, all arbitral awards included in the corpus were in .pdf format. Consequently, a conversion process was undertaken to transform them into .doc format using Adobe Reader. Following this conversion, the documents were further processed to convert them from .doc format to .txt format, ensuring compatibility with the software employed for subsequent analysis detailed in the following sections. Once this preparation was completed, the individual .txt documents within each folder were merged into a singular .txt document. This allowed the creation of a general corpus, referred to as the Main Corpus, encompassing seven distinct subcorpora. Further details about the Main Corpus are described in more detail in the following subsection.

4.1.3 Data description: The Main Corpus composition

The Main Corpus contains a total of 60 arbitral awards and amounts to 1,109,598 tokens, ~849,369 words[117] and 27,445 sentences. Detailed information and statistics regarding the Main Corpus are presented in Table 4.1, Table 4.2 and Figure 4.2 below.

Subcorpus	Time frame	Texts	Tokens	Words
AAA	2008-2023	16	170,507	~130,518
LCIA	2008-2022	10	175,630	~134,440
SAC	2008-2022	9	246,808	~188,925
CAM	2008-2023	8	170,587	~130,580

[117] The symbol '~' indicates that the number of words (849,369) is an estimate. Such an estimate based on the subcorpora texts. The information regarding the number of words contained in each subcorpus is shown in Table 4.1.

HKIAC	2009-2022	7	149,659	~114,560
ICC	2010-2020	5	89,315	~68,368
SIAC	2008-2022	5	107,092	~81,976
Total	**2008-2023**	**60**	**1,109,598**	**~849,369**

Table 4.1: Main Corpus description: the general statistics.

Table 4.1 presents comprehensive information regarding the Main Corpus and its subcorpora. Each subcorpus is identified in the 'Subcorpus' column, denoted by the acronym of the arbitral institution responsible for the awards within that subcorpus. The title of each subcorpus corresponds to the acronym of the arbitral institution that rendered all of the arbitral awards that are included in that specific subcorpus (i.e., AAA, LCIA, SAC, CAM, HKIAC, ICC, and SIAC). For instance, all arbitral awards included in the AAA Subcorpus are rendered by the American Arbitration Association.

The second column, 'Time frame', provides information regarding the period in which the arbitral awards within each subcorpus were rendered. For instance, in the case of the AAA Subcorpus, the 'Time frame' column specifies that all arbitral awards included were rendered between 2008 and 2023. Furthermore, this column presents the overarching time frame encompassing all arbitral awards within the Main Corpus (2008-2023).

The third column, 'Texts', provides information about the number of texts included in each subcorpus, along with the total number of texts included in the Main Corpus (60).

The fourth column, 'Tokens', indicates the number of tokens for each subcorpus, along with the total number of tokens in the Main Corpus (1,109,598).

Finally, the last column, 'Words', provides information about the number of words in each subcorpus and approximate total number of words in the Main Corpus (~849,369). It is noteworthy that the numbers indicating the word count for both the Main Corpus and all subcorpora are approximations.

Main Corpus							
Year	**AAA**	**LCIA**	**SAC**	**CAM**	**HKIAC**	**ICC**	**SIAC**
2008	**1**	**1**	**1**	**1**			**1**
2009	**1**		**1**	**1**	**1**		
2010	**1**					**1**	
2011		**1**				**1**	

2012			**1**				
2013				**1**	**1**		
2014		**1**			**1**		**1**
2015		**1**					**1**
2016	**1**	**1**	**1**	**1**			
2017	**1**	**1**	**1**	**1**		**1**	
2018	**1**	**1**	**1**		**1**		**1**
2019	**2**	**1**	**1**	**1**	**1**		
2020	**3**	**1**	**1**		**1**	**2**	
2021	**3**						
2022	**1**	**1**	**1**	**1**	**1**		**1**
2023	**1**			**1**			

Table 4.2: The representation of the Main Corpus: time frame, arbitral institutions and number of texts included per year.

Table 4.2 provides more specific information concerning the number of arbitral awards that are included in each subcorpus of the Main Corpus. As can be observed, the vertical line indicates the time frame identified to conduct the analysis in this research, spanning from 2008 to 2023. The horizontal line identifies the arbitral institutions rendering the arbitral awards included in the subcorpora (i.e., AAA, LCIA, SAC, CAM, HKIAC, ICC, SIAC) of the Main Corpus. As shown in the previous table (Table 4.1), the acronym contained in the title of each subcorpus corresponds to the arbitral institution that rendered all of the arbitral awards included in the subcorpus under consideration.

In correspondence of each year, a number is found (e.g., 1, 2 or 3), which indicates the number of the arbitral awards included in the subcorpus under consideration (indicated in the horizontal line and corresponding to the rendering arbitral institution) and rendered during that specific year (indicated in the vertical line).

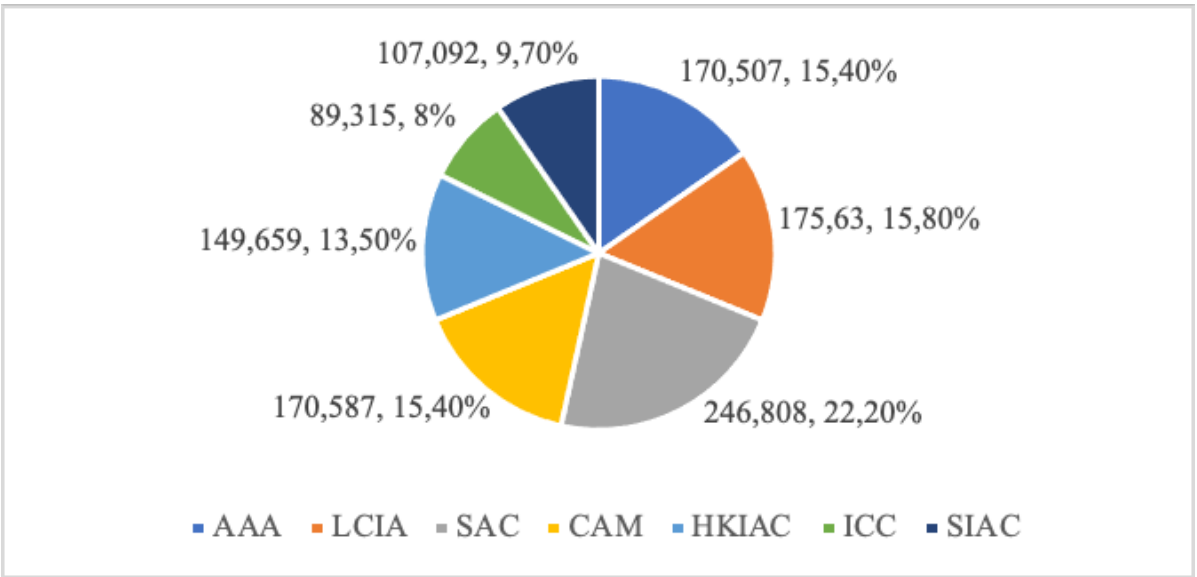

Figure 4.2: Number of tokens and ratio of arbitral awards rendered by the specific arbitral institutions across the subcorpora.

Finally, Figure 4.2 provides information regarding the ratio as well as the number of tokens included in each of the subcorpora of the Main Corpus.

All the documents contained in the Main Corpus were retrieved through the Jus Mundi search engine by means of multiple filters to refine the search. The filters employed for this specific search included: the type of document, status of the case, applicable law, institution/international court, type of case, and date. The date filter, in particular, considerably allowed narrowing down the documents available on the dataset. This filter facilitated the identification of arbitral awards exclusively from cases concluded between 2008 and 2023. As Table 4.1 illustrates, with regard to the rendering arbitral institutions of the arbitral awards included in the corpus, they have been rendered by the American Arbitration Association (AAA), the London Court of International Arbitration (LCIA), the Hong Kong International Arbitration Centre (HKIAC), the Milan Chamber of Arbitration (CAM), the Swiss Arbitration Centre (SAC), the ICC International Court of Arbitration, the Singapore International Arbitration Centre (SIAC). Moreover, all arbitral awards under analysis concern concluded cases of commercial arbitration.

As detailed in Subsection 4.1.1, the Jus Mundi search engine, particularly the 'Jus Mundi – Academic Research', still presents a limited number of arbitral awards, especially with regard to specific arbitral institutions. The research has therefore focused on the 2008-2023 time frame for two main reasons:

1. Most importantly, this study aimed at including recent arbitral awards (the time frame allows the analysis of arbitral awards rendered in the last fifteen years);
2. Secondly, the study aimed at focusing on a time frame that would enable the collection of a sufficient number of arbitral awards for all of the arbitral institutions[118].

As can be observed in Table 4.1, the number of arbitral awards included in the AAA Subcorpus is higher than the number of texts included in the other subcorpora that compose the Main Corpus. Such a higher number of texts included in the AAA Subcorpus is attributable to two main reasons:

1. The first one relates to the fact that the number of arbitral awards rendered by the AAA and that are available on the Jus Mundi search engine is higher than the other subcorpora;
2. Moreover, it was possible to include a higher number of arbitral awards rendered by the AAA while ensuring balance between the corpora as the text length of the AAA awards is – in most cases – shorter than the other arbitral awards rendered by the other arbitral institutions.

On the contrary, the number of arbitral awards rendered by the SIAC, where the applicable law is the law of Singapore, and the ICC, specifically in English and governed by French law, is notably lower compared to the other subcorpora. This discrepancy is attributed to the limited availability of arbitral awards meeting the specified criteria set out in this research from these institutions. As a result, it was not possible to include a higher number of arbitral awards rendered by the SIAC and the ICC. The slight difference in the number of tokens, however, is representative of the availability of arbitral awards from certain arbitral institutions on the Jus Mundi search engine. As the sharing of arbitral awards by the arbitral institutions partnering with Jus Mundi is still in its early stages, it is anticipated that the availability of such documents may increase in the future. Nonetheless, the composition of the subcorpora in this research reflects the ongoing development of the current search engine. The following paragraphs will describe more in detail the composition of each subcorpus.

[118] Indeed, the Jus Mundi search engine features a limited quantity of arbitral awards rendered before 2008. Consequently, collecting a satisfactory number of awards from this period, preceding the time frame considered in this research, proves to be challenging.

4.1.3.1 AAA Subcorpus

The AAA Subcorpus comprises arbitral awards rendered by the American Arbitration Association between 2008 and 2023. It encompasses a total of 16 awards. Moreover, the total number of tokens amounts to 170,507, with an estimated total word count of ~130,518 words. Table 4.3 provides an overview of the general statistics and composition of the AAA Subcorpus.

AAA Subcorpus (2008-2023)				
Text / year	**Source**	**Applicable law**	**Tokens**	**Words**
2008 (1)	Jus Mundi	Washington DC	1,179	~910
2009 (1)	Jus Mundi	New York	3,928	~2,593
2010 (1)	Jus Mundi	Texas	2,812	~2,070
2016 (1)	Jus Mundi	Texas	1,499	~1,097
2017 (1)	Jus Mundi	Louisiana	21,015	~15,790
2018 (1)	Jus Mundi	Pennsylvania	13,519	~10,557
2019 (1)	Jus Mundi	New York	2,537	~1,758
2019 (2)	Jus Mundi	Delaware, New York	951	~670
2020 (1)	Jus Mundi	California	7,802	~5,680
2020 (2)	Jus Mundi	New York	4,792	~3,339
2020 (3)	Jus Mundi	New York	63,801	~45,905
2021 (1)	Jus Mundi	New York	32,725	~25,751
2021 (2)	Jus Mundi	North Carolina	4,085	~2,936
2021 (3)	Jus Mundi	Massachusetts	3,365	~2,576

	2022 (1)	Jus Mundi	California	2,588	~1,915
	2023 (1)	Jus Mundi	Washington	3,909	~3,089
Total	**16**	**-**	**-**	**170,507**	**~130,518**

Table 4.3: AAA Subcorpus.

As indicated in Table 4.3, all arbitral awards within the AAA Subcorpus are governed by U.S. laws, encompassing a total of 10 applicable laws from various U.S. states. Moreover, the AAA Subcorpus represents 15,40% of the Main Corpus.

All arbitral awards included in the AAA Subcorpus are final arbitral awards, and in some cases, they are rendered by the international division of the AAA, namely the International Centre for Dispute Resolution (ICDR) (Moses 2017, 11). Table 4.3 highlights that two texts, namely 'AAA 2008' and 'AAA 2019 (2)', are significantly shorter than the others. Nevertheless, they have been included in this subcorpus due to a general lack of availability of other arbitral awards meeting the specified criteria – most importantly, those concerning the date and applicable law – established for the selection of arbitral texts in the corpus under analysis. It is also crucial to underline that all arbitral awards rendered by the AAA and included in the considered subcorpus are public documents on the Jus Mundi search engine.

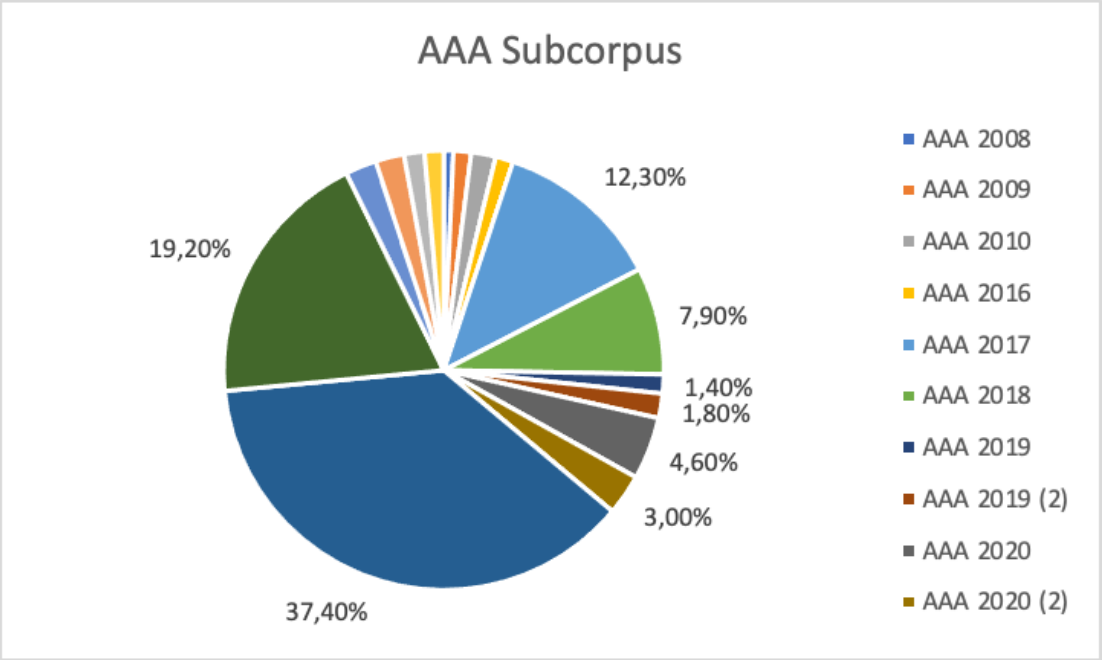

Figure 4.3: Chart depicting the proportions of arbitral awards contained in the AAA Subcorpus.

In Figure 4.3, the chart provided depicts the percentage distribution of each arbitral award within the AAA Subcorpus. Notably, the chart omits the percentage values for the smallest texts, but a detailed breakdown is provided below: ‘AAA 2020x2’ contributes 2.8% to the entire subcorpus; ‘AAA 2021x2’ accounts for 2.4%; ‘AAA 2009’ represents 2.3%; ‘AAA 2023’ accounts for 2.3%; ‘AAA 2021x3’ constitutes 2%; ‘AAA 2010’ encompasses 1.6%; ‘AAA 2022’ represents 1.5%; 'AAA 2019' represents 1.5%; 'AAA 2016' contributes 0.9%; 'AAA 2008' accounts for 0.7%; and 'AAA 2019x2' represents 0.6%.

4.1.3.2 LCIA Subcorpus

The LCIA Subcorpus includes arbitral awards rendered by the London Court of International Arbitration (LCIA) between 2008 and 2022. It encompasses a total of 10 arbitral awards. Furthermore, the total number of tokens contained in this subcorpus amounts to 175,630, and the estimated total number of words amounts to ~134,440. Table 4.4 provides an overview of the general information and statistics of the LCIA Subcorpus and its composition.

LCIA Subcorpus (2008-2022)				
Text / year	**Source**	**Applicable law**	**Tokens**	**Words**
2008 (1)	Jus Mundi	England and Wales	20,147	~15,548
2011 (1)	Jus Mundi	England and Wales	8,977	~7,135
2014 (1)	Jus Mundi	England and Wales	33,108	~26,539
2015 (1)	Jus Mundi	England and Wales	13,202	~10,779
2016 (1)	Jus Mundi	England and Wales	6,504	~5,173
2017 (1)	Jus Mundi	England and Wales	28,686	~23,485
2018 (1)	Jus Mundi	England and Wales	39,337	~28,480
2019 (1)	Jus Mundi	England and Wales	8,199	~6,094
2020 (1)	Jus Mundi	England and Wales	10,830	~7,668

	2022 (1)	Jus Mundi	England and Wales	6,640	~5,081
Total	**10**	**-**	**-**	**175,630**	**~134,440**

Table 4.4: LCIA Subcorpus.

The LCIA Subcorpus features arbitral awards governed by the law of England and Wales, constituting 15,80% of the Main Corpus. The arbitral awards included in the LCIA Subcorpus comprise both final and partial awards. Specifically, the texts labeled 'LCIA 2015' and 'LCIA 2017' are categorized as partial awards. Their inclusion is attributed to the absence of other final awards that meet the criteria set for the selection of arbitral texts within the Main Corpus under analysis. Importantly, all LCIA arbitral awards included in this subcorpus are accessible as public documents on the Jus Mundi search engine.

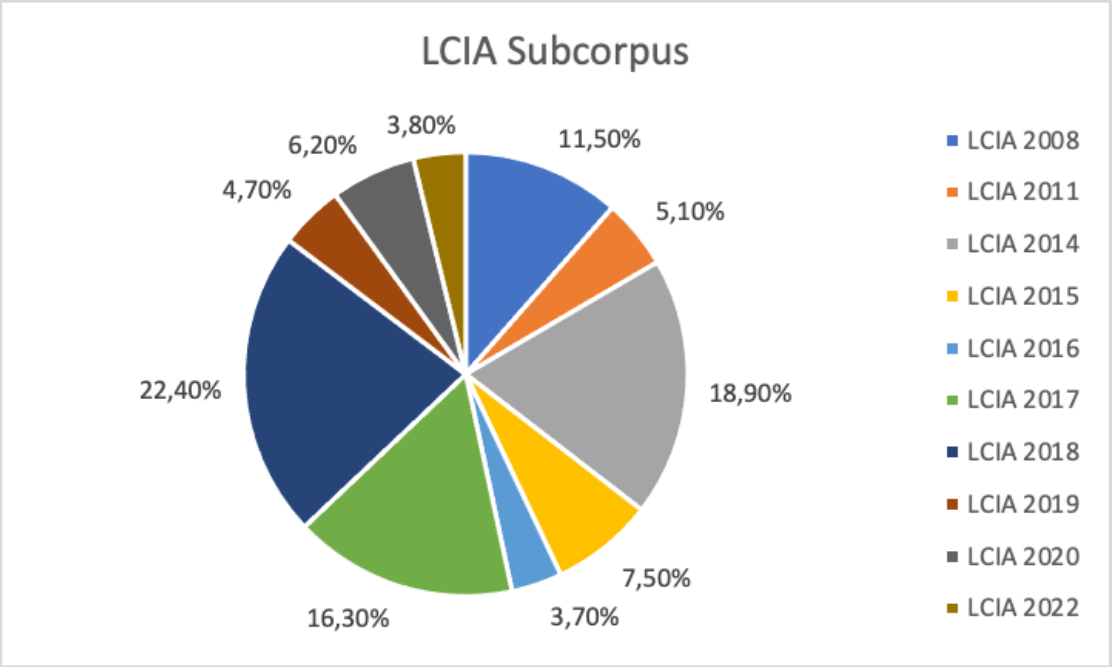

Figure 4.4: Chart depicting the proportions of arbitral awards contained in the LCIA Subcorpus.

The chart presented in Figure 4.4 above illustrates the percentage distribution of all 10 arbitral awards within the LCIA Subcorpus.

4.1.3.3 SAC Subcorpus

The SAC Subcorpus comprises arbitral awards rendered by the Swiss Arbitration Centre (SAC) between 2008 and 2022, totaling 9 arbitral awards. The total number of tokens contained in this subcorpus amounts to 246,808, and the estimated total number of words amounts to ~188,925 words. Table 4.5 provides detailed information and statistics regarding the SAC Subcorpus.

SAC Subcorpus (2008-2022)					
Text / year		**Source**	**Applicable law**	**Tokens**	**Words**
2008 (1)		Jus Mundi	Switzerland	9,873	~7,516
2009 (1)		Jus Mundi	Switzerland	28,645	~21,884
2012 (1)		Jus Mundi	Switzerland	40,092	~31,386
2016 (1)		Jus Mundi	Switzerland	10,158	~7,257
2017 (1)		Jus Mundi	Switzerland	30,466	~22,930
2018 (1)		Jus Mundi	Switzerland	25,751	~18,730
2019 (1)		Jus Mundi	Switzerland	12,026	~9,256
2020 (1)		Jus Mundi	Switzerland	62,877	~47,314
2022 (1)		Jus Mundi	Switzerland	26,920	~20,040
Total	**9**	**-**	**-**	**246,808**	**~188,925**

Table 4.5: SAC Subcorpus.

As can be noticed from Table 4.5, all arbitral awards included in the SAC Subcorpus are final arbitral awards governed by Swiss law. Constituting 22.20% of the Main Corpus, the SAC Subcorpus stands as the largest among the considered subcorpora. Notably, the 'SAC 2020' text is notably longer than others, included to expand the subcorpus due to a scarcity of additional arbitral awards meeting the specified criteria on the Jus Mundi search engine.

Importantly, every arbitral award rendered by the Swiss Arbitration Centre and included in this subcorpus is accessible as a public document on the Jus Mundi search engine.

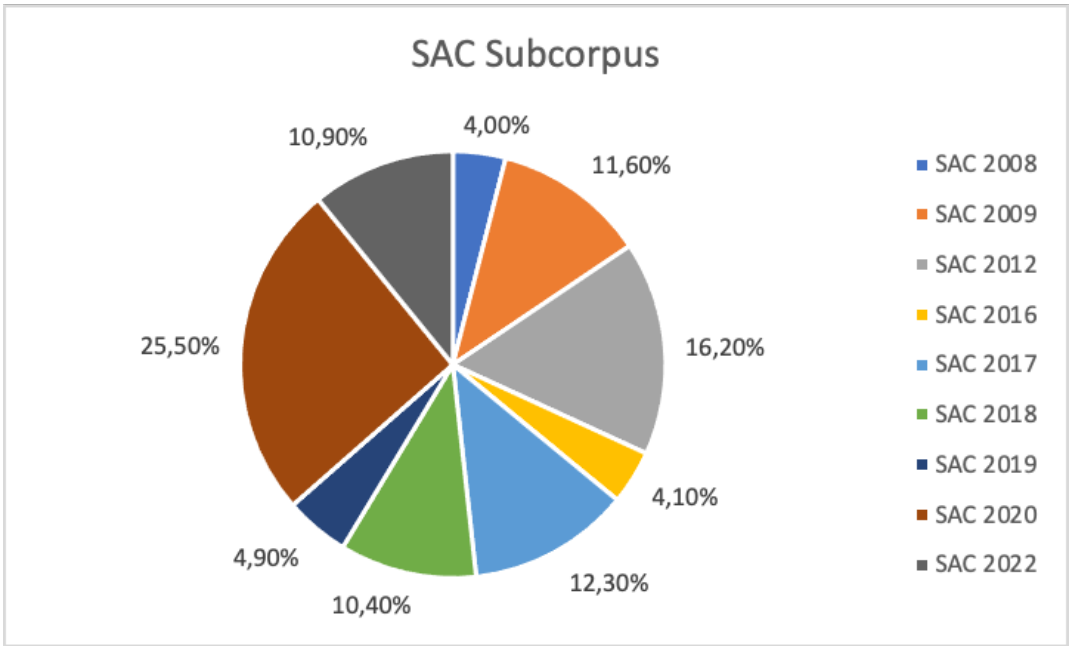

Figure 4.5: Chart depicting the proportions of arbitral awards contained in the SAC Subcorpus.

The percentage of all 9 arbitral awards included in the SAC Subcorpus is depicted in Figure 4.5 above.

4.1.3.4 CAM Subcorpus

The CAM Subcorpus consists of arbitral awards rendered by the Milan Chamber of Arbitration (CAM) from 2008 to 2023, featuring a total of 9 arbitral awards. Notably, 6 arbitral awards, representing 66.67%, were retrieved from the Jus Mundi search engine, while 3 arbitral awards, constituting 33,33%, were retrieved from the official website of the Milan Chamber of Arbitration (CAM). The inclusion of texts such as 'CAM 2013', 'CAM 2016', and 'CAM 2017' from the CAM official website was essential due to the unavailability of CAM-rendered arbitral awards in English on the Jus Mundi search engine. These texts, being accessible on the official CAM website, were incorporated into the CAM Subcorpus to expand its content. The total number of tokens in this subcorpus amounts to 170,587, with an estimated total number of ~130,580 words. Table 4.6 below provides comprehensive information and statistics for the CAM Subcorpus.

CAM Subcorpus (2008-2023)					
Text / year		**Source**	**Applicable law**	**Tokens**	**Words**
2008 (1)		Jus Mundi	Italy	30,192	~22,660
2009 (1)		Jus Mundi	Italy	16,944	~12,755
2013 (1)		Official CAM website	Italy	21,655	~16,700
2016 (1)		Official CAM website	Italy	11,639	~9,616
2017 (1)		Official CAM website	Italy	35,960	~28,622
2019 (1)		Jus Mundi	Italy	12,874	~10,217
2022 (1)		Jus Mundi	Italy	10,751	~8,271
2023 (1)		Jus Mundi	Italy	30,572	~24,670
Total	**8**	**-**	**-**	**170,587**	**~130,580**

Table 4.6: CAM Subcorpus.

All arbitral awards included in the CAM Subcorpus, constituting 15,40% of the Main Corpus, are final arbitral awards governed by Italian law. Importantly, all arbitral awards rendered by the Milan Chamber of Arbitration and included in this subcorpus are publicly accessible documents, available on the Jus Mundi search engine and the official website of the Milan Chamber of Arbitration.

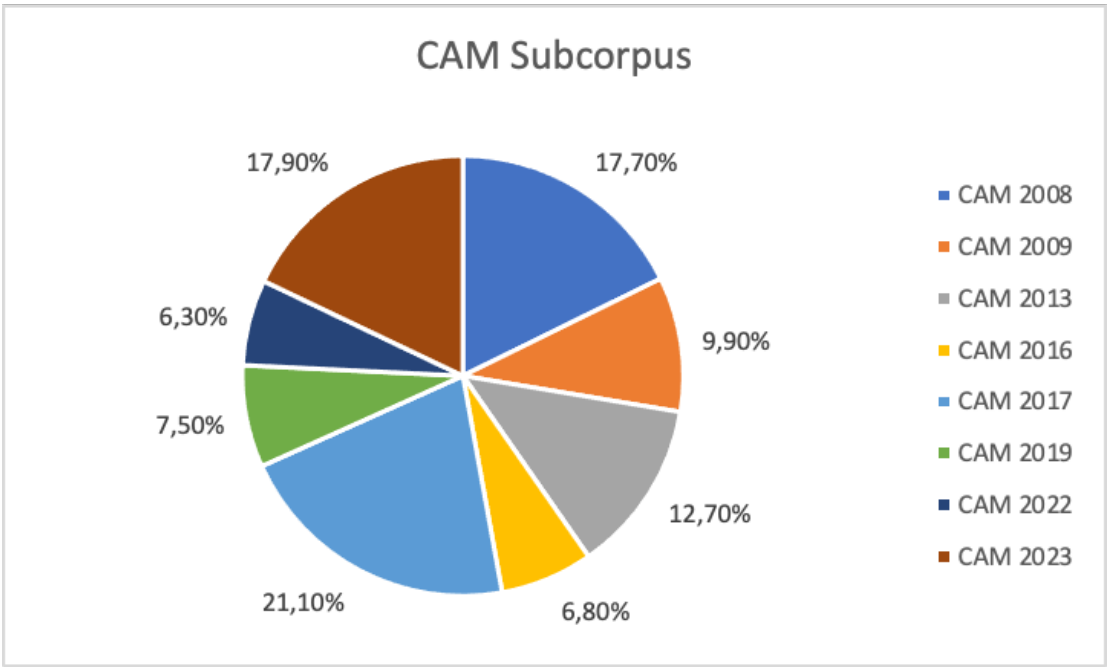

Figure 4.6: Chart depicting the proportions of arbitral awards contained in the CAM Subcorpus.

The chart presented in Figure 4.6 above illustrates the percentage distribution of all 8 arbitral awards within the CAM Subcorpus.

4.1.3.5 HKIAC Subcorpus

The HKIAC Subcorpus contains a total of 7 arbitral awards rendered by the Hong Kong International Arbitration Centre (HKIAC) between 2009 and 2022. Moreover, the total number of tokens amounts to 149,659, and the estimated total number of words amounts to ~114,560. The general information and statistics of the HKIAC Subcorpus, along with its composition, are presented in Table 4.7 below.

HKIAC Subcorpus (2009-2022)				
Text / year	**Source**	**Applicable law**	**Tokens**	**Words**
2009 (1)	Jus Mundi	Hong Kong	5,187	~4,025
2013 (1)	Jus Mundi	Hong Kong	6,494	~5,440
2014 (1)	Jus Mundi	Hong Kong	23,912	~18,958

	2018 (1)	Jus Mundi	Hong Kong	42,571	~33,482
	2019 (1)	Jus Mundi	Hong Kong	17,697	~12,705
	2020 (1)	Jus Mundi	Hong Kong	10,853	~8,417
	2022 (1)	Jus Mundi	Hong Kong	42,945	~31,375
Total	**7**	**-**	**-**	**149,659**	**~114,560**

Table 4.7: HKIAC Subcorpus.

All of the arbitral texts included in the HKIAC Subcorpus are final arbitral awards governed by Hong Kong law. The HKIAC Subcorpus represents 13,50% of the Main Corpus. Finally, all arbitral awards rendered by the Hong Kong International Arbitration Centre and included in this subcorpus are publicly accessible documents on the Jus Mundi search engine.

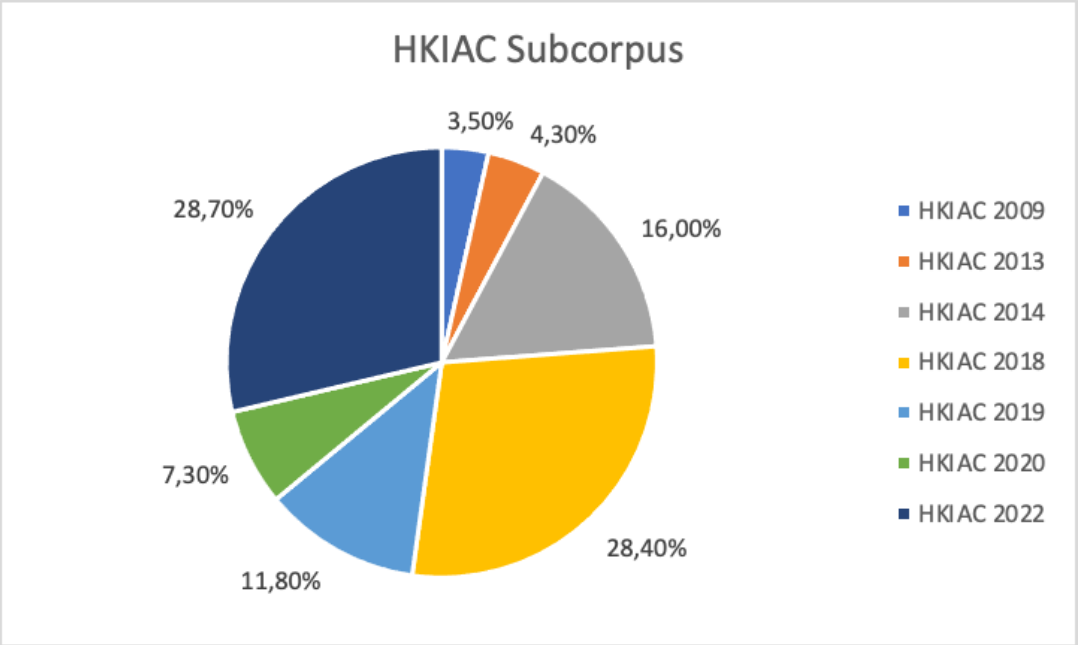

Figure 4.7: Chart depicting the proportions of arbitral awards contained in the HKIAC Subcorpus.

The chart in Figure 4.7 illustrates the percentage distribution of all 7 arbitral awards within the HKIAC Subcorpus.

4.1.3.6 ICC Subcorpus

The ICC Subcorpus encompasses a total of 5 arbitral awards rendered by the ICC International Chamber of Commerce between 2010 and 2020. Despite a substantial number of arbitral awards being available on both the ICC official website and the Jus Mundi search engine, this study opted to include only a limited number of ICC awards. Specifically, all arbitral awards within this subcorpus had to adhere to specific criteria, including language – with all awards being drafted in English – and applicable law, which is consistently French law in all the cases included in this subcorpus.

Given the substantial proportion of arbitral awards available in French rather than English on the Jus Mundi search engine and the ICC official website, it was not feasible to include them in this subcorpus. Additionally, as highlighted in Table 4.8 below, which outlines general information and statistics of the ICC Subcorpus and its composition, the 'ICC 2017' text is notably shorter than others. Nonetheless, its inclusion was deemed necessary due to a general scarcity of available ICC arbitral awards drafted in English, both on the Jus Mundi search engine and the official ICC website.

The ICC Subcorpus comprises a total of 89,315 tokens, with an estimated word count of ~68,368 words. Table 4.8 below presents a comprehensive overview of the general information and statistics of the ICC Subcorpus, including its composition.

ICC Subcorpus (2010-2020)					
Text / year		**Source**	**Applicable law**	**Tokens**	**Words**
2010 (1)		Jus Mundi	France	19,887	~15,927
2011 (1)		Jus Mundi	France	7,652	~5,999
2017 (1)		Jus Mundi	France	1,156	~686
2020 (1)		Jus Mundi	France	36,440	~26,720
2020 (2)		Jus Mundi	France	24,180	~18,841
Total	**5**	**-**	**-**	**89,315**	**~68,368**

Table 4.8: ICC Subcorpus.

As evident from Table 4.8, all arbitral awards within the ICC Subcorpus are governed by French law. Comprising 8% of the Main Corpus, the ICC Subcorpus stands as the smallest among the subcorpora under consideration. Similar to the AAA Subcorpus, the ICC Subcorpus features one text (the 'ICC 2017') that is notably shorter than the others. Nevertheless, its inclusion is justified by a general scarcity of other available ICC arbitral awards meeting the aforementioned selection criteria for texts within the subcorpus under analysis. Importantly, all arbitral awards rendered by the ICC International Chamber of Commerce and included in this subcorpus are final arbitral awards and publicly accessible documents on the Jus Mundi search engine.

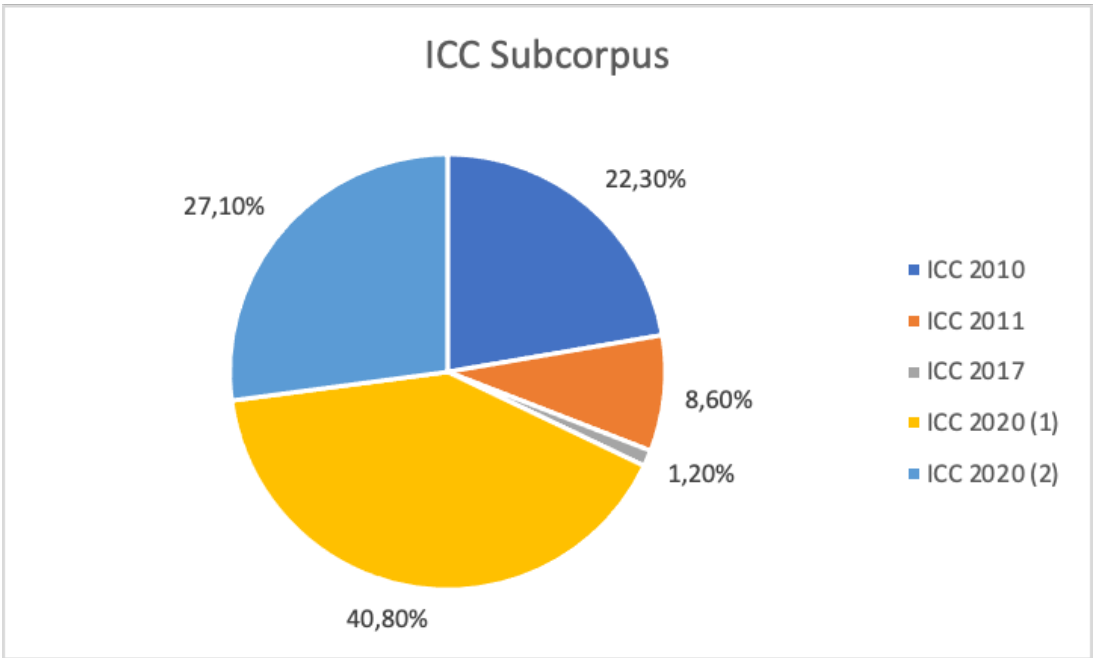

Figure 4.8: Chart depicting the proportions of arbitral awards contained in the ICC Subcorpus.

In Figure 4.8, the percentage distribution of each arbitral award within the ICC Subcorpus is illustrated. Notably, the percentage for the smallest text, 'ICC 2017', is not represented in the chart but constitutes 1.3% of the entire subcorpus.

4.1.3.7 SIAC Subcorpus

The SIAC Subcorpus, the second smallest of the seven subcorpora analyzed in this research, encompasses a total of 5 arbitral awards rendered by the Singapore International Arbitration Centre (SIAC) between 2008 and 2022. This subcorpus constitutes 9,70% of the Main Corpus. The total number of tokens within the SIAC Subcorpus amounts to 107,092, with

an estimated total word count of ~81,976 words. Table 4.9 below provides a comprehensive overview of the general information and statistics of the SIAC Subcorpus, including its composition.

SIAC Subcorpus (2008-2022)					
Text / year		**Source**	**Applicable law**	**Tokens**	**Words**
2008		Jus Mundi	Singapore	4,749	~3,739
2014		Jus Mundi	Singapore	38,690	~30,505
2015		Jus Mundi	Singapore	11,073	~8,201
2018		Jus Mundi	Singapore	17,774	~14,277
2022		Jus Mundi	Singapore	34,806	~27,630
Total	**5**	**-**	**-**	**107,092**	**~81,976**

Table 4.9: SIAC Subcorpus.

As indicated in Table 4.9, all arbitral awards within the SIAC Subcorpus are final arbitral awards governed by Singaporean law. Furthermore, all arbitral awards rendered by the Singapore International Arbitration Centre and included in this subcorpus are publicly accessible documents on the Jus Mundi search engine.

