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INTERNATIONAL COMMERCIAL ARBITRATION DISCOURSE
A corpus-based study of complex prepositions in arbitral awards

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Abstract - In today's globalized world, the increase in international disputes has led to a greater reliance on arbitration for dispute resolution (Bhatia *et al*. 2018, p. 1; Born 2001, p. 1; Gotti 2008, p. 221). Arbitral awards are central to understanding the development of arbitration practices (Bhatia *et al*. 2012, p. 1), yet their analysis was historically limited due to confidentiality. Recent trends toward transparency (Bhatia 2010, p. 468; Mourre, Vagenheim 2023, p. 265; Resnik *et al*. 2020, p. 612), along with platforms like Jus Mundi, launched in 2019, have improved access to legal discourse (Bhatia 1993; Swales 1990). Building on work in arbitration discourse (Bhatia *et al*. 2003, 2008, 2009, 2012, 2018), this study analyzes a corpus of English-language awards collected via Jus Mundi. It focuses on the use of complex prepositions signaling textual authority (Bhatia 1998), applying both quantitative and qualitative methods. Findings suggest that despite greater accessibility and global trends, arbitral reasoning continues to reflect culturally rooted legal traditions (Gotti 2008, p. 232), highlighting how legal discourse is shaped by institutional contexts (Bhatia *et al*. 2012, p.1; Fairclough, Wodak 1997, p. 276).

Keywords: international commercial arbitration; arbitration discourse; arbitral awards; corpus linguistics; complex prepositions.

1. Introduction

In today's globalized world, the frequency of international disputes has necessitated a growing reliance on arbitration as a preferred method of resolution (Bhatia *et al*. 2018, p. 1; Born 2001, p. 1; Gotti 2008, p. 221). Arbitral awards, the conclusive outcomes of these arbitration proceedings, play a crucial role in reflecting and shaping the practices of international arbitration (Bhatia *et al*. 2012, p. 1). Traditionally, the confidentiality surrounding arbitral awards limited their exploration, rendering them as a "relatively unexplored genre" (Bhatia *et al*. 2012, p. 1). Nevertheless, a notable shift towards transparency has emerged over the past decade, with an increasing number of arbitral awards being published to facilitate legal development and scholarly research (Bhatia 2010, p. 468; Mourre, Vagenheim 2023, p. 265; Resnik *et al*. 2020, p. 612). The introduction of Jus Mundi in 2019, an AI-driven legal search engine (Łągiewska 2024, p. 85), has significantly broadened access to a wealth of legal information, supported by collaborations with prominent legal associations and arbitral institutions. This advancement in technology not only democratizes access to legal knowledge but also enriches the study of legal discourse and related data (Bhatia 1993; Swales 1990).

Building on the foundational work of leading scholars in the field of arbitration discourse (Bhatia *et al*. 2003, 2008, 2009, 2012, 2018), this research utilizes Jus Mundi's extensive database of English-language arbitral awards to conduct a linguistic analysis. The study underscores the persistence of cultural differences in the reasoning presented in arbitral awards, highlighting how various legal traditions continue to influence linguistic choices (Gotti 2008, p. 232). This viewpoint is consistent with the notion that texts and

genres are deeply intertwined with their institutional and professional settings (Bhatia *et al*. 2012, p. 1). Legal discourse, inherently shaped by its contextual environment (Fairclough, Wodak 1997, p. 276), exhibits significant variation across different legal systems. Through a corpus linguistics approach, this study focuses on the use of complex prepositions signaling textual authority (Bhatia 1998) in arbitral awards from multiple arbitration seats. The choice to examine complex prepositions is grounded in their pivotal role in legal English. This study functions as a preliminary investigation, offering an initial analysis intended to lay the foundation for future, more comprehensive research based on larger datasets, potentially sourced from Jus Mundi or other relevant sources. It is guided by two main objectives:

• To analyze the selected arbitral awards through both qualitative and quantitative lenses, with particular attention to the use of complex prepositions – a salient feature of legal English that can contribute to characterizing the genre;

• To compare the arbitral awards, focusing particularly on identifying distinctions between civil law and common law elements.

This paper is organized into five sections. Following a brief introduction in Section 1, Section 2 discusses the genre under analysis, focusing on arbitral awards and the recent shift in global arbitration culture from secrecy to transparency. Section 3 details the methodological framework employed in the research, providing a description of the corpus under analysis (Subsection 3.1) and the operational phase of the study (Subsection 3.2). Section 4 delves into the analysis of complex prepositions signaling textual authority in the arbitral awards. Section 5 summarizes the findings and offers final remarks for future research.

2. Arbitral awards: The recent shift from secrecy to transparency

In the current context of globalization of trade and commerce, the rise in international disputes has led to an increasing reliance on arbitration as the preferred method of resolution (Bhatia *et al*. 2018, p. 1; Born 2001, p. 1; Gotti 2008, p. 221). This global context has resulted in numerous conflicts between parties from different countries (Bhatia *et al*. 2018, p. 1), pushing legal issues beyond national boundaries and fostering a more international perspective (Bhatia *et al.* 2008, p. 5; Gotti 2008, p. 221). This phenomenon is a key factor behind the widespread adoption of international commercial arbitration, which is defined as "a means by which international disputes can be definitively resolved, pursuant to the parties' agreement, by independent, non-governmental decision makers" (Born 2001, p. 1). Nowadays, arbitration is the most widely used alternative dispute resolution (ADR) method (Bhatia *et al*. 2018, p. 1).

