



RIGA GRADUATE SCHOOL OF LAW

ARBITRABILITY: PROBLEMATIC ISSUES OF THE LEGAL TERM

MASTERS THESIS

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DECLARATION OF HONOUR:

I declare that this thesis is my own work, and that all references to, or quotations from, the work of others are fully and correctly cited.

(Signed)

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SUMMARY

This Thesis is devoted to terminological analysis of the term “arbitrability” which constitutes an important part of specialized legal discourse focusing on arbitration law. The research is conducted with the aim to disclose the meaning conveyed by the term “arbitrability”, and provide justification for describing this term as multi-faceted and highly context-dependable phenomenon. Next, the research concentrates on finding relevant equivalent for *arbitrability* concept in the Latvian legal discourse, indicating terminological value of the phrasal unit “strīdi, kas pakļauti un piekritīgi šķīrējtiesai”. In addition, this Thesis provides assessment of a neo term “arbitrabilitāte” which has been newly introduced in Latvian arbitration discourse, and which presently lacks substantive aspects of functionality.

To address the aforementioned issues, the research is divided into four Chapters accompanied by several Subchapters.

Chapter I outlines general and all-embracing background consisting of legal terminology and its indispensable elements such as national specificity, interdependence of legal fields, and relations with the term’s user. Along with general aspects, specific elements of legal terminology in arbitration discourse are raised, which focus on impact of globalization, multi-disciplinary nature of the analyzed term and characteristics of arbitration terms’ typology. Following that, approaches and linguistic principles applied in the research are established.

Chapter II concentrates on conceptual analysis of the term “arbitrability”, which is viewed through the prism of legal settings. This allows drawing interrelations with other related terms and designated concepts in arbitration context. In this respect, emphasis is put on similarities and differences of the *arbitrability* concept in civil and common law countries, as well as development and evolving nature of this concept. Conceptual relations of arbitrability are shown, bearing in mind the most important characteristics which pose linguistic questions and produce legal implications. A number of related concepts, such as “capacity” and “jurisdiction”, which denote different semantic scope, are put under scrutiny.

Chapter III considers aspects of formation of the analyzed term, as well as the term’s purely linguistic nature and communicative context. It establishes a lexical choice for denoting the concept, and how the latter is reflected in dictionaries and international legal acts. This contributes to overall understanding that the nominalization of the term is generally avoided and substituted by terms of “linguistic compromise.”

Finally, in Chapter IV discussion focuses on search for equivalent for *arbitrability* concept in Latvian legal community. A combined method of functional and legal equivalence is offered to address this search. In line with that, legal terminological aspect of Latvian arbitration and civil procedure discourse are observed, as well as attention is paid to newly created neologism “arbitrabilitāte”. Such neologism is explored by addressing advantages and disadvantages of its practical usage. It is concluded that currently the usage of this neo term lacks practical value due to various factors. However, since globalization of legal terminology evolves, further development of this term may not be fully denied, and thus, is suggested for further terminological study.

INTRODUCTION

In recent years, alternative dispute resolution has become a booster of global commercial activities, which changes the traditional role and perception of national judicial systems. Being one of the mechanisms of alternative dispute resolution, arbitration is securing its status of a valuable tool for settlement of different disputes which are characterized by sophisticated and multi-faceted nature. Both national states and international community build normative platform for setting regulation and governing rules in order to ensure functionality and efficiency of arbitral proceedings.

In encountering with these development processes, Latvia faces the need to generate an adequate response to international arbitration tendencies by both, adopting relevant and modern regulatory framework, and introducing consistent and coherent approach to overall insight of Latvian role in international arbitration law.¹ Currently, developments in the field of arbitration law advanced various domestic legislative attempts to introduce new regulation, as well as captivated attention of Latvian legal experts. Therefore, these tendencies primarily underlined the author's impetus for further research in the said field.

In line with this growing demand in developing clear understanding of arbitration role and its reflection at the national level, assessment of legal perspective alone is presumably insufficient. Constant increase in interest among scholars of linguistics is confirmed by the expanding number of researchers who conduct analysis of arbitration texts and use of terminology in English and other languages.² Consequently, this linguistic dimension of arbitration law field enhanced the author's interest to carry out analysis which would supplement initial legal aspect with linguistic peculiarities.

Hence, this Thesis presents an attempt to contribute in building a framework of general understanding of arbitration law field by exploring one of its characteristic features, namely, a phenomenon of arbitrability.

Arbitrability is recognized as specific tool arbitration is equipped with in searching the balance between meeting expectations of clients, and at the same time preserving state interests. Arbitrability forms a basis for obstacle-free operation of arbitral proceedings, being a gate-keeper in the case, and guaranteeing that dispute will be furnished by a chance to be settled on the merits. Thus, important nature of this instrument cannot be overestimated. In parallel, along with economic and legal development in the context of evolving role of arbitration, purely national zone of legal terminology in this specialized communication field is challenged. Especially, it is visible due to socio-cultural and national barriers which begin to fade upon confronting with the forces of linguistic globalization. The English language obtains leading position in communication, and therefore logically influences national legal terminology. Thus, when legal and linguistic aspects overlap, a necessity of terminological analysis comes into play.

In this respect, it should be pointed out that acknowledging essential nature of arbitrability as such, eminent legal scholars and researchers devoted their work to shaping and changing legal

¹ A problem of lacking substantial research on the point of international arbitration law in Latvia has been expressly articulated by distinguished Latvian expert in arbitration law I.Kačevska in her dissertation devoted to international commercial arbitration law. See I. Kačevska, *Starptautiskās komerciālās arbitražas tiesības. Promocijas darbs*, Rīga, 2010. Available on LU database. Last visited on 20 April 2012.

² See, e.g., academic works of linguistic researchers V.H.Bhatia, C.N.Candlin, P.E.Allori, M.Gotti, G.Garzone, M.Chroma.

interpretation thereof. In contrast to unequivocal legal interest, linguistic research of the term “arbitrability” is illustrated only occasionally. Due to the limited scope of the Thesis, comprehensive legal questions related to arbitrability may not be comprised to the fullest extent; hence, they are touched upon in necessary perspective.

Consequently, in assessing the need for analysis of arbitrability, a crucial research question should be formulated: whether the term “arbitrability” conveys single and unambiguous meaning which is functionally and practically applicable in globalized communicative environment? Following that, additional question should be proposed: how does the meaning of arbitrability should be conveyed into Latvian legal environment?

Accordingly, this Thesis addresses legal and terminological aspects of arbitrability, as well as observes this phenomenon under domestic legal perspective. Considering this, precise goals of this research may be defined as follows: 1) to analyze the *arbitrability* concept; 2) to analyze the term “arbitrability”; 3) to determine and analyze possible relevant equivalents for transmitting of the concept in Latvian legal environment.

In order to accomplish these goals, certain tasks should be completed: 1) legal terminological framework should be set for delineating the field which influences and pre-determines certain characteristics attributed to the term “arbitrability”; 2) conceptual analysis should be conducted in order to determine the role and place of the *arbitrability* concept, as well as its relations with other related concepts; 3) formation of the term “arbitrability” should be assessed and characterized along with its discourse features; 4) analysis of the existing and newly introduced legal terms should be provided in order to assess their terminological value with respect to *arbitrability* concept.

Considering the aforesaid, this Thesis consists of four Chapters which are divided into Subchapters. Each Chapter is devoted to address articulated tasks.

This Thesis contains an extensive review of legal and linguistic scholarly opinions, examples of national and international regulative framework, review of dictionaries and relevant online tools, as well as is supplemented by graphical representation of conceptual systems. Overall, this Thesis presents an analytical research, which in its legal part is accompanied by comparative, interpretative and historical research methods. In addition, linguistic part of the research is presented by using discourse analysis, and linguistic analysis comprising lexical, morphological, phonological, and orthographical aspects of the term “arbitrability”.

1 SETTING FRAMEWORK FOR TERMINOLOGICAL ANALYSIS

Chapter I of this Thesis gives first insights into the aspects of legal terminology and its specific realm with regard to arbitration discourse. In order to frame the setting of terminological research focused on one particular term and its designated concept, general guidelines should be established which will govern the research process. Such guidelines outline the main general characteristics of legal terminology and its major constituent elements, which allow viewing legal terminology under the widest possible angle. Next, they concentrate on providing a set of specific characteristics which emphasize the uniqueness of arbitration terminology. Lastly, approaches and principles applied in this research are noted.

1.2 General characteristics of legal terminology

According to Pearson, language as a whole is a label used to describe different situations.³ In its turn, legal language is designed to address specific situations, and concentrates in providing legal information within sender-receiver relationship.

As eminent legal linguist Matilla notes, legal language exists only in social environment attributed to particular national legal system, as a part of socio-cultural diversity of a particular society.⁴ Following that, civil and common law systems create different conceptual systems, which in their turn establish distinct semantic domains of legal terms.⁵ In this respect, also linguistic expert Sandrini acknowledges that the national legal system has to be regarded as a framework for all legal communication, and it clearly affects terminology.⁶ Thus, mindful of the fact that legal terminology is the most significant and visible linguistic feature of the legal language⁷, it can be summarised that the first intrinsic and one of the most substantive characteristics attributed to legal terminology is its dependence of national legal context and inability to exist outside thereof.

Secondly, legal terminology is not only inherently placed within national legal boundaries, but is specifically construed to be applied in specialized communicative discourse. Eminent linguistic expert Cabré submits that legal terminology as such and terms offer a set of special activities which are designed to present this specialized field of knowledge.⁸ Likewise, distinguished linguistic researcher Sager points out that terminology is concerned with the collection, description, processing and presenting of lexical items, i.e. terms belonging to specialized area of usage.⁹ In addition, distinguished Latvian linguist Skujiņa provides in this connection that a term is a word or terminological expression that expresses the respective scientific notion.¹⁰

³ J. Pearson, *Terms in Context*, Amsterdam, John Benjamins Publishing, 1998, at p.7.

⁴ H.M.S. Matilla, *Comparative Legal Linguistics*, Aldershot, Ashgate, 2006, at p.104.

⁵ *Ibid.*

⁶ P. Sandrini, "Legal Terminology. Some Aspects for New Methodology", (1999) *Journal of Linguistics* 22, at p.103. Available at: http://download2.hermes.asb.dk/archive/download/H22_06.pdf. Last visited on 26 May 2012.

⁷ D. Cao, *Translating Law*, Clevedon, Multilingual Matters Ltd, 2007, at p.53.

⁸ M.T. Cabré, "Theories of Terminology", (2003) 9 *Terminology* 2, 2003, at p.184. Available at: <http://www.hf.uib.no/forskorskole/cabre.pdf>. Last visited on 26 May 2012.

⁹ J. C. Sager, *Practical Course in Terminology Processing*, Amsterdam/Philadelphia, John Benjamins Publishing, 1990, at p.3.

¹⁰ V. Skujiņa, *Latviešu terminoloģijas izstrādes pamatprincipi*, Rīga, LVI, 2002, at p.9.

Thus, legal terminology serves as an identification of specialized communicative discourse, and is well-equipped with a set of specific methods. Consequently, such methods allow locating a particular lexical unit within the particular field of law and establishing its relations with other units attributed to this field, as well as co-relations with other fields of law (for example, civil law, criminal law, arbitration law).

Next, legal terminology, as signifier of specialized field of legal knowledge, tends to address the needs of users who operate within this particular field. Therefore, in addressing the users' needs, it should be pointed out that terminology, as referred to by Cabré, perceives a common goal of establishing and facilitating the efficiency and optimisation of communication between specialists of the subject-field.¹¹ The mentioned function on the same footing underlines *rationale* of legal terminology, i.e. it addresses the need of efficiently operating communication in legal discourse, thereby conveying precise legal message from sender to receiver. At the same token, linguistic scholar Temmerman points out that in a process of special language understanding potential user groups should be particularly borne in mind.¹²

However, it should be pointed out that legal terminological units do not exist in isolated subject-field specialists' circles. Although addressing of their needs is a primordial goal of legal terminology, it must be borne in mind that the terms should be also operable and understandable for non-competent users. As Temmerman correctly points out, notwithstanding the divertive nature of users, all of them obtain one thing in common: they are likely to consult terminology in searching for help to understand a lexicalised concept.¹³ Hence, in legal discourse interaction of experts (lawyers, researches, legislation drafters) and non-experts of law (linguists, translators) is particularly active and important. Considerations related to users are especially important when legal terminology collides with the issue of equivalence, which links target legal system with the system of the term's origin.

Continuing with major elements which are attributed to legal terminology, linguistic and terminology experts should be consulted.

Since a term constructs a central object of terminological analysis, Cabré suggests that terminology must necessary cover three elements: cognitive, linguistic and communicative.¹⁴ Similarly, Sager submits that terminology as a semantically-based discipline can be studied from the point of view of referent (a cognitive dimension), from the point of view of designation given to referent (a linguistic dimension), and from the point of view of equation of referent and designation can be put to (communicative dimension).¹⁵

Thus, following the presented line of logic, within the first cognitive element a legal term may be demonstrated as comprising a certain number of characteristics, and for the needs of the present research they may be summarized and prioritized as follows:

¹¹ M.T. Cabré, *Terminology: Theory, Methods and Applications*, Amsterdam/Philadelphia, John Benjamins Publishing, 1998, at p.10.

¹² R. Temmerman. *Towards New Ways of Terminology Description: The Sociocognitive Approach*, Amsterdam/Philadelphia, John Benjamins Publishing, 2000, at p. 221.

¹³ *Supra* 11, at p. 221.

¹⁴ *Supra* 8, at p.183.

¹⁵ *Supra* 9, at p.13.

a) contextual dependence, i.e. a legal term is always contextualized and applied in situational model.¹⁶ Such contextualization appears in different sources of law (legislative act, case-law), as well in authoritative academic writing.

b) Conceptual structure, i.e. a legal term has a specific meaning and determined place in conceptual structure.¹⁷ A concept should be precisely drawn and incorporated into conceptual system, thereby emphasizing its interaction with other concepts.

Observing the linguistic element, the following characteristics may be discerned:

a) a legal term is a lexical unit which have lexical and syntactic structure¹⁸;

b) a legal term may appear in different grammatical forms¹⁹ (for example, nouns, verbs, adjectives).

This list of characteristics may be supplemented by another entry stating that a legal term may exist as an abstract or a concrete term²⁰. Thus, considerable role of abstract terms in legal discourse is acknowledged.

From the perspective of communicative element, the following characteristics are crucial:

a) transmitting of information in sender-receiver relations²¹. Here, the process of transmitting of particular information should be efficient and practical; otherwise a legal term is useless.

b) A sender and a receiver presumably operate in the same specific field of knowledge.²²

Thus, for the purpose of this research, legal terminology has been observed in dimension of its general inherent characteristics which show what constitute a basis for existence of legal terminology. Furthermore, legal terminology has been described as a set of elements and their constituent parts which demonstrate where and how a legal term operates in real life situation.

1.2 Specific features of terminological analysis in arbitration

After general description has been outlined, legal terminology should be placed in more specific contextual, i.e. arbitration law environment. This allows distinguishing individual characteristics which are attributed to legal terms in arbitration discourse. That assists in setting a narrower framework for the discussion pertaining to issues of arbitrability.

Based on the conducted analysis of scholarly works, individual characteristics should be extracted and viewed in greater detail.

Firstly, as various scholars point out, nowadays a sharp increase in the dismantling of socio-cultural barriers, national boundaries and predominance of multicultural context is revealed in the area of international business and trade.²³ The globalization of economy contributed to a change in a tradition role of national state, which is becoming more dependent from

¹⁶ *Supra* 8, at p.184.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ For example, analysis of abstract and concrete terms is provided within the legal problematic of genocide. See L. May, *Genocide: A Normative Account*, New York, Cambridge University Press, 2010, at p.25.

²¹ *Supra* 9, at p.101.

²² *Ibid.*, at p.102.

²³ V.K. Bhatia, C.N. Candlin, J. Engberg, "Concepts, Contexts and Procedures in Arbitration Discourse", in V.K. Bhatia, C.N. Candlin, J. Engberg (eds.), *Legal Discourse Across Cultures and Systems*, Hong Kong, Hong Kong University Press, 2007, at p.5.

international challenges; one of these challenges is an increasing role of arbitration.²⁴ It consequently leaves an impact on globalization not only in economic sense, but also with respect to national legal environment, moving forward and even imposing an international view on legal developments in various fields of business-related areas. This changeable context is also applied to the system of alternative dispute resolution, and in particular, arbitration law.

Consequently, following the logic of globalization processes, it can be presumed that given its all-embracing nature, globalization has influenced not only economic, social and legal field, but also language. Linguistic researcher Bhatia precisely admits, while accommodating cross-cultural and socio-economic differences, a variety of related and linguistic questions arise²⁵ which may give light to understanding of both general globalization and purely national development processes.

Meanwhile, in general, such internationality appears to have a two-fold dimension. From the one hand, it stimulates a process of drafting and recognition of international legal acts covering arbitration topic, which contributes to setting more or less strict formats for terminological issues. From the other hand, a translator still collides with the task of transferring one legal text of one legal system to another, and solves the issues of terminological incongruence²⁶.

Secondly, to be more specific, legal terminology in arbitration discourse may be marked with the next particularity.

According to the types of terminology proposed by Skujiņa, terminology used in arbitration may be characterized as carrying both interdisciplinary and monodisciplinary terminological features.²⁷ On the one hand, this statement may be well-justified by the fact that the terminology comprises terms and respectively designated concepts which are common to different fields of law. For example, terms used in the UNCITRAL Model Law on International Commercial Arbitration (Model Law)²⁸ are associated with the terms easily found in civil law: for example, “agreement”, “court”, “dispute”, “parties”, “costs”, “damages”.²⁹ On the other hand, particular terms still carry traces endowed by subject’s specificity: for example, “arbitral tribunal”, “arbitrator”, “arbitral award”.

Thirdly, terms used in arbitration discourse may be seen in the realm of different classification of the terms, which bring to light necessary typological and lexico-grammatical observations.

Some similarities in general representation of terms laid out by Skujiņa are also reflected in the work of researches Alcaraz and Hughes, who divide legal terms into subgroups of purely technical terms, semi-technical and everyday vocabulary.³⁰ It may be assumed that such terms as “arbitration”, “arbitrator” should fall within the scope of the first subgroup. Using Alcaraz

²⁴ B. Hanotiau, “International Arbitration in Global Economy: The Challenges of The Future”, (2011) 28 *J.Int'l Arb (Journal of International Arbitration)* 2, at p. 89.

²⁵ V.K. Bhatia, C.N. Candlin, “Analysing Arbitration Laws Across Legal System” (2004), 32 *Hermes Journal of Linguistics*, at p.14. Available at: http://download2.hermes.asb.dk/archive/download/H32_02.pdf. Last visited on 27 May 2012.

²⁶ M.Chroma, “Translating Terminology in Arbitration Discourse”, in V.K. Bhatia, C.N. Candlin, J. Engberg (eds.), *Legal Discourse Across Cultures and Systems*, Hong Kong, Hong Kong University Press, 2007, at p.325.

²⁷ *Supra* 10, at p.38.

²⁸ 1985 UNCITRAL Model Law on International Commercial Arbitration (2006), Available at: http://www.uncitral.org/pdf/english/texts/arbitration/ml-arb/07-86998_Ebook.pdf. Last visited on 26 May 2012.

²⁹ The examples of terms are found in Model Law, see *Supra* 28.

³⁰ E. Alcaraz, B. Hughes, *Legal Translation Explained*, Manchester, St.Jerome Publishing, 2002, at p.16.

and Hughes classification, the said lexical units are distinguished from the others as they have a semantically stable meaning within their field of application.³¹ Moreover, if semantic stability and certainty is presumed than such terms should serve as a marker of arbitration context, therefore indicating their mandatory presence in arbitration-related communicative environment. Further, some of arbitration-related terms acquire features of the semi-technical terms, for example, “interim measures”. These terms involve a translator in a wide range of choices.³² The term “subject-matter”, in its turn, represents a pattern of everyday vocabulary which is naturally found in numerous legal texts.

In this connection, the core term of the present analysis – “arbitrability” – is uncertain. Namely, from the one hand, it marks specific and unique contextual environment, which require the term to be put within subgroup of purely technical terms. However, such location should be reserved by a remark that its stability is challenged. Therefore, if semantic intension of the designated *arbitrability* concept is dynamic, culturally and context-dependable, and may consequently influence the correct usage of term, than the term’s stability is only superficial. From that point of view, the term may be placed under semi-technical terms, as a translator should put efforts in finding adequate equivalent.

Next, combining the methods of classification proposed by researches Cabré³³ and Chroma³⁴, it is possible to come up with the lexico-grammatical observations of the whole class of terms used in arbitration discourse. These observations comprise the following elements:

- a) normativity of a term. Using Sandrini’s³⁵ and Chroma’s³⁶ definitions of descriptive and prescriptive terminology, it can be pointed out that the dimension of descriptive terminology is represented by scholarly opinions in view of the use of terms in arbitration discourse. Instead, prescriptive terminology should be seen in the context of terms which are used in national and international legal acts. With respect to the term “arbitrability”, the effect of prescriptive terminology should be explained in view of its usage within the statutory regulative framework. Clearly, terms used in case-law should also be addressed, as in common law countries terms are being developed based on the precedential value of the case-law.³⁷
- b) Simplicity and complexity of a term. Such characteristic depends on number of constituent morphemes³⁸. For example, “award” as a pattern of simple term, “arbitration” and “arbitrability” as a complex term. “Arbitral tribunal” and “interim measures” may be classified as a terminological phrase which is made up of the combination of words.³⁹
- c) Term as a one-word unit or compound unit. For example, “arbitration”, “arbitrability” as a one-word unit, and “interim measures” as a compound unit.

³¹ *Ibid.*

³² *Ibid.*

³³ *Supra* 10, at p.85.

³⁴ *Supra* 26, at p.317.

³⁵ P.Sandrini, “Comparative Analysis of Legal Terms: Equivalence Revisited”, in C. Galinski, K.-D. Schmitz (eds.), *Terminology and Knowledge Engineering 96*, Frankfurt, Indeks, 1996, at p. 342-351. Available at: <http://homepage.uibk.ac.at/~c61302/publik/tke96.pdf>. Last visited on 30 May 2012.

³⁶ *Supra* 26, at p.317-318.

³⁷ P.Tiersma, “Textualization of Precedent”, (2007) 82 *Notre Dame L.Rev (Notre Dame Law Review)*, 3, at p.1226. Available on Westlaw International Database. Last visited on 30 April 2012.

³⁸ *Supra* 11, at p.85.

³⁹ *Ibid.*

d) Term as an object/entity (a noun), property/quality (adjective), process/operation (verb), relationships (adjectives, verbs, prepositions).⁴⁰ For example, objects/entities are presented by “arbitrability”, “arbitration”, “defendant”. In this respect, terminology in arbitration discourse is precisely described by Cabré, who asserts that the presence of nouns in the specialized discourse generally outnumbers verbs and adjectives.⁴¹

e) Term is formed by means of derivation, conversion⁴² or compounding.⁴³ Here, in view of legal term’ origin, Cabré presumes that the origin of the term is grounded in the language itself, i.e. language structure permits to create a particular term by certain conventional means of term formation in the language.

Thus, the presented brief analysis demonstrated the way how terminology may be assessed given the specificity of the arbitration dispute, as well as showed in what social and legal reality arbitration-related terms and consequently, the term “arbitrability” exists.

1.3 Approaches and principles applicable in analysis

Finally, after having analyzed terminological peculiarities of specialized discourse, approaches for further analysis of the term “arbitrability” should be presented. Further, three principles are listed which present particular interest in the framework of the present research.

As the fundamental object of research of legal terminology is relations between legal concept and legal term, conceptual analysis of arbitrability will form a primarily object of research of the present analysis. Furthermore, concept-term relations should be studied within the linguistic context, i.e. textual information⁴⁴, instead of delimiting the concept from the term and observe it independently of situational and informational context. Therefore, the conceptual analysis of arbitrability will be held bearing in mind its contextualisation. Next, such relations are studied by using combined onomasiological and semasiological approaches. Onomasiological approach appears to be useful in analysing the term “arbitrability” used in the English language, whereas semasiological approach leads the analysis of finding an equivalent in the target legal language.

Next, in the context of this study, three principles of terminology should be observed. They bear importance due to the nature of the term “arbitrability” and are reflected in further discussion.

Firstly, monosemy as one-to-one relationship between concept and term should be addressed. Linguistic scholar Sager admits that modern terminological approach accepts the occurrence of synonymic expressions and variants of terms and rejects the narrow and prescriptive attitude that one concept is associated with only one term, as terms now are being studied primarily in communicative context.⁴⁵ Similarly, Cabré admits that the claim of univocity and monosemy of terms has been refuted, as the traditional theory regarding the concept to this extent is profoundly idealistic, and far removed from the cognitive view of the socially

⁴⁰ *Ibid.*, at p.85.

⁴¹ *Supra* 11, at p.86.

⁴² *Ibid.*

⁴³ L.J.Brinton, D.Brinton, *Linguistic Structure of Modern English*, Amsterdam/Philadelphia, John Benjamin Publishing, 2010, at p.101.

⁴⁴ *Supra* 12, at p.34.

