Title: Epistemic modality in the rulings of the American Supreme Court and Polish Sąd Najwyższy : A corpus-based analysis of judicial discourse

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A corpus-based analysis of judicial discourse

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Modalność epistemiczna w orzeczeniach sądów najwyższych w Polsce i w Stanach Zjednoczonych
Analiza korpusowa dyskursu sędziowskiego

Rozprawa doktorska

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„Natural language concepts have vague boundaries and fuzzy edges and [...] consequently, natural language sentences will very often be neither true nor false, nor nonsensical but true to a certain extent and false to a certain extent, true in certain respects and false in other respects.”

George Lakoff

To my parents,

without whom this thesis would never have been accomplished

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Introduction

The present thesis is concerned with the analysis of the epistemic markers of modality in the discourse of the Supreme Court judges in Poland and the United States. The thesis is divided into five chapters.

The first chapter is an introduction to the judicial system of civil and common law countries as seen through Polish and American perspective. It has as an objective the confrontation of the Anglo-Saxon model with the continental model with particular attention drawn to the role of judges as representatives of justice. The differences will be visible on the level of argumentation patterns employed in the statement of reason. In the Anglo-Saxon tradition, they will reflect the tendency to treat adjudication as a decision-making process based on the existing body of precedents. The Anglo-Saxon model also lays emphasis on the so called idea of *jurisprudence constante*, according to which adjudicating should be a predictable and coherent process. However, the continental model of statutory law more and more often leans towards the above imperatives. The doctrinal differences and principles of interpretation advanced in the first chapter will serve as a point of departure for the analysis of the genre of legal judgment from the linguistic point of view.

Chapter two constitutes an attempt to define the concept of mood and modality and present the phenomenon from various perspectives: grammatical, semantic, cognitive and philosophical. Sentences that state categorically that something is either 100% true or false are rarely, if not never, encountered in the world of discourse. In the majority of situations we come across statements uttered under certain circumstances, where the speaker assumes a particular point of view and turns to forms that reflect doubt, prediction, admiration, willingness, inference etc. The presence of one form of modality in a sentence modifies its degree of assertiveness. It is also related to stance. Modality enables us, therefore, to place our statement on an axis, whose extremes constitute absolute (ideal) values of truth or false. Another problem, which is also raised in this chapter, is whether this truthfulness/falsity of a statement depends upon our personal faith and inner conviction or whether it has its sources in an external authority associated with objectivity and neutrality. It seems that the former is a more subjective and definite while as the latter a more objective and tentative approach. Other themes elaborated on are: Systemic Functional Linguistics and the classification of modality as proposed by Halliday

and his followers, the illocutionary acts and types of sentences, the theory of speech acts as well as grammatical and semantic aspects of modality. As it turns out, delineating the border between grammar and semantics is not an easy task.

Chapter three outlines the method that will be employed throughout the analysis and contains the characteristics of the Corpus used for the purposes of the research. The Polish part contains 520 judgments of the Supreme Court issed between 1st January 2014 and 31st December 2015. Since the total number of judgments highly exceeds 500, the author decided to select from 20 to 30 decisions issued each month in order for the analysis to be representative (source: http://www.sn.pl/orzecznictwo.aspx). The English part of the Corpus consists of 516 judgments of the Supreme Court (source: http://www.supremecourt.gov/opinions/boundvolumes.aspx).

The method is based on the Hallidayan classification of high, median and low-value markers of epistemic modality. Several classifications are referred to and enriched with the author's own qualitative analysis of a smaller body of decisions aimed to select items that occurred with sufficient frequency to be considered representative. They are subsequently assigned epistemic value (high, median or low).

Chapters four and five are a detailed description of epistemic categories:

- in the case of the Polish Corpus: nouns and nominal phrases, modal verbs, adjectives (attributive and predicative), adverbs and modal modifiers, lexical verbs;

- in the case of the American Corpus: nouns and nominal phrases, modal and semi-modal verbs, adjectives (attributive and predicative), adverbs and modal modifiers, lexical verbs;

The analysis is to determine which part of the material contains more markers of epistemic modality classified as high-value based on the assumptions outlined in the theoretical part of the thesis. The doctrinal differences laid forth in the first chapter suggest that Polish and Anglo-Saxon judges might signalize differently their stance and attitude towards the presented line of argumentation, whether it is doubt or certainty. These linguistic markers might also occur with greater or lesser frequency, depending upon the category of the word. This analysis is an attempt to tell this difference, distinguishing between several grammatical categories. The conclusions might help to get an in-depth idea what functions the epistemicity markers are to perform

whether they reflect the discretion that judges enjoy in both systems or whether they are an inseparable part of the judicial discourse whose most characteristic feature is conventionality and reliance on tradition.

Chapter 1

The judiciary and its language: Polish and American perspective

1.1 Overview of the goals

The present chapter aims to compare the judicial systems of the United States common law system and the Polish civil law system, paying special attention to the role the judges are to fulfill as administrators of justice. In particular, emphasis will be laid on how certain systemic principles and the doctrine might affect the language employed to deliver the decisions insofar as the degree of personalization is concerned. Section 1.2. is dedicated to the contributions to the theme of common law and, more specifically, the American common law. In section 1.3. we will point to some core principles that characterize the judicial procedures in the Anglo-Saxon countires and outline the historical background. The milestone events are described in the development of the United States legal system in the form we know today. Special attention is drawn to the process of 'detachment' and departure from the English version of case law and the politicians who contributed most to the creation of the American law. Section 1.4. will cover the institutions of the Supreme Court as operating in the American and Polish legal systems. The structure, history and most important procedures as well as their significance in relation to the whole judiciary will be discussed in order to place and identify the institution of the Supreme Court against a background of lower courts and related legal institutions as well as entities entitled to interpret legal provisions in the course of law application.

Law as a decision-making process together with modes of reasoning typical for common law judges and civil law judges will be also discussed in section 1.5. A question raised in the course of the debate will concern the degree of creativity enjoyed by the judges. Whether it can be determined 'beyond reasonable doubt' that common law judiciary participate in the process of law-making more actively than do their civil law counterparts will constitute the main object of this section. The author will also concentrate on the role of the judges as embodied in their decisions and the differences between judges in the common and the civil law systems. The main issue addressed is whether systemic factors favor or rather restrict the freedom of judicial interpretation during the trial. The underlying idea would be that the American philosophy of law does not preach strict adherence to the rule of precedent. It is rather the need to balance

between the previous decisions and to adapt the current ones to the changing economic and social circumstances that is recommended in order 'not to injure the public interest which in a given case might be more important than the stability of law itself" (Pomorski 1975: 47). The above seems to somehow undermine the English doctrine which prides itself on the stability of its legal system based on the rule of precedent and the principle of *stare decisis*. In particular, the debate between H. L. Hart and Dworkin is covered in order to present the background and core concepts that emerged in response to controversies over interpretational freedom of common law judges.

The lack or presence of the written statutes in the common law system has certain implications for the methods and interpretation techniques applied by the courts. These methods will also be covered in section 1.6., which deals with the theories and philosophies that have shaped the present doctrine in both, American and Polish, systems. It would be also worthwhile to point to the degree of codification of the American legal system when confronted with the English state of the art. As observed by Eugen Lang,

"In England, the project of codifying all law in one bold stroke has never won much favour with the practical advocates of codification while as in the United States, the codification movement has assumed much greater proportions and has met with a certain measure of success (Eugen Lang 2005: 40, 99)."

This greater 'bulk' of the written law sources has also prompted the choice of the American, rather than the British law, to become the subject of the present comparative analysis of epistemicity in the judicial language.

1.2 Research into the American legal system

Studying the American legal language has been of some interest to Polish scholars although no specific study has so far been conducted with regard to comparison of the two systems. Apart from dictionaries and the study of translational equivalents, covering the growing demand to render the Polish institutions into English language, the number of publications on strictly systemic matters has not received considerable attention. The reason behind this scarcity is probably to be attributed to the growth of interest in the Community law and the resulting proliferation of publications in this field. The most valuable contributions as far as common law is concerned include Jaskiernia (1991), Głuchowski (1988, 1991), Morisson (1996), Chase

(1999), Cappaeli (1997), Burnham (2004), Abadinsky (2008).Halberda (2012), M. Koszowski (2009), Myrczek- Kadłubicka (2013, 2014), Siedlińska (1997), Tomaszewski (1996), Von Mehren and Murray (2007) and Hirschel (2008). As regards the American common law, Tokarczyk (2003) as well as Ludwikowski and Ludwikowska (2008) are amongst the authors most prolific in this research field. A detailed investigation into American criminal law and its relations with the principle *"nullum crimen sine lege"* has also been conducted by Pomorski (1975). As far as the comparative considerations are concerned, it is noteworthy to point out a valuable contribution entitled "Precedens w polskim systemie prawa" edited by Śledzińska-Simon and Wyrzykowski (2010). It is a compilation of articles discussing the growing role of the precedent in the Polish legal system. As observed by the editors:

"The boundaries between the common and civil law systems are becoming blurred and their evolution betrays symptoms of going in the same direction. Experience shows that Polish courts apply specific ruling standards from which they depart with great caution. At the same time, they are highly influenced by the rulings of the European courts, often rendered on the basis of the "established decision line", that is rules assumed in the previous cases that refer to the same category (Śledzińska-Simon, Wyrzykowski 2010: 8, translation mine)."

Other works dedicated to the common law, in particular to the Anglo-Saxon doctrine of the precedent, include Koszowski's "Anglosaska doktryna precedensu (porównanie z polską praktyką orzeczniczą)."

1.3 **The judicial systems of the common law countries**

The Polish state, together with the West European countries, relies on the vast bulk of the statutory legislation whose institutions and functioning echo the character of the Roman law institutions, in particular as far as the civil law is concerned. In contrast, the common law system has worked out its own nomenclature and procedures unknown for instance to the Roman jurists. The American legal system, in turn, is based on the English common law but it has not been adapted uncritically. Indeed, if we look at the history of the United States of America, it might be summarized as the rebellion against the metropolis. As Pomorski observes:

"(…) taking into consideration the distinct political, social and economic features of the new country and the fact that it was born and consolidated in the fight against the old imperium, we must acknowledge that the process of reception could not have been limited to a mechanical assimilation of the elements of the British system nor was the very idea of reception uncontroversial (Pomorski 1975: 32)."

It is very often emphasized that the English common law, as its name suggests (cf. Latin *communis*- common), grew in opposition to the customary law, which is associated with local legal particularities characteristic for the Middle Ages. Therefore, in principle it should unify, rather than contribute to differences, on the territory where it is binding. However, the legal system of the United States significantly differs from its cradle, that is, the British Isles. Although historically an English colony, one cannot describe the thirteen states as of the period directly preceding the Declaration of Independence as ethnically homogenous. Moreover, one should bear in mind the rebellious atmosphere of the second half of the 18th century that accompanied the emergence of the sovereign American state as set forth in the Declaration of Independence of 1776. As emphasized by S. Pomorski:

"A supposition that the reception of the English law in the United States occurred on a fixed date and is completed would be erroneous. On the contrary, the reception is a complicated process of long duration, which involved the gradual verification and adaptation of the elements of the English law, whose inadequately explored origins can be traced back to the seventeenth century, which is not completed and still goes on in the American jurisdiction (Pomorski, 1975:31)."

Crucial to the understanding of the common law, in particular the role judges are to fulfil within it, is the concept of the precedent. Nonetheless, it was not until the 19th century that the precedent acquired its constitutive character as the sine qua non condition of the common law system. It was, therefore, in the course of a long evolutionary process that the binding character of a single precedent was crystallized in the English and American legal systems. Until then, common law was perceived as customary. In contrast, from the 19th century onwards, the common law became a law enacted and observed by the courts (Pomorski 1975: 36). The principle of following precedents is also referred to as stare decisis. According to online legal dictionary it may be defined as:

”the doctrine under which courts adhere to precedent on questions of law in order to insure certainty, consistency, and stability in the administration of justice with departure from precedent permitted for compelling reasons (as to prevent the perpetuation of injustice).”[1]

One should observe, however, that this doctrine is not equally observed by the English and American courts. As claimed by Koszowski, while as The Supreme Court of the United Kingdom is more bound by the classical rule-model, the United States Supreme Court employs the principle of *stare decisis* in its ‘analogy’ model (Koszowski 2009: 22). It should be also stressed that, although *stare decisis* is sometimes questioned, in both cases, sufficient reasons must be provided to account for such a ‘transgression’. Depending on the circumstances and the particularities of the case, the Supreme Court may invoke the rule of *stare decisis* as fundamental for the judiciary in common law systems. Below, an excerpt from Hilton v. South Carolina Public Railways Commission (No. 90–848. Argued October 8, 1991 - Decided December 16, 1991) demonstrates that, when confronted with statutory law, pre-eminence of judicially established legal rules (the precedents) is undebatable:

“Our analysis and ultimate determination in this case are controlled and informed by the central importance of stare decisis in this Court’s jurisprudence. (…). Time and time again, this Court has recognized that “the doctrine of stare decisis is of fundamental importance to the rule of law (Hilton v. South Carolina Public Railways Commission).” [2]

Lang and Wróblewski also draw our attention to the distinction of precedents into *de iure* and *de facto* precedents. The former ones are considered as an autonomous source of law and are legally binding. The latter do not have to be observed by the judges applying the law (Lang, Wróblewski 1986: 176). As far as the common law judgments are concerned, the main body of a decision contains a part which, in its essence, will be binding for the judges deciding analogical cases, and the part which will be insignificant for the future considerations. The former is referred to as *ratio decidendi* while as the latter is known as *obiter dicta* (“other things said”). Nonetheless, it may not be clear for the interpreters, that is, the judges, which statements are vested with the power of the precedent and which ones can be omitted. As Thomas observes:

[1] source: http://dictionary.findlaw.com/definition/stare-decisis.html

[2] No. 90–848. Argued October 8, 1991 - Decided December 16, 1991

"What is binding in a precedent is the *ratio decidendi*; nothing more nor nothing less than the core holding in that case. As touched upon already, however, the ratio must be located and identified. It would do a mischief to experience to claim that the ratio of any case necessarily jumps out and hits its readers between the eyes with the speed and force of the proverbial upturned rake (Thomas, 2005: 131)."

It should not come as a surprise, therefore, that drawing a line between *ratio decidendi* and *obiter dicta* may arouse controversies as was often the case in the past (Koszowski, 2009: 29). In Central Green Co. v. United States, quoting Humphrey's Executor v. United States, the Supreme Court has stated that: "*dicta* may be followed if sufficiently persuasive but are not binding."[3] It would be also of use to introduce in this place the concept of the rule-model, which might be defined as the "insertion" in a judgment or a sentence a statement that is clearly tagged as a rule and should be treated as such by the prospective interpreters. It will thus be a general and abstract legal norm that indicates what kind of conduct is to be recommended under particular circumstances, hence what legal effects are to be drawn from particular types of conduct (Alexander et al. 2008: 54-56). In considering this procedure, one cannot help but make a logical equation with the civil law system based on the statutory law. Indeed, binding other judges deciding similar cases in the future by a general and abstract norm deduced from concrete facts places them on a par with their continental colleagues who follow the letter of law as enshrined in codes and laws of their respective legal systems. For the above juxtaposition to be complete, let us refer to the depiction of the role of the civil judges as summarized at law.berkeley.edu :

"In a civil law system, the judge's role is to establish the facts of the case and to apply the provisions of the applicable code. Though the judge often brings the formal charges, investigates the matter, and decides on the case, he or she works within a framework established by a comprehensive, codified set of laws. The judge's decision is consequently less crucial in shaping civil law than the decisions of legislators and legal scholars who draft and interpret the codes." [4]

It seems, therefore, that it is the common law system that privileges the role of judges as moderators of the contest between the two opposing parties. The American and British proceedings have adversarial character as opposed to the continental system based on

[3] Central Green Co. v. United States, 531 U.S. 425 (2001), quoting Humphrey's Executor v. United States, 295 U. S. 602, 627 (1935)
[4] source: https://www.law.berkeley.edu/library/robbins/CommonLawCivilLawTraditions.html

inquisitorial investigations. Drawing on the verdict of the jury of ordinary people who decide on the facts of the case, the common law judge determines the sentence. One feels tempted to think that, being bound by the precedents, American judges have very little freedom in shaping the law "ad hoc." The issue, however, is not that simple which is discussed in the sections to come. A question arises, however, what to do if the precedent (a rule constituting *ratio decidendi*) can no longer be adapted to the current situation and is blatantly irrational? Although sanctioned by the tradition, precedents should in some cases be rejected. The relevant institution applied in such cases by common law judges is the institution of overruling (overriding) whose main aim is to prevent the fossilization of the legal system and to render it flexible enough when faced with changing political and social circumstances. (Koszowski 2009: 77). In the United States, the courts of appeal are not constrained in any manner to overrule an existing precedent, especially when compared with their English colleagues (ibid, 2009: 88). Nevertheless, the American Supreme Court is an exception in this respect: it does not enjoy such freedom in overruling as does the Supreme Court of the United Kingdom. It is supposed to provide sufficiently convincing arguments that justify the said procedure (ibid, 2009: 88). This restriction is probably to serve as a systemic safeguard since the United States Supreme Court could allow itself to abuse its powerful position if left unhindered. So much for the theory. We will see, however, that this doctrine is not always obeyed. The Supreme Court has exerted, and still exerts, an enormous influence upon the affairs of the state. This is probably the reason why the tendency is now rather to curb this unrestricted autonomy. It is also important to note, however, that not all statements included in the sentence are rendered null and void when overruling them. The annulment concerns only the rule-forming *ratio decidendi* leaving intact its remaining part, namely obiter dicta. The signification of this institution might be also stressed by the fact that it has a retroactive force, that is, the decision annulling a given precedent becomes binding even though the parties could have been positive about the outcome in line with the precedent but had to accept the overruling in the end (ibid, 2009: 91). Naturally, the said institution may in fact have considerable consequences insofar as the modification of law itself is concerned. As pointed out by Charnock (Charnock, 2007: 45):

"In certain circumstances, English judges find themselves obliged to depart from the rule of stare decisis to the extent of overruling a line of earlier decisions. This power is used only rarely, and usually marks a significant turning point in the development of the law."

A third way out, pointed to by Koszowski is the so called distinguishing defined as rejecting the application of ratio and creating, in turn, a new narrower ratio that will serve as the basis for delivering the judgment (ibid: 94). This occurs when the material facts of the case do not correspond to each other to the extent that the judge is compelled to draw a distinction between his/her own case and the precedent case. Hence, the main difference between overruling and distinguishing will be leaving intact the old ratio as the governing principle for the prospective cases while the new one somehow modifies and enriches the content of the original precedent. It may be also necessary, in case the old ratio will not find any application in the current case, to invent a new general rule that will become binding in the future (ibid: 95).

One of the best examples often quoted when explaining the essence of distinguishing is the case Balfour v. Balfour (1919) in which the claimant, a wife, sued her husband who travelled overseas for the non-payment of a monthly sum of £30. The agreed sum was to constitute a maintenance fee for a spouse to keep within means. However, the defendant ceased to send the alimony, a situation thus ended in court. The judgment was unfavorable towards the claimant since no contract was signed and the relation did not produce legal effects as such. It was therefore the claimant who had to bear the burden of proof in accordance with the legal principle *'Eius incumbit probatio qui dicit, non qui negat'*. As explained by Lord Justice Atkin:

"It constantly happens, I think, that such arrangements made between husband and wife are arrangements in which there are mutual promises, or in which there is consideration in form within the definition that I have mentioned. Nevertheless, they are not contracts, and they are not contracts because the parties did not intend that they should be attended by legal consequences. To my mind, it would be of the worst possible example to hold that agreements such as this resulted in legal obligations which could be enforced in the Courts." [5]

Balfour v. Balfour resulted in a judgment against the claimant, which was not the case in Merritt v. Merritt (1971) where, although the situation was similar, a contract was entered into between the parties, a divorced couple, thus sanctioning the obligation that was to be fulfilled by the

[5] [1919] 2 KB 571, 579-580

husband. In departing from what seemed to constitute a precedent and adjudicating in favor of the claimant, the judge deciding the case did, in fact, distinguish it from the previous one.

Although the above concepts of overruling and distinguishing are well defined and exemplified by numerous cases, it is sometimes difficult to draw a borderline between the two, all the more so since certain authorities, especially the proponents of the so called declaratory theory of law, would like to consider it as something fixed and existing in abstracto (Charnock, 2007: 45). Such views discard the creative interpretation of law, claiming instead that it is constantly to be discovered and re-interpreted rather than 'made from scratch' by the judges. As observed by Lord Reid in Kleinwort Benson v Lincoln City Council, [1998] :

"The theoretical position has been that judges do not make or change law: they discover and declare the law, which is throughout the same. According to this theory, when an earlier decision is overruled the law is not changed: its true nature is disclosed, having existed in that form all along." [6]

If, indeed, the law remains 'throughout the same', then a judge overruling or distinguishing a given precedent will only be discovering the 'truer' version of the existing truth. In view of the above description of the procedures and institutions that are available for the Anglo-Saxon judges, we might say that it would be thus a misconception to consider common law judges as blindly following the existing precedents. On the contrary, applying the law means in this case also creating new law in the event no analogy can be found with the binding cases. Pomorski advances a premise that this judicial decision-making process stands in opposition to the time-honored theories cherished by the academia. As he himself argues: "The common law is a product of activities of courts, not of universities. (…) All this proves the pragmatism and anti-conceptualism of the common law" (Pomorski 1975: 4).

Other contributions dedicated to the common law legal theory and philosophy seem to advocate the idea to view the judges as creative in interpreting, applying and, consequently, constantly revising, the existing body of rulings: the treasury of rules and norms. In accordance with this stance, critical approach is a thing to be desired among law-practitioners [7]. Section 1.5. on the

[6] *Kleinwort Benson*, 1998, *per* Lord Browne-Wilkinson.
[7] cf. Thomas who criticizes the blind rule-following: "Rules continue to be seen as prescriptive and precedents tangibly coercive. The outcome is a judicial practice that retains all the hallmarks of formalism. Disowned it may be, but experience confirms that formalism exerts a lingering impact on the judicial process. (Thomas, 2005: 14)"

borderlines of creativity in adjudication further discusses the negative attitude of common law judges towards the letter of law and the fact that this state of affairs is now undergoing a considerable change due to the growing significance of the statutory law in the U.S. legal system.

1.4 **The institution of the Supreme Court : Polish and American perspective**

1.4.1 Sąd Najwyższy: structure and the main procedures

Article 175 of the Polish Constitution stipulates that: "The administration of justice in the Republic of Poland will be implemented by the Supreme Court, the common courts, administrative courts and military courts." [8] Although the Polish Constitution does not specify the structure of the common courts, it does, however, in its article 176 paragraph 1, impose the two-level court system. The Law on the system of common courts goes even further in that it introduces three instances of court procedure (Garlicki 2011: 337). Pursuant to the Act of 23 November 2002, The Supreme Court's administration of justice can practically extend to the following three types of activities:

a) ensuring, as part of its supervisory duties, compliance with the law and uniformity of judicial decisions of common and military courts by hearing final appeals (cassation) and other appeals,
b) adopting resolutions to adjudicate questions of law,
c) determining other cases specified in laws[9]

[8] The Constitution of the Republic of Poland dated 2nd April, 1997, The Journal of Laws No. 78, item 483.
[9] Act of 23 November 2002 on the Supreme Court, Journal of Laws dated 2002 no. 240, item 2052.

There are five chambers competent to hear the cases: Civil Chamber, Criminal Chamber, Labor Law, Social Security and Public Affairs Chamber as well as Military Chamber. The Supreme Court's control over the judicial practice of common and military courts is exercised through two types of activities: examining means of appeal and adopting resolutions that determine controversial points of law (Garlicki 2011: 343). Figure 1.1. illustrates the structure of the judiciary in the Polish legal system.

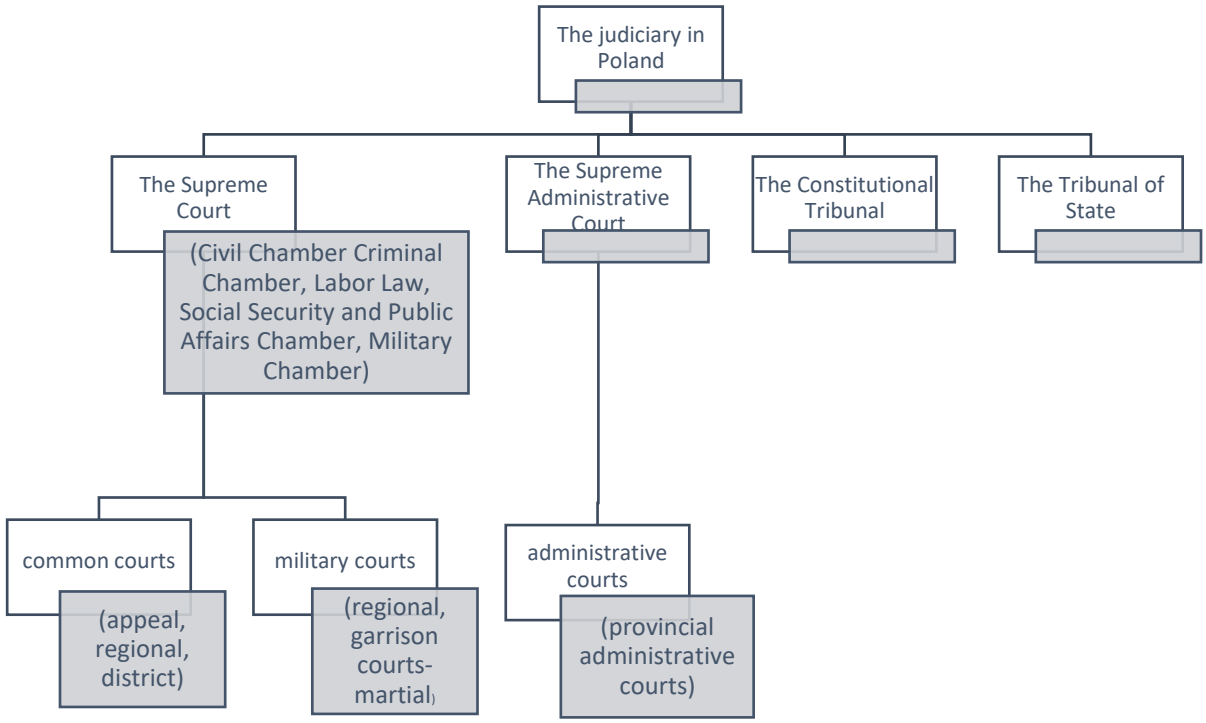

Figure 1.1. The Structure of the judiciary in Poland (on the basis of Garlicki 2011)

Normally, that is when no extraordinary circumstances or interpretational problems occur, the court sits and decides the cases in a bench of three judges. However, if serious doubts as to the interpretation of the provisions arise, the First President of the Supreme Court will submit a request to a bench of seven judges who will accept to determine the answer to a request or refuse to accept it. It may also review the case in its entirety if the particularities so require and adopt a resolution. Article 61 of the Act on the Supreme Court specifies what conditions need

to be fulfilled when adopting resolutions: if the Supreme Court accepts to adjudicate the case and furthermore, the previous judgments invoke provisions or rules that arouse serious doubts as to their meaning or scope of application. According to article 61, paragraph 1 of the said Act:

Art. 61.