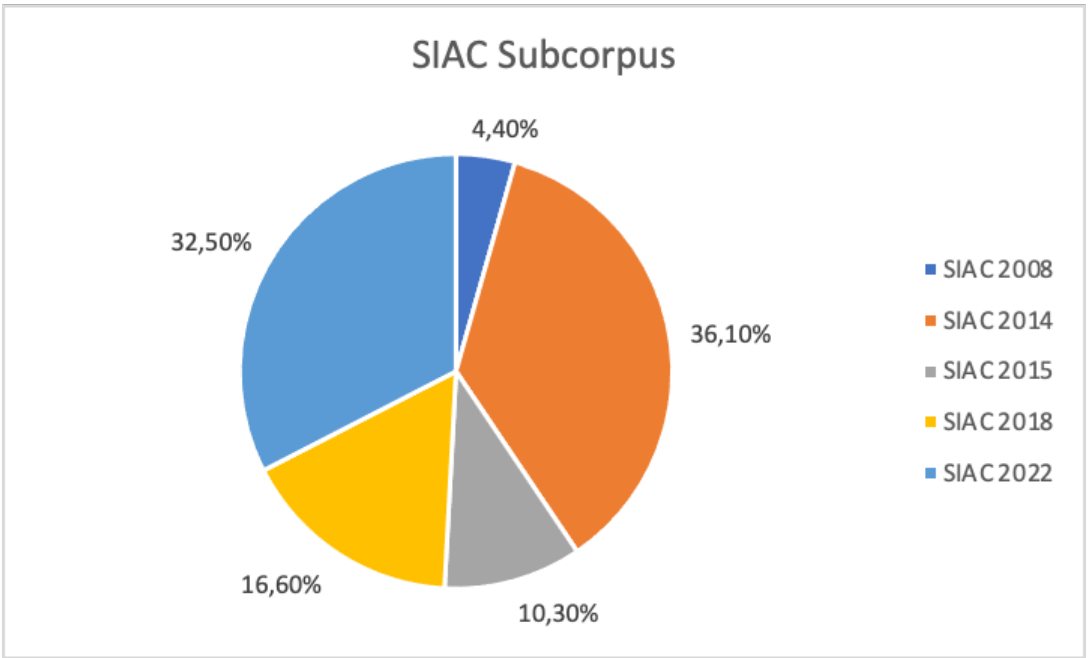

Figure 4.9: Chart Depicting the Proportions of Arbitral Awards Contained in the SIAC Subcorpus.

The chart presented in Figure 4.9 above depicts the percentage distribution of all 5 arbitral awards within the SIAC Subcorpus.

4.2 Preliminary methodological considerations

4.2.1 Corpus linguistics

This section has a theoretical and methodological focus, as it presents the theoretical and methodological framework employed for the analysis of the corpus of arbitral awards (see Chapter 5). The methodology applied in this research incorporates both quantitative and qualitative approaches. The overarching methodological framework is grounded in corpus linguistics, which is discussed in this section.

There is no unanimous agreement as to what corpus linguistics constitutes. Cheng (2012, 6) contends that it is controversial whether corpus linguistics is a methodology or a discipline in its own right. However, it is indisputable that "corpus linguistics has become a new research enterprise and a new philosophical approach to linguistic enquiry" (Tognini-Bonelli 2001, 1).

Corpus linguistics is "perhaps best described for the moment in simple terms as the study of language based on examples of 'real life' language use" (McEnery and Wilson 2001, 1). However, this is a broad definition that can encompass various different methodological approaches. A more practical definition of corpus linguistics, proposed by Cheng (2012, 6), revolves around the compilation and analysis of corpora. As a matter of fact, corpus linguistics entails the compilation and investigation of the so-called 'corpora'. It is therefore crucial to clarify the concept of a corpus and its significance in linguistic analyses. As mentioned in Subsection 4.1.1, there is no universally accepted definition of a corpus in introductory linguistic textbooks. However, Egbert, Biber and Gray provide the following operational definition of a corpus: "a large and principled sample of texts designed to represent a target domain of language use (e.g., a language, dialect, or register)" (2022, 7). They further delve into various definitions of a corpus, noting that such definitions share some key concepts, as summarized in Figure 4.10 below.

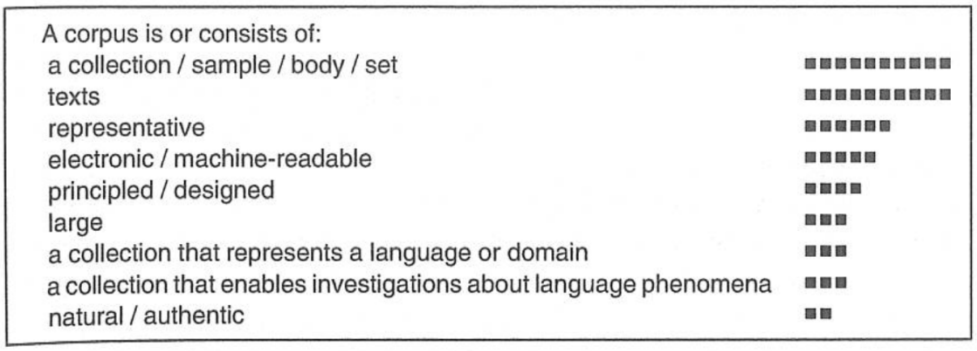

Figure 4.10: Key concepts included in the definition of a corpus (Egbert, Biber and Gray 2022, 3).

As can be noticed, while other criteria may be found in only certain definitions under analysis, it is apparent that all considered definitions characterize a corpus as a collection of texts. Furthermore, the language of the corpus is typically 'naturally-occurring' and is organized based on specific design criteria aligned with a particular purpose, often articulated in the research questions.

Corpora play a crucial role as they enable users to "empirically (i.e., scientifically) establish the regularity of patterns based on their repetition throughout a corpus" (Cheng 2012, 174). For this reason, the use of corpora has significantly contributed to the advancement of research in linguistics, fostering a deeper understanding of language.

According to Stefanotwitsch (2020, 23) the samples of language collected to build the corpus need to possess the following three main criteria:

- They are authentic;
- They are representative of the language or language variety under analysis;
- They constitute a large corpus.

In the field of corpus linguistics, authenticity as the first criterion implies that the language within the corpus represents "real life language use" (McEnery and Wilson 2001, 1). Secondly, a corpus is regarded as representative if the text categories that compose it "accurately reflect both quantitatively and qualitatively the language varieties found in the speech community whose language is represented in the corpus" (Stefanowitsch 2020, 29). Finally, the size of the corpus serves as another important criterion. While there is no fixed requirement for the size of a corpus, Stefanowitsch argues that it should be large enough "to contain sufficiently large samples of every grammatical structure, vocabulary, item, etc.", or at least "to contain a sample of instances of the phenomenon under investigation that is large

enough for analysis" (2020, 38). It is however generally agreed that the larger the corpus, the better (Meyer 2023, 33).

Corpora can be employed in different ways to illustrate linguistic theories and address research questions. A fundamental distinction is made between corpus-based approaches and corpus-driven approaches. The term 'corpus-based approach' generally refers to the approach that "typically use(s) corpus data in order to explore a theory or hypothesis, typically one established in the current literature, in order to validate it, refute it or refine it" (McEnery and Hardie 2012, 6). In other words, the corpus-based approach is regarded as 'deductive', as it involves a type of reasoning that "works from the more general to the more specific, which is a 'top-down' approach" (Cheng 2012, 187).

Conversely, the term 'corpus-driven approach' characterizes the approach through which the linguist "uses a corpus beyond the selection of examples to support linguistic argument or to validate a theoretical statement" (Tognini-Bonelli 2001, 84). In other words, the corpus-driven approach is considered 'inductive' as it operates "from specific observations to broader generalisations and theories, and it is therefore a bottom-up approach" (Cheng 2012, 188). Figure 4.11 illustrates the procedures followed by corpus linguists on the basis of the approach employed to conduct linguistic analyses.

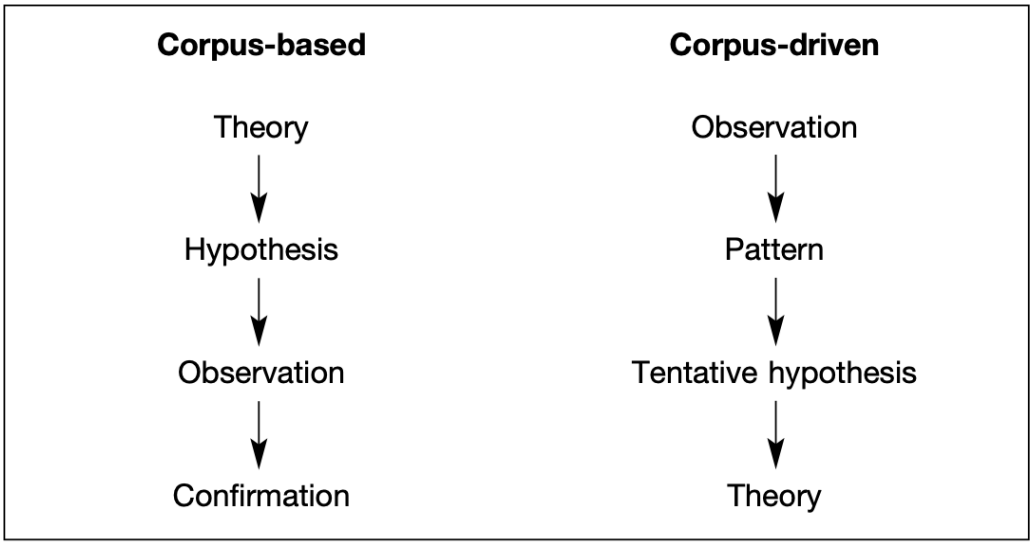

Figure 4.11: Corpus-based and corpus-driven approaches to corpus linguistics according to Cheng (2012, 187)**.**

Generally, scholars viewing corpus linguistics as a methodology tend to adopt a corpus-based approach. They initiate their analyses by relying on existing theory and frameworks to gather evidence from the corpus under investigation. On the contrary, scholars treating

corpus linguistics as a discipline opt for a corpus-driven approach, using corpora to formulate theories on language (Cheng 2012, 6).

As mentioned earlier, corpus linguistics has undoubtedly contributed to the advancement of research in linguistics. However, this approach comes with certain limitations. Firstly, while corpora can provide insights into frequency, they do not inform the researcher on whether something is possible in a language. Moreover, corpora simply display their contents, which means that information and evidence provided need to be interpreted in order to be meaningful. In addition to that, the language contained in corpora is extrapolated from its original social context, thus making it necessary to explore such a context for accurate conclusions regarding the meaning of the investigated text (Cheng 2012, 175, adapted from Hunston, 2002, 22-3).

Despite the limitations listed above, corpus linguistics has undeniably revolutionized the way linguists study language. With the aid of new technologies, corpus linguistics has allowed scholars to collect texts – oftentimes retrieved from the web – and therefore to assemble specific corpora according to "specific language varieties, genres, topics, etc." (Tognini-Bonelli 2001, 5).

This study adopts the corpus-based approach, primarily focusing on corpus data to explore and validate hypotheses and research questions (see Subsection 1.2). Such a hypothesis is grounded on preliminary studies conducted by leading scholars in the field of arbitration discourse (see Subsection 2.5.1). However, this study also involves the observation of texts included in the corpus in order to reach specific conclusions, i.e. generalizations and theories. Consequently, while predominantly following a corpus-based approach, this study incorporates elements of the corpus-driven approach as well.

4.2.2 Software for corpus linguistics

Scholars employ various software programs to conduct corpus linguistic analyses. In this research, one software tool was used to carry out the corpus analysis. WordSmith Tools 8.0, a key software in the field of corpus linguistics developed for the analysis of corpora of texts by the British linguist Mike Scoot in 1996, served as the tool for conducting corpus analyses. WordSmith Tools is described as "an integrated suite of programs for observing how words behave in texts" (Scott 2020[119]). According to Scott (2020), this suite offers various tools for gaining insights into how words are used in texts. The main functions include the Concord

[119] WordSmith Tools. Available at https://lexically.net/downloads/version8/HTML/index.html

tool, enabling users to examine examples of a word or phrase in their respective contexts. Instead of analyzing words as isolated items, WordSmith tools can provide valuable insights into how specific words or phrases are used. Through the Concord tool, users can obtain results on:

1. Concordances, defined as "a set of examples of a given word or phrase, showing the context" (Scott 2020);
2. Collocations, which are "the words which occur in the neighbourhood of your search word" to "work out characteristic lexical patterns by finding out which "friends" words typically hang out with" (Scott 2020);
3. Patterns, representing frequently recurring structures;
4. Clusters, defined as "patterns of repeated phraseology in your concordance" (Scott 2020).

Another important function is the WordList tool, a program specifically designed for generating word lists from designated texts. These lists are typically automatically sorted in both alphabetical and frequency order. Wordlists are primarily used to examine the vocabulary of a text, identify word clusters, compare the frequency of a specific word across various texts, compare frequencies of cognate words or translation equivalents between different languages, and generate a concordance for one or more words in the list.

The KeyWords tool is another essential function of WordSmith Tools 8.0. This program enables the identification of 'key[120]' words in texts. This tool operates by comparing two word lists that have been previously generated by the same tool. One of the two lists serves as a larger reference file, whereas the second word list is based on the text under analysis. The comparison of these two lists aims to identify the key words that predominantly characterize the analyzed text.

In conclusion, WordSmith Tools 8.0 allows the generation of statistical data pertaining to the corpus or corpora under analysis. This statistical data encompasses various metrics, such as the number of files, tokens – which are the running words in the text – types – which refers to the number of different words – type/token ratios, the number of sentences, paragraphs, headings, and sections contained in text, and so on.

[120] A 'key' word is a word "whose frequency is unusually high in comparison with some norm" (Scott 2020).

4.3 Methodological framework

In Chapters 2 and 3, the theoretical framework as well as the institutional context of international commercial arbitration and the arbitral awards as a genre have been described and discussed. In order to proceed with the quantitative and qualitative analysis of the Main Corpus under investigation (Chapter 5), it was imperative to carefully select specific elements. These chosen elements are deemed most pertinent for investigating the selected genre and formulating comprehensive answers to the research questions posed at the beginning of this study (Chapter 1).

This subsection delineates the operational phase of this study. To establish the parameters for both quantitative and qualitative analysis, the criteria outlined by leading scholars regarding the attributes of legal English were adopted. These classifications draw from the works of Mellinkoff (1963), Crystal and Davy (1969), Hiltunen (1990), Bhatia (1993), Tiersma (1999), Alcaraz and Hughes (2002), Gotti (2012a), as well as Riley and Sours (2012).

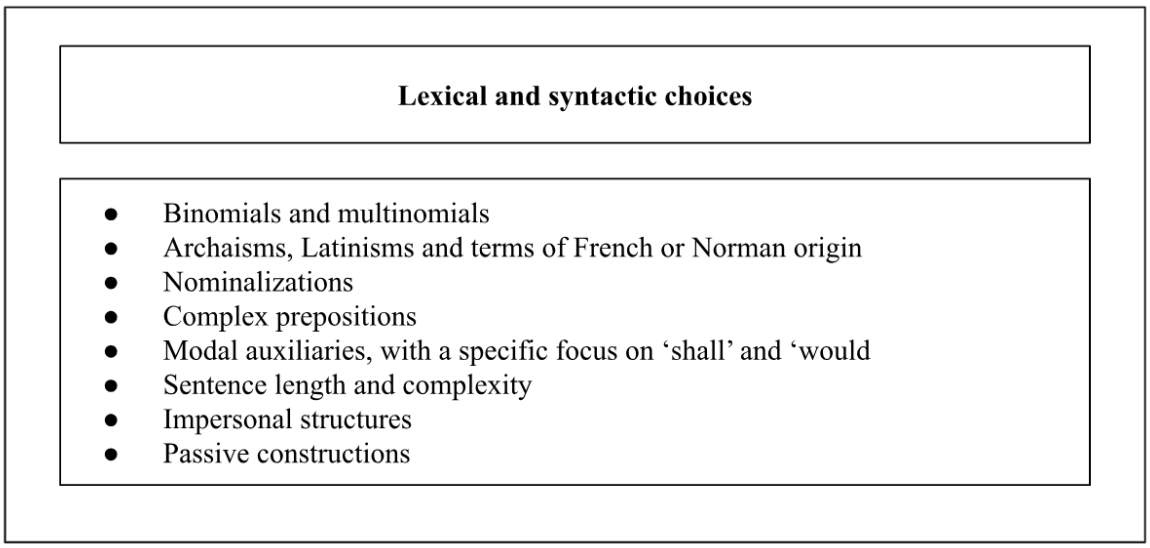

Figure 4.12: Classification used to conduct the present research.

The features included in Figure 4.12 represent the key characteristics of legal English identified by linguists and other scholars, as previously mentioned. However, within the civil law paradigm, the judiciary makes a meticulous interpretation and application of the broad principles delineated in the civil code to specific real-world scenarios. Consequently, this framework privileges stylistic preferences characterized by overarching generality and streamlined expression. In contrast, the common law system operates on the bedrock of legal

precedence, wherein the rulings of previous adjudicators serve as binding precedents for subsequent analogous cases. Therefore, paramount importance is accorded to the clarity and precision of expression in legal drafting within this framework. This conceptual gap manifests in the stylistic predilections of drafters, involving differences such as sentence length and structure, binomial expressions, the use of *shall*, complex prepositions, archaic words, Latinate and French forms.

Chapter 5 comprehensively examines all features characteristic of legal English that have previously served as indicators of potential divergences between legal texts in civil law and common law contexts. Each feature undergoes detailed analysis and description in subsequent chapters and sections.

4.4. Methodology and data retrieval techniques

The features identified in Figure 4.12 in the preceding subsection necessitate distinct extraction mechanisms, each of which is elaborated upon in the respective sections below. Due to variations in subcorpora sizes, this study employs normalization techniques for all frequencies. Normalization is imperative as it enables comparison of corpus frequencies and facilitates statements regarding what is relatively more frequent, ensuring comprehensive analysis despite differences in corpus sizes (Brezina 2018, 43). This entails that all absolute frequencies, namely the "actual count of all occurrences of a particular word in a corpus" (Brezina 2018, 42) have been normalized to compare the corpora under analysis in this research, which have different sizes. The relative or normalized frequency is calculated using the following formula commonly employed in several numerous linguistic studies (e.g., McEnery et al. 2006, 52ff; Biel 2014, 135ff; Brezina 2018, 43):

> *relative frequency = (absolute frequency ÷ number of tokens in corpus) × (basis for normalization = 100,000)*

In other words, the raw frequency, which represents the number of occurrences, is divided by the number of tokens in the corpus. The resulting quotient is then multiplied by the common base considering the number of words contained in the subcorpora. These calculations are performed using Excel spreadsheets.

The common base was established at 100,000 words. While 1,000,000 is typically the standard baseline in corpus linguistics, for relatively small corpora, "smaller bases for normalization than one million are more appropriate, e.g. normalization per 10,000 or even 100,000 words" (Brezina 2018, 43).

The majority of the quantitative data were retrieved using WordSmith Tools 8.0. However, this study also necessitated a manual analysis of the concordances. According to McEnery *et al.*, this type of technique is termed as 'collocation-via-concordance', which is a technique through which "it is the linguist's intuitive scanning of the concordance lines that yields up notable examples and patterns, not an algorithm or recoverable procedure. The computer's role ends with supplying the analyst with a set of (probably sorted) concordance lines" (2012, 125). This technique was feasible due to the manageable size of the subcorpora under examination. The task required a significant investment of time, but it was feasible to complete.

4.4.1 Binomials and multinomials

To retrieve binomials and multinomials, it was crucial to first establish their definitions. In this research, the definition provided by Bhatia is adopted, which defines binomials or multinomials as "a sequence of two or more words"[121] (1993, 197). However, unlike Bhatia's definition, these expressions are not confined to the same word-class. Moreover, as Bhatia (1993, 197, based on Bhatia 1984, 90) further explains, binomials and multinomials are connected by a syntactic device such as 'and' or 'or'. Therefore, the extraction of binomials and multinomials was conducted through a semi-automatic method based on the identifiable element in the expression, which is either 'and' or 'or', along with the number of lexical elements contained in the expression:

wildcard (*) + *and/or* + *wildcard* (*)

In the empty slot, denoted by a 'wildcard', any lexical element could be identified, thus allowing for versatile and comprehensive analysis. The investigation employs the Clusters function integrated within the Concord tool of WordSmith Tools 8.0 to facilitate the search process. This function is configured to detect word clusters incorporating the connectors 'and' or 'or' within a span of 3 to 6 words. Additionally, a frequency threshold of 3 occurrences per 100,000 words is established as the criterion for filtering out individual patterns, ensuring precision and reliability in the identification process.

The results retrieved from the investigation undergo meticulous categorization, based on the discernment of the number of elements present, thereby distinguishing between binomials and multinomials. These categorized findings are subsequently methodically organized based on the word class of their constituent elements, leading to the creation of several distinct groups. These groups are delineated to involve nouns, verbs, adjectives, and adverbs. Specifically, the categories encompass: [N + and/or + N], [V + and/or + V], [Adj + and/or + Adj], [Adv + and/or + Adv], along with a heterogeneous mixed category amalgamating different word classes.

[121] As previously mentioned, the complete definition provided by Bhatia explains that binomial and multinomial expressions are constituted by "a sequence of two or more words or phrases belonging to the same grammatical category having some semantic relationship and joined by some syntactic device such as 'and' or 'or)" (1993, 197). However, in this study, utilizing manual observation alongside computational methods, instances were identified where binomials and multinomials comprised lexemes from different word classes or consisted of multiple lexemes.

4.4.2 Archaisms, Latinisms, and terms of French/Norman origin

The technique used to retrieve quantitative data concerning archaisms, Latinisms and terms of French/Norman origin was semi-automatic. Specifically, utilizing the general search tool of WordSmith Tools 8.0, occurrences of these terms were extracted. The algorithm for extracting instances of archaic adverbs, Latinisms, and terms of French/Norman origin relied on simple deictics such as 'here', 'there', 'where', followed by a wildcard symbol, denoted as *: *here*, where*, there**.

It is also important to highlight that compound adverbs retrieved through the mentioned algorithm were excluded in certain cases as they do not qualify as archaisms, such as 'therefore'. Additionally, to ensure the inclusion of only archaic forms, the definitions of terms were cross-referenced with the Cambridge English Dictionary (online) to verify their definitions and confirm status as archaisms.

Furthermore, beyond compound archaic adverbs, legal language demonstrates a formulaic quality through the utilization of other conventional terms or expressions, including prepositional phrases recognized as archaic. Alcaraz and Hughes (2002, 9) enumerate such phrases, encompassing 'pursuant to', 'without prejudice to', 'subject to', and 'notwithstanding'. The scrutiny of prepositional phrases within the Main Corpus extends to terms such as 'notwithstanding', 'aforementioned', and 'deem/deemed', which are perceived as archaic by proponents advocating for plain language (e.g., Duckworth and Spyrou 1995, 54). The search algorithm is calibrated to identify both the complete terms listed above and their archaic components, employing a wildcard for elements like 'afore'.

Regarding the exploration of Latinisms, the search was conducted using the general search function of WordSmith Tools. Targeted Latinisms were identified based on compilations offered by Alcaraz and Hughes (2002, 5) and Gotti (2011, 85; 2017, 326). To accommodate potential Latinisms not encompassed in the provided lists, a manual examination of Latin terms and expressions was undertaken. No frequency threshold was imposed, ensuring the capture of all instances of Latinisms.

Finally, regarding terms of French/Norman origin, the investigation has concentrated on loanwords from French within the Main Corpus. Identifying these loanwords entailed using the general search function within WordSmith Tools. Targeted French terms were examined with reference to examples and compilations provided by Alcaraz and Hughes (2002), as well as Cantlie (1989) and Alderman (1950). To mitigate potential oversights in the aforementioned compilations, a manual analysis of loanwords from French was undertaken.

No predetermined frequency threshold was imposed, ensuring the exhaustive capture of all instances of loanwords from French.

4.4.3 Nominalizations

To retrieve the occurrences of nominalizations, a straightforward retrieval algorithm was utilized. The search process entailed employing a wildcard preceding the primary suffixes of nominalizations (Biber *et al.*, 1998; 1999; Leech *et al.*, 2009), thereby creating an empty slot: **ability, *able*, *ance, *ation, *ence, *ency*, and so on. No frequency threshold was enforced to guarantee the exhaustive retrieval of all instances of nominalizations.
Furthermore, it should be pointed out that certain suffixes have been intentionally omitted from the dataset. This decision was driven by the overarching research goals, which prioritized the examination of nominal constructions pertinent to the comparative analysis between civil law and common law legal texts. Consequently, nominalizations associated with occupational designations (marked by the suffix *-ian*) or expressions denoting singular occurrences (characterized by the suffix *-ism*) were considered irrelevant to the specific linguistic attributes under examination.

4.4.4 Complex prepositions

The analysis of complex prepositions constituted a fundamental part of this study, necessitating a considerable dedication of time. This process involves identifying structures characterized by a simple preposition followed by any noun and then another simple preposition (*simple preposition - any noun - simple preposition*). This pattern, as noted by Hoffmann (2005, 23), ensures the retrieval of virtually all relevant PNP-constructions (*Preposition - Noun - Preposition*). The search algorithm is depicted in Figure 4.13 below, inspired by the methodology outlined by Hoffmann (2005).

Figure 4.13: Retrieval algorithm for the compilation of a list of potential complex prepositions based on Hoffmann's (2005) work.

As clarified by Quirk *et al.* (1985, 669), the differentiation between simple and complex prepositions is based on the number of elements they contain. As previously elucidated in Paragraph 2.4.2.6, complex prepositions, unlike simple prepositions, comprise more than one word, typically forming two- and three-word sequences. Both forms of complex prepositions commonly end with a simple preposition (Biber *et al*. 1999, 75). These two types of complex prepositions may involve either a lexical word and a simple preposition, as in 'regardless of', or include the following elements: *Simple preposition + (Article) + Lexical word + Simple preposition*, as in 'for the purpose of' (Bhatia 1993, 196).

The methodology for the retrieval of complex prepositions thus entails the application of a retrieval algorithm that employs different combinations of two simple prepositions connected by a wildcard (*), such as 'by + * + of'. Importantly, no frequency threshold was imposed to ensure the exhaustive retrieval of all instances of nominalizations. This systematic approach facilitates a thorough investigation of complex prepositions and their usage patterns.

The search for the compilation of the list of complex prepositions contained within the Main Corpus is conducted using the Concord tool of WordSmith Tools 8.0. However, the results obtained from WordSmith Tools 8.0 necessitated manual analysis to confirm that the PNP-constructions were indeed complex prepositions eligible for inclusion in the list. Furthermore, an additional search is conducted to encompass the possibility of encountering a definite or indefinite article preceding the noun in the PNP-constructions: *simple preposition + the/a + any noun + simple preposition*.

4.4.4 Modal auxiliaries

The process of retrieving modal auxiliaries begins with a broad search for such auxiliaries across all subcorpora. Their search algorithm relies on conducting a straightforward search for a specific modal auxiliary, followed by an analysis of its immediate collocational context using the Concord tool of Wordsmith Tools 8.0. Following this, given the substantial significance of *shall* in legal English and its role as a hallmark of the common law legal drafting tradition, denoting legal obligation (Gotti 2008a, 238), particular attention is directed towards the modal auxiliary *shall*. This entails an in-depth examination of its usage within the Main Corpus to ascertain whether discrepancies exist between the common law and civil law subcorpora. As a result, the subsequent methodological phase entails a qualitative examination regarding *would* and *shall*. In particular, the analysis of the former

involved the investigation of its function across the subcorpora. This involves determining the meanings of *shall* through the analysis of concordance lines. Subsequently, the meanings of each modal auxiliary are compared across the corpora and within individual corpora to identify potential discrepancies. The identified categories of functions encompass the deontic, performative, mixed, and future sense of *shall* across the subcorpora.

4.4.5 Sentence length and complexity

In order to analyze the sentence length within each subcorpus of the Main Corpus, a methodical approach was employed utilizing WordSmith Tools 8.0 to gather quantitative data. Specifically, this involved extracting the average number of words per sentence from each subcorpus. By employing this methodology, a comprehensive understanding of the variations in sentence length across different segments of the corpus was attained, facilitating deeper insights into the linguistic characteristics and patterns within the dataset. Specifically, thanks to the generation of statistics, WordSmith Tools 8.0 is able to provide information regarding the length of texts and sentences. Thus, utilizing WordSmith Tools, the statistical analysis conducted with WordSmith Tools enabled the determination of the average number of words per sentence in each subcorpus within the Main Corpus.

Sentence complexity is also analyzed in this research. Specifically, instead of analyzing the whole corpus, a representative subset of data was sampled for analysis. The subset of data was extracted from two specific Moves of the arbitral awards of all seven subcorpora, namely ArbDHP-2, designated as 'Details of the disputes', and ArbDHP-3, designated as 'Reviews of contentions and claims'. Arbitral Moves ArbDHP-2 and ArbDHP-3 stand out as key focal points for analysis, integral to the arbitral award's core. These moves encapsulate not only the intricate dispute particulars but also the arbitrator's meticulous scrutiny and synthesis of the opposing parties' stances. Additionally, a thorough previous examination reveals a significant incorporation of factual details within these parts of texts, heightening their analytical appeal. The analysis thus centers on the sentence structures utilized within the aforementioned two Moves. Specifically, both simple and more complex sentence structures are examined, including the following:

- Simple sentences, containing a subject and a verb and expressing a complete thought;
- Compound sentences, comprising two independent clauses connected by a coordinating conjunction;

- Complex sentences, formed by two independent clauses joined by a coordinating conjunction;
- Complex-compound sentences, constituted by one independent clause and one or more dependent clauses, frequently employing a subordinating conjunction or relative pronoun to establish relationships between clauses.

In order to obtain quantitative insights into the sentence structures employed in the Main Corpus, it was crucial to gather a representative subset of data through sampling. Subsequently, a manual analysis of randomly selected arbitral awards from all seven subcorpora was conducted to identify the various types of sentences present within the selected Moves.

4.4.6 Impersonal structures

The methodological approach toward retrieving and analyzing impersonal structures initially entailed delineating the parameters that define such constructions. Impersonal structures frequently entail the employment of indefinite pronouns, such as *it* or *there*, alongside impersonal verbs, such as *to be* or *to seem*. Such pronouns and specific verbs were thus taken into consideration while conducting the search with WordSmith Tools 8.0, which was used to scrutinize linguistic patterns associated with impersonal structures:

- it is;
- it was;
- there is;
- there was;
- structures with impersonal verbs, such as *seem*, *say*, *matter*, etc.;
- other impersonal structures (e.g., with *one*, *everyone*, etc.).

The searches specifically targeted sentences including phrases such as ‘it is/it was’ or ‘there is/there was’, followed by common impersonal verbs. Subsequently, manual analysis was performed to identify the concordance lines containing instances of impersonal constructions.

4.4.6 Passive constructions

In a manner akin to the process of retrieving impersonal constructions, the methodological approach to gathering and analyzing passive constructions commenced with defining the parameters that delineate such structures. The Concord tool of WordSmith Tools 8.0 was employed to scrutinize the specific linguistic patterns linked to passive constructions, encompassing the following:

- 'be' + past participle (e.g., 'is written', 'was written');
- Modal verbs + 'be' + past participle (e.g., 'can be improved', 'should be noted');
- 'get' + past participle (e.g., 'gets replaced', 'got lost');
- Passive gerunds (e.g., 'being repaired', 'having been completed');
- Passive infinitives (e.g., 'to be heard', 'to be seen').

Following the data collection phase with WordSmith Tools 8.0, it was crucial to pinpoint the concordance lines featuring instances of passive constructions. This manual scrutiny was essential to guarantee precision in identifying and categorizing passive constructions within the legal texts being analyzed.

CHAPTER 5

LINGUISTIC, CULTURAL, AND LEGAL ASPECTS IN ARBITRAL AWARDS: LEXICAL AND SYNTACTIC FEATURES IN THE MAIN CORPUS

As discussed in preceding chapters, international commercial arbitration serves as a dispute resolution mechanism, facilitating participants from diverse sociocultural backgrounds in resolving conflicts on a global scale. According to Kidane, "in the context of international arbitration, it is theoretically possible that each party, lawyer, and arbitrator comes from a different cultural background" (Kidane 2017, 17). Additionally, Kidane further emphasizes that every person, rule and institution possess a unique cultural profile, leading to the application of distinct systems of knowledge, behaviors, beliefs, understanding, and values. As a result, this process inherently brings about the convergence of various legal cultures.

Legal culture, defined as "attitudes, values, and opinions held in society with regard to law, the legal system, and its various parts" (Lawrence 1977, 76), plays a pivotal role in shaping the dynamics of international commercial arbitration. Recognizing the existence of these diverse legal cultures becomes imperative within the realm of international commercial arbitration. As Kidane (2017, 15) aptly argues, acknowledging the potential divergence in cultural backgrounds is crucial for navigating the intricacies of the arbitration process.

As discussed in Chapter 3, the design of international commercial arbitration aims for flexibility, intending to accommodate participants from varied legal cultural backgrounds, encompassing both civil law and common law traditions. Despite numerous attempts over the decades to harmonize arbitration, international commercial arbitration persists as a domain characterized by cultural intersection, posing clear challenges in the arena of intercultural communication (Hafner 2011).

Concerning the construction of legal opinions, the process seems ostensibly similar in both legal traditions, involving the application of relevant legal rules to the factual circumstances of a case to arrive at a legal conclusion. However, the foundational assumptions guiding these two systems are markedly distinct. Notably, a crucial distinction between civil law and common law lies in the process of creating and applying law. As discussed in Section 3.4, in common law legal systems, the doctrine of precedent plays a pivotal role, mandating that

a court follows its prior decisions. This involves reaching decisions through a process of reasoning by analogy, where the facts and outcomes of past cases are compared with those of the current case to establish legal consequences. Conversely, civil law systems, anchored in civil codes, do not adhere to the doctrine of precedent. Instead, decisions in these systems are typically arrived at through deductive reasoning, wherein pertinent sections of the civil code are identified and applied directly to specific cases.

These divergences regarding the source of law and its application result in variations in professional reasoning within different legal traditions. As Gotti claims, this "conceptual differentiation underlying the two legal systems" gives rise to a "stylistic difference" (2008a, 235), which can manifest in the drafting of legal texts, including arbitral awards. Hence, this chapter delves into the exploration of the impact of sociocultural diversity on the discourse of international commercial arbitration, with a specific focus on the role of cultural differences in professional reasoning during the arbitration process. As mentioned in Subsection 2.5.1, prior comparative studies have scrutinized normative texts in arbitration (e.g., Bhatia *et al*. 2003; Bhatia, Candlin and Engberg 2008; Gotti 2008a). A substantial body of linguistic research in the field of arbitration discourse delves into the implementation of transnational arbitration laws and regulations within diverse legal cultures across various national contexts. Notably, scholars like Gotti (2008a) seek to clarify how specific national cultural contexts influence language choices in crafting normative texts within the realm of arbitration. Gotti underscores that discrepancies in the normative discourse of transnational and national arbitration texts can be traced back to reactions shaped by distinct "cultural, linguistic, and legal environments" (Gotti 2008a, 247).

In addition to focusing on the impact on national and related legal culture, scholars have shown interest in investigating the influence of professional culture on arbitration discourse. Notably, scholars like Bhatia, Candlin and Sharma (2009) and Bhatia (2010b) suggest that arbitration practices are gradually being 'colonized' by litigation practices, leading to a "dissatisfaction with the process of arbitration, which was once considered to be quicker, cheaper and more confidential than litigation" (Gotti 2012b, 129). According to several experts in the field, such a "loss of favour in certain countries is also due to the change in nature that arbitration is undergoing" since "there has recently been a process of 'judicialization'" (Gotti 2012b, 130). Consequently, the discourse of international commercial arbitration is shaped by a spectrum of cultural factors, encompassing national culture, legal culture, and professional culture.

As stated above, while prior studies have explored normative texts in arbitration, there is limited research on the genre of arbitral awards (Bhatia, Garzone and Degano 2012) and on

the influence of cultural differences (Hafner 2011) in the discourse of professional reasoning. As highlighted in Chapter 4, this scarcity is primarily attributed to the historically restricted access to arbitral awards. This chapter therefore delves into lexical and syntactic choices within the domain of arbitral awards in order to detect discrepancies between common law and civil law subcorpora. It specifically scrutinizes the following categories: binomials and multinomials (5.1), archaisms, Latinisms, and terms of French/Norman origin (5.2), nominalizations (5.3), complex prepositions (5.4), modal auxiliaries (5.5), sentence length and complexity (5.6), impersonal structures (5.7), and passive constructions (5.8).

5.1 Binomials and multinomials

As explored in Chapter 2, binomial and multinomial expressions stand out as a significant feature within legal language, as evidenced by scholars such as Mellinkoff (1963), Gustafsson (1984), Bhatia (1993), Maley (1994), Frade (2005). Sauer and Schwan (2017, 83) underscore the importance of these expressions, which, despite their significance, are frequently neglected in research in comparison to other linguistic phenomena. This study incorporates the analysis of binomials and multinomials due to their significance in legal language, particularly within the context of arbitration discourse. As emphasized by Gotti (2008a, 236), these linguistic constructs play a crucial role in the legal drafting tradition of common law legal texts and are frequently employed in the UNCITRAL Model Law, encompassing both crystallized forms and free collocations. The utilization of binomials and multinomials in arbitration discourse is also examined by Garzone (2003, 202), who investigates their prevalence in the set of rules of the LCIA. The study reveals a predominant use of alternative coordination, with 'or' ranking as the fourth most frequent word in the text.

These linguistic constructs, connected by coordinating conjunctions, typically 'and' or 'or', manifest a semantic relationship, frequently characterized by synonymy, antonymy, or complementarity (Bhatia 1993, 197). Within legal language, binomials serve the purpose of rendering an argument comprehensive, all-inclusive, and unambiguous (Gustaffson 1975, 100; Bhatia 1993, 200; Mattila 2006, 112). This pursuit of clarity and unequivocality results in a certain verbosity (Sauer and Schwan 2017, 86).

The term 'binomial', introduced by Malkiel (1959), is adopted in this research to denote linguistic constructs that have also been referred to as 'word-pairs', 'doublets', 'doubling of expressions', 'twin formulae', or 'freezes'. Sauer and Schwan (2017, 84) argue that the term 'binomial' is the most precise, as it allows for the possibility that these constructs can be formulaic with a long history or can be newly created, whether they are tautologic or not. According to Mollin, binomials are "reversible combinations that may over time freeze and acquire non-compositional meaning(s)" (2014, 13). Consequently, this study considers not only the so-called freezes but also reversible binomials.

Binomials, characterized by two coordinated elements, can be extended to multinomials, which can encompass multiple members, depending on the specific context being discussed (Gustafsson 1975, 17). Trinomials, commonly known as triplets, represent the most prevalent type of multinomials, characterized by sequences comprising three words.

5.1.1 Binomials and multinomials in the Main Corpus

Within this subsection, a quantitative analysis of binomials and multinomials is performed. First, this subsection presents the results concerning multinomials, followed by insights into binomials. Regarding multinomials, it is noteworthy to mention that the subcorpora within the Main Corpus, except for the HKIAC Subcorpus, comprised multinomials that met the formal criteria. However, these were not included in the overall count due to their infrequent occurrence. As a result, the quantitative findings reveal a surprising outcome, with the SIAC Subcorpus standing out as the only one featuring a sufficient number of multinomials to be statistically considered. As evident from Table 5.1 below, multinomials amount to 20 occurrences per 100,000 words within the SIAC Subcorpus.

Multinomials	**Relative frequency**
legal, valid and proper	8
promote, market, sell and/or distribute	7
officers, employees and/or agents	5
Total	**20**

Table 5.1: Multinomials in the SIAC Subcorpus.