⁴⁵ *Supra* 9, at p.58.

conditioned concepts prevalent in modern society.⁴⁶ Protagonists of socioterminology also studies synonymy and polysemy which goes against the traditional terminology school's ideal of monosemy, focusing on real language, not on standardization.⁴⁷ Also researcher Cornu admits that the legal terms stand in relation of internal and external polysemy.⁴⁸ Therefore, this research tends to investigate whether the term "arbitrability" may be considered as monosemic.

Secondly, principle of synonymy should be observed. Synonymy in modern terminology stands opposite to polysemy provides that two or more terms may present the same meaning.⁴⁹ Eminent scholar Matilla continues with the presumption that linguists find synonymy to be a common feature of legal terms.⁵⁰ Linguistic researcher Temmerman provides that synonymy, together with polysemy, constitute a part of modern communicative environment where special language operates.⁵¹ Near-synonymy mechanism, as Temmerman points out, exists and demonstrates slightly different perspective of a particular lexical unit, which results in the functional advantage for the target user to emphasize one of the most appropriate and contextually suitable aspects.⁵² Following that, confronting with the absence of clear-cut designation, legal communication may be in fact nuanced and more specifically focused. Therefore, the further analysis of the term "arbitrability" will present the functional advantages and real operability of near-synonymy with respect to the term. The problem of synonymy is specifically observed within the context of related concepts and their designators, as well as is valuable to be looked through within the framework of the Latvian terms denoting the concept of arbitrability.

Thirdly, synchrony and dynamicity of the term and concept should be assessed. As scholars Baker and Saldanha observe, synchrony is static use of concept disregarding their evolutionary nature.⁵³ The principle of synchrony, as described in traditional theories of terminology, suggests that a term, which designates a concept, is unchangeable, permanent, or static.⁵⁴ Therefore, the evolution of the concept, which logically may lead to subsequent evolution of the designation of the concept had not been addressed. Synchrony is also addressed by Sager, who states that terminological data have validity in time⁵⁵, thus admitting that a process of term formation and operation should be regarded within particular time-limit. However, along with modern tendencies of terminology to examine the language and concepts as evolving categories presented by Temmerman⁵⁶, Cabré points out that the world of technical and scientific concepts to which specialized terms refer are permanently dynamic,

⁴⁶ M.T. Cabré, "Elements for the Theory of Terminology: Towards an Alternative Paradigm", (2000) 6 *Terminology. International Journal of Theoretical and Applied issues in Specialized Communication*, 1, at p.39. Available at: <http://www.upf.edu/pdi/dtf/teresa.Cabré/docums/ca00el.pdf>. Last visited on 26 May 2012.

⁴⁷ See, e.g. *Supra* 12, at p.32; M.Baker, G.Saldanha (eds.), *Routledge Encyclopedia of Translation Studies* (2nd ed.), Abington, Routledge, 2009, at p.287.

⁴⁸ G.Cornu, *Linguistique Juridique* (3rd ed.), Paris, Montchrestien, in M.Galdia, *Legal Linguistics*, Frankfurt, Peter Lang, 2009, at p.119.

⁴⁹ *Supra* 4, at p.111.

⁵⁰ *Ibid*, at p.111.

⁵¹ *Supra* 12, at p.16.

⁵² *Ibid*, at p.151.

⁵³ *Supra* 47 (M.Baker, G.Saldanha), at p.287.

⁵⁴ *Supra* 12, at p. 14.

⁵⁵ *Supra* 9, at p.142.

⁵⁶ *Supra* 12, at 16.

not static discipline.⁵⁷ As researcher Kageura notes, terminology demonstrates tendency not only to its lexical-formal dynamics but also in its capacity of establishing dynamic relationship between the term and the meaning.⁵⁸

Therefore, the mentioned approaches and principles assist to view the interaction between the *arbitrability* concept and its designation. In addition, the said principles bring more insight pertaining to quality and degree of relations between the mentioned terms.

2 CONCEPTUAL ANALYSIS OF THE TERM “ARBITRABILITY”

Acknowledging the need for conceptual clarification of the term “arbitrability”, Chapter II of this Thesis focuses on the meaning of this term, context where it is applicable and conceptual relations with other terms in legal discourse. The description is limited to the overall appraisal of *arbitrability* concept, and its main typological characteristics which are necessary to explain this phenomenon in terminological focus.

To begin with, it should be emphasized that a concept in terminology provides an explanation for motivations which guides the process of term formation.⁵⁹ Moreover, term formation as such is of secondary nature, since a primarily goal is to set limits and define a set of characteristics attributed to the concept designated by a coined term. This statement may be also affirmed by linguist Kerremans who mentions that the concept is a starting point of every terminological analysis.⁶⁰

For the purpose of this research, explanation of structural characteristics of the concept is searched through different patterns of arbitration discourse. By referring to different legal systems, conceptual analysis explicitly shows how linguistic choices have been influenced by unique cultural and historical environment. Thus, comparison of concepts will eventually lead to the understanding of conceptual relations. Consequently, these findings may assist greatly in search for equivalence of legal terms which designate the *arbitrability* concept.

In order to justify the necessity to refer to detailed legal perspective analysis of arbitrability, three basic reasons thereto must be noted.

Firstly, the task of legal analysis of a term is to establish a particular concept as a discrete entity of knowledge structure⁶¹, thus clarifying its role and place in the context of specialized discourse of arbitration law. The concept is viewed in strictly defined area, i.e. particular legal settings which are construed in line with the whole functioning of a particular legal system. In fact, the primary role of such evaluation is crucial, as it allows framing settings for a term, thus delineating a precise area of general applicability and accommodation of this term within situational context.

⁵⁷ C.Valer-Garcez, “Terminology and Ad hoc Interpreters in Public Services. An Empirical Study”, (2005) 3 *The Journal of Specialized Translation*, [at p.5]. Available at: http://www.jostrans.org/issue03/art_valero_garces.php. Last visited on 29 May 2012.

⁵⁸ K.Kageura, *The Dynamics of Terminology: a Descriptive Theory of Term Formation and Terminological Growth*, Amstredam/Philadelphia, John Benjamins Publishing, 2002, at p.15.

⁵⁹ *Supra* 9, at p.21.

⁶⁰ K.Kerremans, “A Comparative Study of Terminological Variation in Specialized Translation”, in H.Carmen, J.Engberg (eds.), *Reconceptualizing LSP, Online proceedings of the XVII European LSP Symposium 2009*, Aarhus, 2010, [at p.1]. Available at: <http://www.asb.dk/fileadmin/www.asb.dk/isek/kerremans.pdf>. Last visited on 29 May 2012.

⁶¹ *Supra* 9, at p.21.

Secondly, legal analysis of the *arbitrability* concept provides a sum of attributed characteristics which form intension thereof. It also contributes to diminishing the level of vagueness and abstractness which are inherent features of any legal concept. The intension of *arbitrability* concept in fact brings together different conceptual elements, which remain constant⁶², on the one hand, and those, which justify the changing nature of such concept, on the other hand. Within the framework of intensional analysis it is possible to discern a way of applicability of the concept and to view its evolutionary processes in national legislation and case-law. Further, this analysis also produces understanding of extensive dimension of the concept. It is valuable since this dimension of *arbitrability* concept may not be initially defined by national legislative act.

Thirdly, legal analysis demonstrates a set of interrelated and intertwined concepts related to *arbitrability*. Such conceptual relations manifest themselves in hierarchically or vertically construed generic and partitive relations, or non-hierarchical or horizontal relations which are streamlined by their function. The identified conceptual structure allows not only to explore a place and role of *arbitrability* in a row of related concepts, but also to establish a coherent and logic link between the concept and a coined term.

Apart from the abovementioned, the general approach to analysis of *arbitrability* concept seems to correspond very tightly to researcher Simmonaes's method of perceiving a concept as such. Namely, when defining "concept", Simmonaes endorses to observe it without taking a unit of thought as a starting point, since this criterion is highly subjective and produces variable conclusions.⁶³ Instead, the scholar offers to define a "concept" through the unit of knowledge of any specific field given at a particular period of time.⁶⁴ Thus, projecting the said method on this analysis, it is especially preferable to explore *arbitrability* concept from the angle of its dynamic, changing and evolving character.

Finally, the proposed method of the concept description is carried out based on contextual information extracted from the European states' and the United States' legislative acts, as well as relevant case-law. In addition, intertextuality of *arbitrability* concept is determined by shaping the contours thereof which are found in academic writings.

2.1 General aspects of arbitrability

Brief outline of general aspects of *arbitrability* concept aimed at representing a whole system of legally corresponding characteristics. It is done by emphasizing central content of arbitrability doctrine and describing a set of surrounding "blocks", or types of arbitrability.

The term "arbitrability" is being used in a very broad and diverse sense. In many cases it provokes confusion and inability to identify the exact intension of the designated concept in order to apply it in the most efficient and clear fashion. In this regard, it may clearly show how the terminological features determine semiotic difficulties encountered by the analyzed term.

⁶² R.Alain, J.C.Sager, *Essays on Terminology*, Amsterdam/Philadelphia, John Benjamins Publishing, 1995, at p.36.

⁶³ I.Simmonaes, "Vague Legal Concepts: A Contrdictio in Adjecto?", in B.E.Antia (ed.), *Indeterminacy of terminology and LSP: Studies in Honor of Heribert Picht*, Amsterdam/Philadelphia, John Benjamins Publishing, 2007, at p.121.

⁶⁴ *Ibid.*

Distinguished legal experts Carbonneau and Janson suggest that arbitrability determines the point at which the exercise of contractual freedom ends and the public mission of adjudication begins.⁶⁵ As legal experts Redfern and Hunter point out, each state may decide, in accordance with its own economic and social policy, which matters may be settled by arbitration and which may not.⁶⁶ In other words, if taking a presumption that arbitration as a whole constitutes derogation from the principle of monopoly of national courts⁶⁷, arbitrability is the very feature that delineates and emphasizes such derogation.

Rationale under the reservation of particular disputes for adjudication by national courts is based on two different concepts. As Justice Rogers asserts, firstly, national courts retain exclusive jurisdiction of certain types of disputes due to the very nature thereof, and its inherent inability to be settled by arbitration. Secondly, national law expressly provides a requirement that certain disputes must be determined in accordance with particular mandatory obligations of national law.⁶⁸

However, different approaches are implemented by the national states to base demarcation criteria in terms of arbitrability of particular subject-matters. Firstly, the national states differ in their approach to arbitration, thus demonstrating its closeness or, as opposite, distance in perception of the role and mission of arbitration. As a result, arbitrability may elucidate various important features of how the state positions itself within the area of private legal relationship, particularly in international perspective. Thus, it shows the state's interest and promotion of international trade and arbitration, as well as respect of parties' freedom and autonomy.

Following legal researcher Paulsson's statement pertaining to paradoxical nature of arbitration in general⁶⁹, the idea may be developed in providing even stronger emphasis on inherent ideological contradictions underpinning arbitrability. Thus, arbitrability is a real image of arbitration's attempts to compromise its existence by establishing close relations with the state, and at the same time trying to distance itself from the state as far as possible. Observing arbitrability as a part of modern philosophical discussions, it may be concluded that arbitrability as such plays one of the major roles in sustaining the mentioned paradox.

Arbitrability constitutes grounds of fundamental importance to the institution of arbitration as a whole.⁷⁰ It stems from the fact that if arbitrability is not considered, arbitral proceedings may result in having no practical value, as it forms grounds for setting aside or refusal of arbitral award⁷¹, despite the existence of an arbitration agreement. Furthermore, determination

⁶⁵ T.E. Carbonneau, F. Janson, "Cartesian Logic and Frontier Politics: French and American Concepts of Arbitrability", (1994) 2 *Tul. J. Int'l & Comp. L. (Tulaine Journal of International and Comparative Law)* 193, at p.194. Available on Heinline Database. Last visited on 29 May 2012.

⁶⁶ N. Blackaby, C. Partasides, A. Redfern, M. Hunter, *Redfern and Hunter on International Arbitration*, New York, Oxford University Press, 2009, at p.124.

⁶⁷ N. Shelkopyas, *The Application of The EC Law in Arbitration Proceedings*, Groningen, Europa Law Publishing, 2003, at p.246.

⁶⁸ A. Rogers, "Arbitrability", (1992) 1 *A.P.L.R. (Asia Pacific Law Review)* 2, at p.1. Available on HeinOnline Database. Last visited on 29 May 2012.

⁶⁹ J. Paulsson, "Arbitration in three dimensions", *LSE Law, Society and Economy Working Papers*, 2010, [at p. 3]. Available at: http://www.arbitration-icca.org/media/0/12686652821290/arbitration_in_three_dimensions.pdf. Last visited on 26 April 2012.

⁷⁰ P. Binder, *International Commercial Arbitration and Conciliation in UNCITRAL Model Law Jurisdictions* (2nd ed.), London, Sweet & Maxwell, 2005, at p.274.

⁷¹ See e.g., *Supra* 28.

of arbitrability constitutes a matter of concern due to the fact that distillation of such subject-matters requires thorough review of the legislative acts of the concerned state.

However, as latest tendencies show the significance of arbitrability should not be exaggerated as in broad terms most commercial disputes are now subject to arbitrability.⁷² Developed countries, such as the United States of America, Canada, New Zealand and Australia have significantly liberalized state's approach to arbitrability, considerably limiting the scope of non-arbitrable matters.⁷³ On the contrary, developing countries are reserved as to open the gates for unlimited arbitrable matters, giving exclusive jurisdiction to national courts, since they believe that overall state control should be kept over certain issues, for example, related to investment.⁷⁴ At the same time, in view of globalization of international contracts and denationalization of commercial disputes, such hostility has a tendency to diminish. As distinguished legal expert Gaillard concludes, mistrust of arbitration, which in the 19th century was regarded as competition to domestic courts, has given way to general acceptance of this means of dispute resolution not so much due to relieve national courts of excessive case-load, but rather to the necessity of opening to the parties neutral alternatives, where parties may contribute in various ways.⁷⁵

The most important reason for limiting the scope of arbitrability is the perception that private rights in particular law field are closely entangled and intertwined with certain public interests. For example, some common issues such as employment and labour law, family law, patent regulation, criminal law, bankruptcy are fall out the scope of subject-matters capable of being resolved by arbitration.⁷⁶

National courts have provided concordant explanations as to the reasons why such sensitive matters are left exclusively within the state interests. For example, in the case *Continental Airlines Inc. v. Zimmerman*, it was held that because of the importance of bankruptcy proceedings to the smooth functioning of the nation's commercial activities, they are one of the few areas where state court jurisdiction has been expressly pre-empted.⁷⁷ Patent claims were excluded from arbitration in the United States until 1982, when the Congress modified national legislative acts, expressly allowing patent disputes to be arbitrated.⁷⁸ Similarly, due to case-law developments, securities claims arising in domestic disputes are now deemed arbitrable since the United States Supreme Court decision in the case *Shearson/American Express, Inc. v. McMahon*:

The mistrust of arbitration that formed the basis for the Wilko [*Wilko v. Swan*, 346 (1953) – *author's remark*] opinion in 1953 is difficult to square with the assessment of arbitration that has prevailed since that time. This is especially so in light of the intervening changes in the regulatory structure of the

⁷² See e.g., *Supra* 64, at p.135; A. Kirry, "Arbitrability: Current Trends in Europe", (1996) 12 *Arb. Intl. (Arbitration International)* 4, at p.386. Available on Heinline Database. Last visited on 29 May 2012.

⁷³ See e.g., V. Reddy, V. Nagaraj, "Arbitrability: The Indian Perspective", (2002) 19 *J.Int'l Arb. (Journal of International Arbitration)* 2, at p.123.

⁷⁴ M. Sornarajah, "The UNICITRAL Model Law: A Third World Viewpoint", (1989) 6 *J.Int'l Arb. (Journal of International Arbitration)* 7, at p.10.

⁷⁵ E. Gaillard, *Legal Theory of International Arbitration*, Leiden, Martinus Nijhoff, 2010, at p.68.

⁷⁶ M.L. Moses. *The Principles and Practice of International Commercial Arbitration*, (2nd ed.), New York, Cambridge University Press, 2012, at p.72.

⁷⁷ *Continental Airlines Inc. v. Zimmerman*, SUPREME COURT OF THE UNITED STATES 464 U.S.1038, 104 S.Ct. 699, 79 L.Ed.2d 165, January 9, 1984. Available on Westlaw International Database. Last visited on 26 April 2012.

⁷⁸ R.H. Kreidler, "Litigation or Arbitration: ADR Issues in Transnational Disputes", (1997), 52 *DRJ (Dispute Resolution Journal)* 79, at p.81. Available on Westlaw International Database. Last visited on 25 April 2012.

securities laws. (...) Wilko's assumptions regarding arbitration (...) most certainly (...) do not hold true today for arbitration procedures subject to the SEC's [Securities and Exchange Commission – *author's remark*] oversight authority.⁷⁹

An illustrative matter of antitrust arbitrability was addressed by the United States Supreme Court by its landmark decision in the case *Mitsubishi Motors Corp v Soler Chrysler-Plymouth Inc.*, where it was stated that:

The mere appearance of an antitrust dispute does not alone warrant invalidation of the selected forum on the undemonstrated assumption that the arbitration clause is tainted. So too, the potential complexity of antitrust matters does not suffice to ward off arbitration; nor does an arbitration panel pose too great a danger of innate hostility to the constraints on business conduct that antitrust law imposes (...).⁸⁰

Thus, the United States Supreme Court refuted a number of arguments which were traditionally raised in order to limit the scope of arbitrability.

Additionally, issues regarding human rights and fundamental freedoms guaranteed by international agreements may not be subject to arbitration, even if the dispute arises out of an agreement, which contains an arbitration clause. It occurs mainly due to divergent ideological underpinnings of commercial sphere and human rights' approach. As legal expert McDonald summarizes the criticism of alleged arbitrability of human rights disputes, human rights are based on human dignity as such, whereas trade-related relationship are construed for instrumentalist reasons.⁸¹

Arbitrability issue should be strictly distinguished from the question of what disputes fall within the terms of a particular arbitration agreement (the scope of arbitration agreement), which is a matter of interpretation of the particular clause of arbitration agreement. As legal researchers Sutton and Gill point out, not all matters under English law may be referred to arbitration.⁸² Summarizing information provided by academic sources, it may be concluded that such matters are those where the type of remedy required is not one which an arbitral tribunal is empowered to give (for example, a tribunal may not impose fines, and is generally not suited to resolve matters of criminal law⁸³).

Finally, turning to the issue of determination of arbitrability, it is generally done in three ways. Firstly, arbitrability may be determined by arbitral tribunal as case of jurisdiction; secondly, the courts of the seat of arbitration may be addressed for an injunction or declaration that a subject-matter is not arbitrable; thirdly, legal proceedings may be commenced on the merits of the dispute which will require the court to decide whether the dispute is arbitrable.⁸⁴ The 1958 Convention on the Recognition and Enforcement of Foreign

⁷⁹ Shearson/American Express Inc. V. McMahon, No. 86-44. SUPREME COURT OF THE UNITED STATES, 482 U.S. 220, 107 S.Ct. 2332, 96 L.Ed.2d 185, 55 USLW 4757, Fed. Sec. L. Rep. P 93,265, RICO Bus.Disp.Guide 6642, June 8, 1987. Available on Westlaw International Database. Last visited on 19 May 2012.

⁸⁰ *Mitsubishi v. Soler Chrysler-Plymouth*, Nos. 83-1569, 83-1733. SUPREME COURT OF THE UNITED STATES, 473 U.S. 614, 105 S.Ct. 3346, 87 L.Ed.2d 444, 53 USLW 5069, 1985-2 Trade Cases P 66,669, July 2, 1985. Available on Westlaw International Database. Last visited on 29 May 2012.

⁸¹ N.McDonald, "More Harm Than Good? Human Rights Considerations in International Commercial Arbitration", (2003) 20 *J.Int'l Arb. (Journal of International Arbitration)* 6, at p.525.

⁸² D. St. J. Sutton, K.Gill, *Russel on Arbitration* (22nd ed.), London, Sweet & Maxwell, 2003, at p.28.

⁸³ *Ibid.*

⁸⁴ A.Tweeddale, K.Tweeddale, *Arbitration on Commercial Disputes. International and English Law and Practice*, New York, Oxford University Press, 2005, at p.108.

Arbitral Awards (New York Convention)⁸⁵, for example, refers to non-arbitrability as a ground for a court to refuse recognising and enforcing an award.⁸⁶ It, however, does not contain any rule as to what law governs the question of arbitrability at a pre-award stage.⁸⁷

Thus, given the abovementioned, within linguistic perspective, *arbitrability* concept may be seen in a structure of concepts forming particular conceptual relations in the described specialized discourse. On the one hand, these relations demonstrate conceptual origin of arbitrability. On the other hand, they emphasize specificity of *arbitrability* concept, and presupposes a number of particular and distinguishable characteristics.

The conceptual system may be firstly divided into two interrelated parts which are based on the observed constituent phenomena. Within the first conceptual structure, *arbitrability* concept may be placed as follows:

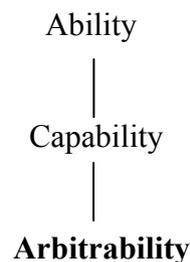


Figure 1

In the presented conceptual system *arbitrability* concept is depicted by interrelations of superordinate and subordinate concepts which form, respectively, generic and specific relationship⁸⁸. They identify *arbitrability* as a specific concept with respect to both superordinate *ability* and *capability* concepts. *Capability* concept, in its turn, is specific and subordinated to generic and superordinate *ability* concept.

In order to validate such conceptual location, *ability* and *capability* concepts must be clarified. Referring to dictionaries, *ability* concept is presented as a “physical or mental power to perform⁸⁹”, “the quality of being able to do something⁹⁰”, “considerable proficiency⁹¹”. Burton’s Thesaurus connects the *ability* concept with “ableness”, “adaptability”, “enablement”, “competence”.⁹² Black’s Law Dictionary defines “ability” in legal context,

⁸⁵ 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention). Available at: http://www.uncitral.org/uncitral/uncitral_texts/arbitration/NYConvention.html. Last visited on 28 May 2012.

⁸⁶ *Supra* 82, at p.13.

⁸⁷ D.M. Lew, L.A. Mistelis, S.M.Kroll, *Comparative International Commercial Arbitration*, The Hague, Kluwer Law International, 2003, at p.189-190.

⁸⁸ International Standard ISO standard 704:2000 (E), *Terminology work – Principles and Methods*, Geneva, ISO 2000. ISO standard 704:2000 (5.4.2.2.) gives the following definition: “a generic relation exists between two concepts when the intension of the subordinate concept includes the intension of the superordinate concept plus at least one additional delimiting characteristic”. Specific concept is defined as follows: “the superordinate concept in a generic relation is called the generic concept and the subordinate concept is called the specific concept.” Available at: <http://semanticweb.kaist.ac.kr/org/tc37/pdocument/standards/ISO%20704.pdf>. Last visited on 20 May 2012.

⁸⁹ Merriam-Webster Dictionary. Available at: <http://www.merriam-webster.com/dictionary/ability>. Last visited on 23 May 2012.

⁹⁰ American Heritage. Dictionary of the English Language. Available at: <http://education.yahoo.com/reference/dictionary/entry/ability>. Last visited on 23 May 2012.

⁹¹ Collins English Dictionary. Available at: <http://www.collinsdictionary.com/dictionary/english/ability>. Last visited on 26 May 2012.

⁹² W.C.Burton, *Burton’s Legal Thesaurus* (3rd ed.), New York, Macmillan, 1998, at p.3.

stating that it is “the capacity to perform an act or service”.⁹³ Therefore, given a certain degree of generality of definition, *ability* concept obtains a superordinate position.

Then, on the second level of the presented hierarchy, as a subordinate concept, *capability* may be located, as it is defined as more specific form of ability, or in other words, “practical ability⁹⁴” with a particular delimitative characteristic of “potentiality⁹⁵”. In addition, Burton’s Legal Thesaurus connects *capability* to “accomplished”, “effective”, “expert” concepts.⁹⁶ According to Longman Dictionary of Contemporary Language, “capability” means “the natural ability, skill, or power that makes you able to do something”.⁹⁷

Arbitrability concept, in its turn, should be accommodated within the third level, being a hierarchically subordinate concept of capability, since it presents a quintessence of specificity of both superordinated concepts.

The second essential characteristic of *arbitrability* concept may be construed by another conceptual system:

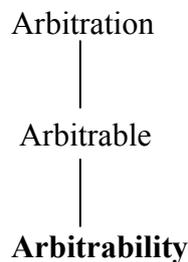


Figure 2

Likewise, as regards the type of the depicted conceptual relations, they correspond to generic relationship, as arbitration is considered to be a superordinate concept, which shares its intension with the specific *arbitrable* concept. Then, the next generic *arbitrable* concept forms its individual conceptual relation with specific *arbitrability* concept. Therefore, both *arbitration* and *arbitrable* concepts are two-faceted, whereas *arbitrability* bears distinct feature of specificity.

Again, reference to dictionaries should be made for delimiting each concept in the presented system. As regards *arbitration*, Cambridge Dictionaries Online defines the respective term as “the process of solving an argument between people by helping them to agree to an acceptable solution”⁹⁸. Duhaime Legal Dictionary brings more specificity in the definition, thus drawing related conceptual mapping: “arbitration is an agreement to submit a dispute for a hearing and binding decision by a third-party, an arbitrator(s), who is neither a judge nor a Court”.⁹⁹ Macmillan Dictionary reflects the *arbitration* concept by providing that it is a “process of

⁹³ B.A.Garner (ed.), *Black’s Law Dictionary* (9th ed.), Minnesota, West, 2009, at p.5.