§ 1. If a Supreme Court bench decides that the submitted question requires clarification, and that the revealed discrepancies need to be adjudicated, it will adopt a resolution. [10]

Adopting resolutions, however, will not create a precedent binding the lower courts, thus, they do not constitute a precedent *sensu stricto* as understood in common law systems. A resolution adopted by a bench of seven Supreme Court judges becomes binding only insofar as the lower court that issued this particular request will need to adapt its subsequent decision following the Supreme Court's guidelines. It is thus only through the power of authority that resolutions passed by the Supreme Court in a particular case may be referred to by the courts of lower instances other than the court that issued a request. (Garlicki 2011: 343). Some resolutions are granted the power of a legal principle. A bench of seven judges is authorized to make such a decision under particular circumstances justified by e.g. the gravity of the matter. If, however, the resolution is passed by the entire bench of the Supreme Court or joint chambers or the entire chamber, it automatically becomes a legal principle which, in turn, will be binding in all matters of similar kind. This procedure is, in turn, described in art. 61, paragraph 6:

Art. 61

§ 6. Upon their adoption, the resolutions of the entire Supreme Court bench, a bench of joint chambers or a bench of the entire chamber will become legal principles. A bench of seven Justices may grant a resolution the power of a legal principle.[11.]

1.4.2 Means of appeal

As regards the main measures of appeal which are addressed at the Supreme Court, these are defined in the Code of Civil Procedure in articles 394 [1], 398^{1} – 398^{21} and 424^{1}- 424^{12}, and include: a complaint, a plea of nullity (or cassation) and a petition to determine that a final

[10] Act of 23 November 2002 on the Supreme Court, Journal of Laws dated 2002 no. 240, item 2052
[11] ibid, Journal of Laws dated 2002 no. 240, item 2052.

decision is not in compliance with the laws (Code of Civil Procedure, Journal of Laws dated 1964, no. 43, item 296).

A complaint may be filed with the Supreme Court if a plea of nullity was dismissed by the second instance court. It is allowed as a measure of review of decisions that fail to comply with procedural provisions, not of those where misinterpretation of facts occurred. A plea of nullity used to be referred to as cassation as set forth by the previous Code of Civil Procedure and these two terms are sometimes used interchangeably. However, the name "cassation" is in the majority of jurisdictions understood as a measure of appeal applicable only in the event where violation of the provisions of procedure has occurred.[12] The Code of Civil Procedure, for that matter, specifies that this type of appeal will be based on both the infringement of the substantive law as well as the infringement of procedure (cf. art. 398^{3}, Code of Civil Procedure, Journal of Laws dated 1964, no. 43, item 296). A plea of nullity is examined during a pre-trial at which one judge of the Supreme Court sitting in camera considers the following issues in order to determine whether the plea should be allowed for further examination:

-if important legal matters have occurred in the case;

-if the need for the construction of legal provisions arousing serious doubts or resulting in discrepancies in judicial decisions has appeared;

-if the nullity of legal proceedings has occurred; or

-if the plea of nullity is clearly justified (Art. 398^{9} paragraph 1. of the Code of Civil Procedure).

In the event all the above requirements are met, the decision appealed against is overturned and the case is transferred for re-examination (article 398^{15}, Code of Civil Procedure, Journal of Laws dated 1964, no. 43, item 296).

[12] Some judicial systems have a separate cassation court concerned solely with procedural matters, that is, it does not rule on the facts leaving it to the lower instances, cf. Court of Cassation in France, Italy, Greece, Belgium, Supreme Court of Cassation of Bulgaria. Other judicial systems, though, have only the institution of Supreme Court which exercises judicial control through "cassation" as re-examination of both *de iure* and *de facto* matters, cf. the Supreme Court of the Netherlands, Poland, Norway, Sweden, Finland, Lithuania, Latvia, Estonia. On the level of the European Union, it is the European Court of Justice which may be regarded as exercising judicial control over appellate courts of the Member States.

The third measure for appeal classified as extraordinary, a petition to determine that a final decision is not in compliance with the laws, is covered by articles 424 [1]-424 [12] of the Code of Civil Procedure and can be brought against the final decision of the second instance court. Its main purpose is to determine whether as a result of the final decision a party has suffered damage and the change or reversal of such a decision is not possible by resorting to legal measures to which the party is entitled. In such a case, damages can be sought from the State Treasury (Zedler, 2011: 635). In exceptional cases, this kind of petition may be brought against the decision of the first instance court if the lack of compliance with legal provisions results from infringing basic rules of legal order or constitutional freedoms or human rights (article 424 [1] of the Code of Civil Procedure, Journal of Laws dated 1964, no. 43, item 296). Apart from a party to the proceedings, a petition may be also filed by the Prosecutor General (in case the lack of compliance with legal provisions infringes basic rules of legal order) or the Commissioner for the Protection of Civil Rights (in case the lack of compliance with legal provisions results from the infringing of constitutional freedoms, human rights or citizen's rights (Article 424 [2] of the Code of Civil Procedure, Journal of Laws dated 1964, no. 43, item 296).

1.4.3 The doctrine of the uniformity of decisions

One of the basic doctrines that accompanies the administration of justice is the doctrine of the uniformity of legal decisions brought by the common courts and revised by the higher instances in the process of appeal against the decisions. The above doctrine is inseparably related with the validity of law understood as a set of provisions that stand in a certain hierarchy and complement each other, being governed by rules such as *lex specialis derogate legi generali, lex superior derogat legi inferiori* and so forth. However, owing to the fact that vagueness is an inherent feature of legal language (cf. section 1.6), this would be an ideal state of affairs. As observed by Leszczyński, every single act of judicial autonomy or authority in relation to the application of legal provisions would undermine the principle of the uniformity of judicial decisions and, in consequence, lack of certainty in the process of law application[13]. In the light of the above, one would be tempted to claim that Polish legal system lacks sufficient measures

[13] source: "Studies and Analyses of the Supreme Court", volume 1, available at: http://sn.pl/publikacje/BSiA_Materialy_naukowe/Studia_i_Analizy_SN_tom_1.pdf

to ensure the uniformity and validity of law, especially when compared with the Anglo-Saxon system based on the rule of precedent and the principle of stare decisis. The only available means which serve this purpose are the resolutions passed by the whole Supreme Court adjudication panel. Leszczyński points to *ratio decideni* as available means in the process of adjudicating and defines it as referring to other decisions that remain on the same level of concreteness. Hence, referring to the legal principles as formulated by the enlarged panel of the Supreme Court would not, as such, constitute *per rationem decidendi* type of argumentation. In the system of statutory law, there is no obligation to apply the rule of *ratio decidendi*. More proper to the system of the statutory law would be the terms "soft precedent", "situational precedent" or "quasi-precedent": as viewed by Leszczyński, resorting to these measures would secure the stability of our legal system rendering it less incidental and prone to the freedom of interpretation of single judges.[14] To conclude the present discussion, let us quote Szmulik who advocates the importance of the Supreme Court's decisions in contributing to legal uniformity:

"The worse the law is, the greater the need to interpret it in a uniform manner and the more difficult the role of the Supreme Court in explaining it and thus contributing to a uniformity of judicial decisions (Szmulik 2008 : 414)."

1.4.4 Relations with the Constitutional Tribunal and State Tribunal

As opposed to the United States tradition to place tribunals and courts on a par, in Polish legal tradition a tribunal has specific functions to perform. Let us, therefore, remind what role the Constitutional Tribunal is to perform under the Polish legal system. According to one of the judges of the Constitutional Tribunal:

"The establishing of the Constitutional Tribunal did however, introduce a new quality into the system, by way of nature limited the arbitrariness of authorities – similarly as when administration judicature was being set up. Today, it is indisputable, that with all political, legal and constitutional limitations the establishing of the Constitutional Tribunal allowed for a completely new insight into law and created a chance for the stepwise changing of the face of the system" [15].

[14] source: ibid.

[15] Mazurkiewicz M., The Role of the Constitutional Tribunal in Creating the Principles of a Democratic State, Ruled by the Law, in the Transition Process, a report: Strasbourg, 19 February 2004 .

Its competences include:

-determining the compliance of normative acts with normative acts of higher rank,

-determining constitutional complaints,

-resolving competence disputes between central constitutional state entities,

-determining the compliance with the Constitution of the goals and activities of political parties,

-answering legal questions,

-signalising gaps in the legal system,

-resolving matters where an obstacle occurs in performing the office by the President (Garlicki 2011: 360).

It would be also noteworthy to point to some matters that remain outside of the scope of the competence of the Polish Constitutional Tribunal but are nevertheless matters of constitutional nature and are conferred to constitutional courts in other legal systems. To such matters we include:

-determining the constitutional liability, a function which in the Polish legal system is performed by the Tribunal of State as a separate judicial entity,

-determining issues concerning the validity of elections and referenda (this would remain in the hands of the Polish Supreme Court);

-determining the officially binding interpretation of the laws (this function was part of the Constitutional Tribunals' competences in the previous political system; however, since it aroused numerous controversies, the new Constitution overturned this type of jurisdiction and moreover, deprived all the previous resolutions adopted through this procedure by the Constitutional Tribunal of their legal force (Garlicki 2011: 360).

All the above functions in the United States are accumulated in the hands of the Supreme Court while as they are separated and distributed between more entities in the Polish legal system.

Naturally, such an accumulation of power might give rise to various consequences, also on the linguistic level. We will return to these issues in the sections to come.

1.4.5 The structure and main procedures employed by the United States supreme judiciary

As claimed by Chief Justice John Marshall in reaction to Marbury v. Madison case resolved in 1803, "it is emphatically the province of the judicial department to say what the law is." The above statement is commonly said to have established a precedent fundamental for the United States legal system.

As far as the structure of the Supreme Court is concerned, it is composed of nine judges, one Chief Justice and eight Associate justices. It presides over the federal court system within which there are 94 district courts operating as first instance courts and 12 courts of Appeal that perform the function of second instance courts. There are also special courts (U.S. Bankruptcy Courts, U.S. Court of International Trade, U.S. Court of Federal Claims) as well as courts that do not exactly fall within the judiciary branch (Military Courts (Trial and Appellate, Court of Appeals for Veterans Claims, U.S. Tax Court, Federal Administrative Agencies and Boards) (Hemmens et al. 2013: 99). Article III. of the United States Constitution is specifically dedicated to the Judiciary. Its section I. states as follows:

"The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office." [16]

Historically, the creation of the judiciary aroused some controversies that were a result of a general conflict between the federalist and anti-federalists. The above article does not specify any judicial entity apart from the Supreme Court leaving it to the Congress to determine the structure and hierarchy of the 'inferior' courts. There were therefore two opposing viewpoints that underlined the political debates in the period directly following the drafting of the Constitution in 1787. While as federalists claimed full support for the creation of lower federal courts, the anti-federalist faction insisted that all first instance cases should be heard by state

[16] source: http://www.archives.gov/exhibits/charters/constitution_transcript.html

courts (Hemmens et al. 2010: 97). The conflict was resolved at the first convention of the Congress, which resulted in the Judiciary Act of 1789. As observed by Hemmens: "the Act represented a compromise between the Federalists and the Anti-Federalists on a number of issues. For example, the Act placed significant limitations on federal trial court jurisdiction, due to the Anti-Federalists' concerns about an overbearing judiciary. Also, the Act stipulated that the boundaries of the federal district and circuit courts were to be drawn along state lines" (Hemmens 2010: 97). The conflict along the line federalist vs. anti-federalist was to spur further disputes that marked the political scene in the 19th century and that helped to shape the present-day judiciary.

As far as the hierarchy of courts is concerned, the lowest level, i.e. the trial courts, comprise 94 Judicial Districts, U.S. Bankruptcy Courts, U.S. Court of International Trade and U.S. Court of Federal Claims. At the appellate level, there are 12 Regional Courts of Appeals and 1 U.S. Court of Appeals for the Federal Circuit. Apart from the appellate courts and trial courts there are also federal courts and other entities outside of the judicial branch such as Military Courts (Trial and Appellate), Court of Appeals for Veterans Claims, U.S. Tax Court as well as Federal Administrative Agencies and Boards (Hemmens et al. 2010: 99).

As regards the relation between the federal courts and the state courts, it is the latter which enjoy greater authority in criminal matters. This is partly to be attributed to the centuries-old fear of the anti-federalists that the federal courts might become too powerful. Indeed, most crimes are defined at the local (i.e. state) level. Moreover, as explained by Hemmens, even before the writing of the Constitution in 1787, the colonies, as sovereign entities, already had their own constitutions—and their own court structures. This is the reason that state court structures do not necessarily mirror the federal court structure (Hemmens et al. 2013: 98). The Supreme Court operates through the so called judicial review. It was the Marbury v. Madison case referred to in the beginning of this section that formed the tradition of reviewing the transferred cases. Indeed, there are special rules that govern the decision whether to grant judicial review. The procedure itself, known as a *writ of certiorari* is, as explained by Hemmens, "an order to the lower court to send the records in the case forward for review. In deciding whether to issue the writ, the justices follow the rule of four: The case will be heard and the writ issued if four of the nine justices agree to hear the appeal" (Hemmens 2010: 387).

The petition for a writ of certiorari is granted only for "compelling reasons", which are set forth in U.S. Supreme Court Rule 10 "Considerations Governing Review on Certiorari". The rule specifies as follows:

(a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

(b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;

(c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court (Jenkins 2011: 92).[17]

As far as procedural matters on the state level are concerned, a division of competences between first instance courts and appellate courts can be observed: while as first instance courts decide both the matters of facts (the jury) and the matters of law (professional judges), the appellate courts are only concerned with questions of law.

1.4.6 The political role of the United States Supreme Court

As regards the establishing of precedents, one could list a few that exerted enormous influence upon the politics and landmark political decisions. If gathered together, these precedents demonstrate one important fact: the U.S. Supreme Court's decisions are deeply interwoven with the country's history and its vicissitudes. We could quote in this place Lord Denning, who in Dutton v Bognor Regis UDC, very accurately embraces the relations of the decision-making with the politics:

[17] source: https://www.law.cornell.edu/rules/supct/rule_10

" the question, what is the best policy for the law to adopt may not have been openly asked, but has always been there in the background. It has been concealed behind such questions as: Was the defendant under any duty to the plaintiff? Was the relationship between them sufficiently proximate? Was the injury direct or indirect? Was it foreseeable or not? Was it too remote? And so forth."[18]

Although the above statement concerned the English reality, we do not have to search very far to point to the deep-reaching political impacts of the United States Supreme Court decisions. One of the best examples would be the so called Gold Clause Cases that followed the period of Great Depression and the attempts on the part of the Government and president Roosevelt to impose control upon the ownership of gold and increase the surveillance of the executive branch upon the U.S. currency as part of the New Deal legislation. These reforms, in turn, were to alleviate the effects of the economic crisis. From the conservative point of view, however, the above proposals (together with a number of others) could constitute a threat to the principle of check and balance system and an assault upon the liberal market. Nonetheless, this manifestation of power on the part of the Government turned out to be necessary in the contemporary circumstances. Despite numerous objections on the part of four of the judges (who were even nicknamed the four Horsemen after the four riders of the Apocalypse), the New Deal legislation finally found its way in 1937 with three final decisions of which two were unanimous.

The post-war period, in turn, was marked by the unrelenting battles to promote equal rights and opportunities. The Supreme Court has become the last resort and instance to which civil rights movement addressed its complaints resulting from discriminatory regulations. The case that might be considered a breakthrough in this process is the Supreme Court's decision, Brown v. Board of Education (1954), which declared segregation at school to be unconstitutional. Both the "New Deal" and civil rights examples, quoted above, clearly demonstrate that in spite of the stereotypes of conservativeness associated with institutions of such a rank and despite disparities between the judges themselves, the Supreme Court is flexible enough and able to evolve should the circumstances so require. However, this judicial activism has been and still is, and object of numerous criticisms being even considered a legislative body, if one is aware of the practices it indulges in. An often quoted example is Roe v. Wade, which resulted in the

[18] [1972] 1 QB 373, at 397

legalization of abortion. Although the right to privacy (which was invoked to condone the said decision) is expressly stated in the Fourteenth Amendment, the logic employed in the justification was deemed far-fetched and convoluted. Referring to the case, Robert Bork wrote: "What judges have wrought is a coup d'état, – slow-moving and genteel, but a coup d'état nonetheless." Another example would be the 2000 presidential elections in which the Court allegedly acted as an arbitrary. In the course of Bush v. Gore decision, it was the former that eventually 'made it to the White House'. To conclude the present section, let us quote Commager who very accurately summarized the idea about „judicial supremacy":

„Americans, as the only nation of the West have created a separate religion: constitutionalism. The judiciary became a religious order surrounded by the aura of piety and devotion (Commager 1950: 362, translation mine)."

1.5 **Judge as a creator and judge as a rule-follower**

1.5.1 Introductory remarks

It may thus turn out to be interesting to analyze American and Polish corpora in terms of the judge's involvement in the process of decision- making. Since they represent two different law systems, this discrepancy will necessarily be reflected in a genre so much embedded in the legal tradition as is the court judgment and court opinion. In order to clarify this idea, let us refer to the distinction highlighted by Pomorski who stresses the fact that the common law established a specific way of legal thinking and construing rules that do not resemble the continental ones insofar as they stem from judgments promulgated in particular cases but simultaneously are to observe the precedents (Pomorski 1975: 4). The observation of precedents, as has previously been noticed, is not a simple rule-following but involves a variety of processes whose principal aim is to make sure that decisions are made in accordance with a certain already established line of reasoning and thus avoid chaos and incoherence within the legal system. The above arguments are frequently referred to when applying institutions of overruling and distinguishing (cf. section 1.3). Such an overt divergence from the theory would be unthinkable on the Polish ground where the doctrine plays a much more important role. That is also why the decisions of the courts in our legal system will not be as detailed and exhaustive as the ones rendered by the common law judges. It is simply required from the recipient of a legal text that he/she will deduce all the answers from the abstract legal norms (i.e. codes, statutes). Nonetheless, the role

of the precedent, which constitutes a foundation of the English and American common law systems, remains a much debated issue as regards the Polish procedure. The Constitution of the Republic of Poland in its articles 87-94 contains a closed catalogue of law sources and does not refer to a precedent as a potential reference statutorily sanctioned. Theoretically therefore, any referral to the previous judgments cannot become a legal ground for prospective decisions concerning the same or similar subject matter. However, as observed by M. Safjan: "the Constitutional Tribunal may repeal the provisions of the effective laws, invoking not only the Constitution but also the general principles of the state of law." [19] As already noticed, this strict adherence to a closed catalogue of the law sources is gradually, albeit carefully, being abandoned and replaced in some court practices by referring to the existing body of cases. The law of the precedent is thus gaining some momentum. This might be partly attributable to the growing influence of the Community law. Although no EU legislation officially mentions the use of the precedent and the doctrine of *stare decisis*, previous cases are formally employed in the proceedings, in particular the judgments of the European Tribunal of Justice. As observed by K. Piasecki, ETJ encourages its Member States to refer to community precedents (Piasecki 2009: 73). To some Polish jurists, especially those faithfully following the letter of law, the judge-made law may seem controversial. However, in the common law system, pragmatic way of thinking is cherished as a striven-for ideal and this particular feature renders it more adaptable to the changing political and social circumstances. Thus, legal 'state-of-the-art' becomes a fact, not a mere delusion. Among Polish jurists, it is assumed that the principle of *stare decisis* somehow impinges upon the autonomy of the judges and is thus rejected by the doctrine. However, even among statutory law jurists, there is a growing approval for the principle of *jurisprudence constante,* according to which judges should deliver their decisions in a predictable and ordered way. There are thus two, seemingly irreconcilable tenets: on the one hand, emphasis is laid on the autonomy of a judge who should remain neutral and withdrawn from any issues whether of political or social nature. On the other hand, some coherence in the line of argumentation as well as in the decision-making process should be

[19] 'Legal Consequences of the judgments passed by the Polish Constitutional Tribunal', a statement made by the President of the Polish Constituional Tribunal, prof. M. Safjan in the Committee of Legal Sciences of the Polish Academy of Sciences on 6th January 2003.

observed. How these two tenets operate on the linguistic strata, will be later be analyzed in the practical part.

1.5.2 Rule-following versus 'common sense' adjudication

There are, in principle, two opposing viewpoints as far as the role of judge is concerned. On the one hand, as observed by Thomas:

"There is, in the practice of the law, a perpetual drive for absolute rules and precise commands and an almost compulsive search for finite formulas and doctrines that will eliminate judicial discretion and reduce to a minimum the need for judicial creativity (Thomas 2005: 116)."

On the other hand, the same author explains in the introduction to his discussion on the common law judiciary system that:

"judges make law, not only when they expand a legal doctrine or extend a legal principle to a new situation, but also when they confine a legal doctrine or restrict a legal principle. Whenever the question before the court could be called novel, and at the appellate level that is frequently the case, the law is made just as much when the judge's decision may be characterized as orthodox or 'negative' as when it may be described as creative or 'positive (Thomas 2005: 3)."

As the administrator of justice, a judge is constrained by the letter of law but there is also the social element, the extra-linguistic factors, that need to be taken into consideration. Consequently, the sentence is to reflect the 'common sense' of the community understood as an ordinary meaning ascribed to the word (cf. the literal interpretation that is employed as the prototypal method of interpretation). It might seem that, whether we deal with common law or civil jurisdiction, the main objective is to establish the true version of events that led to the trial. However, it is not the truth value of the proposition with which we should evaluate the content of a court judgment. Its subjective nature will become apparent, although to various degrees, depending on the system. In summary, we could say that judge's statement represents (in the civil law) an interpretation of the existing norms or, more precisely, the subsumption of facts to suit the particular legal norm or, in the common law, comparing the facts and the existing legal rules formulated in the precedents in order to determine whether this particular rule can be followed or whether a new one should be created (cf. section 1.3 on various practices that

accompany the application of precedent). However, a deeper insight into the process of adjudication will reveal that rule-following is not such a straightforward issue and that it requires a careful re-examination and drawing a line between what should be taken as the binding part of the past decisions. Inadvertently, common law judges are often tempted to apply 'a more narrow approach', i.e. an approach that precludes any interpretation that would go beyond the judicial obligation to apply the law in a just and proper manner. That is why, although discarded as a symptom of narrow-mindedness, the formalist attitude continues to have its strict adherents. It somehow guarantees a safety-valve for the integrity and coherence of the legal system. As observed by Thomas:

"To the formalist, law (…) possesses an internal coherence and logic, which makes it decisive for the understanding of juridical relationships. This fundamental article of faith that the law possesses an internal validity underlies the formalist's perception that a more narrow approach to adjudication will promote certainty and predictability. It precedes and sustains the unquestioning acceptance and application of rules to particular cases (Thomas 2005: 57)."

The 'rule-followers' often advance a theory that vagueness and uncertainty of legal language leaves them with no other choice but to remain faithful to the past and authoritative decisions. However, a somewhat centered approach is proposed by Schauer who is credited with the term 'presumptive' positivism'. As inextricably linked to formalism, the notion 'positivism' brings to mind ideas usually ascribed to it such as certainty of the written law and the eagerness to follow its letter even contrary to reason or common sense. As the author explains, it does not have to be the case. He considers rules as binding only insofar as they provide a reasonable and optimal solution when confronted with the commonsense approach of the relevant linguistic community:

"The prescriptive force of a rule can be abandoned if the moral, political or practical cost of applying the rule would be too large and unacceptable. Presumptive positivism 'is a way of describing a degree of strong but overridable priority' so that 'decision-makers override a rule not when they believe that the rule has produced a suboptimal result in this case but instead when, and only when, the reasons for overriding are perceived by the decision-maker to be particularly strong (Schauer 2009: 204)."

The arguments underlying the abandoning of a particular rule need, therefore, to be sufficiently convincing and reasonable. Furthermore, the motivation for change is to be sought for in the extra-linguistic factors such as moral, political or social matters.