International arbitration is increasingly viewed as a cost-effective and efficient alternative to litigation for resolving commercial disputes. Parties opting for arbitration choose to settle their disputes outside the judicial system through a third-party arbitrator or a tribunal of arbitrators, rather than through public courts[1] (Moses 2017, p. 1). This method aims to provide a resolution process that is efficient, expeditious, confidential, and, most importantly, universally enforceable, akin to court decisions (Bhatia *et al*. 2012, p. 2). As previously mentioned, one of the primary aims of international arbitration is to

[1] However, arbitration is not without its drawbacks. It has been described as "the slower, more expensive alternative" (Lyons 1985, p. 107), and critics point to practical challenges such as coordinating hearing dates – often complicated by the availability of arbitrators, lawyers, and parties located in different jurisdictions – as well as the need to reach consensus on a range of procedural matters (Born 2001, p. 9).

resolve disputes between parties with diverse legal and cultural backgrounds without resorting to litigation.

The final outcome of the arbitration procedure is the arbitral award, which represents the tribunal's determination on the merits of the case. In most instances, arbitral awards are binding on the parties and are enforceable and recognizable in other countries (Moses 2017, p. 190). The recognition and enforcement are often facilitated by the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, commonly known as the New York Convention, which extends to 172 Contracting States, highlighting its extensive international applicability.

Arbitral awards are described as "a complex discursive artefact which has the main purpose of announcing the arbitrator's or arbitral tribunal's decision" (Bhatia *et al.* 2012, p. 1). Consequently, they play a significant role in shedding light on the evolution of international arbitration procedures. A decade ago, arbitral awards were considered a "relatively unexplored genre" (Bhatia *et al.* 2012, p. 1), primarily due to the historical perception of arbitration as a highly confidential practice. However, recent years have seen a notable shift towards greater transparency, marked by the increased publication of arbitral awards (Mourre, Vagenheim 2023, p. 261, based on LCIA 2023).

The need for access to arbitral awards has been recognized by several scholars[2] for various reasons. For instance, it has been argued that the publication of arbitral awards could serve as 'educational samples' for training young arbitrators and promoting consistency in the reasoning of awards at the international level (Bhatia 2010, p. 475). Greater transparency through the publication of arbitral awards could also facilitate the development of arbitration law and practice (Bhatia *et al.* 2009, p. 11), providing a foundation for arbitrators, practitioners, and academics to understand, discuss, and constructively critique awards (Bhatia 2014, p. 75). Similarly, Zlatanska (2015, pp. 27-32) suggests that the publication of arbitral awards could contribute positively in several ways: It could aid in the uniform development of international law, increase the predictability and certainty of outcomes in international business practices, and promote consistency by preventing divergent decisions, thus maintaining the credibility, reliability, and authority of international arbitration.

In recent years, several scholars, researchers, and legal experts have therefore advocated for a shift in arbitral culture from secrecy to transparency[3] (Bhatia 2010, p. 475; Bhatia *et al*. 2009, p. 11; Mourre, Vagenheim 2023, p. 260; Resnik *et al*. 2020, p. 612; Zlatanska 2015, pp. 27-32), allowing for the publication of a limited number of arbitral awards. Notably, in 2019, the International Chamber of Commerce (ICC) policy underwent a significant change to permit the publication of arbitral awards in their entirety, either sanitized or not, based on the parties' preferences. This groundbreaking

[2] 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, p. 48; Moses 2017, p. 200). Arbitration-related publications indeed constitute a particularly interesting field of research for discourse analysts (Catenaccio 2016, p. 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 *et al.* 2012, p. 1).

[3] It is important to mention that other scholars oppose the publication of arbitral awards, arguing that confidentiality stems from party autonomy and therefore extends to all aspects of the arbitration, including the award itself. From this perspective, the award is regarded as a private contractual matter between the parties and should not be made public. Key arguments against publication (Karton 2012, p. 459; Paulsson, Rawding 1995, p. 305) include the risk of disclosing sensitive technical and commercial information; concerns that the efficiency of arbitration may be undermined by the additional time and cost required to draft awards suitable for publication; and the potential reputational harm to the parties involved.

ICC policy has been supported 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",[4] launched in 2019. Since its inception, Jus Mundi has formed numerous partnerships with arbitral institutions globally. Through these collaborations, Jus Mundi provides access to exclusive legal information and content, including arbitral awards. In particular, the search engine now offers over more than 4,800 exclusive commercial arbitration documents in its database, accessible through a free trial or other subscription options.