⁹⁴ Cambridge Dictionaries Online. Available at: http://dictionary.cambridge.org/dictionary/british/capability_1. Last visited on 28 May 2012.

⁹⁵ Collins English Dictionary. Available at: <http://www.collinsdictionary.com/dictionary/english/capability>. Last visited on 28 May 2012.

⁹⁶ *Supra* 92, at p.70.

⁹⁷ A.Gatsby (ed.), *Longman Dictionary of Contemporary Language*, Harlow, Longman Group, 1995, at p.186.

⁹⁸ Cambridge Dictionaries Online. Available at: <http://dictionary.cambridge.org/dictionary/british/arbitration>. Last visited on 28 May 2012.

⁹⁹ Duhaime Legal Dictionary. Available at: <http://www.duhaime.org/LegalDictionary/A/Arbitration.aspx>. Last visited on 28 May 2012.

settlement of disagreements between persons”.¹⁰⁰ Oxford Dictionaries Online provides that “arbitration is the use of an arbitrator to settle a dispute”¹⁰¹. Hence, as arbitration is a certain process which is subject to particular rules and procedure, and which is designed to settle disputes, superordinate status of *arbitration* concept in the present discussions is justified.

Further, *arbitrable* concept, being simultaneously generic with respect to *arbitrability* concept and specific with respect to *arbitration* concept, may be generally¹⁰² defined as “subject to decision by arbitration”¹⁰³. Thus, *arbitrable* concept sets a narrower framework for the intension of *arbitrability* concept. The latter, as a result, is placed on the third level, as it signals about the highest degree of specificity.

Summarizing the abovesaid, it should be concluded that intension of *arbitrability* concept encompasses a set of intrinsic or essential characteristics which are attributed to “higher-rank” concepts with delimitation of subject-field applicability. Such essential characteristics include:

- a) power to perform, which is a common characteristic with respect to both *ability* and *capability* concepts;
- b) to settle dispute by means of arbitration, which is concrete and delineating characteristic with respect to both *arbitration* and *arbitrable* concepts.

To sum up, it means that *arbitrability* concept represents practical ability in the limited sphere of knowledge, specific domain of legal discourse – arbitration law – to settle particular disputes.

Considering this, a common conceptual system may be construed as follows:

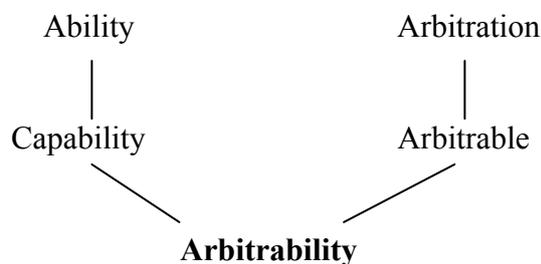


Figure 3

In addition, it should be pointed out that referring to Sager, relationship between superordinate and subordinate concepts are not reversible,¹⁰⁴ indeed, the *ability* or *arbitration* concept may not be limited or exhausted with its relations with *arbitrability* concept.

To put it in terms of semiotics, the constituted relations are paradigmatic within all three conceptual levels. They identify a pre-existing set of signifier, which in its turn, underlies the general content of the term.¹⁰⁵

¹⁰⁰ Macmillan Dictionary. Available at: <http://www.macmillandictionary.com/dictionary/american/arbitration>. Last visited on 29 May 2012.

¹⁰¹ Oxford Dictionaries Online. Available at: <http://oxforddictionaries.com/definition/arbitration?view=uk>. Last visited on 29 May 2012.

¹⁰² Detailed analysis of definition of the term “arbitrable” are provided in Chapter 3, Subchapter 3.2.1.

¹⁰³ Merriam-Webster Online Dictionary. Available at: <http://www.merriam-webster.com/dictionary/arbitrable>. Last visited on 29 May 2012.

¹⁰⁴ *Supra* 9, at p.30.

2.1 Types of arbitrability

In line with the previously described methodology, now the insight should be brought into more detailed characteristics of extension of *arbitrability* concept. That allows following the logic of conceptual relations. Provided types of arbitrability should be seen here as characteristics of the concept, which in their turn, are construed through particular objects encompassing a number of properties.¹⁰⁶

Summarizing classifications traced in scholarly works, the arbitrability as a phenomenon may be demonstrated through different types thereof.

Firstly, arbitrability may refer either to domestic dispute or international¹⁰⁷, thus signifying evolutionary influence to the applicability of *arbitrability* concept by ascertaining the importance of “internationalistic” perspective of arbitration issues. Secondly, arbitrability may be regarded as procedural if it refers to procedural requirements which were observed by a party (for example, submission of a claim within the required time-limits).¹⁰⁸ For the purposes of this analysis, attention is paid to two major classifications, namely, subjective and objective arbitrability, and arbitrability within the European and the United States’ perspective.

2.2.1 Subjective and objective arbitrability

Subjective arbitrability (or “*ratione personae*”) means that the party willing to be subject to arbitration agreement (for example, an individual, legal entity, state entity) must be allowed to enter into such agreement, i.e. must obtain a special authorization. Thus, in order to make subjective arbitrability come into existence, a person it refers to must be entitled either with individual rights to enter into such legal relationship or, in case of state entity, it must be endowed with legal capacity to enter into arbitration agreement. To put it in opposite terms, subjective non-arbitrability generally relates to deficiencies in contractual capacity and thus, affects the validity of the arbitration agreement.

For example, Article 2060 of the French Civil Code provides that disputes involving public entities may not be subject to arbitration.¹⁰⁹ Article 139 of the Iranian Constitution provides authorisation to public entities to enter into arbitration agreement which is valid on specific

¹⁰⁵ D. Chandler (1994), *Semiotics for Beginners*, [at p.1]. Available at:

<http://www.aber.ac.uk/media/Documents/S4B/sem05.html>. Last visited on 18 May 2012.

¹⁰⁶ *Supra* 88, ISO standard (5.3.1.) gives the following definitions: [C]oncept provides the means for recognizing objects, which are perceived as sharing the same properties are grouped into units. The properties of an object or common to a set of objects are abstracted as characteristics which are combined as a set in the formation of a concept. Available at: <http://semanticweb.kaist.ac.kr/org/tc37/pdocument/standards/ISO%20704.pdf>. Last visited on 20 May 2012.

¹⁰⁷ See e.g., *Scherk v. Alberto-Culver Co.*, No. 73-781. SUPREME COURT OF THE UNITED STATES, 417 U.S. 506, 94 S.Ct. 2449, 41 L.Ed.2d 270, Fed. Sec. L. Rep. P 94,593, June 17, 1974. Available on Westlaw International Database. Last visited on 12 May 2012; *Mitsubishi v. Soler Chrysler-Plymouth* (*Supra* 80).

¹⁰⁸ T.J.St. Antoine, “The Law of Arbitration”, in J.L.Stern, J.M. Najita (eds.), *Labour Arbitration Under Fire*, New York, Cornell University Press, 1997, at p.18.

¹⁰⁹ Code Civil of 1804 (20 February 2004), Article 2060: “*On ne peut compromettre (...) ou sur les contestations intéressant les collectivités publiques et les établissements publics (...)*”, Available at : http://www.legifrance.gouv.fr/affichCode.do?sessionId=1A406A060EAB87349C77BDBBD784F36B.tpdjo14v_1?cidTexte=LEGITEXT000006070721&dateTexte=20120531. Last visited on 29 May 2012.

conditions, namely, that the reference of disputes concerning public property requires an authorisation of the Cabinet of Ministers.¹¹⁰

Besides, subjective arbitrability underlies Article 5, paragraph 1(a), of the New York Convention which provides that “recognition and enforcement of the award may be refused, (...) if the parties to the agreement (...) were, under the law applicable to them, under some incapacity, (...)”¹¹¹

Therefore, the essential characteristics of subjective arbitrability may be summarized as follows: 1) it exists in legal discourse, in particular, arbitration law discourse; 2) it envisages allocation of rights to individual or legal entity’s right to enter into arbitration agreement; 3) such rights must be established by law.

Objective arbitrability (or “*ratione materiae*”) refers to categories of disputes which may be referred to arbitration. Being a truly matter of legitimate concern, the scope of objective arbitrability varies according to the place of arbitration offered to it by the state in its judicial system. Basically, objective arbitrability is justified by the fact that certain disputes may involve sensitive issues which are considered to be addressed exclusively by the judicial authority of the state courts.¹¹²

Serving as a criterion for the validity of arbitration agreement, objective arbitrability, at the same time, provides justification for jurisdiction of arbitral tribunal. However, objective arbitrability is subject to another judicial regime than that applicable to the material validity of the arbitration agreement.¹¹³

Objective arbitrability is referred to in international treaties. For example, objective arbitrability may be found in Article 2, paragraph 1, of the New York Convention, which provides that each contracting State shall recognize an agreement in writing “concerning a subject-matter capable of settlement by arbitration.”¹¹⁴ In addition, objective responsibility is also found in Article 5, paragraph (2)(a), thereof, which states that recognition and enforcement of an arbitral award may be refused if the court where such recognition and enforcement is sought finds that “subject matter of the difference is not capable of settlement by arbitration under the law of that country.”¹¹⁵

Hence, essential characteristics of this concept, which to certain extent coincides with *subjective arbitrability* concept, includes: 1) it exists in legal specific-field arbitration discourse; 2) it determines disputes (precisely enlisted or not) which cannot be (or are not subject to) settled by arbitration; 3) such limitations are prescribed by law (either by legislative act, or case-law).

As legal researcher Böckstiegel precisely points out, both criteria – subjective and objective arbitrability – supplement each other.¹¹⁶ Therefore, a realistic answer to the basic questions

¹¹⁰ J. Seifi, “The New International Commercial Arbitration Law in Iran. Towards Harmony with UNCITRAL Model Law”, (1998) 15 *Journal of International Arbitration* 2, at p. 12.

¹¹¹ *Supra* 85.

¹¹² See, e.g., *Supra* 87, at p.189.

¹¹³ J.-F. Poudret, S. Besson, *Comparative Law of International Arbitration*, London, Sweet & Maxwell, 2007, at p.282.

¹¹⁴ *Supra* 85.

¹¹⁵ *Ibid.*

¹¹⁶ K.-H. Böckstiegel, “Public Policy as a Limit to Arbitration and its Enforcement”, (2008) *IBA Journal of Dispute resolution*, “The New York Convention – 50 Years”, [at p. 5]. Available at: <http://www.arbitration->

whether the arbitral agreement is valid¹¹⁷ and whether arbitration is admissible, can only be given if both aspects are examined.¹¹⁸

Speaking about terminological differences, it should be stressed that in the United States the *objective and subjective arbitrability* concepts are traditionally referred to as *substantive* and *contractual arbitrability*. However, as legal expert Carbonneau points out, such distinction is only roughly comparable¹¹⁹, mainly due to the reasons exposed further.

2.2.2 Arbitrability in European and the United States' perspective

American legal researcher Shore points out that in countries outside the United States the term "arbitrability" has a reasonably precise and limited meaning, i.e. whether specific classes of disputes are barred from arbitration because of national legislation or judicial authority.¹²⁰ Similarly, legal expert Bantekas marks that according to the European approach, the definition of scope of arbitrability is understood in a restricted manner, as it refers to the permission granted by state laws for a dispute to be settled by arbitration.¹²¹

As legal scholars Poudret and Besson precisely note, regulatory framework of arbitration rules in the European countries distinguishes the scope of arbitrability and the scope of arbitration agreement.¹²² This distinction manifests itself very clearly taking into consideration the fact that arbitrability is primarily a legislative requirement imposed by state to participants of arbitration proceedings, whereas arbitration agreement is an expression of the principle of parties' autonomy. Thus, the guidelines for interpretation of the scope of the former are found in discovering the intention of a legislator, whereas the scope of the latter should be interpreted in conformity with the parties' intention. As it stems from arbitrability as such, it curtails the scope of the parties' autonomy thereby curbing the contractual right to arbitrate, since arbitration agreements which cover non-arbitrable matters will be considered invalid, will not establish jurisdiction of arbitral tribunal, and, consequently, the award will not be enforced.¹²³

In determining the scope of objective arbitrability, several measurements¹²⁴, if taken in conjunction, allow to draw a picture of arbitrability concept in Europe. They are as follows: a) determination of subject-matters apt to be solved within arbitration proceedings and b) national attitude to interrelations between arbitrability and public policy or national mandatory rules.

icca.org/media/0/12277202358270/bckstiegel_public_policy...iba_unconference_2008.pdf. Last visited on 29 May 2012.

¹¹⁷ Validity of the agreement here should be understood narrowly within the sphere of subjective applicability only.

¹¹⁸ *Supra* 116.

¹¹⁹ *Supra* 65, at p.210.

¹²⁰ L.Shore, "Defining "Arbitrability. The United States v. The Rest of The World", (2009) *New York Law Journal*, at p.1. Available at: <http://www.gibsondunn.com/publications/Documents/Shore-DefiningArbitrability.pdf>. Last visited on 29 May 2012.

¹²¹ I. Bantekas, "The Foundations of Arbitrability in International Commercial Arbitration", (2008) 27 *Aust. YBIL (Australian Yearbook of International Law)* 1, at p.194. Available on HeinOnline Database. Last visited on 29 May 2012.

¹²² *Supra* 113, at p. 232.

¹²³ *Supra* 87, at p.188.

¹²⁴ For example, in terminology used by J.-F. Poudret and S. Besson they are general and accessory criteria, see *Supra* 113, at p. 289-292.

Turning to the determination of subject-matters capable to be subject to arbitration, it should be noted that national approaches of the European countries vary. For example, it may be illustrated by Dutch and Belgian arbitration acts, which provide freedom of disposition of rights as a criterion for arbitrability.¹²⁵ According to the Dutch Arbitration Act 1986, which includes a definition of objective arbitrability, the arbitration agreement shall not serve to determine legal consequences of which the parties cannot freely dispose.¹²⁶ This concise statutory definition employs a vague and abstract explanation, which does not give a clear answer as to the exact scope of arbitrability. However, typically, within the European approach, the rights pertaining to, for example, personal matters such as divorce proceedings, capacity and personal status, marriage are considered inalienable (indisposable), and hence, are not subject to arbitration.¹²⁷ The same rule concerning inalienability of rights as a criterion for non-arbitrability of a dispute is adopted in Italy.¹²⁸

Another example is a liberal and the most modern European approach adopted by the Swiss law. Under Article 177 of the Swiss Private International Law, any dispute of economic interest may be submitted to arbitration.¹²⁹ Although there is no clear definition on what is deemed to be “a dispute of economic interest”, it is commonly understood in a broad sense.¹³⁰

The same formula for defining the scope of objective arbitrability was also adopted by Germany and Austria in their arbitration law.¹³¹ In particular, Article 1030, paragraph 1, of the German Arbitration Act provides that any dispute involving an economic interest is arbitrable.¹³² At the same time, the same provision stipulates that an arbitration agreement concerning claims not involving an economic interest shall have legal effect to the extent that the parties are entitled to conclude a settlement on the issue in dispute. Thus, the latter provision intends to exclude arbitrability in personal matters of traditionally sensitive nature, (for example, divorce proceedings as well).¹³³

With respect to the second measurement comprising national legislative policy, the French approach is considered classical. Article 2060 of the French Civil Code provides that the parties may not agree to arbitrate disputes in state and personal matters, for example, matters of divorce, as well as in all matters that have a public interest.¹³⁴ Based on this statutory restriction French courts initially took a very confining position towards arbitration, providing that if a dispute entailed an interpretation or application of public policy rules, such dispute

¹²⁵ *Supra* 67, at p.247.

¹²⁶ Arbitration Act, Book IV of the Code of Civil Procedure of the Netherlands of 1986 (30 June 2004), Article 1020, paragraph 3. Available at: <http://www.jus.uio.no/lm/netherlands.arbitration.act.1986/portrait.pdf>. Last visited on 30 May 2012.

¹²⁷ *Supra* 67, at p.248.

¹²⁸ See, e.g., *Supra* 72 (Kirry), at p. 377.

¹²⁹ Switzerland’s Federal Code on Private International Law of 1987 (January 1, 2007), Article 177. Available at: <http://www.umbricht.ch/pdf/SwissPIL.pdf>. Last visited on May 19, 2012.

¹³⁰ P.M. Baron, S. Liniger, “A Second Look at Arbitrability: Approaches to Arbitration in the United States, Switzerland and Germany”, (2003) 19 *Arb. Int. (Arbitration International)* 1, at p.30. Available on HeinOnline Database. Last visited on 30 May 2012.

¹³¹ See, e.g., about Austrian approach in F.T. Schwarz, C.W. Konrad, *The Vienna Rules: a Commentary on International Arbitration in Austria*, the Netherlands, Kluwer Law International, 2009, at p.50.

¹³² German Arbitration Act, Book Tenth of the Code of Civil Procedure of 1998, (January 1, 1997), Article 1030. Available at: http://www.arbitrations.ru/userfiles/file/Law/Arbitration%20acts/German%20arbitration%20law_eng.pdf. Last visited on May 19, 2012.

¹³³ *Supra* 130, at p.36.

¹³⁴ *Supra* 109.

was not arbitrable.¹³⁵ However, as case-law of the French courts evolved and international arbitration developed, the French approach became more lenient, and in the beginning of the 90s, the French Court of Appeal held in substance that in international arbitration, the arbitrators have jurisdiction to rule on the arbitrability of the dispute which touches upon issues of public policy. In respect to French case-law, it should be noted that landmarks decisions of the French court which clarified relations between arbitrability and public policy were *Ganz v. SNFCT* case and *Labinal v. Mors* case, where the Court of Appeal of Paris found that, respectively, fraud allegation, and the cases addressing competition law do not violate public policy.¹³⁶

In this respect, it is also interesting to note that the Swiss Federal Tribunal in the case *Fincantieri-Cantieri Navali* clarified the relations between the scope of objective arbitrability and public policy thereby holding that the fact that claim affects public policy does not suffice in itself to rule out the arbitrability of the dispute.¹³⁷

Thus, as the demonstrated examples show, the national states shaped their approach to arbitration and related processes by acknowledging their active and progressive role in global economic processes. That allowed the national states to define their position in more liberal and internationally-oriented way.

To sum up, it should be highlighted that the arbitrability within the European perspective bears a narrow and specific intension which produces certain advantages. For example, although the *objective arbitrability* concept is lexicalised broadly and abstractly, it still designates situations where legislative restrictions limit the number of arbitrable issues, at the same time allowing to correspond to dynamic nature and evolving world practice in enlarging a list of arbitrable disputes. Secondly, as the arbitrability issue does not cover any additional questions referring to the arbitration agreement, its concept is more or less precise and is easy to define. Finally, being used in that narrow sense, arbitrability denotes only one of preliminary barriers which may be raised before the arbitral tribunal while challenging jurisdiction thereof.

Turning to arbitrability issues in the United States, it should be said that the term “arbitrability” is traditionally denotes a wider conceptual dimension. Here, arbitrability has been constantly employed to address a full range of questions which cover jurisdiction of an arbitral tribunal. The specificity in usage of the analyzed term is expressly defined by legal researcher Shore, who states that in dealing with matters relating to the jurisdiction of arbitral tribunals in the United States *arbitrability* concept refers to the complicated balance between courts and arbitrators regarding who should be the initial decision-maker on issues such as the validity of the arbitration agreement.¹³⁸

Thus, the *arbitrability* concept is not restricted with requirements set forth by statutory acts, but contemplates the whole issue as a set of mutually related elements, capturing both the

¹³⁵ *Supra* 72 (Kirry), at p. 375.

¹³⁶ *Ibid*, at p. 376-377. See, in addition, *Ganz v. SNFCT*, COURT OF APPEALS OF PARIS, 29 March 1991, *Rev. Arb.* 478, commentary by Idot. *Labinal v. Mors*, COURT OF APPEALS OF PARIS, 19 May 1993, *Rev. Arb.* 645, commentary by Ch.Jarrosion.

¹³⁷ L.A. Mistelis, “Arbitrability – International and Comparative Perspectives”, in L.A. Mistelis, S.L. Brekoulakis, *Arbitrability: International and Comparative Perspective*, The Hague, Kluwer Law International, 2009, at p.21. See, in addition, *Fincantieri-Cantieri Navali ItalianL SpA and Oto Melara SpA v. M and Arbitration Tribunal*, SWISS SUPREME COURT, 1995, XX, YBCA 766.

¹³⁸ *Supra* 120.

advantages of narrow European-focused definition and highlighting importance of parties' autonomy. As opposed to the characterization of the European approach provided earlier, the perspective followed by the United States legal practice is focused on blending the scope of arbitrability and the scope of arbitration agreement.

In observing the approach to arbitrability adopted by the United States, firstly, it is interesting to note that this issue is predominantly a matter of evolving case-law, as no statutory act provides precise definition thereof. The only reference regarding non-arbitrable disputes is included in the Federal Arbitration Act codified in the United States Code, Title 9 "Arbitration", Chapter 1, Article 1, providing that arbitration rules are not applicable to disputed pertaining to employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce.¹³⁹ Under Article 2 thereof any other agreement which concerns the submitting of a dispute to arbitration is presumed to be valid and enforceable.¹⁴⁰

In the case *Moses H. Cone Memorial Hospital v. Mercury Construction Corp.* the United States Supreme Court explicitly interpreted the scope of Article 2, and confirmed legislator's liberal intent to favour arbitration thereby stating that

[Article] 2 is a congressional declaration of a liberal federal policy favoring arbitration agreements, notwithstanding any state substantive or procedural policies (...).The Arbitration Act establishes that, as a matter of federal law, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration (...).¹⁴¹

It should be pointed out that over time, the United States took pro-arbitration stand and that considerably affected the development of the concept.¹⁴² Beginning with its ruling in the case *Scherk v. Alberto-Culver Co.*, the United States Supreme Court admitted inevitable growth and expansion of international arbitration by overturning the doctrine formulated in the *Wilko v. Swan et al.*¹⁴³ case, which declared disputes under the Security Act as being non-arbitrable, and stated the disadvantageous effect of the agreement to arbitrate, which deprived petitioner of the court remedy afforded by the Securities Act.¹⁴⁴ Instead, in the *Scherk* case the United States Supreme Court held that the claim submitted under the Securities Exchange Act of 1934 was subject to arbitration due to its international nature of commercial transaction between Scherk, a citizen of Germany, and Alberto-Culver, a United States corporation, thus denying purely domestic and protectionist approach that all disputes must be resolved under the United States laws and in United States courts.¹⁴⁵

Afterwards, the United States Supreme Court reached the same conclusion in 1985, in *Mitsubishi v. Soler Chrysler-Plymouth* case, by affirming its recognition and acceptance of more liberal approach towards arbitrability, stating that

¹³⁹ Federal Arbitration Act, Chapter 9 of the United States Code (July 30, 1947). Available on Westlaw International Database. Last visited on 31 May 2012.

¹⁴⁰ *Ibid.*

¹⁴¹ *Moses H. Cone Memorial Hospital v. Mercury Construction Corp.*, No.81-1203. SUPREME COURT OF THE UNITED STATES, 460 U.S. 1, 103 S.Ct. 927 U.S.N.C.,1983, February 23, 1983. Available on Westlaw International Database. Last visited on 26 April 2012.

¹⁴² Brief historical analysis is provided by T.E.Carbonneau (see *Supra* 65), as well as Baron and Liniger (see *Supra* 130).

¹⁴³ *Wilko v. Swan et al*, No. 39. SUPREME COURT OF THE UNITED STATES, 346 U.S. 427, 74 S.Ct. 182 U.S. 1953, December 7, 1953. Available on Westlaw International Database. Last visited on 26 April 2012.

¹⁴⁴ *Supra* 107.

¹⁴⁵ *Ibid.*

[I]nternational comity, respect for the capacities of foreign and transnational tribunals, and sensitivity to the need of the international commercial system for predictability in the resolution of disputes require that we enforce the parties' agreement, even assuming that a contrary result would be forthcoming in a domestic context (...).¹⁴⁶

As concerns matters of traditionally sensitive nature, for example, in the case *Gilmer v. Interstate/Johnson Lane Corp.* pertaining to the claim submitted under employment law and concerning age discrimination, the United States Supreme Court confirmed its position fixed in the *Mitsubishi* case and reiterated that such claims are subject to arbitration.¹⁴⁷ The United States Supreme Court relied on the general and broad statutory presumption of Article 2 of the Federal Arbitration Act concerning validity and enforceability of an arbitration agreement, and stated that the claim has not been excluded under Article 1 thereof.¹⁴⁸ Furthermore, the Supreme Court, when addressing Gilmer's allegations concerning inadequacy and inconsistency between arbitration forum and such important social policy, refuted the argument and provided that the claim may not be precluded from arbitration unless there is a clear intent of the Congress to prohibit such recourse.¹⁴⁹

Thus, the United States Supreme Court pointed out that courts have provided considerable expansion of arbitrability within the areas of economic activity which are traditionally highly impregnated with public interest.¹⁵⁰ Hence, it can be seen that in deciding matters connected with arbitrability, the United States Supreme Court followed the logic of shifting towards the direction that would strengthen the United States position in "competition surrounding the export of arbitration laws and services¹⁵¹". This approach justifies the intent of the United States to generally accept and recognize the evolving nature and considerable growth of the role of arbitration, since exactly the national system, not party's intention, plays the main role in determining and regulating arbitration process within the territory of the state.