1.5.3 The United States perspective: reluctance towards formalism

As has already been articulated as far as the principle of *stare decisis* is concerned, 'every American court is free to depart from its earlier decision should this be considered desirable for any reason' (Pomorski 1975: 46). The above is also confirmed by Cardozo for whom one of the rules that underlie the American pragmatic philosophy of law is the one of social utility: 'the court is free to or even bound to depart from a precedent if, because of a change in circumstances or in social needs, adherence to precedents will be injurious to a public interest, which in a given case might be more important than the stability of law itself (Cardozo 1964: 112-113). Lang and Wróblewski also draw our attention to the general reluctance towards legal formalism and positivism that permeates judicial thinking on the American ground (Lang, Wróblewski, 1986: 182). When it comes to comparison of the English and American attitude towards rule-following, American courts are more prone to employ the principle of *stare decisis* in its alternative referred to as 'the model from particular analogy'. In brief, it involves the judge's comparison of the case at hand with the cases from the past. If sufficient similarity holds between them, then the rule established in the previous case will be analogously applied. Somehow related to the American anti-formalism is the idea of natural law, which defines justice as tantamount to morality. As an age-old concept, it found its proponents especially among English anti-monarchists who struggled with the king to enforce 'the fundamental laws of England'.[20] This reluctance towards legal positivism and formalism naturally led to pragmatism as an attitude towards reality typically associated with American judges and with the Americans as a nation cherishing efficiency and practicality above all other values. Among the U.S. scholars the term most often encountered is legal realism defined as a specific behavior of the judiciary and parties to lawsuits, otherwise law in action or law emerging from the decision-making process (Lang, Wróblewski 1986: 182). What is emphasized in this concept is the interaction or inter-communication between the participants of the legal process, thus a social fact (ibid: 182). Thomas succinctly summarizes this radical skepticism sometimes

[20] The latter is a term coined by William Blackstone, an English jurist and philosopher to whom the Founding Fathers owe considerable homage and respect insofar as his "Commentaries on the Laws of England" contributed enormously in shaping the formative documents such as the Articles of Confederation and Perpetual Union and later the Declaration of Independence together with the Constitution. As Miles justly observes, Blackstone's most influential work 'helped to solidify legal thinking' (Miles 2000: 46). Not only did it exert an influence upon the letter of law as reflected in the statutes, it was also a guide for the U.S. Supreme Court judges,

represented by the common law judges: "Legal practice is regarded as being sufficiently rich to make theory redundant" (Thomas 2005: 2). However, such extreme, as it were, pragmatism, should not be considered as representative for the American jurisprudence, notwithstanding the historical binary opposition existing between statutory law on the one hand, and common law on the other. All the more so since the doctrine of *stare decisis* is not so strictly observed by the American judges when compared with their English colleagues. The above state of affairs renders the depiction of the U.S. legal system as a decision-making process somewhat more difficult to embrace (Lang, Wróblewski 1986: 174).

The principle of *stare decisis* has aroused and still arouses certain controversies[21]. Doubtless, once applying a particular method of interpretation (cf. the types of interpretation are further discussed in the subsequent section), a judge, especially in higher instance courts, ceases to be an anonymous representative of justice. Analyzing judicial decision processes might even disclose their personality reflected therein (ibid: 178). As already observed, the Supreme Court also actively participates in the political life. The best example that confirms this court role as a policy-maker would be civil rights cases. In the American judicial practice, a decision that establishes the scope of the civil rights might even contradict the statutes and become a precedent binding in the future cases (ibid: 179). Considering this political impact that courts have on the adjustment of human and civil rights legislation to the current political circumstances, a judge is inevitably confronted with a dilemma: looking into the past is out of question since it does not provide any answer for what seems to be just. It might roughly correspond to the civil law rule of "*interpretatio extensiva.*" According to this rule, whenever a doubt arises as to what should constitute the scope of civil rights, the decision should always favor the broader interpretation, or the one which will be more beneficial for the injured party. Formalist approach towards law interpretation and application seems to somehow contradict the idea that the judiciary is to play an important role in the political life of a country. As Sir Anthony Mason remarks:

[21] Especially under John Marshall and his successful attempt to form the very basis of the decision-making process employed by the American Supreme Court judges (Bader 1995: 6).

"Precedent brings in its train corresponding detriments: a mode of argumentation that appears to be excessively formal because it is preoccupied with past decisions and dicta, and is unable to respond to the need for change. Examination of past authorities, he suggests, dominates the process of legal reasoning (Lindell 2008: 28)."

The counter-arguments, however, also occur on the part of those who view legal texts as open-textured (cf. Hart, Putnam) and the concepts therein contained subject to constant redefinition and reinterpretation. These authors argue that :

"If, the concepts themselves are defined according to the current state of knowledge in the relevant linguistic community, then meaning remains provisory, and cannot be fixed independently of context' (Charnock, 2007: 36)."

Here, however, a compromise is also offered: Hart, following Putnam, proposes to view the concept as a kind of a stereotype that would mirror the society's default and imbued perception of the world that is not precise nor perfect and thus requires refinement in the course of application to a particular case or situation (cf. Charnock, 2007: 37). It turns out, therefore, that neither excessive rule-following and formalism nor excessive creativity or 'ad hoc' searching for common-sense meaning seems recommended. The decision-making process is thus a multi-faceted and elusive procedure so that each one requires different approach tempered by the particularities of the case and the current state of knowledge in the relevant linguistic community.

1.5.4 The "Hart-Dworkin" debate

As already pointed, American jurisprudence is known for its negative attitude towards formalism. We may venture a conclusion that this attitude will also reflect itself in a relatively high degree of discretion that American judges enjoy faced with interpreting the law when compared with their English counterparts. One of the legal theorists who contributed most to the 'depersonalization' of law is Ronald Dworkin. Although critically oriented towards legal positivism, he himself is regarded as one of the strongest opponents of the so called strong discretion of judges in arguing that "adjudication should be as unoriginal as possible" (Dworkin 1977: 40). In his "Model of Rules", he claims the following:

"The set of these valid legal rules is exhaustive of 'the law,' so that if someone's case is not clearly covered by such a rule (because there is none that seem appropriate, or those that seem appropriate are vague, or for some other reason) then that case cannot be decided by 'applying the law.' It must be decided by some official, like a judge, 'exercising his discretion (Dworkin 1967: 17)." [22]

In the above description, "exercising the discretion" is qualified as something exceptional, standing in stark contrast to 'applying the law' (which, in turn, is valid and appropriate as such). Whether the body of existing legal rules and principles is sufficient to embrace the infinite number of situations is yet another debatable question and has been the bone of contention between legal positivists and proponents of the law of nature. The former, among them, Hart, have claimed that legal rules are distinct from morality and therefore ethics and conscience should not in any way influence the application of rules in the course of decision-making process. Such a viewpoint has naturally aroused protests since indifference towards morality creates a risk of becoming immoral. No one of sound mind would accept a rule that killing or robbing someone should remain unpunished. Therefore, in his "Concept of Law", Hart refined the earlier positivist theory by claiming that in obeying the rule of law, a citizen is not acting like a blind follower but rather, assumes a critical and reflective approach towards it (Hart 1994: 86). We should also highlight an important distinction between a legal rule and a legal principle: whilst the former is a secondary norm deduced on the basis of a number of cases, the latter constitutes the core of the legal system and is sanctioned by the convention and tradition. As Thomas observes:

"Whether or not a rule is 'valid' is ultimately determined by reference to the relevant legal principles, that is, principles that judges must take into account as a consideration which inclines the decision in one direction or another (Thomas 2005: 191)."

What constitutes a legal rule and what, in turn, should prevail when determining a given case, might also not be as clear as it seems. Dworkin's answer to that question can be summarized as follows:

[22] also available at: http://www.umiacs.umd.edu/~horty/courses/readings/dworkin-1967-model-of-rules.pdf

"If the facts are covered by a settled rule, that rule must be applied and that is the end of the matter. If the rule does not point to a single result, or two rules are in conflict, the case is to be determined by reference to the relevant principle or principles implicit in the particular rule or rules. If the principle or principles point in one direction, the judge is bound to recognize their force and decide the case accordingly (Thomas 2005: 191)."

The main shortcomings of the neat constellation of Dworkin's rules and principles as outlined above, would be the premise that legal system is infallible and that there are no gaps nor exceptions within it that would require general "refurbishment." In such a view, principles are the last and unrepealable instance to be consulted in cases of doubt. In claiming that applying the law remains outside of the domain of policy-making, he wished to confine the judicial system to safe neutral grounds. However, as remarked by Hart, his main ideological opponent:

"This exclusion of ''policy considerations'' will, I think, again run counter to the convictions of many lawyers that it is perfectly proper and indeed at times necessary for judges to take account of the impact of their decisions on the general community welfare (Hart 1983: 141)."

Similarly, a theory that rule-model does not require any discretion nor interpretation should also be rebutted since the act of "extracting" the rule (*ratio decidendi*) itself may also become a source of dissention. Shapiro, Alexander, Sherwin and McCormick argue that this is indeed the case (cf. Shapiro 2007, Alexander and Sherwin 2007, McCormick 1997). In their opinion, drawing a line between what in a given case constitutes a *ratio decidendi* and what should be in turn regarded as *obiter dicta* is in fact determined by the judge. However, the above viewpoint would imply an unrestrained will and power of the law-applying body. Since extreme and untempered theories fall from grace rather quickly in the domain of legal sciences, the above had to be somewhat "tempered." In its mild version it claimed that if the part considered as *ratio* by the judge establishing the precedent is considered defective in its original form, it may undergo some modifications by the judges deciding similar cases in the future (Koszowski 2009: 39). A similar process is discussed in section 1.3 where the institutions of overruling and distinguishing are covered in greater detail. Sometimes though, the general and abstract norm is formulated explicitly by the judge and does not need to be implied ad hoc by his or her successor. The manner in which the *ratio* is presented (whether explicitly or implicitly) might constitute distinctive criteria: we may namely speak of those of judgments which contain a clear ratio and those where the ratio is implied (ibid: 35-36).

1.6 **The interpretation of law**

1.6.1 Vagueness of legal discourse

Describing legal language is not an easy task, especially if one refers not to one particular area of law but rather to an entire scope of law branches (i.e. civil law, criminal law, contracts, torts, business and tax law, commercial law, private and public international law etc.). As Roszkowski notices:

‘legal discourse spans a continuum from legislation enacted at different levels (e.g. state, federal), judicial decisions (judgments, decrees or orders), law reports, briefs, various contractual instruments, wills, power of attorney, etc., academic writing (e.g. journals, textbooks), through oral genres such as, for example, witness examination, jury summation, judge’s summing-up, etc. to various statements on law reproduced in the media and any fictional representation of the foregoing’ (Roszkowski 2011, 11).

It is for this reason that the author would like to restrict the research in question to one specific field, i.e. the criminal law and its terminology. Referring to the structuralist nomenclature, we might define the language of law as discrete and dichotomous in nature and as relying heavily on binary oppositions. The majority of criminal concepts are divided into two categories, one of which possesses a given feature and the other one which is devoid of it. The said feature is often a relation towards other entities, e.g. 'guilty' vs. 'innocent’, ‘prosecutor’ vs. ‘defendant’, ‘conviction’ vs. ‘acquittal’. In principle, therefore, there is no room for “in-between” concepts or phenomena that would not match the category. In his observations on legal matters, Havranek proposes to refer to this feature as ‘intellectualization’: ‘This intellectualization culminates in scientific speech determined by the attempt to be as precise in expression as possible, to make statements which reflect the rigor of objective thinking in which the terms approximate concepts and the sentences approximate logical judgments’ (Havranek 1964: 3-16). Since the linguistic means may render the utterance more or less categorical in the eyes of its recipients, analogically, the language employed by the judiciary may reflect either certainty or uncertainty vis-à-vis the line of argumentation proposed by his predecessors (as is the case with common law judges). On the one hand, expressions such as “I now pronounce you husband and wife” are not subject to interpretation and are there to ensure the validity of the existing legal conventions. On the other hand, however, legal language can be characterized by its

indeterminacy and vagueness, in particular so since legal general clauses refer to an entirety of some phenomena or situations that are to be individualized on the level of interpretation by the judge. The dichotomous character of legal discourse as opposed to the 'continual' character of common every day speech gives rise to the 'conflict of interests'.

Language of law is considered to rely on the intention of the lawmaking body which is often given as the most important factor when deciding upon the verdict or sentence. The above approach would imply the stability of meaning which was once determined by the legislator and is subsequently enshrined in the legal act or statute. However, pursuant to paragraph 155 of "The Principles of the Legislative Technique":

§ 155. "If there is a need to ensure the flexibility of a text of a normative act, one might avail themselves of vague terms, general clauses or set the minimum and maximum limits of decisive freedom not to be exceeded." [23]

Gizbert-Studnicki describes the notion of vagueness as the so-called "accidental polysemy." This, in his view, would include all words with vague meaning (Gizbert-Studnicki 1978: 54). The category of "vagueness" belongs to the more general category of polysemy. Such an approach requires a different understanding of polysemy: a polysemous word is not the one with numerous meanings but rather the one which is equivocal or ambiguous (Gizbert-Studnicki 1978: 54). The author enumerates the following types of vagueness which presuppose the means in which doubts as to the meaning of a legal norm might be eradicated:

— scale vagueness: vagueness which arises with respect to one gradual feature of a predicte's connotation (e.g. small- big, narrow- wide, short- long);
— multi-sided vagueness: vagueness is linked to so called semantic fields of the language (a set of words referring to more or less distinctly separated sphere of reality); vagueness arises not only with respect to the borderline between the extension of a given predicate and another one but also with respect to borderlines among more than two predicates;

[23] Annex to the regulation of the Prime Minister as of 20th June 2002 on "Principles of Legislative Technique" ("Zasasy Techniki Prawodawczej") (Journal of Laws, No 100, item 908, translation mine).

— multidirectional vagueness: occurs when a connotation of a vague predicate contains more than one graduał feature; each of the graduał features of the predicate's connotation determines one direction of its vagueness (e.g. "a catastrophe": a decision whether to classify a particular event as a catastrophe does not entail classification of other events and borderlines must be established with respect to each gradual feature of the predicate's connotation (Gizbert Studnicki 1978: 142-146).

The opposite of vague predicates would be predicates denoted as precise which, as he writes, imply the existence of a dichotomy: two categories that are mutually exclusive (Gizbert-Studnicki 1978: 54). If, on the contrary, a given term does not imply the existence of such complementary categories, the term is considered vague. However, this "faultiness" or the lack of two dichotomous terms complementing each other, is not the result of insufficient linguistic skills on the part of the speaker since the purported "vagueness" would need to be confirmed by the native. Instead, it is a consequence of intrinsic properties of a word (Gizbert-Studnicki 1978: 55). Naturally, native speakers may also resort to the so-called intuitive meaning or the meaning motivated by empiric experience (Gizbert-Studnicki 1978: 55). However, the point of departure for the studies of vagueness in language (which subsequently laid foundation for the studies of vagueness in the legal language) would be the ideas introduced by the stream of cognitive semantics in the early 1970s, notably Rosch, Lakoff and Langacker (Rosch 1973, Lakoff 1987, Langacker 1987/91). Lakoff claimed that „the structure of meaning" is based on a prototype. Prototypes, in his view, are objects which are considered by a given community as the most typical representatives of a semantic category (Lakoff 1987: 12). Here are some basic notions formulated by Lakoff in "Women, Fire and Dangerous Things", which afterwards became of interest to the law theorists (cf. H. Hart 1990):

— centrality· The idea that some members of a category may be "better examples" of that category than others;
— centrality gradience: The idea that members (or subcategories), which are clearly within the category boundaries, may still be more or less central;
— membership gradience: The idea that at least some categories have degrees of membership and no clear boundaries (Lakoff 1987: 12)

With regard to the perception of reality, we should also evoke the theory of Hilary Putnam, according to whom meaning and reference are dependent upon use in a particular context. He dismissed the notion that universal ideas are out there since they depend upon our versions of reality. Furthermore, he introduced the concept of a stereotype which he defines as the point of departure for a speaker of a given language when it comes to his/her knowledge about the external world. As such, this knowledge does not have to correspond to the scientific status quo (Putnam 1975: 249). The above ideas concerning stereotypical and prototypical understanding of linguistic meaning have been transferred onto legal ground by Hart, already referred to in the context of his debate with Dworkin. Hart's definition of a legal term is interesting insofar as he considers it as consisting of a semantic core and penumbra (Hart 1990: 275).Whereas the core is a stable and unproblematic center of the category and does not need to be interpreted, the penumbra are peripheral, more connotative areas of the category, the fringe areas (ibid: 275). The „core and penumbra" concept corresponds to roles which the legislator and the court are to fulfil in the process of law application: whilst the legislator establishes the core, the judge investigates the penumbra. The above view rendered legalese more compatible with the "the continual" and changing circumstances of the outside world. As we have already seen in the previous section, legal concepts are not that "fixed" and precise and thus might become problematic, especially when employed in the legislative acts aimed to serve the judges in determining the sentence. Language of law is considered to rely heavily on the intention of the law-making body, which is often given as the most important factor when deciding upon the verdict or a sentence. The above approach would imply the stability of the meaning which was once determined by the legislator and is subsequently enshrined in the legal act or statute.

Another classification is the one proposed by Azar who distinguishes four types of semantic indeterminacy: homonymy, polysemy, generality, and vagueness. The conceptual category that has a fuzzy zone causes uncertainty as to whether or not an entity in the real world belongs to the category (Azar 2006: 125). Unlike ambiguity, vagueness is concerned with extra-linguistic factors and a vague term cannot be de-vaguefied by means of linguistic context (Azar 2006: 127). Azar concludes his deliberations by stating that „the only way for a user of language to give to a vague term a precise meaning is by providing a stipulative definition (Azar 2006: 127)." Opinions vary as to the classification and nomenclature of vague words (or under-

defined concepts, as they are referred to by Kornelius). We will point to only a few of them. According to Jopek-Bosiacka, we can distinguish between two types of vague expressions:

— general clauses (mostly the domain of the civil law and contracts);
— vague expressions (the domain of both: civil and criminal law) [in Polish: zwroty nieostre, szacunkowe] (Jopek-Bosiacka 2006: 32).

Kornelius, on the other hand, distinguishes between three dimensions of vague, or under-defined concepts: those referring us to customary norms, to the estimated valuation or to the systemic valuation (the general clauses) (Kornelius 2009: 90). Examples of evaluative, or comparative phrases would be: *strong reasons, appropriate benefits or striking loss.* The understanding of such terms "depends on the valuation (estimation, to be more precise) and requires the application of a differential method which relies on the comparison of the factual state with the desired one (Kornelius 2009: 90)."

General clauses are indeterminate terms which send the reader to extralegal phenomena, ethics, moral systems (good faith, good will, the best interests of the child) that increase the elasticity of a legal text. According to Panek, they may serve as safety-valves of law since their semantic vagueness makes law flexible enough for unexpected situations (Panek 2010: 45). Lawyers who are well-trained in their profession are able to make use of this feature of legal language while "juggling" with arguments during trials. Being a branch of the private law, civil legislation abounds in general clauses. However, in the criminal law it is to be avoided for the reason which shall be elaborated later on. As observed by Kornelius

"some researchers define by this term any use of the expression generating a freedom of decision in the text of the legal act. Others claim that any situation where legal regulations establish the necessity to give evaluation to fix the content of the concept should be treated as general clauses. Yet, other researchers define a general clause as the expression of language which refers to a certain system of evaluation which is beyond the scope of law (Kornelius 2009: 91)."

In the opinion of Hart, the open texture and the use of general concepts enable a legislator and the organ of law application to adopt legal regulations to actual needs (Hart 1990: 176).

Vague expressions make the norm potentially applicable and relevant pragmatically. According to Jopek- Bosiacka, the legislator thus tries to render legal texts flexible and adequate vis-a-vis the changing social and political circumstances (Jopek- Bosiacka 2006: 33). Examples of this kind include: *adequate compensation, adequate remedy at law, due care, due process, extreme cruelty, reasonable time, as soon as possible, sufficient, under the influence of liquor (Polish ones: promptly/without undue delay, due diligence generally required in relations of a given kind, glaring loss, excessive difficulties, etc.).* According to Panek,

"vagueness of single lexemes does not lie directly within the semantic scope of their category but has much more to do with pragmatics and context. Phrases such as "sufficient," "as soon as possible," or "undue influence" mean very little when taken out of their context, it is in large measure pragmatic, contextual (Panek 2010: 41)."

Polish Penal Code operates with numerous vague expressions. Among them we may find: *considerable value* (art. 294), *particularly justfied cases* (art. 60 § 2), *permanent source of income* (art. 65), *accident of lesser importance, insignificant social consequences, dangerous item, particular cruelty, essential needs* (art. 209), *personal inviolability* (art.217), *malicious infringement* (art. 218), *guilt* (occurring in the provisions of both substantive and procedural criminal law). In the Polish legal system the meaning of such terms is usually determined through the analysis of a body of rulings and the doctrine. Since vagueness is concerned with extra-linguistic factors, it allows more room for interpretation when it comes to adjudication. Due to this feature of vagueness, which has little to do with the text's wording, the linguistic context does not provide sufficient clues for the clarification of vague words. As far as criminal law is concerned, vague expressions are to be avoided. However, some legal systems stigmatize them more than others. In the American legal system the "void-for-vagueness" doctrine best illustrates the negative attitude of law enforcement institutions towards vague and unclear language. In the Polish law, on the other hand, it is not so explicitly criticized. Leaving room for free interpretation, vague language may prove a useful tool if literal interpretation defies the so-called "common-sense" understanding (very often referred to in works dedicated to law interpretation). According to the definition from the textbook for the American law students, a statute is void for vagueness and unenforceable if it is too vague for the average citizen to

understand.[24] There are several reasons a statute may be considered vague; in general, a statute might be called void for vagueness when an average citizen cannot generally determine what persons are regulated, what conduct is prohibited, or what punishment may be imposed. Criminal laws which do not state explicitly and definitely what conduct is punishable are void for vagueness. As we will see, vagueness is a defense very frequently called upon by the plaintiffs in the American cases and the one that leads to innumerable discussions. The citizens invoke the "void for vagueness" doctrine in situations where the statutory or precedential definition is too broad and results in charges that are unsubstantiated given their wide-ranging character and that impose guilt by association. One of the most frequently-cited cases is the Holder v Humanitarian Law Project where the plaintiffs question the judgment finding them guilty on the basis of providing material support to terrorist organizations. The said crime is defined in the United States Code, sections 2339A and 2339B [25] as involving four elements, namely: "training," "expert advice or assistance," "service," and "personnel.
As observed by David Cole:

"The term [providing material support] coined by former Attorney General John Ashcroft, describes an amalgam of tactics in which the government employs highly coercive and intrusive measures against groups and individuals based not on proof of past wrongdoing, but on necessarily speculative fears about what they might do in the future." [26]

Indeed, both the terms "terrorist organization" as well as "providing material support" have become controversial, especially in the light of the 9/11 events and they have as many supporters as adversaries. Other terms that have become the bone of contention in the course of the American judicial history include inter alia: "suspicious persons", "abominable and detestable crime against nature", "gang", "gangster", "vagrancy", "being a common thief", "common night walking", "humane and sanitary manner", "legal adult pornography." We will analyse more such terms in the chapters to come, especially regarding their epistemic aspect.

[24] Source: "E-Study Guide for Contemporary Criminal Law: Concepts, Cases, and Controversies".
[25] 18 U.S. Code 2339A and § 2339B - Providing material support or resources to designated foreign terrorist organizations, source: https://www.law.cornell.edu/uscode/text/18/2339A

[26] source: Cole, D., Terror Financing, Guilt by Association and the Paradigm of Prevention in the 'War on Terror', availabla at: http://scholarship.law.georgetown.edu/facpub/442/;

1.6.2 Civil law approaches to law interpretation

In this section we will briefly examine an array of interpretative means and meaning theories available for judges in the civil law systems. While on the grounds of common law, the general rule is that literal interpretation should supersede intentional meaning, in Polish tradition two approaches seem to compete. On the one hand, Polish judiciary are advised to adhere to the linguistic meaning where the content allows it. Hence, as the rule assumes, interpretation is not necessary if all doubts are dispersed by literally reading and applying the norm from the statute. This particular approach can be accurately described by a Latin principle *clara non sunt interpretanda.* The above was also advocated and reiterated in the decision of the Polish Constitutional Tribunal as of 28 June 2000 according to which :

"In a state of law, the interpreter must always in the first place take into consideration the linguistic meaning of a legal text. If linguistic meaning of a text is clear then, according to the principle *clara non sunt interpretanda*, there is no need to resort to other, extra-linguistic methods of interpretation. In such a case the extra-linguistic method of interpretation might additionally confirm, thus intensify, the results of the linguistic interpretation through systemic or functional one." (Journal of Laws No 53 item 648, Judgment as of 28th June 2000, File ref. K 25/99, translation mine).

Crucial to the understanding of these two conflicting viewpoints may be the distinction recalled by Morawski, into declarative and constitutive theory of law interpretation (Morawski 2010: 18). The declarative theory has already been hinted at with an example case and opinion of Lord Reid in Kleinwort Benson v Lincoln City Council. Let us here confine ourselves to the statement that the declarative theory reduces the creative side of the judicial work to an absolute minimum, often denying it any innovative character. The constitutive theory, on the other hand, grants judges the potential to alter legal norms through determining the plight of individuals. The latter, however, is considered somewhat controversial in the civil law continental systems since it poses a risk that a judge may become too dangerously involved and therefore any ingenuity should be thwarted. Such an approach, however, is favored by the Polish Constitutional Tribunal which, in the Resolution passed on 7th March 1995, expressly stated:

"Interpretation established by the Polish Constitutional Tribunal is not and may not be creating legal norms but establishing the correct interpretation of legal norms contained in statutory provisions. (…) The Constitutional Tribunal does not take away or add anything to the system of binding legal norms, but only specifies the content of these norms." [27]

The opposite point of view can be summarized as treating a text as an open texture which always requires some amount of interpretation regardless of whether its content seems obvious at first sight or not. This principle, reflected by a Latin proverb *omnia sunt interpretanda*, has also found its advocates.[28] Depending upon the assumed criteria, we can distinguish between several types of law interpretation employed in the civil law systems. Relevant for our analysis will be the one based on the method. Wróblewski points to the following methods: linguistic, systematic, functional and historical (Wróblewski 1998: 128). As already evoked in the decision of the Polish Constitutional Tribunal, the linguistic interpretation should be a default method employed by the legal text recipients. However, in certain cases it might lead do irrational moves such as was the case with the famous Supreme Court decision regarding the use of the plural form of the noun 'greyhound and its cross breeds'. The court ruled that incriminating the possession of 'greyhounds' without license should in itself also refer to a single animal although the legislator employed the plural form which would normally imply 'more than one'. In justifying its decision, it concluded that:

"Limiting oneself to the literalist interpretation- without regard to the purposes the legislative act is to fulfil – distorts the meaning of the legal regulation and leads to absurd conclusions.*"*[29]

Systematic interpretation, for its part, is concerned with placing a given legal provision within particular circumstances that constitute a background for the law-maker. Thus, the interpreter should refer to the system in its entirety anywhere he/she draws general conclusions based on concrete facts. Such an approach towards a legal text is to guarantee a coherence and stability of the law.