Thanks to these policy changes and the advent of Jus Mundi, a substantial number of legal documents and arbitral awards rendered by institutions and tribunals worldwide are now accessible to the general public. Historically, the lack of easy accessibility to arbitral awards posed 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. This development not only addresses the longstanding difficulty in obtaining such information but also marks a crucial step in enhancing accessibility to discursive data. The publication of a curated selection of arbitral awards and the ensuing availability of discursive data represent a noteworthy milestone for researchers in both the legal field and linguistic and genre analysis (e.g., Bhatia 1993; Swales 1990).

For the purposes of this study, a selection of arbitral awards drafted in English was therefore collectable through the Jus Mundi search engine. Specifically, it was possible to analyze a corpus of arbitral awards from 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), the Swiss Arbitration Centre (SAC), the Singapore International Arbitration Centre (SIAC), and the ICC International Court of Arbitration.

This collection allowed for both quantitative and qualitative linguistic analysis of the texts. In particular, this study operates within the field of corpus linguistics (Baker 2010; Egbert *et al.* 2022; McEnery, Hardie 2012; McEnery, Wilson, 2001; Stefanowitsch 2020). It recognizes that both the *lex arbitri* – the law governing arbitral proceedings, also known as the procedural law of arbitration, the curial law, or *loi de l'arbitrage* (Born 2001, p. 43) – and the applicable law of the arbitration impact various aspects of the proceedings, including procedural conduct and the drafting of arbitral awards (Cordero-Moss 2021, p. 98). However, this study specifically examines the impact of the applicable law of arbitration – whether civil law or common law – on the professional reasoning articulated in arbitral texts, as well as the influence of cultural differences (Hafner 2011, p. 119). The assertion posited is that, despite globalization, these cultural differences persist and are reflected in variations in reasoning within arbitral awards.

Legal discourse is indeed shaped by the legal system in which it evolves. As a result, linguistic choices in arbitration texts are often "greatly influenced by the cultural environment in which these texts have been produced" (Gotti 2008, p. 232). As Bhatia (1993, p. 245) highlights,

> It is generally agreed that common law, which forms the basis for legislation in the UK, and the civil code, which underpins much of Continental legislation, including French law, differ in two main aspects. First, the civil code favors generality, while common law emphasizes

[4] Jus Mundi. General Terms of Sale and Subscription. https://jusmundi.com/cgu/terms_of_subscription_en.pdf (06.04.2024).

> particularity. Second, the civil code draftsman aims to be widely understood by the general readership, whereas the common law draftsman is more concerned with avoiding misunderstanding within the specialist community.

The differences in linguistic and textual realization between civil law and common law are deeply rooted in their conceptual foundations. As Gotti (2008, p. 235) explains, the civil law system involves the judiciary interpreting and applying the general principles outlined in the civil code to specific real-life situations. This system favors stylistic choices that emphasize generality and simplicity of expression. Conversely, the common law system relies on the principle of precedence, where judicial decisions set binding precedents for future similar cases. This tradition thus prioritizes certainty of expression in legal drafting.

It is therefore widely accepted that legal discourse varies in linguistic and textual realization depending on the legal system involved. This view aligns with Fairclough and Wodak's assertion that "discourse is not produced without context and cannot be understood without taking the context into consideration" (Fairclough and Wodak 1997, p. 276, based on Duranti and Goodwin 1992).

Ultimately, this study operates 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 *et al*. 2012, p. 1). Consequently, the study performs a linguistic analysis of a corpus of arbitral awards from various arbitration seats, each seated in different legal systems and governed by distinct applicable laws. The analysis takes into account the contextual elements of international commercial arbitration, including the arbitral institutions, the legal systems, and the applicable laws involved.

3. Methodological framework

3.1. Corpus description: Data collection, data preparation and data description

The analytical framework of this study is grounded in corpus linguistics. This section details the corpus description, focusing on the data collection process, data preparation, and data description.

The data collection process was guided by the following criteria:

• Applicable law: The applicable law for each case was a primary consideration, often reflecting the legal system of the country where the arbitral institution is seated. The applicable laws of the awards include:

o 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.

o LCIA Awards: England and Wales law.

o CAM Awards: Italian law.

o SAC Awards: Swiss law.

o HKIAC Awards: Hong Kong law.

o ICC Awards: French law.

o SIAC Awards: Singaporean law.

• Diversity of legal systems: The arbitral awards were selected to ensure representation from both civil law and common law systems.

• Global significance of arbitral institutions: The focus was on major international arbitral institutions due to their influential role in global commercial arbitration.

The general 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. Each subcorpus consists of arbitral awards drafted in English. The Main Corpus is designed to be comparable (Leech 2007, p. 144; McEnery, Hardie 2012, p. 20; Tognini-Bonelli 2001, p. 7), consisting of similar text samples that are comparable in both genre and publication time frame. To ensure this comparability, the following criteria were employed in constructing the corpus:

• Genre consistency: All texts in the corpus belong to the genre of arbitral awards, a distinct and relatively unexplored type of legal genre (Bhatia, Lung 2012, p. 23).
• Time frame consistency: All arbitral awards were rendered between 2008 and 2023.
• Institutional consistency: All awards were issued by prominent global arbitral institutions (Born 2021, p. 156).
• Case type consistency: All awards pertain to commercial arbitration, addressing topics such as wholesale trade, textiles and fashion, food production, real estate, and related fields.
• Language consistency: All texts are drafted in English.
• Authenticity: The corpus includes material that is "taken from genuine communications of people going about their normal business" (Tognini-Bonelli 2001, p. 55), specifically reflecting authentic communication in international commercial arbitration cases.