Turning to second dimension of the United States perspective to "arbitrability blend", as legal researcher Brunet clarifies, apart from questions of European approach to arbitrability, the supplemented part covering the arbitration agreement includes: a) was there any agreement to arbitrate a dispute? b) Was the dispute within the scope of arbitration agreement? c) Was the arbitration agreement valid (for example, not induced by fraud)?¹⁵² Some authors¹⁵³ suggest that the list of questions falling under the umbrella of arbitrability may be continued: whether the party waived its right to arbitrate? Or, whether arbitration was precluded due to certain time-limits?

Some notable examples of the mentioned issues can be illustrated. Deciding over the dispute concerning fraudulent and allegedly non-existing contracts, the United States Court of

¹⁴⁶ *Supra* 80.

¹⁴⁷ *Gilmer v. Interstate/Johnson Lane Corp.*, No. 90-18, SUPREME COURT OF THE UNITED STATES, 500 U.S. 20, 111 S.Ct. 1647, 55 Fair Empl.Prac.Cas. (BNA) 1116, 56 Empl. Prac. Dec. P 40,704, 114 L.Ed.2d 26, 59 USLW 4407, May 13, 1991. Available on Westlaw International Database. Last visited on 26 April 2012.

¹⁴⁸ *Ibid.*

¹⁴⁹ *Ibid.*

¹⁵⁰ K.Youssef, "The Death of Inarbitrability", in L.A. Mistelis, S.L. Brekoulakis, *Arbitrability: International and Comparative Perspective*, The Hague, Kluwer Law International, 2009, at p.57.

¹⁵¹ *Supra* 65, at p.209.

¹⁵² E.J. Brunet, R.E. Speidel, J.R. Sternlicht, S.J. Ware, *Arbitration Law in America: Critical Assessment*, New York, Cambridge University Press, 2006, at p.34.

¹⁵³ See, e.g., G.A. Bermann, "The "Gateway" Problem in International Commercial Arbitration", (2012) 37 *Yale J.Int'l L. (Yale Journal of International Law)* 1, at p.11. Available on HeinOnline Database. Last visited on 25 May 2012.

Appeals in the case *China Minmetals Materials Imp. & Exp. Co. v. Chi Mei Corp.*, among others, confirmed that the crucial principle (a matter of contract and that a party can be forced to arbitrate only those issues it specifically agrees to submit to arbitration) suggests that the court had an obligation to determine independently the existence of an agreement to arbitrate.¹⁵⁴ In the case *Doctor's Associates, Inc. v. Distajo* the United States Court of Appeals held that remand would be required to determine whether franchisor waived its right to invoke arbitration clause by having its subsidiaries bring eviction proceedings against franchisees.¹⁵⁵ In the case *Howsam v. Dean Witter Reynolds, Inc.*, where a brokerage firm brought suit seeking to enjoin customer from arbitrating dispute with National Association of Securities Dealers, Justice Breyer, judge of the United States Court of Appeals, held that interpretation of such rule imposing six-year time limit for arbitration was a matter presumptively for the arbitrator, not for the court, notwithstanding the fact contract did not call for judicial determination of whether arbitration was time-barred.¹⁵⁶

Thus, summarising the abovementioned, it should be stated that the *arbitrability* concept is understood in the United States as an all-embracing criterion, which presupposes whether the matter which was referred to arbitral tribunal will pass all preliminary barriers to be finally decided on merits. This approach has been put under scrutiny by various legal scholars. It has been particularly criticized for being confusing and embracing too broadly the issues of jurisdiction, admissibility and arbitrability¹⁵⁷ thereby expressing the “intriguing manifestation of exceptionalism¹⁵⁸” of such approach. Although arbitrability appears to be broad in its meaning, there are scholars such as Bermann who points out that such capacious position of arbitrability is logical since a dispute may fairly be admitted to be “arbitrable” only if all the issues that are raised and upon whose resolution enforcement of the obligation to arbitrate depends are resolved in favor of the arbitration going forward.¹⁵⁹ This statement appears to contradict to the abovesaid critical remarks and bears interpretation that treating the issues altogether have advantages. Indeed, if one forum may decide on all potential obstacles to further arbitration on merits, it in fact contributes to making the whole arbitration process more foreseeable for the parties, which in its turn, enhances certainty.

2.2.3 Building a conceptual system

After having distinguished the typology of arbitrability, a number of brief summary remarks should be deduced at this stage of analysis.

¹⁵⁴ *China Minmetals Materials Imp. & Exp. Co. v. Chi Mei Corp.*, NO. 02-2897, 02-3542. COURT OF APPEALS OF THE UNITED STATES, 334 F.3d 274 C.A.3 (N.J.), June 26, 2003. Available on Westlaw International Database. Last visited 29 May 2012.

¹⁵⁵ *Doctor's Associates, Inc. v. Distajo*, NO. CIV. 3:94CV349 (PCD). COURT OF APPEALS OF THE UNITED STATES, 66 F.3d 438, C.A.2 (Conn.), September 12, 1995. Available on Westlaw International Database. Last visited 29 May 2012.

¹⁵⁶ *Howsam v. Dean Witter Reynolds, Inc.*, No.99-1320. COURT OF APPEALS OF THE UNITED STATES, 537 U.S. 79, December 10, 2002. Available on Westlaw International Database. Last visited on 19 May 2012.

¹⁵⁷ J. Paulsson, “Jurisdiction and Admissibility”, in *Global Reflections on International Law, Commerce and Dispute Resolution. Liber Amicorum in honour of Robert Briner*, ICC Publishing, 693, 2005, at p.611. Available at: http://www.arbitration-icca.org/media/0/12254599444060/jasp_article_-_jurisdiction_and_admissibility_-_liber_amicorum_robert_briner.pdf. Last visited on 28 May 2012.

¹⁵⁸ W.W. Park, “Arbitral Jurisdiction in the United States: Who Decides What?”, (2008) 1 *Int. A.L.R. (International Arbitration Law Review)*, at p.33. Available on HeinOnline Database. Last visited on 19 May 2012.

¹⁵⁹ *Supra* 153.

Firstly, it should be stressed that the conceptual system of *arbitrability* is composed of various interconnected elements, and may be illustrated as a set of variations which differ by means of more detailed and specific characteristics. Accordingly, its generic relationship, an *arbitrability* concept may be subdivided in various subordinate concepts taking one or another criteria. Ultimately, an extension of arbitrability encompasses such types or groups based on different general criteria of *arbitrability* concept:

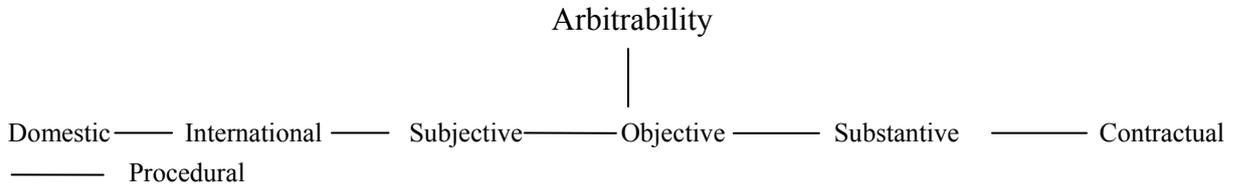


Figure 4

A chain of *subjective-objective arbitrability* bears particular importance, as under semantic perspective, constitutes partitive relationship¹⁶⁰ which eventually construes a conceptual system of *arbitrability* as a whole.

Another illustrated way of grouping the subordinate concepts within the conceptual system of arbitrability may be exemplified by employing a geographic criterion or linking ‘object-place relations’¹⁶¹:

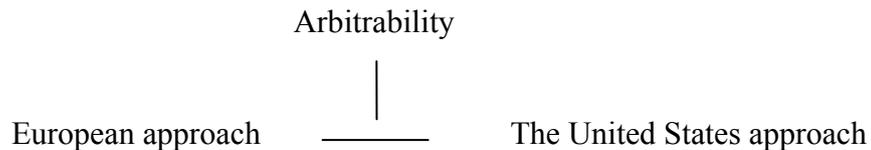


Figure 5

These types distinguished by geographic criterion should be described, applying Sager’s terms, as faceted classification¹⁶², as they are divided based on the applicability of the main concept.

In the framework of semiotics, the relationship between *arbitrability* concept and the depicted types thereof are paradigmatic.¹⁶³ In its turn, the relationship between the types themselves are syntagmatic, as such combination of interactive and interrelated smaller conceptual units may be composed in a Chandler’s proposed “chain”, with a relation of interdependence holding between both terms.¹⁶⁴

Bringing closer insight to the relations between the classified types of the arbitrability, it is valuable to elucidate complex relationship underlying a chain of *objective-subjective-substantial-contractual* concepts.

By intention, as follows from the description part of the present analysis, the most semantically close relations should be construed between *objective* and *substantial*

¹⁶⁰ *Supra* 88, at p.9 (5.4.2.3.) provides the following definition: “[A] partitive relation is said to exist when the superordinate concept represents a whole, while the subordinate concepts represent parts of that whole”.

¹⁶¹ *Supra* 9, at p.35.

¹⁶² *Ibid.*

¹⁶³ *Supra* 105.

¹⁶⁴ *Ibid.*, [at p.7]. Available at: <http://www.aber.ac.uk/media/Documents/S4B/sem04.html>. Last visited on 18 May 2012.

arbitrability, as a set of characteristics comprised by both includes *tertium comparationis*, i.e. state constraints with regard to subject-matters capable of being arbitrable. Therefore, turning to approach suggested by linguistic expert Sandrini, it means that on the purpose level, or within functional relations¹⁶⁵, the concepts serve a similar function. However, as regards the legal setting, a manner of applicability, as well as socio-cultural background, these concepts differ.

Moreover, as the applied methodology of the present analysis suggests, one should have due regard to the aspect of the dynamic of the concept, its adaptiveness and flexibility, which may be practically served as an additional comparable element. From that point of view, *objective* and *substantial arbitrability* in general pursue the same path of development, based on the fact of its responsiveness to globalized trend of shortening a list of non-arbitrable matters.

In contrast, characteristics underlying *subjective* and *contractual arbitrability* concepts may coincide only haphazardly, since the use of the *arbitrability* concept in the United States, as it was observed, may simultaneously address different functions. Thus, *subjective arbitrability* concept may form a constituent part of *contractual arbitrability* concept (or even of the single *arbitrability* concept), thereby correspondingly being placed within “partitive relations with complete extensions”¹⁶⁶.

Finally, under intensional understanding, *arbitrability* concept appears to be versatile, and may not be defined as a *mono-content* concept. In other words, generally, the term “arbitrability” may not be treated as fully monosemic, as it denotes variable concepts, and therefore is imprecise in worldwide perspective. That eventually influence establishing of relations and finding equivalence in terms of comparison. The comparable concepts were contemplated with reference to individual legal setting, which subsequently presented particular aspects of real life the concept is operating in, i.e. either European reality or a situation in the United States. Such aspects, as it was analyzed above, in point of fact are similar to the extent of their general purpose, since they tend to solve a legal problem pertaining to overall capability of a dispute to be resolved in arbitration proceedings. Following that, it may be concluded that along with the similar purpose, both concepts generally exist in functional relations.

2.3 Arbitrability and related concepts

After having discovered the arbitrability concept and complex relations attached to the related concepts, it is necessary to turn to the related concepts in order to clarify whether they may be used interchangeably in the light of discussion concerning arbitrability.

At this stage of analysis the problem of terminological incongruence which is connected with synonymy of legal terms arise. Within the present research two associated concepts are analyzed – capacity and jurisdiction, in order to decide whether the designation of such concepts may be suggested for the usage as near-synonymy.

¹⁶⁵ *Supra* 35, at p.8.

¹⁶⁶ *Supra* 88, at p.9 (5.4.2.3.) provides as follows: “[A] partitive concept shall be defined on the basis of a partitive relation only if the complete extension and the essential characteristics of the intension can be determined”.

2.3.1 Capacity vs. Arbitrability

Referring to conceptual analysis, first terminological difficulty arises with the delimitation of two concepts – *capacity* and *arbitrability* as associated concepts.¹⁶⁷

Basically, in general arbitration law context, and in particular under the choice of law method,¹⁶⁸ these two concepts are strictly separated, notwithstanding their seemingly close meaning. In fact, the issue originated from the use of terminology of the European Convention on International Commercial Arbitration (ECICA) of 1961. Article 2, paragraph 1, of the ECICA in the English language version refers to “right to resort to arbitration” in heading of the respective paragraph, and “right to conclude public agreements” in the body text.¹⁶⁹ However, the French version of the ECICA reads as follows: “*capacité des personnes morales de droit public de se soumettre de l’arbitrage*”¹⁷⁰, which may be translated in English as “capacity”. Therefore, given the terminological divergence in authentic international texts, where the English and French text versions are using different terms, one may be confused whether these two concepts are overlapping and produce the same effect.

As Fouchard, Faillard, Goldman note, this terminological dispute should be observed within the field of applicable law: different legal consequences apply in case the terms are separated, in particular, when different legal systems are involved.¹⁷¹ Further, scholars explain that if the issue is one of capacity, the applicable law in civil law countries will be national law of a party in question, whereas in common law countries a law of domicile will apply.¹⁷² In this connection, the scholars refer to illustrative example in French law where a party’s capacity to enter into agreement was governed by its own domestic law, whereas the issue of arbitrability is governed by the substantive rules of jurisdiction under which an award was to be enforced.¹⁷³ Following that, it can be concluded that such terminological peculiarity may give legal effect to prohibition to state entities to enter into arbitration agreement.

Indeed, *capacity* concept seems to encompass different intension, if compared with *arbitrability*. This statement appears strong when tested by legal scholars Poudret and Besson, who suggest that the *capacity* concept, either individual or state capacity, concerns the general ability of a person or a legal entity to conclude agreement and to be a party thereto, including an arbitration agreement.¹⁷⁴

Moreover, referring to the dictionaries, *capacity* is connected with such associated concepts as mental competence¹⁷⁵, “power to act”,¹⁷⁶ “power to acquire and exercise rights”.¹⁷⁷ Burton’s

¹⁶⁷ *Ibid.* “[A]n associative relation exists when a thematic connection can be established between concepts by virtue of experience”.

¹⁶⁸ P. Fouchard, E. Faillard, B. Goldman, *International Commercial Arbitration*, The Hague, Kluwer Law International, 1999, at p.316.

¹⁶⁹ 1961 European Convention on International Commercial Arbitration (Geneva Convention). Available at: <http://www.jus.uio.no/lm/europe.international.commercial.arbitration.convention.geneva.1961/>. Last visited on 23 May 2012.

¹⁷⁰ *Ibid.*, French version. Available at: http://lexinter.net/Conventions%20Internationales/convention_de_geneve_sur_l'arbitrage_commercial_international.htm. Last visited on 23 May 2012.

¹⁷¹ *Supra* 168, at p.313.

¹⁷² *Ibid.*, at p.316.

¹⁷³ *Ibid.*, at p.313.

¹⁷⁴ *Supra* 113, at p.232.

¹⁷⁵ Legal Dictionary Law.com. Available at: <http://dictionary.law.com/Default.aspx?typed=capacity&type=1>. Last visited on 30 May 2012.

Legal Thesaurus connects *capacity* concept to “authority”, “authorisation”, “permission”, “legal capacity”, “qualification”.¹⁷⁸ The Oxford Thesaurus defines *capacity* concept referring to such terms as “ability”, “capability”, “understanding”, “judgement”.¹⁷⁹ More descriptive definition is provided by Dictionary of Legal Terms, which states that “capacity is mental ability to make a rational decision, which includes the ability to perceive and appreciate all relevant facts”.¹⁸⁰ A Handbook of Basic Law Terms defines *capacity* as “legal qualification such as legal age, which determines one’s ability to sue and be sued”.¹⁸¹ Black’s Law Dictionary provides narrow definition stating that “capacity is the role in which one performs an act”.¹⁸² Connotation of the word “capacity” may be generally described as positive, as it refers to overall qualities of action, intelligence and comprehensiveness.

In its turn, *arbitrability* concept as a whole, reflects the idea, whether an arbitration is statutory (or based on case-law) acceptable as a way of resolutions of disputes. In other words, being in narrow status, it determines whether the public policy of a particular state imposes specific restriction to exert its general capacity over a subject-matter at question; its broad meaning comprises also question of validity of arbitration agreement. Taking all these qualities as a whole, legal researcher Böckstiegel correctly marks that arbitrability may provide an answer to a question what can be subject to arbitration, whereas capacity answers the question who may submit to arbitration.¹⁸³

Given that, the scheme of conceptual relations of *arbitrability* concept (see *Figure 3*) may be again supplemented by adding *capacity* concept:

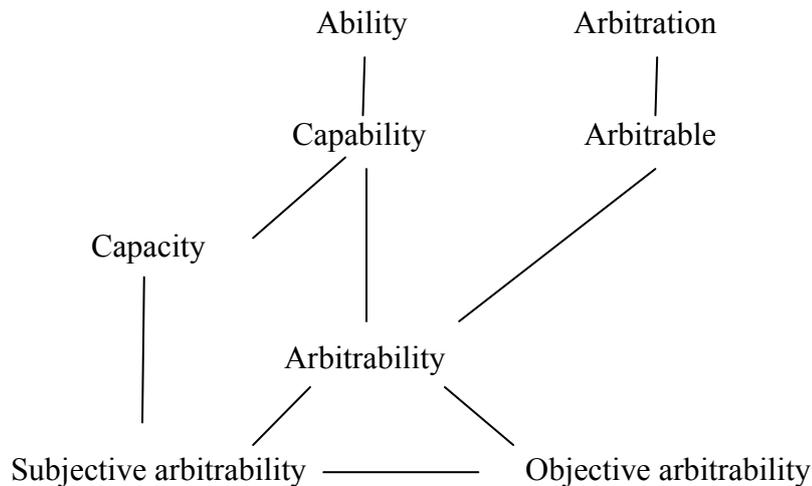


Figure 6

Being in associative conceptual relations, there is no direct hierarchical interdependence between both of them. However, *capacity* concept forms superordinate relations with the general *ability* concept. In addition, *capacity* concept may be also described as being within

¹⁷⁶ Legal Dictionary Online. Available at: <http://legal-dictionary.thefreedictionary.com/capacity>. Last visited on 30 May 2012.

¹⁷⁷ See, e.g., Duhaime’s Legal Dictionary. Available at: <http://www.duhaime.org/LegalDictionary/C/Capacity.aspx>. Last visited on 30 May 2012.

¹⁷⁸ *Supra* 92, at p.71.

¹⁷⁹ L. Urdang, *The Oxford Thesaurus* (2nd ed.), Oxford, Clarendon Press, 1997, at p.48.

¹⁸⁰ S.H. Gifis, *Dictionary of Legal Terms*, New York, Barron’s Educational Series, 1998, at p.59.

¹⁸¹ B.A. Garner (ed.), *A Handbook of Basic Law Terms*, Minnesota, West Group, 1999, at p.28.

¹⁸² *Supra* 93, at p.234.

¹⁸³ *Supra* 116, at p.5.

the vertical subordinated relations with *capability* concept. Such vertical hierarchical relations stress the degree of specificity attributed to *capacity* concept, which is seen as an operable term in legal discourse. Relations established between *capability* and *capacity* may be also named as partitive, as they are connected with regard to their constituent parts¹⁸⁴, namely, expression of power to act.

However, in the depicted relations particular attention should be given to *subjective arbitrability* concept, as one of the elements in the typology of arbitrability. This concept seems to acquire semantically closest relations with *capacity* concept. In this relationship, *capacity* is a superordinate concept as a general exemplification of power to perform within the rights a person or object is endowed with. That should be regarded as common conceptual characteristic. In its turn, *subjective arbitrability* concept, within its concreteness and specificity, refers exactly to the right to act, or in other words, to conclude an agreement in specialized legal relations in the field of arbitration law. In the light of aforementioned, legal researcher Böckstiegel, for example, accurately uses a lexical construction “capacity as subjective arbitrability¹⁸⁵”, emphasizing that the term “arbitrability” is applied to the questions which regulate inter alia those issues, which are commonly perceived when using the term “capacity”. Eventually, it can be concluded that the intension of the *capacity* concept is narrowed due to specificity of the field, where such capacity is required.

2.3.2 Jurisdiction vs. Arbitrability

Such terms as “arbitrability” and arbitral or arbitrator’s “jurisdiction” raises concerns over their precise and accurate applicability. Namely, both terms are sometimes being treated interchangeably.

To be precise, the problematic aspects of overlapping *jurisdiction* and *arbitrability* concepts mostly arise within the arbitration law discourse which takes place in the United States. It seems logical that given the specifics of shaping the doctrine of arbitrability there, indeterminacy of terms may be found of considerably high degree. Notwithstanding the fact that the European approach to applicability is facing other social-cultural and consequently legal reality, the insight into delineation of two concepts still remains a matter of importance, especially in the context of terminological equivalence.

For the purpose of contextualisation, some academic writing may be mentioned. For example, American legal scholar Park observes that in commercial disputes in the United States, several terms, such as “jurisdiction” and “arbitrability” are applied almost interchangeably to address the issue which aspects of the dispute are to be solved by arbitral tribunal.¹⁸⁶ He also notes that the United States courts decisions speak of the “arbitrability question” in the same fashion that the rest of the world refers to a jurisdictional issue.¹⁸⁷ In parallel to Park, also legal scholar Paulsson addresses critical remarks to incoherent and “unfortunate usage¹⁸⁸” of the term “arbitrability” in the case-law of the United States Supreme Court, as it is usually

¹⁸⁴ *Supra* 9, at p.32.

¹⁸⁵ *Supra* 116, at p.5.

¹⁸⁶ *Supra* 158, at p.33.

¹⁸⁷ W.W. Park, “The Arbitrator’s Jurisdiction to Determine Jurisdiction”, Montreal, 13 *ICCA Congress Series* 55, 2006, at p.113. Available at: http://www.arbitration-icca.org/media/0/12409326410520/jurisdiction_to_determine_jurisdiction_w_w_park.pdf. Last visited on 26 April 2012.

¹⁸⁸ *Supra* 154.

misplaced by the term “jurisdiction”. As a culmination to these discussions, legal researcher Justin finds the definition of the term “arbitrability” easily to construe, since his connotations refer to two accurate questions: “Did the parties agree to make the arbitration process available for a particular dispute under their arbitration clause? Is a particular dispute that arises during the contract term subject to the arbitration system that the parties set up under their contract?”¹⁸⁹ However, while proceeding with the definition of “jurisdiction”, terminological incongruence is collided since this term, according to Justin, has been used in arbitration discourse at times to refer to “arbitrability”, and at other times – to the arbitrator’s authority to decide the dispute on the merits.¹⁹⁰

While referring to the areas of non-arbitrability, the terms “jurisdiction” and “arbitrability” are used interchangeably by legal scholar Jarvin in European arbitration discourse. For example, while discussing the topic of arbitration seats, he includes a chapter with a heading “Arbitrability of disputes”; sentences, which address the issue, contain a term “jurisdiction” while in fact *arbitrability* concept is defined:

Competition law has, in many countries, been considered an area excluded from jurisdiction of the arbitrators. [A] claim that a contract is unenforceable due to the non-arbitrability of issues concerning competition laws raises question whether the arbitrator has jurisdiction to deal with the dispute (...).¹⁹¹

As an all-inclusive illustration of the applicability of the analyzed terms in single legislative act, Articles 177 and 186 of the Swiss Private International Law may be extracted. The latter reads as follows:

VII. Jurisdiction

1. The arbitral tribunal shall rule on its own jurisdiction.
2. The objection of lack of jurisdiction must be raised prior to any defense on the merits.
3. In general, the arbitral tribunal shall rule on its own jurisdiction by means of an interlocutory decision.¹⁹²

Thus, the *jurisdiction* and *arbitrability* concepts are separated both syntactically and semantically, providing that “jurisdiction” is primarily understood in connection with one of the most fundamental principles of arbitration law – “competence-competence” principle¹⁹³.

An example of another use of terms, which lexically presents a combination of both, is found in the case-law of the Supreme Court of Canada. In the case *Desputeaux v. Éditions Chouette* the Supreme Court of Canada held that Article 2639 of the Civil Code of Quebec expressly provides that the parties may not submit a dispute over a matter of public order or the status of persons, which is, in any event, a matter of public order, to arbitration:

¹⁸⁹ J. J. Justin, “Arbitrability and the Arbitrator’s Jurisdiction”, in T. McKelvey, *Management Rights and Arbitration Process: proceedings of the ninth annual meeting*, Ohio, USA, BNA Inc, January 26-28, 1956, at p.3. Available at: <http://www.naarb.org/proceedings/pdfs/1956-1.pdf>. Last visited on 16 April 2012.

¹⁹⁰ *Ibid.*

¹⁹¹ S. Jarvin, “Leading Arbitration Seats – A (Mostly European) Comparative View”, in: S.N. Frommel, B.A.K. Rider (eds.), *Conflicting Legal Cultures in Commercial Arbitration. Old Issues and New Trends*, The Hague, Kluwer Law International, 1999, at p.47.

¹⁹² *Supra* 129.

¹⁹³ The principle “competence-competence” vests an arbitral tribunal with the right to decide whether it has jurisdiction over a dispute brought before it. See e.g., G. Born, *International Commercial Arbitration: Commentary and Materials* (2nd ed.), The Hague, Kluwer Law International, 2001, at p.87.