The multinomials identified within the SIAC Subcorpus pertain to legal and commercial matters, as depicted in Table 5.1. Furthermore, the multinomials within the Main Corpus are structured as follows:

- [Adj + Adj + and/or + Adj]: e.g., ‘Legal, valid and proper’;
- [N + N + and/or + N]: e.g., ‘Officers, employees and/or agents;
- [V + V + V + and/or + V]: e.g., ‘Promote, market, sell, and/or distribute’;

According to the quantitative results, multinomials are not sufficiently prevalent within the Main Corpus. As a consequence, they do not allow for drawing further conclusions regarding their usage. The only discernible observation is that across the majority of subcorpora, the

use of multinomials is minimal, suggesting an avoidance of structures that tend to produce verbosity.

Regarding binomials, four primary morphological structures of binomials are observed, consisting of nouns (N), adjectives (Adj), verbs (V), and adverbs (Adv). Furthermore, an additional mixed category is observed, encompassing noun-based nominals, including those composed of nominal phrases. For example, a binomial comprising a noun and a nominal phrase with adjectival premodification [N + and/or [Adj + N]] or [[Adj + N] + and/or + [Adj + N]], as exemplified by 'opinion and final award'. Similarly, verb-based binomials such as 'applied for or used by' are included, denoted as [[V + Pr] + and/or + [V + Pr]], where the prepositions are integral to the complex predicate. Pronoun-based binomials and those composed of function words are also included in the mixed category, along with binomials composed of multi-word elements belonging to different world classes. Examples include 'whether or not' and 'slow moving and obsolete inventory'.

The following main structures have therefore been identified in the Main Corpus:

- [N + and/or + N]: e.g., 'Fees and expenses', 'Failure or inability';
- [V + and/or + V]: e.g., 'Ascertain and declare', 'Approve or disapprove';
- [Adj + and/or + Adj]: e.g., 'Independent and impartial', 'Null and void', 'False or misleading';
- [Adv + and/or + Adv]: e.g., 'Retroactively and immediately', 'Jointly and severally', 'Directly or through';

Furthermore, the identified mixed morphological structures, wherein certain binomials are created by combining words from different grammatical classes, encompass a variety of instances, including but not limited to the following:

- [Pr + and/or + Pr]: e.g., 'On or about';
- [N + and/or + [Adj + N]]: e.g., 'Opinion and final award';
- [[Adj + N] + and/or + N]: e.g., 'Full force and effect';
- [[Adj + N] + and/or + [Adj + N]]: e.g., 'Good faith and fair dealing';
- [Adj + and/or + [Adj + N]]: e.g., 'Incomplete and poor quality';
- [[Ger + Pr] + and/or + Pr]: e.g.., 'Arising out of or in connection with';
- [[Ger + Pr] + and/or + [Ger + Pr]]: e.g., 'Arising out of or relating to';
- [Pr + and/or + Ger]: e.g., 'Until and including';
- [[Ger + Pr] + and/or + [Ger + Pr]]: e.g., 'Arising out of or relating to';

- [[V + Pr] + and/or + [V + Pr]]: e.g., ‘Applied for or used by’.

The quantitative analysis of binomials within the Main Corpus has provided interesting results, as elaborated in the tables below.

Type	**Common law subcorpora**				**Civil law subcorpora**		
	AAA	**LCIA**	**HKIAC**	**SIAC**	**SAC**	**CAM**	**ICC**
Absolute frequency of binomials	379	320	433	365	508	314	111
Featuring *and*	339	278	375	259	440	287	106
Featuring *or*	40	42	53	50	68	27	5
Featuring both *and* and *or* (e.g., ‘sell and/or distribute’)	-	-	5	71	-	-	-

Table 5.2: Absolute frequency of binomials in the subcorpora of the Main Corpus.

As depicted in Table 5.2, illustrating the absolute frequencies of binomials connected by *and* and *or*, it is evident that binomials linked by the conjunction *and* represent the most dominant type. Additionally, within both the HKIAC Subcorpus and the SIAC Subcorpus, mixed structures featuring both *and* and *or* are observable, such as in the phrase ‘sell and/or distribute’. According to the absolute frequencies shown in Table 5.2, this is particularly evident within the SIAC Subcorpus.

The relative frequencies from Table 5.2 have then been normalized for comparability. Such quantitative results are illustrated in Table 5.3 and Table 5.4 below, which also detail the morphological structure of the binomials observed in the Main Corpus.

Structure	**Common law subcorpora**				**Civil law subcorpora**		
	AAA	**LCIA**	**HKIAC**	**SIAC**	**SAC**	**CAM**	**ICC**
N + N	123	69	233	146	128	92	93

V + V	28	5	5	24	4	29	16
Adj + Adj	16	50	7	76	16	53	-
Adv + Adv	11	10	17	24	16	4	-
Mixed	45	48	27	71	42	7	16
Total	**222**	**182**	**289**	**341**	**206**	**184**	**124**

Table 5.3: Relative frequencies of binomial morphological structures in the Main Corpus.

According to Table 5.3, the awards included in the common law subcorpora present the highest number of binomials. Specifically, the SIAC, HKIAC and AAA subcorpora report higher numbers compared to the civil law subcorpora. However, an interesting exception is found in the LCIA Subcorpus, which contains a lower number of binomials compared to the other common law subcorpora. This difference could potentially be attributed to a change in the drafting style of English legal texts within English-speaking countries and, specifically in this case, in institutions based in the United Kingdom. Indeed, as highlighted in Section 2.4, one of the key recommendations of the Plain English movement includes the removal of unnecessary words and expressions to prevent redundancy, including instances of binomials.

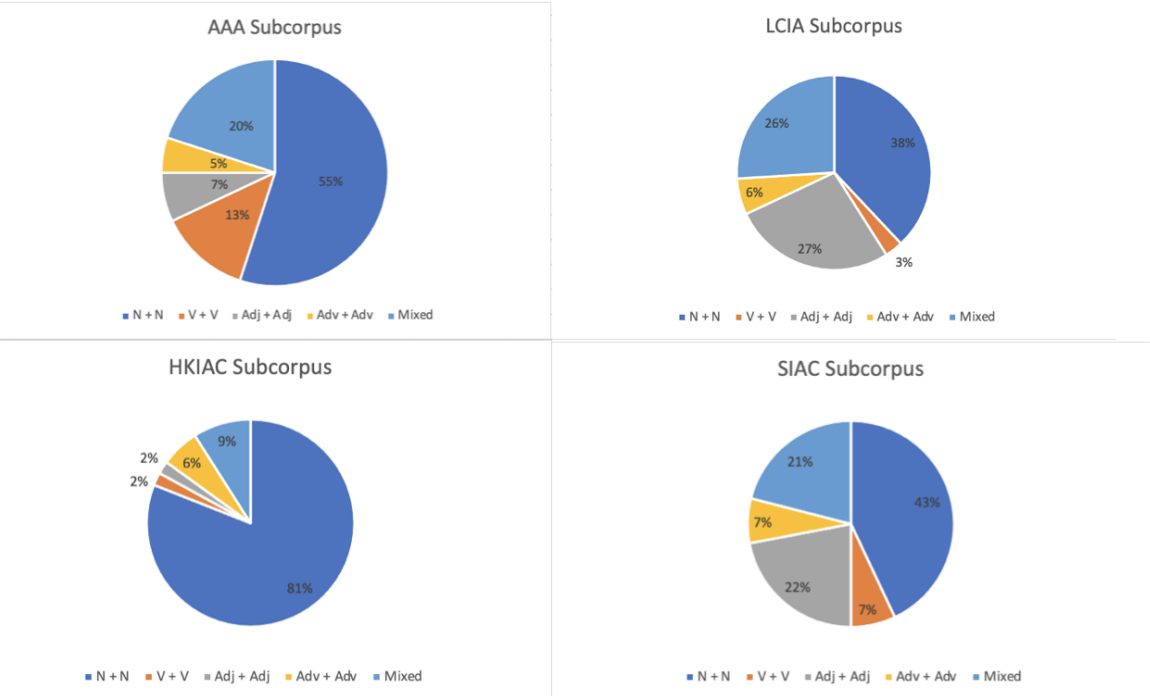

Figure 5.1: Proportion of morphological structure of binomials in the common law subcorpora.

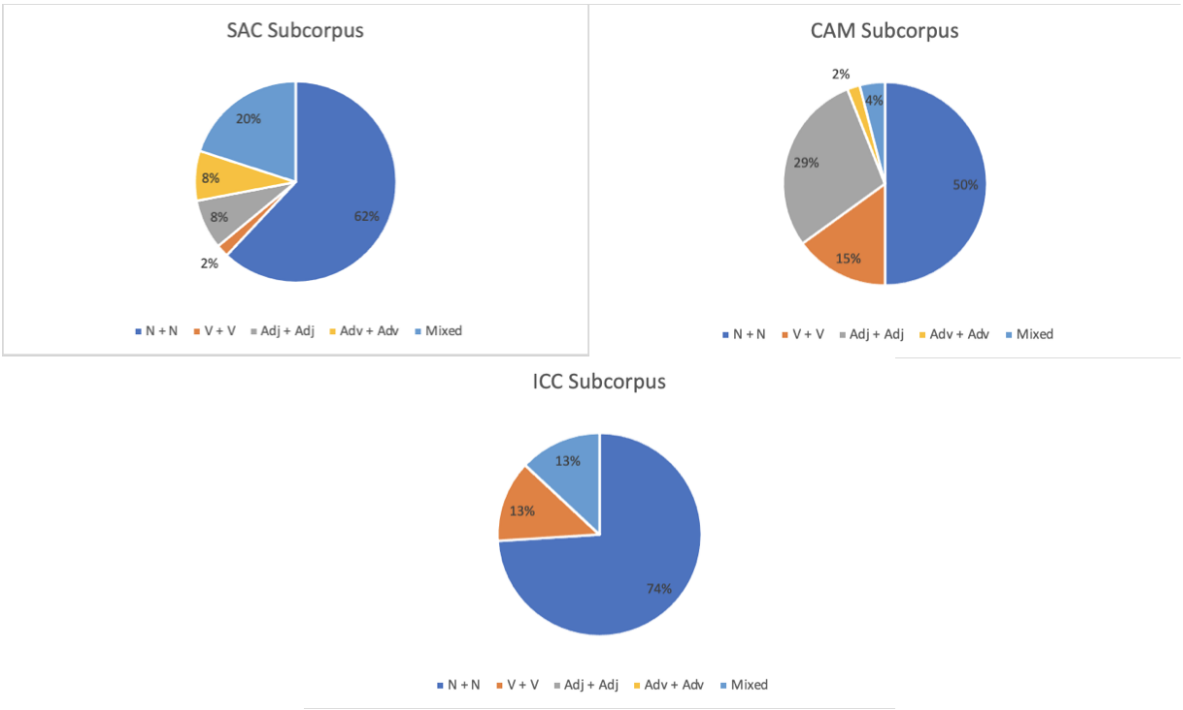

Figure 5.2: Proportion of morphological structure of binomials in civil law subcorpora.

Table 5.3, Figure 5.1 and Figure 5.2 demonstrate that binomials in the Main Corpus predominantly exhibit an [N + N] morphological structure. In terms of relative frequencies, binomials following the [N + N] structure are particularly common in the HKIAC, ICC, and SAC subcorpora. Nonetheless, the preference for noun-based binomials is consistently observed across all seven subcorpora. Additionally, within the LCIA and CAM subcorpora, there is a notable prevalence of adjective-based binomials, accounting for 27% and 29% of the total binomial occurrences, respectively. Verb-based binomials occur proportionally more frequently within the AAA, CAM and ICC subcorpora. Interestingly, adverb-based binomials are the least used across all subcorpora under analysis. Within the ICC Subcorpus, there are no occurrences of adjective-based or adverb-based binomials, which exclusively includes the remaining categories of binomials analyzed in this research. Finally, an important data point deduced from the tables above is that the AAA, LCIA and SIAC subcorpora exhibit a relatively balanced distribution of binomials by part of speech, particularly when compared to the other subcorpora of the Main Corpus. This observation likely underscores their significance as indicative of the common law legal texts' emphasis on precision and detailed specification of legal actions within specific circumstances (Bhatia, Candlin and Engberg 2008, 24).

5.1.2 Qualitative analysis of binomials

The following tables provide the twenty most frequent binomials in each subcorpus along with their normalized frequencies (NF). The results have been divided in two tables: Table 5.4, including normalized frequencies of the twenty most frequent binomials within the common law subcorpora (AAA, LCIA, HKIAC, and SIAC), and Table 5.5, including normalized frequencies of the twenty most frequent binomials within the civil law subcorpora (SAC, CAM, and ICC).

Common law subcorpora								
N.	**AAA**	**NF**	**LCIA**	**NF**	**HKIAC**	**NF**	**SIAC**	**NF**
1	*fees and expenses*	43	*perpetual and irrevocable*	30	*reply and defence*	37	*fees and expenses*	30
2	*wear and tear*	22	*costs and expenses*	13	*review and approval*	35	*clean and clear*	26
3	*fees and costs*	12	*fees and expenses*	11	*representations and warranties*	24	*void and unenforceable*	24
4	*jointly and severally*	11	*jointly and severally*	10	*debts and claims*	16	*the purchaser and/or his designates*	23
5	*compensation and expenses*	7	*rights and obligations*	6	*fees and expenses*	16	*terms and conditions*	19
6	*proofs and allegations*	7	*joint and several*	5	*costs and expenses*	15	*legal and other costs*	18
7	*failure or inability*	7	*natural and ordinary*	5	*jointly and severally*	13	*owned legally and/or beneficially*	15
8	*recognition and enforcement*	6	*null and void*	5	*defence and counterclaim*	12	*defence and counterclaim*	14
9	*these and other reasons*	5	*sold and delivered*	5	*laws and regulations*	11	*due and owing*	10
10	*opinion and final award*	5	*success and failure*	5	*whether or not*	11	*supply and license agreement*	10
11	*terms and*	5	*arbitration*	5	*sale and*	11	*the claimant*	8

	conditions		*and legal costs*		*purchase*		*and the respondent*	
12	*good faith and fair dealing*	5	*full force and effect*	5	*taxes and expenses*	7	*filed and served*	7
13	*all further and other relief*	4	*legal or other costs*	5	*tax and expenses*	6	*applied for or used by*	7
14	*disapprove all or a portion*	4	*terms and conditions*	5	*approval and registration*	6	*loss and damage*	7
15	*witnesses or employees*	4	*arising out of or in connection with*	4	*claimant and respondent*	6	*title and interest*	7
16	*contract and applicable law*	3	*sale and purchase*	4	*approval and registration*	5	*directly or indirectly*	6
17	*approve or disapprove*	3	*success and failure*	3	*arising out of or in relation to*	5	*consent or knowledge*	6
18	*claimants and respondents*	3	*due and payable*	3	*further or alternatively*	5	*further and proper*	6
19	*independent and impartial*	3	*further and better*	3	*bear and pay*	5	*nature and gravity*	6
20	*reasonable and necessary*	3	*notice or other document*	3	*false or misleading*	4	*submissions and evidence*	6

Table 5.4: Relative frequencies of the twenty most frequent binomials within common law subcorpora normalized to 100,00 words.

Civil law subcorpora						
N.	**SAC**	**NF**	**CAM**	**NF**	**ICC**	**NF**
1	*defense and counterclaim*	26	*national and international*	18	*fees and expenses*	24
2	*fees and expenses*	23	*terms and conditions*	16	*answer and counterclaims*	21
3	*until and including*	13	*partial and interim*	13	*legal and other costs*	16
4	*costs and expenses*	11	*ascertain and declare*	12	*custody and control*	11
5	*any and all*	11	*instructions and drawings*	11	*declare and rule*	10

6	*representation and assistance*	10	*find and declare*	9	*representations and undertakings*	10
7	*fees and costs*	8	*true or not*	8	*costs and expenses*	8
8	*jointly and severally*	7	*fees and costs*	8	*claimant and respondent*	8
9	*goods and merchandise*	5	*recognition and enforcement*	8	*answer and counterclaim*	6
10	*full and final*	5	*slow moving and obsolete inventory*	7	*payment and delivery*	6
11	*bodies and senior executives*	5	*photos and videos*	7	*moderate or increase*	6
12	*fabric yardage and finished goods*	5	*representations and warranties*	5	-	-
13	*the claimant and the respondent*	5	*fees and expenses*	5	-	-
14	*books and documents*	5	*costs and fees*	5	-	-
15	*terms and conditions*	5	*tested and approved*	5	-	-
16	*whether or not*	5	*the buyer and the seller*	5	-	-
17	*directly or indirectly*	5	*intents and purposes*	5	-	-
18	*by and between*	5	*claimant and respondent*	5	-	-
19	*analysis and findings*	5	*null and void*	5	-	-
20	*documents and records*	5	*valid and effective*	5	-	-

Table 5.5: Relative frequencies of the twenty most frequent binomials within civil law subcorpora normalized to 100,00 words.

Tables 5.4 and 5.5 shed light on the occurrence of binomials within the analyzed subcorpora. As evident from the tables provided, the majority of binomials observed pertain to the context of arbitration, particularly highlighting the material and procedural aspects inherent in drafting arbitral awards. For example, instances such as ‘documents and records’ (SAC), ‘books and documents’ (SAC), ‘notice or other document’ (LCIA), ‘arbitration and legal costs’ (LCIA), ‘null and void’ (CAM), ‘independent and impartial’ (AAA), ‘void and unenforceable’ (SIAC), and ‘fees and expenses’ (present in all seven subcorpora) are illustrative examples. Additionally, all subcorpora utilize vague notions typical of

international arbitration language, such as ‘recognition and enforcement’ (AAA and CAM) and ‘full and final’ (SAC).

Furthermore, a significant portion of the qualitative findings showcase instances of irreversible binomials, which are fixed in “frozen expressions” (Bhatia 1993, 367). This is illustrated through the following examples extracted from specific subcorpora of the Main Corpus:

(1) All third parties must agree to abide by the *terms and conditions* in the BSA and incorporated policies. (AAA Subcorpus)
(2) The arbitration agreement was *null and void* within Article II(3) of the New York Convention [...]. (LCIA Subcorpus)
(3) The Claimant further contends that Respondent 2 is *jointly and severally* liable for the termination payment [...]. (SAC Subcorpus)

Overall, both civil law and common law subcorpora generally contain both crystallized or frozen forms of binomials, as shown in the examples (1), (2) and (3) above, as well as free collocations, such as ‘documents and records’. Finally, an important observation regarding the ICC Subcorpus qualitative results presented in Table 5.5 is noteworthy. The ICC Subcorpus stands out as the only subcorpus featuring eleven binomials instead of the usual twenty. This discrepancy arises from the detection of only eleven binomial examples within the subcorpus. Both quantitative and qualitative data affirm that the ICC Subcorpus exhibits the lowest number of binomials among the analyzed subcorpora, making it the sole civil law subcorpus characterized by a notably limited number of binomials.

5.1.3 Results

Multinomials are not statistically relevant enough within the Main Corpus. The only subcorpus in which their occurrence increases is the SIAC Subcorpus, a common law subcorpus, in which they are used presenting various structures. As a consequence, they do not allow for drawing further conclusions regarding their usage. The only discernible observation is that across most subcorpora, there is minimal use of multinomials, signaling a deliberate avoidance of verbose structures.

With regard to binomials, on the contrary, they are statistically relevant in all subcorpora under analysis. There is a clear tendency with regard to the preferred morphological structure of binomials. As a matter of fact, all subcorpora clearly favor binomials of the [N + and/or

+ N] type. Furthermore, while all subcorpora present all targeted types of binomials ([N + and/or + N], [Adj + and/or + Adj], [V + and/or + V], [Adv + and/or + Adv], and the mixed category), the ICC Subcorpus is the only one in which only four of the targeted types of binomials are present, thus excluding the use of the [Adv + and/or + Adv] and [Adj + and/or + Adj] types of binomials. Additionally, a notable observation arising from the comparison of the findings is that the AAA, LCIA and SIAC subcorpora (with the only exception being the HKIAC Subcorpus, also belonging to the common law category) showcase a comparatively even distribution of binomials across different parts of speech, especially when compared to the other subcorpora within the Main Corpus. This observation potentially underscores their importance in mirroring the emphasis of common law legal texts on precision and thorough delineation of legal actions within specific contexts, as manifested through the utilization of different types of binomials (Bhatia, Candlin and Engberg 2008, 24).

5.2 Archaisms, Latinisms and terms of French and Norman origin

In this subsection, archaisms, Latinisms and terms of French and Norman origin are analyzed within the Main Corpus as they are fundamental characteristics of legal English (see Subsection 2.4.1) that potentially serve as indicators of differences between common law and civil law drafting conventions. Regarding archaisms, Crystal and Davy highlight that "it is particularly noticeable that any passage of legal English typically contains numerous archaic words and phrases, which are characteristic of the language used exclusively by lawyers" (1969, 207). According to Veretina-Chiriac (2012, 53), archaisms represent typical instances of legalisms and lawyerisms associated with formal style, contributing to the brevity and precision of documents. In terms of their structure and morphological features, Crystal and Davy (1969, 207) elaborate that many of these archaic words, derived from Old English, often manifest as adverbials with attached prepositions. They offer examples like *heretofore, therefrom, thereof, hereinbefore, thereafter, hereinafter, whatsoever*, and others. Additionally, a common feature in legal drafts is the placement of adverbials before the verbs they modify, as in "the arbitrators do *hereby* award…" and "all claims not expressly granted *herein*…", exemplifying prevalent archaic expressions within legal documents.

Concerning foreign words and expressions, especially from Latin, Subsection 2.4.1 discussed how legal English is richly infused with lexical elements, primarily stemming from French and Latin. This influence is largely attributed to centuries of Norman dominance in England's legal and governmental domains (Williams 2004, 112). Alcaraz and Hughes (2002, 5) propose the following examples of Latinisms in legal English: writ of *fieri facias* (you may cause it to be done), *prima facie* (at first sight), *bona fide* (good faith), *res iudicata* (a case or matter already decided), *restitutio in integrum* (restoration to the original composition), *onus probandi* (burden of proof), *mors civilis* (civil death). Regarding terms of French/Norman origin, the following examples are provided: *profits à prendre* (rights of taking; in other words, a type of easement or right allowing someone to enter a person's land to take or extract a specific natural resource or benefit), *chose* (piece of personal property or tangible asset), *feme sole* (woman who is unmarried or legally considered to be acting independently of her husband), *lien* (legal right or interest that a creditor has in another person's property as security for a debt or obligation), *on parole* (conditional release or of a prisoner before the completion of their sentence, under the supervision of a parole officer and subject to certain conditions and restrictions; in other words, conditional release). These and other archaic and foreign expressions are analyzed in this subsection to verify their

occurrences within the Main Corpus. Specifically, archaisms are analyzed in Subsection 5.2.1 and the analysis of foreign words and expressions is carried out in Subsection 5.2.2

5.2.1 Archaisms

According to Alcaraz and Hughes, in legal English, a special case of "fossilized language" is represented by compound adverbs "based on the simple deictics 'here', 'there', 'where' and so on, often referring to the text or document in which they appear or to one under discussion" (2002, 9). In this instance, the search utilizes a straightforward retrieval algorithm, wherein *here*, *there*, or *where* are succeeded by a wildcard or empty slot. No frequency cut-off was established to gather all instances of archaic adverbs. The outcomes are depicted in Table 5.6 and Table 5.7, demonstrating the normalized frequencies of the compound adverbs identified within the Main Corpus.

Compound adverb	**Common law subcorpora**				**Civil law subcorpora**		
	AAA	**LCIA**	**HKIAC**	**SIAC**	**SAC**	**CAM**	**ICC**
hereabove	-	-	-	-	1	-	-
hereafter	1	2	3	-	2	5	26
herebelow	-	-	-	-	-	1	-
hereby	26	6	15	19	4	4	4
herefrom	-	-	-	-	-	1	-
herein	15	5	10	18	3	4	3
hereinabove	-	-	-	-	2	-	-
hereinafter	4	12	16	3	16	17	4
hereof	2	3	7	10	2	2	-
hereto	2	2	3	4	2	5	2
heretofore	1	-	-	-	-	-	-
hereunder	-	1	1	8	4	2	1
hereunto	-	-	1	-	-	-	-
herewith	-	-	-	-	1	1	1
thereabouts	-	-	-	1	-	-	-

thereafter	8	9	13	15	11	5	13
thereby	6	5	5	4	1	7	4
therefor	2	-	-	-	4	1	-
therefrom	1	-	1	3	1	2	-
therein	3	3	9	11	7	11	6
thereof	10	3	7	21	21	9	3
thereon	1	2	3	5	2	1	1
thereto	1	2	8	6	5	8	1
thereunder	-	-	2	5	1	2	-
thereupon	1	1	-	2	1	6	1
therewith	1	-	1	4	4	-	-
whereabouts	-	-	1	-	-	-	-
whereas	-	-	7	7	2	2	-
whereby	1	2	3	4	2	4	10
whereof	1	-	1	2	-	-	-
wherein	3	-	1	-	2	-	-
whereupon	1	1	1	1	1	1	-
Total	**91**	**59**	**119**	**153**	**102**	**105**	**80**

Table 5.6: Relative frequencies of archaic compound adverbs in the Main Corpus.

Primarily, it is crucial to underscore that within Table 5.6, specific terms have been excluded on the basis of their divergence from archaic linguistic forms and their lack of designation as legal terminologies. Rather, these terms denote expressions commonly encountered in everyday discourse, exemplified by instances such as *therefore* and *wherever*. A particular instance pertains to the term *whereas*, which finds application beyond legal language, predominantly signifying *on the contrary* within everyday discourse. However, within the legal context, should *whereas* assume the connotation of *given the fact that* and be situated at the outset of a sentence, it assumes the status of an "archetypical legalism" frequently employed for the introduction of recitals in specific legal texts (Duckworth and Spyrou 1995, 92).

In the Main Corpus, the predominant usage of *whereas* conforms to its second semantic interpretation across the SIAC, HKIAC, CAM, and SAC subcorpora. Conversely, the AAA,

LCIA, and ICC subcorpora lack instances where *whereas* assumes the sense of 'given the fact that' and is positioned at the outset of a sentence. Furthermore, the Concord tool facilitated the observation that within the AAA, LCIA, and ICC subcorpora, *whereas* predominantly conveys the meanings of 'but on the contrary' or 'while', as evidenced by the following examples:

(4) He wanted to "get the margins up" to around 50%, *whereas* X said in the barge market the norm had been around the mid-30's. (AAA Subcorpus)
(5) For example, the headings to clauses 1 to 7 inclusive are in capitals, *whereas* the headings to clauses 8 and 9 are in lower case. (LCIA Subcorpus)
(6) First, such a decision would pertain to the merits of the case, *whereas* the Arbitral Tribunal has to decide, at the present stage, on a provisional basis. (ICC Subcorpus)

Consequently, instances where *whereas* is employed to denote 'but on the contrary' are excluded from the enumeration of compound adverbs delineated in Table 5.6.

According to the frequency table provided above, the SIAC Subcorpus (153) exhibits the highest prevalence of usage for archaic adverbs, followed by the HKIAC Subcorpus (119). Conversely, the LCIA Subcorpus (59) demonstrates the least inclination towards employing archaic adverbs. This observation suggests a conformance to the principles advocated by the Plain English movement within the LCIA Subcorpus. These principles entail the exclusion of archaic, infrequently utilized, and foreign terms, in favor of substituting them with commonplace vocabulary, aligning with patterns characteristic of everyday speech. Ultimately, the ICC and AAA subcorpora also show lower occurrences in comparison to the other subcorpora, albeit not to the extent observed in the LCIA Subcorpus.

Furthermore, Table 5.6 provides intriguing insights into the utilization patterns of specific archaic adverbs. Notably, certain adverbs, including *hereby*, *herein*, *hereinafter*, *thereafter*, *therein* and *thereof*, are consistently employed across all seven subcorpora. However, it is noteworthy that *hereby* and *herein* are predominantly favored within the common law subcorpora (AAA, LCIA, HKIAC and SIAC). Concerning the usage of *hereby*, it is frequently categorized as a "legal surplusage" (Butt and Castle 2013, 148). This term finds is often used in enactment formulas, as in the following examples extracted from the common law subcorpora:

(7) I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreement entered into between the above-named parties and

dated August 15, 2006, and having been duly sworn, and having duly heard the proofs and allegations of the Parties, do *hereby*, AWARD, as follows [...]. (AAA Subcorpus)

(8) Accordingly, the Tribunal *hereby* awards as follows [...]. (LCIA Subcorpus)

(9) Now, the arbitral tribunal, consisting of [...], having assumed the burden of this arbitration and having considered all the oral and documentary evidence adduced by both parties and for the above reasons, do *hereby* AWARD AND ADJUDGE that [...]. (HKIAC Subcorpus)

(10) For the reasons given the Tribunal *hereby* AWARDS AND DIRECTS as follows [...]. (SIAC Subcorpus)

Enactment formulas of this nature are comparatively less frequent within the civil law subcorpora. Within these contexts, *whereas* also assumes the meaning of 'within the present document'. However, in certain instances, it is employed as a stylistic preference, aligning with a conventional formula characteristic of legal English. Nonetheless, its usage in such cases does not inherently serve a legal function and often imparts a less formal tone. An illustration of this phenomenon can be discerned in the following example from the SAC Subcorpus:

(11) With regard to savings in expenditures, Claimants maintains that these amounted to a monthly sum of EUR 118,404 plus one-time costs of EUR 118,891 for software enhancement for hospital administration, etc. (K/SeA para. 4). Claimant *hereby* supports its statement through an 'Expert Statement' [...]. (SAC Subcorpus)

The provided example suggests a hypothesis that the utilization of archaic words might originate from a motivation to conform to the conventions of written legal English.

With regard to *herein*, its use appears to be the same across all seven subcorpora. Indeed, they all use it to mean 'in this document', 'in this piece of writing'. This can be observed in the following examples:

(12) All claims not expressly granted *herein* are hereby DENIED. (AAA Subcorpus)

(13) Any and all other claims made by the Parties *herein* are dismissed. (SAC Subcorpus)

As evident in examples (12) and (13), extracted from the common law and civil law subcorpora, respectively, *herein* is employed with identical meaning.

In addition to the compound archaic adverbs discussed earlier in this paragraph, the formulaic nature of legal language extends to the employment of other formulaic terms or expressions, which include prepositional phrases that are considered archaic. The following list is provided by Alcaraz and Hughes (2002, 9): *pursuant to, without prejudice to, subject to, notwithstanding*. The examination of prepositional phrases within the Main Corpus extends to other terms, such as *notwithstanding*, *aforementioned*, and *deem/deemed*, which are regarded as archaisms by advocates of plain language. These terms are seen as lacking substantive meaning or having clear, modern English equivalents (Duckworth and Spyrou 1995, 54). The search algorithm is configured to incorporate both the entirety of the terms listed above and their archaic constituents, employing a wildcard for components like *afore*. Table 5.7 below provides the relative frequencies of these formulaic words and expressions.

Formulaic words and expressions	**Common law subcorpora**				**Civil law subcorpora**		
	AAA	**LCIA**	**HKIAC**	**SIAC**	**SAC**	**CAM**	**ICC**
aforementioned	1	1	4	-	1	4	2
aforequoted	1	-	-	-	-	-	-
aforesaid	1	2	9	2	-	1	-
deem/deemed	13	7	7	21	11	38	19
forthcoming	2	4	1	1	-	1	1
forthright	1	1	-	-	-	-	-

forthwith	1	2	6	1	-	-	-
henceforth	-	1	-	-	1	-	-
notwithstanding	5	7	2	18	4	4	1
pursuant to	43	57	67	94	44	88	32
subject to	14	26	9	30	34	26	20
without prejudice to	2	3	1	7	2	1	49
Total	**84**	**111**	**106**	**174**	**97**	**163**	**124**

Table 5.7: Relative frequencies of formulaic words and expressions regarded as archaisms by proponents of the Plain English movement in the Main Corpus.

Based on the data presented in Table 5.7, it becomes apparent that both common law, particularly evidenced within the SIAC Subcorpus, and civil law, particularly notable within the CAM Subcorpus, exhibit a propensity for employing formulaic words and expressions. Of all seven subcorpora analyzed, the AAA Subcorpus demonstrates the least prevalence of these words and expressions, plausibly attributed to the influence exerted by the Plain English movement. While the LCIA Subcorpus does not exhibit a stark departure from the usage pattern observed in the AAA Subcorpus, it does employ vocabulary and expressions in a manner akin to other civil law and common law subcorpora, including the HKIAC Subcorpus, SAC Subcorpus, and the ICC Subcorpus. The prepositional phrase 'pursuant to' appears to be the most commonly used across all subcorpora, closely followed by 'subject to'. However, the quantitative data provided in Table 5.7 suggest a fairly consistent usage of formulaic words and expressions across both common law and civil law subcorpora.

However, additional insights can be provided from the analysis of the concordances of specific words and expressions outlined in Table 5.7. For example, concerning the word form *afore*, it is found alongside the more contemporary word form *above* within the Main

Corpus. Specifically, within the civil law subcorpora, *abovementioned* is used (SAC: 5; CAM: 12; ICC: 5). On the contrary, within the common law subcorpora, *abovementioned* is only present within the HKIAC Subcorpus (19). Within the civil law subcorpora, all variants including *abovementioned*, *above-mentioned* and *above mentioned* are observed, as illustrated in the following examples:

(14) Pursuant to the *above mentioned* arbitration clause (Article 7.2), the seat of the arbitration is Milan and the language of the arbitration is English. (CAM Subcorpus)

(15) The plaintiffs commented on the *above-mentioned* objection by email dated March 31, 2016. (SAC Subcorpus)

(16) Pursuant to the *abovementioned* arbitration clause, English should be the language of the arbitration. (CAM Subcorpus)

Within the civil law subcorpora, it is notable that both the *afore* and *above* forms even coexist within the same sentence. In this instance, the utilization of both expressions may serve a deliberate purpose, aiming to ensure clarity and eliminate ambiguity. Employing both terms could be interpreted as a method of over-explanation or excessive caution to avoid any misinterpretation of the referenced material. This notion is illustrated by the following example extracted from the ICC Subcorpus:

(17) We take reference to the e-mail dated March 16, 2011 related to the *aforementioned* proceeding and would like you to take notice of the fact that following the circular resolution dated February 23, 2011 neither the bankruptcy estate nor one of the creditors have asked to take over the *above mentioned* proceeding. (ICC Subcorpus)

Additionally, *forthwith* stands out as an interesting term, exclusively present within the common law subcorpora. It is primarily employed in relation to the concept of one or both parties' obligation to promptly pay a specific sum of money. This usage is exemplified in the following example:

(18) The Respondent shall pay *forthwith* the Claimant a sum of US $ X. (HKIAC Subcorpus)

Another intriguing observation pertains to the term *deem/deemed*, which is employed across all seven subcorpora, despite being viewed as a problematic and ambiguous term that introduces artificiality into legal language (Duckworth and Spyrou 1995, 13). Specifically, *deem/deemed* is often employed alongside the verb *shall* in all subcorpora except the LCIA Subcorpus. Upon scrutinizing the concordance lines, it is indeed evident that the phrase 'shall be deemed' does not occur within the LCIA Subcorpus. Once again, it is plausible that the LCIA adheres to the recommendations of the Plain English movement, which considers both *deem* and *shall* as unnecessary archaisms lacking precise meanings (e.g., Asprey, 1992; Duckworth and Spyrou 1995; Williams 2005). Indeed, the LCIA Subcorpus only contains seven occurrences of *deem* or *deemed*, which is lower compared to the other subcorpora, and it lacks any instances of 'shall be deemed'.

Overall, it can be concluded that regarding formulaic words and expressions considered archaisms by proponents of the Plain English movement, the quantitative data indicate a relatively consistent usage across both common law and civil law subcorpora. However, in qualitative terms, specific subcorpora exhibit a dominance of particular expressions with unique usage patterns, which diverge from those found in other subcorpora.

5.2.2 Foreign words and expressions

Legal professionals are known for incorporating Latinisms into their language, as Mellinkoff (1963) observes, thereby elevating the complexity of legal discourse significantly. These Latin-derived expressions serve as a distinctive feature of legal terminology, offering precise delineations for particular legal concepts while also infusing the discourse with an atmosphere of formality and tradition. Gotti (2017, 326) further highlights the prevalence of Latinisms in awards, underscoring the idea that arbitration is influenced by legal conventions, almost as if it were undergoing a process of 'colonization' from the legal sphere.

In this research, the search of Latinisms occurred through the general search tool of WordSmith tools. Specific Latinisms were sought based on the compilations provided by Alcaraz and Hughes (2002, 5) and Gotti (2011, 85; 2017, 326). To account for potential Latinisms not covered in the lists provided by the aforementioned scholars, a manual analysis of Latin terms and expressions was conducted. No threshold for frequency was set to capture all occurrences of Latinisms. The results are presented in Table 5.8, showcasing the normalized frequencies of Latinisms identified within the Main Corpus.

Latinisms	**Common law subcorpora**				**Civil law subcorpora**		
	AAA	**LCIA**	**HKIAC**	**SIAC**	**SAC**	**CAM**	**ICC**
ad hoc	-	-	-	-	1	1	-
annex / annexes / annexed	11	56	26	3	4	12	24
bona fide	1	-	-	1	-	-	1
causa petendi	1	-	-	-	-	1	-
consensus	2	1	16	1	1	1	-
e.g. (exempli gratia)	13	6	1	1	11	9	2
ex aequo et bono	-	-	-	1	-	3	-
ex facie	-	-	-	1	-	-	-
ex parte	-	-	1	-	-	1	-
ex post facto	-	-	-	-	1	-	-
i.e. (id est)	32	38	48	20	50	35	21
inter alia	3	12	17	16	5	14	18

interim	13	8	15	9	5	18	7
minimum	5	2	6	9	21	13	6
petitum	1	-	-	-	-	4	-
res iudicata / res judicata	-	-	-	-	5	1	-
status quo	1	1	1	2	-	-	-
subpoena	3	-	-	-	-	-	-
v. / v (versus)	50	34	19	35	9	8	9
Total	**136**	**158**	**150**	**99**	**113**	**121**	**88**

Table 5.8: Relative frequencies of Latinisms in the Main Corpus.