Functional interpretation, as its name suggests, will in the first place consider the function and purpose a given norm or a decision may have upon the society. And lastly, historical

[27] Resolution of the Polish Constitutional Tribunal dated 7th March 1995, File Ref. no. W 9/94, OTK 1995/1/20.
[28] cf. the decision of the Supreme Administrative Court dated 30th November 2005, file Ref. FSK 2396/04.
[29] Resolution of the Polish Supreme Court dated 21st November 2001; I KZP 26/2001 [translation mine].

interpretation will rely on the circumstances that accompanied the creation of a given act, issuing of a decision. As observed by Łętowska, reference to the past might help in adapting the norms or rules to the current situation since it draws a line between what was relevant some years ago and what will be relevant here and now (Łętowska 1993: 58).

1.6.3 The growing role of the statutory legislation in common law countries

As observed earlier, interpreting in common law adjudication generally favors literal meaning over intentional meaning. According to the 'literal rule' English judges are expected to adhere as far as possible to 'the grammatical and ordinary sense of the words, giving the words their ordinary signification'.[30] They are further guided by the authoritative meaning, that is, prior cases that raised similar issues and thus, sanction a particular judgment, whether for or against the defendant. As regards the statutory elements present in the American legal system, their influence upon common legislation is on the increase. However, as Tokarczyk notices, the common law system constitutes a far more integral and complete system of norms. It is also self-sufficient since a legal loophole, i.e. lack of precedent, will be filled with a new precedent (Tokarczyk 2003: 41). Moreover, Pomorski remarks that common law and statute law are not two isolated phenomena but are highly interrelated (Pomorski 1975: 3). Consequently, methods of interpretation of statutory law in case-law systems had to be worked out to allow a more coherent application of abstract norms that often arouse doubts due to the vagueness of legal language and the occurrence of general clauses and vague expressions (cf. section 1.6.1. on the characteristics of legal language).

The first method would be the literal interpretation (or the plain-meaning interpretation), which roughly corresponds to the linguistic interpretation employed in the civil law systems. The main disadvantage of literality, though, is that is presupposes that the language used in legal acts is always clear and precise allowing a fair and unproblematic projection onto reality. However, this is not the case since, as is often argued, legalese is full of abstract notions detached from everyday reality. Moreover, interpreting a statute word-for-word may lead to absurdities and thus, needs some 'filtering' through the circumstances accompanying a case that is adjudicated and taking into consideration the extra-linguistic factors. A case most frequently cited is Fisher

[30] cf. Grey v Pearson [1857] All ER 21 (HL), per Lord Wensleydale.

v Bell (1960) where both, the High Court and the Court of Appeal ruled in favor of the defendant, a seller who was sued for contravening the Restriction of Offensive Weapons Act 1959 by displaying a flick knife that suited the description contained in section 1 (1) of the said law. The judges, however, found that merely displaying an item does not constitute an offer for sale under the general law of the country distinguishing here between an invitation to treat and an offer in the understanding of the contract law. Although personally inclined to apply the 'common sense' meaning of the word "offer", they had to adhere to the literal interpretation. In the case at hand it would mean that the seller would be liable for displaying an article with a price attached to it. Nonetheless, since the law did not specify whether an offer for sale included "exposure", both the claim and the appeal had to be dismissed. Below an argumentation presented by Lord Parker CJ :

"In those circumstances I am driven to the conclusion, though I confess reluctantly, that no offence was here committed. At first sight it sounds absurd that knives of this sort cannot be manufactured, sold, hired, lent, or given, but apparently they can be displayed in shop windows; but even if this – and I am by no means saying it is – is a *casus omissus* it is not for this court to supply the omission."[31]

This avoidance of "absurdities" has led to the formation of a second rule referred to as the golden rule encountered in two possible variations: the wider one and the narrow one: depending on the situation, the judge may either extend the scope of a legal term or definition or apply one of the potential meaning the definition offers. In the words of Elliott: "where the literal rule gives an absurd result, which Parliament could not have intended, the judge can substitute a reasonable meaning in the light of the statute as a whole." (Elliott 2006: 26). Here, in turn, the best example is provided by Adler v George case (1964) where the defendant was sued for obstructing a member of the armed forces on the station. The ground for appeal, absurd as it may seem, had to be viewed by the Court of Appeal: the defendant argued that the statute, against which he had contravened, specified that prohibition concerned only "the vicinity" of a place where the armed forces were stationed and not the place itself. Naturally, the literal interpretation would result in acquittal whereas it is the 'common sense' that yields a fairer and more reliable sentence. Lord Parker CJ again does not fail to express his personal stance in relation to the said matter:

[31] Fisher v. Bell (Divisional Court). (1961) 1 QB 394.

"I am quite satisfied that this is a case where no violence is done to the language by reading the words 'in the vicinity of' as meaning 'in or in the vicinity of."[32]

The third method would be a mischief rule, which differs from the previous ones insofar as the judge is compelled to look 'beyond' the letter of the statute in order to 'bridge the gap' between the law and the facts. One could be inclined to actually view it as a modified version of the golden rule. In the 'mischief' version, however, we do not deal with absurd interpretations, as it were, but instead we are to determine whether there actually was a 'mischief' beyond the intention of the defendant. In other words, whether the deed was intentional or not. The above description would be best exemplified in Smith v Hughes (1960) where the defendants acted contrary to section 1(1) of the Street Offences Act, 1959 in that they solicited for the purposes of prostitution in 'public places'.[33] What aroused doubt was whether windows of the private houses could be considered as 'public places'.

The fourth method, the purposive approach is concerned with establishing the true will of the Parliament while enacting the law. As such, this interpretation method would give most discretion to judges who found themselves confronted with such a problematic wording of a statute. In the words of Lord Bingham:

"The court's task, within the permissible bounds of interpretation, is to give effect to Parliament's purpose. So the controversial provisions should be read in the context of the statute as a whole, and the statute as a whole should be read in the historical context of the situation which led to its enactment." [34]

The judge's last resort in the event where the literal meaning is likely to lead to absurd conclusions and the precedents offer no analogies, is the common sense : "Such an approach amounts to adjudication by introspection. The judge assumes that his intuition, possibly corroborated by that of his colleagues on the bench, will be accepted as valid for the relevant linguistic community" (Charnock 2007: 26).

[32] Adler v George, [1964] 2 QB 7, the text of a judgment available at: jpkc.jnu.edu.cn/syjx/abcl/jxal/...3164/.../2/2-1.doc.
[33] Street Offences Act 1959, Section 1 available at: http://www.legislation.gov.uk/ukpga/Eliz2/7-8/57/section/1
[34] Judgments - Regina v. Secretary of State for Health (Respondent) ex parte Quintavalle (on behalf of Prof-Life Alliance) (Appellant), available at: http://www.publications.parliament.uk/pa/ld200203/ldjudgmt/jd030313/quinta-1.htm

1.7 **Concluding remarks**

Supreme Court decisions are the ones "burdened" with the highest degree of responsibility for the possible legislative consequences, in particular in common law systems. The observations presented in the present chapter were to offer a comparative overview onto the systemic factors surrounding the decision-making process as operating in the civil law Polish system and the United States common law system. In particular, they were to address the issue of the involvement (or, for that matter, a lack thereof) of the judiciary in shaping the law, taking into account considerable discrepancies and the totally divergent process of evolution of the concept of the judge-made law in these two legal systems. Presenting various theories and hypotheses concerning the degree of judicial creativity might facilitate the task of comparing the occurrence of markers of certainty and doubt in a body of the Supreme Court decisions in the American and Polish version of the corpus.

Considering the incongruity of 'ordinary' decisions made by the Supreme Court in Poland with their American counterparts (in particular those delivered by a reduced panel of one or three judges), the author has selected only the resolutions of Sąd Najwyższy passed by a body of at least seven judges as having the force of a legal principle. We have already hinted in the previous sections that such resolutions, although not binding upon the lower courts, may nevertheless be invoked as a source of authority. They can hardly be called precedents since they become binding only upon the Supreme Court itself. Following Koszowski, we might recall here the distinction into interpretational precedents and resolving precedents (precedents pertaining to resolutions). Whilst the former are concerned with interpretation (be it literal, extending or narrowing one), the latter usually create a new norm which is no longer based on the interpretation of the hitherto binding legal norms (Koszowski 2009: 15). Analogically, legal specialists tend to regard the type of interpretational precedents as prevailing in the civil law systems while as the precedents pertaining to resolutions as typical for the common law ones.

Summarizing the differences outlined so far we might state that common law judges are considered to enjoy more freedom in interpreting the law as enacted in the rules of the previous judges or the statutes. Thus, an abstract body of rulings, a judge-made law, is possible at all. Nevertheless, some jurists are reluctant towards granting judges excessive liberty in amending the precedents and are of the opinion that such practices should be confined to exceptional

cases. On the other hand, civil law judges are encouraged to adhere to the letter of law as enacted in codes and statutes. The principle, which is of utmost importance, especially in the Polish doctrine, is the principle of the uniformity of judicial decisions. Although it is not yet a standardized practice, some authorities are inclined to adapt certain common law tendencies in order to secure the stability of the legal system. The application of precedents is still associated with lack of autonomy of a judge, an argument which has somehow monopolized the debate on the interpretation of legal norms and provisions that is ongoing among theoreticians and professionals alike. Taking the above into account, the questions that have arisen in the course of the present chapter and that will be addressed in the chapters to come would be:

— Are American Supreme Court judges (as representative of the common law system) employing more linguistic markers of epistemicity (doubt, certainty, opinion) than do Polish Supreme Court members?
— What are the similarities and differences in the distribution of epistemic markers in common law Supreme court judgments and civil law Supreme court judgments in terms of their classification into high, median and low-value?
— Can the statistical data thus obtained allow us to determine the the degree of autonomy enjoyed by the Polish and American judiciary in issuing verdicts and rendering judgments?

The subsequent chapter will focus specifically on the phenomenon of mood and modality as a grammatical phenomenon with the ‘power’ of modifying the nature of an utterance. Examples of such utterances drawn from the corpus will be provided in order to embed our discussion in strictly legal settings.

Chapter 2

Mood and modality

2.1 Introduction: general remarks and state of the art

Mood and modality render the text and an utterance an 'actual potential'. This somewhat metaphorical depiction of the essence of modality has been coined by M. A. K. Halliday in his classical contribution to the subject 'Language as Social Semiotic' (1978: 40). Modality will constitute the groundwork of the analysis intended by the author and this chapter concentrates on the presentation of various taxonomies construed to date with regard to mood and modality and scrutinizes them in order to create a frame of reference for the practical part. The following sections will be dedicated to the nature, scope, typology, meaning and linguistic/grammatical markers of modality. Section 2.2. will be concerned with Systemic Functional Linguistics, which can be considered as a point of departure for the analysis proper of the phenomenon of modality. A brief summary of the theories advanced by the main proponents of SFL will be followed by the presentation of illocutionary acts and sentence types which, as will turn out, may prove useful in understanding the classifications and taxonomies made on the basis of the theory of speech acts. Section 2.3 is dedicated to both grammatical and semantic aspects of mood and modality. Delineating the borders is not an easy task. However, certain categorizations need to be made in order to become familiar with the scope of the terms 'mood' and 'modality'. Section 2.4., in turn, will concern epistemic modality: its scope and relations with cognitive grammar, stance-theories, the category of evidentiality and philosophy. The theories demonstrated will vary in their broadness from the most narrow definitions, based on the grammatical category of mood (Palmer 1986, Huddleston 1988: 80, Bybee and Fleischmann 1995) to the philosophical ones, attempting to view the topic globally and in line with generations of philosophers concerned with 'the necessary' and 'the possible'.

As observed by Palmer (1986) and Bybee and Fleischmann (1995), despite terminological discrepancies, modality as a category is recognized across a number of different and unrelated languages similarly to aspect, tense, number, gender, etc. The extensive research conducted to date has resulted in a multiplicity of aspects and methods of dealing with the issue. The authors whose contributions will permeate the present investigations include: Halliday (1970, 1978),

Lakoff (1972), Lyons (1977), Kratzer (1977, 1981, 1991); Perkins (1983), Coates (1983), Erhart (1984), Chung and Timberlake (1985), Palmer (1979, 1986, 2001), Huddleston (1988), Hengeveld (1988), Kinkade (1998), Sweetser (1990), Comrie (1991), Kakietek (1991);Bybee and Fleischmann (1995), Kiefer (1994), Nuyts and Van der Auwera (1996, 2001a, 2001b, 2016), Hoye (1997), De Haan (1997), Mindt (1998), van der Auwera and Plungian (1998), Schneider (1999), Papafragou (2000), Cresti (2000, 2001), Kärkkäinen (2003), Keisanen (2007);, von Fintel (2007), Cheng and Cheng (2010), Martin, Matthiessen and Painter (2010), Cheng and Sin (2011), Kačmárová (2011).

In the case of epistemic and evidential modality the most prominent authors in this field include: Halliday (1970, 1994), Leech (1983), Sperber and Wilson (1986), Palmer (1986, 2001), Zuck and Zuck (1986), Chafe (1986), Wilson (1986), Biber and Finegan (1988), Dik (1989); Blakemore (1992), Hoye (1997), Biber (1999), Hyland (1998), Drubig (2001); Rooryck (2001a, 2001b), Halliday and Matthiessen (2004), du Bois (2007), Keisanen (2007) Moraes et al. (2010), Brezina (2012).

As far as Polish researchers are concerned, the following contributors to the theme of modality can be enumerated: Polański (1969), Wierzbicka (1971), Puzynina (1974), Rytel (1981, 1982), Jędrzejko (1987, 2000), Wróbel (1991, 2001), Grzegorczykowa (1995, 1996, 1997), Ligara (1997); Wronkowska, Ziembiński (2001), Szczyrbak (2012), Warchał (2014).

At the start of our review, however, we should point to the complexity, on the one hand, and vagueness, on the other, of the concept itself. Due to truly multifaceted character, it spans a continuum of disciplines and verges on different branches of linguistics such as semantics, pragmatics, psycho- and sociolinguistics, discourse analysis, genre analysis, rhetorical structure theory, recently also forensic linguistics where in particular genres such as judgments are given most attention. Bybee and Fleischmann (1995: 2) define modality as:

"The semantic domain pertaining to elements of meaning that languages express. It covers a broad range of semantic nuances - jussive, desiderative, intentive, hypothetical, potential, obligative, dubitative, hortatory, exclamative, etc. - whose common denominator is the addition of a supplement or overlay of meaning to the most neutral semantic value of the proposition of an utterance, namely factual and declarative."

Schneider (1999: 13), in turn, argues that modality consists of:

— speech acts (orders and wishes, i.e. deontic modality) and
— attitudes to truth-content of the sentence (i.e. epistemic modality).

Kiefer, on the other hand, approaches the term from a slightly different (speaker's) point of view and defines modality as "the speaker's cognitive, emotive, or volitive attitude towards a state of affairs" (Kiefer 1994: 2516); his commitment or detachment, his "envisaging several possible courses of events" or his "considering of things being otherwise"(Kiefer 1994: 2516);

Due to the confusion the above multiplicity of meanings may lead to, modality is usually approached from one perspective only: the present chapter will therefore be confined to the study of epistemic modality as a sort of functional frame for the portrayal of the decisions of the Supreme Court as a legal genre. By 'measuring' the degree of 'epistemicity' of both corpora, we will be able to approach the underlying dilemma: whether the role of the judge and his/her involvement as emerging on the linguistic layer can find its reflection in the ideological foundations of the respective legal systems. These ideological factors have been referred to in the previous section. Let us now, however, embark upon the issue of Systemic Functional Linguistics and the notion of function as understood and elaborated on by Halliday since, as we will see, the notion of function is of utmost importance in the study of modality.

2.2 **Systemic Functional Linguistics**

2.2.1 Introductory remarks

The point of departure for the discussion of modality should be the Systemic Functional Linguistics, which constitutes a comprehensive framework and background for the study of modality. As far as the notion of function is concerned, it might be best illustrated by the succinct statement 'language is as it is because of the functions it is required to serve' (Halliday 1970: 324). Halliday's Systemic Functional Linguistics (or SFL, as a commonly used abbreviation to refer to this field of research) focuses on the strictly functional parameters. If perceived through this light, depiction of various collocations and the recognition of interplay between verbal and non-verbal elements are to serve a particular, mostly communicative, purpose. As defined by Halliday, Systemic Functional Linguistics is one variety of functional linguistics, its distinctive feature being the concern to explain the internal organization of language in terms of the functions that is has evolved to serve (Halliday, 1978, 1994). SFL,

therefore, pays particular attention to those aspects of language that allow its users to accomplish everyday social life and manage social matters. On the level of the written discourse, the analysis of texts is always conducted in relationship to the social context in which they occur (McCarthy, Matthiessen, Slade 2010: 63).

Initiated by such authorities as Malinowski, Firth and Whorf and enriched by Halliday, Systemic Funtional Linguistics is centred around the idea of a system, which in turn is understood as 'any set of alternatives together with its condition of entry (Halliday 2004). System as such is contrasted with the notion of structure. The definition of the latter is 'the syntagmatic ordering in language: patterns or regularities in what goes together with what (Halliday 2004). On the other hand, system would be the ordering on an axis and determining upon 'what could go instead of what'. What we end up with, therefore, is the syntagmatic versus paradigmatic structuring of a language. Of particular interest, especially in the context of modality, would be the notion of meaning potential. Language itself is thus understood as an infinite pool of potential meanings which the speakers consult and adapt to particular communicative situations. Halliday refers here to the concept of 'delicacy'. As with modality, which makes possible placing a given phrase somewhere on an axis whose extremes represent absolute (ideal) values of something being 100 % true or something being 100% untrue, by employing the axis we are able to categorize the clause as either being positive or negative. In the paradigmatic ordering where we are able to select among the infinite pool of options, we might also make our utterance more or less refined according to the communicative needs. Halliday argues that the interplay between the system and structure can be best shown on the example of the mood network (Halliday 2004). As can be deduced from Figure 2.1., the clause can be either imperative or indicative. The indicative clauses consist of a Finite verb and a Subject and they are further divided into declarative and interrogative clauses. If the clause is indicative, the Subject comes first and if it is interrogative, the clause is either of yes/no type or WH-type. The details are shown in figure 2.1.

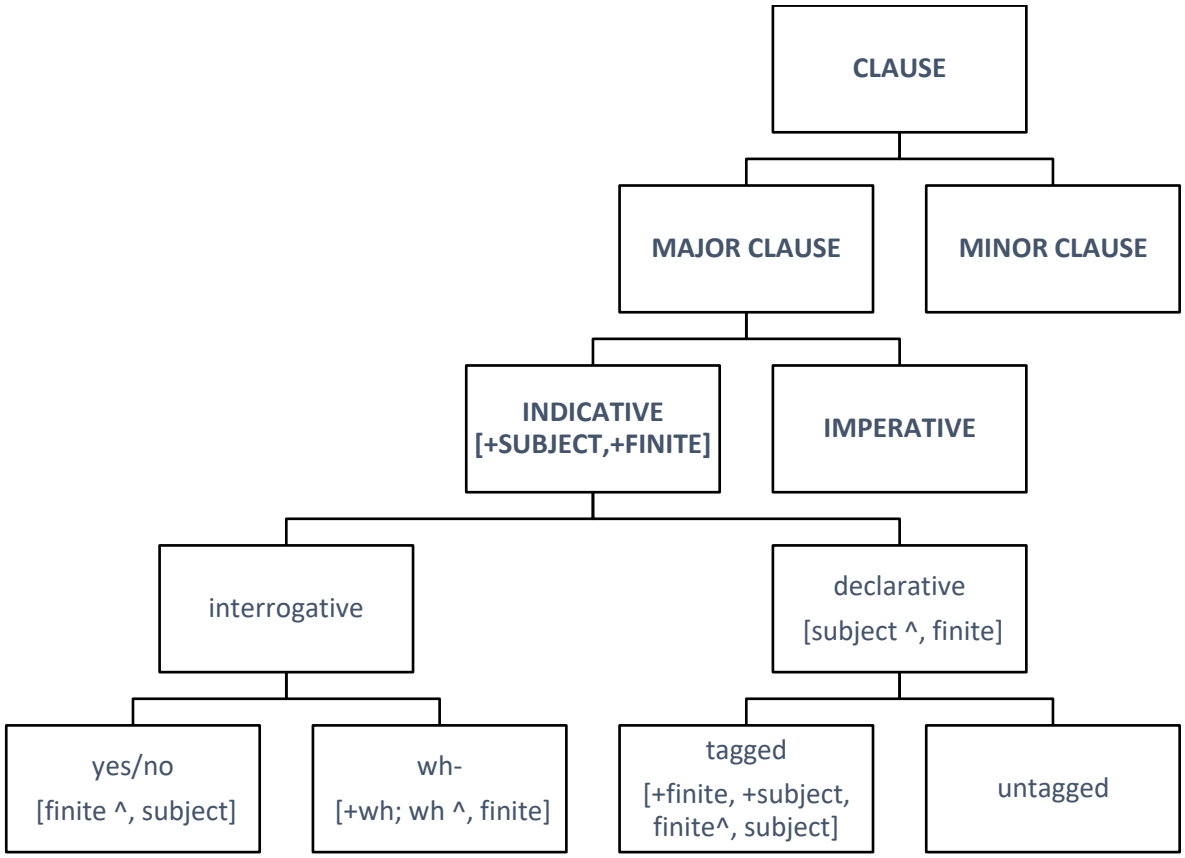

Figure 2.1: The mood network: set of choices available to speakers of English (based on Halliday 2004).

Awareness of the conventions of the verbal conduct in a given speech community is a necessary prerequisite for the speaker to determine what syntactic pattern to employ, what lexico-grammatical means to choose, and what intonation to use in expressing his/her communicative needs. The term ‘networks' representing the choices speakers make when producing an utterance refers us to various language strata. The 'choices' in this network are called 'features'. The scheme above might illustrate the way this ‘network’ operates. Depending on whether our decisions are taken at the sentence, the clause or the word level, there are various syntactic options available. Halliday further argues that before language takes on its lexico-grammatical form, it undergoes various stages beginning with social interactions that give rise to meaning per se (the stratum of semantics) and ending with the verbal element, the splitting into particular lexical units (the lexico-grammatical stratum). As Halliday himself describes the process:

"We use language to make sense of our experience, and to carry out our interactions with other people. This means that the grammar has to interface with what goes on outside language: with the happenings and conditions of the world, and with the social processes we engage in. But at the same time it has to organize the construal of experience, and the enactment of social processes, so that they can be transformed into wording. The way it does this is by splitting the task into two. In step one, the interfacing part, experience and interpersonal relationships are transformed into meaning; this is the stratum of semantics. In step two, the meaning is further transformed into wording; this is the stratum of lexico-grammar" (Halliday 2004: 24-25).

Another classification that draws on the function a sentence is to perform is proposed by Kiklewicz (2004) who distinguishes between nominative and interpretative functions of statements. The nominative function, which is subdivided into referential, transferential, propositional, temporal and aspectual, is based on the assumption that units of language, i.e. sentences, should be interpreted as designators of entities in the real world. Each of the sub-functions indicates a specific aspect of the situation, event, fact or state of affairs and the semantic structure should reflect the structure of the world (Kiklewicz 2004: 49-50). On the other hand, the interpretative function, would reflect certain extra-linguistic factors and pragmatic tendencies with which the speakers "equip" their messages in order to achieve a particular goal. It may thus show the attitude towards the propositional content. We can characterize the nominative function as describing the situations, events, fact and states of affairs with language that guarantees the direct relation of the sign to the reality. Referential sentences are considered as being synthetically true (Ehrich 1990: 11). However, as pointed by the author, the boundary between the nominative and the interpretative function is not so straightforward since even describing the reality "as it is" requires certain amount of subjectivity. Through selecting specific means that speakers have at their disposal, they show their individual preferences. It is up to them which option to choose to best refer to the situation in the outside world. The epistemic modality, which is here labelled as 'categorical' or 'problematic', would belong to the latter. According to the definition coined by Kiklewicz, categorical or problematic modality consists in expressing certitude/incertitude of the speaker towards the truth/un-truth of the content encoded in the sentence as well as towards its other features, e.g. reality, necessity or possibility' (Kiklewicz 2004: 152, translation mine). Table 2.1. below presents a full classification proposed by the author.

Nominative function	Interpretative function
Referential	Verdictive
Transferential	Categorical/problematic
Propositional	Alethic
Temporal	Deontic/intensional
Aspectual	Normative
	Axiological
	Emotive

Table 2.1. Sentence function according to the theoretical and functional modal

It is also worth to quote the opinion of Bojar and Korytkowska (1991: 44) who consider certainty/uncertainty as a variety within the category of truth: 'This category constitutes a scale of evaluation on which we can distinguish median values that differ in the degree of conviction of the speaker towards the truth-value of the message he/she is communicating' (Bojar and Korytkowska 1991: 44, translation mine).