In order to determine whether questions relating to ownership of copyright fall outside arbitral jurisdiction (...) we must more clearly define the concept of public order in the context of arbitration, where it may arise in a number of forms, as it does here, for instance, in respect of circumscribing the jurisdiction *ratione materiae* of the arbitration. (...) The Court stated that it must first ask whether copyright, as a moral right, is analogous to the matters enumerated in [Article] 2639, para. 1 C.C.Q. [Civil Code of Quebec – *author's remark*] and is therefore outside the jurisdiction *ratione materiae* of the arbitration system.¹⁹⁴

Here, the combination of English and Latin terms “jurisdiction *ratione materiae*” in fact deals with the question of arbitrability.

Next, after explicit contextual examples, with the aim to determine a framework within which two analyzed concepts operate, a definition of the term “jurisdiction” should be provided.

In total six online monolingual dictionaries, which were consulted for the purpose of this analysis, offer the following definitions of the term “jurisdiction”: a) “the power or right to exercise authority¹⁹⁵”; b) “the authority of an official organization to make and deal with especially legal decisions¹⁹⁶”; c) “power of authority in general¹⁹⁷”; d) “the territory or sphere of activity over which the legal authority of a court or other institution extends¹⁹⁸”; e) “power to interpret and apply the law¹⁹⁹” j) “sphere of authority”, or “the limits within which any particular power may be exercised²⁰⁰”. Hence, a description of *jurisdiction* concept may embrace the following array of constituent and intrinsic characteristics: “authority”, “power”, “extent of limits of power”, “a sphere of activity”, “generalized applicability”. Besides, a number of definitions expressly refer to communication in specialized context, i.e. highlighting the term’s belonging to legal discourse.

As Alcaraz and Hughes point out, the term “jurisdiction” has three distinct meanings: 1) “power of the courts to take cognizance of matters referred to them”; as an equivalent of “competence” or “authority”; 2) “particular area of class of law”; 3) “territory over which power of the court applies”.²⁰¹

As it can be seen, some online tools as well as academic sources refer to the term “jurisdiction” to extent that it becomes associated particularly with national court which has power to deal with disputes. Therefore, taken together with limited information provided in dictionary one can mistakenly assume that the term “jurisdiction” and further references related thereto are generally attributed to the proceedings performed only in national courts.

¹⁹⁴ Desputeaux v. Éditions Chouette, SUPREME COURT OF CANADA, 2003 SCC 17, 223 D.L.R. (4th) 407, 301 N.R. 220, 23 C.P.R. (4th) 417, [2003] 1 S.C.R. 178, REJB 2003-38952, J.E. 2003-626, March 21, 2003. Available on Westlaw International Database. Last visited on 30 May 2012.

¹⁹⁵ Merriam-Webster Online Dictionary. Available at: <http://www.merriam-webster.com/dictionary/jurisdiction>. Last visited on 30 May 2012.

¹⁹⁶ Cambridge Online Dictionary. Available at: <http://dictionary.cambridge.org/dictionary/british/jurisdiction>. Last visited on 30 May 2012.

¹⁹⁷ Collins Dictionary Online. Available at: <http://www.collinsdictionary.com/dictionary/english/jurisdiction>. Last visited on 30 May 2012.

¹⁹⁸ Oxford Dictionaries. Available at: <http://oxforddictionaries.com/definition/jurisdiction?q=jurisdiction>. Last visited on 30 May 2012.

¹⁹⁹ American Heritage, Dictionary of the English Language. Available at: <http://education.yahoo.com/reference/dictionary/entry/jurisdiction>. Last visited on 30 May 2012.

²⁰⁰ Webster Revised Unbridged Dictionary. Available at: <http://machaut.uchicago.edu/?resource=Webster%27s&word=jurisdiction&use1913=on>. Last visited on 30 May 2012.

²⁰¹ *Supra* 30, at p.157.

However, such intensional characteristic as “power of any official institution” may efficiently and cogently dispel any doubts as to the reference of this term also to mechanism of arbitration which ‘allows settlement of disputes based on extra-legal standards²⁰²’. To this respect, a considerable number of information sources used for consulting on the terminological issue, is crucial.

Taking into account the abovementioned, mutual correspondence of the analyzed legal concepts may be currently assessed by enlisting common intrinsic features attributed simultaneously to *jurisdiction* and *arbitrability*. They may be formulated based on the presumptions that both concepts perceive: 1) a legal dispute, i.e. which involve either a point of law or fact (for example, these terms are not applicable in political or historical context); 2) an arbitral tribunal must be endowed with legal power to decide a legal dispute; 3) a legal dispute must be enumerated as an issue covered by the power of a tribunal.

Again, using the approach suggested by linguistic expert Sandrini, on the purpose level, or within functional relations²⁰³, the concepts serve a similar function: both of them fix strict boundaries as to arbitral tribunal’s power to decide. However, the concepts differ by their specificity.

Addressing the issue of specificity, a question may be pondered whether *arbitrability* has to have more rigorous constraints on the overall delineation of its concept. From the one hand, if to put it in classification provided by Sager, the referent “arbitrability” reflects the organisational characteristics of the region²⁰⁴, i.e. specific domain of private law – arbitration law, by tending to restrict its use in this well-defined law discipline. Being a part of the language for specific purposes, the term “arbitrability” includes those characteristics which emphasize its conceptual relationship with the specific domain. Therefore, specific term is preferable, since it is immediately able to convey a user-driven message pertaining to specificity and intensity of arbitrability as opposed to general meaning of overall power to decide.

In this case, under semiotic analysis, the relationship between *jurisdiction* and the related *arbitrability* concepts are paradigmatic, as arbitrability is only one of *jurisdiction*’s forms. In other words, *jurisdiction* concept answers a question “who decides what”, whereas *arbitrability* concept is a “more specific enquiry as to whether the dispute is of the type that comes within the domain of arbitration²⁰⁵”. The conceptual relations may depicted as follows:

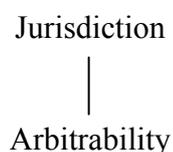


Figure 7

Under the semantic analysis, these concepts represent a generic-specific relationship, where *jurisdiction* as a superordinate concept which encompasses *arbitrability* concept as a subordinate and specific one. Under the semiotic understanding relations are paradigmatic.

²⁰² As Goh puts it, arbitration is the most institutionalized form of extra-judicial dispute settlement of a quasi-judicial nature. In G.M. Goh, *Dispute Settlement in International Space Law: A Multi-Door Courthouse for Outer Space*, Leiden, Martinus Nijhoff Publishers, 2007, at p.111, 207.

²⁰³ *Supra* 35, at p.8.

²⁰⁴ *Supra* 9, at p.18.

²⁰⁵ *Supra* 66, at p.123.

From the other hand, although strict delimitation of concepts may be successful for unambiguous and efficient communication in some situations, it should by no means taken as a general rule.²⁰⁶ Presumably, this approach of linguistic expert Temmerman is in line with the United States perception of *arbitrability* concept. As it is a more complex concept which comprise additional intrinsic characteristics in comparison to the European approach, in addressing jurisdiction the United States courts sometimes say that the issue is not only “who decides what,” but also “who decides who decides”.²⁰⁷ Hence, generic *jurisdiction* concept implies *arbitrability* concept as well, thus making the contours of the decision-making authority of an arbitral tribunal to coincide.

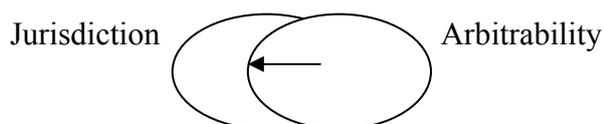


Figure 8

This overlapping relationship is also confirmed by presumption expressed by legal researcher Jones, that the term “arbitrability” is used in the United States to cover the whole issue of a tribunal’s jurisdiction.²⁰⁸ As a result of overlapping of the main conceptual characteristics, in the United States arbitration discourse “jurisdiction” and “arbitrability” may be treated as near-synonymy, which practically on domestic level remain the possibility to use them interchangeably and stressing the nuances in contextual situation.

However, in international environment such approach only intensifies ambiguity. Practical applicability of such near-synonyms should be made with considerable precaution, as according to ISO 704:2000 near-synonyms or quasi-synonymy are allowed to be used interchangeably only within the specific subject-field.²⁰⁹

3 LINGUISTIC ANALYSIS OF THE TERM “ARBITRABILITY”

Referring to the previously analyzed aspects of conceptual system and specificity of *arbitrability* concept, in Chapter III of this Thesis it is necessary to devote attention to the formation of the designation of *arbitrability* concept and its linguistic construction. Within this analysis, existing linguistic forms of the term “arbitrability” are examined, as well as their usage in definitions provided by dictionaries and online tools. Moreover, aspects of term formation will be discussed in conjunction with the contextual use of the “arbitrability” term found in international legal acts.

3.1 General aspects of term formation

This Subchapter presents description of how the term “arbitrability” is formed taking into account phonological, orthographical, morphological criteria. Then, the issue of abstractness of the term is addressed.

²⁰⁶ *Supra* 12, at p.34.

²⁰⁷ *Supra* 158, at p.35.

²⁰⁸ D. Jones, “Insolvency And Arbitration: an Arbitral Tribunal’s Perspective” (2012), 78 *Arb. (Arbitration)* 2, at p. 124. Available on Westlaw International Database. Last visited on 13 May 2012.

²⁰⁹ *Supra* 88, at p.25 (7.2.4.) provides as follows: “a partitive concept shall be defined on the basis of a partitive relation only if the complete extension and the essential characteristics of the intension can be determined”.

At the outset, linguistic form of the term should be seen from the point of view of linguistic theory, which states that terms are base-level phonological representation with a phonetic form.²¹⁰ As any other lexical unit, the term “arbitrability”, if observed on phonological level, represents a sequence or acceptability of syllables that form a term (or a word, as the general principles do not differ²¹¹) in the English language. “Arbitrability” is multisyllabic²¹², and as no explanatory online tool provides exact transcription of arbitrability, first impression of pronunciation may be potentially gained by converging²¹³:

“arbitrable”: [är b -tr -b l]²¹⁴ and “ability” [ə-b ɪ ˈɪ-tē]²¹⁵

Based on provided vocalisation of the term “arbitrability”²¹⁶, there are two stressed syllables: the first one and the fourth, which logically corresponds to the term’s lexical formation.

By the criterion of orthography²¹⁷, arbitrability is a single word. As concerns orthographic representation of the term, correctly spelling thereof is “arbitrability”, as opposed to other variation provided by *A Dictionary of Modern Legal Usage*. It particularly highlights the difference and incorrect spelling of the term “arbitrability” by opposing it to “arbitratability”.²¹⁸

Under morphological level, “arbitrability” presents a pattern of morphologically-complex²¹⁹ term, since it is composed of more than one morpheme. In general, “arbitrability” presents a pattern of conventional morphological structure of the English language, where a base morpheme is supplemented by affixation. In the present case, a base morpheme or lexical root -arbitr- is supplemented by a derivational suffix -ability.

According to Oxford Advanced Learner Dictionary, suffix -ability forms uncountable noun from adjective ending in -able.²²⁰ In addition, it is interesting to note that the derivation suffix -ability (originated from Latin²²¹) is used as a noun form for -able that corresponds to objectification of quality²²², i.e. a dispute capable to be arbitrated or arbitrable dispute.

²¹⁰ *Supra* 11, at p.83.

²¹¹ *Ibid.*, at p.83-84.

²¹² A. McMahon, *Introduction to English Phonology*, Edinburgh, Edinburgh University Press, 2002, at p.104

²¹³ This method is only an exemplary, as well as based on pattern of pronunciation used by American English speakers.

²¹⁴ American Heritage, Dictionary of the English Language. Available at: <http://education.yahoo.com/reference/dictionary/entry/arbitrable>. Last visited on 30 May 2012.

²¹⁵ American Heritage, Dictionary of the English Language Available at: <http://education.yahoo.com/reference/dictionary/entry/ability>. Last visited on May 30 2012.

²¹⁶ The only online source found, which provides vocalisation of the term is Online Talking Dictionary of English Pronunciation. Available at: <http://www.howjsay.com/index.php?word=arbitrability&submit=Submit>. Last visited on 30 May 2012.

²¹⁷ L.J. Brinton, *The Structure of Modern English: A Linguistic Introduction*, Amsterdam/Philadelphia, John Benjamins B.V., 2000, at p.74.

²¹⁸ B.A. Garner, *A Dictionary of Modern Legal Usage* (2nd ed.), New York, Oxford University Press, 1995, at p.72.

²¹⁹ L.B. Feldman, R. Frost, T. Pnini, “Decomposing Words into Their Constituent Morphemes: Evidence From English and Hebrew”, *Haskins Laboratories Status Report on Speech Research*, SR 119-/120, 1994-1995, at p.237. Available at: http://www.haskins.yale.edu/sr/SR119/SR119_14.pdf. Last visited on 30 May 2012.

²²⁰ J. Crowther (ed.), *Oxford Advanced Learners’ Dictionary* (5th ed.), Oxford, Oxford University Press, 1995, at p.2.

²²¹ Online Etymology Dictionary. Available at: <http://www.etymonline.com/index.php?l=a>. Last visited on 30 May 2012.

²²² H. Čuriová, “Abstract Naming Units in Business English”, at p. 132, in M. Ferenčík, J. Horváth (eds.), *Language, Literature and Culture In A Changing Transatlantic World. International Conference Proceeding*,

With respect to productivity of suffix -ability (or -ity), it can be concluded that in specialized language usage it turns to be productive, as generally refers to nominalization, which, as linguistic expert Gotti points out, is a characteristic feature of legal discourse.²²³ On this point, referring to observations made by linguists Plag, Dalton-Puffer and Baayen, nominalization is interpreted as markers of conceptual abstractness, which can be used to condense information into fewer words.²²⁴ Such characteristic of nominalization corresponds precisely to “arbitrability”, as the use of a noun may efficiently denote the meaning while preserving the conceptual base of a phrase “capable of being arbitrated”.

The fact that “arbitrability” stems from adjective base is confirmed by the term’s etymological grounds. According to Merriam-Webster Dictionary, first known use of the term “arbitrable” is dated back in 1531.²²⁵ Similarly, Etymology Dictionary refers to 1530s, when the term “arbitrable” was firstly recorded in the meaning of “to give an authoritative decision”.²²⁶ It stems from Latin expression *arbitratus*, which in its turn, denotes “arbitration”, “choice”, “judgment”, “capacity for decisions”, “jurisdiction power”.²²⁷ The term “arbitrable” also stems from a prepositional phrase of *arbitrari*, which means “be of an opinion, to give a decision”.²²⁸ Therefore, in classification of terms proposed by Cabré, “arbitrability” is a borrowing from Latin, or neoclassical borrowing.²²⁹ In addition, Cabré points out an interesting aspect that Latin borrowing is explicitly recommended for use by international terminology standards as to encourage international nature of the term.²³⁰

As concerns other characteristics, “arbitrability” is a common, non-countable noun. By its syntactic behaviour, noun “arbitrability” can be combined with ‘the’ to form a complete phrase, or in other words, ‘the arbitrability’ is full phrase because it can occur as a subject.²³¹

3.1.1 “Arbitrability” as an abstract term

The term “arbitrability” may be seen as raising problem in relation to combined vagueness of law and linguistic. Accordingly, a user of information may encounter with problems of what criteria to apply in order to uncover the meaning of the term. In the present case, the discussion concentrates on vagueness exactly, not ambiguity²³², as it precisely embodies the problem when the term may be used even without certain precision, and then is made more precise in certain situation.

Prešov, Prešovská univerzita, April 22-23, 2009. Available at: http://www.pulib.sk/elpub2/FF/Ferencik2/pdf_doc/17.pdf. Last visited on 12 May 2012.

²²³ M. Gotti, “The Litigational ‘Colonisation’ of ADR Discourse”, (2012) 2 *IJLLD (International Journal of Law, Language & Discourse)* 1, at p.40. Available at: <http://www.ijlld.com/2012-index>. Last visited on 30 May 2012.

²²⁴ I. Plag, Ch. Dalton-Puffer, H. Baayen, “Morphological Productivity Across Speech and Writing”, (1999), 3 *English Language and Linguistic* 2, [at p.6]. Available at: <http://www2.uni-siegen.de/~engspra/Papers/Morphology/ell.pdf>. Last visited on 30 May 2012.

²²⁵ Merriam-Webster Dictionary. Available at: <http://www.merriam-webster.com/dictionary/arbitrable>. Last visited on 30 May 2012.

²²⁶ Online Etymology Dictionary. Available at: http://www.etymonline.com/index.php?term=arbitrate&allowed_in_frame=0. Last visited on 30 May 2012.

²²⁷ Latin Dictionary. Available at: <http://www.latin-dictionary.org/arbitratus>. Last visited on 30 May 2012.

²²⁸ *Supra* 223.

²²⁹ *Supra* 11, at p.88.

²³⁰ *Ibid.*

²³¹ K. Borjars, K. Burridge, *Introducing English Grammar* (2nd ed.), London, Hachette, 2010, at p.49.

²³² Definitions used by J.Engberg in J.Engberg, D.Heller, “Vagueness and Indeterminacy in Law” in: V.K. Bhatia, C.N. Candlin, J. Engberg (eds.), *Legal Discourse Across Cultures and Systems*, Hong Kong, Hong Kong University Press, 2007, at p.147.

Turning to linguistic vagueness of the term, it can be said that “arbitrability”, according to legal linguist Cao, possesses a clear distinguishable feature of intralingual linguistic uncertainty.²³³ That means that for the first time uncertainty, vagueness and generality of the term manifests itself in the English language. Such uncertainty in linguistic applicability of the term in English may further lead to legal vagueness of the concept, which should be interpreted in order to acquire necessary particularization and to establish concrete semantic scope of the term in specific communicative environment.

In the context of the discussion, it is equally interesting to note that in characterization provided by researcher Schmid, “arbitrability”, while being an abstract noun in view of its intangible nature, may though be classified as a full-content noun,²³⁴ since it contains a clearly observed potential for detailed particularization in the situational context. It means that the term has more or less clear denotation²³⁵. If observing “arbitrability” from that angle, it would be more correctly to speak about *surface-level clarity* of its denotation. Surface-level clarity here corresponds to the fact that notwithstanding the situation that “arbitrability” is semantically divergent, the term denoting the concept is still *superficially* comprehensible, as it may be generally designated as “something that is connected to arbitration and ability to arbitrate”.

In general, vagueness with respect to the analyzed term may not only provoke difficulties and incongruence, but also demonstrate advantages. Referring to Čuriová, abstractions reflect social processes caused by the development of science.²³⁶ Thus, due to vagueness the term is generally open for flexibility and dynamic development, which may consequently lead to further standardization.

However, presently, this term as such inherently implies interpretation, which is strongly connected with the interpreter’s competence. Moreover, an interpreter has to be aware of international disharmony in the use of the term. Since the international disharmony is implicitly governing the *arbitrability* concept, it consequently leads to incongruence of the used terminology. Therefore, it seems to be a challenging task not only for such interpreter as court or state authority when applying the term, but also to a translator, who must be circumspect when confronting the term “arbitrability”.

3.2 Identification of the term “arbitrability”

Further, in the context of the discussion, it should be observed whether and how the analyzed term is identified by means of definition provided as an entry in general language dictionaries and dictionaries of legal terms. In fact, it must be determined either the definition encompasses the specificity of the concept, or the term is denoting only general and vague perception of the content of arbitrability. Afterwards, lexicalisation of the *arbitrability* concept is explored by referring to texts of international legal acts.

²³³ *Supra* 7, at p.77.

²³⁴ H.-J. Schmid, *English Abstract Nouns as Conceptual Shells: From Corpus to Cognition*, Berlin/New York, Mouton de Gruyter, 2000, at p.15.

²³⁵ *Ibid.*

²³⁶ *Supra* 222, at p.128.

3.2.1 The term “arbitrability” in dictionaries

Monolingual and multilingual dictionaries explored for this part of Thesis proves that the term “arbitrability” is defined by using a range of lexical structures. Among them, the concept lexicalised as noun “arbitrability” has been traced only once.

A good example of an extensive and thorough definition of the term is provided by expert Rossini. Namely, “arbitrability” is the issue of whether a dispute may be subject to arbitration, which in one sense, relates to the capacity of the parties; in other sense, arbitrability pertains to whether the claim is an appropriate subject of arbitration, which arises from the limitations on freedom of contract for public policy reasons.²³⁷

The term “arbitrable” is defined in various dictionaries. For example, Dictionary of Modern Legal Usage refers to “arbitrable” by providing that this term denotes the meaning of “being subject to or appropriate for arbitration”. Furthermore, along with this brief explanation, it qualifies the nuance of the term’s usage, namely, by stressing that “arbitrable” is the correct form, as opposed to “arbitratable”.²³⁸ Also, the London Encyclopedia contains the term “arbitrable”, which is explained to be connected with the term “arbiter”, which means “one who goes to examine and settle differences for another, either in a court or justice, or chosen by contending parties to adjust their respective claims amicably”.²³⁹ According to the Multilingual Law Dictionary, “arbitrable” is translated as “*susceptible d’arbitrage (fr.)*”.²⁴⁰

Among dictionaries of legal terms explored for the purpose of this analysis, for example, Dictionary of Law by Curzon provides no exact definition for the term “arbitrability”. However, the definition of “arbitration agreement” states that it is “an agreement in writing to submit to arbitration present or future differences capable of settlement by arbitration”, with an external reference to the Arbitration Act 1975 of the United Kingdom.²⁴¹ Referring to the Burton’s Legal Thesaurus, the term “arbitrability”, although not being defined, is noted as an associated concept to “arbitration” on the whole.²⁴²

While exploring online tools, the same tendency is observed, i.e. the *arbitrability* concept is explained by means of other lexical mechanisms. For example, Collins Dictionary provides definition of a verb “to arbitrate”, which then is supplemented by a range of additional forms, including an adjective “arbitrable” and noun “arbitrator”.²⁴³ Webster’s Revised Dictionary defines “arbitrable” as “capable of being decided by arbitration, determinable”.²⁴⁴ American

²³⁷ C. Rossini, *English as a Legal Language*, London, Kluwer International Law, 1999, at p.54.

²³⁸ *Supra* 218, at p.72. The same definition is also provided in the newest edition of the Garner’s Dictionary, see in: B.A. Garner, *Dictionary of Legal Usage* (3rd. ed.), New York, Oxford University Press, 2011, at p.74.

²³⁹ T. Curtis (ed.), *The London Encyclopaedia, or, Universal Dictionary of Science, Art, Literature, and Practical Mechanics, Comprising a Popular View of the Present State of Knowledge* (Vol. 2), London, T.Tegg, 1829, at p.565. Available at: <http://www.searchdictionaries.com/?q=arbitrable>. Last visited on 30 May 2012.

²⁴⁰ L.D. Egbert, F. Morales-Macedo (eds.), *Multilingual Law Dictionary: English, Français, Español, Deutsch*, The Netherlands, A.W. Sijthoff, Alphen aan den Rijn, 1979, at p.24. Available at: <http://www.searchdictionaries.com/?q=arbitrable>. Last visited on 30 May 2012.

²⁴¹ L.B. Curzon, *Dictionary of Law* (4th ed.), London, Pitman Publishing, 1996, at p.23.

²⁴² *Supra* 92, at p.37.

²⁴³ Collins Dictionary Online. Available at: <http://www.collinsdictionary.com/dictionary/english/arbitrable>. Last visited on 29 May 2012.

²⁴⁴ Webster’s Revised Dictionary of 1913. Available at: <http://machaut.uchicago.edu/?resource=Webster%27s&word=arbitrable&use1913=on>. Last visited on 29 May 2012.

Heritage Dictionary also provides a definition of an adjective “arbitrable”, in the meaning of “subject to arbitration” and “appropriate to referral to arbitrator”.²⁴⁵

Therefore, it can be concluded that these randomly chosen definitions mark a tendency, firstly, to denote the meaning of arbitrability through a term expressed by using different lexical structures, for example, adjective “arbitrable”. Secondly, the meaning of “arbitrability” may be extracted from definition provided for another term, for example, “arbitration agreement”. As well, the term may also be shown in conjunction with associated concepts, as in case of “arbitration” or “arbitrator”.

Thus, taking into account the abovementioned, degree of specificity of the term “arbitrability” is very limited, or *vice versa*, abstractness of the term is very strong. The dictionaries narrow down the content of this concept by using other related terms which draws the user’s attention only to general and thus fragmental characteristics of the concept’s intension. Thus, the element of comparative-law analysis, which must be involved in order to evaluate the degree of terminological incongruence and potential divergence in the scope of the concept, is left without notion.

3.2.2 The term “arbitrability” in international legal acts

As the dictionaries provide only decontextualised use of terms and their designated concepts, from the pragmatic standpoint it is necessary to conduct discourse analysis thereby assessing usage of the term “arbitrability” in different international legal acts. It will also mark the tendencies of the usage in international context.

At the outset, it is worth emphasizing that the New York Convention²⁴⁶ avoids the use of the term “arbitrability” and instead, offers “arbitrable subject-matters”. In fact, from the standpoint of semantics, “arbitrability” in Article 5, paragraph 2, of the New York Convention is narrowed down to the meaning of objective arbitrability.