Based on the quantitative data presented in Table 5.8, the use of Latinisms within the Main Corpus shows consistency across all seven subcorpora. However, a slightly lower frequency is observed within the SIAC Subcorpus (99) and the CAM Subcorpus (88). Higher occurrences are noted within the common law subcorpora, particularly within the LCIA Subcorpus. The most recurrent Latinisms across all subcorpora are *annex / annexes / annexed, i.e., inter alia, interim, minimum* and *v. / v (versus).* Specifically, *v. / v* assumes a significant role, particularly within the common law subcorpora: AAA (50), SIAC (35) LCIA (34) and HKIAC (19). Remarkably, within the AAA Subcorpus, *v. / v* reaches a total of 50 occurrences. Interestingly enough, using the Concord tool, it was possible to ascertain that many occurrences specifically refer to previous cases (precedents) meticulously considered in deciding the case at hand. In the AAA Subcorpus, the absolute frequency of this Latinism amounts to 62 occurrences, with a relative frequency of 36. This trend is exemplified by the following instances provided by the common law subcorpora:

(19) The Arbitrator finds that X has sufficiently established that the rates charged by its counsel are consistent with those charged by other comparable law firms in the New York area. See, e.g., *Rozell v. Ross-Hoist*, 576 F. Supp. 2d 527, 544-46 (S.D.N.Y. 2008) (approving $600 per hour for work performed in 2006 and 2007); *Phoenix Four, Inc. v. Strategic Res.* Corp., No. 05 Civ. 4837, 2006 WL 2135798, at *2 (S.D.N.Y. Aug. 1, 2006) (same for work performed in 2006) [...]. (AAA Subcorpus)

(20) The Penalty Argument. Respondent cited a number of Texas cases regarding penalty. These were in the context of liquidated damages clauses in a commercial contract. The cases hold that some clauses amount to a penalty, but some do not, and are enforceable. We find these cases are not controlling here, because this case does not deal with a commercial contract with a liquidated damages clause. This involves a settlement agreement, and we find the case of *Belton v. St. Claire & Case*, 1992 WL 199391 (Tex, App. Dallas, writ dism'd w.o.j.), along with *Wiley-Reiter Corp. v. Groce*, 693 S.W.2d 701 (Tex.App.Houston - 14th, no writ), provide compelling reasoning. (AAA Subcorpus)

(21) An anticipatory repudiation constitutes an irreparable and total breach of the contract. See, e.g., *Andrews v. Cross Atlantic Capital Partners*, Inc., 158 A.3d 123, 143 (Pa. Super. Ct. 2017) ("[s]imply put, the anticipatory repudiation of a contract accords the plaintiff an immediate right to sue for breach of contract"); *Harrison v. Cabot Oil & Gas Corp.*, 110 A.3d 178, 184 (Pa. 2015); 16 Summ Pa. Jur. 2d Commercial Law §6:38 (2d ed. 2018) (explaining that "renunciation or repudiation of a contract... that amounts to a refusal to perform it at any time, gives the adverse party the option to treat the entire contract as broken"). (AAA Subcorpus)

(22) As to set-off, Pearl says that it is excluded by the terms of paragraph 1.8.3 of Annexure 6A to the HoA. Even if this were not the case, the KRG would not be entitled to an equitable set-off in English law because that requires that the claim and cross-claim should be linked in a way which makes it unjust that the claimant should obtain a judgment without taking into account the cross-claim of the defendant: see Rix LJ in *Geldof Metaalconstructie NV v. Simon Carves.* (LCIA Subcorpus)

(23) [...] the Loan Agreements were 'shams' within the meaning of *Snook v. London & West Riding Investments Ltd* [1967] 2 QB 786, at 802 (§16). (LCIA Subcorpus)

(24) Citing *Waddington Ltd v. Chan Chun Hoo Thomas & Ors* [2016] HKEC 1127 and *Tadjudin Sunny v. Bank of America* [2016] HKEC 1128, the Claimant claims

pre-judgment interest rate of 1% over the HSBC best lending rate (5.125%) and post-judgment interest rate determined by the Chief Justice of Hong Kong (8.125%)100. (HKIAC Subcorpus)

(25) Citing the case *Rojas v First Bank National Association* 613 F.Supp 968, 971 (E.D. N.Y. 1985), the Court in Credit Alliance Corporation (Tab 3) held that "[t]he very purpose of a guaranty is to assure the [creditor] that in the event the [debtor] defaults, the [creditor] will have someone to look to for reimbursement." (SIAC Subcorpus)

Contrary to the common law subcorpora, references to previous case law are infrequent within the civil law subcorpora. Specifically, within the SAC Subcorpus, there are no references to previous case law associated with the Latinism *v. / v*. In terms of relative frequencies, only 2 occurrences are observed within the CAM Subcorpus, and merely one occurrence is noted within the ICC Subcorpus. In further exploration of these themes, additional qualitative insights will be presented in Subsection 5.4.7. Specifically, an examination of other linguistic elements and devices, such as complex prepositions serving the purpose of referencing legal sources, as identified by Bhatia (1998) as "signaling textual authority", will be undertaken. Nevertheless, within this subsection, initial conclusions can be derived regarding the proposition that both civil and common law characteristics exert an influence on the formulation of arbitral awards. This assertion stems from the recognition that within common law traditions, precedents hold significant weight as a source of judge-made law, necessitating meticulous consideration in case adjudication. Such a pattern has been notably observed within the common law subcorpora, thus far affirming the abovementioned hypothesis.

Regarding terms of French/Norman origin, quantitative results are presented below. The findings, demonstrating the normalized frequencies of the loanwords identified within the Main Corpus, are delineated in Table 5.9. Specifically, the exploration has focused on loanwords from French within the Main Corpus. The identification of these loanwords involved the utilization of the general search tool within WordSmith tools. Specific French terms were scrutinized based on examples and compilations provided by Alcaraz and Hughes (2002), along with Cantlie (1989) and Alderman (1950). To address potential omissions in the aforementioned compilations, a manual analysis of loanwords from French was also conducted. No predefined frequency threshold was applied to ensure the comprehensive capture of all instances of loanwords from French.

Loanwords from French	Common law subcorpora				Civil law subcorpora		
	AAA	**LCIA**	**HKIAC**	**SIAC**	**SAC**	**CAM**	**ICC**
bureau	-	1	1	-	1	-	-
dossier	-	-	8	-	-	-	-
force majeure	2	-	-	-	-	-	3
lien	-	1	1	2	-	1	-
lieu	2	2	4	1	-	2	3
surveillance	-	-	-	-	-	1	-
tranche	-	-	-	2	2	-	-
vis-à-vis / vis-a-vis	-	2	3	5	2	18	-
Total	**4**	**6**	**17**	**10**	**5**	**22**	**6**

Table 5.9: Relative frequencies of loanwords from French in the Main Corpus.

Quantitatively, the analysis of loanwords from French reveals that their usage is generally limited across all subcorpora. The only instances of higher frequency are observed within the CAM Subcorpus (22) and the HKIAC Subcorpus (17). At a qualitative level, a subtle discrepancy emerges regarding the orthographic representation of the term *vis-à-vis*. Notably, within the HKIAC, SIAC, and CAM subcorpora, this term is employed in both its grammatically incorrect and correct forms, *vis-à-vis* and *vis-a-vis*. One plausible explanation for this discrepancy in usage could be attributed to varying linguistic preferences or conventions among the legal practitioners or authors contributing to each subcorpus. It is conceivable that some writers may adhere more strictly to formal grammatical norms, while

others may adopt a more flexible approach, possibly influenced by regional dialects, individual writing styles, or the influence of bilingualism.

5.3 Nominalizations

In this section, nominalizations are analyzed as a fundamental characteristic of legal discourse (Jackson 1995, 120; Tiersma 1999, 77-79; Gotti 2011a, 78). Halliday defines nominalization as a process "whereby any element or group of elements is made to function as a nominal group in the clause" (1985, 41). Nominalizations are also referred to as "buried verbs" as they are "verbs that have been changed into nouns (Garner 1995, 122). Nominalizations are indeed distinguished into two primary types: those comprising nouns derived from verbs or adjectives, and those formed by noun groups, nominal clauses, infinitives or gerunds. Nominalizations constructed from verbs normally have the suffixes -*age*, -*ment*, -*tion*, which are particularly common within legislative documents (Zaharia 2010, 540-542). Nominalizations, often lengthier than their base verbs, can occasionally pose challenges in readability and comprehension (Williams 2004, 115). Despite this, they introduce objectivity to the text, facilitating statements of a more general nature. However, they also have a propensity to induce wordiness due to the necessity of accompanying articles. Nonetheless, their extended nominal constructions contribute to heightened precision, encapsulating substantial information within a singular lexical unit (Zaharia 2010, 539). In alignment with this perspective, Mattiello (2010, 136) posits precision as one of the three primary functions of nominalizations. These functions encompass a text-oriented role, enhancing textual cohesion. Additionally, nominalizations serve an addresser-oriented function by aiding in the compression of information, thereby fostering textual efficiency and enabling the conveyance of a precise and clear message with fewer words. Lastly, nominalizations exhibit an addressee-oriented function, augmenting the level of imposition on the addressee.

This section therefore undertakes an analysis of nominalization forms to ascertain their presence within the Main Corpus. Employing a straightforward retrieval algorithm, the search operation involves the utilization of a wildcard preceding the primary suffixes of nominalizations (Biber *et al.* 1998; 1999; Leech *et al.* 2009), effectively creating an empty slot. No frequency threshold was imposed to ensure the comprehensive retrieval of all instances of nominalizations. The findings are presented in Table 5.10, illustrating the normalized frequencies of nominalizations identified within the Main Corpus.

Suffixes of nominalizations	**Common law subcorpora**				**Civil law subcorpora**		
	AAA	**LCIA**	**HKIAC**	**SIAC**	**SAC**	**CAM**	**ICC**
-ability	62	54	28	24	20	31	31
-able	182	263	127	178	148	176	158
-ance	162	135	118	139	218	172	124
-ation	898	984	693	862	976	645	674
-ence	204	282	323	272	158	270	270
-ency	25	4	18	8	15	9	6
-ion	575	441	752	668	641	651	691
-ity	118	101	213	257	134	274	129
-ment	718	1193	1348	952	1255	797	712
-ness	65	81	85	57	75	84	101
-age	-	2	-	3	12	7	2
-er	177	60	156	160	94	270	210
-ship	27	24	22	28	31	92	7
-al	954	726	983	420	925	875	743

Total	**4168**	**4352**	**4866**	**4028**	**4702**	**4355**	**3858**

Table 5.10: Relative frequencies of nominalizations in the Main Corpus.

First and foremost, it is crucial to emphasize that particular suffixes have been deliberately omitted from the compilation presented in Table 5.10. The rationale behind the exclusion of certain nominalizations stemmed from the overarching research objectives and the imperative to concentrate on nominal constructions that directly pertain to the comparative analysis between civil law and common law texts. In this context, nominalizations associated with occupational designations (characterized by the suffix *-ian*) or manifestations of singular occurrences (marked by the suffix *-ism*) were deemed incongruent with the precise linguistic attributes under scrutiny.

Based on the quantitative data delineated in Table 5.10, the occurrences of nominalizations demonstrate homogeneity across all subcorpora. While the ICC Subcorpus exhibits marginally fewer instances, the overall trend indicates parity in the utilization of nominalizations across all corpora. As Bhatia, Candlin and Engberg (2008, 24) observe, the use of nominalizations is one of the main characteristics of common law legal texts. However, in this research, both civil law and common law subcorpora extensively utilize nominalizations. This may indicate that the legal language used in both common law and civil law arbitral awards under analysis tends to utilize nominalizations to convey complex legal concepts or describe procedures. Despite differences in the underlying legal systems and traditions between civil law and common law jurisdictions, there may be common influences or cross-pollination of language conventions.

As previously delineated, each subcorpus exhibits a notable prevalence of nominalizations. Across all subcorpora, nominalizations fulfill a consistent function, primarily aimed at fostering textual cohesion, condensing information, and imposing on the addressee (Bhatia 1993, 277; Mattiello 2010, 136-138). The imperative of enhancing textual cohesion is evident in the subsequent examples extracted from one of the common law subcorpora (AAA) and one of the civil law subcorpora (ICC):

(26) Claimants' principal defense regarding the issue of the failure *to develop* is an alleged oral agreement or understanding that X *would not be developed* unless and until Y was profitable. On pages 15 and 16 of their Brief, paragraphs 67 and 68, Claimants contend that the renewal of the X agreements in February 2012 evidences

the fact that there was such an understanding as there was no *development* during the initial term. (AAA Subcorpus)

(27) On 3 August 2018, X asked Y *to extend* the delivery date until 30 November 2018 "due to an unexpected delay regarding capital repair of heat treatment oven [...]." Y refused such *extension* arguing that it would put it at fault regarding its own date of delivery to Z. (ICC Subcorpus)

Both examined text segments evince a textual progression marked by a transition from verbal to nominal constructions.

Regarding the condensation of information, this is particularly used in lists contained in both common law and civil law subcorpora, as can be noticed in the following examples extracted from one of the common law subcorpora (LCIA) and one of the civil law subcorpora (CAM):

(28) (1) the *assignment* of substantial Z to Mr X (expressly subject to the relevant licences);
(2) the *assignment* of territories to Mr X and Y from which the other contracting parties were excluded; and
(3) under clause 3.1(a), the *acquisition* of a one-third interest by X in A (subsequently converted by mutual agreement into a one-third interest in B) for a sum of €150,000, payment of which sum was waived when the one-third shareholding in B was allocated to Mr X. (LCIA Subcorpus)

(29) Such *recognition* may be manifested by
(a) *exposure* in exhibitions and museums,
(b) *publication* in non-commercial specialist magazines,
(c) *participation* in artistic events, [...]. (CAM Subcorpus)

In both cases, the information is condensed into precise, all-inclusive nominal constructions, which are lacking verbs but incorporate details that may be necessary for the correct understanding and interpretation of the text.

The third function served by nominalizations within the Main Corpus pertains to their role in imposing a particular communicative stance on the recipient, as highlighted by Mattiello. In particular, Mattiello (2010, 139) underscores that nominalization serves to diminish the speaker or writer's commitment, as nominal constructions facilitate a pragmatic strategy of 'typification' of the predicate. Through deverbal nominalization, the predicate is deprived of some of its illocutionary force, thereby enabling speakers to convey content without overtly

expressing their personal opinion on it. This phenomenon is evident in the following examples extracted from a common law subcorpus (HKIAC) and a civil law subcorpus (SAC):

(30) The arbitral tribunal held that Item (a) above should be interpreted as if the Respondents *are required* by the laws and regulations to provide a fixed price for the transfer of X's 100% equity, and the said *requirement* causes the Applicants *to have to pay* the actual amount for the above transfer of equity to the Respondents, the actual amount of such *payment* (after deducting the tax incurred) should be added into the cash consideration to be paid by the Respondents to the Applicants. (HKIAC Subcorpus)

(31) Except as provided in Article 40(2), the costs of the arbitration shall in principle be borne by the unsuccessful party. However, the arbitral tribunal *may apportion* any of the costs of the arbitration among the parties if it determines that such *apportionment* is reasonable, taking into account the circumstances of the case. (SAC Subcorpus)

These instances of nominalizations play a significant role in accentuating the intrinsic value attributed to legal principles, thereby asserting the authoritative imposition of legal constructs upon the recipient. References to antecedent discourse serve to signify the implicit acceptance or presupposed acknowledgement of the original assertion.

5.4 Complex prepositions

As anticipated in Paragraph 2.4.2.6, what Quirk *et al*. (1982, 302) refer to as complex prepositions are identified as a fundamental characteristic of legal discourse. As Bhatia states, "[l]egal draftsmen are particularly suspicious of simple prepositions, as they find them potentially ambiguous in meaning, and hence often go for complex prepositions, many of which are rarely used in any other variety of professional discourse" (2006, 3). Complex prepositions thus differ from simple prepositions, which consist of one word (Quirk *et al*. 1985, 657). As further explained by Quirk *et al.* (1985, 669), the distinction between simple and complex prepositions lies in the number of elements they entail. Unlike simple prepositions, complex prepositions consist of more than one word, and can thus be categorized into two- and three-word sequences. Both forms of complex prepositions conventionally culminate in a simple preposition (Biber *et al.* 1999, 75). Complex prepositions frequently exhibit a syntactic structure characterized by a P-N-P (Preposition + Noun + Preposition) arrangement. These two varieties of complex prepositions may encompass either a lexical word and a simple preposition, exemplified by *according to*, or incorporate the following elements: Simple preposition + (Article) + Lexical word + Simple preposition, as illustrated by *for the purpose of* and *in accordance with* (Bhatia 1993, 196). This subsection aims to analyze the behavior of complex prepositions within the Main Corpus. The methodology involves employing a retrieval algorithm that utilizes various combinations of two simple prepositions linked by a wildcard (*), such as 'by + * + of'. Notably, no frequency threshold was applied to ensure the comprehensive retrieval of all nominalization instances. This approach ensures a systematic examination of complex prepositions and their usage patterns. As observed in the forthcoming results, the complex prepositions identified within the Main Corpus often convey specific functions commonly encountered in legal texts. These functions, as delineated by Quirk *et al.* (1985, 656), primarily include "ranges of meaning other than place and time":

- Cause/purpose spectrum: e.g., *because of*;
- Means/agentive spectrum: e.g., *on behalf of*;
- Concession: e.g., *in spite of*;
- Respect: e.g., *with reference to*;
- Exception and addition: e.g., *in addition to* and *with the exception of*;
- Condition: e.g., *in case of*;

Furthermore, Bhatia (1998) identifies four additional functions of intertextual devices inherent in complex prepositions, namely:

- Signaling textual authority: e.g., *by virtue of*;
- Providing terminological explanation: e.g., *within the meaning of*;
- Facilitating textual mapping: e.g., *referred to in*.
- Defining legal scope: e.g., *subject to*.

Drawing upon these taxonomies, the identification of complex prepositions within the Main Corpus has been facilitated. Specifically, Table 5.11 illustrates the categorization of complex prepositions into eight distinct groups within the Main Corpus. Subsequently, Figures 5.3 and 5.4 provide information concerning the proportion of the eight identified groups of meanings expressed by complex prepositions in both common law and civil law subcorpora. The identified groups comprise the following ranges of meaning:

- Complex prepositions of the cause/purpose spectrum;
- Complex prepositions of the means/agentive spectrum;
- Complex prepositions expressing concession;
- Complex prepositions expressing respect;
- Complex prepositions expressing exception and addition;
- Complex prepositions expressing condition;
- Complex prepositions signaling textual authority;
- Complex prepositions expressing non-adherence to legal sources;

Occurrences characterized by predicative use, such as exemplified by ‘due to’ not acting as a complex preposition, are excluded. An example is found in the sentence “A dispute arose as to the final balance *due to* the Claimant under the Agreement” (HKIAC Subcorpus). Additionally, instances represented by complex prepositions conveying distinct semantic nuances, illustrated by the example of ‘by virtue of’, are omitted. Details regarding the latter are further delineated within the ‘Signaling textual authority’ table of complex prepositions (Table 5.18). These exclusions are applied to ensure that the tabulated calculations of relative frequencies, presented in this subsection, accurately reflect the intended data. By filtering out instances that do not align with the specific criteria and focus of the analysis, accuracy of findings is maintained.

Expressed meaning	Common law subcorpora				Civil law subcorpora		
	AAA	**LCIA**	**HKIAC**	**SIAC**	**SAC**	**CAM**	**ICC**
Cause/purpose	105	104	118	112	137	195	150
Means/agentive	42	95	64	78	96	65	32
Concession	11	7	3	4	5	7	-
Respect	133	169	130	165	153	176	47
Exception and addition	51	24	40	37	64	50	34
Condition	24	52	22	40	53	56	107
Signaling textual authority	94	152	147	181	232	250	143
Non-adherence to legal sources	17	18	7	46	19	18	18
Total	**477**	**621**	**531**	**663**	**759**	**817**	**531**

Table 5.11: Relative frequencies of the eight identified groups of meanings expressed by complex prepositions in the Main Corpus.

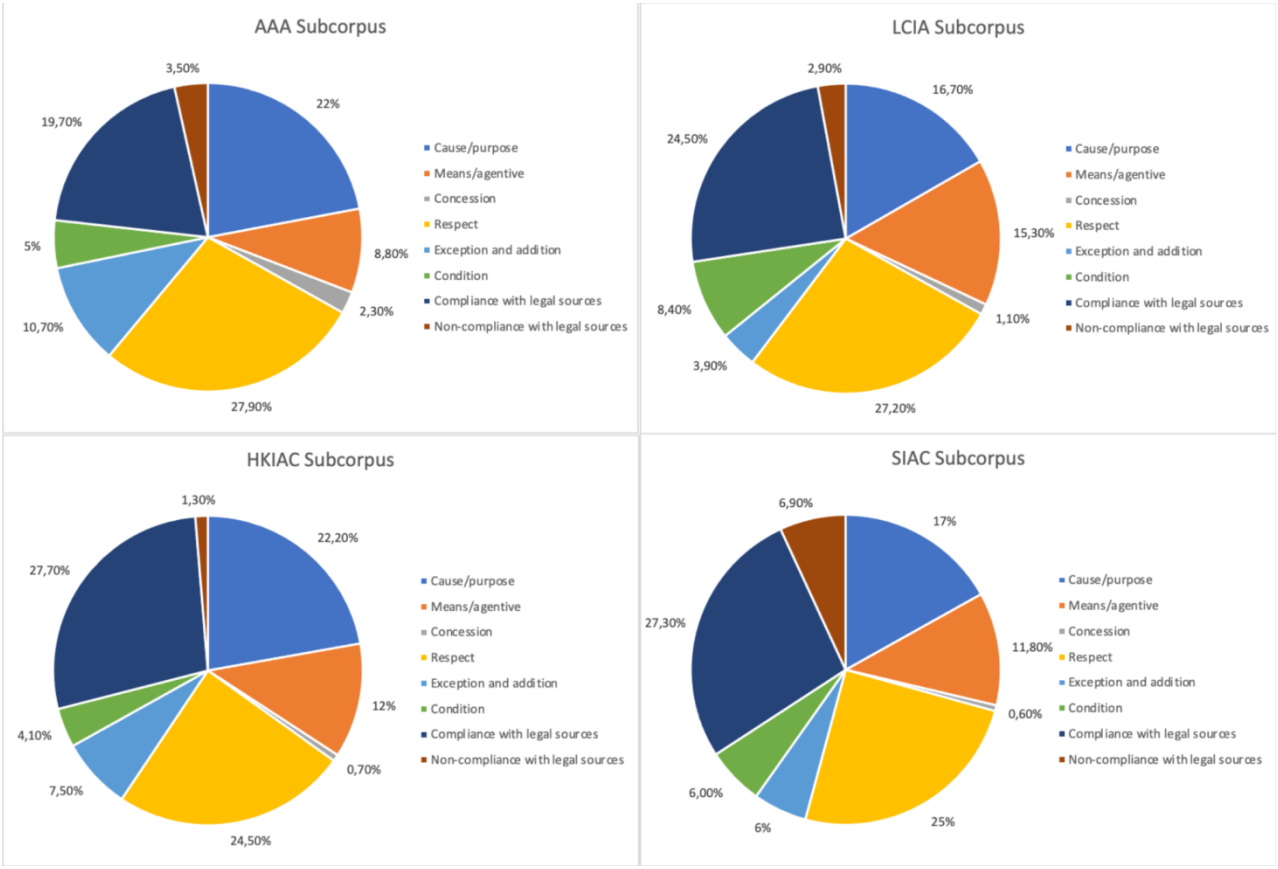

Figure 5.3: Proportion of the eight identified groups of meanings expressed by complex prepositions in common law subcorpora.

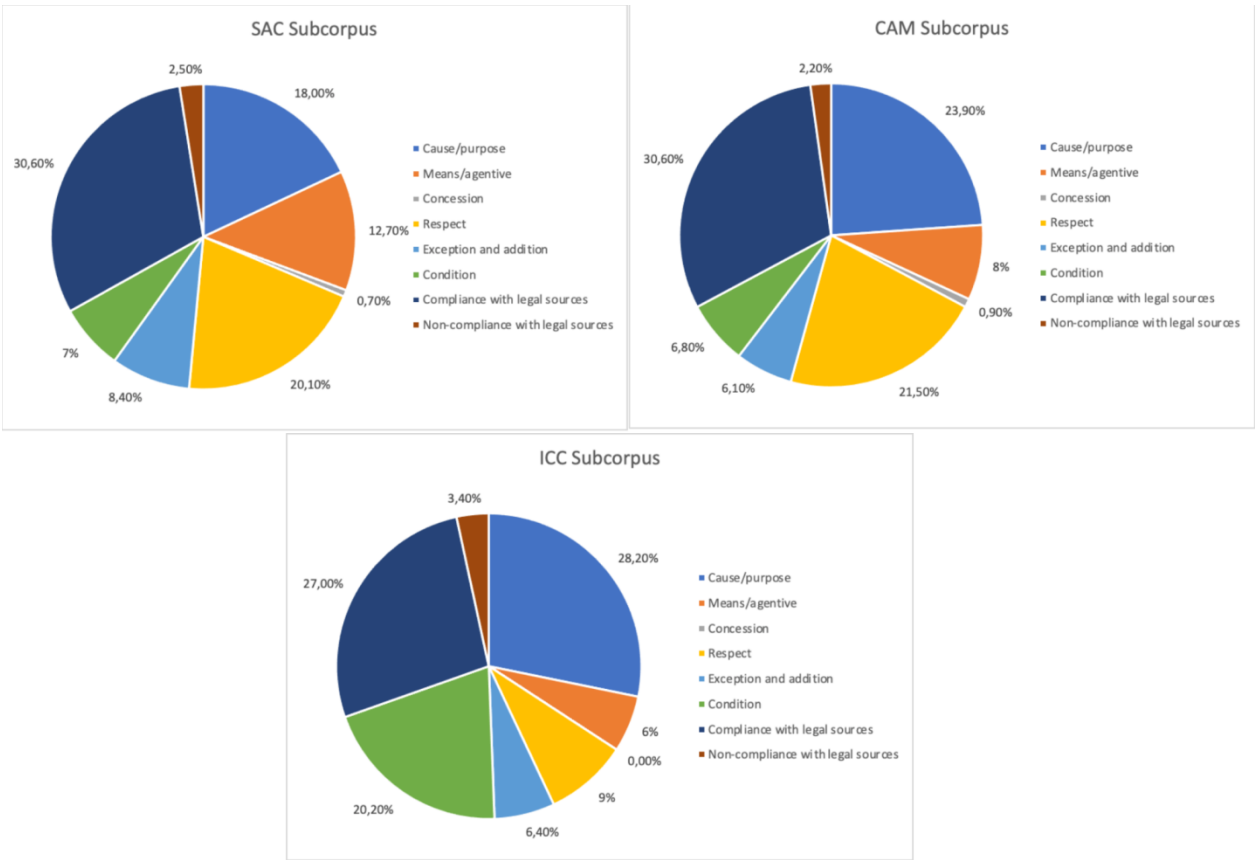

Figure 5.4: Proportion of the eight identified groups of meanings expressed by complex prepositions civil law subcorpora.

The initial observation that emerges from the quantitative data presented in Table 5.11, Figure 5.3 and Figure 5.4 is the prominence of a discernible trend: complex prepositions are more prevalent within two civil law subcorpora, namely the SAC and CAM subcorpora. However, when considering all subcorpora collectively, the quantitative data suggests a relatively uniform usage of complex prepositions. Furthermore, certain categories of complex prepositions demonstrate a tendency towards overrepresentation, exemplified by cause/purpose, respect, and signaling textual authority. Conversely, other categories tend to be underrepresented, with concession being entirely absent from the ICC Subcorpus. The following subsections offer an examination that combines both quantitative data and qualitative insights regarding the identified groups of complex prepositions.

5.4.1 Cause/purpose spectrum

Within the first range of meaning identified by Quirk *et al.* (1985, 695), namely the cause/purpose spectrum, complex prepositions conveying both the material cause or the psychological motive behind an event, as well as those indicating the intended goal or objective of an action, are included. Table 5.12 below illustrates the normalized frequencies of complex prepositions expressing the meanings of cause and purpose observed in the Main Corpus.

Cause / purpose	**Common law subcorpora**				**Civil law subcorpora**		
	AAA	**LCIA**	**HKIAC**	**SIAC**	**SAC**	**CAM**	**ICC**
on account of	2	5	-	1	-	6	6
owing to	2	2	-	9	-	1	-
due to	23	18	32	22	34	35	54

as a result of	22	6	5	4	7	5	11
by reason of	1	5	9	3	2	2	2
by virtue of	4	1	1	1	-	1	-
because of	10	5	3	4	4	19	7
in (the) light of	9	11	11	10	6	45	9
in view of	-	5	11	4	18	7	10
on the basis of	5	9	13	20	29	31	18
on (the) grounds of	-	-	1	-	-	2	4
in order to	15	13	11	12	26	29	22
in order for	2	-	1	3	2	2	-
with a view to	1	5	3	2	-	-	-
for the purpose(s) of	8	18	13	17	8	9	7
with the purpose of	-	-	-	-	1	1	-
with the aim of	1	1	-	-	-	-	-
with the intention of	-	-	1	-	-	-	-

for the sake of	-	-	3	-	-	-	-
Total	**105**	**104**	**118**	**112**	**137**	**195**	**150**

Table 5.12: Relative frequencies of complex prepositions of the cause / purpose spectrum in the Main Corpus.

An initial observation drawn from the quantitative data presented in this subsection pertains to the generally higher frequencies of complex prepositions expressing cause and purpose within the civil law subcorpora. As a matter of fact, the relative frequencies of the CAM Subcorpus (195), ICC Subcorpus (150) and SAC Subcorpus (137) surpass those of all common law subcorpora. In comparison to the common law subcorpora, specific complex prepositions exhibit notably higher frequencies within the civil law subcorpora. Notable instances include *because of* (CAM Subcorpus: 19), *in (the) light of* (CAM Subcorpus: 45), and *in view of* (SAC Subcorpus: 18). Concerning the complex preposition *in view of*, Hoffmann (2005) notes that its original concrete meaning has evolved over time into a more abstract concept. This abstraction, according to Hoffmann, no longer directly relates to visual perception but rather conveys "a subjective evaluation on the part of the author/speaker" (2005, 53-55). This can be observed in the following common law subcorpora:

(32) *In view of* the above considerations, the Arbitral Tribunal decides, awards and orders as follows [...]. (LCIA Subcorpus)

(33) *In view of* all of the above, the Sole Arbitrator finds that the Respondent should bear the Arbitration Costs and accordingly reimburse the Claimant the sum of GBP X. (LCIA Subcorpus)

(34) *In view of* the wide range of statements made by all parties in this case, the arbitral tribunal held that it was not necessary to list every statement made by the parties concerned. (HKIAC Subcorpus)

(35) *In view of* these reasons set out above, our client has not been able to reasonably satisfy herself as to the results of her due diligence conducted thus far. (SIAC Subcorpus)

However, in the civil law subcorpora, particularly within the SAC and CAM Subcorpus, in *view of* is not necessarily used to mean 'in consideration of', as demonstrated by examples

(32), (33), (34), and (35). Instead, in the instances provided below, *in view of* implies that the future event serves as a relevant factor or context for the discussion:

(36) After the successful termination of the Phase I Study, Respondent in August 2005 approached Claimant again in order to discuss a further cooperation *in view of* the conduct of a Clinical Phase II study for the active ingredient of the Drug." (SAC Subcorpus)

(37) The second is not pertinent in the opinion of the Arbitral Tribunal as 1 February 2009 is not coterminous with the Distribution Agreement and it is likely to assume that Respondent insisted on this expiration date for matters of caution *in view of* a potential dispute with Claimants. (SAC Subcorpus)

(38) The parties had signed a memorandum of understanding in which the parties agreed to exchange confidential information *in view of* the subsequent corporate acquisition. (CAM Subcorpus)

Civil law legal systems often prioritize legal certainty and predictability. Consequently, explicitly framing discussions around anticipated future events in the civil law subcorpora under analysis may be interpreted as indicative of a preference to acknowledge the significance of forward-looking considerations in legal decision-making.

5.4.2 Means/agentive spectrum

Within this subsection, complex prepositions of the means or agentive spectrum typically convey how an action is performed or by whom, often indicating the instrumental or agentive relationship (Quirk *et al*. 1985, 698) between elements in a sentence. Specifically, these complex prepositions include:

- Instrumental complex prepositions denote the tool or medium used to accomplish an action (e.g., *by means of*);
- Agentive complex prepositions indicate the agent responsible for performing an action, emphasizing its role (e.g., *on behalf of*).

Table 5.13 presented below showcases the normalized frequencies of complex prepositions that express meanings related to cause and purpose as observed in the Main Corpus.

Means / agentive spectrum	**Common law subcorpora**				**Civil law subcorpora**		
	AAA	**LCIA**	**HKIAC**	**SIAC**	**SAC**	**CAM**	**ICC**
in the form of	4	3	5	1	4	3	3
by means of	1	1	-	-	1	16	2
by way of	1	18	11	11	4	6	2
with which to	1	-	-	-	-	-	-
in response to	8	6	7	7	3	-	3
in reply to	1	1	-	5	52	1	2
on the part of	2	6	2	6	4	-	1
in favor of / in favour of	8	9	5	13	8	23	3
in support of	6	11	3	10	8	3	4
instead of	1	2	4	4	6	2	-
on behalf of	9	38	27	21	6	11	12
Total	**42**	**95**	**64**	**78**	**96**	**65**	**32**

Table 5.13: Relative frequencies of complex prepositions of the means / agentive spectrum in the Main Corpus.

The initial observation drawn from the quantitative results reveals that two subcorpora display lower frequency rates compared to the others, namely the ICC (32) and AAA (42) subcorpora. Notably, the frequencies observed in the ICC Subcorpus are nearly three times lower than those in the LCIA (95) the SAC (96) subcorpora. Additionally, further observations can be drawn regarding the prevalence of specific complex prepositions within certain subcorpora. In particular, the SAC Subcorpus exhibits a distinct preference towards *in reply to* (52), with a noteworthy number of occurrences, especially when compared to the other subcorpora. Conversely, in the common law subcorpora, a slightly stronger preference is evident for the usage of *in response to* (AAA: 8; LCIA: 6; HKIAC: 7; SIAC: 7), which is frequently used in present-day English (Hoffmann 2005, 23). As a consequence, it is plausible that the prevalence of *in reply to* within the civil law subcorpora can be attributed to its direct indication of a response to a specific communication or action. Indeed, the term *reply* inherently implies a direct answer to a question, statement, or request. This is evident in the following examples extracted from the civil law subcorpora, which make clear reference to counterclaims, arguments, and comparable situations. Examples (39), (40), (41), (42) and (43) show this below:

(39) Within the realms of the restricted answer to the statement of defense *in reply to* the counterclaim, the Respondent adjusted the petition again, ultimately stipulating the sum of the counterclaim to be USD X [...]. (SAC Subcorpus)

(40) The deadline for the submission of the Claimant's statement of defense *in reply to* the counterclaim by April 29, 2019 was withdrawn and set to Friday, May 31, 2019. (SAC Subcorpus)

(41) As per its comments of March 22, 2019 and its statement of defense *in reply to* the counterclaim, the Claimant states that the Respondent's statement of defense and counterclaim, including all evidence, was filed after the deadline [...]. (SAC Subcorpus)

(42) This number of 4,487 hatchlings is indicated in X's letter of 12 November 2015 (doc. C-5), which was sent *in reply to* Y's letter of 15 October 2015.

(43) Respondent submits, *in reply to* Claimant's argument that the relief sought by it is inadmissible as it cannot be cumulated with the already occurred termination

of the Contract, that the parties provided for such a possibility in the Contract. (ICC Subcorpus)

On the contrary, within the common law subcorpora, *in response to* is mostly used because it provides a broader and more flexible framework for acknowledging various forms of communication, actions, or circumstances that may require a reply. This can be noticed in the following examples extracted from the common law subcorpora, especially within the AAA and LCIA subcorpora:

(44) Also, he admitted his repair estimates were not based on contractor or estimator bids and specifications, *in response to* any detailed scope of work. (AAA Subcorpus)

(45) Further, and in light of the difficulties presented by restrictions on movement and gatherings imposed *in response to* the Pandemic, the Parties and Tribunal agreed that hearings must be conducted virtually rather than in-person. (AAA Subcorpus)

(46) *In response to* this development, the Respondents' legal representatives circulated an email on 24 November 2017 in the Shireen claim saying this [...]. (LCIA Subcorpus)

In conclusion, the examples extracted from civil law subcorpora demonstrate instances where *in reply to* is used in contexts involving counterclaims, arguments, or comparable situations, reflecting the direct and specific nature of civil law legal discourse. On the contrary, examples from common law subcorpora showcase the usage of *in response to* in broader contexts, such as reactions to developments or adaptations to changing circumstances, reflecting the flexible and adaptive nature of common law legal discourse.

5.4.3 Concession

This subsection deals with complex prepositions expressing concession (Quirk *et al.* 1985, 705-706), introducing clauses indicating a concession or contrast to the main clause. They convey the notion that despite something being true or happening, there is another contrasting or unexpected element to consider. The quantitative results are depicted in Table 5.14, showcasing relative frequencies of complex prepositions expressing concession within the Main Corpus. Notably, complex prepositions expressing concessions are the least frequent across all subcorpora, as also demonstrated in Figure 5.4 above. However, to

provide further insights on a qualitative level, data concerning other adverbs and conjunctions expressing concession have been collected, normalized, and presented in the table below.

Concession	**Common law subcorpora**				**Civil law subcorpora**		
	AAA	**LCIA**	**HKIAC**	**SIAC**	**SAC**	**CAM**	**ICC**
in spite of	1	-	-	-	-	1	-
despite the fact that	1	1	1	-	-	1	-
regardless of	9	5	2	4	5	5	-
in the face of	-	1	-	-	-	-	-
Total	**11**	**7**	**3**	**4**	**5**	**7**	**-**
Additional connectors expressing concession							
albeit	1	1	1	-	-	-	-
although	23	25	10	16	8	22	27
even though	8	1	3	2	-	4	3
even if	9	14	18	22	15	19	7
though	1	1	2	3	-	11	-
nevertheless	5	15	3	3	2	4	7

nonetheless	5	-	-	2	-	5	-
despite	8	10	10	5	6	2	6
however	54	42	39	69	75	87	78
while (concessive)	22	6	10	17	34	29	25
Total	**136**	**115**	**96**	**139**	**140**	**183**	**153**

Table 5.14: Relative frequencies of complex prepositions expressing concession in the Main Corpus.

Based on the quantitative data provided in Table 5.14, it is evident that the frequency of concessive complex expressions consistently remains low across all subcorpora. Interestingly, while the AAA Subcorpus exhibits the highest frequency (11), the ICC Subcorpus shows no frequency at all. Due to the absence of quantitative data in certain cases, drawing further conclusions regarding their usage is not feasible. However, interesting insights emerge regarding the utilization of additional concessive connectors. While frequencies are fairly similar across all subcorpora, it is worth noting that slightly higher frequency results are observed in the civil law subcorpora, particularly within the CAM (183) and ICC (153) subcorpora. Given the general lower density of information in civil law legal texts (Bhatia Candlin and Engberg 2008, 24), the need to acknowledge exceptions, counterarguments, or competing interests seems atypical. Concessive connectors, in this case, are used to maintain clarity and coherence within sentences, ensuring that exceptions or limitations are clearly articulated to prevent misinterpretation or ambiguity. It is however important to highlight that the higher frequency rate within civil law subcorpora can be attributed to the prevalent use of specific connectors, such as 'however' and 'while', which are commonly employed in civil law subcorpora, reflecting a slightly less elaborate style. Conversely, common law subcorpora exhibit a preference for more formal stylistic choices, such as *albeit* and *nevertheless*, with the latter being predominantly used within the LCIA Subcorpus (15). The absence of *albeit* in civil law subcorpora, despite its low frequency in common law subcorpora, is noteworthy. This suggests that the usage of such a type of

concessive connectors may be influenced by specific legal traditions or stylistic conventions. Furthermore, legal professionals drafting documents in civil law contexts may need to adjust their writing style based on the target audience or legal tradition to ensure clarity and coherence.

5.4.4 Respect

This subsection examines the use of complex prepositions denoting respect within the Main Corpus. This type of complex prepositions is used to express respect or reference (Quirk *et al.* 1985, 706). Typically, they indicate deference, politeness, or acknowledgment towards someone or something, thereby enhancing the courtesy or politeness of a statement in communication. Specifically, in legal language, they are used to denote consideration, attention or respect towards certain facts, principles or legal norms. Quantitative data pertaining to the frequencies of this type of complex prepositions within the Main Corpus are presented in Table 5.15 below.

Respect	**Common law subcorpora**				**Civil law subcorpora**		
	AAA	**LCIA**	**HKIAC**	**SIAC**	**SAC**	**CAM**	**ICC**
with reference to	4	1	1	33	3	6	-
with regard to	9	2	54	6	43	21	-
with respect to	29	25	4	8	13	39	7
as for	2	2	7	1	4	13	-
as to	43	50	32	54	34	50	19
as regards	6	6	5	-	9	5	1
in relation to	4	47	17	34	18	10	4
in connection with	25	15	7	18	23	25	7
in terms of	5	4	3	6	2	1	-
in the context of	6	17	-	5	4	6	9
Total	**133**	**169**	**130**	**165**	**153**	**176**	**47**

Table 5.15: Relative frequencies of complex prepositions denoting respect in the Main Corpus.