Despite the recent availability of arbitration documents to the public over the past four years, the number of arbitral awards on the Jus Mundi search engine remains limited, particularly for certain arbitral institutions such as the Milan Chamber of Arbitration (CAM), the Singapore International Arbitration Centre (SIAC), and the ICC International Court of Arbitration. Additionally, some documents available through the search engine are in Italian or French, rather than English, particularly for cases governed by Italian and French law. As a result, to maintain consistency, arbitral awards in languages other than English could not be included in the corpus.

It should be acknowledged that the primary methodological challenge of this study was the limited number of arbitral awards accessible through the 'Jus Mundi – Academic Research' subscription. Nevertheless, it is important to acknowledge that the ICC's new policy and the establishment of Jus Mundi, along with its partnerships, have significantly improved the accessibility of arbitral awards from various global institutions. These advancements have increased the availability of arbitral awards, allowing for more in-depth exploration, understanding, and discussion of information related to real arbitration proceedings.

Regarding data preparation, the arbitral awards included in the corpus were systematically organized and relabeled for ease of analysis. Initially, all awards belonging to a specific subcorpus were grouped into folders based on the applicable law governing each case. For example, awards under Italian law were collected in a designated folder. Each award was then named according to the year of its conclusion (e.g., "2016"), which facilitated the identification of cases with the same applicable law and allowed for the discernment of the years involved. The original documents were in .pdf format. These were converted to .doc format using Adobe Reader, and subsequently transformed into .txt format to ensure compatibility with the analysis software used in this study. Once converted, the .txt documents within each folder were merged into a single .txt file for each subcorpus. This process resulted in the creation of a general corpus, referred to as the Main Corpus, which consists of seven distinct subcorpora.

Regarding data description, the Main Corpus comprises a total of 60 arbitral awards, amounting to 1,109,598 tokens, approximately ~849,369 words,[5] and 27,445 sentences. Detailed statistics and information about the Main Corpus are provided in Table 1.

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
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 1
Main Corpus description: The general statistics.

Table 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[6] (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).
The research has focused on the 2008-2023 time frame for two main reasons:
• This research aimed at including recent arbitral awards (the time frame allows the analysis of arbitral awards rendered in the last fifteen years);

[5] The symbol '~' indicates that the number of words (849,369) is an estimate. Such an estimate is based on the subcorpora texts.

[6] As can be observed in Table 1, the higher number of texts in the AAA Subcorpus is attributable to two main reasons: Firstly, the number of arbitral awards rendered by the AAA and available on the Jus Mundi search engine is higher than in the other subcorpora; secondly, it was possible to include a higher number of AAA arbitral awards while ensuring balance among the corpora, as the text length of AAA awards is – in most cases – shorter than those rendered by other arbitral institutions. Conversely, the number of arbitral awards rendered by SIAC, where the applicable law is Singaporean law, and the ICC, specifically in English and governed by French law, is notably lower compared to the other subcorpora. This discrepancy is due to the limited availability of arbitral awards from these institutions that meet the specified criteria of this research. Consequently, it was not possible to include a higher number of arbitral awards from SIAC and ICC.

• This research 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.

3.2. The operational phase of the study

This subsection outlines the operational phase of this study. First and foremost, it is essential to note that due to variations in subcorpora sizes, this study employs normalization techniques for all frequencies. Normalization is crucial as it allows for the comparison of corpus frequencies and enables statements about relative frequency, ensuring a comprehensive analysis despite differences in corpora sizes (Brezina 2018, p. 43). This means that all absolute frequencies, which are the "actual count of all occurrences of a particular word in a corpus" (Brezina 2018, p. 42), have been normalized to compare the corpora in this research, which vary in size. The relative or normalized frequency is calculated using the following formula, commonly used in numerous linguistic studies (e.g., Biel 2014, pp. 135ff; Brezina 2018, p. 43; McEnery *et al*. 2006, pp. 52ff):

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

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

In order to analyze complex prepositions, it was necessary to identify structures characterized by a simple preposition followed by any noun and then another simple preposition (*simple preposition – any noun – simple preposition*). As Hoffmann (2005, p. 23) notes, this pattern ensures the retrieval of virtually all relevant PNP-constructions (*preposition – noun – preposition*). Quirk *et al*. (1985, p. 669) clarify that the difference between simple and complex prepositions lies in the number of elements they contain. Unlike simple prepositions, complex prepositions consist of more than one word, typically forming two- or three-word sequences (Adejare 2020, p. 216), and usually ending with a simple preposition (Biber *et al.* 1999, p. 75). Complex prepositions can either combine a lexical word with a simple preposition, as in "regardless of", or follow the structure: *Simple preposition + (Article) + Lexical word + Simple preposition*, as in "for the purpose of" (Bhatia 1993, p. 196).