As far as the notion of 'choice' is concerned, our preferences for one or the other set of available alternatives are of course also governed by pragmatic concerns such as specified by the Gricean maxims and by the so called cooperative principle: "Make your contribution such as it is required, at the stage at which it occurs, by the accepted purpose or direction of the talk exchange in which you are engaged" (Grice 1975: 41-59). Let us briefly invoke what types of conditions guarantee the successful communication as advanced by Grice:

- The maxim of quantity, where one tries to be as informative as one possibly can, and gives as much information as is needed, and no more.
- The maxim of quality, where one tries to be truthful, and does not give information that is false or that is not supported by evidence.
- The maxim of relation, where one tries to be relevant, and says things that are pertinent to the discussion.
- The maxim of manner, when one tries to be as clear, as brief, and as orderly as one can in what one says, and where one avoids obscurity and ambiguity.

To sum up, the speaker wants the language to fulfil a certain function for him. What is meant or the actual function that the language fulfils for the speaker is in turn determined by the different aspects of the situation in which the language is used (Szczygłowska 2012: 18). The view within the frames of Systemic Functional Linguistics to perceive modality as the realization of one of the alternatives under specific circumstances has been advanced somewhat alternatively when compared with traditional taxonomies which are usually based on a dichotomy such as deontic versus epistemic modality or subjective versus objective modality.

2.2.2 Illocutionary acts and sentence types

A theory developed somewhat simultaneously with SFL and which has equally contributed to the study of mood and modality was the speech act theory whose main proponents include Austin (1962) and later Searle (1970: 1-29, 1983: 166). Lyons refers to this theory as a potential framework for the general discussion of modality (Lyons 1977: 725). The authors point to five categories of illocutionary acts that vary in function of the involvement of the speaker shown in uttering a statement: assertives, directives, commissives, declarations (declaratives), expressives (Palmer 1986: 13). To this group Kreidler (1998:183) adds the categories of performatives, verdictives and of phatic speech acts. Following Austin, Cresti (2000, 2001) claims that the illocution co-occurs with the locutory act, functioning as the affective engine of the linguistic act and proposes five types of illocutionary classes: refusal, assertion, direction, expression and rite which are further subdivided into other classes. The main criterion employed to distinguish such subclasses is prosody (Mello et al. 2011: 2). In literature, the illocutionary force of a statement has often been associated with modality. The definitions for illocution and modality vary and at times mix. Since both express the speaker's attitude (modus) towards the content of an utterance (i.e. the referential or the cognitive content or dictum), it has been claimed by some linguists (cf. Ungeheuer 1972, Kärkkäinen 2003: 151) that the concepts may indeed be used interchangeably. In contrast, Ludtke (1980) views modality as distinct from illocution insofar as:

"Subjective modality shares with illocution the property of regarding the speaker's attitude or assessment concerning his proposition. The basic difference between them is that the latter concerns the relation between the speaker and the hearer - thus goals and operations of communication - whereas the former does not."

Mello et al. proposes to confine modality to the semantic level in which the speaker's stance towards the locutionary expression is manifested. Illocution, on the other hand, would belong to the pragmatic level in which the speaker's stance towards the interlocutor is manifested (Mello et al. 2011: 5). In terms of epistemic markedness, assertives display a very low commitment degree or even lack thereof. As a matter of fact, they express how things are and conceptually resemble the notion of 'factuality' referred to by Lyons (1977: 794) and Palmer (1986: 17) in their treatment of modality. Factuality is contrasted here with counter-factivity or non-factivity. In such an approach, assertions are considered as 'straightforward statements of fact' and as epistemically non-modal utterances (Palmer 1986: 17). It could be argued, therefore, that we should exclude the study of factuals as statements that describe the reality as it is rather that as it may be or should be. Palmer, however, is of the opinion that it would be a mistake to confine the study of modality to non-factuality since their degree of subjectivity should be handled together with other types of statements such as opinions or judgments even though it may approach or be equal to zero. Referring to the theory of speech acts, in excluding the factuality we would be restricting ourselves to the locutionary aspect of the sentence. We could repeat after Lyons that 'the illocutionary force of a statement is not exhausted by its propositional content: it must be associated with the illocutionary act of assertion' (Palmer 1986: 18).

The next type of illocutionary act, the directives, can be defined as attempts on the part of the speaker to get the hearer to do something. As Palmer remarks, they correspond largely to deontic modality since both are concerned with indicating the state of reality which does not meet the specific standards, be they of social, moral or legal nature, and point how the world should be. The commissives, as its name suggests, reveal the intention of the speaker to undertake some voluntary action in the future. However, Searle is not so eager to classify them as independent illocutionary acts since they resemble directives insofar as both are concerned with fitting the world to the word (Searle 1976: 11-12). We could point to such types of statements as vows, promises, oaths, guarantees, pledges, contracts, covenants and so forth. As

regards expressives, Searle includes the following paradigms to this type of statements: 'thanking', 'congratulating', 'apologizing', 'condoling', 'deploring', and 'welcoming' (ibid: 12). As the author observes, however, there is no direction of fit since the speaker does not try to fit the word to the world nor the other way round (ibid: 12). What is presupposed here is that the content expressed is true as in the following sentence:

I apologise that I stepped on your toe.[35]

Here, it is presupposed that the speaker has indeed stepped on the toe of the person addressed in the utterance. The last type of speech act, declarations, is concerned with the introduction of some change in the status or condition of the referred-to object or objects (Searle 1976: 14). The successful performance of a declaration guarantees that the propositional content corresponds to the state of affairs in the external world as in:

I hereby declare you husband and wife; or

You're fired.

However, the classification of illocutionary acts becomes problematic when e.g. a directive speech act can be conveyed by means of an interrogative form (and additionally the intonation and the contex point to a declaration, not a question). Due to these interpretation concerns, certain authors such as Austin to refer to prototype speech acts as opposed non-prototypical ones (Austin 1962). As observed by Witczak-Plisiecka (2009),

"Speech acts necessarily emerge from social conventions and expectations common to a culture, but are rarely written down or well-defined. Thus, prototype-related categories provide sufficient means for a description of this somewhat gradable arbitrariness, which holds between form and function related to illocutionary force associated with a particular act." (Witczak-Plisiecka, 2009)

Let us, however, approach some of the classifications offered by the linguists concerned with the problem of modality. In order to do so, we should embark upon the problem of sentence types since it will be mostly sentential modality on which we will focus our attention. Palmer suggests a certain terminological framework that might turn helpful when hypothesizing about modality-related issues: the most important one is the differentiation between semantic

[35] source: Searle, J. (1976): A classification of illocutionary acts' http://sites.duke.edu/conversions/files/2014/09/Searle_Illocutionary-Acts.pdf

functions and typological categories (such as *'Declarative', 'Interrogative', 'Imperative', 'Quotative', ' Speculative', 'Deductive'*). The former will include common English words such as statements, questions and mands (commands) while as the latter are Latin-based terms that reflect the notion of mood as expressed formally in the verbal system of many languages (Palmer 1986: 24, 26). Palmer observes that, although it might seem tempting at first sight to draw a one-to-one correspondence, there are often disparities between the former and the latter. If typological categories (or, for that matter, sentence types) are defined semantically, they become identical with the utterances (i.e.: statements, questions and mands). However, if defined formally, they might be confused with mood types (of which Palmer lists only two: the indicative and the imperative) (Palmer 1986: 24). The three main sentence types provided in most accounts are: declarative, imperative (jussive) and interrogative. The terminological confusion may arise in particular with regard to the first type which is sometimes referred to as indicative or simply, statement. To disperse doubts, Lyons (1977) proposes to use another classification but with regard to utterances: 'statements', 'questions' and 'commands'. There is additionally, the notion of mood where similar concepts occur. Palmer, therefore, makes the following distinction:

Utterances	statements	questions	(com)mands
Sentences	declaratives	interrogatives	Jussives
Mood	indicative	-	Imperative (subjunctive)

Table 2.2.: Utterances, sentences and mood, based on: Palmer 1986: 24)

Furthermore, Palmer draws our attention to the fact that a command for example may be expressed by way of a declarative, an interrogative or an imperative sentence, in particular in view of the speech-act theory which we have just covered earlier (Palmer 1986: 24). Grzegorczykowa, in turn, proposes to distinguish between modality understood as information regarding the intention from the modality revealing the cognitive and volitional attitude of the speaker (deontic and epistemic modalities, respectively). While the former one is usually referred to by the linguists as the intentional modality or a sentential modality, the latter are called truth-based modality. The intentional or sentential modality corresponds to grammatical or lexical markers. These include:

Declarativa: statements that communicate the intention of notifying;

Imperativa: statements that are to make the hearer perform a certain action;

Interrogativa: statements that are to elicit some response on the part of the hearer;

Expressiva: statements that express some emotional, mental or intellectual state;

The above classification of the sentential or intentional modality can be summarized by Figure 2.2.

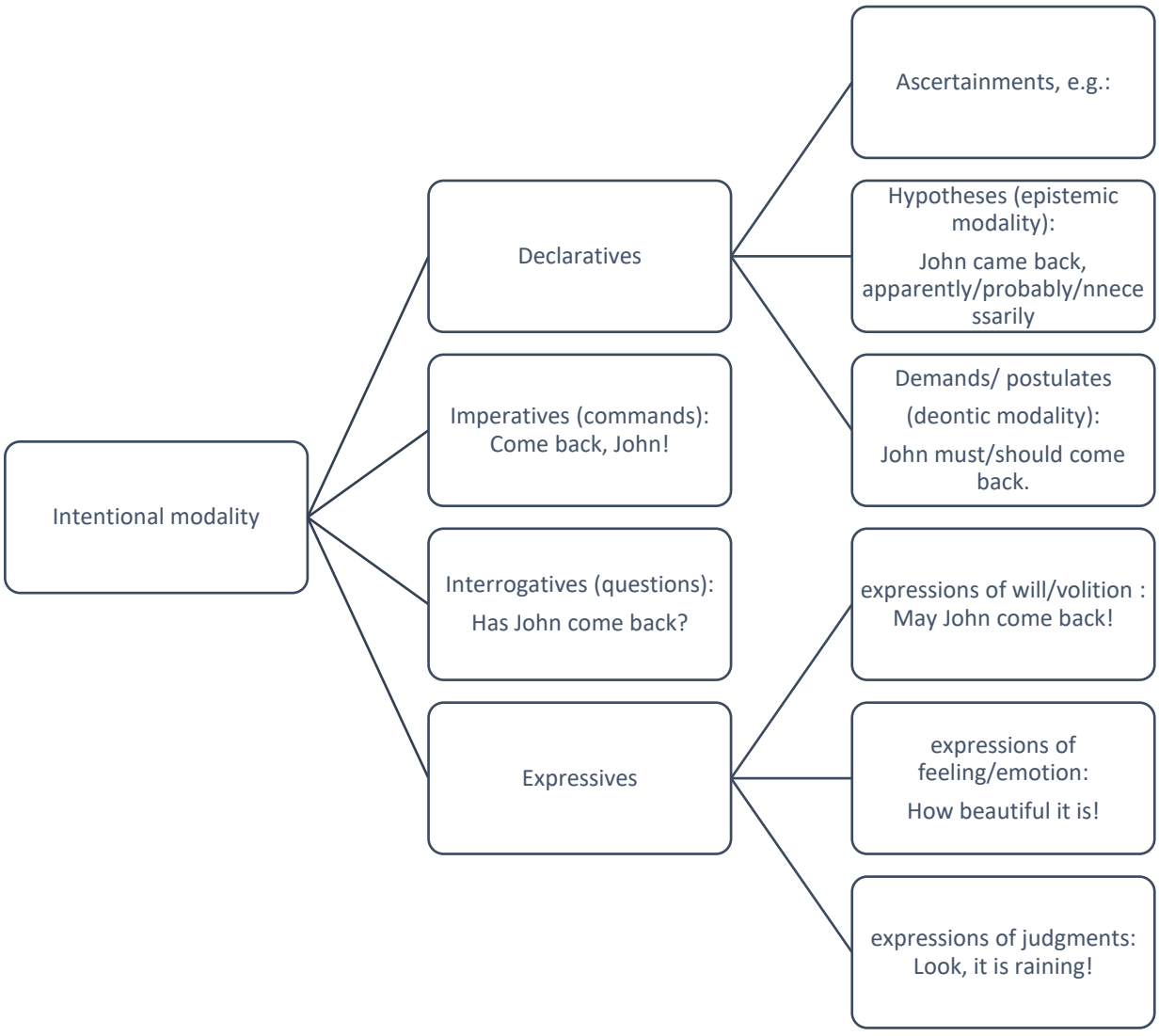

Figure 2.2. Classification of the sentential or intentional modality (based on Grzegorczykowa 2001: 126)

What leads to greatest concern in employing the classification into 'Declarative', 'Interrogative', 'Imperative' and 'Expressive' is the conclusion that declaratives are commonly associated with lack of any commitment on the part of the speaker. As a matter of fact, as remarked by Lyons, 'there are some languages in which a speaker cannot utter a subjectively unmodalized declarative sentence' (Lyons 1982 in Palmer 1986: 27). It means that there would be no neat classification into 'marked' and 'unmarked' sentences since all would represent to some extent modal variations. Palmer argues that a study of modality must have a place for declaratives which, he assumes, would probably belong to the epistemic system (Palmer 1986: 27). In English, the declarative is obviously related to lack of any modal verb and in Polish with absence of certain particles and suffixes. We are thus justified to consider it as unmarked formally and grammatically. However, as raised by Palmer, whether it should be also considered to be unmarked semantically is yet another issue (ibid: 28).

Let us here introduce the notion of assertion. Searle, for instance, includes both epistemic modal judgments and declaratives within his understanding of the term 'assertion' (Searle 1979: 1-29). According to Lyons, there is no epistemically stronger statement than a categorical assertion and that the introduction of a modal verb like "must" or an adverbial like "necessarily" or "certainly" is epistemically weaker since it makes our utterance dependent upon our limited knowledge (Lyons 1977: 809). Palmer does not agree with this version: he claims instead that words such as "certainly", "obviously", "without doubt", "doubtless" etc. clearly indicate that our commitment to the factuality of the proposition is stronger than would be the simple declarative or, as Lyons calls it, the "categorical assertion" (Palmer 1986: 28). We will therefore abide by the inclination to include the declaratives within the epistemically unmarked types of sentences.

2.2.3 Mood according to the Systemic Functional Linguistics

As observed by Martin, Matthiessen and Painter:

‘The mood element makes the clause ‘negotiable’ and consists of Finite, Subject and (sometimes) modal adjunct(s). The Finite makes a clause negotiable by coding it as positive or negative in polarity and by grounding it, either in terms of time (it is/it isnt’t; it was/it wasn’t; it will/ it won’t) or in terms of modality (it may/it will/it must, etc.) (Martin, Matthiessen and Painter 2010: 61).

The authors further distinguish between meanings or dimensions which the expression acquires through the use of the ‘mood element’. Among them we find: polarity and modality (perhaps, probably, certainly), temporality (already, soon, yet) and intensity (degree: hardly, quite, almost, totally, utterly; counter-expectancy: even, actually, just, simply, merely, only) (Martin, Matthiessen and Painter 2010: 61). In line with the above distinction, Halliday, in his classification, refers to four main types of modality: probability, usuality, obligation and readiness. The first two are categorized as modalisation related to propositions (statements and questions) while as obligation and readiness fall under the label ‘modulation’, which Halliday considers synonymous with proposals, i.e. offers and commands. The former are equivalent to either yes or no i.e. maybe yes, maybe no, with different degrees of likelihood attached. The latter are equivalent to both yes and no i.e. sometimes yes, sometimes no, with different degrees of oftenness attached. It is these scales of probability and usuality that the term modalisation refers to (Halliday 1994: 89). The propositions, therefore, are statements where information constitutes the commodity that we exchange as interlocutors. In such cases, the degrees of probability with which we qualify our statements are threefold: possibly/probably/certainly whereas the degrees of usuality can be marked with sometimes/usually/always. Proposals also mark the meaning of the statement as either positive or negative. The positive pole is identified with prescribing and the negative as proscribing (the positive ‘do it’ and the negative ‘don’t do it’). Halliday also mentions the intermediate possibilities: depending whether we deal with commands or offers, the intermediate points may represent degrees of obligation (‘allowed to/supposed to/required to’) in the case of commands or degrees of inclination (‘willing to/anxious to/determined to’) in the case of offers. It is these scales of obligation and inclination that Halliday refers to as modulation *(Halliday 1994: 89). Below a table containing an overview of the types of modality proposed by Halliday:

Kind of modality	Finite: modal	Mood Adjuncts
(modalisation) probability	May, might, can, could, will, would, should, must	Probably, possibly, certainly, perhaps, maybe
usuality	May, might, can, could, will, would, should, must	Usually, sometimes, always, never, ever, seldom, rarely
(modulation) obligation	May, might, can, could, should, must	Definitely, absolutely, possibly, at all costs, by all means
Readiness: inclination and ability	May, might, can, could, will, would, must, shall Can, could	Willingly, readily, gladly, certainly, easily -

Table 2.3. Types of modality proposed by Halliday based on: Martin, Matthiessen and Painter 2010: 63.

As observable from the list of grammatical and lexical exponents, the modal verbs typical for the two kinds of modalisation and modulation are not a good distinctive feature since they differ to a very small degree and hence, the type of modality with which we deal would be distinguishable mainly on the basis of the mood adjuncts. The problem of the overlapping semantic functions of modal verbs is covered e.g. by Coates, who discusses, amongst other things, the modal verb 'may', which regularly expresses both root and epistemic possibility (Bybee and Fleischman 1992: 60). Examples where it is difficult to tell the root from epistemic function are quoted from more formal sources and academic texts where, as the author claims, it is endemic:

1. *or the pollen may be taken from the stamens of one rose and transferred to the stigma of another.*
2. *…the process of simplification…through which even forms and distinctions present in all the contributory dialects may be lost (Bybee and Fleischman 1992: 62).*

The distinction between root and epistemic possibility, though, is quite blurry, the only difference being the criterion of subjectivity. As seen by Lyons, forms involving subjectivity can be defined as 'devices whereby the speaker, in making an utterance, simultanesously comments upon that utterance and expresses his attitude to what he is saying (Lyons 1977: 739). Hence, the presence of mood adjuncts becomes practical insofar that they qualify the speaker's stance in terms of certitude and/or doubt.

2.2.4 Congruent and metaphorical realizations of modality

Apart from the distinction into Finite modal verbs and Mood adjuncts, Halliday introduces linguistic realization of modality which are either congruent or metaphorical. Metaphorical realizations are related to the rhetorical modes of each language. To such Halliday includes, amongst other things: promising, ordering, requesting, persuading, encouraging, advising, prohibiting, warning, blaming, hedging, complaining, claiming, arguing, denying and so forth (Halliday 1994: 363). The wording alone cannot carry any specific rhetorical function which, in turn, is signaled by five different factors. To these we include: (1.) paradigmatically associated lexico-grammatical features (e.g. realizations of tone, lexical connotations), (2.) syntagmatically associated lexico-grammatical features (e.g. expansion by a conditional clause), (3.) paralinguistic and behavioural features such as voice quality, facial expression and gesture, (4.) features of the context of situation: what is going on, who is taking part, and what the speech acts are designed to achieve, (5.) features of the context of culture (ibid: 365). As Halliday notes, with metaphorical realizations, the grammar works as a metaphor for the relevant meaning and additionally, helps to fill in the missing gap between the word and the language as a system:

> "What the metaphorical interpretation does is to suggest how an instance in the text may be referred to the system of the language as a whole. It is therefore an important link in the total chain of explanations whereby we relate the text to the system; it is for this reason that the study of discourse ('text linguistics') cannot properly be separated from the study of the grammar that lies behind it" (ibid: 366).

In the case of the probability, one kind of metaphorical realization involves first person, present tense 'mental' processes of cognition (e.g. I think, I reckon, I suspect) or 'relational processes of cognitive state' (e.g. I'm sure, I'm convinced, I'm uncertain). The above form of realization makes the speaker explicitly responsible for the assessment (Martin, Matthiessen and Painter 2010: 68). Let us analyze two synonymous utterances in order to grasp the difference:

1. *English grammar must be interesting.*
2. *I'm sure that English grammar is interesting.*

The first one is a modal, congruent realization of probability whereas the latter is a paraphrase considered to convey the meaning of probability but not through strictly grammaticalized structures such as modal verbs. As such, the above statement is said to stand for explicitly

subjective. As observed by Martin, Matthiessen and Painter, explicit objectivity can also be achieved through nominalisations of probability or usuality and construing them as either a quality (adjective), or a thing (noun). Examples of such 'objectivized' expressions include: it is likely/possible or there is no possibility/likelihood (Martin, Matthiessen and Painter 2010: 68). An outline of metaphorical realizations of modality can be studied in the table below.

KIND OF MODALITY	**Congruent realizations**			**Metaphorical realizations**	
	Finite **Implicitly subjective**	Adjunct (mood) **Implicitly objective**	Predicator **Implicitly objective**	Mental clause **Explicitly subjective**	Attributive clause **Explicitly objective**
Probability	Can/could/, may/might, Will/would, Should, ought to, must	Possibly, probably, certainly		[cognitive]: I guess, I think, I know	It is possible It is probable It is certain…
Usuality		Sometimes, usually, always		-	It is unusual (for him to leave)
Obligation			Be allowed to, be supposed to, be obliged to	[affective]: I'm willing for, I expect, I want…(him to leave)	It is permitted, It is expected, It is necessary (…for him to leave)
Readiness: inclination		Willingly, eagerly	Be willing to, be keen to, be determined to	[verbal group complex]: I'd like to leave, I want to leave	It'd be lovely to leave
Readiness: ability	Can/could		Be able to	-	It is possible for him to leave

Table 2.4. Congruent and metaphorical realizations of modality (source: Martin, Matthiessen and Painter 2010: 69)

In order to further systematize the above classification, Halliday introduces the following two paradigms as far as orientation is concerned: between the subjective and objective modality, and between the explicit and implicit variants, which, in turn, can also be associated with the four types of modality already accounted for (i.e.: probability, usuality, obligation, inclination). This combination is shown, for instance, in Table 2.5. based on Halliday 1994: 368.

	Subjective/explicit	Subjective: implicit	Objective: explicit	Objective: implicit
Modalization: probability	I think/in my opinion Mary knows	Mary will know.	It's likely that Mary knows [Mary is likely to know]	Mary probably knows [in, all probability]
Modalization: usuality	-	Fred will sit quite quiet.	It's usual for Fred to sit quite quiet.	Fred usually sits quite quiet.
Modulation: obligation	I want John to go	John should go	It's expected that John goes	John is supposed to go
Modulation: inclination	-	Jane will help		Jane's keen to help.

Table 2.5. Modality: examples of 'type' and orientation combined (based on Halliday 1994: 368).

2.3 Between grammar and semantics

2.3.1 Introductory remarks and cross-linguistic observations

Whether mood and modality are treated as belonging to two separate realms of syntax (mood) and semantics (modality), as maintained by the majority of the contributors to the subject (cf. Jespersen 1924, Lyons 1977, Palmer 1986, Huddleston 1988) is not such a straightforward issue. To some, this distinction seems arbitrary as is indeed grammaticalization, the process whereby the abstract notion such as 'mood' in English has acquired its distinct grammatical forms (in the majority of cases, it will be either modal verbs or modal adjuncts that can be taken to represent the grammaticalized instances of modality in English).

Whereas in most languages, in particular the Indo-European ones, modality constitutes both a grammaticalized and lexicalized phenomenon, some authors suggest that expressing such modal notions as necessity, obligation or possibility is not an inherent property of a language (cf. Comrie 1991: 29). Bybee, Perkins and Pagliuca use even the denotation tense-aspect-mood (TAM for short) to refer to those grammatical systems where separate markers are employed to convey the notions of location in time (tense), the framework of time (aspect) and the personal attitude of the speaker towards the propositional content indicating the degree of possibility, necessity or obligation (mood) (Bybee et al. 1994). As observed by Hopper (1982), Comrie (1976, 1985) and Palmer (1986), many Indo-European languages do not clearly distinguish tense from aspect. In view of the above, the search of common cross-linguistic

equivalent classes, also in terms of modality, appears a quite promising area of research, in particular with reference to some exotic languages that do not possess any grammaticalized items to express e.g. the notion of possibility as e.g. Harui, a Papuan language spoken in Highland Papua New Guinea (Comrie 1991: 29). As Comrie observes, it does not have any means to convey the idea of possibility as illustrated in the example "I might go". Instead, one should use the future tense and construct a sentence that would translate into English as:

"I don't know whether I'll go" (Comrie 1991: 31).

Even among closely related languages, the mapping of the relevant semantic content onto linguistic form might not be the same. Bybee and Fleischmann point to the realis/irrealis distinction as realized differently across languages (Bybee and Fleischmann 1995: 3). If, however, we limit our observations to the domain of languages which do possess grammaticalized categories of words or word classes that convey the notion of modality, we end up with a basic distinction, namely that into mood and modality. It is relatively simple to draw such a distinction in European languages where grammatical (i.e. formal) features are the exponents of particular semantic categories (Palmer 1986: 21).