Across all subcorpora, the overall frequency of complex prepositions denoting respect remains similar, with the exception of the ICC Subcorpus, which exhibits the lowest frequency rate (47). This frequency is notably lower, particularly when compared to the other civil law subcorpora, such as SAC (153) and CAM (176). As evident from Table 5.15, there are specific complex prepositions, such as *with reference to* and *with regard to*, that are completely absent from the ICC Subcorpus. Within the CAM and SAC subcorpora, *with reference to* is mostly used to refer to circumstances and events but also to specific legal sources, as can be noticed from the examples provided below. Regarding the grammatical error in the example (49), it is important to note that it stemmed from the original draft of the CAM Subcorpus. In quoting the extract from the text, fidelity to its wording was maintained, thus resulting in the preservation of the mistake:

(47) Secondly, in the present arbitration proceedings, the validity of the arbitration clause shall also be scrutinized *with reference to* the proper identification of the Chamber of Arbitration of Milan as institution entrusted by the Parties to administrate the present arbitration proceedings under its Rules of Arbitration. (CAM Subcorpus)

(48) In the present arbitration proceedings, the Arbitration Clause shall be construed *with reference to* the principles of interpretation of contracts, pursuant to Article 1362 et seq. of the Italian Civil Code (see, amongst the others, Italian Supreme Court, 26 March 2021, no. 8630, Italian Supreme Court, 18 November 2021, no. 35265, Italian Supreme Court, 23 October 2019, no. 27085). (CAM Subcorpus)

(49) *With regard to* savings in expenditures, Claimants maintains that these amounted to a monthly sum of EUR X plus one-time costs of EUR Y for software enhancement for hospital administration, etc. (K/SeA para. 4). (SAC Subcorpus)

(50) According to Art. 40 (1) Swiss Rules, the costs of the Arbitration Proceedings are in principle borne by the unsuccessful Party. However, the Arbitration Tribunal may apportion any kind of costs between both Parties if it deems it appropriate *with regard to* the circumstances of the case. (SAC Subcorpus)

(51) *With regard to* the subdistribution agreement for Canada that expired on 1 February 2009, Respondent maintains that, when this agreement was made, it was already aware of the potential disagreement concerning the expiry date with Claimants and wanted to avoid a potential conflict.

In the CAM Subcorpus, reference to this type of circumstances and legal sources is made through alternative types of complex prepositions and connectors, such as *under*, *in connection with* and *in accordance with*. This is evident in the following examples extracted from the ICC Subcorpus:

(52) The Claimant does not intend to make a separate claim for damages in this respect; however, if the Arbitral Tribunal considers that the remuneration of the Claimant *under* the Agreement is less than the Total Commission, the Claimant requests that the difference between the amount determined by the Arbitral Tribunal as due and the Total Commission (less the Paid amounts) shall be ordered to be paid to the Claimant as damages for loss of reputation. (ICC Subcorpus)

(53) In addition, neither I nor the Claimant in fact offered any money to such public servants and officials or make any promise to do so, *in connection with* the Agreement or the award of the UAE Contract. (ICC Subcorpus)

(54) Agreed that the case should be heard by three arbitrators, nominated Mr. X as co-arbitrator, and suggested that the Chairman of the Tribunal be appointed by the ICC Court *in accordance with* Article 9 of the ICC Rules [...]. (ICC Subcorpus)

In common law subcorpora, the usage of *with reference to* and *with regard to* differs from what is observed in civil law subcorpora. In particular, in the AAA and LCIA subcorpora, they are predominantly employed to reference circumstances and events rather than legal sources. This distinction can be observed in the examples provided below:

(55) In emails from their counsel dated 9 and 18 June, the respondents invited the Tribunal to revisit P02, in particular *with regard to* the question whether further progress in this claim should be deferred pending disclosure in the NY proceedings, but also *with regard to* specific elements in the timetable. (LCIA Subcorpus)

(56) On 28 July 2020, the Arbitral Tribunal issued Procedural Order No. 10, in which it invited the Parties to make most brief submissions, by 30 July 2020, *with regard to* two specific issues [...]. (AAA Subcorpus)

Exceptions to this trend are observed in the SIAC and HKIAC subcorpora, where *with reference to* and *with regard to* are utilized to refer to both circumstances and events and legal sources. However, unlike in civil law subcorpora, where reference typically pertains to principles outlined in civil codes, in these instances, the references are made to case law (see

e.g. (48) above extracted from the CAM Subcorpus). This contrast is highlighted by examples (58) and (59) provided below:

(57) On March 25, 2014, all parties submitted their opinions in writing to the arbitral tribunal respectively *with regard to* the abovementioned issue. (HKIAC Subcorpus)

(58) Rather, *with reference to* Singapore case law, EKA submits that it is a fundamental tenet of contract that in construing the intention of the parties, it is their objective intention that the court is seeking to construe. (SIAC Subcorpus)

(59) The First Applicant also proposed that the arbitral tribunal order the Estate of the Second Applicant to submit an official written statement [...] on its position at that time and the attitude *with regard to* the case as mentioned above [...]. (HKIAC Subcorpus)

In conclusion, the frequency of complex prepositions denoting respect remains generally consistent across civil law subcorpora, with the ICC subcorpus displaying notably lower usage rates compared to SAC and CAM subcorpora. Notably, certain complex prepositions such as *with reference to* and *with regard to* are absent from the ICC subcorpus, setting it apart from other civil law subcorpora. While *with reference to* is frequently used in SAC and CAM subcorpora to refer to circumstances, events, and legal sources, alternative prepositions like *under*, *in connection with*, and *in accordance with* are utilized in the CAM subcorpus to denote similar meanings. In common law subcorpora, particularly within AAA and LCIA, *with reference to* and *with regard to* are predominantly employed to reference circumstances and events rather than legal sources. However, exceptions are noted in SIAC and HKIAC subcorpora, where these prepositions are used for both circumstances/events and legal sources, specifically referring to case law instead of civil codes as observed in civil law subcorpora. Overall, these findings underscore the nuanced differences and subtleties that reflect profound differences in legal traditions, linguistic conventions, and the divergent approaches to legal reasoning and citation practices between civil law and common law legal traditions.

5.4.5 Exception and addition

Complex prepositions denoting exception and addition (Quirk *et al.* 1985, 707-709) convey nuances of meaning within sentences, particularly when indicating exceptions and adding

supplementary information. They serve to modify the relationship between different parts of a sentence by expressing specific conditions or circumstances. Specifically, complex prepositions denoting exception emphasize the exclusion of certain elements from a general statement. On the contrary, complex prepositions denoting addition signal the inclusion of extra items or elements beyond what has already been stated. In this subsection, the use of this type of complex prepositions is examined. The normalized frequencies of complex prepositions expressing exception and addition within the Main Corpus are presented in Table 5.16 below.

Exception and addition	**Common law subcorpora**				**Civil law subcorpora**		
	AAA	**LCIA**	**HKIAC**	**SIAC**	**SAC**	**CAM**	**ICC**
except for	4	1	4	4	2	5	2
with the exception of	2	1	-	-	2	1	1
apart from	1	3	7	8	4	5	9
aside from	2	-	-	-	-	1	-
as well as	30	16	21	17	39	26	20
in addition to	11	2	7	6	14	11	2
in conjunction with	1	1	1	2	3	1	-
Total	**51**	**24**	**40**	**37**	**64**	**50**	**34**

Table 5.16: Relative frequencies of complex prepositions expressing exception and addition in the Main Corpus.

According to the data presented in Table 5.16, it can be concluded that complex prepositions denoting addition are utilized moderately to fairly frequently in both the common law and civil law subcorpora. The LCIA (24) and ICC (34) subcorpora exhibit the lowest frequencies, yet they still align with the frequencies observed in the remaining subcorpora. Within both sets of subcorpora, the usage of complex prepositions signifying addition surpasses those indicating exception. The most prevalent complex preposition, *as well as*, indicating addition, is notably utilized across all subcorpora. Regarding the utilization of this and other complex prepositions denoting addition and exclusion within the Main Corpus, no additional elements have been pinpointed through the Concord tool (WordSmith Tools 8.0), and thus, no discernible disparities in the usage of this category of complex prepositions can be inferred.

5.4.6 Condition

The inclusion of the subset of complex prepositions denoting condition in this section is warranted due to the crucial role these prepositions play in language. They serve to express specific circumstances or conditions under which certain events or outcomes may occur. These linguistic constructs are essential for conveying a wide range of conditions, contingencies, and possibilities within discourse. In the subsequent analysis, their usage patterns and frequencies within the Main Corpus are examined, as detailed in Table 5.17 below.

Condition	Common law subcorpora				Civil law subcorpora		
	AAA	**LCIA**	**HKIAC**	**SIAC**	**SAC**	**CAM**	**ICC**
in case of	1	2	1	-	8	8	16
on condition that	-	-	1	-	-	-	-
on (the) condition of	2	-	-	-	-	-	-
in the event that	2	5	5	5	1	4	8
in the event of	1	7	1	4	6	4	7
subject to	14	26	9	30	34	25	48
contingent upon	-	1	-	-	-	-	-
in (the) presence of	1	1	-	-	-	1	1
in (the) absence of	3	10	5	1	4	14	27
Total	**24**	**52**	**22**	**40**	**53**	**56**	**107**

Table 5.17: Relative frequencies of complex prepositions expressing condition in the Main Corpus.

It is readily apparent that the quantitative data unveil a spectrum of frequency rates that diverge across all subcorpora, offering a nuanced perspective on the usage of complex prepositions expressing condition within the subcorpora:

- The AAA (24) and HKIAC (22) exhibit lower occurrences compared to the other subcorpora;
- The LCIA (52), SIAC (40), SAC (53) and CAM (56) exhibit moderate to fairly frequent occurrences;
- The ICC Subcorpus (107) exhibits the highest number occurrences compared to all other subcorpora.

Drawing from these observations, it is interesting to highlight the prevalence of occurrences of the complex preposition *subject to* within the ICC Subcorpus. While it is acknowledged as the most frequent complex preposition of its kind across all subcorpora, its notably elevated occurrence rate within the ICC Subcorpus warrants further investigation on its use and on the potential contextual factors influencing its usage within this specific subset. Within the ICC Subcorpus, *subject to* is mostly used to refer to specific articles of the French civil code, as exemplified in the following statements. The grammatical error in example (61) stemmed from the original draft of the ICC Subcorpus (i.e., "provided for by of the Contract"), and fidelity to its wording was maintained, leading to the preservation of the mistake:

(60) The Bank Guarantee issued by Respondent's bank was *subject to* Article 2321 of the French Civil Code and provided that it could be enforced under two conditions [...]. (ICC Subcorpus)

(61) The Arbitral Tribunal finds that Article 8.1 which provides for a fixed contractual fine provided for by of the Contract in case of termination by fault of PROMEX is therefore *subject to* Article 12315 of the French Civil Code.

Subject to is also used in the CAM to refer to civil codes, but mostly because such a complex preposition is included in a quotation that is included in the arbitral award at hand:

(62) On this issue, we must note the opportune pertinent clarification made by the Italian legislator, specifically in respect of international arbitration (with seat in Italy), through Art. 833(1) CCP, which was introduced by the 1994 arbitration reform: "The arbitration clause contained in general conditions of contract ... is not *subject to* the specific approval provided for in Arts. 1341 and 1342 of the Civil Code." (CAM Subcorpus)

(63) This figure of the acceptance *subject to* Art. 241 of the Swiss Civil Procedure Rules corresponds to a mechanism that was provided in former Cantonal Civil Procedure Codes, as "Passé expedient" or "Abstand". (SAC Subcorpus)

On the contrary, within common law subcorpora, *subject to* mainly refers to legal principles, which do not derive from civil codes, and agreements. This distinction is evident in the following examples extracted from two of the common law subcorpora:

(64) [...] the Tribunal finds that, as a general principle, Claimant is entitled to recover his arbitration and legal costs and expenses incurred in this arbitration (*subject to* review of the reasonableness and proportionality of the claimed costs and expenses). (LCIA Subcorpus)

(65) *Subject to* the terms of this Agreement, the Vendor hereby agrees to sell and procure the transfer of the Shares, and the Purchaser hereby agrees to purchase the Shares, free and clear of any security interest and with all rights, interests and claims attaching to them. (SIAC Subcorpus)

In conclusion, within the Main Corpus, there is noticeable variation in the occurrence rates of complex prepositions expressing condition across different subcorpora. The AAA and HKIAC subcorpora have lower occurrence rates compared to others, while the ICC subcorpus has the highest occurrence rate. The complex preposition *subject to* is notably prevalent within the ICC subcorpus, being the most frequent among all subcorpora. The use of such a complex preposition varies across subcorpora. Within the civil law subcorpora, it often refers to specific articles of civil codes, while in the common law subcorpora, it mainly refers to established legal principles and agreements.

5.4.7 Signaling textual authority

Another significant set extensively represented in the Main Corpus comprises complex prepositions referring to legal sources, including laws, acts, statutes, and case law. In this subsection, complex prepositions expressing non-adherence to legal sources and quasi-legal sources are included as well due to their presence in the analyzed texts. This set of complex prepositions draws inspiration from Bhatia's (1998) taxonomy, in which he identifies linguistic devices serving the functions of signaling textual authority, providing terminological explanation, facilitating textual mapping, and defining legal scope. In

particular, the complex prepositions identified in the Main Corpus fall into the category of devices signaling textual authority, which is "signaled in the form of a typical use of complex prepositional phrases, which may appear to be formulaic to a large extent" (Bhatia 1998, 14). The complex prepositions that are mostly used to signal textual authority and to indicate compliance with legal sources are the ones identified in Table 5.18. In this table, the normalized frequencies of complex prepositions expressing exception and addition within the Main Corpus are presented. To ensure comprehensive coverage, two-word connectors and the most basic one-word preposition, 'under', are included in the table below.

Signaling textual authority	Common law subcorpora				Civil law subcorpora		
	AAA	**LCIA**	**HKIAC**	**SIAC**	**SAC**	**CAM**	**ICC**
in accordance with	24	58	39	48	110	47	30
in pursuance of	-	1	-	-	-	-	-
by virtue of	4	1	5	1	2	1	1
in compliance with	4	-	2	8	3	8	2
in agreement with	-	-	-	-	-	2	-
in conformity with	-	-	-	-	2	5	-
in line with	1	2	-	-	2	2	1
in accord with	2	-	-	-	-	-	-
according to	16	19	32	30	69	97	77
pursuant to	43	71	69	94	44	88	32
Total	**94**	**152**	**147**	**181**	**232**	**250**	**143**
under	181	247	200	381	99	154	116

Table 5.18: Relative frequencies of complex prepositions signaling textual authority in the Main Corpus.

The initial observation highlights a notable disparity in the frequency of occurrences between the civil law and common law subcorpora, particularly evident in the SAC (232) and CAM (250) subcorpora, where occurrences are notably higher. Conversely, the common law subcorpora exhibit slightly lower frequencies, albeit still maintaining a considerable usage of these complex prepositions. Additionally, another emerging tendency concerns the preference towards simple prepositions or two-word connectors across all subcorpora. Specifically, *under* is particularly used in the common law subcorpora, showing particularly high scores compared to the civil law subcorpora, namely: SIAC (381), LCIA (247), HKIAC (200), AAA (181). These quantitative data appear to challenge the conventional descriptions of common law legal English, which typically suggest a preference for the utilization of complex prepositions (e.g., Bhatia, Candlin, and Engberg 2008, 24). A plausible explanation for this shift in the frequency of complex prepositions could be attributed to the influence of the Plain English movement, which extended its influence beyond the United Kingdom and United States to places like Singapore[122] and Hong Kong[123] (Chan 2018, 682; Tan 2021, 167).

At a qualitative level, distinctions are evident in the manner in which sources of authority are integrated into the texts. To ascertain the methods employed across the subcorpora for

[122] AGC. Attorney-General's Chambers. Plain Laws Understandable by Singaporeans (PLUS). Available at https://www.agc.gov.sg/our-roles/drafter-of-laws/plain-laws-understandable-by-singaporeans.

[123] In particular, in Singapore, the Speak Good English Movement (SGEM) was launched in 2000 to promote good English. In 1999, the Prime Minister Goh Chok Tong gave a speech before the language campaign was launched stating that Singaporeans "should speak a form of English that is understood by the British, Americans, Australians, and people around the world" (Ying-Ying 2021, 167). Since then, the SGEM has been an annual event, with each campaign's theme and focus revolving around ideas such as speaking Standard English intelligible to all (2000-06), the Plain English Speaking Award (YMCA) (2005-onward), effective communication (2007 and 2009), making a choice to use Standard English (2008), using proper English (2010 and 2014), and being ambassadors of good English (2011) (Tan 2021, 167). Moreover, and of paramount importance, in 2013, the Legislation Division initiated a project aimed at enhancing and modernizing the Singapore statute book both in terms of content and design. Known as the Legislation Division's Plain Laws Understandable by Singaporeans (PLUS) project, it involves an online public survey geared towards modernizing legislative drafting practices and enhancing the readability of Singaporean laws to ensure they are more easily understood by the general public.
In Hong Kong, the focus on promoting the use of plain English has been particularly pronounced. In 2012, the Department of Justice of Hong Kong published a plain language guide aimed at assisting current legislation to align with the established guidelines. In particular, Chapter 9 of this guide is titled 'Plain Language and Gender-Neutral Drafting', and involves guidelines such as organizing legislative prepositions simply and logically, using short sentences with a simple structure, and avoiding double or triple negatives, passive voice, nominalizations and *shall* (Chan 2018, 683-684).

incorporating these sources, it was imperative to utilize the search tool of WordSmith Tools 8.0 and examine their inclusion within the Main Corpus. Not only were the complex prepositions listed in Table 5.18 utilized to search for sources of authority, but additional indicators of such sources were also employed. This decision was driven by the necessity to encompass all potential references to sources of authority within the Main Corpus. These supplementary indicators included, but were not limited to, the following:

> see, see also, as, as in, like, too, as well, likewise, analog*, rely on, based on, code, civil code, art*, law, case, case law, v./v, precedent, decision.

Specifically, the sources of authority encompassed in the search pertain to court decisions, legislation, and codes. As Degano (2012, 138) states,

> The assumption that international commercial arbitration (ICA) is not connected with any specific legal system is a fundamental principle of its rationale. However, since ICA does not take place in a vacuum it is often suggested that it may be subject to influences on the part of national legal systems, either as an effect of the legal mentality of arbitrators, a heritage of their education and professional setting, or of national laws that in some countries still regulate access to arbitration to establish what subject matters can be resolved through such practice.

Overall, while the international commercial arbitration endeavors to maintain independence from specific legal systems, it operates within a broader legal context and may be subject to influence from various factors originating from national legal systems. Given this context, the objective of this paragraph is to investigate whether precedents maintain a fundamental and influential role within the common law subcorpora, while civil codes retain significance within civil law subcorpora. Additionally, the examination seeks to determine whether case law assumes importance within civil law subcorpora as well, potentially indicating the influence of common law on arbitration. As a preliminary step, concordances were extracted and manually analyzed to identify all occurrences referring to case law and legislation/codes. By expanding the context surrounding each line, it became feasible to visualize a meaningful unit of text, which facilitated the identification of the context of the identified source of authority, and allowed for the selection of those used in the arbitral award to provide reasoning. The quantitative findings are presented in Table 5.19 below.

Source of authority / evidence	Common law subcorpora				Civil law subcorpora		
	AAA	**LCIA**	**HKIAC**	**SIAC**	**SAC**	**CAM**	**ICC**
Court decision	37	45	20	68	12	63	24
Legislation / code	33	46	37	66	68	133	135

Table 5.19: Relatives frequencies of references to source authority/evidence in the Main Corpus.

The quantitative data from Table 5.19 provide intriguing results. While data regarding references to legislation/codes exhibit notably higher frequencies within the civil law subcorpora, particularly in the CAM (133) and ICC (135) subcorpora, data pertaining to references to case law and specific court decisions appear to be more consistent across all subcorpora. However, it is essential to provide insights on each subcorpus regarding references to court decisions. Within the common law subcorpora, the SIAC registers the highest score (68), followed by the LCIA (45), AAA (37), and HKIAC (20). Notably, the HKIAC records particularly low frequencies compared to the other common law subcorpora. Nonetheless, the frequencies across the common law subcorpora appear relatively consistent. Within the civil law subcorpora, lower frequencies are observed, especially in the SAC (12) and ICC (24) subcorpora, while the CAM records notably high scores (63). At a quantitative level, it can be inferred that the CAM results appear surprising, whereas the remaining scores seem relatively neutral.

At a qualitative level, significant differences exist. In particular, these differences concern the integration of sources of authority within legal texts. For instance, in the civil law subcorpora, sources of authority are frequently incorporated concisely, with succinct references, as can be noticed in the following examples:

(66) *Art. II of the New York Convention* provides for a uniform - that is, special - regulation of the formal requirements for arbitration agreements in international contracts, thus preventing the Contracting States from imposing further or more restrictive formal requirements. (CAM Subcorpus)

(67) Italian case law recognizes that the signature placed under a list of oppressive clauses indicated by number or title is sufficient to comply with the requirements of *Art. 1341 CC* (*cfr. Italian Supreme Court, Civil Section, Cass. Civ. no. 12708/2014; see also Cass. Civ. no. 15278/2015 and no. 18525/2007*, with further ref.). The Supreme Court has even stated that in contracts which do not require the written form (as in the present case) the written approval (i.e. by one signature), of the sole oppressive clauses alone is sufficient (*Cass. Civ. no. 12708/2014*).

(68) *Article 2(1) of the Swiss Civil Code* ("CC") provides for a general requirement to act in good faith in the exercise of rights and in the performance of obligations. *Article 2(2) CC* goes on to provide that a manifest abuse of a right is not protected by law.

(69) However, *Article 31 (3) of the ICC Arbitration Rules*, which requires the Arbitral Tribunal to fix the costs of the arbitration and decide on how these costs shall be borne, does not prescribe any specific criteria for the allocation of these costs between the Parties. (ICC Subcorpus)

In examples (66), (68) and (69), respectively, the principles of the New York Convention, of the Swiss Civil Code, and of the ICC Arbitration Rules are briefly summarized. In example (67), a brief summary of the relevant case law is made. In all examples mentioned above, succinct summaries or explanations are provided. Conversely, within the common law subcorpora, the dominant trend is to thoroughly discuss the legal principle, particularly when referencing case law. In such instances, the legal principles are discussed by providing detailed information about the facts of the precedent in question. This can be noticed in the following examples:

(70) Respondent cited a number of Texas cases regarding penalty. These were in the context of liquidated damages clauses in a commercial contract. The cases hold that some clauses amount to a penalty, but some do not, and are enforceable. We find these cases are not controlling here, because this case does not deal with a commercial contract with a liquidated damages clause. This involves a settlement agreement, and we find the case of *Belton v. St. Claire & Case*, 1992 WL 199391 (Tex, App. Dallas, writ dism'd w.o.j.), along with *Wiley-Reiter Corp. v. Groce*, 693 S.W.2d 701 (Tex.App.Houston - 14th, no writ), provide compelling reasoning. (AAA Subcorpus)

(71) The Arbitrator is satisfied that the *Nano v Canon* decision could, in principle, be persuasive authority with respect to the natural and ordinary meaning of the terms 'perpetual' and 'irrevocable'. The case certainly lends support to the Claimants' argument that the words 'perpetual' and 'irrevocable' are clear and unambiguous in their intent and should be given their full effect. Nevertheless, as in Ocular Sciences, the court in *Nano v Canon* was, strictly speaking, dealing with the terminability for repudiatory breach of the licence agreement itself rather than of the underlying licence. The Arbitrator therefore does not consider the decision in *Nano v Canon* to provide unequivocal support for the Claimants' specific proposition that the four subject licences granted under the Eyeliner Agreement would survive a valid termination of that agreement for repudiatory breach. (LCIA Subcorpus)

(72) Finally, in response to the Arbitrator's request at the hearing for more specific authority to assist with the contractual interpretation issue to be determined, the Claimants submitted the further case of *VLM Holdings Ltd v Ravensworth Digital Services Ltd* [2013] EWHC 228 [Ch]. That case is authority for the proposition that a sub-licence was capable of surviving the termination of the head licence pursuant to which the sub-licence was granted. In the Arbitrator's view, this case also turns on its facts and while it may be good authority for the general proposition that rights acquired under a contract are capable of surviving termination of that contract, it does not really assist the Arbitrator in determining the specific question of whether the licence rights in the present case, expressed to be perpetual and irrevocable, can and do survive the purported termination of the Eyeliner Agreement for repudiatory breach. (LCIA Subcorpus)

(73) The Respondent cited 2 Singapore decisions and an Australian decision to support its case viz. *United Artists Singapore Theatres Pte Ltd & Anor v. Parkway Properties Pte Ltd & A nor* [2003] 1 SLR 791 ("United Artists") [RBA-5]; *Popular Book Co Pte Ltd V Sea Sun Furnishing Pte Ltd* [1991] SGHC 39 ("Popular Book Co") [RBA-6] and *Summergreene v Parker* [1950] HCA 13 ("Summergreene") [RBA-7]. In the Tribunal's view, the facts of these cases bear no similarity to the facts in this arbitration. In all the 3 cases cited, the agreements contemplated were all future agreements, the essential terms of which were then left to be negotiated and to be agreed. In *Popular Book Co*, the court was dealing with the renewal of a lease upon the expiry of the initial term. Chan J (as be Chen was) pointed out that he was dealing with a lease renewal clause and not a rent review clause. In that case the essential term of the contract was the agreement on the rent before the lease could be

considered renewed. In *United Artists*, the parties were in negotiations for the lease of a cineplex and draft contracts marked "subject to contract" were exchanged. No contract was ever executed. The court ruled that the term "subject to contract" made it clear that neither party would be bound until and unless a formal contract was signed. The case of *Summergreene* was concerned with the sale of a business. The purchaser's solicitors had in its letter of offer to purchase set out some terms including a stipulation that The usual Agreement for Sale and Purchase to be entered into by you and the [company to be formed] containing the usual terms of sale and these terms in a form satisfactory to you and to the [company to be formed]. The full court of the Australian High Court held that the stipulation that the sale be subject to the "usual terms...in a form satisfactory to you and to the [company to be formed]" rendered the agreement to be uncertain and unenforceable in that it required the execution of a formal agreement between the Parties including a company that had yet to be formed. (SIAC Subcorpus)

(74) In any event, my understanding is: consideration is not a high demand, as Denning J. said in *Ward v. Byham* (1956) 1 WLR 496: "the performance of an existing duty, or the promise to perform it, was always good consideration". (HKIAC Subcorpus)

It is evident that examples (70), (71), (72), (73), and (74) are, on average, longer than the examples extracted from the civil law subcorpora (66) to (69). This discrepancy arises because detailed information regarding the facts of the case and observations on their relevance are extensively articulated. This heightened level of detail is particularly notable in examples (72) and (73). The detailed summary of the facts of previous court decisions, as observed in the common law awards, are entirely absent in the civil law subcorpora. As can be observed, in (74) a direct quote from a case is provided. These types of quotes occur in civil subcorpora as well, but in this case they are mostly extracted from articles of the civil code or agreements, as can be observed in the following examples:

(75) *As to Article 830, para. 4, c.p.c.* (*Decisione sull'impugnazione per nullitá*), which reads as follows: *"Su istanza di parte anche successiva alia proposizione dell'impugnazione, la corte d'appello può sospendere con ordinanza l'efficacia del lodo, quando ricorrono gravi motivi"*, this provision relates exclusively to the suspension of the enforceability of the award by the state court, and does not apply to arbitrators. (CAM Subcorpus)

(76) the deadline for performance of the obligation or the end of the deadline set by the contract to perform the obligation (*see Art. 102 para. 2 of the Swiss Code of Obligations*, which reads as follows : "Where a deadline for performance of the obligation has been set by agreement or as a result of a duly exercised right of termination reserved by one party, the obligor is automatically in default on expiry of the deadline". (SAC Subcorpus)

(77) The arbitration agreement relied upon by the Parties is set out in *Article 17 of the X Contract Y* [Claimant] dated 5 May 2018 (the "Contract"), which reads as follows: "17) Arbitration and Applicable Law: The Parties hereby agree to settle all disputes amicably. If settlement is not reached, the dispute in question shall be submitted to arbitration. The place of jurisdiction and/or arbitration shall be Paris (France) and the laws of France. (ICC Subcorpus)

The qualitative differences observed in the Main Corpus concerning the inclusion of legal sources within legal texts underscore a cultural dichotomy in the modes of legal reasoning characterizing civil law and common law legal systems. As discussed in Chapter 3, in civil law judgments, there is a discernible preference for a deductive type of reasoning, characterized by succinct articulation and systematic application of legal principles. Conversely, common law judgments typically exhibit a preference towards inductive reasoning, manifesting in a meticulous analysis of legal precedents whereby principles are extrapolated through analogical reasoning, comparing factual scenarios of prior cases to the present case to derive legal determinations. The abovementioned modes of legal reasoning find application in the resolution of arbitral disputes within the realm of international commercial arbitration. Their utilization is evidently influenced by the legal tradition associated with the applicable law and the legal expertise of the participants engaged in the arbitration proceedings.

To conclude, in this subsection, the final subset of intricate prepositions pertains to complex prepositions indicating non-adherence to legal sources and quasi-legal sources. These complex prepositions often involve a combination of words that emphasize actions or behaviors that go against established norms, rules, or regulations. Indeed, quantitative data pertaining to this aspect are presented in Table 5.20 below.

Non-adherence to legal sources	Common law subcorpora				Civil law subcorpora		
	AAA	**LCIA**	**HKIAC**	**SIAC**	**SAC**	**CAM**	**ICC**
in contravention of	-	1	-	1	-	-	-
in violation of	5	1	3	4	4	1	-
in breach of	4	9	2	33	4	9	8
in conflict with	1	-	1	-	-	1	-
in contrast with	-	-	-	-	-	1	-
in contrast to	-	1	-	3	1	1	-
contrary to	7	6	1	5	10	5	10
Total	**17**	**18**	**7**	**46**	**19**	**18**	**18**

Table 5.20: Relative frequencies of complex prepositions expressing non-adherence to legal sources in the Main Corpus.

This subset of complex prepositions is relatively less prevalent in the Main Corpus compared to the types of complex prepositions previously analyzed in this research. An exception is the SIAC Subcorpus (46), which demonstrates a higher occurrence rate. Specifically, this elevated score can be attributed to the frequent utilization of the complex preposition *in breach of*, which occurs 33 times. Nevertheless, upon qualitative examination, no discernible disparities are observed concerning the usage of this complex preposition or others included

in the table. Their application appears relatively uniform across all subcorpora, both quantitatively and qualitatively.

5.4.8 Results

The analysis conducted in this section reveals that specific categories of complex prepositions serve as indicators of significant differences in drafting between common law and civil law arbitral awards. These distinctions manifest across linguistic, cultural and legal dimensions. Specifically, these differences are particularly noticeable within complex prepositions of the cause/purpose spectrum, as well as in complex prepositions expressing concession and signaling textual authority. Within the spectrum of cause/purpose, certain complex prepositions demonstrate significantly higher frequencies within the civil law subcorpora compared to the common law subcorpora. Conversely, in the case of complex prepositions expressing concession, their frequency consistently remains low across all subcorpora. However, in some instances, the absence of quantitative data prevents drawing further conclusions regarding their usage. Nevertheless, intriguing insights emerge regarding the utilization of additional concessive connectors. Although the frequencies remain relatively consistent across all subcorpora, it is notable that there are slightly higher occurrences in the civil law subcorpora, particularly within the CAM and ICC subcorpora. In civil law legal texts, where information density tends to be lower (Bhatia, Candlin, and Engberg 2008, 24), the requirement to acknowledge exceptions, counterarguments, or competing interests may appear unconventional. Moreover, within the civil law subcorpora, there is a tendency towards employing specific connectors that evoke a somewhat elaborate style, contrasting with the preference for formal stylistic choices observed in common law subcorpora.

Lastly, concerning complex prepositions signaling textual authority, it is crucial to emphasize that in civil law subcorpora, sources of authority are often integrated succinctly, with brief references. Conversely, within common law subcorpora, the prevailing practice is to extensively discuss the legal principle, especially when citing case law. In these cases, legal principles are elucidated through detailed accounts of the facts underlying the precedent in question.

5.5 Modal auxiliaries

The analysis of modality in terms of syntax and semantics poses significant challenges for grammatical examination, with the modal verbs of English presenting a range of idiosyncratic complexities. Consequently, these modal verbs are particularly challenging to deal with (Palmer 2003, 2). Conventionally, two primary forms of modality are identified (Palmer 1990, 2): epistemic and deontic. Although both are classified as modal verbs, their semantics exhibit notable differences. Palmer defines epistemic modality as "the simplest type of modality to deal with" (1990, 50). The fundamental degrees of possibility and necessity are primarily conveyed by the modal verbs *may* and *must*, respectively (e.g., "they may be in the conference room" or "they must be in the conference room"). In contrast, deontic modality entails obligations, permissions, promises, or threats (Palmer 1990, 69) (e.g., "they may/can come to the conference room" or "they must come to the conference room"). Consequently, deontic modality holds particular significance in legal discourse. As Kurzon states, legal statements "function as speech acts with the illocutionary forces of permission (*may*), ordering (*shall*), or prohibition (*shall not*), respectively" (1986, 15-16). Finally, a third type of modality, known as dynamic modality (Williams 2007; Palmer 1990), which expresses ability and disposition (e.g., "they can read very fast" or "they will help you"), has gained recognition in recent decades. As emphasized by Williams (2007) and other scholars (e.g., Coates 1983),

> there is a considerable degree of fuzziness between the boundaries of the three categories in question, with each of the central modal auxiliaries assuming a wide range of different meanings and nuances, according to the context in which an utterance is made. (Williams 2007, 83)

As a consequence, the analysis of modals needs to involve a combination of quantitative and qualitative approaches, where quantitative analysis is complemented by a comprehensive qualitative examination that considers the contextual nuances surrounding the modal in question. In this section, modals and semi-modal auxiliaries are categorized together due to their shared function in expressing modality. The semi-modal forms under consideration are *be to*, *need not*, and *have to* (Williams 2007, 114). The relative frequencies of the "central modal auxiliaries" (Williams 2007, 82) and the abovementioned semi-modals are collected and illustrated in Table 5.21 below.

Modals and semi-modals	Common law subcorpora				Civil law subcorpora		
	AAA	**LCIA**	**HKIAC**	**SIAC**	**SAC**	**CAM**	**ICC**
shall	80	102	186	232	161	155	145
should	66	120	132	71	73	63	79
must	19	40	46	33	51	116	47
be to	12	7	17	11	36	13	3
need not	5	2	1	-	-	4	-
have to	12	21	10	9	17	15	19
may	43	68	55	74	53	66	92
might	21	24	6	12	5	9	8
can	35	39	39	35	32	68	21
could	63	75	50	85	56	69	91
will	63	104	44	102	60	59	69
would	192	276	190	252	153	113	161
Total	**611**	**878**	**776**	**916**	**697**	**750**	**735**

Table 5.21: Relative frequencies of modals and semi-modals in the Main Corpus.

This introductory subsection primarily concentrates on analyzing and discussing the relative frequencies of modals and semi-modals within the Main Corpus to observe whether significant differences exist across the subcorpora. According to the quantitative data provided in Table 5.21, common law subcorpora generally exhibit higher scores, with the sole exception being the AAA Subcorpus (611), which records the lowest score. In general, semi-modals tend to exhibit lower frequencies across all seven subcorpora, with *need not* notably being particularly underrepresented. Conversely, modal verbs such as *would* and *shall* demonstrate higher scores across all subcorpora. In particular, *shall* registers notably higher frequencies compared to other alternatives for modals of obligation, such as *must* and *be to*, which proponents of the Plain English movement advocate as suitable replacements for *shall* (e.g., Asprey 1992; Kimble 1992). However, within the AAA and LCIA subcorpora, the scores concerning *shall* are lower than in all other subcorpora, probably due to the significant influence of the Plain English movement in countries like the United States and the United Kingdom.

As previously mentioned, in legal discourse, modals expressing deontic obligation and permission play a crucial role, as they aid in conveying the intended legal meaning establishing rights, obligations, and permissions. In particular, *shall* holds significant importance in legal English and serves as a distinctive feature of the common law legal drafting tradition, indicating juridical obligation (Gotti 2008a, 238). As a consequence, the following subsection specifically addresses *shall* to examine its usage within the Main Corpus and determine if there are disparities between the common law and civil law subcorpora. In Subsection 5.5.2, the discussion also delves deeper into the usage of *would* as the quantitative data reveal intriguing findings, portraying this modal as notably prevalent within the Main Corpus.

5.5.1 *Shall*

Shall stands out as the most controversial modal auxiliary verb in legal discourse. As Facchinetti (2003, 115) observes

> The exact current semantic value of the modal verb *shall* is still unascertainable, due to its numerous shades of meaning, which have gradually been taking shape since the shadowy early history of modal auxiliaries and have come through the centuries up to the present time.

In recent decades, scholars have scrutinized and heavily criticized *shall* due to its inherently mutable nature. Notably, as discussed in Paragraph 2.4.1.6, this modal auxiliary has encountered extensive criticism from proponents of the Plain English movement. They argue that lawyers often "misuse it" and "confuse the imperative *shall* with the future tense and fail to distinguish between the various senses of *shall* in their documents" (Asprey 1992, 79). Indeed, *shall* can carry both a deontic legal meaning and a performative meaning, depending on the context in which it is employed (Garzone 1999, 139), while also denoting a sense of futurity (Butt and Castle 2013, 265). As emphasized by Palmer,

> With SHALL the speaker gives an undertaking or guarantees that the event will take place. In a sense, SHALL is stronger than MUST, in that it does not merely lay an obligation, however strong, but actually guarantees that the action will occur. (Palmer 1990, 74)

Since "there are cases in which deontic and performative meaning can hardly be distinguished" (Garzone 2013, 74), to comprehend the nuances of meaning of *shall* within the Main Corpus, the criterion proposed by Trosborg (1997, 136-138) is employed, according to which the non-animacy of the subject excludes the deontic meaning. In this regard, Trosborg even states that *shall* can only be used when an obligation is imposed by a person. However, as Garzone (2013, 74) further states

> If it is true that non-animacy of subject is not compatible with deontic meaning, the reverse is not universally true, as there are cases – albeit less frequent – that are obviously performative although the subject is an animate agent; the requisite for this to be possible is that the lexical verb is stative.

Based on this distinction, this subsection conducts a comprehensive examination of the usage of *shall* within the Main Corpus. The identified categories include the deontic, performative[124], mixed (including those cases where *shall* possesses an "inherent indeterminacy" (Garzone 2013, 74), as exemplified by situations where the agent is not explicitly indicated, making it challenging to determine whether it is a deontic or performative case), and future sense of *shall* across the subcorpora. The following taxonomy was therefore used to ascertain the nature of all occurrences of *shall* within the Main Corpus.

[124] According to Conte (1994, 248ff, in Garzone 2013, 74), performative meanings of *shall* can be categorized as either thetic and athetic. Thetic performatives establish the state of things they express, while athetic performatives merely accomplish the act they express.

Meanings of *shall*
Deontic: ● Animated Subject + Active Verb ● Animated Subject + Passive Verb
Performative: ● Animated Subject + Active Verb ● Animated Subject + Passive Verb ● Non-animated Subject + Active Verb ● Non-animated Subject + Passive Verb

Table 5.22: Criteria to identify *shall* in the Main Corpus.

