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The Necessity and Permissibility of Arbitration Agreements: A Hermeneutic Approach

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1. Round 1

1.1. Reviewer 1

Reviewer:

The phrase, "The three modern methods of interpreting legal texts and sources, collectively known as legal hermeneutics—ranging from romantic hermeneutics to historical and reader-oriented approaches—offer new perspectives on interpreting the laws related to this issue." needs a brief theoretical justification. It would be beneficial to summarize the relevance of these approaches to legal analysis before applying them.

The statement, "The implications of this principle are evident in the choice of arbitrator (Article 454), the determination of their jurisdiction, the timeframe for proceedings, and even the method of delivering the arbitrator's decision (Articles 458, 483, and 485)," lacks reference to judicial precedents. Consider incorporating cases that have upheld or challenged this principle.

The sentence, "The simultaneous categorization of a contract as both obligatory and permissible is logically and legally implausible," is a strong claim. However, it contradicts the subsequent argument that the legislator's language implies dual characteristics. Consider refining this argument to acknowledge possible legal nuances.

The claim that "Legal hermeneutics, which examines presuppositions and foundational issues concerning legal texts, raises distinct questions about the nature of these texts," should be linked more clearly to the arbitration issue. The paragraph introduces general questions about legal interpretation but does not demonstrate their direct relevance.

The term "literal approach" is used to describe the judicial interpretations of arbitration agreements, but later in the same section, "textual interpretation" is used. Consider standardizing terminology to avoid confusion.

Authors revised the manuscript and uploaded the document.

1.2. Reviewer 2

Reviewer:

The introduction does not clearly articulate the research gap. While it states that "Interpretations provided by legal scholars also fail to clearly determine whether arbitration agreements are necessary or permissible," it would be helpful to cite specific scholars who have attempted to address this issue and highlight where their analyses fall short.

The section states, "One of the most important features of arbitration is breaking the monopoly of the judiciary in resolving disputes and adjudicating claims." However, there is no comparative analysis with jurisdictions where arbitration is either more or less independent. A comparative perspective would strengthen this claim.

The section relies heavily on direct quotations, such as "Schleiermacher's romantic hermeneutics is the art of interpreting texts and emphasizes technical interpretation." While these citations are useful, more paraphrasing could improve readability and synthesis.

The section states, "Schleiermacher’s approach to analyzing texts involves understanding the conditions under which the text was produced." However, it does not explain how this principle is specifically applied to the case of arbitration agreements. Provide a concrete example of how Schleiermacher’s approach affects the interpretation of Article 481.

The article states, "In cases of doubt about whether a contract is obligatory or permissible, the default assumption is that the contract is obligatory," citing Article 185. However, this contradicts earlier discussions about arbitration agreements having characteristics of both. Clarify how this default assumption applies in light of the ambiguity in Article 481.

The section heavily supports the necessity of arbitration agreements but does not sufficiently engage with counterarguments. Consider including opposing views from legal scholars who argue for permissibility.

The claim that "A comparison of Article 481 of the 2000 Civil Procedure Code with Article 656 of the 1939 Code reveals a significant difference" is important but lacks a direct quotation from the older law. Include a side-by-side comparison to substantiate this argument.

Authors revised the manuscript and uploaded the document.

2. Revised

Editor’s decision: Accepted.
Editor in Chief’s decision: Accepted.