The methodology for retrieving complex prepositions involved applying an algorithm that uses various combinations of two simple prepositions connected by a wildcard (*), such as 'by + * + of'. Crucially, no frequency threshold was set, ensuring the comprehensive retrieval of all instances of nominalizations. This systematic approach enabled a thorough examination of complex prepositions and their usage patterns.

The list of complex prepositions within the Main Corpus was compiled using the Concord tool in WordSmith Tools 8.0. However, the results from this tool required manual verification to ensure that the PNP-constructions identified were indeed complex prepositions suitable for inclusion. Additionally, a further search was carried out to account for occurrences where a definite or indefinite article might precede the noun in the PNP-constructions, using the pattern: *Simple preposition + the/a + Noun + Simple preposition*.

4. Analysis

Complex prepositions are a notable feature of legal English (Quirk *et al*. 1982, p. 302). Legal draftsmen often prefer complex prepositions over simple prepositions, finding the latter "potentially ambiguous in meaning" (Bhatia 2006, p. 3). Unlike simple prepositions, which consist of a single word, complex prepositions are multi-word expressions that generally form two- or three-word sequences. This multi-element structure distinguishes them in both form and function. Typically, complex prepositions end with a simple preposition (Biber *et al*. 1999, p. 75). They often follow a syntactic pattern of Preposition-Noun-Preposition (P-N-P). These constructions can either combine a lexical item with a simple preposition, as seen in expressions like *according to*, or feature a more elaborate structure, such as Simple Preposition + (Article) + Lexical Word + Simple Preposition, exemplified by phrases like *for the purpose of* and *in accordance with* (Bhatia 1993, p. 196).

This study aims to analyze the behavior of specific complex prepositions within the Main Corpus. Specifically, it focuses on complex prepositions conveying functions commonly encountered in legal texts as identified by Bhatia's (1998) taxonomy, outlining four 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*), and defining legal scope (e.g., *subject to*). This study particularly analyzes the first type identified by Bhatia's taxonomy, namely complex prepositions signaling textual authority, referring to legal sources, including laws, acts, statutes, and case law. The complex prepositions identified in the Main Corpus falls into such a category, 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, p. 14).

Table 2 highlights the complex prepositions frequently employed to signal textual authority and adherence to legal sources. This table displays the normalized frequencies of complex prepositions signaling textual authority found in the Main Corpus. To ensure thorough representation, the table includes not only two-word connectors but also the fundamental one-word preposition, *under*.

Complex prepositions 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 2
Relative frequencies of complex prepositions signaling textual authority in the Main Corpus.

Table 2 reveals a significant difference in the frequency of occurrences between the civil law and common law subcorpora. Specifically, the SAC (232) and CAM (250) subcorpora show a marked increase in the use of these complex prepositions. In contrast, while the common law subcorpora display somewhat lower frequencies, they still demonstrate substantial use of these prepositions. Another notable trend is the increased preference for simple prepositions or two-word connectors across all subcorpora. For instance, the preposition *under* is prominently used in the common law subcorpora, with particularly high frequencies in SIAC (381), LCIA (247), HKIAC (200), and AAA (181). The data highlights a slightly different trend from the typical patterns observed in common law legal English, which traditionally favors the use of complex prepositions (e.g., Bhatia *et al*. 2008, p. 24). This shift towards simpler prepositions could be attributed to the influence of the Plain English movement, which has spread beyond the UK and the US to regions such as Singapore (Chan 2018, p. 682) and Hong Kong[7] (Tan 2021, p. 167).

At a qualitative level, there are clear differences in how sources of authority are incorporated into the texts. To determine the methods used for incorporating sources of authority across the subcorpora, the search tool of WordSmith Tools 8.0 was employed to examine their presence within the Main Corpus. In addition to utilizing the complex prepositions listed in Table 2, various other indicators of sources of authority were also considered. This approach was necessary to ensure comprehensive coverage of all potential references within the Main Corpus. The supplementary indicators included terms such as:

> 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, and decision.

The search for sources of authority focused on court decisions, legislation, and codes. As noted by Degano (2012, p. 138), although international commercial arbitration (ICA) is founded on the principle of detachment from specific legal systems, it is not isolated from them. Instead, ICA is influenced by national legal systems in various ways, including the legal perspectives of arbitrators, their educational backgrounds, and national laws that may still dictate the scope of arbitration. In essence, while ICA strives for neutrality, it remains influenced by the broader legal environment in which it operates.