Furthermore, instances of *shall* followed by a verb whose *Aktionsart* is stative are regarded as performative, as can be observed in the following example:

(78) In accordance with Article 28.2, the Claimant *shall have the right* to recover from the Respondent such sums, which have already been covered by the Claimant by way of a payment to the LCIA under Article 24. (LCIA Subcorpus)

Based on the criteria presented in Table 5.22, the number of occurrences has been calculated through an analysis of over 1600 concordance lines. The quantitative results are presented in Table 5.23 below.

Shall	**Common law subcorpora**				**Civil law subcorpora**		
	AAA	**LCIA**	**HKIAC**	**SIAC**	**SAC**	**CAM**	**ICC**
Deontic	23	30	70	92	58	45	42
Performative	54	72	97	122	91	100	95
Mixed	2	-	5	3	4	4	6
Future sense	1	-	14	15	8	6	2

Total	**80**	**102**	**186**	**232**	**161**	**155**	**145**

Table 5.23: Relative frequencies of *shall* in the Main Corpus.

Before delving into a more specific analysis of the uses of *shall*, it is pertinent to analyze and discuss the relative frequencies concerning *shall* as illustrated in Table 5.23. As previously indicated in Table 5.21, *shall* emerges as significantly more common compared to other alternative modals such as *must*, *be to* and *will*. According to Table 5.23, the SIAC (232) and HKIAC (186) subcorpora display notably high scores, while the AAA (80) and LCIA (102) subcorpora record the lowest scores. In contrast, the civil law subcorpora exhibit moderate frequencies, although they still remain relatively high (SAC: 161; CAM: 155; ICC: 145). These data appear to be particularly interesting as they challenge Gotti's assertion that the English texts of the Italian arbitration chambers "make a limited use of this modal [shall] and more frequently recur to the present indicative tense" (2008, 238). As Gotti further states, this trend is also observed in the drafting tradition of French legal texts (Gotti 2008a, 238, based on Garzone 2003, 206). Nevertheless, the data from Table 5.21 indicate that the usage of the modal *shall* in the civil law subcorpora exceeds that of two common law subcorpora (AAA and LCIA).

A plausible explanation for the shift in the use of the modal *shall* in both groups of subcorpora, particularly within the AAA and LCIA on one hand, and within the SAC, CAM and ICC on the other hand, could be attributed to two reasons:

- On the one hand, the decrease in the use of *shall* in the LCIA and AAA subcorpora could plausibly be attributed to the impact of criticism from the Plain English movement directed at the modal *shall*. Conversely, it appears that this movement has not instigated changes in the context of international commercial arbitration in Hong Kong and Singapore, as their occurrences are notably higher than the other subcorpora (SIAC: 232; HKIAC: 186);
- On the other hand, the higher frequencies observed in the civil law subcorpora could be attributed to the adherence of civil law legal drafters writing in English to the conventional characteristics of legal English, including the abundant use of *shall*. As a matter of fact, as discussed in Paragraph 2.4.1.6, the movement has prompted legal drafters, particularly in common law jurisdictions like the United Kingdom and the United States, to reassess and simplify their language choices to enhance accessibility and comprehension for a wider audience.

In summary, the divergent linguistic practices between civil law and common law traditions, as evidenced by the usage of *shall* in legal subcorpora, can be attributed to external influences such as the Plain English movement, on one hand, and to internal adherence to established conventions within legal discourse, on the other hand. These factors interact to shape the linguistic landscape of legal language in distinct ways across different legal traditions.

Taking into account the remaining data regarding the relative frequencies of *shall* from Table 5.23, it can be concluded that the meanings of *shall* are predominantly performative across all subcorpora. Conversely, occurrences of *shall* expressing a deontic meaning are less frequent across all subcorpora. The deontic and performative uses of *shall* are represented in examples (79) and (80) below, respectively:

(79) Where a partial delivery is possible, Seller *shall* deliver those portions and/or modules of a Plant [...]. (AAA Subcorpus)

(80) Where an arbitral award on agreed terms is made, Art. 32(2) and (4) to (6) *shall* apply. (SAC Subcorpus)

Interestingly, the LCIA Subcorpus is unique in its use of *shall* to convey either a deontic or a performative meaning, with no occurrences of *shall* falling within the mixed category or conveying future sense. On the contrary, in all other subcorpora, instances of both mixed instances and conveying a sense of futurity are observed, as exemplified in (81) and (82):

(81) This Agreement *shall be deemed to have been made* in Italy, and shall be governed and construed in accordance with the laws of Italy exclusive of its rules governing choice of law and conflict of law. (CAM Subcorpus)

(82) Please let us have your reply as soon as possible. If we do not have your reply by March 21, 2011, we *shall* take it that you do not want to perform the Sole Agency Agreement and the Supplemental Agreement made between us. We *shall* then solve the matters by arbitration. (HKIAC Subcorpus)

In example (49), the verb form *shall be deemed* can be interpreted as imposing the obligation to consider or regard the agreement as having been in force in Italy. However, it can also be understood statively, signifying the performative establishment of the validity of such an agreement. In example (50), in both instances in italics, *shall* is used to express a sense of

futurity. HKIAC (14) and SIAC (15) exhibit the highest occurrences of *shall* conveying a sense of futurity compared to all other subcorpora.

In conclusion, the disparities between civil law and common law traditions regarding the usage of *shall* primarily concern the quantitative level, with significant variations in the number of occurrences across the subcorpora. However, at a qualitative level, no further distinctions are evident, as the meanings of *shall* are predominantly performative across all subcorpora, while deontic meanings tend to be less frequent.

5.5.2 *Would*

According to Table 5.21, it emerges that *would* is the modal that is most frequently used across all subcorpora, both common law and civil law, together with *shall*. It is therefore important to dedicate a separate subsection to this modal, which records high scores across all subcorpora. *Would* is commonly used in English as a conditional form. It is often employed "to express a condition or, to put it in another way, to express that something is dependent on something else" (Haigh 2009, 15). Furthermore, it is often employed to express hypothetical situations, future possibilities and polite requests. Therefore, while *would* can be used in legal English, its usage is not widespread in specific legal texts such as laws and statutes. These documents typically employ more direct and definitive language to establish rules, rights, and obligations, often utilizing modals like *shall* and *must* "to impose a high degree of obligation on the addressee" (Trosborg 1995, 34). As a matter of fact, within legislation, the use of *would* is less prevalent compared to other forms of legal documents such as contracts, judgments, or arbitration awards. In these latter types of texts, *would* becomes necessary in situations where a hypothetical or conditional statement is required to clarify or explain a legal principle or consequence. This phenomenon is evident in the following examples extracted from both civil law and common law subcorpora:

(83) Hence, it *would* be redundant for X to obtain from such third party a provision affording Y the protection of Clause 19 of the Equipment Contract. Likewise, it is logically excluded that Y *would* be liable under the Equipment Contract vis-à-vis a third-party beneficiary in excess of the limitations and exclusions of the Equipment Contract, because contractual claims asserted by a third-party beneficiary are subject to the same limitations and exclusions. (AAA Subcorpus)

(84) By letter dated 31 October 2007 and an email on 13 November 2007 addressed to all the parties the Tribunal specifically sought confirmation from Mr

Olsen and Ms Okuneva that they *would* be attending the hearing to represent the 1st and 2nd Respondents and 3rd and 4th Respondents respectively. (LCIA Subcorpus)

(85) The Respondents also breached the Commitment Representations and Warranties in that the Founder and other Key Employees of the Group Companies have not been attending to work since around the 13 November 2019 Detention and *would* not be attending to work in the foreseeable future or at all. (HKIAC Subcorpus)

(86) If the Arbitration Clause had no such effect, the consequence *would* be that the dispute regarding the swatches Flowers, Cape, Two Flowers and Rose *would* have to be settled by arbitration while the dispute regarding the swatches Ruffle and Chevron Eagle *would* have to be settled before state courts even though both disputes are based on the same legal relationship between the Parties. This result *would* certainly not have been in the interest of Claimant when Claimant proposed the Arbitration Clause in 2016/2017. (CAM Subcorpus)

(87) As a result, the Sole Arbitrator bases its decision on Article 1156 of the French Civil Code. However, his decision *would* be the same if it was based on Article 1998 of the French Civil Code. (ICC Subcorpus)

As evident from the examples above, a discernible pattern emerges in the usage of *would*, often observed in specific contexts where the articulation of hypothetical or conditional statements becomes crucial to fulfill the goals of the legal texts under analysis. Within the Main Corpus, the employment of *would* mainly serves to introduce hypothetical scenarios or potential outcomes. By invoking hypothetical situations, legal practitioners and scholars can effectively illustrate the application of legal principles in various circumstances. Furthermore, the utilization of *would* underscores the speculative nature inherent in legal analysis, acknowledging the inherent uncertainties and contingencies that may influence legal proceedings or outcomes.

Consequently, the deliberate utilization of *would* within the Main Corpus reflects the understanding of the complex interplay between legal theory and practical application. In this context, *would* is therefore used to discuss hypothetical situations, potential outcomes, or conditional scenarios, all of which are common in legal reasoning. By employing *would* in the Main Corpus, arbitrators and drafters may reinforce the authority of their discussions and reasoning on various situations and scenarios, thereby enhancing their legal analyses and contributing to the effectiveness of the arbitral award as a legal document. Ultimately, given the potential classification of *would* as a less formal type of modal, this could elucidate

its widespread usage across subcorpora, particularly considering that arbitral awards frequently prioritize content over formal writing features (Tessuto 2008, 182).

5.6 Sentence length and complexity

Another important feature of legal English is its tendency towards intricate analysis and argumentation, requiring drafters to present multiple points, counterarguments, and supporting evidence within a single sentence or paragraph. Furthermore, as Belotti argues, "drafters tend to include all possible information in a single sentence in order to avoid ambiguity and misinterpretation" (Belotti 2003, 31). This inherent complexity of legal concepts often results in longer sentences, as they are necessary to effectively convey intricate legal ideas (see Paragraph 2.4.2.2). In particular, the common law style traditionally presents lengthy and complex sentences (Gotti 2008a, 239; Gustaffson 1975; Bhatia 1994; Hiltunen 1984, 2001). Consequently, this section scrutinizes the sentences contained in the Main Corpus, particularly focusing on their length and complexity. Quantitative data pertaining to the average number of words per sentence in each subcorpus within the Main Corpus were extracted using WordSmith Tools 8.0. The results are presented in Table 5.24 below.

Subcorpora	**Subcorpus**	**Average sentence length**
Common law subcorpora	AAA	21,02
	LCIA	30,4
	HKIAC	25,30
	SIAC	27,59
Civil law subcorpora	SAC	25,39
	CAM	26,65
	ICC	26,27

Table 5.24: Average sentence length in common law and civil law subcorpora.

The data presented in Table 5.24 illustrate that the average sentence length shows little variation across the majority of the subcorpora. In particular, both common law and civil law subcorpora, including the HKIAC (25,30), SIAC (27,59), SAC (25,39), CAM (26,65), and

ICC (26,27), exhibit a similar average. However, the LCIA (30,4) exhibits the highest average sentence length, exceeding that of the other subcorpora and deviating from the guidelines advocated by the Plain English movement, which suggest sentences with an average length ranging from 15 to 20 words[125]. Conversely, the AAA (21,02) demonstrates a significantly lower average. Overall, these findings suggest a consistent approach across both common law and civil law subcorpora regarding the average sentence length.

In this subsection, an analysis of sentence complexity is also conducted. As a matter of fact, legal English is not only characterized by lengthy sentences but also by their complexity (e.g, Tiersma 1999, 56; Williams 2004, 122). In this regard, Belotti (2003, 33) notes that the structure of sentences plays a significant role in readability. Simple sentence structures, resembling the basic form S + V + Complement + Adjunct, are typically easier to understand. Conversely, more intricate sentence structures tend to pose greater difficulty in understanding. These more elaborate sentences include:

- Compound sentences, consisting of two independent clauses joined by a coordinating conjunction;
- Complex sentences, consisting of two independent clauses joined by a coordinating conjunction;
- Complex-compound sentences, consisting of one independent clause with one or more dependent clauses, often incorporating a subordinating conjunction or a relative pronoun to establish relationships between clauses.

In legislative language, the prevalence of intricate sentences is notable, and it is often attributable to the significant amount of information to be condensed into a single sentence. This condensation not only increases sentence length but also contributes to its grammatical complexity (Tiersma 1999, 57). As a result, this type of language tends to be abundant with complex sentence structures. However, as Belotti further notes,

> If this is particularly true for legislative language, in which legislators have to predict a number of situations, conditions and cases, the situation is different in arbitration language. This type of language serves the purpose of delivering a definite set of rules concerning arbitral procedures both to legal experts and businesspeople and therefore it has to be closer to plain language than to legal language. (Belotti 2003, 33)

[125] Plain English Campaign. Fighting for Crystal Clear Communication Since 1979. Available at https://www.plainenglish.co.uk/how-to-write-in-plain-english.html.

This study thus delves into the level of sentence complexity within the Main Corpus to determine whether arbitration language tends towards simplicity (Belotti, 2003, 33) and whether common law sentences exhibit greater length and complexity compared to civil law sentences (Gotti 2008a, 235). Specifically, it examines two Moves of arbitral awards as identified by Bhatia and Lung (2012, 25-26) to explore their degree of complexity. The two Moves comprise the following:

- ArbDHP-2, designated as 'Details of the disputes', which serves to summarize the agreed facts, elucidate the claims and/or counterclaims presented by the parties, and potentially provide details regarding the relief sought by the involved parties;
- ArbDHP-3, designated as 'Reviews of contentions and claims', which entails an analysis of facts, the pertinent legal principles, and optionally, the general principles of good faith, culminating in conclusions drawn from this analysis.

Moves ArbDHP-2 and ArbDHP-3 were selected as objects of analysis as they constitute essential components of the arbitral award, encompassing both the details of the dispute and "the arbitrator's analyses and reasoning, while reviewing and summarizing the parties' respective positions" (Bhatia and Lung 2012, 36). Furthermore, the close reading previously conducted unveiled a substantial inclusion of details and facts in Moves ArbDHP-2 and ArbDHP-3, adding to the intrigue of the analysis.

The investigation thus focuses on the types of sentences utilized within the abovementioned two Moves. To acquire quantitative data on the types of sentences employed in the Main Corpus, it was necessary to obtain a representative subset of data through sampling. Subsequently, following the manual analysis of randomly selected arbitral awards from all seven subcorpora, the following data regarding the two Moves under analysis were obtained:

Common law subcorpora				
Sentence type	**AAA**	**LCIA**	**HKIAC**	**SIAC**

Simple	7	13.20%	72	30.90%	20	27%	16	21.90%
Compound	2	3.80%	29	12.40%	5	6.80%	5	6.80%
Complex	30	56.60%	98	42.10%	23	31.10%	24	32.90%
Complex - compound	14	26.40%	34	14.60%	26	35.10%	28	38.40%
Total	**53**		**233**		**74**		**73**	

Table 5.25: Distribution of sentence types within the ArbDHP-2 and ArbDHP-3 Moves of the common law subcorpora.

Civil law subcorpora						
Sentence type	**SAC**		**CAM**		**ICC**	
Simple	30	24.20%	13	16.50%	27	39.70%
Compound	8	6.50%	4	5%	-	
Complex	49	39.50%	39	49.40%	26	38.20%
Complex - compound	37	29.80%	23	29.10%	15	22.10%
Total	**124**		**79**		**68**	

Table 5.26: Distribution of sentence types within the ArbDHP-2 and ArbDHP-3 Moves of civil law subcorpora.

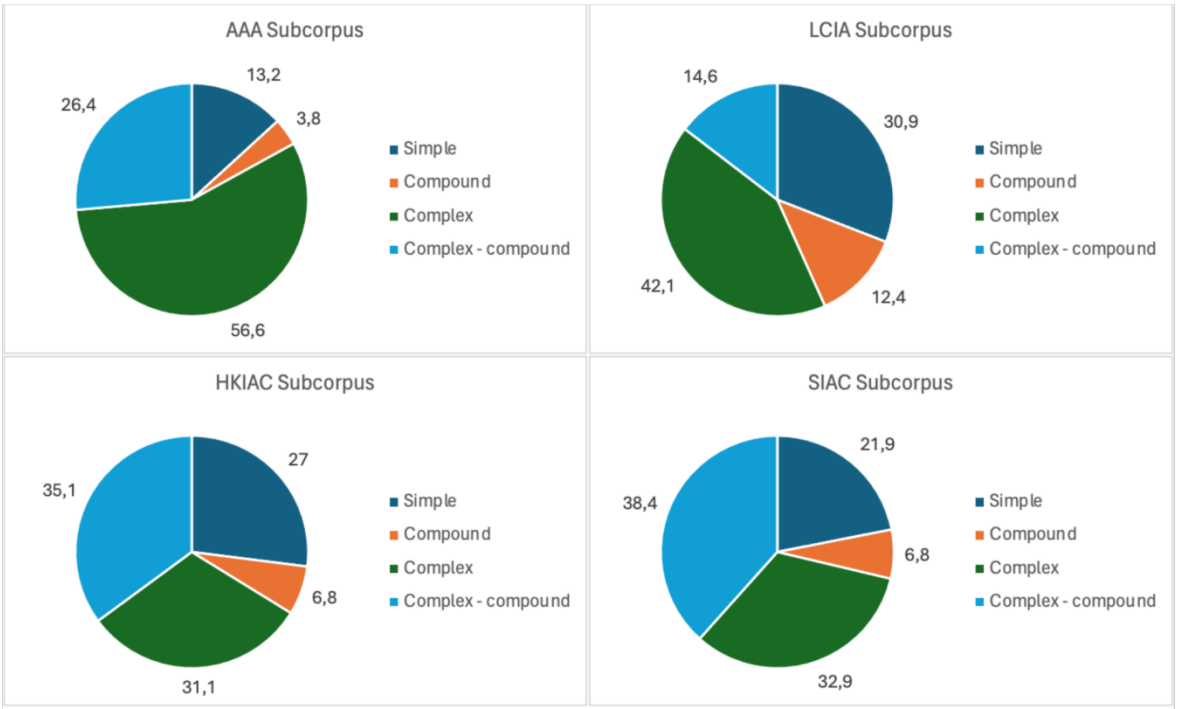

Figure 5.5: Proportion of the sentence types in the ArbDHP-2 and ArbDHP-3 Moves of common law subcorpora.

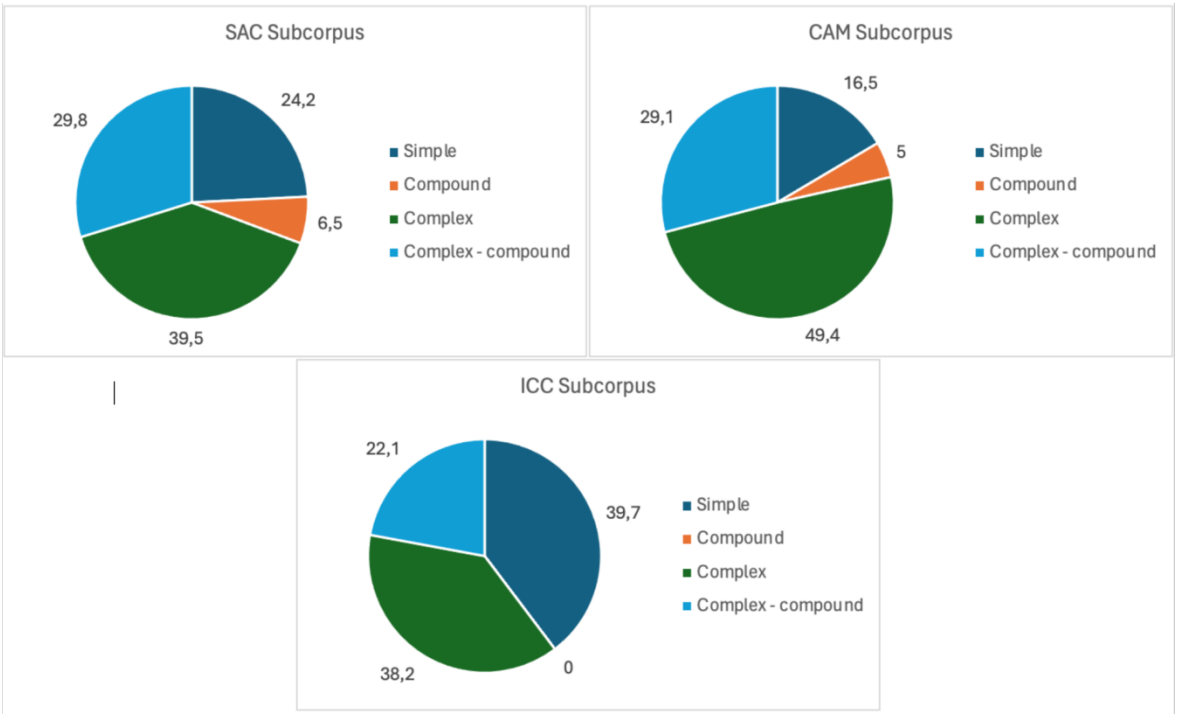

Figure 5.6: Proportion of the sentence types in the ArbDHP-2 and ArbDHP-3 Moves of civil law subcorpora.

Tables 5.25 and 5.26, along with Figures 5.5 and 5.6, illustrate that compound sentences constitute a small percentage across all subcorpora, encompassing both common law and civil law, with the ICC Subcorpus even displaying no compound sentences at all. The LCIA Subcorpus exhibits the highest percentage rate at 12.40, although this figure remains lower compared to the percentage rates of other types of sentences. Within the LCIA Subcorpus, simple sentences are particularly prevalent[126] (30.9), although complex sentences still predominate (42.1). Complex sentences also prevail within the AAA Subcorpus, whereas the two remaining common law subcorpora, the HKIAC and SIAC subcorpora, exhibit higher percentage rates of complex-compound sentences, respectively 35.1 and 38.4. Within the civil law subcorpora, complex sentences prevail, with the only exception of the ICC Subcorpus in which simple (39.7) and complex (38.2) sentences' percentage rates are almost equal.

The data presented in the tables and figures of this subsection highlight that the syntax of arbitral awards appears to be predominantly characterized by a structure wherein complex and complex-compound sentences assume a prominent role, while simple sentences are generally less used. This observation holds true for both groups of subcorpora, namely both civil law and common law, with the exception of the ICC and LCIA subcorpora. According to the data obtained in this subsection, the general assertions stating that "civil law sentences are shorter" (Gotti 2008a, 235) and that the civil law pays more attention to "simpler syntactic formulations" (Bhatia, Candlin and Engberg 2008, 24) do not seem to apply when considering the language used in arbitral awards in the context of international commercial arbitration.

In summary, the analysis indicates a uniform utilization of compound sentences across both common law and civil law subcorpora. However, there is a more varied pattern observed in the use of other sentence types, with a general inclination towards complex and complex-compound sentences across all subcorpora. The use of simple sentences exhibits more diversity, with a notable prevalence in the LCIA and ICC subcorpora.

[126] The significant presence of simple sentences within the LCIA Subcorpus may be attributed to the influence of the Plain English movement on institutions in the United Kingdom. As discussed in previous subsections, this movement seeks to tackle the complexity of sentences in legal English, advocating for simpler syntactic structures as a desirable alternative.

5.7 Impersonal structures

In numerous English specialized texts, particularly within legal documents, discourse is often depersonalized (Gotti 2008a, 99). The depersonalization process manifests through several forms. Nominalizations represent a prominent strategy for depersonalization; however, this concept extends beyond nominalizations. It involves the omission of the subject-speaker, the reduction of direct references to the interlocutor and includes the utilization of third-person pronouns to indirectly refer to the author. In particular, third-person pronouns are used because "[t]he third person also promotes an aura of objectivity" and because "[j]udges are reluctant to say that *I find* something to be the case; such a finding seems too personal and vulnerable" (Tiersma 1999, 68).

Impersonal structures often involve the use of indefinite pronouns, such as *it* or *there*, and impersonal verbs, such as *to be* or *to seem*. For the purposes of this study, it was imperative to investigate the use of impersonal constructions, a significant aspect of legal English, in order to ascertain potential disparities in their usage across civil law and common law subcorpora. With the Concord tool of WordSmith Tools 8.0, specific linguistic patterns linked to impersonal structures were examined (Tiersma 1999, 67ff; Gotti 2008a, 99ff). For instance, searches were conducted for sentences initiating with phrases such as 'it is/it was' or 'there is/there was', succeeded by a wildcard (*). Subsequently, manual analysis was conducted to identify the concordance lines containing instances of impersonal constructions, usually involving impersonal verbs. The findings are displayed in Table 5.27 below.

Impersonal structure	**Common law subcorpora**				**Civil law subcorpora**		
	AAA	**LCIA**	**HKIAC**	**SIAC**	**SAC**	**CAM**	**ICC**
it is *	59	79	37	61	63	116	79

it was *	55	29	11	38	23	15	31
there is *	36	31	34	32	26	38	35
there was *	15	18	13	30	9	9	21
Structures with impersonal verbs (*seem, say*, etc.)	9	6	3	1	3	16	2
Other impersonal structures	5	10	4	-	6	6	16
Total	**179**	**173**	**102**	**162**	**130**	**200**	**184**

Table 5.27: Relative frequencies of impersonal structures across common law and civil law subcorpora.

Based on the findings presented in Table 5.27, there are no significant differences observed across the common law and civil law subcorpora. Quantitatively, the common law subcorpora display consistent results overall, with the exception of the HKIAC Subcorpus (102), which exhibits a notably lower score compared to the other subcorpora. Regarding the civil law subcorpora, scores are generally slightly higher, although the SAC Subcorpus presents a lower score (130) compared to the CAM (200) and ICC (184) subcorpora. However, the total number of occurrences remains consistent across all subcorpora.

On a qualitative level, however, it is relevant to point out that manual analysis revealed discrepancies in the usage of the third person in decisions, namely within the Move ArbDHP-4, constituting the closure of the award. Specifically, within the AAA Subcorpus, the prevalent use of the 'editorial we' is noteworthy. This form is commonly employed in formal or scientific writing by individual authors, particularly by judges who refrain from using the

first person (e.g., 'I certify that'), deeming such statements as too personal and vulnerable. As noted by Tiersma, "[t]his usage thus helps legitimate the judicial system by making it appear to be above the fray of human emotions and biases" (1999, 68). This phenomenon is evident in the following in the following examples extracted from the AAA Subcorpus:

(88) *We* hereby certify that, for the purposes of Article I of the New York Convention of 1958, on the Recognition and Enforcement of Foreign Arbitral Awards, this Final Award was made in Houston, Texas, U.S.A. (AAA Subcorpus)

(89) For the reasons set forth above, *we* award the following sums to X and Y. (AAA Subcorpus)

However, it is noteworthy that in the AAA Subcorpus, the first person is also employed in the Move ArbDHP-4, as evidenced by the following examples, thus rendering the decision particularly 'personalized':

(90) In accordance with the foregoing, *I* award as follows: [...] (AAA Subcorpus)

(91) For the reasons set forth above, *I*, the UNDERSIGNED ARBITRATOR, AWARD as follows: [...] (AAA Subcorpus)

However, it should be noted that within the AAA Subcorpus, instances arise where both first and third person references, or the usage of the 'editorial we', are employed in the conclusion of the same award, as exemplified in the following instances:

(92) Accordingly, *the Panel makes* its FINAL AWARD as follows: [...] *We* hereby certify that, for the purposes of Article I of the New York Convention of 1958, on the Recognition and Enforcement of Foreign Arbitral Awards, this Final Award was made in Houston, Texas, U.S.A. (AAA Subcorpus)

(93) Accordingly, *the Arbitrator AWARDS* the following damages in favor of Claimant [...]. *I* hereby certify that, for the purposes of Article I of the New York Convention of 1958, on the Recognition and Enforcement of Foreign Arbitral Awards, this Final Award was made in New Orleans, Louisiana, Parish of Orleans.

As evident from the examples provided above, the concluding Moves of the arbitral awards contained within the AAA Subcorpus exhibit a mixture of both personal and impersonal

structures. These sentences express the decision of the arbitrator or the arbitral tribunal, incorporating first, second and third person pronouns and forms.

Similar observations can be drawn regarding the LCIA and HKIAC subcorpora, wherein both personal and impersonal structures are discernible in the concluding Moves of the arbitral awards. This can be noticed in the following examples extracted from both subcoprora:

(94) *I* award, order and declare as follows: [...]. This Award is *made and issued by the Arbitral Tribunal* at the seat of arbitration, London, United Kingdom. (LCIA Subcorpus).

(95) Accordingly, the *Tribunal hereby awards* as follows: [...]. Any remaining applications, claims or counter-claims *are hereby dismissed*.

(96) *We*, Leonard Lord Hoffmann, Lawrence, Lord Collins of Mapesbury and John Beechey, having read and heard the evidence and the parties' written and oral submissions made to us, and having carefully considered the same and, for the reasons stated above, make our Third Part Final Award as follows. [...] *We* reserve to ourselves the determination of all other issues and claims in the reference, including the costs relating to this Award. (LCIA Subcorpus)

(97) For the reasons given above, *the Tribunal has decided and makes* the following Final Award: [...]. (LCIA Subcorpus)

(98) Now, *the arbitral tribunal*, consisting of X, Y, and Z, having assumed the burden of this arbitration and having considered all the oral and documentary evidence adduced by both parties and for the above reasons, *do hereby AWARD AND ADJUDGE* that - [...]. IN WITNESS WHEREOF *we* have hereunto set our hands in Hong Kong this 23rd day of January 2009. (HKIAC Subcorpus)

(99) *I* now turn to my deliberation and decision. Firstly, *I* shall decide whether the delivery or supply under Invoice 28 was to Ms. X personally rather than to Y or the Claimant. [...] *I* therefore come to the decision that the Claimant is liable to pay for the batch of the Balm under Invoice 28, or the adjusted amount under the revised Invoice 28 of HK$ Z. (HKIAC Subcorpus)

As noted from the examples provided above, all common law subcorpora exhibit a combination of both personal and impersonal structures within the decisions articulated in their arbitral awards. The sole exception is the SIAC Subcorpus, which, along with the awards contained within the civil law subcorpora, exclusively employs third person

structures. Such a choice of structure serves to depersonalize the final decisions rendered by the arbitrators, as evidenced by the following examples extracted from both the SIAC Subcorpus and the civil law subcorpora:

(100) The *Tribunal hereby AWARDS AND DIRECTS* the following: [...]. (SIAC Subcorpus)

(101) Accordingly, the Tribunal decides as follows. Mr. X, Ms. Y, Ms. Z and J shall pay the Claimant: [...]. (SIAC Subcorpus)

(102) For these reasons, and by applying the Swiss Rules of International Arbitration, the agreed rules of procedure and Chapter 12 of the Swiss Private International Law Statute, and in due consideration of the parties' agreement captioned "Agreed Terms to be Included in Final Award" of 14 April 2009,28, *the Arbitral Tribunal*: 1. *Declares* that… [...]. (SAC Subcorpus).

(103) The sole arbitrator, in view of the foregoing, DECIDES: [...]. (SAC Subcorpus)

(104) All the above considered, *THE TRIBUNAL*, for all the reasons and within the limits stated in the motion, referring to and fully confirming the partial and interim award signed on February 8, 2007, 1. unanimously: (a) *Declares* it cannot… [...]. (CAM Subcorpus)

(105) For these reasons, the Arbitral Tribunal decides as follows: [...]. All other claims are dismissed. (CAM Subcorpus)

(106) On the grounds set out above, the Arbitral Tribunal makes the following decision: [...]. All other claims of the Parties are denied. (ICC Subcorpus)

(107) Consequently, the Arbitral Tribunal decides: [...]. Any and all other claims made by the Parties herein are dismissed. (ICC Subcorpus)

In summary, the analysis conducted in this subsection highlights a significant disparity between the common law and the civil law subcorpora concerning the use of personal and impersonal sentence structures within the final Move of the arbitral awards examined in this research. Specifically, the common law subcorpora exhibit a blend of structures that simultaneously convey objectivity, impressiveness, and vulnerability (Tiersma 1999, 68). The sole deviation from this trend is observed in the SIAC Subcorpus, which consistently employs third person constructions (e.g., 'the tribunal declares'). In alignment with the SIAC Subcorpus, all civil law subcorpora adhere to the utilization of third-person structures.

5.8 Passive constructions

As delineated in Paragraph 2.4.2.3, legal discourse frequently employs passive constructions, aiming to intentionally introduce imprecision and vagueness into legal texts (Tiersma 1999, 74). Particularly in English, the passive voice serves as the primary device for depersonalizing discourse (Gotti 2008a, 96). Passive constructions in English are characterized by the transformation of the object in an active sentence into the subject of the passive sentence. This construction frequently redirects attention from the agent of the action to the recipient of the action (Tiersma 1999, 75).

In the context of this research, it was essential to examine the utilization of passive constructions, an important syntactic feature of legal English, to determine any potential discrepancies in their application between civil law and common law subcorpora. To fulfill this objective, the Concord tool of WordSmith Tools 8.0 facilitated the examination of specific linguistic patterns associated with passive constructions, as discussed in works such as those by Gotti (2008a, 96ff) and Tiersma (1999, 74ff). By systematically examining these patterns, a comprehensive understanding of the use of passive constructions within the Main Corpus is attained. These patterns include the following:

- *be* + past participle (e.g., ‘is written’, ‘was written’);
- Modal verbs + *be* + past participle (e.g., ‘can be improved’, ‘should be noted’);
- *get* + past participle (e.g., ‘gets replaced’, ‘got lost’);
- Passive gerunds (e.g., ‘being repaired’, ‘having been completed’);
- Passive infinitives (e.g., ‘to be heard’, ‘to be seen’).

According to the outlined criteria, WordSmith Tools 8.0 was thus used to conduct the search and gather the quantitative data pertinent to the identified linguistic patterns. Through this process, a substantial volume of data was collected, facilitating the extraction of valuable insights into the frequency of passive constructions across the subcorpora. Following the initial phase of data collection, it was indeed imperative to conduct a meticulous manual analysis to identify the concordance lines containing instances of passive constructions. Specifically, manual analysis was necessary to ensure accuracy and reliability in identifying and categorizing passive constructions within the legal texts under analysis. The results are presented in Table 5.28 below.

Passive constructions	**Common law subcorpora**				**Civil law subcorpora**		
	AAA	**LCIA**	**HKIAC**	**SIAC**	**SAC**	**CAM**	**ICC**
be + past participle	612	688	581	692	578	601	663
Modal verbs + *be* + past participle	124	169	173	154	158	234	194
get + past participle	1	1	-	2	-	-	-
Passive gerunds	76	94	47	48	33	27	46
Passive infinitives	87	118	98	160	141	120	100
Total	**900**	**1070**	**899**	**1056**	**910**	**982**	**1003**

Table 5.28: Relative frequencies of passive constructions across common law and civil law subcorpora.

Based on the quantitative data presented in Table 5.28, it appears that the relative frequencies of passive constructions exhibit homogeneity across both common law and civil law subcorpora. The higher score is recorded in the LCIA Subcorpus, totalling 1070 occurrences; nevertheless, it remains consistent with the other subcropora. Overall, no discernible disparities are evident among the subcorpora under analysis. As evident, the construction '*get* + past participle' is sparingly used across all subcorpora and notably absent from the civil law subcorpora. Additionally, at a qualitative level, within the common law subcorpora, where present, their utilization adopts a colloquial form, as can be noticed in the following example:

(108) Therefore, he said, "the hulls *get looked at*" quite often. There are opportunities to go below deck after every job. (AAA Subcorpus)

Conversely, the passive construction '*be* + past participle' emerges as the most utilized structure across all subcorpora. The style of these constructions maintains a more formal tone across all subcorpora, as evidenced by the following examples:

(109) Based on Article 28 of the LCIA Rules, [...] as a general principle, Claimant *is entitled* to recover his arbitration and legal costs and expenses incurred in this arbitration (subject to review of the reasonableness and proportionality of the claimed costs and expenses). (LCIA Subcorpus)

(110) It *was also copied* to the Claimant's Counsel. It *was sent* to the Claimant's Counsel by email and to the Respondent by email (at ********.com and ********.com) and courier (at R's 1st Address - see DHL tracking record at Annex A, No.2). (HKIAC Subcorpus)

(111) It *is also denied* that the Respondent had any legal and contractual basis for its conduct in dealing with X. (SIAC Subcorpus)

(112) On this basis, the Claimant *is entitled* to the interest it claims, at the claimed rate of 5% per annum, which corresponds to the statutory interest rate under Swiss law. (SAC Subcorpus)

(113) Thus, pursuant to Article 13 of the Rules, any possible objection is deemed to be waived. (CAM Subcorpus)

Thus, drawing from the aforementioned examples, the complexity of passive constructions appears to remain uniform across all arbitral awards subjected to analysis. Overall, no significant disparities are noted concerning the utilization of passive constructions across common law and civil law subcorpora under examination, both quantitatively and qualitatively.

CHAPTER 6

RESULTS AND CONCLUSIONS

This chapter provides a summary of the key findings regarding the central topics of this study and their implications within a larger framework and context. Initially, a synthesis and interpretation of quantitative and qualitative data and results from Chapter 5 is presented to highlight the differences that are evident across common law and civil law subcorpora (6.1). Subsequently, the strengths and limitations of the research are presented, along with insights into potential directions for future investigation (6.2).

6.1 Results concerning the lexical and syntactic choices indicating discrepancies between civil law and common law arbitral awards

The research questions addressed in this research pertain to the linguistic, cultural, and legal disparities between the civil law and common law arbitral awards gathered through the 'Jus Mundi' search engine for international law and arbitration. The research questions are outlined below:

1. What are the linguistic, cultural and legal differences between the civil law and the common law arbitral awards generated in the arbitral institutions under consideration?
2. To what extent do common law and civil law features influence the arbitration awards?

Addressing these questions required a keen focus on the pertinent legal framework and, most importantly, the applicable laws guiding each arbitration decision. It is indeed posited that the drafting and the composition of arbitration awards reflects the perspectives of practitioners and legal scholars, heavily influenced by their legal heritage (Bhatia 1993, 245) and the linguistic and cultural nuances of their country of origin (Gotti 2008a, 235). It was therefore imperative to collect arbitral awards that would ensure representation from applicable laws belonging to both civil law (including Italian law, Swiss law, and French law) and common law (including US state laws, England and Wales law, Hong Kong law,

and Singaporean law) systems. These arbitral awards originated from renowned international arbitral institutions with an influential position in the global arena of commercial arbitration. Largely due to the entrenched notion of arbitration as a highly confidential practice, arbitral awards have long been considered a "relatively unexplored genre" (Bhatia, Garzone and Degano 2012, 1), However, there has been a significant shift in recent years, characterized by a consistent commitment to transparency (Mourre and Vagenheim 2023, 261), aiming to publish arbitral awards and make them accessible to the general public to contribute to the development of law (Resnik, Garlock and Wang 2020, 612). Thanks to this shift in arbitration culture, significant policy changes have occurred in prominent arbitral institutions like the ICC, alongside the establishment of search engines like Jus Mundi, which aim to disseminate legal knowledge. Consequently, it became feasible to collect a limited number of arbitral awards – drafted in English and originating from various arbitral institutions worldwide – through the Jus Mundi search engine for analysis, enabling this study to concentrate on the genre of arbitral awards. As previously mentioned in this research, access to data regarding arbitration discourse enables in-depth examination, analysis, and comparison of the professional reasoning by arbitrators in resolving disputes across diverse global regions and under different legal frameworks. To this end, the genre of arbitral awards is particularly relevant, as it can provide insights into the evolving landscape of the widely adopted practice of international commercial arbitration (Bhatia, Garzone and Degano 2012, 1).