Other international conventions contain similar provisions, but expressed by means of other linguistic form. For example, Article 5, paragraph 2, of the 1975 Inter-American Convention on International Commercial Arbitration (Panama Convention) also uses a phrase “the subject of the dispute cannot be settled by arbitration under the law of that State”.²⁴⁷ By the same token, ECICA, Article VI, paragraph 2, refers to “the dispute is not capable of settlement by arbitration”.²⁴⁸

The Model Law, which plays a pivotal role in institutionalisation of international commercial arbitration, devotes a number of legal norms to address the issue of arbitrability. Article 1, paragraph 5, thereof provides that the Model Law shall not affect any other law of the state by virtue of which certain disputes may not be submitted to arbitration or may be submitted to arbitration only according to other provisions.²⁴⁹ It should also be pointed out that the expression is construed in a negative form, i.e. semantically defining non-arbitrability

²⁴⁵ American Heritage. English Language Dictionary. Available at:

<http://education.yahoo.com/reference/dictionary/entry/arbitrable>. Last visited on 29 May 2012.

²⁴⁶ Article 5, paragraph 2, is cited in Subparagraph 2.2.1.

²⁴⁷ 1975 Inter-American Convention on International Commercial Arbitration (Panama Convention). Available at: <http://www.jurisint.org/doc/html/ins/en/2000/2000jiinsen72.html>. Last visited on 28 May 2012.

²⁴⁸ *Supra* 169.

²⁴⁹ *Supra* 28.

issue.²⁵⁰ Another provision of the Model Law, which is devoted to this topic, is Article 34, paragraph 2(b). It stipulates that the arbitral award may be set aside only if, among others, the court finds that the subject matter of the dispute is not capable of settlement by arbitration under the law of this State.²⁵¹

Another example of arbitrability issue being discussed under international treaties is 1965 Convention on the Settlement of Investment Disputes Between States and Nationals of Other States²⁵². In order to promote increased flows for international investment by facilitating investment disputes resolution between investors and governments, Article 25 includes four major elements to be considered as crucial in determining jurisdiction of International Centre for Settlement of Investment Disputes (ICSID). The provision states that ICSID's jurisdiction extends to any legal dispute arising directly out of an investment, between a Contracting State and a national of another Contracting State, if so consented between the parties.²⁵³ Among other things, such consent determines the scope of matters, which are subject to the ICSID's arbitration. Analyzing Article 25, paragraph 4, it can be concluded that in this case arbitrability of investment disputes is presented in a two-fold way. One is the general consent of the parties to overall ICSID arbitration, which means to consent to submitting all the matters relating to the investment transaction.²⁵⁴ As legal expert Lamm puts it, tribunals have interpreted this provision broadly to include a wide range of economic and commercial disputes.²⁵⁵ Secondly, the limited consent of the parties who are entitled to submit only particular disputes for proceedings before the ICSID's arbitration. To that extent, some countries declared that the disputes over natural resources are not arbitrable.²⁵⁶ Hence, in the present case the issue of objective arbitrability is referred to by applying a general term "jurisdiction".

Having outlined the applicability of *arbitrability* concept, it may be concluded that, at the same footing, avoidance of the use of nominalization when denoting the content of the concept, is observed in international legal acts. It may be justified by the fact of particular terminological incongruence and disharmony which exists between civil and common law countries. This statement appears to be particularly strong, bearing in mind the fact that, for example, in England, although the arbitrability concept is known, the term "arbitrability" is not used.²⁵⁷ Among them, any international agreement presents a certain level of compromise not only concerning the substantive matters of regulation, but including also legal terminology. Thus, a phrase "capable of settlement by arbitration" is a pattern of "linguistic

²⁵⁰ Report of the United Nations Commission on International Trade Law on the work of its 18th session, Vienna, 3-21 June, 1985, A/40/17, at p.9. Available at: <http://www.uncitral.org/pdf/english/yearbooks/yb-1985-e/vol16-p3-46-e.pdf>. Last visited on 24 April 2012.

²⁵¹ *Supra* 28, Article 34; See also R.J. Weintraub, *International Litigation and Arbitration. Practice and Planning* (3rd ed.), Durham, Carolina Academic Press, 2001, at p.537.

²⁵² 1965 Convention on the Settlement of Investment Disputes Between States and Nationals of Other States. Available at:

<http://www.jus.uio.no/lm/icsid.settlement.of.disputes.between.states.and.nationals.of.other.states.convention.was.hington.1965/>. Last visited on 24 April 2012.

²⁵³ *Ibid.*

²⁵⁴ A.S. Kyuz, "The Jurisdiction of ICSID: The Application of the Article 25 of Convention on the Settlement of Investment Disputes Between States and Nationals of Other States", (2003) 33 *University of Ankara-Faculty of Law Review*, at p.340. Available on HeinOnline Database. Last visited on 27 April 2012.

²⁵⁵ C.B. Lamm, "The International Centre for Settlement of Investment Disputes: Responses to Problems and Changing Requirements", (1998) 64 *Arb. (Arbitration)* 1, at p.22. Available on Westlaw International Database. Last visited on 27 April 2012.

²⁵⁶ *Supra* 254, at p.350.

²⁵⁷ *Supra* 113, at p.282.

compromise”, denoting a generalized *arbitrability* concept and types thereof. The latter, in its turn, further becomes subject to particularized interpretation by each contracting state and then, a particular user. In addition, it may also be concluded that term lacks international acceptability.

4 FINDING EQUIVALENTS IN LATVIAN LEGAL DISCOURSE

Discussion about the term “arbitrability” cannot be complete without an insight into the Latvian legal terminology. Consequently, after having explored conceptual and linguistic peculiarities of the term “arbitrability”, Chapter IV of this Thesis is aimed at assessing potential equivalents which may be found or created to denote *arbitrability* concept.

In the beginning, as a theoretical aspect, methods of searching for equivalent which are applied in this analysis are outlined. Then, the assessment of possible equivalents are presented, weighing the applicability of the existing terminological patterns and observing advantages and disadvantages of the neologism “arbitrabilitāte”.

4.1 Methods of searching for equivalents

The search for equivalent as an indispensable part of legal translation should be conducted by means of specific methods, which are appropriate to be used for comparison of concepts. The methods used in this analysis may be demonstrated as follows.

Along with terminological analysis which was carried out for the *arbitrability* concept in civil and common law countries, search for equivalent within national boundaries should begin with assessment of terminology use in national arbitration discourse. Such discourse is represented by text of Latvian legislative act and scholarly opinions. Altogether, they attempt to provide terminological variables capable to denote the intension of the concept.

Turning to the discourse analysis of national legislative act, Article 487 of the Civil Procedure Law²⁵⁸ should be discussed in greater detail, in order to discern terminological units which may be identified as equivalents of certain degree with respect to *arbitrability*. As a result, it should be established whether *arbitrability* concept may be transposed in target legal system by means of existing relevant equivalent.

For the purpose of this analysis, functional and legal equivalent are two characteristics of equivalents converged together for producing the most appropriate result with respect to translation of a legal term. Basic characteristics for functional equivalent are described by numerous distinguished researches such as Sandrini²⁵⁹, Šarčević²⁶⁰, Weston²⁶¹, whereas legal equivalence is found in works of Garzone²⁶², Paolucci.²⁶³

²⁵⁸ Civilprocesa likums, pieņemts 14.10.1998 (ar grozījumiem 20.04.2012.), “Latvijas Vēstnesis”, 326/330 (1387/1391), 03.11.1998. (Civil Law of 1998 (April 20, 2012)). Available at: <http://www.likumi.lv/doc.php?id=50500>. Last visited on 30 May 2012.

²⁵⁹ For example, *rationale* of functional analysis used for comparison of legal terms is explained by P.Sandrini (see *Supra* 35).

²⁶⁰ Functional equivalence as a method (yet, put under certain conditions) used for conceptual comparison is described by S.Šarčević, *New Approach to Legal Translation*, The Hague/London/Boston, Kluwer Law International, 2000, p.235-250.

In the context of the present discussion, the most feasible advantages of the combined method of functional and legal equivalence may be summarized as follows:

1) *conceptual considerations* are taken into account. This means that functional analysis is based on substantial analysis of the concept, which requires extensive use of previously developed knowledge of the concept's origin and related conceptual system. As well, conceptual analysis envisages an insight into essential and auxiliary characteristics of the comparable concepts. Under this method, function or purpose of the concepts is crucial.

2) *pragmatic considerations* are taken into account. That means that the said analysis examines how the concept is communicated in real world, or in other words, the concept's applicability. In particular, the concepts are explored in legal environment, keeping in mind the intent of legislator, authenticity of the translated terms and legal effects. Moreover, the use of the respective term is contemplated in broader understanding, i.e. not being limited to particular source text²⁶⁴, but encompassing a full range of information involved in previous discussions (international legal acts, case-law, peculiarities of European and the United States approaches, dictionaries, scholarly opinions).

In its turn, discourse analysis of scholarly work focus on the proposed use of a neologism "arbitrabilitāte". In opposite to this attempt of internationalisation of Latvian terminology in arbitration law, scholarly opinions of eminent Latvian experts are provided to signify cultural-specific aspects of legal terminology. Thus, the question of equivalence stipulated as one of the key questions of this research, must be continued by asking if functional and legal equivalents may not rectify terminological incongruence, should alternative equivalence²⁶⁵ be expressed as "arbitrabilitāte".

4.2 Assessment of terms as equivalents

Article 487 of the Civil Procedure Law provides a number of disputes which cannot be decided by arbitral tribunal. Among them are disputes: 1) if the award may infringe the rights or the interests guaranteed by law of such a person who is not a party to the arbitration court agreement; 2) if at least one party is a State or local government institution or the award of the arbitration court may affect the rights thereof; 3) related to changes in registration of civil status deeds; 4) related to rights and duties of persons under guardianship or trusteeship; 5) related to property rights with regard to immovable property; 6) related to eviction of a person from his/her domicile; 7) labour disputes; 8) related to rights and duties of an insolvent person.²⁶⁶

²⁶¹ Weston refers to functional equivalence as the ideal method of translation, see S.Šarčević, "Challenges to the Legal Translator", in P. Tiersma, L. Solan (eds.), *The Oxford Handbook of Language and Law*, New York, Oxford University Press, 2012, at p.195-196.

²⁶² G. Garzone, "Legal Translation and Functionalists Approaches: A Contradiction in Terms?", in *Legal translation: history, theory/ies and practice. International colloquium*, University of Geneva, February 17-19, 2000, Berne, ASTTI, 2000. Available at: <http://www.gitrad.uji.es/sites/default/files/Garzone.pdf>. Last visited on 20 May 2012.

²⁶³ S. Paolucci, "The Problem of Equivalence in Translating Legal Texts", (2011) 56 *Lebende Sprachen* 1, at p.93. Available at: <http://www.deepdyve.com/lp/de-gruyter/the-problem-of-equivalence-in-translating-legal-texts-iaxbQhL8og>. Last visited on 28 May 2012.

²⁶⁴ For example, in view of European approach to arbitrability, the most visible example is the Swiss Private International Law, where arbitrability is explicitly referred to, see *Supra* 129. In addition, see *Supra* 28.

²⁶⁵ *Supra* 260, at p.254.

²⁶⁶ *Supra* 258.

In the Latvian version of this Article the cited group of disputes are located under the heading “šķīrējtiesā izšķīramie strīdi”, which is further translated in official English translation version as “disputes resolvable by arbitration courts”²⁶⁷. Formally, one should admit that the lexical structure used in the heading more resembles an incomplete definition, not a term, with general and highly descriptive nature. This phrasal expression, to put in Cabré’s words, cannot be considered as a phrasal term, but rather a combination of lexems, which exists and operates in special-subject field, but do not establish a concept.²⁶⁸ Substantially, the content of the said Article reflects and encompasses the meaning of the European approach to arbitrability, as it converges both constituent types thereof, i.e. *objective* and *subjective* concepts’ dimension. To be more precise, *objective arbitrability* is referred to by enlisting certain kind of civil disputes which are attributed to exclusive national courts’ competence, or may not be subject to arbitration (Article 487, subparagraphs 1, 3-8, of the Civil Procedure Law). In its turn, conceptual framework of *substantial arbitrability* is referred to in Article 487, subparagraph 2, of Civil Procedure Law, where the legislator expressly prohibits a state or local government to become a party to arbitration agreement.

Hence, as it stems from substantial content, it is necessary to examine other terms used in specific-field legal discourse, namely, in the Civil Procedure Law, with the aim to find a precise and accurate term, which corresponds to the meaning of functional and legal equivalent.

Bearing in mind the fact that at least presently the syntactic structure of Article 487 reflects legislator’s intention to leave both substantial conceptual aspects in a combined form, it is necessary that functional and legal equivalent (or equivalents) contribute to precise delineation of involved concepts.

4.2.1 Finding equivalent for *arbitrability* concept

With respect to *arbitrability* concept two related concepts should be examined: *pakļautība* un *piekritība*.

Referring to the term “pakļautība”, a definition thereof may be found in exploring different information sources. For example, according to the terms approved by the Latvian Academy of Sciences, Commission of Terminology, “pakļautība” is a term used to denote a concept of “subordination”, “jurisdiction”.²⁶⁹ According to the terms approved by Letonika, “pakļautība” means “subjection”, “subordination”, “subordinate position”, “subjugation”.²⁷⁰ According to Thesaurus of the Latvian University, “pakļautība” is defined as “being dependent”, “under condition”, “subordination”.²⁷¹ According to bilingual Latvian-English dictionary,

²⁶⁷ Civilprocesa likums (Civil Procedure Law). Official translation in English is available at: http://www.vvc.gov.lv/advantagecms/docs/LRTA/Likumi/Civil_Procedure_Law.doc. Last visited on 28 April 2012.

²⁶⁸ *Supra* 11, at p. 91.

²⁶⁹ Latvijas Zinātņu akadēmijas Terminoloģijas komisijas Akadēmisko Terminu vārdnīca AcadTerm. Available at: <http://termini.lza.lv/term.php?term=pakļautība&list=&lang=LV>. Last visited on 26 May 2012.

²⁷⁰ Letonika Dictionary. Available at: <http://www.letonika.lv/groups/default.aspx?q=pak%40bcaut%40abba&s=0&g=2&r=10621033>. Last visited on 26 May 2012.

²⁷¹ Latvijas Universitātes Skaidrojošā Vārdnīca. Available at: <http://www.tezaurs.lv/sv/?w=pak%40BCaut%40ABba>. Last visited on 26 May 2012.

but also in administrative law domain, where it is presented more literally, i.e. signifying a degree of subordination of higher-rank authority over lower-rank authority.²⁷⁹ Although in Latvian both concepts are designated by a single term, translation thereof does not provoke significant difficulties, as in case of administrative law, the term “pakļautība” is translated as “subordination”.²⁸⁰ Secondly, *pakļautība* is connected to an institution in general, which may be either national court of arbitration. In other words, *pakļautība* concept extension presents additional situation occurring in administrative law where it applies, and is applicable in operation of a variety of institutions.

Hence, bearing in mind essential characteristics attributed to *arbitrability* concept, it can be suggested that essential characteristics of intension of both analyzed concepts build near functional equivalence²⁸¹.

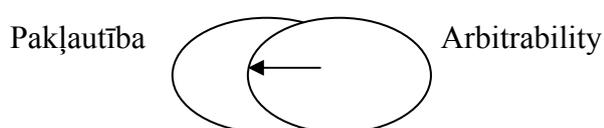


Figure 9

Such conclusion is based on various factors. Primarily, both concepts serve the same function, i.e. to delineate disputes which are capable to be resolved by national courts from those which are not capable to be resolved by arbitral tribunal, or which fall within exclusive competence of national courts. Next, overlapping characteristics attributed to both concepts may be summarized as follows: 1) existence and operability in legal discourse; 2) delineation of disputes (either generally or specifically) which fall within the scope of decision; 3) settlement of dispute by a competent institution (either arbitration, or any other, for example, national court); 4) delineation and thus, institution’s competence is prescribed by a legislative act (systemically, within single regulative framework – the Civil Procedure Law).

By the same token, taking into account pragmatic consideration, which reflects dimension of legal equivalence, it should be pointed out that applicability of both said concepts is established in the same legal environment – civil law domain. *Pakļautība* concept seems to be particularly adequate and corresponding to legislator’s intent, since the aspects of *arbitrability* concept are expressly regulated within the framework of a single act, which in its turn contributes to systemic and logical use of terminology. Moreover, both concepts refer to the legal implication of identical nature: if a legislative act precludes a dispute’s settlement by means of arbitration, a responsible judge may refuse to issue a writ for compulsory enforcement of arbitral award.²⁸²

As well, near equivalence demonstrates that such auxiliary characteristics of *pakļautība* concept form a semantically broader concept, which includes the content of more specific and narrow *objective arbitrability* and *subjective arbitrability* concepts. Nevertheless, taking into

²⁷⁹ Such definition of the term “pakļautība” is provided in Article 7, paragraph 4, of the State Administration Structure Law of 2002 (13 May 2010). Valsts pārvaldes iekārtas likums, pieņemts 06.06.2002. (ar pēdējiem grozījumiem 13.05.2010.) “Latvijas Vēstnesis”, 94 (2669), 21.06.2002. Available at: <http://www.likumi.lv/doc.php?id=63545>. Last visited on 26 May 2012.

²⁸⁰ State Administration Structure Law. Official translation in English. Available at: <http://www.likumi.lv/doc.php?id=63545>. Last visited on 30 May 2012.

²⁸¹ Šarčević’s classification is applied. See *Supra* 260, at p. 238.

²⁸² *Supra* 258, Article 534.

account all aforementioned, such inclusion cannot deprive *pakļautība* concept of its efficiency in being applicable as a functional and legal equivalent.

Referring to the term “piekritība”, as it arises from definition offered by the Latvian Academy of Sciences, Commission of Terminology, it “limits of the scope of activities, within which is it possible to enforce judgements and decisions of national courts”.²⁸³ According to the terms approved by Letonika, “piekritība” is shown in conceptual relations with national court.²⁸⁴ According to Encyclopaedia provided by Letonika “piekritība” is defined by “competence”, “authority”, “jurisdiction”.²⁸⁵ According to Thesaurus of the Latvian University, “piekritība” is defined as “a set of activities allowed to be performed by law”, “a set of functions to be performed (usually legal or state administrative regulation)”.²⁸⁶ According to bilingual Dictionary of Terms used in Legislative Acts, “piekritība” is defined as “cognisably, under jurisdiction, under the competence”.²⁸⁷ As defined by bilingual Latvian-English Dictionary, “piekritība” is related to such terms as “jurisdiction”, “cognizable”.²⁸⁸ Next, distinguished Latvian legal expert Bukovskis uses the term “piekritība” as a synonym to “competence”, and subdivides the latter into narrow classification.²⁸⁹

As it can be seen, these information sources provide rather general definition for the term “piekritība”, which is similarly to “pakļautība”, considered to be connected to competence and jurisdiction. However, in the context of civil procedure law, Torgāns and Dudelis provide more narrow definition of this term, stating that its task is to identify a particular court where a particular civil dispute should be referred to. Legal expert Rasnačs suggests that the term “piekritība” should be defined as allocation of rights to decide civil dispute among institutions belonging to one particular type, for examples, among different arbitral tribunals or different level of national courts.

Although historically *piekritība* concept has been used to denote the meaning of “capable of being settled by arbitration”²⁹⁰, presently, in relevance to the Civil Procedure Law *piekritība* concept is understood as a “second step” concept. This concept is endowed with essential characteristics of 1) institutions belonging to one type and 2) division of their institutional competences. Thus, *piekritība* concept forms another logically construed “step down” in the previously depicted hierarchical relations, and consequently is determined only after *pakļautība* has been established. To this extent, *piekritība* concept should not be seen as a separate functional and legal equivalent for *arbitrability*. However, as *piekritība* concept is derived from *pakļautība* concept, the latter one, if taken as a general concept, should include *piekritība* also in the context of discussion of arbitrability.

²⁸³ Latvijas Zinātņu akadēmijas Terminoloģijas komisijas Akadēmisko Terminu vārdnīca AcadTerm <http://termini.lza.lv/term.php?term=piekritiba&list=&lang=LV>. Last visited on 29 May 2012.

²⁸⁴ Letonika. Vārdnīcas. Available at: <http://www.letonika.lv/groups/default.aspx?g=2&q=piekrit%C4%ABba>

²⁸⁵ Letonika. Enciklopēdijas. Available at:

<http://www.letonika.lv/groups/default.aspx?g=1&q=piekrit%C4%ABba>. Last visited on 29 May 2012.

²⁸⁶ Latvijas Universitātes Skaidrojošā vārdnīca. Available at: <http://www.tezaurs.lv/sv/?w=piekrit%C4%ABba#>. Last visited on 29 May 2012.

²⁸⁷ V. Krauklis, J. Krauklis, D. Ūķis, *Likumdošanas aktu terminu vārdnīca*, Rīga, Senders S, 1999, at p.325.

²⁸⁸ *Supra* 269, at p.167.

²⁸⁹ V. Bukovskis, *Civilprocesa Mācības Grāmata*, Rīga, V.Bukovskis, 1933, at p.213.

²⁹⁰ See, e.g., F. Konradi, A. Walter, *Civilprocesa nolikums, 1932.gada izdevums. Ar Latvijas Senāta Civilā Kasācijas Departamenta paskaidrojumiem*, Rīga, Jurist, 1933, at p.481.

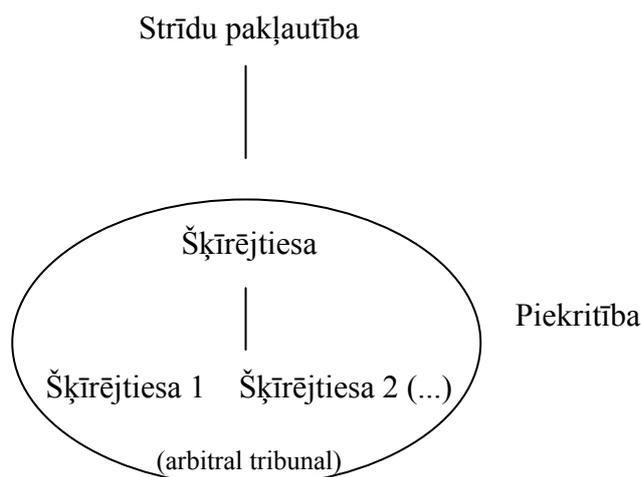


Figure 10

Thus, in order to denote precise conceptual relations of equivalents, and to establish accurate conceptual relations, *arbitrability* concept as a whole should be seen as a combination of *pakļautība* and *piekritība* concepts, where the latter ones are in fixed phrasal conjunction. Hence, they may serve as the most precise and accurate functional and legal equivalent.

Thus, as far as two terms applicable in legal domain exist and denote aforementioned concepts, such two-fold content should be also reflected in language. To this point, linguist Pavel acknowledges that it is perfectly acceptable to render the terms from the language in which the concepts have been created in a target language by means of descriptive phrases for lack of a single term.²⁹¹ Therefore, accurate and adequate terminological unit of functional and legal equivalent may be referred to in the use of compound phrase of verb-noun structure “*strīdi, kas pakļauti un piekritīgi šķīrējtiesai*”.

Finally, some additional advantages of the use terms “*pakļautība*” and “*piekritība*” may be traced by referring to ISO standard 704:2000, where requirements for term formation are set forth. In parallel to formation process, it can be admitted that the adequacy of the existing functional and legal equivalent may be evaluated by employing the same criteria. Special attention should be given to such features as transparency, consistency, appropriateness and preference to native language.²⁹² Namely, both terms are transparent, as the general concept it designates may be inferred without considerable difficulties, since they are in practical, constant and even normative use. They are also consistent and appropriate, as well as bear an established meaning within Latvian legal community. In addition, they exemplify preference to Latvian language, which ties legal translation to more culture-specific components than

²⁹¹ S. Pavel, “Neology and Phraseology as Terminology-in-the-Making”, in: H.B. Sonneveld, K.L. Loening (eds.) *Terminology: Applications in Interdisciplinary Communication*, Amsterdam/Philadelphia, John Benjamin Publishing, 1993, at p.23.

²⁹² *Supra* 88, at p.25-26 (7.3.2.) transparency: ‘(...) concept it designates can be inferred, at least partially, without a definition. In other words, its meaning is visible in its morphology (...)’. Consistency (7.3.3.): ‘The terminology (...) should not be an arbitrary and random collection of terms, but rather a coherent terminological system corresponding to the concept system (...)’. Appropriateness (7.3.4.): ‘(...) terms should adhere to familiar, established patterns of meaning within a language community’. Preference for native language (7.3.8.): ‘(...) native language expressions should be given preference over direct loans’.

universal ones.²⁹³ Although linguistic economy is hardly achievable in this case, it may not outweigh the certainty established by using the mentioned phrasal unit. Moreover, notwithstanding the fact that the functional equivalent substitutes one term for another with different degree of conceptual and culture-bound specificity, analyzed national terms are fully correspondent to national legislative terminological patterns, but also is understandable and suitable for the target user, even in non-legal environment.

4.2.2 “Arbitrabilitāte” as a neologism

In order to address the question of an alternative for existing functional and legal equivalent, the neologism “arbitrabilitāte” should be analyzed. As professor Baltiņš precisely indicates, terms together with concepts develop differently in individual language and language communities, depending on, among others, professional, scientific and linguistic factors.²⁹⁴

For the first time the term ‘arbitrabilitāte’ was introduced in Latvian legal discourse in doctrinal opinion of distinguished Latvian expert in arbitration law dr. Kačevska.²⁹⁵ In order to assess the terminological necessity of such neologism, the term “arbitrabilitāte” should be observed with respect to its linguistic nature, pragmatic considerations of its use in Latvian legal discourse, as well as with regards to its correspondence to ISO standards of term formation.