The aim of this analysis is therefore to explore whether precedents play a crucial and influential role within the common law subcorpora, while civil codes continue to be significant in the civil law subcorpora. Additionally, it seeks to determine if case law also holds importance within civil law subcorpora, which could suggest an influence of

[7] In Singapore, the Speak Good English Movement (SGEM) was launched in 2000 to promote clear and effective English usage. Prior to its initiation, Prime Minister Goh Chok Tong had emphasized the need for Singaporeans to use English that is easily understood by people globally, including the British, Americans, and Australians (Tan 2021, p. 167). Since then, SGEM has become an annual event with various themes, such as promoting Standard English (2000-06), the Plain English Speaking Award (YMCA) (2005-onward), effective communication (2007 and 2009), choosing Standard English (2008), proper English usage (2010 and 2014), and advocating for good English (2011) (Tan 2021, p. 167). In addition, the Legislation Division launched the Plain Laws Understandable by Singaporeans (PLUS) project in 2013. This initiative aims to modernize and enhance the readability of Singapore's statutes through an online public survey designed to improve legislative drafting practices and ensure that laws are more accessible to the general public. Similarly, in Hong Kong, efforts to promote plain English have been notable. In 2012, the Department of Justice released a plain language guide to align current legislation with plain language principles. Chapter 9 of this guide, titled 'Plain Language and Gender-Neutral Drafting', includes guidelines for organizing legislative text clearly and logically, using short and simple sentences, and avoiding complex structures such as double negatives, passive voice, and excessive nominalizations (Chan 2018, pp. 683-684).

common law on arbitration practices. As a preliminary step, concordances were extracted and examined manually to identify all references to case law and legislation/codes. By expanding the surrounding context of each reference, it was possible to visualize a coherent unit of text, which enabled 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 3 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 3
Relative frequencies of references to source of authority / evidence in the Main Corpus.

The quantitative data presented in Table 3 yield notable findings. References to legislation and codes are significantly more frequent in the civil law subcorpora, with the CAM (133) and ICC (135) subcorpora showing particularly high counts. In contrast, references to case law and specific court decisions exhibit more uniform frequencies across all subcorpora. A closer look at references to court decisions reveals the following patterns: In the common law subcorpora, the SIAC shows the highest frequency (68), followed by the LCIA (45), AAA (37), and HKIAC (20). The HKIAC stands out with notably lower frequencies compared to the other common law subcorpora, although the overall frequency across these subcorpora remains fairly consistent. In the civil law subcorpora, references to court decisions are generally lower, with the SAC (12) and ICC (24) recording modest frequencies, while the CAM stands out with a notably high count (63). Quantitatively, the high frequency observed in the CAM is surprising, whereas the frequencies in other subcorpora appear relatively typical.

At a qualitative level, significant differences are evident, particularly in how sources of authority are integrated into legal texts. For example, within the civil law subcorpora, sources of authority are often incorporated concisely and with brief references, as illustrated by the following examples:

• 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*). (CAM Subcorpus)

• The Sole Arbitrator notes that Claimant cannot claim, at the same time, interest based on *Article 1231-6 of the French Civil Code* and interest based on *Article L441-10 of the French Commercial Code*. Indeed, these articles both provides for late payment interest and therefore, they cannot be applied cumulatively. (ICC Subcorpus)

• *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. (SAC Subcorpus)

In the three examples provided above, succinct summaries or explanations are provided. In the first example, a brief summary of the relevant case law is presented. In the second and

third examples, brief references to articles of the French Civil Code and the Swiss Civil Code are made, accompanied by short summaries of the relevant case law.

In contrast, the common law subcorpora typically exhibit a trend toward a more comprehensive discussion of legal principles, especially when citing case law. In these cases, detailed information about the facts of the cited precedents is provided. This approach is exemplified in the following instances:

• 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)

• Finally, on page 52 of their Brief, Claimants argue that the court in *2401 Penn Avenue v. Federation of Jewish Agencies*, 489 A.2d 733, 737 (Pa. 1985) strictly held that an "'intention to avoid performance' is not an anticipatory breach where 'there is a legal basis for the refusal of performance.'" This distorts the actual holding of *2401 Penn Avenue*. The case held only that a communication that seeks only to preserve legal defenses is not a repudiation. There is nothing in the November 19 email which can be so read. The language is clear that Claimants were unconditionally ceasing performance. Although they expressed much regret and dissatisfaction, the email did not seek to preserve legal defenses and actually promised to pay money owed. (AAA Subcorpus)

• Cornelia has understood Code Red's arguments to be based on the position of English law with respect to contractual penalties. With this starting point, Cornelia has relied on *Cavendish Square Holding v. Makdessi* [2015] 3 WLR 1373 decided by the UK Supreme Court in 2015, in support of its position that clause 4 of the Agreement is valid and enforceable under English law. In the abovementioned case, the Supreme Court embarks on a detailed discussion of previous case law, as well as of the test to be applied henceforth. In summary, the test laid down by the Supreme Court for a penalty is whether the sum stipulated as a consequence of breach of contract "imposes a detriment on the contract-breaker out of all proportion to any legitimate interest of the innocent party in the enforcement of the primary obligation". Applying this test to clause 4 of the Agreement,

the Tribunal finds that the clause providing for the payment of interest at the prescribed rate cannot be characterized as such. It is therefore valid and enforceable under applicable English law. In reaching this conclusion, the Tribunal notes, first, that the Agreement is a contract negotiated by commercial enterprises having an equal bargaining position, a fact warranting the presumption that they meant what they said. Also, it must be noted that whilst clause 4 refers to "liability" and "fine", the nomenclature is not decisive, but rather the substance of the provision. (LCIA Subcorpus)