As previously discussed in this study, there are overarching features – at the lexical, syntactic, and textual levels – that generally characterize legal discourse. However, certain features cannot be considered recurrent across all types of legal texts, but rather as typical of specific genres. This research therefore focused on the lexical and syntactic features of legal English as identified by prominent scholars (Mellinkoff 1963; Crystal and Davy 1969; Hiltunen 1990; Bhatia 1993; Tiersma 1999; Alcaraz and Hughes 2002; Gotti 2012a; Riley and Sours 2012). Importantly, it took into consideration prior analyses conducted by Gotti (2008a) and Bhatia, Candlin, and Engberg (2008), who delineated several distinctions between traditional common law and civil law drafting conventions. Consequently, the lexical and syntactic features selected for analysis within the genre of arbitral awards are as follows:

- Binomials and multinomials;
- Archaisms, Latinisms and terms of French/Norman origin;
- Nominalizations;

- Complex prepositions;
- Modal auxiliaries, with a specific focus on *shall* and *would*;
- Sentence length and complexity;
- Impersonal structures;
- Passive constructions.

In Chapter 5, the analysis thus focused on characteristic features of legal English, particularly those previously identified as indicators of potential divergences between legal texts in civil law and common law contexts. This research has been centered on conducting both quantitative and qualitative analyses of the corpus of arbitral awards collected via Jus Mundi. The first feature analyzed in this research concerns binomials and multinomials. At a quantitative level, multinomials are not sufficiently frequent, thus hindering the possibility to draw conclusions regarding their usage across subcorpora. The SIAC Subcorpus is the only one containing a sufficient number of multinomials within the Main Corpus, amounting to 20 occurrences. In contrast, binomials are fairly evenly spread across all subcorpora, as each one features all the specified types of binomials ([N + and/or + N], [Adj + and/or + Adj], [V + and/or + V], [Adv + and/or + Adv], and the mixed category). However, the ICC Subcorpus only showcases four of the targeted types of binomials, thus excluding the use of the [Adv + and/or + Adv] and [Adj + and/or + Adj] types of binomials. Furthermore, an interesting aspect emerges: the common law subcorpora (AAA, LCIA, and SIAC, with the exception of the HKIAC Subcorpus) demonstrate a relatively uniform distribution of binomials across different parts of speech. This phenomenon mirrors the focus of common law legal texts on precision and comprehensive description of legal actions within specific contexts. Such emphasis is demonstrated by the use of various types of binomials (Bhatia, Candlin and Engberg 2008, 24), which can thus be categorized as a distinctive feature of common law arbitral awards.

The second feature under analysis pertains to archaisms, Latinisms, and terms of French/Norman origin. Regarding archaisms, both common law and civil law subcorpora consistently employ archaic formulaic words and expressions. With regard to archaic adverbs, however, the quantitative data reveal a general lower usage across subcorpora, especially evident in the LCIA Subcorpus, which shows a notably reduced inclination toward their employment. This observation implies adherence to the principles advocated by the Plain English movement within the LCIA Subcorpus. These principles involve omitting archaic and foreign terms, replacing them with everyday vocabulary that aligns with patterns typical of ordinary speech.

With regard to Latinisms, quantitative data provide relatively consistent results across all seven subcorpora. However, higher occurrences are observed within the common law subcorpora, especially within the LCIA Subcorpus. Through qualitative analysis, it was possible to observe that the Latinism *v. / v* assumes a significant role in the context of arbitral awards, particularly within the common law subcorpora. Specifically, it is prominently featured across all common law subcorpora. By employing the Concord tool, it was possible to verify that numerous occurrences of the Latinism *v. / v* specifically refer to previous cases, namely precedents, considered and meticulously examined in deciding the current case. In contrast to the common law subcorpora, references to previous case law are infrequent within the civil law subcorpora. Nevertheless, additional insights on this theme are subsequently provided in Subsection 5.4.8.

Regarding terms of French/Norman origin, their usage is generally restricted across all seven subcorpora, thereby preventing the drawing of conclusions on the topic.

The third feature examined in this research focuses on nominalizations, with quantitative data revealing a high level of consistency and uniformity across all subcorpora. Although the ICC Subcorpus displays slightly fewer instances, the overall trend suggests equality in the use of nominalizations across all corpora. Furthermore, nominalizations are consistently used across all seven subcorpora with a common purpose, which is to enhance textual cohesion, condense information, and exert influence on the reader. On the whole, both at quantitative and qualitative levels, nominalizations are used in a homogeneous manner across all subcorpora under analysis. However, it is important to highlight that, as noted by Bhatia, Candlin, and Engberg (2008, 24), the employment of nominalizations stands out as a primary feature of common law legal texts. Therefore, the fact that both civil law and common law subcorpora extensively employ nominalizations suggests that the legal language employed in the arbitral awards of both common law and civil law jurisdictions tends to rely on nominalizations to convey intricate legal concepts or describe procedures, and that there may exist shared influences or cross-fertilization of language conventions.

The fourth feature examined in this research concerns complex prepositions, which constitute the most substantial part of this study. The investigation has focused on their usage patterns, following the classifications proposed by Quirk et al. (1985, 656) and Bhatia (1998). Drawing upon their taxonomies (refer to Section 5.4), the analysis focused on the following identified groups of complex prepositions, categorized by ranges of meanings:

- Complex prepositions of the cause/purpose spectrum:
- Complex prepositions of the means/agentive spectrum;

- Complex prepositions expressing concession;
- Complex prepositions expressing respect;
- Complex prepositions expressing exception and addition;
- Complex prepositions expressing condition;
- Complex prepositions signaling textual authority;
- Complex prepositions expressing non-adherence to legal sources.

Quantitative data first indicate a notable trend, suggesting that complex prepositions are more prominent within two civil law subcorpora (SAC and CAM subcorpora). However, when considering all subcorpora collectively, a consistent usage is observed across all arbitral awards under analysis. Importantly, certain categories of complex prepositions show prevalence across subcorpora, including those expressing cause/purpose, respect, and signaling textual authority. Conversely, other categories tend to be less represented, particularly in the case of complex prepositions expressing concession. The following discussion below synthesizes the main findings from each category:

- Within the cause/purpose spectrum, the civil law subcorpora exhibit higher occurrences than the common law subcorpora. Nevertheless, all seven subcorpora demonstrate relatively high results. Indeed, the relative frequencies of the CAM, ICC, and SAC subcorpora exceed those of all common law subcorpora. Specifically, certain complex prepositions within the cause/purpose spectrum exhibit significantly higher frequencies in the civil law subcorpora compared to the common law subcorpora.
- Within the means/agentive spectrum, mixed results are observed. In particular, the ICC and AAA subcorpora exhibit notably lower frequencies, especially when compared to the LCIA and SAC subcorpora. However, quantitative data do not permit drawing conclusions regarding differences between common law and civil law subcorpora. In contrast, qualitative analysis reveals that specific complex prepositions reflect the nature of either civil law or common law discourse.
- Concerning complex prepositions indicating concession, there is a persistent trend of low occurrences across all subcorpora. However, due to limited quantitative data in some cases, drawing conclusive insights about their usage proves difficult. Nonetheless, intriguing patterns emerge regarding the utilization of additional concessive connectors. Despite their consistent appearance across subcorpora, it is worth noting a slight increase in occurrences within civil law texts, especially in

CAM and ICC subcorpora. This is noteworthy considering the typically less dense information in civil law texts (Bhatia, Candlin, and Engberg 2008, 24). Additionally, it is unusual to see a need for acknowledging exceptions, counterarguments, or conflicting interests within this legal domain. Moreover, within civil law texts, the choice of specific connectors tends to reflect a more elaborate style, while common law texts lean towards more formal stylistic conventions.

- With regard to complex prepositions indicating respect, there is a general consistency in frequency across all subcorpora, except for the ICC Subcorpus, which shows the lowest rate. However, qualitatively, there are notable differences between subcorpora, with specific complex prepositions and alternative ones highlighting distinctions. For example, common law subcorpora employ complex prepositions to reference legal sources like case law, whereas civil law subcorpora predominantly use them for civil codes. These results underscore the differences arising from variations in linguistic norms and divergent approaches to legal reasoning and citation practices between civil law and common law systems.
- Concerning complex prepositions indicating exception and addition, they appear with moderate to fair frequency in both common law and civil law subcorpora. Overall, no noticeable differences in the usage of this type of complex prepositions can be observed.
- With regard to complex prepositions expressing condition, quantitative data unveil varying frequency rates across all subcorpora, making it challenging to draw conclusions about their general use within either civil law or common law subgroups. Qualitatively, these complex prepositions highlight differences in how legal sources are incorporated into the text. In civil law subcorpora, they often reference specific articles of civil codes, whereas in common law subcorpora, they primarily allude to established legal principles and/or agreements.
- With regard to complex prepositions signaling textual authority, they represent an extensively represented subset within the Main Corpus. Notably, there is a noticeable difference in frequency between civil law and common law subcorpora, especially within the SAC and CAM, where occurrences are notably higher. Conversely, common law subcorpora show slightly lower frequencies. These quantitative findings seem to challenge conventional descriptions of common law legal English, which typically suggest a preference for complex prepositions (e.g., Bhatia, Candlin, and Engberg 2008, 24). One possible explanation for this shift could be attributed to

the influence of the Plain English movement, which has extended beyond the United Kingdom and United States to regions including Singapore and Hong Kong.

Moreover, concerning the integration of sources of authority into the texts, while data on references to legislation/codes show notably higher frequencies within civil law subcorpora, especially in the CAM and ICC subcorpora, data regarding references to case law and specific court decisions seem to be more uniform across all subcorpora. It is also crucial to note that in civil law subcorpora, sources of authority are often integrated concisely, with brief references. Conversely, in common law subcorpora, the prevailing tendency is to extensively discuss the legal principle, particularly when citing case law. In such cases, legal principles are elaborated upon by providing detailed information about the facts of the precedent in question.

- With regard to complex prepositions expressing non-adherence to legal sources, they are relatively less common across all subcorpora. Quantitatively, their frequencies are consistent across all subcorpora, except for the SIAC Subcorpus, which stands out. Moreover, upon qualitative analysis, no noticeable differences are observed regarding the usage of this category of complex prepositions. Their application seems relatively consistent across all subcorpora, both quantitatively and qualitatively.

Overall, particular categories of complex prepositions signify significant differences in the drafting of common law and civil law arbitral awards. These variances are evident across linguistic, cultural, and legal dimensions. Specifically, these disparities are most noticeable within complex prepositions related to the cause/purpose spectrum, as well as those expressing concession and signaling textual authority.

The fifth feature scrutinized in this research concerns modal auxiliaries. Quantitative data indicate that common law subcorpora generally show higher scores, except for the AAA Subcorpus, recording the lowest score. Across all seven subcorpora, semi-modals tend to have lower frequencies. In contrast, modal verbs like *would* and *shall* consistently show higher scores. *Shall* is notably more frequent than alternative modals of obligation like *must* and *be to*, which advocates of the Plain English movement suggest as substitutes for *shall* (e.g., Asprey 1992; Kimble 1992). However, in the AAA and LCIA subcorpora, *shall* appears to be less frequent compared to other subcorpora, likely due to the substantial influence of the Plain English movement in countries such as the United States and the United Kingdom. Scores are notably high in the SIAC and HKIAC subcorpora, while the AAA and LCIA subcorpora record the lowest scores. Conversely, civil law subcorpora show moderate frequencies, although they remain relatively high. These findings are intriguing as

they challenge Gotti's statement that English texts from Italian arbitration chambers "make a limited use of this modal [shall]" (Gotti 2008, 238). As a matter of fact, in civil law subcorpora, the utilization of the modal *shall* surpasses that observed in two common law subcorpora (AAA and LCIA).

A plausible rationale for the variation in the usage of the modal *shall* within both sets of subcorpora, notably within the AAA and LCIA subcorpora, on one hand, and within the SAC, CAM, and ICC subcorpora on the other hand, may be delineated by two underlying factors: Firstly, the decline in the use of *shall* in the LCIA and AAA subcorpora may plausibly be ascribed to the repercussions of criticism emanating from the Plain English movement targeting the modal *shall*. Conversely, it is discernible that this movement has not instigated alterations within the context of international commercial arbitration in Hong Kong and Singapore, as the occurrences therein markedly surpass those of other subcorpora (SIAC and HKIAC). Secondly, the augmented frequencies observed in the civil law subcorpora could be attributed to the inclination of civil law legal drafters writing in English to adhere to the traditional features of legal English, including the prevalent use of *shall*. In essence, the contrasting linguistic approaches regarding the usage of *shall* between common law and civil law traditions can be ascribed respectively to external factors such as the Plain English movement and to the internal adherence to entrenched norms within legal discourse.

Furthermore, regarding the remaining data concerning the relative frequencies of *shall* across all seven subcorpora, findings suggest that the meanings of *shall* are primarily performative across all of them. In contrast, instances where *shall* expresses a deontic meaning are less common across all subcorpora. In summary, the differences between civil law and common law traditions regarding the usage of *shall* primarily manifest at a quantitative level, with notable discrepancies in occurrence frequencies across subcorpora. Instead, at a qualitative level, no further distinctions emerge, as *shall* predominantly serves performative functions across all subcorpora, with deontic meanings being less prevalent.

The second modal examined in this research is *would*, with quantitative data revealing intriguing insights, illustrating its significant prevalence in the Main Corpus. Indeed, *would* is the modal that is most frequently used across all subcorpora, both common law and civil law, together with *shall*. It could be regarded as a less formal type of modal, which may explain its widespread usage across subcorpora, given that arbitral awards often prioritize content over formal writing features (Tessuto 2008, 182). Furthermore, according to the qualitative analysis conducted, *would* is often observed in specific contexts where articulating hypothetical or conditional statements becomes pivotal to achieving the objectives of the legal texts under scrutiny. Within the Main Corpus, its primary function is

to introduce hypothetical scenarios or potential outcomes, which are commonplace in legal discourse.

The sixth characteristic examined in this research pertains to sentence length and complexity. Concerning sentence length, there is little variation in the average sentence length across most of the subcorpora. Specifically, both common law and civil law subcorpora, including HKIAC, SIAC, SAC, CAM, and ICC, exhibit a similar average sentence length. However, the LCIA (30.4) exhibits the highest average sentence length, exceeding that of the other subcorpora and deviating from the guidelines promoted by the Plain English movement. In contrast, the AAA (21.02) exhibits a significantly lower average sentence length. Nevertheless, these findings suggest a consistent approach to average sentence length across both common law and civil law subcorpora.

With regard to sentence complexity, the analysis conducted on the Moves ArbDHP-2 and ArbDHP-3 indicates that the syntax of arbitral awards predominantly features complex and complex-compound sentences, with simple sentences being less frequently employed. This observation remains consistent across both sets of subcorpora, encompassing both civil law and common law, with the exception of the ICC and LCIA subcorpora. Based on the data gathered in this subsection, the general claims asserting that "civil law sentences are shorter" (Gotti 2008a, 235) and that civil law exhibits a preference for "simpler syntactic formulations" (Bhatia, Candlin, and Engberg 2008, 24) do not seem to hold true when examining the language employed in arbitral awards within the context of international commercial arbitration. In summary, the analysis shows that compound sentences are consistently used across both common law and civil law subcorpora. However, other sentence types exhibit more variability, with a tendency towards complex and complex-compound sentences across all subcorpora. The usage of simple sentences varies more, with a notable prevalence in the LCIA and ICC subcorpora.

The seventh characteristic scrutinized in this research revolves around impersonal structures. Quantitative analysis reveals no significant differences across common law and civil law subcorpora, as the total number of occurrences remains consistent. However, qualitative examination highlights notable variations in the use of the third person in decisions, particularly within the Move ArbDHP-4, constituting the award's closure. Specifically, within the AAA Subcorpus, the prevalent use of the 'editorial we' stands out, although both first person and third person constructions are also employed. Overall, the AAA Subcorpus presents a blend of personal and impersonal structures. Similar observations are made for the LCIA and HKIAC subcorpora, where both personal and impersonal structures are evident in the concluding Moves of the arbitral awards. All common law subcorpora exhibit

a mix of personal and impersonal structures in their award decisions, except for the SIAC Subcorpus, which, along with the civil law subcorpora, exclusively employs third person structures, thus depersonalizing the final decisions rendered by the arbitrators.

Finally, the eighth and concluding feature explored in this research pertains to passive constructions. Based on the quantitative data, it is apparent that the relative frequencies of passive constructions display uniformity across both common law and civil law subcorpora. Although the LCIA Subcorpus records the highest score, this remains consistent with the other subcorpora. Overall, no notable disparities are observed among the subcorpora under investigation. There are no significant differences noted in the utilization of passive constructions across common law and civil law subcorpora examined, both quantitatively and qualitatively.

Table 6.1 below summarizes the findings from Chapter 5 concerning the differences identified between common law and civil law subcorpora, covering both quantitative and qualitative aspects. 'Yes' indicates instances where differences were observed between civil law and common law subcorpora, while 'no' indicates cases where no significant disparities were found. The hyphen '-' is used when data are insufficient to draw further conclusions, warranting additional investigation.

Features	**Discrepancies between common law and civil law subcorpora**	
	Quantitatively	**Qualitatively**
Binomials	no	yes
Multinomials	-	-
Archaisms	yes	no
Latinisms	no	yes
Terms of French/Norman origin	-	-
Nominalizations	no	no
Complex prepositions	yes	yes
Modal auxiliaries	yes	no
Sentence length	no	no
Sentence complexity	yes	no

Impersonal structures	no	yes
Passive constructions	no	no

Table 6.1: Results concerning all lexical and syntactic features analyzed in this research.

6.2 Conclusions

This study validates the hypothesis that arbitration discourse, particularly within the genre of arbitral awards, is influenced by linguistic, cultural and legal differences depending on the relevant applicable law. Regarding the first research question, arbitral awards governed by either civil law or common law applicable laws are particularly influenced by their respective legal systems, leading to linguistic, cultural and legal differences. As can be noticed from Table 6.1, although convergence is observed in specific features, others indicate discrepancies between civil law and common law approaches. For instance, as discussed in Chapter 5, civil law subcorpora typically adhere to the traditional drafting conventions of legal English, exemplified by the case of *shall*. In contrast, common law subcorpora, particularly those greatly influenced by the Plain English movement, tend to modify these linguistic patterns, aligning with the new recommendations.

Regarding the second research question, it is evident that features characteristic of both common law and civil law deeply influence arbitral awards. This is observable in certain features, such as the use of complex prepositions to signal textual authority. In these instances, it is evident that the legal culture of the involved arbitrators significantly shapes their approach to legal reasoning, thus profoundly impacting the procedures. However, it is believed that this does not represent a limitation or issue, but rather enriches the global arbitration culture. In this context, the growing access to arbitral awards through search engines or other resources can serve as a significant asset for both scholars and practitioners worldwide, enabling them to learn from diverse legal cultures and contributing to further harmonization of arbitration procedures on a global scale. The analysis conducted in this research already indicates convergence between common law and civil law in certain aspects. As evident from Table 6.1, no discrepancies are detected concerning specific lexical and syntactic features. However, others still reflect a significant influence from the legal system of origin.

6.3 Limitations and ideas for future research

Thanks to the retrieval of arbitral awards through the search engine Jus Mundi, this study was able to conduct a linguistic analysis on the legal genre of arbitral awards, which was considered "relatively unexplored" (Bhatia, Garzone and Degano 2012, 1) until a decade ago. It must be admitted that the collection of the material for this study was limited due to the nature of the search engine Jus Mundi, which necessitates an annual subscription by the university of affiliation. For the purposes of this study, it was possible to make a one-month free trial, which allowed the collection of the necessary data. However, further data could be collected and a bigger corpus could be compiled. Nevertheless, the constraint of limited flexibility in the text collection was considered acceptable as it allowed to work with original and not easily accessible legal documents, thus making this research more authentic and reflective of real-world legal scenarios.

The data collected for this study could represent a starting point for further research and could also be integrated with additional data. Specifically, the following potential ideas are outlined:

- A larger corpus of arbitral awards could be retrieved from Jus Mundi or similar resources (this could also involve other types of legal genres, both related to arbitration or not);
- Diachronic analysis of this genre and/or similar genres could be conducted;
- Analysis of other linguistic features not included in this research, including textual features, could be pursued.

In conclusion, despite the constraints imposed by the subscription model of Jus Mundi and the challenges it presented for data collection, this study effectively conducted a linguistic analysis of arbitral awards. This endeavor has contributed to a deeper understanding of a genre that had been relatively underexplored until recent years, while also enhancing the comprehension of the inherent differences between common law and civil law within arbitral awards. The one-month free trial provided an opportunity to gather sufficient data for this research, albeit with restrictions on flexibility. Moving forward, the data collected can serve as a foundational starting point for future research investigations. Additionally, the outlined potential ideas for further analysis present promising avenues for expanding the understanding of linguistic aspects within legal discourse.

BIBLIOGRAPHY

Aarts, Bas. *English Syntax and Argumentation.* New York: Palgrave, 2001.

About the AAA and ICDR. https://www.adr.org/about. Last visited 22/01/2024.

Adejare, Roseline Abonego. "A Corpus-Based Study of Complex Prepositions in a Non-Native English Variety." *Open Journal of Modern Linguistics* 10.4 (2020): 215-259.

Adler, Mark. "The Plain Language Movement." *The Oxford Handbook of Language and Law*. Edited by Lawrence M. Solan and Peter M. Tiersma. Oxford and New York: Oxford University Press, 2012.

Aeberli, Peter. "Jurisdictional Disputes under the Arbitration Act 1996: A Procedural Route Map." *Arbitration International* 21.3 (2005): 253-300.

Alcaraz, Enrique, and Brian Hughes. *Legal Translation Explained*. Manchester: St. Jerome Publishing, 2002.

Alderman, Sydney S. "The French Language in English and American Law." *Canadian Bar Review* 28.10 (1950): 1104-1124.

Al-Hawamdeh, Ahmed Mohammad, Noor Akief Dabbas, and Qais Enaizan Al-Sharariri. "The Effects of Arbitrator's Lack of Impartiality and Independence on the Arbitration Proceedings and the Task of Arbitrators under the UNCITRAL Model Law." *Journal of Politics and Law* 11.3 (2018): 64-73.

Alpa, Guido. "Arbitration and ADR Reforms in Italy." *European Business Law Review* 29.2 (2018): 313-323.

AGC: Attorney-General's Chambers. Plain Laws Understandable by Singaporeans (PLUS). https://www.agc.gov.sg/our-roles/drafter-of-laws/plain-laws-understandable-by-singaporeans. Last visited 07/03/2024.

Arbitration Bill. Explanatory Notes on the Arbitration Bill as Introduced in the House of Lords on 21 November 2023 (HL Bill 7). https://bills.parliament.uk/publications/53039/documents/4029#:~:text=It%20published%20its%20final%20report,of%20recommendations%20for%20targeted%20reform. Last visited 19/01/2024.

Arbitration Guide. International Bar Association (IBA) Arbitration Committee. France, March 2012. https://www.ibanet.org/MediaHandler?id=D44F7671-12B3-4FE5-8B59-9203D7EAD2AD. Last visited 24/01/2024.

Asprey, Michèle M. "Shall Must Go." *Scribes Journal of Legal Writing* 3 (1992): 79-84.

Asprey, Michèle M. *Plain Language for Lawyers*. Annandale, NSW: The Federation Press, 2003.

Baker, Paul. “Corpus Methods in Linguistics.” *Research Methods in Linguistics*. Edited by Lia Litosseliti. London and New York: Continuum International Publishing Group, 2010. 93-113.

Balboni, Paolo. *Le Microlingue Scientifico-Professionali: Natura e Insegnamento*. Torino: Libreria Utet, 2000.

Bantekas, Ilias. “The Foundations of Arbitrability in International Commercial Arbitration.” *Australian Year Book of International Law* 27 (2008): 193-224.

Barber, Charles. “Some Measurable Characteristics of Modern Scientific Prose.” *Episodes in ESP*. Edited by John Swales. Oxford: Pergamon Press, 1985. 3-14. (1962) *Gothenburg Studies in English* 14, 21-43.

Bates, Elizabeth. *Language and Context: The Acquisition of Pragmatics*. New York: Academic Press, 1976.

Bazerman, Charles. “Systems of Genres and the Enhancement of Social Intentions.” *Genre and New Rhetoric*. Edited by Aviva Freedman and Peter Medway. London: Taylor & Francis, 1994. 79-101.

Beccaria, Gian Luigi. *I Linguaggi Settoriali in Italia*. Milano: Bompiani, 1973.

Belotti, Ulisse. “Generic Integrity in Italian Arbitration Rules.” *Legal Discourse in Multilingual and Multicultural Contexts: Arbitration Texts in Europe.* Edited by Vijay K. Bhatia, Christopher Candlin and Maurizio Gotti. Bern: Peter Lang, 2003. 19-40.

Bennett, Daniel R., and Madeleine A. Hodgson. “Confidentiality in Arbitration: A Principled Approach.” *McGill Journal of Dispute Resolution* 3 (2016-2017): 98-112.

Berger, Bernhard, and Franz Kellerhals. *International and Domestic Arbitration in Switzerland*. Bern: Stämpfli, 2021.

Besson, Sebastien. “The Utility of State Laws Regulating International Commercial Arbitration and Their Compatibility with the FAA.” *American Review of International Arbitration* 1.11 (2000): 211-249.

Bhatia, Vijay K. “Syntactic Discontinuity in Legislative Writing and Its Implications for Academic Legal Purposes.” *Reading for Professional Purposes - Studies and Practices in Native and Foreign Languages*. Edited by Anthony K. Pugh and Jan M. Ulijn. London: Heinemann Educational Books, 1984. 90-96.

Bhatia, Vijay K. “Language of the Law.” *Language Teaching* 20.4 (1987a): 227-234.

Bhatia, Vijay K. “Textual-mapping in British Legislative Writing.” *World Englishes* 6.1 (1987b): 1-10.

Bhatia, Vijay K. *Analysing Genre. Language Use in Professional Settings.* London and New York: Longman, 1993.

Bhatia, Vijay K. “Cognitive Structuring in Legislative Provisions.” *Language and the Law*. Edited by John Gibbons. London: Longman, 1994. 136-155.

Bhatia, Vijay K. “Intertextuality in legal discourse.” *The Language Teacher* 22.11 (1998): 13-39.

Bhatia, Vijay K. “A Generic View of Academic Discourse.” Academic Discourse. Edited by J. Flowerdew. London: Longman, 2002a.

Bhatia, Vijay K. “LSP and Professional Practice: Negotiating Disciplinary Conflicts.” *Conflict and Negotiation in Specialized Texts*. Edited by Maurizio Gotti, Dorothee Heller and Marina Dossena. Bern: Peter Lang, 2002b.

Bhatia, Vijay K. *Worlds of Written Discourse: A Genre-Based View*. London: Continuum, 2004.

Bhatia, Vijay K. “Legal Genres.” *Encyclopedia of Language and Linguistics*. Edited by Keith Brown. Amsterdam and London: Elsevier, 2006. 1-7.

Bhatia, Vijay K. “Accessibility of Discoursal Data in Critical Genre Analysis: International Commercial Arbitration Practice.” *Linguagem em (Dis) curso* 10 (2010a): 465-483.

Bhatia, Vijay K. “Interdiscursivity in Professional Communication.” *Discourse and Communication* 4 (2010b): 32-50

Bhatia, Vijay K. *Worlds of Written Discourse: A Genre-Based View*. London: Continuum, 2014.

Bhatia, Vijay K. “International Commercial Arbitration: A Protected Practice.” *Language in the Negotiation of Justice: Contexts, Issues and Prospects*. Edited by Christopher Williams and Girolamo Tessuto. Abingdon and New York: Routledge, 2016. 69-78.

Bhatia, Vijay K. “International Commercial Arbitration in Asia: Discursive and Professional Perspectives.” *International Arbitration Discourse and Practices in Asia.* Edited by Vijay K. Bhatia, Maurizio Gotti, Azirah Hashim, Philip Koh and Sundra Rajoo. Abingdon and New York: Routledge, 2018. 7-20.

Bhatia, Vijay K. Christopher Candlin, Jan Engberg and Anna Trosborg. *Multilingual and Multicultural Contexts of Legislation: An International Perspective*. Bern: Peter Lang, 2003.

Bhatia, Vijay K., Jan Engberg, Maurizio Gotti and Dorothee Heller. “Introduction.” *Vagueness in Normative Texts*. Edited by Bhatia, Vijay K. *et al*. Bern: Peter Lang, 2005. 9-23.

Bhatia, Vijay K., Christopher N. Candlin and Jan Engberg. “Concepts, Contexts and Procedures in Arbitration Discourse.” *Discourse Across Cultures and Systems*. Edited by

Vijay K. Bhatia, Christopher N. Candlin and Jan Engberg. Hong Kong: Hong Kong University Press, 2008. 3-32.

Bhatia, Vijay K., Christopher N. Candlin and Rajesh Sharma. "Confidentiality and Integrity in International Commercial Arbitration Practice." *Arbitration: The International Journal of Arbitration, Mediation and Dispute Management* 75.1 (2009): 2-13.

Bhatia, Vijay K., Giuliana Garzone and Chiara Degano. "Arbitration Awards: Generic Features and Textual Realisations. An Introduction." *Arbitration Awards: Generic Features and Textual Realisations*. Edited by Vijay K. Bhatia, Giuliana Garzone and Chiara Degano. Cambridge: Cambridge Scholars Publishing, 2012. 1-12.

Bhatia, Vijay K., and Jane Lung. "Analysing International Commercial Arbitration Awards as Genre." *Arbitration Awards: Generic Features and Textual Realisations*. Edited by Vijay K. Bhatia, Giuliana Garzone and Chiara Degano. Cambridge: Cambridge Scholars Publishing, 2012. 21-46.

Bhatia, Vijay K., Christopher Candlin and Maurizio Gotti. "International Commercial Arbitration Practice: A Discourse-Based Perspective." *Discourse and Practice in International Commercial Arbitration: Issues, Challenges and Prospects*. Edited by Vijay K. Bhatia, Christopher Candlin and Maurizio Gotti. Farnham: Ashgate, 2012. 3-7.

Bhatia, Vijay K., *et al*. "Introduction". *International Arbitration Discourse and Practices in Asia*. Edited by Bhatia, Vijay K., Maurizio Gotti, Azirah Hashim, Philip Koh and Sundra Rajoo. Abingdon and New York: Routledge, 2018. 1-3.

Belcher, Diane, Ann M. Johns and Brian Paltridge. *New Directions in English for Specific Purposes Research*. Ann Arbor (MI): University of Michigan Press, 2011.

Bennion, Francis. "Confusion over Plain Language Law." *The Commonwealth Lawyer* 16 (2007): 63-68.

Biber, Douglas, Susan Conrad and Randi Reppen. *Corpus Linguistics: Investigating Language Structure and Language Use*. Cambridge: Cambridge University Press, 1998.

Biber, Douglas, Stig Johansson, Geoffrey Leech, Susan Conrad and Edward Finegan. *The Longman Grammar of Spoken and Written English*. London: Longman, 1999.

Biber, Douglas, and Bethany Gray. "Nominalizing the Verb Phrase in Academic Science Writing." *The Verb Phrase in English: Investigating Recent Language Change with Corpora*. Edited by Bas Aarts, Joanna Close, Geoffrey Leech and Sean Wallis. Cambridge: Cambridge University Press, 2013. 99-132.

Biber, Douglas, and Susan Conrad. *Register, Genre, and Style*. Cambridge: Cambridge University Press, 2019.

Biel, Lucja. *Lost in the Eurofog. The Textual Fit of Translated Law*. Frankfurt am Main: Lang, 2014.

Blackaby, Nigel, Constantine Partasides, Alan Redfern and Martin Hunter. *Redfern and Hunter on International Arbitration* (6th edition). Oxford: Oxford University Press, 2015.

Blankley, Kristen M. "Standing on Its Own Shoulders: The Supreme Court's Statutory Interpretation of the Federal Arbitration Act." *Akron Law Review* 55.1 (2022): 101:156.

Bloch, Joel. "Technology and ESP." *The Handbook of English for Specific Purposes*. Edited by Brian Paltridge and Sue Starfield. Oxford: John Wiley & Sons, 2013. 385-401

Bockstiegel, Karl-Heinz. "Public Policy as a Limit to Arbitration and Its Enforcement." *Dispute Resolution International* 2.1 (2008): 123-132.

Bondi, Marina, and Giuliana Diani. "Conveying Deontic Values in English and Italian Contracts: A Cross-Cultural Analysis." *ESP across Cultures* 7 (2010): 7-24.

Born, Gary B. *International Commercial Arbitration: Commentary and Materials*. The Hague: Kluwer Law International, 2001.

Born, Gary B. *International Commercial Arbitration*. Alphen aan den Rijn: Kluwer Law International, 2021.

Bowers, Frederick. *Linguistic Aspects of Legislative Expression*. Vancouver: University of British Columbia Press, 1989.

Bowker, Lynne, and Jennifer Pearson. *Working with Specialized Language: A Practical Guide to Using Corpora*. London and New York: Routledge, 2002.

Brekoulakis, Stavros. "Introduction: The Evolution and Future of International Arbitration." *The Evolution and Future of International Arbitration*. Edited by Stavros Brekoulakis and Julian D. M. Lew. Kluwer Law International, 2016. 7-27.

Brezina, Vaclav. *Statistics in Corpus Linguistics: A Practical Guide.* Cambridge: Cambridge University Press, 2018.

Bucher, Andreas, and Pierre-Yves Tschanz. *International Arbitration in Switzerland*. Basel: Helbing & Lichtenhahn, 1988.

Burn, George, and Persall Alison. "Exceptions to Confidentiality in International Arbitration." *ICC International Court of Arbitration Bulletin*. Special Supplement (2009): 23-28.

Butt, Peter, and Richard Castle. *Modern Legal Drafting. A Guide to Using a Clearer Language.* Cambridge and New York: Cambridge University Press, 2013.

Camera Arbitrale di Milano (CAM). Lodi Arbitrali e Decisioni. https://www.camera-arbitrale.it/it/centro-studi-e-documentazione/risorse-ad-accesso-libero/lodi-arbitrali-e-decisioni.php?id=262. Last visited 08/09/2023.

CAM Arbitration. https://www.camera-arbitrale.it/en/arbitration/index.php?id=5. Last visited 24/01/2024.

CAM Arbitration Rules. https://www.camera-arbitrale.it/en/arbitration/arbitration-rules.php?id=64. Last visited 24/01/2024.

CAM-Milan and Jus Mundi Announce Partnership for Sharing Non-Confidential Arbitration Awards. https://blog.jusmundi.com/cam-milan-and-jus-mundi-announce-partnership-for-sharing-non-confidential-arbitration-awards/. Last visited 08/09/2023.

CAM. Why CAM Arbitration. https://www.camera-arbitrale.it/en/arbitration/why-cam-arbitration.php?id=203. Last visited 26/01/2024.

Campbell, Lisibeth. "Drafting Styles: Fuzzy or Fussy?" ELaw. Murdoch University Electronic Journal of Law 3:2 (1996). Available at http://www.murdoch.edu.au/elaw/issues/v3n2/campbell.html.

Cantlie, Ronald. "The French Language and the Common Law." *Manitoba Law Journal* 18.3 (1989): 341-364.

Cao, Deborah. *Translating Law*. Clevedon: Multilingual Matters Ltd, 2007.

Cappelletti, Mauro. "The Doctrine of Stare Decisis and the Civil Law: A Fundamental Difference – or No Difference at All?" *Festschrift für Konrad Zweigert zum 70. Geburtstag*. Edited by Herbert Bernstein, Ulrich Drobnig, and Hein Kötz. Tübingen: Mohr Siebeck, 1981. 381-393.

Caron, David D., and Lee M. Caplan. *The UNCITRAL Arbitration Rules: A Commentary*. Oxford: Oxford University Press, 2013.

Castellane, Beatrice. "The New French Law on International Arbitration." *Journal of International Arbitration* 28.4 (2011): 371-380.

Catenaccio, Paola. "Cultural Variation in Arbitration Journals: *The International Court of Arbitration Bulletin* and *Arbitration International* Compared." *Discourse and Practice in International Commercial Arbitration: Issues, Challenges and Prospects.* Edited by Vijay K. Bhatia, Christopher N. Candlin and Maurizio Gotti. London: Ashgate, 2012. 163- 178.

Chan, Clara Ho-Yan. "Hong Kong Bilingual Legislation and Plain Language Drafting: A Communicative Approach." *Multilingua* 37.6 (2018): 681-700.

Chong, Wygene. "Arbitration in Harmony: The Effect of the Model Law on the Choice of Seat of Arbitration." *Perth International Journal* 6 (2021): 82-100.

Coates, Jennifer. *The Semantics of the Modal Auxiliaries.* London: Croom Helm, 1983.

Code Civil. Version en Vigueur au 23 Janvier 2024. https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006070721/. Last visited 23/01/2024.

Code de Procédure Civile. Version en Vigueur au 23 Janvier 2024. https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006070716/. Last visited 23/01/2024.

Codice di Procedura Civile. https://www.gazzettaufficiale.it/sommario/codici/proceduraCivile. Last visited 24/01/2024.

Colombo, Giorgio Fabio. "Cultural Expertise and Commercial Arbitration." *Cultural Expertise, Law, and Rights: A Comprehensive Guide*. Edited by Livia Holden. Abingdon and New York: Routledge, 2023.

Conte, Amedeo G. "Performativo vs. Normativo." *Il Linguaggio del Diritto*. Edited by Uberto Scarpelli, Paolo Di Lucia, and Mario Jori. LED: Milano, 1994. 387-402.

Constitution of the International Chamber of Commerce (ICC). 2016. https://iccwbo.org/icc-constitution/. Last visited 23/01/2024.

Cordero-Moss, Giuditta. "The Role of the *Lex Arbitri*." *The Cambridge Companion to International Arbitration*. Edited by Lim, Chin L. Cambridge: Cambridge University Press, 2021. 97-114.

Corona, Isabel. "Confidentiality at Risk: The Interdiscursive Construction of International Commercial Arbitration." *Discourse & Communication* 5.4 (2011): 355-374.

Cortelazzo, Michele A. *Lingue Speciali*. Padova: Unipress, 1994.

Cortelazzo, Michele. "Lingua e Diritto in Italia. Il Punto di Vista dei Linguisti." *La Lingua del Diritto. Difficoltà Traduttive. Applicazioni Didattiche. Atti del Primo Convegno Internazionale*, *Milano, 5-6 ottobre 1995*. Roma: CISU, 1997. 337-344.

Cheng, Winnie. *Exploring Corpus Linguistics: Language in Action*. London and New York, Routledge, 2012.

Chomsky, Noam Avram. *Syntactic Structures*. The Hague: Mouton, 1957.

de Saussure, Ferdinand. *Cours de Linguistique Générale 1916*. Edited by T. De Mauro. Paris: Payot, 1972.

Criscuoli, Giovanni, and Mario Serio. *Nuova Introduzione allo Studio del Diritto Inglese. Le Fonti.* Milano: Giuffrè Editore, 2016.

Crystal, David. *English as a Global Language*. Cambridge: Cambridge University Press, 2003.

Crystal, David. "A Global Language." *English in the World: History, Diversity, Change*. Edited by Philip Seargeant and Joan Swann. Milton Keynes: Open University, 2013. 163-208.

Crystal, David, and Derek Davy. *Investigating English Style*. London: Longman, 1969.

Cutts, Martin. *Oxford Guide to Plain English*. Oxford: Oxford University Press, 2020.

Darics, Erika and Veronika Koller. *Language in Business, Language at Work*. London: Palgrave, 2018.

David, René. *Arbitration in International Trade*. Antwerp, Boston, London, Frankfurt: Kluwer and Taxation Publishers, 1985.