The linguistic nature of neologism “arbitrabilitāte” may be explained by various methods. In regard to ISO standard 704:2000 “arbitrabilitāte” should be classified as a neo term, which is a type of neologism, and which designates a concept established in the source language.²⁹⁶ By its linguistic construction “arbitrabilitāte” conforms to literal²⁹⁷ or formal²⁹⁸ equivalent which basically means “word-by-word translation”. Using classification of neologisms provided by linguistic researches Valeontis and Mantzari, “arbitrabilitāte” may be characterized as a pattern of interlingual borrowing, where the new term is formed by means of loan translation.²⁹⁹ Yet, the most precise and accurate explanation of the term’s linguistic nature is a loaned term acquired through the process of naturalization. Naturalization means that such borrowing, while being incorporated from the source language, has been modified with orthographic and phonological adaptation to native words in the target language.³⁰⁰

²⁹³ L. Biel, “Legal Terminology in Translation Practice: Dictionaries, Googling or Discussion Forums?” (2008) 3 *SKASE Journal or Translation and Interpretation* 1, at p.22. Available at: http://www.skase.sk/Volumes/JTI03/pdf_doc/BielLucja.pdf. Last visited on 29 May 2012.

²⁹⁴ Baltiņš M., Presentation Slides of the Lecture Course “Theory and Practice of Terminology”, December 2011-February 2012, Rīga, RGSL. Available at RGSL.

²⁹⁵ I. Kačevska, *Starptautiskās komerciālās arbitrāžas tiesības. Promocijas darbs*, Rīga, 2010. Available on LU database. Last visited on 20 April 2012.

²⁹⁶ *Supra* 88, at p.24 (7.2.1.).

²⁹⁷ Such definition of naturalization is provided by S. Šarčević, see *Supra* 260, at p.259.

²⁹⁸ M. Harvey, “A Beginner’s Course in Legal Translation: the Case of Culture-Bound Terms. Legal Translation and Functionalists Approaches: A Contradiction in Terms?”, in *Legal translation: history, theory/ies and practice. International colloquium*, University of Geneva, February 17-19, 2000, Berne: ASTTI, 2000, at p. 4. Available at: <http://www.gitrad.uji.es/sites/default/files/Harvey2000.pdf>. Last visited on 20 May 2012.

²⁹⁹ K. Valeontis, E. Mantzari, “The linguistic dimension of terminology: Principles and methods of term formation”, in *Translation: Between Art and Social Science, 1st Athens International Conference on Translation and Interpretation*, Athens, 13 -14 October 2006, at p.8. Available at: http://www.eleto.gr/download/BooksAndArticles/HAU-Conference2006-ValeontisMantzari_EN.pdf. Last visited on 29 May 2012.

³⁰⁰ See, e.g., *Supra* 260, at p.258; *Supra* 298, at p.4.

Turning to its morphological structure, the naturalized term “arbitrabilitāte” is formed by root -arbitrab- and suffix -itāte, which is generally attributed to foreign words.³⁰¹ As it is seen, suffix -ability used in English remains the same in Latvian. Thus, taking into account the English term formation, similarities may be traced which allow to presume that English terms seems to be easily transferrable into the target language, reserving even the same linguistic structure.

In view of *technical* simplicity, which accompanies the formation of the term in the Latvian language, the main question arises whether the proposed naturalization is endowed with the same *communicative* simplicity. In the present case communicative simplicity is understood as a measurement of the term’s affiliation to the target language communicative environment. To put it in words of linguist Datta, whether this artificially construed term correspond to Latvian “social reality³⁰²”.

Besides, to be more precise, it is crucial to speak about the legal term’s appropriateness in the status of a “communicative tool”, especially in the legal environment of the target language. To this point, and generally agreeing with the opinion of legal expert de Groot, mere formal existence of the term in the target language does not become a matter of concern, whereas its existence as a part of the legal terminology of the target legal system is pivotal.³⁰³

Hence, appropriateness of such communicative tool as “arbitrabilitāte” may be measured by its recognition and acceptance in the Latvian legal reality. This, however, is preconditioned by competence of users. As Sager points out, the term may be used only if a target user already possesses the configuration of knowledge.³⁰⁴ Moreover, such knowledge should not be fragmentary; in order to be properly used, it should comprise general understanding of the role, exact place in the conceptual system and situational context of the term.

Therefore, as a strategy for introducing a neo term into the legal terminology of the target language Sager suggests that such term must be learned simultaneously with new knowledge.³⁰⁵ Then, Sager admits that, from the one hand, strict codification of the new term may encourage users to use it; from the other hand, community of specialists (lawyers, arbitrators) may attempt to introduce, or even impose the uniformity of usage.³⁰⁶ Such imposition of usage indeed could be promoted by publicly available information sources which will assist in the process of standardization of the term in particular legal environment. It will fix the term with a designated concept and make the term natural and practical, but not synthetic and useless.

In this connection, it is highly beneficial that this term is formed by the legal expert and is raised as a terminological question together with the comprehensive legal observations. Such collaboration of law and linguistics tend to bring dynamic changes into development and enhancement of quality of the respective Latvian legislative acts. Motivational process for establishing a new term is relatively understandable, i.e. professionals of the field suppose it necessary to name specific object of interest. Thus, theoretically, following Sager’s strategy,

³⁰¹ *Supra* 10, at p.84.

³⁰² J.C. Datta, “Transferring Social Concepts Across Linguistic and Cultural Boundaries”, in R.A.Strehlow, S.E.Wright (eds.), *Standardizing Terminology fo Better Communication*, Philadelphia, ASTM, 1993, at p.299.

³⁰³ G.R.De Groot, “Guidelines for Choosing Neologisms”, (1996) 4 *Translation and Meaning*, at p.378. Available at: <http://arno.unimaas.nl/show.cgi?fid=2183>. Last visited on 28 May 2012.

³⁰⁴ *Supra* 9, at p.20.

³⁰⁵ *Ibid.*

³⁰⁶ *Ibid.*

first attempt towards introduction of the term “arbitrabilitāte” into Latvian official arbitration discourse has been made. However, practically, in order to survive and being efficiently circulated within the field of knowledge in target language, specialists in discipline should actively operate with the term in scholarly works. Although distinguished scholars Alcaraz and Hughes submit that legal practitioners are mostly reluctant to accept adaptations of terms and regard them as alien technicisms,³⁰⁷ a degree of such reluctance may not be measured presently, and the term’s practical usage is potentially a matter of further research.

Another problem, which arises after the communicative boundaries have been removed, may be named as the concept’s domestication. De Groot refers to this problem emphasizing that naturalization in fact becomes a part of the target legal system.³⁰⁸ Following that, when the new term is introduced, it conveys precise meaning by finding and affiliating certain conceptual characteristics which are individually referred to the Latvian arbitration discourse. At that stage, bearing in mind dynamic and divergent nature of *arbitrability* concept, introduced naturalization will become ambiguous for those users who will try to link the conceptual characteristics of *arbitrabilitāte* to, for example, *arbitrability*, as it is perceived in the United States. In fact, it will be erroneous to use the term ‘arbitrabilitāte’ in the status of functional and legal equivalent for *arbitrability*, especially, if dealing in translation with common law as a target legal system. To this extent, the only possible way for this term to be introduced in the Latvian legal discourse avoiding uncertainty and confusion is to adopt it in a legislative act and provide an exact definition thereof. On this point, however, arbitration law specialists and legislative drafters should achieve compromise and follow dr. Kačevska’s proposed terminological path.

Then, apart from uncertainty of practical use of the term “arbitrabilitāte”, some other difficulties must be mentioned.

As referred to by professor Baltiņš³⁰⁹, and according to ISO standard, firstly, due regard must be have on transparency of the term “arbitrabilitāte”. Generally, by introducing such term it is believed that the level of knowledge and familiarity with the subject will allow a user to understand the meaning and to practically use the term. A competent user indeed will generally understand the meaning, especially given that the English term “arbitrability” is widely used in academic works of international arbitration law experts. However, a non-competent user may not obtain even slightly general understanding of the term, as it lexical structure is derived from “arbitrāža”, which, although used in everyday language, has not gained such acceptability as Latvian term ‘šķīrējtiesa’³¹⁰. Thus, the meaning of the term as such is not visible enough to be understood in the target language before background check is accomplished pertaining to the intension of the respective concept.

³⁰⁷ *Supra* 30, at p.156.

³⁰⁸ *Supra* 303, at p.380.

³⁰⁹ M.Baltiņš, “Terminoloģijas procesa esošais un vēlamais”, in *Latviešu valoda – pastāvīgā un mainīgā. Valsts valodas komisijas raksti*, 3.sēj., Rīga, VVK, 2007, at p.33-34.

³¹⁰ For example, Latvian Academy of Sciences, Commission of Terminology, Subcommittee for Legal Terminology defines ‘šķīrējtiesa’ and ‘arbitrāža’ as synonyms. Available at: <http://termini.lza.lv/term.php?term=arbitr%C4%81%C5%BEa&list=arbitr%C4%81%C5%BEa&lang=LV>. Last visited on 20 May 2012. According to the Explanatory Terms of Foreign States Law and History of Law provided by Explanatory Dictionary, “arbitrāža” means “a state arbitration in former USSR, which settled disputes arising from economic or industrial relationship”, see, P. Valters, *Ārvalstu valsts un tiesību vēsture. Terminu skaidrojotā vārdnīca*, Rīga, Divergens, 1998, at p.9.

Secondly, consistency requires that new terms must be integrated into the existing conceptual system.³¹¹ Therefore, the new term should be correctly and accurately incorporated into the concept system of such existing and functional terms as “*jurisdikcija*”, “*pakļautība*”, “*piekritība*”, “*kompetence*”, “*pilnvaras*”, and so forth. As a result of such incorporation, a problem of polysemy should be pro-actively considered and avoided. Therefore a precise conceptual mapping should be firstly drawn, including the assessment of all potentially problematic terms.

Thirdly, as regards appropriateness³¹², the term “*arbitrabilitāte*” presently may not be considered as representing an established and familiar pattern of meaning in the target language community, as other functional and legal equivalents may be used to convey the message.

Next, as naturalization, “*arbitrabilitāte*” as such may not fulfil the requirement of preferential attitude towards native language³¹³, as well as pose difficulties with respect to conventional morphological and phonological norms³¹⁴ of the Latvian language.

In contrast, as regards such term formation requirement as linguistic economy³¹⁵, “*arbitrabilitāte*” is very concise and allows substituting a phrasal unit with one specific word. It should be also added that the Latvian term “*arbitrabilitāte*”, together with its English counterpart, has the major advantage of emphasizing and focusing precisely the matter of concern, avoiding excessive generality.

As well, as professor Baltiņš suggests, within the process of term formation, new term should be proposed at the right time.³¹⁶ From that point, the neo term has been proposed along with evolving interest in international arbitration law and its development in Latvian. Therefore, this term has realistic prospects for further development and introduction into Latvian legal discourse.

To sum up, it should be concluded that currently, the use of the neo term “*arbitrabilitāte*”, which is proposed by particular scholarly opinion, may not be fully justified due to be linguistic and terminological peculiarities. However, as communication in the specialized legal discourse develops, and legal terminology is influenced by globalization processes, this term’s acceptability and recognition in future cannot be fully denied.

³¹¹ *Supra* 88, at p.26 (7.3.3), *Supra* 309, at p.33-34.

³¹² *Ibid.*, (7.3.4).

³¹³ *Supra* 88, at p.27 (7.3.8), *Supra* 309, at p.33-34.

³¹⁴ *Ibid.*, at p.27 (7.3.7).

³¹⁵ *Ibid.*, at p.26 (7.3.5).

³¹⁶ *Supra* 294.

CONCLUSION

Referring to the main question, which was formulated in the beginning of the research, it should be stated that the meaning of the term “arbitrability” proved to be multi-faceted and context-dependable, as it is always preconditioned by established diverse communicative practice. Moreover, this term requires particular attention of both interpreters and translators, as well as presupposes thorough and competent comparative approach. In order to justify these presumptions, a number of specific analytical steps were taken.

In order to build the aforementioned conclusion, metaphorically speaking, the research started from “fencing a field, clearing the surface, removing all possible obstacles and leaving a few construction blocks to use”. In particular, within general dimension of legal terminology, three crucial aspects were highlighted, which determine functionality and operability of legal terminology: importance of national and cultural constraints imposed on legal terms, inherent nature of interrelations of terms within and between different fields of law, as well need of high-degree awareness of terminology by both competent and non-competent users. Specific insights into peculiarities of arbitration terminology served for better understanding that modern globalization processes are particularly dynamic and active in the analyzed field of knowledge, as well as legal and social reality of term “arbitrability” is two-faceted: it acquires mono and multidisciplinary character. In addition, terms’ typology allowed for better understanding of linguistic peculiarities existing in the field. Finally, “construction tools” were selected, pointing out conceptual approach and three principles to be useful in observing interrelations between the terms and designated concepts.

Next, “starting construction works in the field, digging the foundation is pivotal”. Thus, conceptual analysis of the term “arbitrability” was conducted. It revealed that “arbitrability” in the English language is a highly particularized term which carries divergent meaning. In fact, intensional and extensional characteristics *arbitrability* concept depends on their place within the conceptual structure, which is guided by general and geographic criteria. In particular, with respect to European and the United States approaches, *arbitrability* concept manifests itself as highly contextually-dependent. Such peculiarities of *arbitrability* concept are disclosed by analysis of conceptual relations with related legal and general concepts (*ability, capability, arbitration, arbitrable*), national and international legal acts, case-law and scholarly opinions. Besides, a closer look was brought to *jurisdiction* and *capacity* concepts which, as it was discovered, bear considerable semantic differences.

Then, “when the foundation is ready, laying of blocks may begin”. Linguistic analysis of the term allowed for better understanding of origins of the term, as well as phonological, orthographical, morphological specifics. The term appears to be abstract and vague, as well as endowed with linguistic uncertainty. Besides, although the term is subject to further interpretation, at the outset, it is only *superficially* comprehensible. Therefore, it is always a challenging task not only for an interpreter, but also for a translator to explore what the designation of *arbitrability* concept encompasses. Moreover, different research tools such as monolingual and bilingual dictionaries, thesaurus, as well as online tools were used for identifying and exploring how and what does the term offers for a user. As analysis showed, mostly *arbitrability* concept is designated by means of other lexical instruments, and nominalization of the term is generally avoided, presumably, due to the term’s abstractness. The use of the term “arbitrability” was also reflected in examples of international legal acts. Likewise, it was established that the term “arbitrability” is avoided, as it would presumably

imply preference of one of the conceptual realm. Thus, international documents of political compromise should be characterized by “linguistic compromise”.

Last but not least, “when blocks are laid, colour for walls should be chosen”. At this point of analysis, referring to the second question of the research, it was discovered that theoretically there are two ways of conveying the *arbitrability* meaning into Latvian environment: by means of existing equivalents and by using a neologism “arbitrabilitāte”. It was stated that legal terms that exist in Latvian legal discourse presently are appropriate for serving the needs encompassed by *arbitrability* concept, whereas a neo term, due to various reasons, is impractical. To validate this presumption, again, a chain of arguments was provided.

With the aim to search for equivalent, a combination of functional and legal equivalence searching method was offered. Such approach suggests that thoroughly built conceptual and pragmatic considerations are taken into account, assessing the relevant conceptual structure and conceptual relations of the term, as well as examination of communicative environment of Latvian legal terminology is necessary. As studies reflected, the most appropriate functional and legal equivalent is a combination of terms “pakļautība” and “piekritība”, which are glued in a phrasal unit “strīdi, kas pakļauti un piekritīgi šķīrējtiesai”. Within the analysis, monolingual and bilingual dictionaries, scholarly opinions, as well as normative regulation were studied.

Analysis of the neo term “arbitrabilitāte” demonstrated that notwithstanding technical easiness in linguistic transposition of “arbitrability” into the Latvian language, communicative aspect pose difficulties. In this respect, close interrelation and nearly full unanimity of specialists in the field and legislator is needed in order to achieve the neo term’s circulation and existence. Another problem, which arises even if communicative boundaries are removed, was named as the concept’s domestication. It signifies that if “arbitrabilitāte” is accepted, it will be covered by national comprehension of *arbitrability* concept’s meaning. In turn, it may be potentially ambiguous and misleading, especially in legal communication with specialists originated from common law system. Given that, presently, negative assessment of such characteristics as transparency, consistency, appropriateness and preferential attitude towards native language generally precludes “arbitrabilitāte” to become a real and practical equivalent for *arbitrability*.

Finally, it should be stated that the provided research leaves room for further study of various aspects. Firstly, more expanding study of conceptual system of *arbitrability* concept may be conducted thereby signifying its relationship with other related concepts and eliminating confusion and ambiguity in their use. Secondly, this Thesis offers opportunities to discover in greater detail Latvian conceptual system of terms designated to convey the meaning of the term “arbitrability”. Lastly, a question of terminological value for the neo term “arbitrabilitāte” may be offered for future empirical and theoretical study.

BIBLIOGRAPHY

Books

1. Alain R., Sager J.C., *Essays on Terminology*, Amsterdam/Philadelphia, John Benjamins Publishing, 1995.
2. Alcaraz E., Hughes B., *Legal Translation Explained*, Manchester, St.Jerome Publishing, 2002.
3. Binder P., *International Commercial Arbitration and Conciliation in UNCITRAL Model Law Jurisdictions* (2nd ed.), London, Sweet & Maxwell, 2005.
4. Blackaby N., Partasides C., Redfern A., Hunter M., *Redfern and Hunter on International Arbitration*, New York, Oxford University Press, 2009.
5. Borjars K., Burrige K., *Introducing English Grammar* (2nd ed.), London, Hachette, 2010.
6. Born G., *International Commercial Arbitration: Commentary and Materials* (2nd ed.), The Hague, Kluwer Law International, 2001.
7. Brinton L.J., *The Structure of Modern English: A Linguistic Introduction*, Amsterdam/Philadelphia, John Benjamins B.V., 2000.
8. Brinton L.J., Brinton D., *Linguistic Structure of Modern English*, Amsterdam/Philadelphia, John Benjamin Publishing, 2010.
9. Brunet E.J., Speidel R.E., Sternlicht J.R., Ware S.J., *Arbitration Law in America: Critical Assessment*, New York, Cambridge University Press, 2006.
10. Bukovskis V., *Civilprocesa Mācības Grāmata*, Rīga, V.Bukovskis, 1933.
11. Cabré M.T., *Terminology: Theory, Methods and Applications*, Amsterdam/Philadelphia, John Benjamins Publishing Company, 1998.
12. Cao D., *Translating Law*, Clevedon, Multilingual Matters Ltd, 2007.
13. Fouchard P., Faillard E., Goldman B., *International Commercial Arbitration*, The Hague, Kluwer Law International, 1999.
14. Gaillard E., *Legal Theory of International Arbitration*, Leiden, Martinus Nijhoff, 2010.
15. Galdia M., *Legal Linguistics*, Frankfurt, Peter Lang, 2009.
16. Garner B.A., *A Dictionary of Modern Legal Usage* (2nd ed.), New York, Oxford University Press, 1995.
17. Goh G.M., *Dispute Settlement in International Space Law: A Multi-Door Courthouse for Outer Space*, Leiden, Martinus Nijhoff Publishers, 2007.
18. Kageura K., *The Dynamics of Terminology: a Descriptive Theory of Term Formation and Terminological Growth*, Amstredam/Philadelphia, John Benjamins Publishing, 2002.
19. Konradi F., Walter A., *Civilprocesa nolikums, 1932.gada izdevums. Ar Latvijas Senāta Civilā Kasācijas Departamenta paskaidrojumiem*, Rīga, Jurist, 1933.

20. Lew D.M., Mistelis L.A., Kroll S.M., *Comparative International Commercial Arbitration*, The Hague, Kluwer Law International, 2003.
21. McMahon A., *Introduction to English Phonology*, Edinburgh, Edinburgh University Press, 2002.
22. Matilla H.M.S., *Comparative Legal Linguistics*, Aldershot, Ashgate, 2006.
23. May L., *Genocide: a Normative Account*, New York, Cambridge University Press, 2010.
24. Moses M.L., *The Principles and Practice of International Commercial Arbitration* (2nd ed.), New York, Cambridge University Press, 2012.
25. Pearson J., *Terms in Context*, Amsterdam, John Benjamins Publishing, 1998.
26. Poudret J.-F., Besson S., *Comparative Law of International Arbitration*, London, Sweet & Maxwell, 2007.
27. Rossini C., *English as a Legal Language*, London, Kluwer International Law, 1999.
28. Sager J. C., *Practical Course in Terminology Processing*, Amsterdam/Philadelphia, John Benjamins Publishing, 1990.
29. Schmid H.-J., *English Abstract Nouns as Conceptual Shells: From Corpus to Cognition*, Berlin/New York, Mouton de Gruyter, 2000.
30. Schwarz F.T., Konrad C.W., *The Vienna Rules: A Commentary on International Arbitration in Austria*, the Netherlands, Kluwer Law International, 2009.
31. Shelkopyas N., *The Application of the EC Law in Arbitration Proceedings*, Groningen, Europa Law Publishing, 2003.
32. Skujiņa V., *Latviešu terminoloģijas izstrādes pamatprincipi*, Rīga, LVI, 2002.
33. Sutton D. St. J., Gill K., *Russel on Arbitration* (22nd ed.), London, Sweet & Maxwell, 2003.
34. Šarčević S., *New Approach to Legal Translation*, The Hague/London/Boston, Kluwer Law International, 2000.
35. Temmerman R., *Towards New Ways of Terminology Description: the Sociocognitive Approach*, Amsterdam/Philadelphia, John Benjamins Publishing Company, 2000, at p. 221.
36. Tweeddale A., Tweeddale K., *Arbitration on Commercial Disputes. International and English law and Practice*, New York, Oxford University Press, 2005.
37. Weintraub R.J., *International Litigation and Arbitration. Practice and Planning* (3rd ed.), Durham, Carolina Academic Press, 2001.

Edited collections and chapters in edited collections

1. Antoine T.J.St., “The Law of Arbitration”, in Stern J.L., Najita J.M. (eds.), *Labour Arbitration Under Fire*, New York, Cornell University Press, 1997.
2. Baker M., Saldanha G. (eds.), *Routledge Encyclopedia of Translation Studies* (2nd ed.), Abington, Routledge, 2009.

3. Bhatia V.K., Candlin C.N., Engberg J., “Concepts, Contexts and Procedures in Arbitration Discourse”, in Bhatia V.K., Candlin C.N., Engberg J. (eds.), *Legal Discourse Across Cultures and Systems*, Hong Kong, Hong Kong University Press, 2007.
4. Chroma M., “Translating Terminology in Arbitration Discourse”, in Bhatia V.K., Candlin C.N., Engberg J. (eds.), *Legal Discourse Across Cultures and Systems*, Hong Kong, Hong Kong University Press, 2007.
5. Datta J.C., “Transferring Social Concepts Across Linguistic and Cultural Boundaries”, in Strehlow R.A., Wright S.E. (eds.), *Standardizing Terminology fo Better Communication*, Philadelphia, ASTM, 1993.
6. Engberg J., Heller D., “Vagueness and Indeterminacy in Law” in Bhatia V.K., Candlin C.N., Engberg J. (eds.), *Legal Discourse Across Cultures and Systems*, Hong Kong, Hong Kong University Press, 2007.
7. Jarvin S., “Leading Arbitration Seats – A (mostly European) Comparative View”, in Frommel S.N., Rider B.A.K. (eds.), *Conflicting Legal Cultures in Commercial Arbitration. Old Issues and New Trends*, The Hague, Kluwer Law International, 1999.
8. Justin J. J., “Arbitrability and the arbitrator’s jurisdiction”, in T. McKelvey, *Management Rights and Arbitration Process: proceedings of the ninth annual meeting*, Ohio, USA, BNA Inc, January 26-28, 1956. Available at: <http://www.naarb.org/proceedings/pdfs/1956-1.pdf>. Last visited on April 16, 2012.
9. Mistelis L.A., “Arbitrability – International and Comparative Perspectives”, in Mistelis L.A., Brekoulakis S.L., *Arbitrability: International and Comparative Perspective*, The Hague, Kluwer Law International, 2009.
10. Paulsson J., “Jurisdiction and Admissibility”, in *Global Reflections on International Law, Commerce and Dispute Resolution. Liber Amicorum in honour of Robert Briner*, ICC Publishing, 693, 2005. Available at: http://www.arbitration-icca.org/media/0/12254599444060/jasp_article_-_jurisdiction_and_admissibility_-_liber_amicorum_robert_briner.pdf. Last visited on 28 May 2012.
11. Pavel S., “Neology and Phraseology as Terminology-in-the-Making”, in H.B. Sonneveld, K.L. Loening (eds.) *Terminology: Applications in Interdisciplinary Communication*, Amsterdam/Philadelphia, John Benjamin Publishing, 1993.
12. Sandrini P., “Comparative Analysis of Legal Terms: Equivalence Revisited”, in C. Galinski, K.-D. Schmitz (eds.), *Terminology and Knowledge Engineering 96*, Frankfurt, Indeks, 1996. Available at: <http://homepage.uibk.ac.at/~c61302/publik/tke96.pdf>. Last visited 30 May 2012.
13. Simmonaes I., “Vague Legal Concepts: A Contrdictio in Adjecto?”, in Antia B.E. (ed.), *Indeterminacy of terminology and LSP: Studies in Honor of Heribert Picht*, Amsterdam/Philadelphia, John Benjamins Publishing, 2007.
14. Šarčević S., “Challenges to the Legal Translator”, in Tiersma P., Solan L. (eds.), *The Oxford Handbook of Language and Law*, New York, Oxford University Press, 2012.