In the traditional, a somewhat structuralist, depiction, mood is contrasted with modality and understood as 'a formally grammaticalized category of the verb which has a modal function' (Bybee and Fleischmann 1995: 2). Furthermore, Huddleston remarks: "just as we distinguish between TENSE, a category of grammatical form, and TIME, a category of meaning, so it is important to distinguish grammatical MOOD from semantic MODALITY" (Huddleston 1988: 79). Palmer arrives at a similar conclusion insofar as he states that the dichotomy 'mood-modality' is similar to those of 'tense-time' and 'sex-gender' (Palmer 1986: 21) thereby acknowledging that modality should indeed be considered as a semantic entity. In this structuralist characterization, the notion 'mood' is usually confined to the verbal morphology and this view is supported e.g. by Jespersen (1924: 373) and Lyons (1977: 848). Jespersen goes so far to acknowledge that mood is an inherently verbal category. As he claims "it is very important that we speak of mood only if the attitude of mind is shown in the form of the verb: mood is thus a syntactic, not a notional category" (Jespersen 1924: 313). Lyons, however, concedes that not all languages possess verbal inflection system that would reflect the notion of mood (Lyons 1977: 848). Palmer holds that the verb is a prototypal carrier of modal

meanings although the semantic function of mood relates to the whole sentence rather than to the verb alone (Palmer 1986: 21). Huddleston, in turn, refers to the 'analytic mood system' as opposed to the 'synthetic mood system' when it is the modal verbs rather than the verb inflection system that constitute the exponents of the grammatical category of mood (Huddleston 1988). Huddleston's view is also shared by other scholars such as Davidsen-Nielssen, according to whom among modalized utterances we might distinguish between those that are expressed grammatically (either morphologically by means of e.g. verbal inflections, or syntactically by means of e.g. modal verbs) or in various lexical ways, for instance by full verbs, adjectives, participles and adverbs (Davidsen- Nielssen 1990: 35). The former case, when it is grammar that "carries " modality, should be referred to as 'mood'. Syntactic realization of modality means that grammar is equipped with proper modal verbs that serve the purpose of 'bridging the gap' between morphology and semantics. To such cases we will refer to as 'analytic systems'. In English, it is predominantly modal verbs which are used to express differences between factual assertion and non-factuality. The residual character of inflection becomes apparent if we compare English with German, French, Spanish or Italian. The latter are, however, also endowed with a fairly well developed system of modal verbs. Even so, the meaning ascribed to these modals might differ across familiar languages although historically, they stem from the same etymological root. An example of the above peculiarity may be, e.g.: English "may" and German "mögen". As far as the distinction into mood and modality is concerned, we have remarked that this clear-cut dichotomy is not so eagerly acknowledged and arouses some controversies. Kačmárová, for instance, demonstrates that perceiving the above concept in terms of binary oppositions carries certain drawbacks and in doing so, she supports the hypothesis previously advanced by Erhart that the nature of mood does not lie in the semantics of a single sememe but in that of a whole sentence (Erhart 1984: 91, Kačmárová 2011). The table below might demonstrate how various grammatical categories are realized on the level of lexis.

'real' units	**MORPHEME**			
	GRAMMATICAL		**LEXICAL**	
'virtual' units	**Significant**	**Signifie**	**Signifiant**	**Signifie**
	MORPHON	GRAMEME	MORPHON	SEMEME
	CATEGORY	GRAMEME/S		SEMEME
NOUN	Gender	Animate-inanimate Masculine – non-masculine (i.e. feminine)		Substance
	Number	Singular-plural		quantity
	Determination	New-known		Anaphoric deixis
	Case	Coherence-adherence-orientation		Objective deixis
VERB	Voice	Progressive-regressive-transgressive		action
	Aspect	Perfect-imperfect		action
	Person	Subjective (+/-), actual (+/-), close (+/-), present (+/-)		Subjective deixis
	Tense	Present-past		Subjective (temporal) deixis
	Mood	Real/actual – volitional		*the semantics of a whole sentence

Table 2.6. Realization of the grammatical categories on the level of grammar and lexis (based on: Kačmárová 2011)

Following the data presented above, we may clearly observe that all grammatical categories can be realized in a single lexeme, with the exception of mood. This peculiar feature makes mood somewhat different from the other categories and places it on a par with MODALITY. Kačmárová, therefore, rejects the view that mood and modality are two entirely distinct categories that can be analysed in terms of binary oppositions and that, in fact, they share certain properties, namely the potential of being realized on the sentence level rather than on the level of a single sememe (Kačmárová 2011). This comparison once again confirms that the original assumption of Jespersen should be rejected for the sake of more 'concessive' theories that acknowledge the fact that sometimes the scope of the concepts of mood and modality overlap and do not constitute entirely distinct categories.

Although Palmer observes that the extent to which mood has been grammaticalized in most languages shows that it has been removed from semantics (Palmer 1986: 22), it cannot be denied that moods in various languages have a whole variety of semantic meanings. The subjunctive mood, in particular in English, has been formalized and some traces of its archaic usages have been preserved in the modern language like in the examples below:

1. *far be it from me*
2. *until death do us part or until death us do part*
3. *be it enacted*

In any case, where grammaticalization of mood has taken place in the course of language evolution, it is understood rather in terms of the degree, not as consisting of mutual exclusivity. It is through degree that Palmer illustrates the historical development of modal verbs: in English it involved the gradual re-categorization of what were previously main verbs (Palmer 1986 after Plank 1984: 5). When compared with French *pouvoir, devoir* and *vouloir*, the grammatical status of the English modals like *can, may, should, would, could*, is not put into question. This fair relativity in terms of grammaticalization is also the case with the 'degree' of intensity of meaning or the categorical nature of an assertion that can be conveyed through means of the grammatical system. As observed by Palmer, it differs from language to language and the same applies to modality: hoping and fearing are not marked grammatically in English whereas they might well be in languages other than English (Palmer 1986: 5). A good example of this is a substantial number of *irrealis* moods encountered across languages that where the function to be performed by the verb phrase occurs on the morphosyntactic level. More about *irrealis* moods that have become grammaticalized and have, therefore, acquired their own separate names in the section to come.

Despite some evidence to the contrary, we will abide by the traditional distinction offered by Palmer, namely into MOOD and MODALITY as representing two separate fields: grammar and semantics, thereby acknowledging the appurtenance of 'mood' to the purely grammatical domain and 'modality' to semantics. As we have seen by the examples demonstrated in the foregoing investigations, we might use both, inflectional mood and modal verbs to express modality, depending on whether we deal with analytic or synthetic mood systems.

2.3.2 The scope of the term

As regards the scope of the term ‘modality’, Durovic and Kačmárová propose to refer to the structure of the whole sentence in order to delineate the scope of the concept. Through this perspective, it is perceived as the main constitutional factor or the ‘modal meaning present in the deep sentence structure’ (Durovic 1956: 9, Kačmárová 2011). To this group we will include modal verbs and sentential adverbs like “maybe”, “without doubt”, “naturally”, “to be sure”, “in any event”, “of course”. Sentential modality is placed above the level of the predicate .

Being sufficient if applied to the traditional semantic framework, such definition would not meet the requirements set by Kratzer (1977), the creator of the so-called contextualist semantics, according to which, the meaning of modal verbs (or modal base) takes two arguments: a proposition and a context. The modal base is equalled with the conversational background against which a given piece of discourse is set and involves a number of assumptions whereby the meaning of a particular modal verb can be understood. Through such conversational backgrounds we are able to determine whether speakers share something which they know or believe to be true and actual (epistemic conversational background), which they intend or undertake to do (teleological conversational background) or which is ordered and commanded from above (deontic conversational background) (Kratzer 1977). The components of the modal base, the proposition and the context, are tantamount to the sentence in which a particular modal occurs (proposition) and the accessible worlds or an ordering relation on the accessible worlds (context). The modal relation holding between these components is either that of possibility or of necessity (Kratzer 1981).

In the light of the above, the ‘sentential’ definition of modality seems too narrow since it is only concerned with truth-conditions. Recently in particular, there have been some attempts to account for modality at the level of discourse. The term we need to introduce here is “the common ground” and “actual” versus “non-actual” use of modal verbs to refer to the state of affairs. As claimed by Moon:

"The notion of actual refers to uses of sentences corresponding to propositions which are either presupposed or entailed to be true in the actual world of the discourse. These propositions are assumed to enter the agent’s common ground as facts about the world of the discourse. Non-

actual uses are a much broader class and include sentences corresponding to propositions which are only true relative to a participant's belief model, for example, or only true relative to a non-actual possible world" (Moon 2011: 2). [36]

Thus, the notion of 'common ground' establishes a certain background to which the speakers refer. The existence of this 'background' would itself constitute a proof of existence of some 'supra-sentential' structures embracing the whole context.

Modality as a linguistic phenomenon can therefore be traceable on the sentence level as well as on the level of discourse. We will refer to such approaches as describing discursive modality as opposed to sentential and sub-sentential modality. Likewise, Polish researchers have drawn attention to the fact that modality should be perceived not only through sentential perspective but also on the level of the whole text (Jędrzejko 2000: 114; Wilkoń 2002: 46; Boniecka 1999: 11-12). Such depictions of modality are often blurry in terms of delineating its lexical boundaries, which results from the intentional attitude of the speaker who is immersed in the relations: human – language (utterance) – reality (Jędrzejko 2000: 114, 2002). As observed by Jędrzejko, it is the interactional character of the text that make discursive modality possible at all. Apart from the text itself, the discursive space is also created by the addresser and the recipient of a speech act. It is their different 'conversational background' which leads to discrepancies in the linguistic depictions of reality. As a consequence, the intentional character of discourse is of utmost importance in order to both construct the message as well as to interpret it (Jędrzejko 2000: 114). Jędrzejko writes: "It is this pragmatic and psychological notion of the communicative intention of the speaker (who uses language in a particular way adapting it to the assumed recipient, subject and various contextual factors thereby either betraying or hiding their own attitude towards the communicated content) which approaches the notion of modality in its broadest linguistic understanding (ibid: 2000: 114, translation mine)". Viewed through such pragmatic perspective, modality is confined to not only traditional grammar and semantics but would also encompass units larger than sentence (discourse).

[36] Source: Modal Verbs in the Common Ground: Discriminating among "Actual" and "Non-Actual" Uses of Could and Would for Improved Text Interpretation, Papers from the 2011 AAAI Fall Symposium, available online at: https://www.aaai.org/ocs/index.php/FSS/FSS11/paper/viewFile/4152/4498.

As far as sub-sentential modality is concerned, it expresses modal meaning within constituents smaller than a full clause, for example within the predicate (e.g., by verbs) or through modifying a noun phrase (e.g., by adjectives). There is, however, some slippage between this category and sentential modality as well as between sentential modality and discourse modality. Although the adjective "possible" is technically a representative of sub-sentential modality, the structure "it is possible that S" is sometimes considered as an expression of sentential modality (Portner 2009). There are equally important connections between sentential modality and discourse modality. For example, the choice of verbal mood in root sentences (typically indicative, but sometimes the subjunctive or some other mood) is dependent on the role which that sentence has in the discourse. Warchał, after Polański (1969), remarks that there is also some confusion over the use of the term 'sentential modality', and 'sentence mood'. The first is typically reserved for the linguistic exponents of modality on the level of a sentence such as will be discussed in the present analysis but, as Polański observes, it may also overlap with what scholars refer to as intentional modality, i.e.: declarative, interrogative, greetings, calls, and exclamations (Polański, 1969, see also section 2.2.3). On the other hand, 'sentence mood' or verbal modality is understood as the verbal morphology in the case of synthetic mood systems where verb conjugation is confined to its morphology, not to auxiliary verbs. The issue has already been discussed in section 2.3.1. If we consider it alongside analytic mood systems, we will end up with the distinction into indicative versus other irrealis moods such as subjunctive, imperative, conditional or a whole range of others which vary across languages (cf. the enumeration of Bybee et al.: jussive, desiderative, intentive, hypothetical, potential, obligative, dubitative, hortatory, exclamative).

2.3.3 In search of a typology

In our attempts to depict the most comprehensive classification of modality, we will embark upon both linguistic and extra-linguistic factors since, as de Haan observes, explanations for cross-linguistic generalizations can be drawn from language use, cognition and from sociological factors (de Haan 2001). One of the key distinction as far as modality is concerned, is the one into deontic modality and epistemic modality. This dichotomy can be traced back to logicians such as von Wright (1951). The two terms owe their names to Greek: "deon" is a

Greek word for duty while as “episteme” means knowledge. The examples below might clarify how the two operate on the sentence level:

1a. John must have been at home.

1b. John must go to school.

The first one refers to the degree of certainty of the speaker in the truth-value of the proposition while as the second one deals with the degree of force exerted on the subject of the sentence to perform an action (de Haan 2001). This force usually comes from an external source, other than the speaker himself/herself. If, however, the imperative is of an internal character, then we should also account for another dichotomy, i.e. deontic and dynamic modality. The latter, it seems, encodes ability and volition. Such view is held by a number of authors beginning with Lyons (1977) and continuing with Palmer (1986), Frawley (1992), de Haan (1997), Van der Auwera and Plungian (1998). Sentences involving the use of the modal verb “can” are best illustrations of this phenomenon as in: ‘John can swim’.

As far as the theory of law is concerned, we should also point to the so called legal modality as a qualification of certain modes of conduct on the basis of a given norm or a system of legal norms (Wronkowska, Ziembiński 2001: 100). Within this legal modality, we further distinguish between basic and derivative modalities. Basic modalities are such qualifications of modes of conduct as interdictions, orders, permissions, obligations, possibilities etc. Derivative modalities, in turn, are such qualifications of modes of conduct that are an object of rights or legally protected freedoms from the positions of persons other than the addressee of the norm (Wronkowska, Ziembiński 2001: 100-121). In general, a legal norm is hypothetical (no absolute norms exist). Moreover, it always has to meet specific conditions before it applies to a concrete situation. For instance, the prohibition to kill, is not absolute but will apply only to human beings to whom the legal system itself applies (on grounds of nationality, or because the killing has been committed on a certain territory) (van Hoecke 2002). According to Mark Van Hoecke, when taking together the act-situation and the deontic operator one comes up with four possible modalities of legal norm:

(a) a positive directive (an order): one ought to do something, eg "Spouses have the duty to live together" (Article 213, Belgian Civil Code);

(b) a negative directive (a prohibition): one ought not to do something (it is forbidden to do it), eg: "It is forbidden to address personally petitions to the Parliament" (Article 43, Belgian Constitution);

(c) a positive non directive (absence of order): one is allowed not to do something, eg: "The usufructuary offers surety ...; however, the father and mother who have the statutory usufruct of the goods of their children,..., do not have to offer surety" (Article 601, Belgian Civil Code);

(d) a negative non directive (absence of prohibition): one is allowed to do something, eg 'The occupier may at any time take and destroy the wild rabbits on his land (Article 7 Belgian Hunting Act 28.2.1882) (Van Hoecke 2002).

These four modalities form a logical square (see figure 2.4. below).

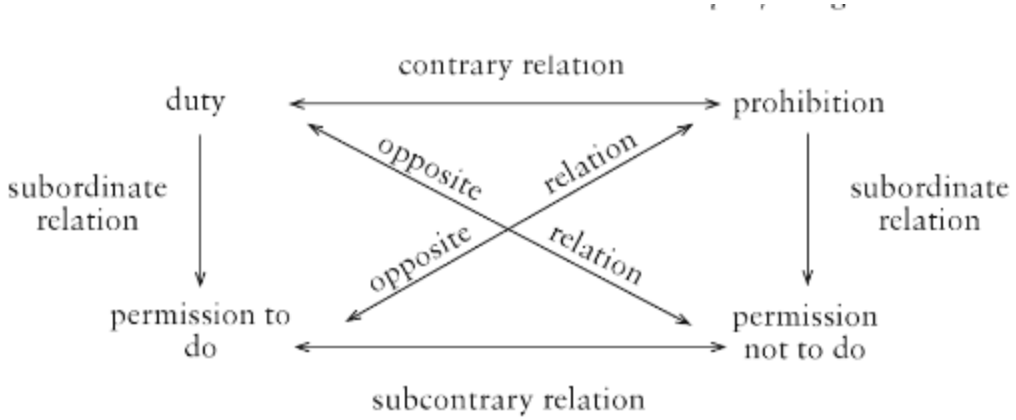

Figure 2.3. The logical square of the four modalities according to Van Hoecke (2002)

Van Hoecke defines the “duty” and “the permission not to” as contradictory relations. When Having a duty to do something is tantamount to not being allowed not to do it, and, if there is a permission not to do, there cannot be a duty to do (Van Hoecke 2002). A similar relationship, it appears, holds between a “prohibition” and a “permission to do” . When one has a permission to do something, this behavior cannot be prohibited, and vice versa.

"Duty" and "prohibition" are contrary concepts. It is logically not possible that a duty and a prohibition apply to the same person as regards the same behavior. If such a case arises, it is called antinomy. But it is possible that there is neither a duty nor a prohibition. The behavior may be explicitly allowed (strong permission) or merely allowed because it is not governed by any rule at all (weak permission)" (Van Hoecke 2002).

Apart from deontic and epistemic modalities, Lyons (1977) further distinguishes alethic modality as involving logical necessity and possibility. Following Leibniz, Lyons proposes to qualify the propositions that are true in all possible worlds as alethically necessary and those that are not necessarily false (i.e. are true in at least one possible world) as alethically possible (Lyons, 1977: 791). Let us consider the following sentences:

2a. It is necessary that Matthiew knows English grammar.

2b. It is possible that Matthiew knows English grammar.

versus:

3a. Matthiew must know English grammar.

3b. Matthiew may know English grammar.

Examples 2a. and 2b. illustrate alethic modality in its *de dicto* version (modality *de dicto* = modality of propositions) while 3a. and 3b. are instances of alethic modality in *de re* variant (modality *de re* = modality of things). As far as alethic modality is concerned, it is sometimes disputed whether it should be treated independently from epistemic modality (to which separate sections will be dedicated) since it is difficult, almost impossible, to tell apart the truth "in the world" from the truth "in the individual's mind" (Frawley et al., 2006: 8-9).

Drawing from the terminology coined by the generative grammarians, the term "root" began to be employed to denote the entirety of deontic and other modalities. Depending on the author, the number of modalities that this 'umbrella term' covers vary but deontic and dynamic are the ones most often included as subcategories of root modality. This view is shared by e.g. Coates (1983) for whom the term deontic primarily refers to the logical notions of obligation and permission. She notices, though, that modals such as "must" and "may" have other interpretations as well (1983). She further divides aspects of modal meaning into 'core' and 'peripheral'. The 'core' meaning would approximately correspond to root modality. Whether

root and deontic modalities should be used interchangeably (see Steele 1975, Talmy 1988, Sweetser 1990) or whether the former should be considered as a hyperonym for the latter is a somewhat controversial issue. Palmer (2001), in turn, covers deontic and dynamic modality under the label event modality.

As far as typology is concerned, Palmer (1986) originally drew a distinction into propositional modality and speech acts, to which he later added event modality (subdivided into dynamic and deontic modalities). Propositional modality is considered distinct from speech acts since it expressed commitment to the truth of the proposition where as speech acts are always associated with the performance of an act signalled by the so called performative verb (e.g. order). To this category Palmer included indicative, subjunctive and epistemic modality markers. Speech acts modality, in turn, comprised moods such as the imperative and the interrogative. The criteria allowing to draw a line between propositional and event modality markers would be that the former modified the whole proposition, nut just the event. To the category of propositions, Lyons added alethic modality (Lyons 1977). Epistemic modality is divided into non-evidential and evidential. Non-evidential modality, in turn, can be considered in terms of objectivity and subjectivity. As far as event modality is concerned, it would comprise deontic and dynamic modalities. The latter would be further divided into neutral (circumstantial) modality and subject-oriented (abilitive, dispositional) modality. The third category of dynamic modality added in 2001 was that of volitive modality (Palmer 2001). Figure 2.4. below illustrates this original classification.

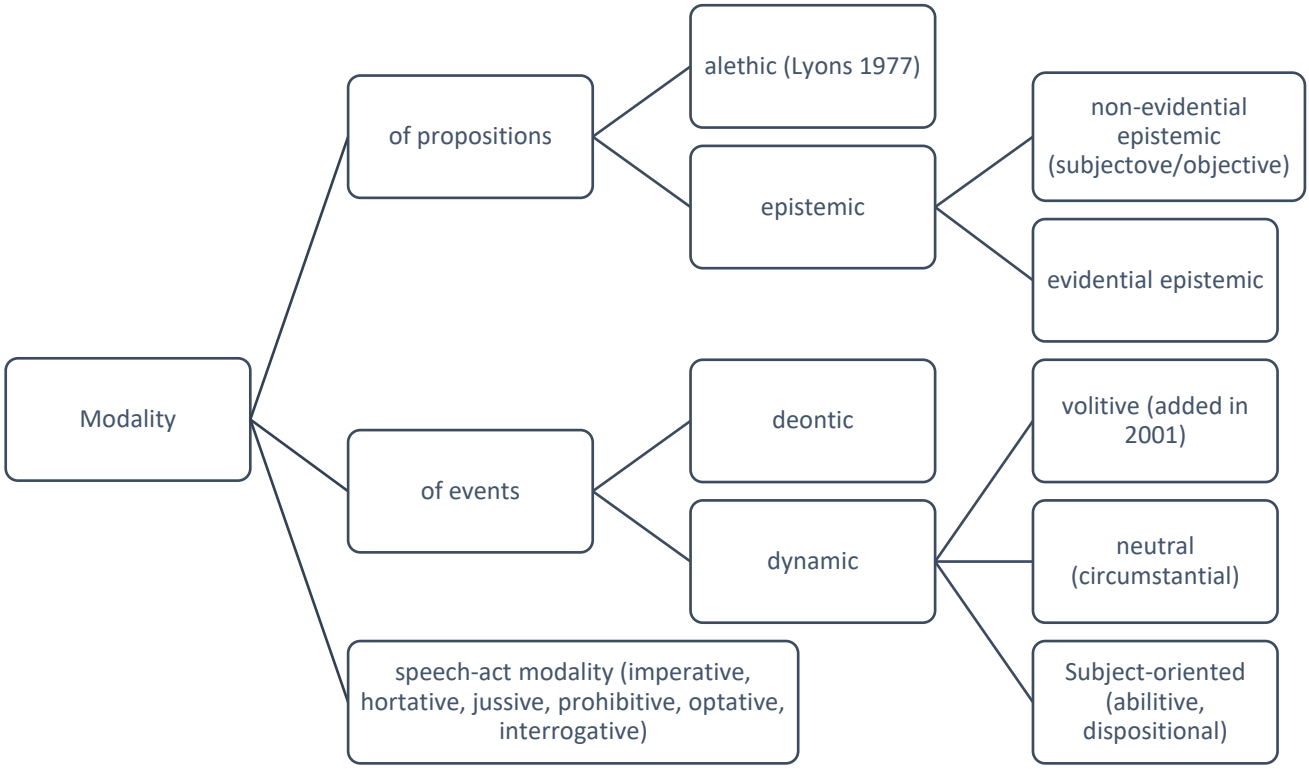

Figure 2.4. Modality of propositions and of events (Lyons 1977 and Palmer 1979, 1986)

Palmer (2001) decided to subsume speech-act modality and event modality under one universal category, that of events. The reason for this was that both of them are followed by irrealis or subjunctive moods to mark the events as non actual. Although it is true in the Germanic or Romance languages, event modality should not be associated with irrealis since it is rather concerned with giving commands, posing questions, revealing abilities and expressing desires, not with non-factivity (Nordström 2010). This argument supports the idea that speech-act modality, event modality and propositional modality should be regarded as distinct categories. Figure 2.5. below presents the modified version of Palmer's classification with the third category of speech-acts modality included.

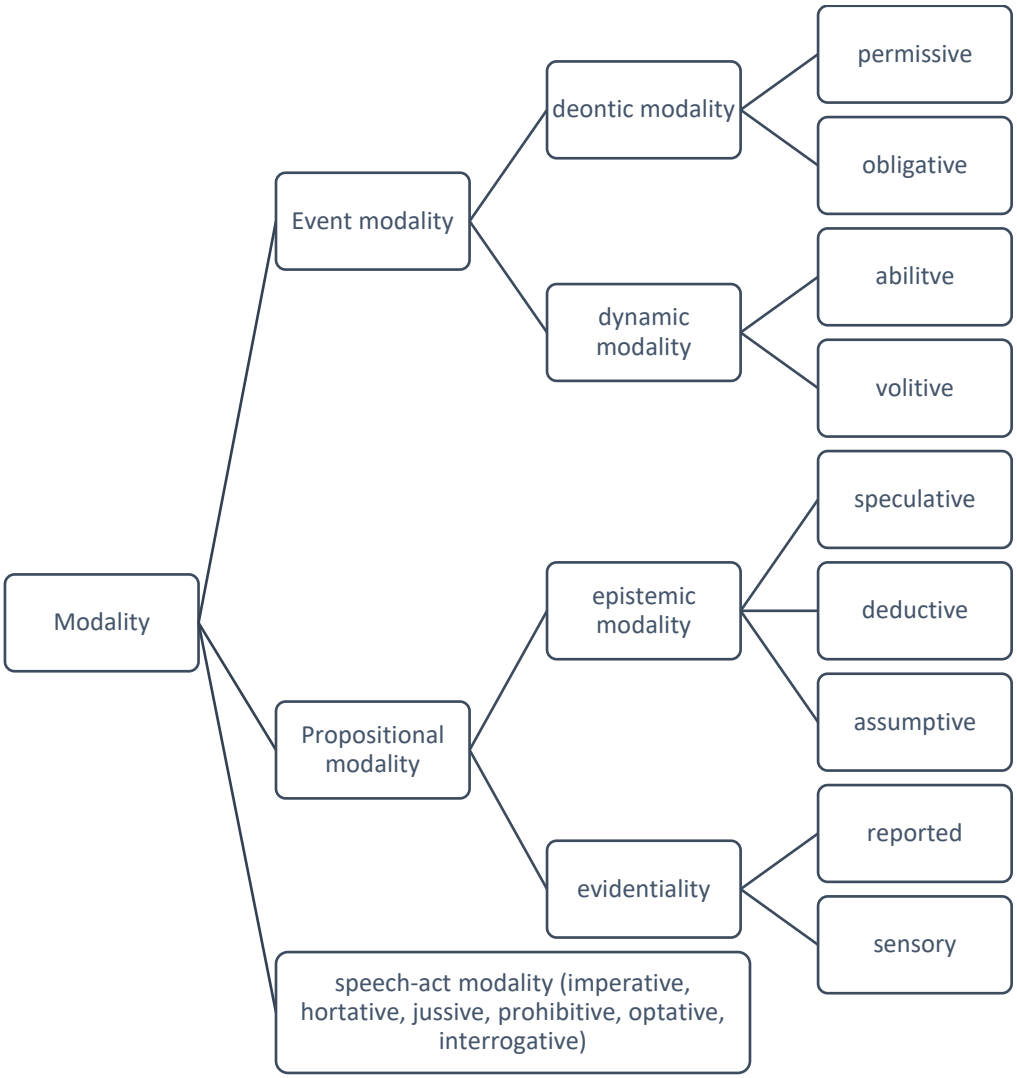

Figure 2.5. Palmer's distinction into event modality and propositional modality (Palmer 2001)

Deontic modality is described as containing modal expressions that point to some conditions outside of the agent as influencing the course of events in the sentence. These external factors are of either permissive or obligatory nature. Below examples where auxiliary modals 'may' and 'should' are used as English representatives of the sub-categories of deontic modality:

(1.) The Department's opinion reflects a "body of experience and informed judgment to which courts and litigants may properly resort for guidance.