David, René, and John E. Brierley. *Major Legal Systems in the World Today: An Introduction to the Comparative Study of Law*. London: Stevens & Sons, 1985.

Degano, Chiara. "Arguments by Analogy in Arbitration Awards." *Arbitration Awards: Generic Features and Textual Realisations*. Edited by Vijay K. Bhatia, Giuliana Garzone and Chiara Degano. Cambridge: Cambridge Scholars Publishing, 2012. 138-151.

De Speville, Bertrand E. D. "Arbitration in Hong Kong: The Arbitration Ordinance 1963-1982." *Arbitration International* 1.1 (1985): 109-111.

DeVries, Henry P. "International Commercial Arbitration: A Contractual Substitute for National Courts." *Tulane Law Review* 57.1 (1982): 42-79.

Doughty, Peter S., John J Pearce, and Geoffrey Thornton. Exploring Language. (Explorations in Language Study.) London: Edward Arnold, 1972.

Duckworth, Mark, and Arthur Spyrou. *Law Words: 30 Essays on Legal Words and Phrases*. Sydney: Centre for Plain Legal Language, 1995.

Dudley-Evans, Tony, and Maggie Jo St. John. *Developments in English for Specific Purposes*. Cambridge: Cambridge University Press, 1998.

Duranti, Alessandro and Charles Goodwin. *Rethinking Context: Language as an Interactive Phenomenon*. Cambridge: Cambridge University Press, 1992.

Egbert, Jesse, Douglas Biber and Bethany Gray. *Designing and Evaluating Language Corpora. A Practical Framework for Corpus Representativeness*. Cambridge: Cambridge University Press, 2022.

Emerson, Frank D. "History of Arbitration Practice and Law." *Cleveland State Law Review* 19.1 (1970): 155-164.

Endicott, Timothy A. O. *Vagueness in Law*. Oxford: Oxford University Press, 2000.

Endicott, Timothy A. O. "Vagueness and Law." *Vagueness: A Guide*. Edited by Giuseppina Ronzitti. Dordrecht: Springer Netherlands, 2011. 171-191.

Engberg, Jan, and Dorothee Heller. "Vagueness and Indeterminacy in Law." *Legal Discourse across Cultures and Systems*. Hong Kong: Hong Kong University Press, 2008. 145-168.

Erteschik-Shir, Nomi. "Topic-chaining and Dominance-chaining." *The Prague School and its Legacy in Linguistics, Literature, Semiotics, Folklore, and the Arts*. Edited by Yishai Tobin. Amsterdam: John Benjamins, 1988. 145-153.

Facchinetti, Roberta. “The Modal Verb *Shall* between Grammar and Usage in the Nineteenth Century.” *The History of English in a Social Context.* Edited by Werner Winter. Berlin and New York: Mouton de Gruyter, 2000. 115-134

Fairclough, Norman and Ruth Wodak. “Critical Discourse Analysis.” *Discourse as Social Interaction: Discourse Studies 2 (A Multidisciplinary Introduction)*. Edited by Van Dijk, Teun A. London: Sage, 1997. 258-284.

Feehily, Ronán. “Separability in International Commercial Arbitration; Confluence, Conflict and the Appropriate Limitations in the Development and Application of the Doctrine.” *Arbitration International* 34 (2018): 355-383.

Firth, John Rupert. *Papers in Linguistics 1934-51*. Oxford: Oxford University Press, 1957.

Flowerdew, John and Matthew Peacock. “The EAP Curriculum: Issues, Methods and Challenges.” *Research Perspectives on English for Academic Purposes*. Edited by John Flowerdew and Matthew Peacock. Cambridge: Cambridge University Press, 2001. 177-194.

Fortese, Fabricio, and Lotta Hemmi. “Procedural Fairness and Efficiency in International Arbitration.” *Groningen Journal of International Law* 3.1 (2015): 110-124.

Fouchard, Philippe, Emmanuel Gaillard, Berthold Goldman, and John Savage. *Fouchard Gaillard Goldman on International Commercial Arbitration.* The Hague: Kluwer Law International, 1999.

Frade, Celina. “Legal Multinomials: Recovering Possible Meanings from Vague Tags.” *Vagueness in Normative Texts.* Edited by Vijay K. Bhatia, Jan Engberg, Maurizio Gotti and Dorothee Heller. Bern: Peter Lang, 2005. 133-155.

Frade, Celina. “Systems of Genres in International Commercial Arbitration.” *Discourse and Practice in International Commercial Arbitration: Issues, Challenges and Prospects*. Edited by Bhatia, Vijay K., Christopher Candlin and Maurizio Gotti. Farnham: Ashgate, 2012. 45-62.

Friedman, Lawrence M. *Law and Society: An Introduction*. Englewood Cliffs, NJ: Prentice-Hall, 1977.

Gabriel, Simon, and Roxane Schmidgall. “The Revised Swiss Arbitration Law.” *Revija Kopaoničke škole prirodnog prava* 4.1 (2022): 75-89.

Gaillard, Emmanuel. “France Adopts New Law on Arbitration.” *New York Law Journal* 245.15 (2011): 1-2.

Galdia, Marcus. *Legal Linguistics*. Frankfurt am Main and Oxford: Peter Lang, 2009.

Gambarini, Camilla, and Giacomo Gasparotti. “The Recent Amendment of Italy’s Arbitration Law and the Ongoing Review of the English Arbitration Act: Two Arbitration

Reforms in Comparison." *The American Review of International Arbitration*. https://aria.law.columbia.edu/the-recent-amendment-of-italys-arbitration-law-and-the-ongoing-review-of-the-english-arbitration-act-two-arbitration-reforms-in-comparison/. Last visited 26/01/2024.

Garner, Bryan A. *A Dictionary of Modern Legal Usage*. New York and Oxford: Oxford University Press, 1995.

Garner, Bryan A. *Legal Writing in Plain English: A Text with Exercises*. Chicago and London: University Press of Chicago, 2023.

Garzone, Giuliana. "Espressione della Performatività nel Testo Giuridico: Italiano e Inglese a Confronto." *Anglistica e…: Metodi e Percorsi Comparatistici nelle Lingue, Culture e Letterature di Origine Europea. Vol. II: Transiti Linguistici e Culturali*. Edited by G. Azzaro and M. Ulrych. Trieste: E.U.T. 127-144.

Garzone, Giuliana. "Deontic Modality and Performativity in English Legal Texts." *Modality in Specialized Texts. Selected Papers of the 1st CERLIS Conference*. Edited by Maurizio Gotti and Marina Dossena. Bern: Peter Lang, 2001. 153-174.

Garzone, Giuliana. "Arbitration Rules across Legal Cultures: An Intercultural Approach." *Legal Discourse in Multilingual and Multicultural Contexts: Arbitration Texts in Europe*. Edited by Vijay K. Bhatia, Christopher N. Candlin and Maurizio Gotti. Bern: Peter Lang, 2003. 177-220.

Garzone, Giuliana. "Variation in the Use of Modality in Legislative Texts: Focus on *Shall.*" *Journal of Pragmatics* 57 (2013): 68-81.

Garzone, Giuliana, Dermot Heaney and Giorgia Riboni. "Approaches to Teaching LSP: An Introduction." *Focus on LSP Teaching: Developments and Issues*. Edited by Giuliana Garzone, Dermot Heaney and Giorgia Riboni. Milano: LED Edizioni Universitarie di Lettere Economia Diritto, 2016.

Garzone, Giuliana, and Rita Salvi. *Legal English*. Milano: Egea, 2007.

Gibbons, John. *Language and the Law.* London: Longman, 1994.

Gibbons, John. "Language and the Law." *The Handbook of Applied Linguistics*. Edited by Alan Davies and Catherine Elder. Oxford: Blackwell, 2004. 285-303.

Glendon, Mary Ann, Paolo G. Carozza and Colin B. Picker. *Comparative Legal Traditions in a Nutshell*. St. Paul MN: West Academic Publishing, 2016.

Glogar, Ondřej. "The Concept of Legal Language: What Makes Legal Language 'Legal'?" *International Journal for the Semiotics of Law* 36 (2023): 1081-1107.

Gotti, Maurizio. *I Linguaggi Specialistici*. Scandicci: La Nuova Italia, 1991.

Gotti, Maurizio. “Cultural Constraints on Arbitration Discourse.” *Legal Discourse across Cultures and Systems*. Edited by Bhatia, Vijay K., Christopher Candlin and Jan Engberg. Hong Kong: Hong Kong University Press, 2008a. 221-252.

Gotti, Maurizio. “Aspetti Culturali nel Discorso Normativo sull’Arbitrato Commerciale Internazionale.” AIDEL - Associazione Italiana Diritto e Letteratura, 2008b. Available at http://www.jus.unitn.it/cardozo/Review/2008/Gotti1.pdf.

Gotti, Maurizio. *Investigating Specialized Discourse*. Bern: Peter Lang, 2011a.

Gotti, Maurizio. “Linguistic Aspects of Legal Drafting in an International Context.” *Reflections on Children’s Rights. Marginalized Identities in Discourse(s) of Justice*. Edited by Giuseppina Cortese. Monza: Polimetrica, 2011b. 27-44.

Gotti, Maurizio. “Text and Genre.” *The Oxford Handbook of Language and Law*. Edited by Lawrence M. Solan and Peter M. Tiersma. Oxford: Oxford University Press, 2012a. 52-66.

Gotti, Maurizio. “The Judicialization of Arbitration Discourse in the Italian Context.” *Discourse and Practice in International Commercial Arbitration: Issues, Challenges and Prospects*. Edited by Vijay K. Bhatia, Christopher Candlin and Maurizio Gotti. Farnham: Ashgate, 2012b. 129-146.

Gotti, Maurizio. “Translating International Arbitration Norms into the Italian Language and Culture.” *The Ashgate Handbook of Legal Translation*. Edited by Le Cheng, King Kui Sin, and Anne Wagner. United Kingdom: Routledge, 2014. 193-207.

Gotti, Maurizio. “The Influence of Legal Tradition on Italian Arbitration Discourse.” *Semiotica* 216 (2017): 317-337.

Greenbaum, Sydney, and Randolph Quirk. *A Student’s Grammar of the English Language*. Essex: Longman, 1993.

Guido, Maria Grazia, and Barbara Seidlhofer. “Introduction. English as a Lingua Franca: Theory and Practice.” *Textus* 27.1 (2014): 7-16.

Gustafsson, Marita. “Some Syntactic Properties of English Law Language.” *Publications of the Department of English* 4. Turku: University of Turku, 1975.

Gustafsson, Marita. “The Syntactic Features of Binomial Expressions in Legal English.” *Text* 4.1-3 (1984): 123-142.

Hafner, Christoph A. “Professional Reasoning, Legal Cultures, and Arbitral Awards.” *World Englishes* 30.1 (2011): 117-128.

Haigh, Rupert. *Legal English*. London and New York: Routledge-Cavendish, 2009.

Halliday, Michael A. K. “Notes on Transitivity and Theme in English” (part 3). *Journal of Linguistics* 4.2 (1968): 179-215.

Halliday, Michael A. K., and Ruqaiya Hasan. *Cohesion in English*. London: Longman, 1976.

Halliday, Michael A. K. *Language as a Social Semiotic: The Social Interpretation of Language and Meaning*. London: Edward Arnold, 1978.

Halliday, Michael A. K. *An Introduction to Functional Grammar*. London: Edward Arnold, 1985.

Halliday, Michael A. K., Angus McIntosh and Peter Strevens. *The Linguistic Sciences and Language Teaching*. London: The English Language Book Society and Longman Group Ltd., 1964.

Heinsz, Timothy J. "The Revised Uniform Arbitration Act: Modernizing, Revising and Clarifying Arbitration Law." *Journal of Dispute Resolution* 1 (2001): 1-66.

Helm, Rebecca K., Andrew J. Wistrich and Jeffrey J. Rachlinski. "Are Arbitrators Human?" *Journal of Empirical Legal Studies* 13.4 (2016): 666-692.

Hiltunen, Risto. *Chapters on Legal English. Aspects Past and Present of the Language of the Law*. Helsinki: Suomalainen Tiedeakatemia, 1990.

Hiltunen, Risto. "The Type and Structure of Clausal Embedding in Legal English." *Text-Interdisciplinary Journal of the Study of Discourse* 4.1-3 (1984): 107-122.

Hiltunen, Risto. "Some Syntactic Properties of English Law Language." Twenty-five Years after Gustafsson (1975). *English in Zigs and Zags*. Edited by Risto Hiltunen, Keith Battarbee, Matti Peikola, Sanna-Kaisa Tanskanen. Turku: University of Turku, 2001. 53-66.

Hiltunen, Risto. "The Grammar Structure of Legal Texts." *The Oxford Handbook of Language and Law*. Edited by Peter M. Tiersma and Lawrence M. Solan. Oxford and New York: Oxford University Press, 2012.

HKIAC. The Hong Kong Arbitration Ordinance. https://www.hkiac.org/arbitration/why-hong-kong/HK-arbitration-ordinance. Last visited 25/01/2024.

HKIAC. Hong Kong Arbitration FAQs. https://www.hkiac.org/arbitration/why-hong-kong/hong-kong-arbitration-faqs#014. Last visited 26/01/2024.

HKIAC. 2018 Administered Arbitration Rules. https://www.hkiac.org/arbitration/rules-practice-notes/hkiac-administered-2018. Last visited 25/01/2024.

Hoellering, Michael F. "The UNCITRAL Model Law on International Commercial Arbitration." *The International Lawyer* 20.1 (1986): 327-339.

Hoffmann, Lothar. "Seven Roads to LSP." *Fachsprache* 6 (1984): 28-37.

Hoffmann, Sebastian. *Grammaticalization and English Complex Prepositions: A Corpus-based Study*. New York: Routledge, 2005.

Hong Kong e-Legislation. Cap. 609 Arbitration Ordinance. https://www.elegislation.gov.hk/hk/cap609. Last visited 25/01/2024.

Hopkins, Bryan. "A Comparison of Recent Changes in the Arbitral Laws and Regulations of Hong Kong, Singapore and Korea." *KLRI Journal of Law and Legislation* 3.1 (2013): 281-314.

Hunston, Susan. *Corpora in Applied Linguistics*. Cambridge: Cambridge University Press, 2002.

Hunter, Martin J. "Arbitration procedure in England: Past, Present and Future." *Arbitration International* 1.1 (1985): 82-102. https://doi.org/10.1093/arbitration/1.1.82.

Hutchinson, Tom, and Alan Waters. *English for Specific Purposes*. Cambridge: Cambridge University Press, 1987.

Hyland, Ken. *Genre and Second Language Writing*. Ann Arbor (MI): University of Michigan Press, 2004.

ICC. International Chamber of Commerce. https://iccwbo.org/. Last visited 29/01/2024.

ICC International Court of Arbitration. https://iccwbo.org/dispute-resolution/dispute-resolution-services/icc-international-court-of-arbitration. Last visited 25/09/2023.

ICC. Publication of ICC Arbitral Awards with Jus Mundi. https://iccwbo.org/dispute-resolution/resources/publication-of-icc-arbitral-awards-jus-mundi-not-icc-publication/. Last visited 25/09/2023.

ICDR. International Dispute Resolution Procedures (Including Mediation and Arbitration Rules). Rules Amended and Effective March 1, 2021. ICDR. International Dispute Resolution Procedures (Including Mediation and Arbitration Rules). Available at https://www.adr.org/sites/default/files/ICDR_Rules_0.pdf. Last visited 29/01/2024.

International Bar Association. The Global Voice of the Legal Profession. https://www.ibanet.org/. Last visited 29/01/2024.

Jackson, Bernard S. *Making Sense in Law*. Liverpool: Deborah Charles Publications, 1995.

Jensen, Paul. "International: Lessons from Singapore." *The Resolver: The Quarterly Magazine of the Chartered Institute of Arbitrators* 3 (2020): 26-27.

Johns, Ann M. "The History of English for Specific Purposes Research." *The Handbook of English for Specific Purposes*. Edited by Brian Paltridge and Sue Starfield. Chichester, UK: Wiley-Blackwell, 2013. 5-30.

Juthe, André. "Argument by Analogy." *Argumentation* 19 (2005): 1-27.

Jus Mundi. About Us. https://jusmundi.com/en/about. Last visited 06/09/2023.

Jus Mundi. General Terms of Sale and Subscription. https://jusmundi.com/en/terms-of-subscription#:~:text=Jus%20Mundi%20(%E2%80%9CJus%20Mundi%E2%80%9D,more%20transparent%20and%20accessible%20worldwide. Last visited 22/09/2023.

Jus Mundi. ICC x Jus Mundi Partnership. https://jusmundi.com/en/partnership/icc. Last visited 06/09/2023.

Jus Mundi. Jus Mundi's Global Partnerships in 2022. https://dailyjus.com/news/2023/09/jus-mundis-global-partnerships-in-2022. Last visited 22/09/2023.

Jus Mundi. Search Engine for International Law and Arbitration. https://jusmundi.com/en. Last visited 08/09/2023.

Kauffmann, Philipp. "Spreading the Law - Comparative Legal Traditions." *Journal on European History of Law* 4.2 (2013): 33-40.

Kaufmann-Kohler, Gabrielle. "Globalization of Arbitral Procedure." *Vanderbilt Journal of Transnational Law* 36.4 (2003): 1313-1334.

Kidane, Won L. *The Culture of International Arbitration*. New York: Oxford University Press, 2017.

Kimble, Joseph. "The Many Misuses of Shall." *Scribes Journal of Legal Writing* 3 (1992): 61-78.

Kleinheisterkamp, Jan. "Navigating Through Competence-Competence and Good Faith - A Comment on the Dallah v. Pakistan Case in the UK and France." *Revista Brasileira de Arbitragem* 8.31 (2011): 123-207.

Kredens, Krzysztof, and Stanisław Goźdź-Roszkowski. *Language and the Law: International Outlooks*. Frankfurt am Main and New York: Peter Lang, 2007.

Kurzon, Dennis. *It is Hereby Performed… Legal Speech Acts*. Amsterdam and Philadelphia: John Benjamins, 1986.

Kyle, John W. "Nature and Origin of Writs under the Common Law." *Mississippi Law Journal* 24.1 (1952): 1-8.

Laudisa, Luciana. "Arbitrato Rituale e Irrituale: Ragioni del Distinguere." *Rivista dell'Arbitrato* 2 (1998): 211-236.

LCIA Arbitration Rules 2020. https://www.lcia.org/Dispute_Resolution_Services/lcia-arbitration-rules-2020.aspx. Last visited 29/01/2024.

LCIA Releases Challenge Decisions Online. https://www.lcia.org//News/lcia-releases-challenge-decisions-online.aspx. Last visited 20/09/2023.

Lecaj, Mentor, and Granit Curri. “Advantages of International Commercial Arbitration in Resolving the Commercial Contests.” *Perspectives of Law and Public Administration* 10.2 (2021): 96-101.

Leech, Geoffrey. “New Resources, or Just Better Old Ones? The Holy Grail of Representativeness.” *Corpus Linguistics and the Web*. Edited by Marianne Hundt, Nadja Nesselhauf and Carolin Biewer. Amsterdam and New York: Rodopi, 2007.

Leech, Geoffrey, Marianne Hundt, Christian Mair, Nicholas Smith. *Change in Contemporary English: A Grammatical Study*. Cambridge: Cambridge University Press, 2009.

Leech, Geoffrey, and Jan Svartvik. *A Communicative Grammar of English*. London: Longman, 1994.

Lembo, Saverio, and Vincent Guignet. *Confidentiality in Arbitration: From Myth to Reality.* Zurich: Bär & Karrer, 2015. https://media.baerkarrer.ch/karmarun/image/upload/baer-karrer/Confidentiality_in_Arbitration_-_From_Myth_to_Reality.pdf. Last visited 26/01/2026.

Leung, Carrie. *A Comparison of the Use of Major English Conjunctions by American and Hong Kong University Students*. LUNDS Universitet, 2005.

Liu, Yanhua, and Guangwei Hu. “Mapping the Field of English for Specific Purposes (1980-2018): A Co-citation Analysis.” *English for Specific Purposes* 61 (2021): 97-116.

Maci, Stefania M. “An Introduction to English Tourism Discourse.” *Sociolinguistica* 32.1 (2018): 25-42.

Maglie, Rosita. “From ‘Une Langue Une’ to Linguistic Varieties: An Overview of ESP Studies.” *ESP Across Cultures* 1 (2004): 7-21.

Maley, Yon. “The Language of the Law.” *Language and the Law*. Edited by John Gibbons. London: Longman, 1994. 11-50.

Malinowski, Bronisław. “The Problem of Meaning in Primitive Languages.” Supplement 1 to C. K. Ogden and I. A. Richards. *The Meaning of Meaning.* (International Library of Psychology, Philosophy and Scientific Method). London, Kegan Paul, 1923.

Malkiel, Yakov. “Studies in Irreversible Binomials.” *Lingua* 8 (1959): 113-160.

Malmkjaer, Kirksten. *The Linguistics Encyclopedia*. London and New York: Routledge, 1991.

Marmor, Andrei. *The Language of Law*. Oxford: Oxford University Press, 2014.

Marmor, Andrei. “Varieties of Vagueness in the Law.” *Handbook of Legal Reasoning and Argumentation*. Dordrecht: Springer Netherlands, 2018. 561-580.

Martin, James R. “Process and Text: Two Aspects of Semiosis.” *Systemic Perspectives on Discourse*. Vol. 1: Selected Theoretical Papers from the 9th International Systemic Workshop. Edited by James D. Benson and William S. Greaves. London: Ablex, 1985. 248-274.

Mattei, Ugo, and Pier Giuseppe Monateri. *Introduzione Breve al Diritto Comparato*. Padova: Cedam, 1997.

Mattei, Ugo, and Luca G. Pes. “Civil Law and Common Law: Toward Convergence?” *The Oxford Handbook of Law and Politics*. Edited by Gregory A. Caldeira, R. Daniel Kelemen, and Keith E. Whittington. New York: Oxford University Press, 2008. 267-280

Mattiello, Elisa. “Nominalizations in English and Italian Normative Legal Texts.” *ESP Across Cultures* 7 (2010): 129-146.

Mattila, Heikki E. S. *Comparative Legal Linguistics.* Aldershot-Hampshire-Burlington VT: Ashgate, 2006.

Mattila, Heikki E. S. “Legal Vocabulary.” *The Oxford Handbook of Language and Law.* Edited by Peter M. Tiersma and Lawrence M. Solan. Oxford: Oxford University Press, 2012.

McEnery, Tony, and Andrew Hardie. *Corpus Linguistics: Method, Theory and Practice* (Cambridge Textbooks in Linguistics). Cambridge and New York: Cambridge University Press, 2001.

McEnery, Tony, Richard Xiao, and Yukio Tono. *Corpus-Based Language Studies. An Advanced Resource Book.* London: Routledge, 2006.

McEnery, Tony, and Andrew Hardie. *Corpus Linguistics: Method, Theory and Practice*. New York: Cambridge University Press, 2012.

McKinlay, Jane. *An Analysis of Discussion Sections in Medical Journal Articles*. Unpublished M.A. dissertation. University of Birmingham, UK, 1984.

Mellinkoff, David. *The Language of the Law*. Boston: Little Brown & Co., 1963.

Meyer, Charles F. *English Corpus Linguistics: An Introduction*. Cambridge: Cambridge University Press, 2023.

Miller, Carolyne R. “Genre as Social Action.” *Quarterly Journal of Speech* 70 (1984): 151-167.

Mitter, Rana. “One Country, Two Systems?” *RSA Journal* 166.2 (2020): 42-45.

Mollin, Sandra. *The (Ir)reversibility of English Binomials: Corpus, Constraints, Developments*. Amsterdam: John Benjamins, 2014.

Moser, Michael J., and Teresa Y. W. Cheng. *Hong Kong Arbitration: A User’s Guide*. The Hague: Kluwer Law International, 2004.

Moses, Margaret L. *The Principles and Practice of International Commercial Arbitration*. Cambridge: Cambridge University Press, 2017.

Mourre, Alexis, and Alexandre Vagenheim. "Again on the Case for the Publication of Arbitral Awards." *Arbitration International* 39.2 (2023): 259-267.

Müller, Christophe. "La Confidentialité en Arbitrage Commercial International: Un Trompe-L'Oeil?" *ASA Bulletin* 23.2 (2005): 218-219.

New York Arbitration Convention. Contracting States. https://www.newyorkconvention.org/countries. Last visited 24/01/2024.

Noussia, Kyriaki. *Confidentiality in International Commercial Arbitration: A Comparative Analysis of the Position under English, US, German and French Law*. Berlin: Springer-Verlag, 2010.

O'Regan, John P. "English as a Lingua Franca: An Immanent Critique." *Applied Linguistics* 35.5 (2014): 533-552.

Palmer, Frank Robert. *Modality and the English Modals*. London: Routledge, 1990.

Palmer, Frank Robert. "Modality in English: Theoretical, Descriptive and Typological Issues." *Modality in Contemporary English*. Edited by Roberta Facchinetti, Manfred Krug and Frank R. Palmer. Berlin and New York: Mouton de Gruyter, 2003. 1-20.

Paltridge, Brian. *Genre and the Language Learning Classroom*. Ann Arbor (MI): University of Michigan Press, 2001.

Paltridge, Brian. "Genre and English for Specific Purposes." *The Handbook of English for Specific Purposes*. Edited by Briand Paltridge and Sue Starfield. Oxford: John Wiley & Sons, 2013. 347-364.

Paltridge, Brian and Sue Starfield. *The Handbook of English for Specific Purposes*. Chichester, UK: Wiley, Blackwell, 2013.

Patocchi, Paolo Michele. "National Report for Switzerland." *ICCA International Handbook on Commercial Arbitration* (ICCA & Kluwer Law International 2020, Supplement No. 104, February 2019) 1.58.

Pejovic, Caslav. "Civil Law and Common Law: Two Different Paths Leading to the Same Goal." *Poredbeno Pomorsko Pravo* 155 (2001): 7-32.

Pillay, Mohan R. "The Singapore Arbitration Regime and the UNCITRAL Model Law." *Arbitration International* 20.4 (2004): 355-386.

Pinnavaia, Laura and Annalisa Zanola. "English for Academic Purposes (EAP): New Frontiers in Learning to Write in English." *EuroAmerican Journal of Applied Linguistics and Languages* 10.2 (2023): 1-8.

Plain English Campaign. Fighting for Crystal Clear Communication Since 1979. https://www.plainenglish.co.uk/how-to-write-in-plain-english.html. Last visited 15/03/2024.

Pomari, Alberto, and Charles T. Kotuby Jr. "Do the 2021 Reforms of the Italian Code of Civil Procedure Make Italy a Favorable Seat for International Arbitration?" *ASA Bulletin* 40.2 (2022): 344-358.

Pound, Roscoe. *An Introduction to the Philosophy of Law.* New Haven: Yale University Press, 1922.

Pozzo, Barbara. "Comparative Law and Language." *Cambridge Companion to Comparative Law*. Edited by Mauro Bussani and Ugo Mattei. Cambridge: Cambridge University Press, 2012. 88-113.

Quirk, Randolph, Sydney Greenbaum, Geoffrey Leech, and Jan Svartvik. *A Grammar of Contemporary English*. London: Longman, 1982.

Quirk, Randolph, Sidney Greenbaum, Geoffrey Leech and Jan Svartvik. *A Comprehensive Grammar of the English Language*. New York: Longman, 1985.

Radjai, Noradèle. "Confidentiality in International Arbitration." *ASA Bulletin* 1 (2009): 48-49.

Rahman, Momtazur. "English for Specific Purposes (ESP): A Holistic Review." *Universal Journal of Educational Research* 3.1 (2015): 24-31.

Rao, Parupalli Srinivas. "The Role of English as a Global Language." *Research Journal of English* (RJOE) 4.1 (2019): 65-79.

Redfern, Alan, and Martin Hunter. *Law and Practice of International Commercial Arbitration*. London: Sweet & Maxwell, 2004.

Renton, David. *The Preparation of Legislation: Report of the Committee Appointed by the Lord President of the Council*. London: HMSO, 1975.

Resnik, Judith, Stephanie Garlock and Annie J. Wang. "Collective Preclusion and Inaccessible Arbitration: Data, Non-Disclosure, and Public Knowledge." *Lewis & Clark Law Review* 24.2 (2020): 611-684.

Richman, Lisa. "Introduction and the Institution." *Arbitrating under the 2020 LCIA Rules: A User's Guide*. Edited by Maxi Scherer, Lisa Richman and Rémy Gerbay. Alphen aan den Rijn: Kluwer Law International, 2021.

Riley, Alison and Patricia Sours. *Legal English and the Common Law with Legal Grammar Handbook*. Italy: CEDAM, 2012.

Robin, Guy. "The Advantages and Disadvantages of International Commercial Arbitration." *International Business Journal Law* 2 (2014): 131-156.

Robinson, Pauline C. *ESP Today: A Practitioner's Guide*. New York: Prentice Hall, 1991.

Roebuck, Derek. *Ancient Greek Arbitration*. Oxford: Holo Books, 2001.

Sacco, Rodolfo. "Legal Formants: A Dynamic Approach to Comparative Law (Installment I of II)." *The American Journal of Comparative Law* 39.1 (1991): 1-34.

Sacco, Rodolfo. "Language and Law." *Ordinary Language and Legal Language*. Edited by Barbara Pozzo. Milano: Giuffrè Editore, 2005. 1-21.

Sager, Juan C., David Dungworth, and Peter F. McDonald. *English Special Languages*. Wiesbaden: Oscar Brandstetter, 1980.

Salmi-Tolonen, Tarja. "Legal Linguistic Knowledge and Creating and Interpreting Law in Multilingual Environments." *Brooklyn Journal of International Law* 29.3 (2004): 1167-1191.

Salton, David. "Recent Trends in International Arbitration and 2021 International Rule Changes." *Construction Law Journal* 17.2 (2021): 81-93.

Sanders, Carol. *The Cambridge Companion to Saussure*. Cambridge: Cambridge University Press, 2004.

Sanders, Peter. "Recent Developments in Arbitration Law and Practice." *Arbitration: The International Journal of Arbitration, Mediation and Dispute Management* 47.2 (1981): 67-71.

Sanders, Peter. "Has the Moment Come to Revise the UNCITRAL Rules of Arbitration?" *Arbitration International* 20.3 (2004): 243-268.

Šarčević, Susan. *New Approach to Legal Translation*. The Hague: Kluwer Law International, 1997.

Sauer, Hans, and Birgit Schwan. "Heaven and Earth, Good and Bad, Answered and Said: A Survey of English Binomials and Multinomials (Part II)." *Studia Linguistica Universitatis Iagellonicae Cracoviensis* 134.2 (2017): 83-96.

Scarpa, Federica. *La Traduzione Specializzata*. Milano: Editore Ulrico Hoepli, 2001.

Schlesinger, Rudolph B. *Comparative Law: Cases, Texts, Materials*. New York: Foundation Press, 1998.

Scott, Mike. *WordSmith Tools Version 8, Lexical Analysis Software*, 2020. https://lexically.net/downloads/version8/HTML/index.html. Last visited 16/10/2023.

Seppala, Christopher R. "French Domestic Arbitration Law." *International Lawyer* 16.4 (1982): 749-792.

Shalakany, Amr A. "Arbitration and the Third World: A Plea for Reassessing Bias under the Specter of Neoliberalism." *Harvard International Law Journal* 41.2 (2000): 419-468.

SIAC Announces Public Consultation on the Draft 7th Edition of the SIAC Rules. https://siac.org.sg/siac-announces-public-consultation-on-the-draft-7th-edition-of-the-siac-arbitration-rules. Last visited 25/01/2024.

Siems, Mathias. *Comparative Law*. Cambridge: Cambridge University Press, 2018.

Silvestri, Elisabetta. "Italy: No Country for Arbitrators?" *Bulletin of Taras Shevchenko National University of Kyiv Legal Studies* 112 (2020): 49-51.

Singapore Statutes Online. International Arbitration Act (IAA) 1994. https://sso.agc.gov.sg/Act/IAA1994. Last visited 24/01/2024.

Slomanson, William R. "Historical Development of Arbitration and Adjudication." *Miskolc Journal of International Law* 1.2 (2004): 238-258.

Smith, Sylvia A. "Cultural Clash: Anglo-American Case Law and German Civil Law in Translation." *Translation and the Law*. Edited by Marshall Morris. Amsterdam: John Benjamins, 1995. 179-200

Status: UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006. https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration/status. Last visited 10/01/2024.

Stefanowitsch, Anatol. *Corpus Linguistics: A Guide to the Methodology*. Berlin: Language Science Press, 2020.

Susan, Binsy, and Amogh Srivastava. "Publication of Arbitral Awards: Balancing Confidentiality and Transparency in Arbitration." *Indian Arbitration Law Review* 4 (2022): 13-27.

Swales, John M. *Episodes in ESP: A Source and Reference Book on the Development of English for Science and Technology*. New York: Prentice-Hall, 1988.

Swales, John M. *Genre Analysis: English in Academic and Research Settings*. Cambridge: Cambridge University Press, 1990.

Swales, John M. *Research Genres: Explorations and Applications*. New York: Cambridge University Press, 2004.

Swales, John M. and Vijay K. Bhatia. "An Approach to the Linguistic Study of Legal Documents." *Fachsprache* 5.3 (1983): 98-108.

Swiss Arbitration Centre. An Overview. https://www.swissarbitration.org/centre/. Last visited 23/01/2024.

Swiss Federal Act on Private International Law. https://www.fedlex.admin.ch/eli/cc/1988/1776_1776_1776/it. Last visited 23/01/2024.

Szalai, Imre Stephen. “Exploring the Federal Arbitration Act through the Lens of History.” *Journal of Dispute Resolution* 1 (2016): 115-140.

Szalay, Gabor. “A Brief History of International Arbitration, Its Role in the 21st Century and the Examination of the Arbitration Rules of Certain Arbitral Institutions with Regards to Privacy and Confidentiality.” *Law Series of the Annals of the West University of Timisoara* 2 (2016): 5-20.

Tan, Ying-Ying. “The Myth of Multilingualism in Singapore”. *Language, Nations, and Multilingualism.* Questioning the Herderian Ideal. Edited by Ying-Ying Tan and Mishra Pritipuspa. Oxon and New York: Routledge, 2021. 152-171.

Tessuto, Girolamo. “Discourse Systems in English Arbitration Awards.” *Legal Discourse across Cultures and Systems*. Edited by Vijay K. Bhatia, Christopher Candlin and Jan Engberg. Hong Kong: Hong Kong University Press, 2008. 181-197.

Tiersma, Peter M. *Legal Language.* Chicago and London: The University of Chicago Press, 1999.

Tiersma, Peter M. “Talking Like a Lawyer.” *Speaking of Language and Law. Conversations on the Work of Peter Tiersma.* Oxford: Oxford University Press, 2015. 27-34.

Tognini-Bonelli, Elena. *Corpus Linguistics at Work*. Amsterdam and Philadelphia, John Benjamins, 2001.

Trakman, Leon. “Legal Traditions and International Commercial Arbitration.” *American Review of International Arbitration* 17.1 (2007): 1-44.

Trosborg, Anna. “Statutes and Contracts: An Analysis of Legal Speech Acts in the English Language of the Law.” *Journal of Pragmatics* 23.1 (1995): 31-53.

Trosborg, Anna. *Rhetorical Strategies in Legal Language: Discourse Analysis of Statutes and Contracts*. Tübingen: Gunter Narr Verlag, 1997.

Turner, Peter, and Reza Mohtashami. *A Guide to the LCIA Arbitration Rules*. New York: Oxford University Press, 2009.

Turner, Ray. *Arbitration Awards: A Practical Approach*. Oxford: Blackwell, 2005.

United States Code (USC). Title 9. Arbitration. From the U.S. Government Publishing Office www.gpo.gov. https://www.govinfo.gov/content/pkg/USCODE-2011-title9/html/USCODE-2011-title9.htm. Last visited 29/01/2024.

Van den Berg, Albert J. *The New York Convention of 1958. Towards a Uniform Judicial Interpretation.* The Hague: TMC Asser Institute, 1981.

Veretina-Chiriac, Ina. “Characteristics and Features of Legal English Vocabulary.” *Studia Universitatis Moldaviae (Seria Ştiinţe Umanistice)* 54.4 (2012): 103-107.

Vlachopoulos, Stefanos. "*LSP and Translation.*" In K. Malmkjaer (ed.). The Routledge Handbook of Translation Studies and Linguistics. London: Routledge, 2018. 425-440.

Wallace, William D. "How Registers Register: Toward the Analysis of Language Use." *IRAL* 19.4 (1981): 267-286.

Walton, Douglas, Chris Reed and Fabrizio Macagno. *Argumentation Schemes*. New York: Cambridge University Press, 2008.

Webster, Thomas H., and Michael W. Bühler. *Handbook of ICC Arbitration: Commentary, Precedents, Materials*. London: Sweet & Maxwell, 2014.

Weil, Henri. *De l'Ordre des Mots dans les Langues Anciennes Comparées aux Langues Modernes* (1984), translated by C. W. Super. Amsterdam: John Benjamins, 1978.

West, Richard. "Needs Analysis in Language Teaching." *Language Teaching* 27.1 (1994): 1-19.

Wetmore, Todd. "Transparency's Contribution to Legitimacy." *Leadership, Legitimacy, Legacy: A Tribute to Alexis Mourre* (ICC Publishing, Paris, France, 2022), 694.

Widdowson, Henry George. *Explorations in Applied Linguistics*. Oxford: Oxford University Press, 1979.

Williams, Christopher. "Legal English and Plain Language: An Introduction." *ESP Across Cultures* 1 (2004): 111-124.

Williams, Christopher J. "Vagueness in Legal Texts: Is There a Future for *Shall*?" *Vagueness in Normative Texts*. Edited by Vijay K. Bhatia, Jan Engberg, Maurizio Gotti and Dorothee Heller. Bern: Peter Lang, 2005. 201-224.

Williams, Christopher J. "Fuzziness in Legal English: What Shall We Do with 'Shall'"? *Legal Language and the Search for Clarity: Practice and Tools.* Bern: Peter Lang, 2006. 237-263.

Williams, Christopher J. *Tradition and Change in Legal English: Verbal Constructions in Prescriptive Texts*. Bern: Peter Lang, 2007.

Williams, Christopher J. "Legal English and the Modal Revolution." *Modality in English: Theory and Description.* Edited by Raphael Salkie, Pierre Busuttil, Johan van der Auwera. Berlin: Mouton de Gruyter, 2009. 199-210.

Wolaver, Earl S. "The Historical Background of Commercial Arbitration." *University of Pennsylvania Law Review and American Law Register* 83.2 (1934): 132-146.

Yang, Ling. "Recent Developments in Hong Kong Arbitration." *Kluwer Arbitration Blog. Wolters Kluwer.* October 17, 2023. https://arbitrationblog.kluwerarbitration.com/2023/10/17/recent-developments-in-hong-kong-arbitration/. Last visited 26/01/2024.

Zaharia, Alina-Maria. “Nominalizations in Legal Language.” *Analele Universităţii din Craiova, Ştiinţe Filologice, Limbi Străine Aplicate* 1-2 (2010): 539-546.

Zanola, Annalisa. *La Lingua Inglese per la Comunicazione Scientifica e Professionale*. Roma: Carocci, 2023.

Zhang, Beibei. *Third Party Funding for Dispute Resolution: A Comparative Study of England, Hong Kong, Singapore, the Netherlands, and Mainland China*. Singapore: Springer, 2021.

Zlatanska, Elina. “To Publish or not to Publish Arbitral Awards: That is the Question…” *Arbitration: The International Journal of Arbitration, Mediation and Dispute Management* 81.1 (2015): 25-37.