15. Torgāns K., Dudelis M. (zin. red), *Civilprocesa likuma komentāri*, Rīga, Tiesu Namu Aģentūra, 2001.
16. Youssef K., „The Death of Inarbitrability”, in L.A. Mistelis, S.L. Brekoulakis, *Arbitrability: International and Comparative Perspective*, The Hague, Kluwer Law International, 2009.

Articles

1. M.Baltiņš, “Terminoloģijas procesa esošais un vēlamais”, in *Latviešu valoda – pastāvīgā un mainīgā. Valsts valodas komisijas raksti*, 3.sēj., Rīga, VVK, 2007.
2. Bantekas I., “The foundations of arbitrability in international commercial arbitration”, (2008) 27 *Aust. YBIL (Australian Yearbook of International Law)* 1. Available on HeinOnline Database. Last visited on 29 May 2012.
3. Baron P.M., Liniger S., “A Second Look at Arbitrability: Approaches to Arbitration in the United States, Switzerland and Germany”, (2003) 19 *Arb. Int. (Arbitration International)* 1. Available on HeinOnline Database. Last visited on 30 May 2012.
4. Bermann G.A., “The “Gateway” Problem in International Commercial Arbitration”, (2012) 37 *Yale J.Int'l L. (Yale Journal of International Law)* 1. Available on HeinOnline Database. Last visited on 25 May 2012.
5. Bhatia V.K., Candlin C.N., “Analysing Arbitration Laws Across Legal System” (2004), 32 *Hermes Journal of Linguistics*. Available at: http://download2.hermes.asb.dk/archive/download/H32_02.pdf. Last visited on 27 May 2012.
6. Biel L., “Legal Terminology in Translation Practice: Dictionaries, Googling or Discussion Forums?” (2008) 3 *SKASE Journal or Translation and Interpretation* 1. Available at: http://www.skase.sk/Volumes/JTI03/pdf_doc/BielLucja.pdf. Last visited on 29 May 2012.
7. Böckstiegel K.-H., “Public Policy as a Limit to Arbitration and its Enforcement”, (2008) *IBA Journal of Dispute resolution*, “The New York Convention – 50 Years”. Available at: http://www.arbitration-icca.org/media/0/12277202358270/bckstiegel_public_policy...iba_unconference_2008.pdf. Last visited on 29 May 2012.
8. Cabré M.T., “Elements for the Theory of Terminology: Towards an Alternative Paradigm”, (2000) 6 *Terminology. International Journal of Theoretical and Applied issues in Specialized Communication*, 1. Available at: <http://www.upf.edu/pdi/df/teresa.Cabré/docums/ca00el.pdf>. Last viewed on 26 May 2012.
9. Cabré M.T., “Theories of Terminology”, (2003) 9 *Terminology* 2. Available at: <http://www.hf.uib.no/forskingskole/cabre.pdf>. Last visited on 26 May 2012.
10. Carbonneau T.E., Janson F., “Cartesian Logic and Frontier Politics: French and American Concepts of Arbitrability”, (1994) 2 *Tul. J. Int'l & Comp. L. (Tulaine Journal of International and Comparative Law)* 193. Available on Heinline Database. Last visited on 29 May 2012.

11. De Groot G.R., "Guidelines for Choosing Neologisms", (1996) 4 *Translation and Meaning*. Available at: <http://arno.unimaas.nl/show.cgi?fid=2183>. Last visited on 28 May 2012.
12. Gotti M., "The Litigational 'Colonisation' of ADR Discourse", (2012) 2 *IJLLD (International Journal of Law, Language & Discourse)* 1. Available at: <http://www.ijlld.com/2012-index>. Last visited on 30 May 2012.
13. Hanotiau B., "International Arbitration in Global Economy: The challenges of the future", (2011) 28 *J.Int'l Arb (Journal of International Arbitration)* 2.
14. Jones D., "Insolvency and Arbitration: an Arbitral Tribunal's Perspective" (2012), 78 *Arb. (Arbitration)* 2. Available on Westlaw International Database. Last visited on 13 May 2012.
15. Kirry A., "Arbitrability: Current Trends in Europe", (1996) 12 *Arb. Intl. (Arbitration International)* 4. Available on Heinline Database. Last visited on 29 May 2012.
16. Kreidler R.H., "Litigation or Arbitration: ADR Issues in Transnational Disputes", (1997), 52 *DRJ (Dispute Resolution Journal)* 79. Available on Westlaw International Database. Last visited on 25 April 2012.
17. Kyuz A.S., "The Jurisdiction of ICSID: The Application of the Article 25 of Convention on the Settlement of Investment Disputes Between States and Nationals of Other States", (2003) 33 *University of Ankara-Faculty of Law Review*. Available on HeinOnline Database. Last visited on 27 April 2012.
18. Lamm C.B., "The International Centre for Settlement of Investment Disputes: Responses to Problems and Changing Requirements", (1998) 64 *Arb. (Arbitration)* 1. Available on Westlaw International Database. Last visited on 27 April 2012.
19. McDonald N., "More Harm than Good? Human Rights Considerations in International Commercial Arbitration", (2003) 20 *J.Int'l Arb. (Journal of International Arbitration)* 6.
20. Mistelis L., "*Galvenais risks – tieksme pārāk stingri regulēt šķīrējtiesu*", (2008) 47 *Jurista Vārds* 552. Available at: <http://www.juristavards.lv/index.php?menu=DOC&id=185087>. Last visited on 26 May 2012.
21. Paolucci S., "The Problem of Equivalence in Translating Legal Texts", (2011) 56 *Lebende Sprachen* 1. Available at: <http://www.deepdyve.com/lp/de-gruyter/the-problem-of-equivalence-in-translating-legal-texts-iaxbQhL8og>. Last visited on 28 May 2012.
22. Park W.W., "Arbitral Jurisdiction in the United States: Who Decides What?", (2008) 1 *Int. A.L.R. (International Arbitration Law Review)*. Available on HeinOnline Database. Last visited on 19 May 2012.
23. Plag I., Dalton-Puffer Ch., Baayen H., "Morphological Productivity Across Speech and Writing", (1999), 3 *English Language and Linguistic* 2. Available at: <http://www2.uni-siegen.de/~engspra/Papers/Morphology/ell.pdf>. Last visited on 30 May 2012.

24. Reddy V., Nagaraj V., “Arbitrability: The Indian Perspective”, (2002) 19 *J.Int'l Arb. (Journal of International Arbitration)* 2.
25. Rogers A., “Arbitrability”, (1992) 1 *A.P.L.R. (Asia Pacific Law Review)* 2. Available on HeinOnline Database. Last visited on 29 May 2012.
26. Sandrini P., “Legal Terminology. Some aspects for New Methodology”, (1999) *Journal of Linguistics* 22. Available at: http://download2.hermes.asb.dk/archive/download/H22_06.pdf. Last visited on 26 May 2012.
27. Tiersma P., “Textualization of Precedent”, (2007) 82 *Notre Dame L.Rev (Notre Dame Law Review)*, 3. Available on Westlaw International. Last visited 30 April 2012.
28. Seifi J., “The New International Commercial Arbitration Law in Iran. Towards Harmony with UNCITRAL Model Law”, (1998) 15 *Journal of International Arbitration* 2. Available on HeinOnline Database. Last visited on 29 April 2012.
29. Shore L., “Defining “Arbitrability. The United States v. the Rest of the World”, (2009) *New York Law Journal*. Available at: <http://www.gibsondunn.com/publications/Documents/Shore-DefiningArbitrability.pdf>. Last visited on 29 May 2012.
30. Sornarajah M., “The UNCITRAL Model Law: A Third World Viewpoint”, (1989) 6 *J.Int'l Arb. (Journal of International Arbitration)* 7. Available on HeinOnline Database. Last visited on 25 April 2012.
31. Valer-Garcez C., “Terminology and Ad hoc Interpreters in Public Services. An Empirical Study”, (2005) 3 *The Journal of Specialized Translation*. Available at: http://www.jostrans.org/issue03/art_valero_garces.php. Last visited on 29 May 2012.

Legislative acts and official papers

1. Civilprocesa likums, pieņemts 14.10.1998 (ar pēdējiem grozījumiem 20.04.2012.), “Latvijas Vēstnesis”, 326/330 (1387/1391), 03.11.1998. Civil Law of 1998 (20 April 2012). Available at: <http://www.likumi.lv/doc.php?id=50500>. Last visited on 30 May 2012.
2. Valsts pārvaldes iekārtas likums, pieņemts 06.06.2002 (ar pēdējiem grozījumiem 13.05.2010.) “Latvijas Vēstnesis”, 94 (2669), 21.06.2002. State Administration Structure Law of 2002 (13 May 2010). Available at: <http://www.likumi.lv/doc.php?id=63545>. Last visited on 30 May 2012.
3. 1985 UNCITRAL Model Law on International Commercial Arbitration (2006), Available at: http://www.uncitral.org/pdf/english/texts/arbitration/ml-arb/07-86998_Ebook.pdf. Last visited on 26 May 2012.
4. 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention). Available at: http://www.uncitral.org/uncitral/uncitral_texts/arbitration/NYConvention.html. Last visited on 28 May 2012.

5. Code Civil of 1804 (20 February 2004). Available at : http://www.legifrance.gouv.fr/affichCode.do;jsessionid=1A406A060EAB87349C77BDBBD784F36B.tpdjo14v_1?cidTexte=LEGITEXT000006070721&dateTexte=20120531. Last visited on 29 May 2012.
6. Arbitration Act, Book IV of the Code of Civil Procedure of the Netherlands of 1986 (June 30, 2004). Available at: <http://www.jus.uio.no/lm/netherlands.arbitration.act.1986/portrait.pdf>. Last visited on 30 May 2012.
7. Switzerland's Federal Code on Private International Law of 1987 (January 1, 2007). Available at: <http://www.umbricht.ch/pdf/SwissPIL.pdf>. Last visited on May 19, 2012.
8. German Arbitration Act of 1998, Book Tenth of the Code of Civil Procedure (January 1, 1997). Available at: http://www.arbitrations.ru/userfiles/file/Law/Arbitration%20acts/German%20arbitration%20law_eng.pdf. Last visited on May 19, 2012.
9. Federal Arbitration Act, Chapter 9 of the United States Code, (July 30, 1947). Available on Westlaw International Database. Last visited on 31 May 2012.
10. 1961 European Convention on International Commercial Arbitration (Geneva Convention). Available at: <http://www.jus.uio.no/lm/europe.international.commercial.arbitration.convention.geneva.1961/>. Last visited on 23 May 2012.
11. 1975 Inter-American Convention on International Commercial Arbitration (Panama Convention). Available at: <http://www.jurisint.org/doc/html/ins/en/2000/2000jiinsen72.html>. Last visited on 28 May 2012.
12. 1965 Convention on the Settlement of Investment Disputes Between States and Nationals of Other States. Available at: <http://www.jus.uio.no/lm/icsid.settlement.of.disputes.between.states.and.nationals.of.other.states.convention.washington.1965/>. Last visited on 24 April 2012.

Case-law

1. Continental Airlines Inc. v Zimmerman, SUPREME COURT OF THE UNITED STATES 464 U.S.1038, 104 S.Ct. 699, 79 L.Ed.2d 165, January 9, 1984. Available on Westlaw International Database. Last visited on 26 April 2012.
2. Shearson/American Express Inc. V. McMahon, No. 86-44. SUPREME COURT OF THE UNITED STATES, 482 U.S. 220, 107 S.Ct. 2332, 96 L.Ed.2d 185, 55 USLW 4757, Fed. Sec. L. Rep. P 93,265, RICO Bus.Disp.Guide 6642, June 8, 1987. Available on Westlaw International Database. Last visited on 19 May 2012.
3. Mitsubishi v. Soler Chrysler-Plymouth, Nos. 83-1569, 83-1733. SUPREME COURT OF THE UNITED STATES, 473 U.S. 614, 105 S.Ct. 3346, 87 L.Ed.2d 444, 53 USLW 5069, 1985-2 Trade Cases P 66,669, July 2, 1985. Available on Westlaw International Database. Last visited on 29 May 2012.

4. Scherk v. Alberto-Culver Co., No. 73-781. SUPREME COURT OF THE UNITED STATES, 417 U.S. 506, 94 S.Ct. 2449, 41 L.Ed.2d 270, Fed. Sec. L. Rep. P 94,593, June 17, 1974. Available on Westlaw International Database. Last visited on 29 May 2012.
5. Moses H. Cone Memorial Hospital v. Mercury Construction Corp., No.81-1203. SUPREME COURT OF THE UNITED STATES, 460 U.S. 1, 103 S.Ct. 927 U.S.N.C., 1983, February 23, 1983. Available on Westlaw International Database. Last visited on 26 April 2012.
6. Wilko v. Swan et al, No. 39. SUPREME COURT OF THE UNITED STATES, 346 U.S. 427, 74 S.Ct. 182 U.S. 1953, December 7, 1953. Available on Westlaw International Database. Last visited on 26 April 2012.
7. Gilmer v. Interstate/Johnson Lane Corp., No. 90-18, SUPREME COURT OF THE UNITED STATES, 500 U.S. 20, 111 S.Ct. 1647, 55 Fair Empl.Prac.Cas. (BNA) 1116, 56 Empl. Prac. Dec. P 40,704, 114 L.Ed.2d 26, 59 USLW 4407, May 13, 1991. Available on Westlaw International Database. Last visited on 26 April 2012.
8. China Minmetals Materials Imp. & Exp. Co. v. Chi Mei Corp., NO. 02-2897, 02-3542. COURT OF APPEALS OF THE UNITED STATES, 334 F.3d 274 C.A.3 (N.J.), June 26, 2003. Available on Westlaw International Database. Last visited 29 May 2012.
9. Doctor's Associates, Inc. v. Distajo, NO. CIV. 3:94CV349 (PCD). COURT OF APPEALS OF THE UNITED STATES, 66 F.3d 438, C.A.2 (Conn.), September 12, 1995. Available on Westlaw International Database. Last visited 29 May 2012.
10. Howsam v. Dean Witter Reynolds, Inc., No.99-1320. COURT OF APPEALS OF THE UNITED STATES,537 U.S. 79, December 10, 2002. Available on Westlaw International Database. Last visited on 19 May 2012.
11. Desputeaux v. Éditions Chouette, SUPREME COURT OF CANADA, 2003 SCC 17, 223 D.L.R. (4th) 407, 301 N.R. 220, 23 C.P.R. (4th) 417, [2003] 1 S.C.R. 178, REJB 2003-38952, J.E. 2003-626, March 21, 2003. Available on Westlaw International Database. Last visited on 30 May 2012.
32. Ganz v. SNFCT, COURT OF APPEALS OF PARIS, 29 March 1991, Rev. Arb. 478, commentary by Idot, in Kirry A. "Arbitrability: Current Trends in Europe", (1996) 12 *Arb. Intl. (Arbitration International)* 4. Available on Heinline Database. Last visited on 29 May 2012.
33. Labinal v. Mors, COURT OF APPEALS OF PARIS, 19 May 1993, Rev. Arb. 645, commentary by Ch.Jarrosion, in Kirry A. "Arbitrability: Current Trends in Europe", (1996) 12 *Arb. Intl. (Arbitration International)* 4. Available on Heinline Database. Last visited on 29 May 2012.
17. Fincantieri-Cantieri Navali ItalianL SpA and Oto Melara SpA v. M and Arbitration Tribunal, SWISS SUPREME COURT, 1995, XX, YBCA 766, in Mistelis L.A., "Arbitrability – International and Comparative Perspectives", in Mistelis L.A., Brekoulakis S.L., *Arbitrability: International and Comparative Perspective*, The Hague, Kluwer Law International, 2009.

Dictionaries, Thesaurus, Encyclopedia (incl. online tools)

1. Ancāne I. (red.), *Latviešu-angļu vārdnīca* (2.sēj.), Rīga, Avots, 1999.
2. American Heritage. Dictionary of the English Language. Available at: <http://education.yahoo.com/reference/dictionary/>. Last visited on 23 May 2012.
3. Burton W.C., *Burton's Legal Thesaurus* (3rd ed.), New York, Macmillan, 1998.
4. Cambridge Dictionaries Online. Available at: <http://dictionary.cambridge.org>. Last visited on 28 May 2012.
5. Collins English Dictionary. Available at: <http://www.collinsdictionary.com>. Last visited on 26 May 2012.
6. Crowther J. (ed), *Oxford Advanced Learners' Dictionary* (5th ed.), Oxford, Oxford University Press, 1995.
7. Curzon L.B., *Dictionary of Law* (4th ed.), London, Pitman Publishing, 1996.
8. Curtis T. (ed.), *The London Encyclopaedia, or, Universal Dictionary of Science, Art, Literature, and Practical Mechanics, Comprising a Popular View of the Present State of Knowledge* (Vol. 2), London, T.Tegg, 1829. Available at: <http://www.searchdictionaries.com/?q=arbitrable>. Last visited on 30 May 2012.
9. Duhaime Legal Dictionary. Available at: <http://www.duhaime.org/LegalDictionary.aspx>. Last visited on 29 May 2012.
10. Egbert L.D., Morales-Macedo F. (eds.), *Multilingual law dictionary: English, Français, Español, Deutsch*, The Netherlands, A.W. Sijthoff, Alphen aan den Rijn, 1979. Available at: <http://www.searchdictionaries.com/?q=arbitrable>. Last visited on 30 May 2012.
11. Garner B.A. (ed.), *Black's Law Dictionary* (9th ed.), Minnesota, West, 2009.
12. Garner B.A. (ed.), *A Handbook of Basic Law Terms*, Minnesota, West Group, 1999.
13. Garner B.A., *A Dictionary of Modern Legal Usage* (2nd ed), New York, Oxford University Press, 1995.
14. Garner B.A., *Dictionary of Legal Usage* (3rd. ed.), New York, Oxford University Press, 2011.
15. Gatsby A. (ed.), *Longman Dictionary of Contemporary Language*, Harlow, Longman Group, 1995.
16. Gifis S.H., *Dictionary of Legal Terms*, New York, Barron's Educational Series, 1998.
17. Krauklis V., Krauklis J., Ūķis D., *Likumdošanas aktu terminu vārdnīca*, Rīga, Senders S, 1999.
18. Latin Dictionary. Available at: <http://www.latin-dictionary.org>. Last visited on 30 May 2012.
19. Latvijas Universitātes Skaidrojošā Vārdnīca. Available at: <http://www.tezaurs.lv>. Last visited on 26 May 2012.
20. Legal Dictionary Law.com. Available at: <http://dictionary.law.com>. Last visited on 30 May 2012.

21. Legal Dictionary Online. Available at: <http://legal-dictionary.thefreedictionary.com>. Last visited on 30 May 2012.
22. Letonika Dictionary. Available at: <http://www.letonika.lv>. Last visited on 26 May 2012.
23. Letonika. Enciklopēdijas. Available at: <http://www.letonika.lv>. Last visited on 29 May 2012.
24. Latvijas Zinātņu akadēmijas Terminoloģijas komisijas Akadēmisko Terminu vārdnīca AcadTerm. Available at: <http://termini.lza.lv>. Last visited on 26 May 2012.
25. Macmillan Dictionary. Available at: <http://www.macmillandictionary.com>. Last visited on 29 May 2012.
26. Merriam-Webster Dictionary. Available at: <http://www.merriam-webster.com>. Last visited on 23 May 2012.
27. Online Etymology Dictionary. Available at: <http://www.etymonline.com>. Last visited on 30 May 2012.
28. Online Talking Dictionary of English Pronunciation. Available at: <http://www.howjsay.com>. Last visited on 30 May 2012.
29. Oxford Dictionaries Online. Available at: <http://oxforddictionaries.com>. Last visited on 29 May 2012.
30. Urdang L., *The Oxford Thesaurus* (2nd ed.), Oxford, Clarendon Press, 1997, at p.48.
31. Vēbers J., *Latviešu-Krievu, Krievu-Latviešu Juridisko Terminu Vārdnīca*, Rīga, Rasma, 1994.
32. Valters P., *Ārvalstu valsts un tiesību vēsture. Terminu skaidrojošā vārdnīca*, Rīga, Divergens, 1998.
33. Webster Revised Unbridged Dictionary. Available at: <http://machaut.uchicago.edu/?resource=Webster%27s>. Last visited on 30 May 2012.

Other sources

1. Baltiņš M., Presentation Slides of the Lecture Course “Theory and Practice of Terminology”, December 2011-February 2012, Rīga, RGSL. Available at RGSL.
2. Chandler D. (1994), *Semiotics for Beginners*, Available at: <http://www.aber.ac.uk/media/Documents/S4B/semiotic.html>. Last visited on 18 May 2012.
3. Čuriová H., “Abstract Naming Units in Business English”, in Ferenčík M., Horváth J. (eds.), *Language, Literature and Culture In A Changing Transatlantic World. International Conference Proceeding*, Prešov, Prešovská univerzita, April 22-23, 2009. Available at: http://www.pulib.sk/elpub2/FF/Ferencik2/pdf_doc/17.pdf. Last visited on 12 May 2012.
4. Feldman L.B., Frost R., Pnini T., “Decomposing Words into Their Constituent Morphemes: Evidence From English and Hebrew”, *Haskins Laboratories Status*

- Report on Speech Research*, SR 119-/120, 1994-1995, at p.237. Available at: http://www.haskins.yale.edu/sr/SR119/SR119_14.pdf. Last visited on 30 May 2012.
5. Garzone G., “Legal Translation and Functionalists Approaches: A Contradiction in Terms?” in *Legal translation: history, theory/ies and practice. International colloquium*, University of Geneva, February 17-19, 2000, Berne: ASTTI, 2000. Available at: <http://www.gitrad.uji.es/sites/default/files/Garzone.pdf>. Last viewed: May 20, 2012.
 6. Harvey M., “A Beginner’s Course in Legal Translation: the Case of Culture-Bound Terms. Legal Translation and Functionalists Approaches: A Contradiction in Terms?”, in *Legal translation: history, theory/ies and practice. International colloquium*, University of Geneva, February 17-19, 2000, Berne: ASTTI, 2000. Available at: <http://www.gitrad.uji.es/sites/default/files/Harvey2000.pdf>. Last visited on 20 May 2012.
 7. International Standard ISO standard 704:2000 (E), *Terminology work – Principles and Methods*, Geneva, ISO 2000. Available at: <http://semanticweb.kaist.ac.kr/org/tc37/pdocument/standards/ISO%20704.pdf>. Last visited on 20 May 2012.
 8. Kačevska I., *Starptautiskās komerciālās arbitrāžas tiesības. Promocijas darbs*, Rīga, 2010. Available on LU database. Last visited on 20 April 2012.
 9. Kerremans K., “A Comparative Study of Terminological Variation in Specialized Translation”, in Carmen H., Engberg J. (eds.), *Reconceptualizing LSP*, Online proceedings of the XVII European LSP Symposium 2009. Aarhus, 2010. Available at: <http://www.asb.dk/fileadmin/www.asb.dk/isek/kerremans.pdf>. Last viewed on 29 May 2012.
 10. Park W.W., “The Arbitrator’s Jurisdiction to Determine Jurisdiction”, Montreal, 13 *ICCA Congress Series* 55, 2006. Available at: http://www.arbitration-icca.org/media/0/12409326410520/jurisdiction_to_determine_jurisdiction_w_w_park.pdf. Last visited on 26 April 2012.
 11. Paulsson J., “Arbitration in three dimensions”, *LSE Law, Society and Economy Working Papers*, 2010. Available at: http://www.arbitration-icca.org/media/0/12686652821290/arbitration_in_three_dimensions.pdf. Last visited on 26 April 2012.
 12. Rasnačs L., “Jurisdikcija un tās noteikšana civiltiesiska rakstura lietās. Promocijas darba kopsavilkums juridisko zinātņu doktora zinātniskā grāda iegūšanai”, Latvijas Universitāte. Available at: http://www.lu.lv/fileadmin/user_upload/lu_portal/zinas/kopsavilkums_Lauris_Rasna%C4%8Ds_LV.pdf. Last visited on 27 May 2012.
 13. Report of the United Nations Commission on International Trade Law on the work of its 18th session, Vienna, 3-21 June, 1985, A/40/17. Available at: <http://www.uncitral.org/pdf/english/yearbooks/yb-1985-e/vol16-p3-46-e.pdf>. Last visited on 24 April 2012.
 14. Valeontis K., Mantzari E., “The linguistic dimension of terminology: Principles and methods of term formation”, in *Translation: Between Art and Social Science, 1st*

Athens International Conference on Translation and Interpretation, Athens, 13 -14 October 2006, at p.8. Available at: http://www.eleto.gr/download/BooksAndArticles/HAU-Conference2006-ValeontisMantzari_EN.pdf. Last visited on 29 May 2012.