(2.) A lawsuit begins when a complaint or petition is filed with the court. This complaint should explicitly state that one or more plaintiffs seek(s) damages or equitable relief from one or more stated defendants.

In this later classification, Palmer (2001) coins a separate notion of commissive modality which he considers a third category of deontic modality alongside prohibitive and obligative modalities. In our classification, however, we will abide by the notion speech-act modality. The motives for including it in the taxonomy have been already put forward.

Dynamic modalities are characterized as being dependent upon the speaker's own capabilities or wishes. Insofar, they are divided into abilitive and volitive modalities. As far as epistemic modality is concerned, Palmer (2001) distinguishes three types: speculative, deductive and assumptive, in English expressed by the modal verbs 'may', 'must' and 'will' respectively as in the below examples taken partially from the Corpus:

*(3.) While it **may** be true that some searches of a property are so destructive as to require a different result, this was not one of them.*

*(4.) … the plaintiff must suffer an injury or loss; and the defendant's conduct **must have been** the actual and legal cause of the plaintiff's injury.*

*(5.) Jem thinks that Tom Robinson **will** be found innocent.*

As regards evidential statements, the evidence invoked in them may be gathered either first-hand, i.e. the speaker directly witnesses the events he/she is reporting, or the source of knowledge is a third party's account or coverage.

While Palmer's classification does not include the term "root" modality as encompassing deontic and other types of modalities, Sweetser advocates the notion "root modality" and even suggests that epistemic modality derives from "root" modality (cf. Sweetser 1982, 1990). We will elaborate on this idea in section 2.4. dedicated to the epistemic modality. Sweetser's (1990) tripartite classification includes epistemic modality, root modality and speech-act modality. Kiefer (1997) further subdivides root modality into pairs: circumstantial/dispositional modality and deontic/bouletic modalities on the basis of the similarities they display (cf. figure 2.6.).

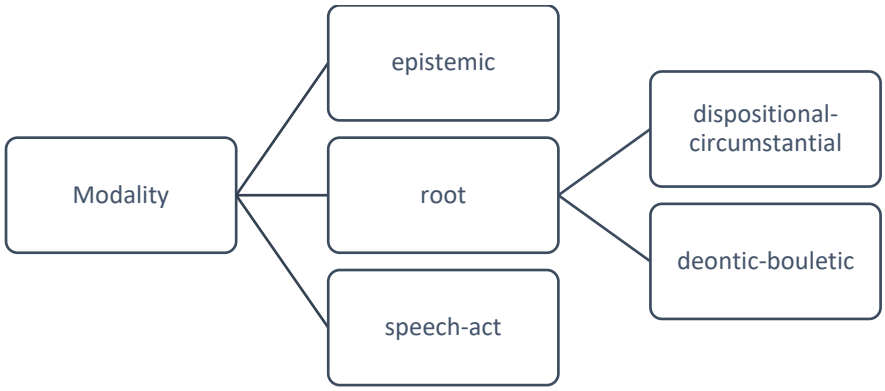

Figure 2.6. Tripartie classification of modality based on Sweetser (1990) and Kiefer (1997)

The innermost facets of modality would concern the scale between objective and subjective modality. As repeatedly observed by linguists, objective modality, otherwise referred to as root modality, is an intrinsic property of the predication and reflects the relationship between the content of the proposition and the extra-linguistic reality (cf. Kačmárová 2011, Papafragou, 2000). Subjective modality, in turn, would depict the relationship between the speaker and the proposition of the utterance. In a stricter sense, modality can be grasped as an expression of the relationship between a speaker and an utterance, or to be more exact, of the truth-value of the proposition. Dik (1989: 205), following Hengeveld (1988), presents a somewhat different perspective than a simple binary opposition between subjective and objective. Instead, he proposes the following classification:

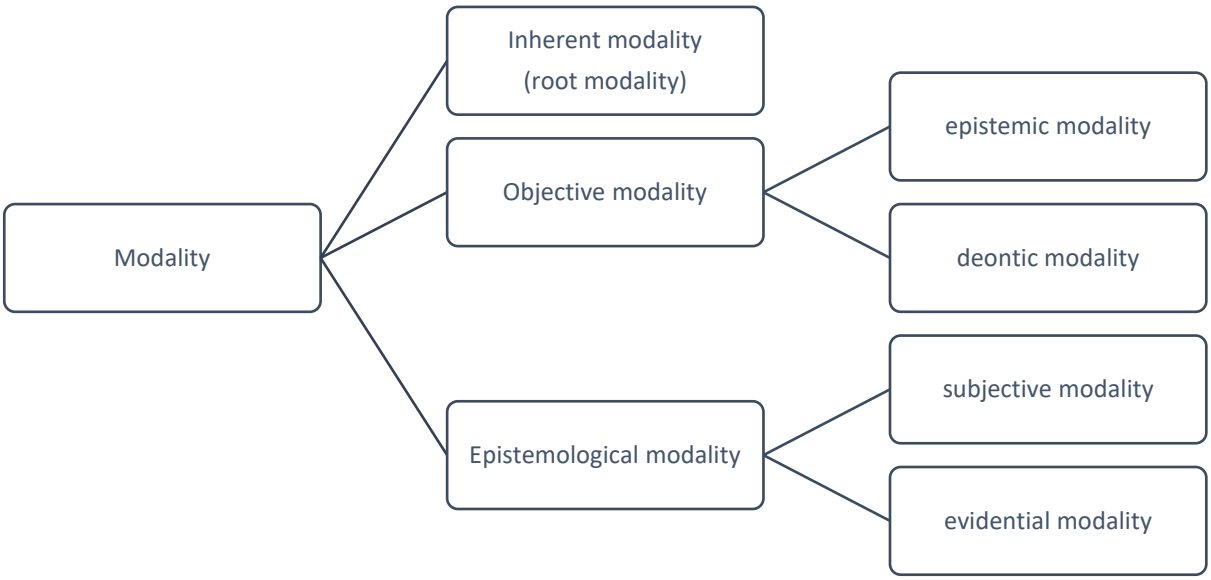

Figure 2.7. Inherent, objective and epistemological modality (Hengeveld 1988, Dik 1989, 1997)

Inherent modality belongs to the predication center of the utterance and, as observed by Siewierska, is concerned with merely presenting the speaker's knowledge of a given situation. Conversely, by means of objective and epistemological modalities, a speaker contributes to the assessment of the actual situation (Siewierska 1991: 124): objective modality expresses the speaker's evaluation of the likelihood of occurrence of some fact or state. Dik and Hengeveld divide this type of modality into epistemic objective modality (Certain-Probable-Possible-Improbable-Impossible) and deontic objective modality (Obligatory-Acceptable-Permissible-Unacceptable-Forbidden) (Dik, Hengeveld 1997).

The third type of modality is epistemological modality concerned with presenting the version of events as either directly experienced by the speaker or repeated after other sources such as knowledge obtained at second-hand, that is either subjective or evidential modality. Siewierska defines subjective modality as marking "the truthfulness of the proposition from the point of view of the speaker." Evidential modality, on the other hand, indicates "the factuality of the proposition in terms of how the speaker has obtained the knowledge of it." (1991: 126). Some authors (cf. Westney 1995) would like to see a one-to-one correspondence between the syntactic form and the semantics of an expression. Although there is some evidence that the meaning of the modal auxiliaries is more subjective and the meaning of periphrastic forms more objective, there are certain clear cases where this distinction cannot be introduced. Pairs such as 'will' and 'be going to' or sets 'should', 'ought to' and 'be supposed to' do not display the above tendencies (Warchał 2014: 58).'

An interesting point of view is also proposed by Kratzer (1977, 1981, 1991) who provides an analysis of modality as related to the notion of the 'the possible worlds' framework. To explain how modality functions in such a framework, Kratzer (1981) introduces three factors which jointly underlie modal operators: the quantificational strength, the modal base (a set of accessible worlds) and the ordering source of those worlds. These sets can, in turn, be expressed with epistemic modal bases, deontic modal bases, teleological modal bases, circumstantial modal bases or bouletic (boulomaic) modal base. Bearing in mind the above distinction, Kratzer's classification might be presented in figure 2.8.

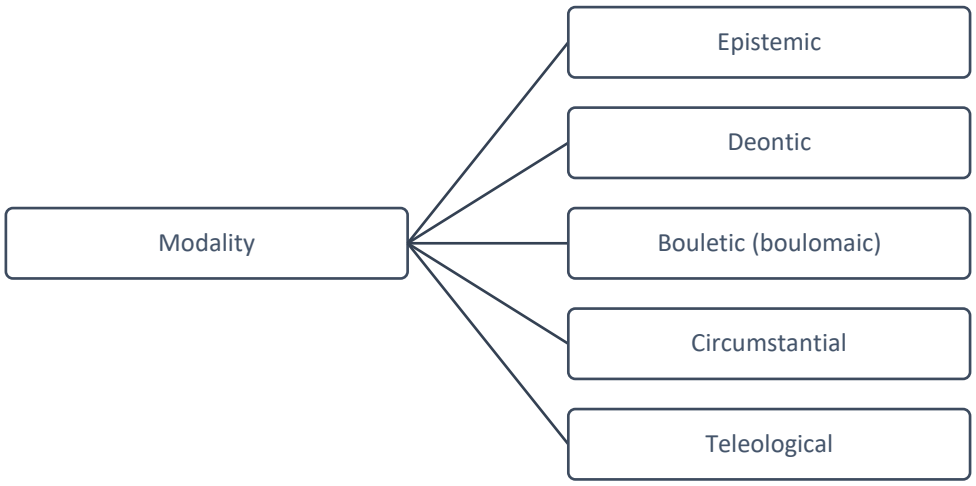

Figure 2.8. Epistemic, deontic, circumstantial, bouletic and teleological modality (based on Kratzer 1981)

The 'possible worlds' semantics has been advanced by logicians for the purposes of modal logic. Kratzer draws our attention to context-dependency which accounts for the multiplicity of meanings of modal expressions. Seen through this perspective, modality needs to be interpreted as an interplay of a set of accessible worlds (modal base), the quantificational strength, the accessibility relation and the ordering of the possible worlds. The quantificational strength refers to "ascribing" to the modal base the proper label (be it possibility, necessity or some 'shade' in-between). While accessibility relation holds for all types of modality, the so-called 'ordering' is necessary only in some cases such as deontic or bouletic modality. As explained by von Fintel: "The accessibility relation underlying epistemic modality delivers as the domain of quantification those worlds that are compatible with what is known, with the available evidence in the evaluation world. Similary, deontic modality quantifies over worlds that satisfy the relevant body of law or principles. Bouletic modality quantifies over worlds that conform to what the relevant person desires (von Fintel 2006: 3)."

In turn, ordering takes place for instance in deontic modality where relevant rules and laws determine whether a particular sentence is true or false. The simple 'possible words' analysis does not suffice and one must also establish what 'should' or 'should not be done' in the relevant possible world. Modal bases are therefore considered as sets of possible worlds which need to

be quantified with modal operators. It is only then that we can interpret the meaning of a modal expression properly despite its being ambiguous on the surface structure. As observed by von Fintel, modal expressions have of themselves a rather skeletal meaning and it is only in combination with the background context that they take on a particular shade of meaning (such as epistemic or deontic) (von Fintel 2006).

So far, we have accounted for several attempts to classify numerous modality types. Below is a rather exhaustive list of possible modal meanings made by Mindt,: (i) possibility/high probability, (ii) certainty/prediction, (iii) ability, (iv) hypothetical event/result, (v) habit, (vi) inference/deduction, (vii) obligation, (viii) advisability/desirability, (ix) volition/intention, (x) intention, (xi) politeness/downtoning, (xii) consent, (xiii) state in the past, (xiv) persmission, (xv) courage, (xvi) regulation/prescription; (xvii) disrespect/insolence (Mindt 1998: 45).

As we can see, the typologies presented so far vary in their details and nomenclature.

Despite so numerous contributions to the subject, the broadest, in the opinion of the author, classification into modality types, modal orientation, modal value and polarity is proposed by Halliday. The details of this system are detailed in Figure 2.9.

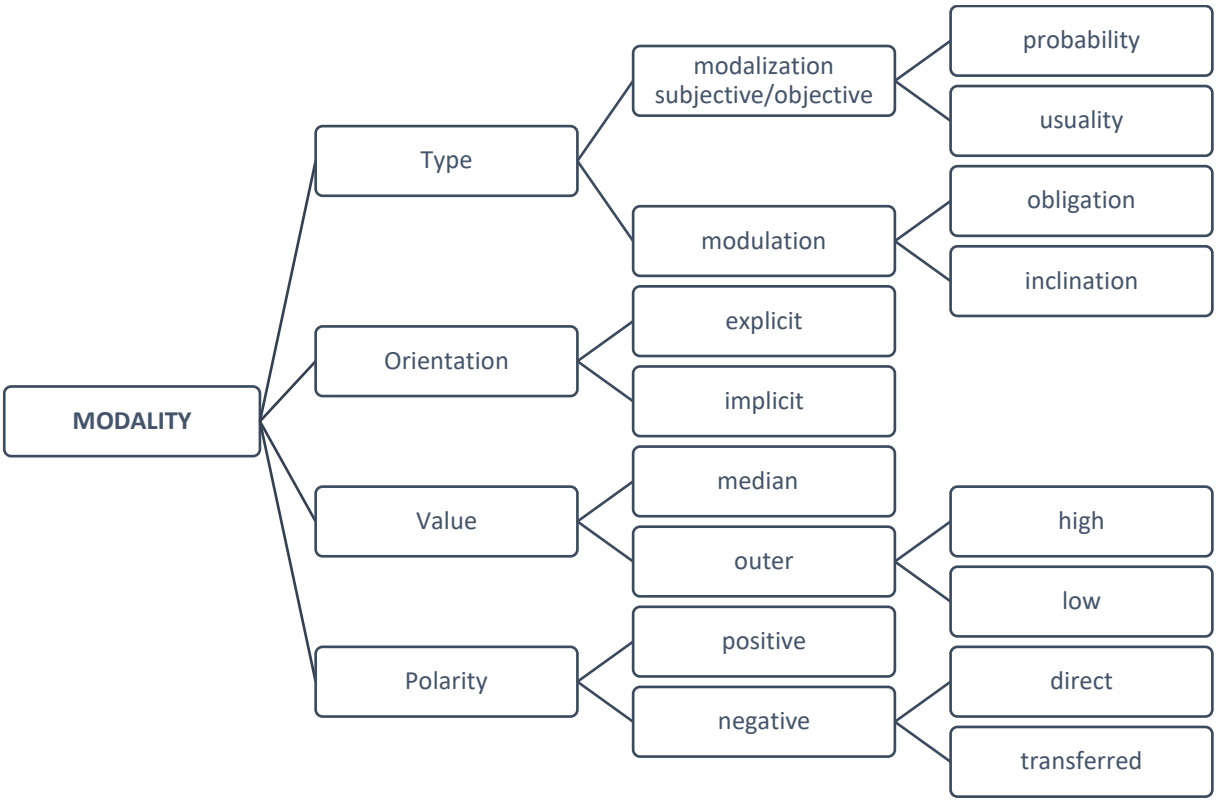

Figure 2.9. Modality system (based on Halliday 1994: 360)

2.3.4 Modal verbs in English and Polish and their distinctive characteristics

Why certain languages are equipped with a grammatical apparatus to express modal meanings while as others are devoid of it and resort to lexical means instead (or, as Palmer refers to it, modality is glossed, i.e. it is lexicalized rather than grammaticalized (cf. Palmer 1986). This phenomenon proves that it is indeed a question of processes that occur independently across languages but, as Palmer remarks "there are probably very few languages that do not have some kind of grammatical system of modality" (Palmer 1986: 7). In some cases, however, the grammaticality of some items may arouse some doubts: English modal verbs such as *might, should, must*, for that matter, are clear-cut examples of grammaticalization since they do exhibit all properties that Palmer invokes after Twaddell and Huddleston as conditions that all modal verbs need to fulfil, that is: negation, inversion, 'code' and emphatic affirmation (which the author neatly arranges into what he calls NICE properties) (Twaddell 1963, Huddleston 1976: 333). Let us have a look at the following sentences:

1. She can't be at home right now. I have just seen her in the office [NEGATION].

2. Must I wear this uniform? It looks awful [INVERSION].

3. He can speak Chinese and so can she ['CODE'].

4. We will support you [EMPHATIC AFFIRMATION].

As illustrated above, all modals in 1-4 are full-blown members of a grammatical system. Apart from NICE properties (which are also observed in 'be' and 'have' auxiliary forms), Palmer lists some additional ones that are characteristic only for modals. To these he includes:

- no co-occurrence next to each other (*She must can swim)
- no –s ending for 3rd person singular
- no distinction into finite and non-finite forms
- no imperatives
- we can distinguish pairs of modals in which one is of morphologically present, and the other of morphologically past form [1]:

can – could

shall - should

may – might [37]

Only '*must*' does not have its past equivalent.

- suppletive negative forms:

She may know the answer -> She can't know the answer

He must wear the uniform -> He needn't wear the uniform.

As far as 'can' is concerned, it may be characterized as having an invariant core meaning (potentiality). Leech (2004: 85) argues that it is doubtful whether it has any genuine epistemic uses. Moreover, the author claims that the modal verb 'can' essentially conveys root senses (permission, possibility and ability) and thus it seems to be the only modal auxiliary where we do not find the regular root-epistemic distinction. In the Corpus "can" occured 5169 times while " could" 5998 times. Upon the analysis, we found no epistemic occurrences of 'can' and thus

[37] of these only „could" does indeed refer to the past;

we may suspect that there is no total equivalence between Polish ‘móc’ (which in a number of cases proved to be epistemic) and the English modal ‘can’. Depending on the context, we would have to resort to three semantically complementary modals ‘can’, ‘could’ and ‘may’ to convey all the shades and gradients of meaning. Legal register is therefore no exception: all the instances of ‘can’ represent root possibility. Although ‘can’ has three different variants of interpretation: permission, possibility or ability (cf. Perkins 1983: 35, Papafragou 2000: 48), we will not delve any further since these variants are of no relevance for the present analysis.

‘Could’, on the other hand, has some epistemic potential. It can namely occur in the past settings where it has almost exclusively epistemic readings. Epistemic possibility ‘could’ expresses the speaker´s assessment of the possibility of something being true (past hypothetical conditionals). According to Downing and Locke (387), in addition to ‘may’ and ‘might’ used in the sense of possibility, stressed ‘could’ is increasingly used in the English written discourse.

When it comes to 'may' according to Coates the following features can be ascribed to this modal

a) the speaker does not commit himself or herself to the truth of the unmodalized statement;

b) there is no restriction on the time reference of the main predication, which can refer to the moment of, prior to or after speaking;

c) they collocate with well to achieve a quasi-objective effect of the there-is-a possibility-that rather than I-am-not-sure-but-perhaps type (Coates, 1983: 135).

As fas as 'might' is concerned, its contexts are similar to 'may' but the distribution is not identical. The above may seem obvious: language abounds in expressions whose meaning overlaps and such whose meaning is not restricted to only one domain: a reflection of the phenomenon of polysemy. Modal verbs are a very good example of polysemy. From the point of view of cognitive linguistics, any irregular behavior in the sphere of linguistics must be accounted for by certain motivational principles (Radden and Panther 2004). Seen through this light, all language users strive towards communicative clarity and relevance. This can be achieved by avoiding forms that are ambiguous and that pose difficulties when processed and interpreted by the recipients. Ideally, therefore, one strives towards such wording where one form corresponds to one meaning. However, as we have repeatedly observed throughout the analysis, this cannot be the case with modals which behave irregularly, especially as far as their negated forms are concerned.

As far as negation is concerned, modal verbs that display irregularities are, according to Radden (Radden and Panther 2004): must, have (got) to, need to, may and can. These irregularities can be illustrated by table 2.7. [38]

1 Deontic modality		Subjective	External
1.1 obligation	obl p	*must*	*have to, need to*
1.2 permission, enablement	perm p	*may*	*can*

2 Epistemic modality		Subjective	External
2.1 necessity	nec p	*must*	*have to*
2.2 possibility	poss p	*may*	

Negated deontic modality		Subjective	External
1.1.1 prohibition	obl ~p	*mustn't*	
1.1.2 exemption from obligation	~obl p		*don't have to, need not*
1.2.1 permission not to act	perm ~p	*may nót*	
1.2.2 refusal of permission	~perm p	*may not*	*can't*

Negated epistemic modality		Subjective	External
2.1.1 necessity that not	nec ~p		
2.1.2 exemption from necessity	~nec p		*don't have to, need not*
2.2.1 possibility that not	poss ~p	*may not*	
2.2.2 impossibility	~poss p		*can't*

Table 2.7. English modal verbs and their negated forms

Let us, however, approach the problem in Polish. Among contributors to the subject of Polish modality, we may list the following authors: Boniecka (1976, 1984, 1999); Grzegorczykowa (1995, 1996, 1997); Jędrzejko (1987, 2000); Ligara (1997), Wronkowska, Ziembiński (2001);

[38] source: Quaderns de Filologia. Estudis lingüístics. Vol. XIV (2009) 169-192, AFFIRMATIVE AND NEGATED MODALITY* Günter Radden Hamburg available at: http://roderic.uv.es/bitstream/handle/10550/30269/169.pdf?sequence=1

Polański (1969); Puzynina (1974); Rytel (1981, 1982); Wierzbicka (1971); Wróbel (1991, 2001); Bellert (1971), Bobran (1995, 1996), Bogusławski (1971), Gardzińska (1996), Jodłowski (1971), Mirowicz (1956).

As far as typology is concerned, we might distinguish four main modal verbs: *móc, musieć, chcieć, potrafić, woleć* (various classifications are generally proposed) as in the examples below:

1. ***Mogę*** *sprawdzić ten czasownik w słowniku [I can look this verb up in the dictionary].*
2. ***Musimy*** *zdać egzamin poprawkowy [We must pass the re-take exam].*
3. *Olga* ***chce*** *pojechać na Karaiby [Olga wants to go to the Caribbean].*
4. *Olek* ***potrafi*** *mnożyć w pamięci dwucyfrowe liczby [Olek can multiply two-digit numbers in mind].*

Modals verbs in Polish oscillate between the lowest degree of probability ("móc"), and the highest degree of certainty ("musieć"). Using Palmer's criteria, we would instinctively classify the above verbs as less grammatically marked than English "can" or "must". There is also a class of verbs called defective (after the Latin notion: *verba defectiva*), that is those that do not inflect. To such verbs Tytuła and Łosiak include for instance verbs that occur only in the 3rd person singular: *można, wypada, uchodzi, przystoi, godzi się* and residual forms such as: *trzeba, trza, powinien, wiadomo* (Tytuła, Łosiak 2008).

Saloni and Świdziński, in turn, write about words that occur in place of predicates but that originally are not verbs and that, consequently, do not display inflectional patterns typical for other verbs. To such the authors include: trzeba, można, dość (Saloni, Świdziński, 1998: 97). Within a sentence, such 'verbs' should occur with markers of mood and tense. For this reason, there is only one form, that of present indicative, which can be used synthetically. Other forms (past, conditional etc.) require the use of analytic constructions, often accompanied by auxiliary verbs, e.g.: *można było, można by, niech będzie można* (ibid: 97).

According to Ligara (1997: 48), the criteria for the Polish modal verbs may be specified as:

— being followed by the infinitive,
— no nouns as complements,
— no imperative forms,
— no passive or perfective forms,

— no substantiva verbalia forms,
— no phrasal verbs as complements.

As remarked by Kakietek, Polish lexical counterparts of the English modal verbs do not form such a distinct class of verbs (Kakietek, 1991: 96). Nevertheless, it seems somehow unfair to apply NICE features to the modal system of just any language. Those relatively close in terms of lexicon or grammar might constitute a good point of reference but the 'degree' of modality should be evaluated on the basis of a comparison with the rest of lexical verbs of a given language, by the observation of linguistic patterns and behaviours typically displayed by those lexical items one wishes to classify as "modals". Davidsen-Nielsen supports this view insofar as he claims that the NICE criteria are of no real value in a contrastive framework since they all involve a language-specific use of the verb "do" (in: Kakietek 1991: 35). On balance, we could say that if there is a substantial amount of marked grammatical features, the modal system displays a high degree of grammaticalization. If, on the other hand, few idiosyncrasies can be distinguished, we will consider such modal verbs as less grammatically identified. Features of a more general nature have been proposed by e.g. Spang-Hanssen whose contribution consists in singling out a class of 'grammatical verbs' which are 'intimately connected with another verb and which are similar to verbal inflections' (in: Kakietek: 1991: 36). Among these general criteria the author mentions:

— the meaning of an auxiliary is general and abstract. Apart from semantically empty verbs – like English "do" –its content is analyzable in terms of temporal, aspectual, modal, or diathetic meanings.
— An auxiliary is functionally dependent in the sense that it is impossible to modify it without simultaneously modifying the lexical verb it combines with.
— The addition of an auxiliary does not affect the lexical restrictions of the verb it combines with.
— An auxiliary is attached to a lexical verb without any intervening infinitive marker, i.e. it governs a bare infinitive or a participle.