• First, the Tribunal notes that Claimant bases its claim for a constructive trust on the principles outlined in *Foskett v McKeown*. As noted, this is Claimant's proprietary claim. At the Substantive Hearing, counsel for Claimant conceded that its claim did not fall precisely within the ambit of the passage of Lord Millett's speech on which Claimant placed particular reliance (Judgment, at page 130A-C), but submitted that "the principle is that the trustee cannot be permitted to keep any profit resulting from his misappropriation [of trust property] for himself". Naturally, the Tribunal accepts the validity of the principle described by Lord Millett at page 130A-C of the Judgment. However, the Tribunal rejects the applicability of that principle to this case. The circumstances and background facts of *Foskett v McKeown* are very different, in significant ways, from the circumstances and background facts of this matter. For example:

(a) *Foskett v McKeown* determined which of two innocent parties should benefit from the activities of a fraudster (Mr. Deasy). By contrast, there is no underlying allegation or suggestion of fraud in this case, which is at its heart (as Claimant has submitted on more than one occasion) a simple breach of contract case - in the very first paragraph of Claimant's Skeleton Opening Submissions, referencing paragraph 5 of its own Statement of Claim, Claimant describes the case as follows: "In its purest form this is a simple case involving two commercial parties, advised by lawyers, agreeing contractual terms with which one party (the Claimant) complied and the other party (the Respondent) did not".

(b) In *Foskett v McKeown* the recipient of the funds (Mr. Deasy) used the funds for his own purposes and not for the purposes for which the claimant purchasers had provided the funds. Here, Claimant accepts that Respondent used the funds for the purpose for which they were provided. Indeed, this forms the basis of Claimant's case: see, for example, paragraph 132 of the Statement of Claim, where Claimant pleads that "[i]t is not alleged, and the facts do not support, that the Valuation Funding was paid to a third party to settle a pre-existing debt, nor that the Respondent did not use the Valuation Funding for the agreed purpose". Indeed, it is Claimant's complaint that having done exactly this (i.e., having accepted the Valuation Funding provided under the Facility Agreement and used it for its proper purpose) Respondent has breached the terms of the Parties' agreement by refusing and/or failing to pay Claimant the return to which they had agreed it would be entitled under the Facility Agreement.

(c) In *Foskett v McKeown*, Mr. Deasy was expressly named as a trustee under a trust deed and he held the moneys provided to him by the purchaser claimants under the express trusts of the purchasers trust deed. There is no trust deed in this case, just the Facility Agreement, a simple contract. There is equally no express trust, and Respondent was not appointed as trustee for the funds provided by Claimant.

(d) *Foskett v McKeown* is not a case involving resulting or constructive trusts; the only trusts at issue in *Foskett v McKeown* were the express trusts of the purchaser claimants trust deed. It was under those express trusts that the purchasers were entitled to equitable interests in the original monies paid to Mr. Deasy by the purchasers (see Lord Browne-Wilkinson's speech at page 108F- H).

(e) Further, in this case (unlike in *Foskett v McKeown*), there is no evidence of a

mixing of funds. Lord Millet introduces his speech (the leading speech) by saying: "this is a textbook example of tracing though mixed substitutions" (Judgment, page 126G). In fact, as Claimant makes a claim for the full amount of the AVI Consideration, Claimant's claim must be predicated on the basis that there was no such mixing of funds. In that case, to the extent that the principles of *Foskett v McKeown* can be applied at all to this case (which this Tribunal doubts), it appears clear that the maximum amount recoverable would be the amount of the sums remitted (i.e., the Valuation Funding) plus interest: see Lord Browne-Wilkinson's speech at pages 109D-1101B.

Accordingly, unlike in the passage from *Foskett v McKeown* relied upon by Claimant, as cited above, in this case there is no express trust deed, Respondent was not trustee for the funds provided by Claimant under the Facility Agreement, and the funds so provided were not misappropriated by Respondent and used for purposes other than those for which they were provided. Rather, this is (as Claimant has submitted elsewhere) a simple claim for breach of contract; it is not a trust claim, there being no fiduciary relationship between Claimant and Respondent. The claim Claimant has against Respondent is personal, not proprietary, in nature. Accordingly, in the Tribunal's view, Claimant does not have a proprietary claim in relation to the Valuation Funding and is not able to trace the "inherent value" of the Valuation Funding "into the full amount of the AVI Consideration" so as to make a claim for US$ ****. Accordingly, the Tribunal agrees with Claimant that […]. (HKIAC Subcorpus)

It is apparent that, on average, all examples from the common law subcorpora are notably longer compared to those from the civil law subcorpora. This difference is due to the extensive articulation of case facts and their relevance in the common law examples. In these instances, the facts and circumstances of relevant cases are thoroughly discussed to apply to the case at hand. This comprehensive analysis not only elaborates on the legal principles but also meticulously compares the factual scenarios of prior cases with the current situation, thereby providing a detailed rationale for the legal determinations made. In the last common law example provided, direct quotes and bullet points are even used to address relevant aspects of the prior case being considered, highlighting the thorough and systematic approach taken in common law arbitral awards. In contrast, civil law subcorpora lack such detailed summaries of previous court decisions, which are prominently featured in the common law awards.

The qualitative differences observed in the Main Corpus regarding the integration of legal sources into texts reveal a cultural divide between civil law and common law systems in their approaches to legal reasoning (Criscuoli, Serio 2016, pp. 268-269; Kauffmann 2013, p. 34; Mattei, Pes 2008, p. 273; Pejovic 2001, p. 11; Siems 2018, p. 66). Civil law judgments tend to favor a deductive reasoning style, characterized by concise articulation and systematic application of legal principles. In contrast, common law judgments often employ an inductive reasoning approach, involving a detailed analysis of legal precedents. This method uses analogical reasoning to compare the facts of prior cases with those of the current case, leading to legal conclusions. These distinct reasoning methods are reflected in the resolution of disputes in international commercial arbitration, influenced by the legal tradition of the applicable law and the expertise of the arbitration participants.

5. Conclusions

At the outset of this study, it was posited that the drafting and composition of arbitral awards reflect the viewpoints of practitioners and legal scholars, shaped significantly by

their legal heritage (Bhatia 1993, p. 245) and the linguistic and cultural contexts of their countries of origin (Gotti 2008, p. 235). To address this, it was crucial to gather arbitral awards representing both civil law systems (including Italian, Swiss, and French law) and common law systems (including US state laws, England and Wales law, Hong Kong law, and Singaporean law). These awards were issued by prominent international arbitral institutions with a significant presence in global commercial arbitration.

Historically, due to the confidential nature of arbitration, arbitral awards have been viewed as a "relatively unexplored genre" (Bhatia *et al*. 2012, p. 1). However, in recent years there has been a notable shift towards transparency, with efforts to publish and publicly access arbitral awards to foster legal development (Mourre, Vagenheim 2023, p. 261; Resnik *et al*. 2020, p. 612). This cultural shift has led to significant policy changes in leading arbitral institutions, such as the ICC, and the creation of search engines like Jus Mundi to facilitate the dissemination of legal knowledge. As a result, it became possible to collect a limited number of arbitral awards – drafted in English and sourced from various global institutions – through Jus Mundi for analysis, allowing this study to focus on the genre of arbitral awards.

Specifically, this study focused on the use of complex prepositions signaling textual authority, which represent an extensively represented group of complex prepositions within the Main Corpus. A notable frequency discrepancy exists between civil law and common law subcorpora, with higher occurrences in the SAC and CAM subcorpora compared to slightly lower frequencies in the common law subcorpora. These quantitative results slightly differ from traditional descriptions of common law legal English, which typically emphasize a preference for complex prepositions (e.g., Bhatia *et al*. 2008, p. 24). This deviation could be attributed to the influence of the Plain English movement, which has expanded beyond the UK and the US to regions such as Singapore and Hong Kong.

Regarding the integration of sources of authority, civil law subcorpora show significantly higher frequencies of references to legislation and codes, particularly in the CAM and ICC subcorpora. In contrast, references to case law and specific court decisions are relatively uniform across all subcorpora. Additionally, civil law texts tend to incorporate sources of authority concisely with brief references, while common law texts generally feature more detailed discussions. Common law subcorpora often elaborate on legal principles by providing extensive information about the facts of precedents, offering a more in-depth analysis compared to the succinct references typical in civil law subcorpora.

Overall, the analysis of complex prepositions signaling textual authority reveals significant persisting differences in how legal determinations are articulated in common law versus civil law arbitral awards. However, it is crucial to consider additional overarching features – at lexical, syntactic, and textual levels – that characterize legal discourse to achieve a more comprehensive view of the current state of the arbitration discourse. Future research should incorporate these additional features, focusing on features that have previously indicated potential divergences between legal texts from civil law and common law contexts. Additionally, as resources like the Jus Mundi search engine evolve, the collection of further data and the expansion of the corpus will enable more extensive linguistic analyses of arbitral awards.

The results of this study, which presents a large-scale diachronic analysis of a corpus of arbitral awards, provide valuable insights into the linguistic characteristics of arbitral awards – particularly the use of complex prepositions signaling textual authority. By highlighting distinctions between civil law and common law traditions, the study contributes to a deeper understanding of how legal cultures shape the language of

arbitration. More broadly, it contributes to the field by providing empirical evidence that integrates linguistic analysis with legal genre studies and may serve as a foundation for further inquiry into how legal traditions influence language use in international arbitration.

The data collected for this study lays the groundwork for further research and may be expanded with additional data. Potential avenues for future exploration include:

• Retrieving a larger set of arbitral awards from Jus Mundi or similar databases and possibly incorporating other legal genres to allow for comparative analysis across genres and better understand the broader linguistic patterns within arbitration and legal practices.

• Conducting a diachronic study of this genre or similar genres – such as judgments or arbitral procedural orders – to trace changes over time and examine how evolving legal norms, drafting conventions, or influences like the Plain English movement may have shaped linguistic features.

• Investigating other linguistic and textual features not covered in this research, such as salient lexical choices and syntactic structures characteristic of legal English.

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