Making such a grammatical review of both, English and Polish, might turn helpful insofar as we will be comparing modal differences on the semantic level but by necessarily resorting to the grammatical systems. Apart from the subjunctive, various grammars distinguish other

unreal moods, some less, some more grammaticalized. As far as the definition of the unreal (or irrealis) is concerned, Bybee and Fleischmann describe it as "a modality that connotes that the proposition with which it is associated is nonactual or nonfactual" (Bybee and Fleischman 1995:2).

Kinkade observes that although the category *"irrealis*" is a convenient term to emphasize the grammatical contrast between "real" and "unreal" situations, it is somehow "inconsistently defined" across languages (Kinkade 1998: 234).The author further suggests that we might expect all languages to exhibit constructions that describe "logically unreal" contexts, but "none of these notions must be marked grammatically (i.e., morphologically or syntactically) as unreal" (Kinkade 1998: 234). As observed by Palmer, the term *"irrealis"* is very vague insofar as it can refer to a number of different circumstances and the morphemes carrying the semantic load of non-factuality are different cross-linguistically, which renders the category itself even more complicated to determine (see Palmer 2001:149). According to Palmer (2001:145ff) there are two ways in which *"irrealis"* can manifest itself. Palmer refers to these types as joint and non-joint systems. In one type of language, the joint type, an *"irrealis"* morpheme co-occurs with another morpheme which encodes the actual type of *"irrealis".* The second type, called non-joint, has *irrealis* morphemes that do not need other morphemes but function all by themselves.

As far as 'the reality status' is concerned, Foley suggests a conceptual continuum from real to unreal:

real → necessary → likely → possible → unreal

Foley and Van Valin (1984) and Van Valin and La Polla (1997: 40) also propose to refer to the 'reality status' as a separate grammatical category. However, it has not been acclaimed by all contributors to the subject and some (cf. Bybee 1998; De Haan 2012, Cristofaro 2012) refute the like ideas insofar as a category is too broad to cover this particular grammatical notion and that it should rather be treated as a sub-function.

2.4 **Epistemic modality: definition and subjective nature**

2.4.1 Definition and scope

Although subjectivity, as permeating our day-to-day communication seems obvious and self-understandable, it has been rather recently that the expressive function of language was acknowledged and received greater attention. The term "function" has already appeared in sections dedicated to Systemic Functional Linguistics, for which the communicative concerns were of utmost importance. When seen through this "communicative" perspective, every single utterance represents the choices speakers make in adapting the meaning they wish to convey to particular lexico-grammatical means available in a given language. The above process is covered in detail in the earlier part of this chapter. This "function" referred to by Halliday and his followers, contains in itself the very notion of communication as a self-understandable element whereby the inter-actants, or the participants, perform their roles in encoding (emitting) the message and in decoding (receiving) it. Apart from these, we should also mention the relationship between the object, or state of affairs, and the sign which is meant to represent and encode whatever constitutes the message itself. Theories such as Buhler's tripartite model of language or Jakobson's model of communication, both handle the above mentioned relationships. For Buhler (1934), they might be described as *Darstellung* (representation, or the relationship between the object and the sign), *Apell* (appeal, or the relationship between the receiver and the sign), and *Ausdruck* (expression, or the relationship between the sender and the sign). Figure 2.10. illustrates how the theory operates in practice

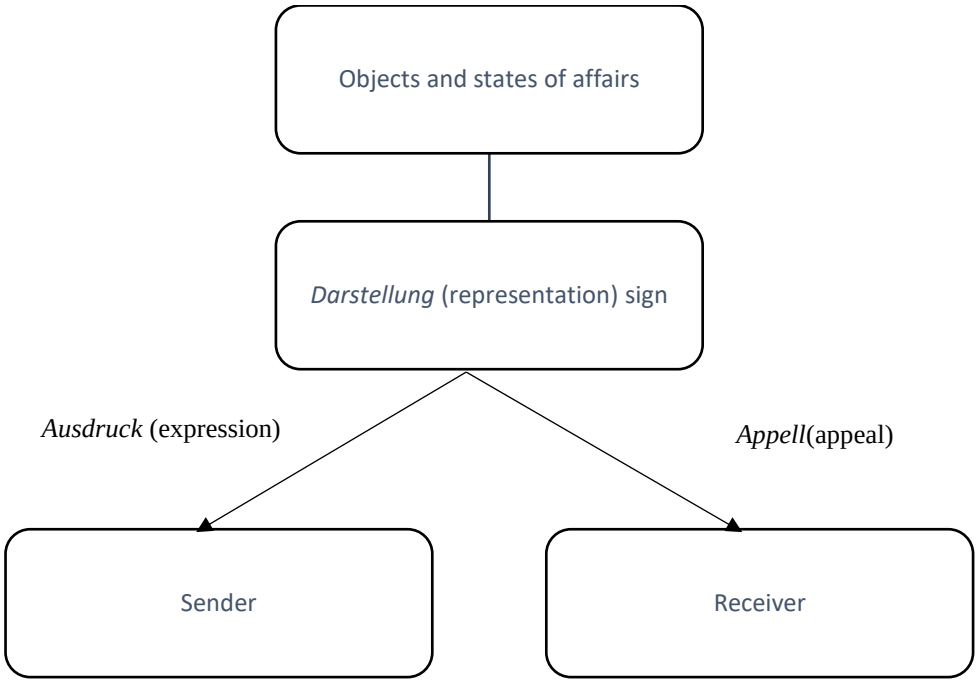

Figure 2.10. Tripartite model of language according to Buhler (1934)

Authors such as Mushin are of the view that while the function of representation has hitherto dominated in the linguistic studies concerned with communication, the expressive power of language has been somehow neglected. The "appeal", or the influence upon the receiver of the message is, in turn, best described in the speech-act theory and authors such as Austin (1962), Searle (1969) and Grice (1975). Both speech-act theory and other theories focusing on the pragmatic and context-related function of communication, recognize that main purpose of the expression, or the process whereby the message is conveyed, which is: to maximize the receiver's ability to decode and properly understand it (cf. Mushin 2001: 2-3).

As observed by Buhler, apart from the sign, which performs a mediating function, it is also the speaker and the addressee that actively participate in the creation of the speech situation (Buhler 1934 [1990]: 37). Authors such as Jakobson (1960), Austin (1962) and Bienveniste (1971) have repeatedly stressed that there is no such things as predetermined linguistic constructions to which speakers refer without making any contribution of their own. Therefore, their utterances cannot be deemed entirely objective and neutral (Mushin 2001: 3). In the words of Lyons (1982 in Palmer 1986: 102):

"The term "subjectivity" refers to the way in which natural languages, in their structure and their normal manner of operation, provide for the locutionary agent's expression of himself and of his own attitudes and beliefs. Modern Anglo-American linguistics, logic and philosophy of language has been dominated by the intellectual prejudice that language is essentially, if not solely, an instrument for the expression of propositional thought."

As with the notion of modality, epistemicity has also received a considerable amount of attention and as a result of this wide range of interests displayed on the part of the contributors, one has to narrow one's area of research in order to arrive at a sufficiently concrete handling of the term. To quote Halliday and his most representative definition: "[Epistemic modality]....is the speaker's assessment of probability and predictability. It is external to the content, being part of the attitude taken up by the speaker: his attitude in this case, towards his own speech role as 'declarer'" (Halliday, 1970: 349). Palmer, in turn, draws our attention to the status of the proposition. As he views it, epistemic modality is "the status of the proposition in terms of the speaker's commitment to it." (Palmer 1986: 54-55). Bybee and Fleischman define epistemic modality as the "clausal scope indicators of a speaker's commitment to the truth of a proposition" (Bybee and Fleischman, 1995: 6). Keisanen's definition does not differ much when he describes epistemicity as "those interactional and linguistic means by which discourse participants display their certainty or doubt toward some state of affairs or a piece of information" (Keisanen 2007: 257). As observed by von Fintel (2007), "expressions of epistemic modality mark the necessity/possibility of an underlying proposition, traditionally called the prejacent, relative to some body of evidence/knowledge." Even the general definition, therefore, contains reference to some external source of information, which only proves that there exists a clear relation between epistemicity and evidentiality.

A somewhat more general definition is provided by Nuyts who considers certainty or epistemic modality as a linguistic expression of an estimation of the likelihood that a certain state of affairs is, has been, or will be true (Nuyts, 2001a). This likelihood might be conceived of as an axis where 0% represents something being totally unlikely to happen and where 100% equals something being bound to happen. As far as categories of epistemic modality are concerned, there is generally no agreed upon nomenclature. When faced with the task of drawing a scale in terms of certainty/uncertainty, some authors (cf. Holmes 1982, Hoye 1997) suggest the following gradation: certainty, probability, possibility. However, as observed by Szczyrbak

(2014), there is no consensus regarding the semantic organisation of all the epistemic markers, especially verbs, in a way that would unambiguously differentiate them on the scale from absolute to low certainty. Marcinkowski is also of the same opinion when he points out that "the strength of epistemic verbs and the commitment conveyed largely varies with their syntactic environment" (Marcinkowski 2010: 51). Therefore, what has to be taken into consideration when evaluating the degree of (un)certainty would be the context in which a given (un)certainty marker occur. With regard to the scope of the term, Drubig points to its referring to all propositional operators: "Epistemic modals must be analysed as evidential markers. As such, they are part of the extra-propositional layer of clause structure and take scope over all propositional operators" (Drubig, 2001: 44). As far as the scope of the term is concerned, Brezina (2012: 106) proposes to distinguish four different levels at which epistemicity can operate. These include: pragmatics, non-verbal communication, cognition and discourse.

The most common linguistic exponents of epistemic modality would include modal verbs such as: *must*, *might, may, ought, should, can, could, have to, needn't* and adverbial expressions such as *possibly, probably, certainly, apparently, supposedly, allegedly*.

Another very important aspect of` epistemic modality highlighted in a number of definitions is its lack of truth-conditional content. Von Fintel (2007) suggests that due to this impossibility of categorizing epistemic expressions in terms of their truth or untruth, we should develop an alternative semantics for them. The author proposes two possibilities:

— Epistemic modals might be treated as "parentheticals", phrases that give side-remarks in a separate semantic dimension from the normal truth-conditional content.
— Epistemic modals might be treated as "speech act modifiers". While an unmodalized sentence is interpreted as a straightforward assertion, adding an epistemic modal might indicate that a different kind of speech act (albeit with the same truth-conditional content) is performed (von Fintel 2007).

As far as the classification of modality is concerned, the most common one refers to the distinction into epistemic modality proper, agent-oriented modality, speaker-oriented modality

and subordinating modality (figure 2.11). This has been proposed by authors such as Bybee (1985:166) and Bybee, Perkins and Pagliuca (1994).

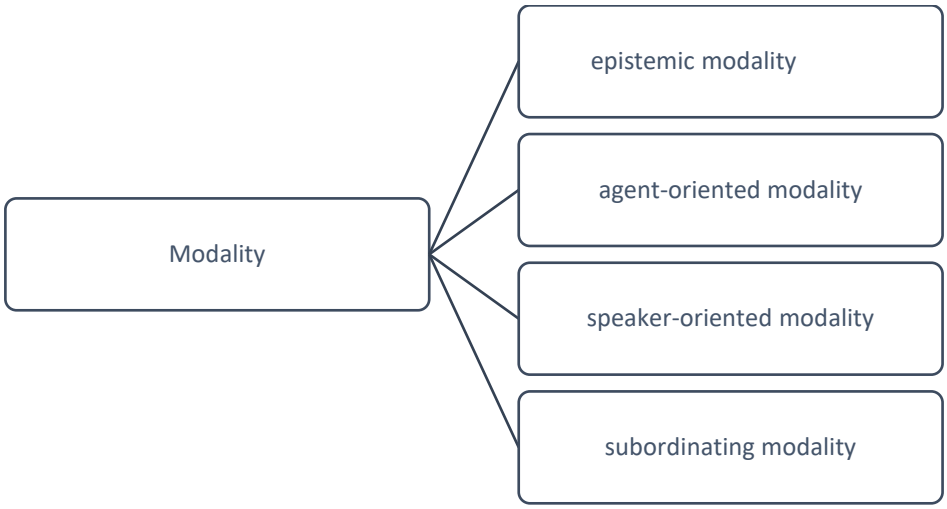

Figure 2.11. Classification of epistemic modality, based on: Bybee (1995:166) and Bybee, Perkins and Pagliuca (1994)

Agent-oriented modality might be considered a 'supercategory', as maintained by Bybee and Fleischmann (1995: 5), and, as its name suggests, it describes those states of affairs where the agent, or the doer referred to in a clause, becomes dependent upon the external and internal conditions in the completion of the action expressed in the main predicate. As regards the external nature of the source of the action, we speak about obligation and necessity. As for the internal factors, it is either ability or desire.

The external conditions might refer to some factors, a legal authority, statutory laws that compel the agent to perform a given action. As far as legal discourse is concerned, apart from the statutes, it is often the principles of social life or the rules of equity as well as the common sense that bind the judges to behave (=adjudicate) in the way prescribed by these factors as in:

*The court **must** ensure the defendant understands the nature of the charges against him and the range of allowable punishments*

In the above statement, the obligation of the court to explain the situation to the defendant is a result of the Sixth Amendment which "secures to a defendant facing incarceration the right to counsel at all 'critical stages' of the criminal process". However, since cases dealt with by the Supreme Court are rarely unproblematic to the extent that one could confine oneself to the study of the Constitution, it very often entails resorting to some common sense notions and

understandings of what constitutes "proper counselling and advising" of a defendant during the plea hearing. In any case, we may refer to the above example as illustrating obligation, the classical representative of the agent-oriented modality.

Similarly to obligation, necessity also involves factors of external nature which influence the performer to undertake something. The sentence below might give an example:

The claimant needs to prepare evidence to prove the extent of the loss suffered

The last two types, ability and desire, describe situations where the agent is restricted only by his/her internal conditions. In the case of ability, there exist some enabling circumstances which determine the accomplishment of the action. In the legal settings, the examples most often encountered will concern someone's (e.g. the plaintiff's, the victim's) physical or psychical ability when confronted with some external difficulty, e.g. in the reports or relations of the court appointed experts as in:

The doctor concluded the plaintiff was still able to do sedentary work and was not disabled.

When the desire comes into play, there are some internal volitional conditions that determine whether the actions is accomplished or not. In the legal discourse, we may come across statements which involve desire only under specific circumstances where highly emotive language is employed, e.g. in the statements of witnesses.

One of the mixed types not mentioned in the classification above, is root possibility based on both the internal factors (the ability of the agent) as well as the external ones. Coates gives an example of such a situation where the inability of the agent is caused by the external factor (in this case someone else's leaving):

I actually couldn't finish it because the chap whose shoulder I was reading the book over got out at Leicester Square. (Coates 1983:114).

Statements expressing the agent-oriented modality are often confused with deontic modality which, as Bybee et al. argues, does not distinguish between inflectional (e.g. grammaticalized) moods and lexical ones (e.g. periphrastic expressions or modal verbs), for instance forms such as the imperative are not properly distinguished from the lexical or auxiliary expressions of obligation or permission (Bybee et al. 1995: 5). Furthermore, deontic modality as traditionally

understood excludes certain semantically related notions such as ability (physical or mental) and desire that have linguistic expressions similar to that of permission and obligation. While one argument for the category 'deontic' might be the well-documented pathway of change whereby deontic modals over time come to acquire epistemic functions, in actual fact this change affects a broader range of meanings than the term 'deontic' indicates.

The speaker-oriented modality, describes states of affairs where the speaker becomes the source of the "enabling condition". To such types we will include: directives, imperatives, prohibitions, optatives, admonitions and permissions (De Haan 2005: 9).

Subordinating mood, as its name suggests, refers to the use of modality in subordinate clauses. To these we might include the concessive clause and the purposive clause (De Haan 2005: 8). De Haan also mentions the subjunctive as one of the exponents of the subordinating mood. The subjunctive mood is covered in greater detail in section 2.3.4. Examples of the subordinating mood can be also found in our corpus:

Although the Ninth Circuit correctly concluded that an individual partner can be a "taxpayer," § 6203 speaks of the taxpayer's "liability," which indicates that the relevant taxpayer must be determined.

A defendant must be advised of the usefulness of an attorney and the dangers of self-representation in order to make a knowing and intelligent waiver of his right to counsel.

2.4.2 Epistemic modality and cognitive grammar

The innovative approach of the cognitivism as far as subjectivity is concerned, consisted in defining the meaning not in terms of denotative reference and truth conditions, as was the case with traditional semantics, but in equating the meaning with conceptualisation (Langacker 1987:107). The grammatical structures that have hitherto been studied only with regard to their truthfulness or falsity about the real world, began to be associated with cognitive processes that occur within the realm of the mind of the speakers, or, to use the cognitive grammarians' language, the conceptualizers or experiencers. The main focus shifted therefore towards the cognitive capacity which determines our perception of the external world and, consequently, shapes our construal of the states of affairs in the external world which manifests itself in the grammatical structures that we use to convey these mental processes of our own

Figure 2.12. The relationship between the real world, the experiencer and language

This is where subjectivity comes into play: as claimed by cognitivists, and later cognitive grammarians, language will never be entirely objective due to the fact that before a statement about some state of affairs is uttered, it is filtered through our cognitive capacity and coloured by our perception. It is thus the world minus or plus (depending whether our statements add or extract something that we experience through our senses) our 'rectification', '(mis)reperesentation, or 'distortion' of the original truth, as it were. As observed by Mushin: "language never represents what is actually in the world, merely our construal of these states of affairs" (Mushin 2001: 7). In order to describe this subjective perception, or epistemicity, as it were, we need to resort to such concepts as categorization, which is well known by the cognitive sciences and whereby our mind processes the data it is continually confronted with throughout daily interactions and communication. Both the Aristotelian, objective interpretation of a category, as well as its epistemic understanding by Kant used to depict the category as the most basic structure of the world or as a special notion that serves to stratify the experiential data. We can also define a category as a structure used by our mind to order and arrange the data obtained in the process of learning (Judycki 2009).

As viewed by Judycki (2009), categorization is a process whereby various objects become parts of the same category. If we were to present it in numbers, each group of objects could be categorized in millions of ways. The whole process differs from individual to individual and this relativity of categorization arouses questions. Judycki refers to it as trans-semantic categorization. In his view: "The understanding of the world based on the trans-semantic

categorization will necessarily entail considerable discrepancies" (Judycki 2009)[39]. He further argues that epistemicity or epistemic relation, should not be conflated with sensory perception.

According to Stubbs:

"whenever speakers (or writers) say anything, they encode their point of view towards it: whether they think it a reasonable thing to say, or might be found to be obvious, questionable, tentative, provisional, controversial, contradictory, irrelevant, impolite, or whatever. [...] All sentences encode such a point of view [...] and the description of the markers of such points of view and their meanings should therefore be a central topic for linguistics." (Stubbs 1996: 202).

Analyzing subjectivity directs us towards categorization which, in turn, refers us to cognitive linguistics where categorizing is described along with construal as a process whereby the speakers somehow adjust the reality to fit it to what they intend to communicate. Thus, both of them require the speaker's involvement in giving a shape to reality, making it structured and arranged: just as grammar of any language appears to be. As Sanders argues: "Choosing one word over another to express meaning can be seen as an act of linguistic categorization. Establishing a direct relationship between linguistic representation and conceptual knowledge is not straightforward in most formal linguistic theories" (Sanders 2005: 2).

According to Langacker, in terms of cognitive grammar, construal operations involve three types of processes: selection, perspective and abstraction (Langacker 1987). The first one, selection, refers to the language users' capacity to selectively attend to some facets of a conceptualization and ignoring others. This reminds us of Systemic Functional Grammar where emphasis was also laid on the speaker being induced to make a choice each time he/she engages in an act of communication. However, instead of referring us to various linguistic strata, Langacker draws our attention to conceptualization defined as comprising any type of mental experience, whether established or novel, whether of intellectual nature or immediate (sensory, motor, kinesthetic, and emotive) (Verhagen 2010: 53). Viewed through such a perspective, the conceptualization processes are changeable rather than stable and involve full apprehension of the physical, social, and cultural context. Perspective, in turn, comprises linguistic manifestations of the position from which a situation is viewed, and includes four subtypes:

[39] translation mine

figure/ground alignment, viewpoint, deixis and subjectivity/ objectivity. The third category, abstraction, can be defined as our ability to establish common features of distinct phenomena and to arrange concepts into categories. Abstraction is, therefore, part of the process of categorization related to subjectivity (ibid: 53).

For the present discussion, the perspective, as accounted for by the cognitivists, will be of utmost importance. Through referring to perspective, we are able to define any changes on the subjectivity/objectivity scale. As for now, let us briefly characterize the concept of granularity, crucial for the understanding of perspective. As described by Croft, granularity is the idea that there are different levels of precision in conceptualization, so that some concepts are conceptualized as irreducible at one level even if they are reducible at another, more 'fine-grained' level (Croft 1991: 163-164). What is important here is that the speakers themselves choose among linguistic means available, depending on what they wish to achieve through a communicative event. Again, we are referred to the process of selection and subjectivity and the underlying assumption that language users are active participants even if they resort to most common and schematic means available. This is because they always make a choice and adopt the content of the message at the mental stage to the expected results and outcome they want to achieve having at their disposal verbal means of communication.

As observed by Verhagen, some of the most common verbs in a language are highly schematic (make, do, have, be) and thus allow the speaker to characterize a situation without paying attention to the detail (Verhagen 2010: 51). However, a somewhat contradictory conclusion can also be drawn on the basis of the 'discoveries' advanced in the field of cognitive linguistics: since languages vary in the options available for the speakers as regards construals of different phenomena, natives have very little freedom in picturing the world they see around them and rely on 'what is already there'. Thus, depending on the culture one is born and brought up in, one may have at their disposal more or less linguistic expressions to refer to various shades of grey, white etc. The example of colors is one of the most common ones when discussing the phenomenon of linguistic relativity.

In the case of the legal language, the relation between subjectivity versus objectivity becomes even more evident since law does not exist outside the realm of language. It is similar to language insofar as its arbitrariness and conventionalization are concerned. Although it seeks

to accurately grasp and define the relations in the real world, it always operates in terms of binary oppositions (cf. chapter 1, which also deals with issues of vagueness and arbitrariness in the language of law), which necessarily leads to some conflicts. Their nature lies exactly in a sort of a contrast: while the reality abounds in situations and meanings whose scope is simply infinite, language of law is restricted to a finite pool of conventionalized expressions through which legal professionals attempt to adjust the world to the word. We will, however, not linger upon the issue of legal language here since the above problems have already been dealt with in the preceding chapter.

Let us, therefore, return to the process of construal oa accounted for by the cognitive linguistics and, most notably, by Langacker. Langacker describes subjectivity in terms of the observer's role in the process of construal: it may be more or less active depending on whether the conceptualizer becomes an 'onstage' or 'offstage' participant of the whole process. The below figure taken from Langacker (1987: 121) demonstrates how the two options work in practice:

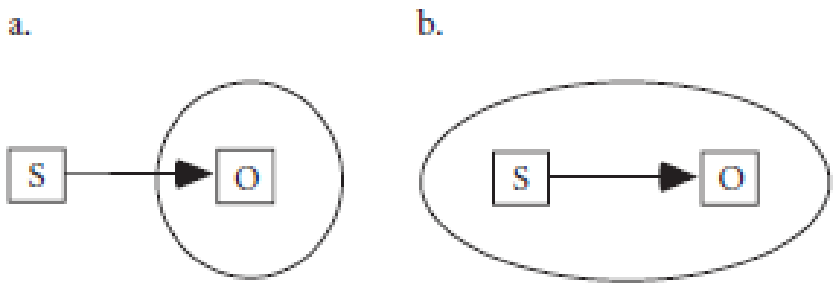

Figure 2.13. Langacker's illustration of the optimal viewing arrangement versus an egocentric viewing arrangement

The first one represents the arrangement where the subject (here "S") distances himself/herself from the object described via language (the so called optimal viewing perspective), while as the second one reflects the alternative where the subject identifies himself/herself with the uttered statement concerning the real world (the so called egocentric viewing perspective). In the words of Mushin:

"the most subjective utterances are those in which there is no conceptual distance between the conceptualiser and the experience, resulting in a true' expression′ of the conceptualiser's self'. The most objective utterances are those in which there is a maximised distinction between the conceptualiser and the object of conceptualisation, resulting in a representation of states of affairs in the world" (Mushin 2001: 8).

When it comes to translating modal verbs across languages, it is important to bear in mind the distinction into denotative ad conceptual manings. As observed by Coates, on the level of concepts, these meanings overlap to a considerable extent (Coates 1983: 26). She further differentiates between primary, secondary and infrequent uses of the modal auxiliaries. However, as the author observes:

"it is often asserted that the polysemy of the modals leads to ambiguity. Corpus study reveals, however, that, in context, sentences containing modal auxiliaries are very rarely ambiguous; in particular, prosodic features serve to disambiguate utterances. (1983: 246)"

Figure 2.14 presents the correspondeces advanced by Coates together with distinction into primary and less frequent uses. Although we are not concerned here with English-Polish translation of the court judgments, these interrelationships might prove helpful since it is the contrast between the (American) English and Polish legal language in terms of their subjectivity that we aim to highlight.

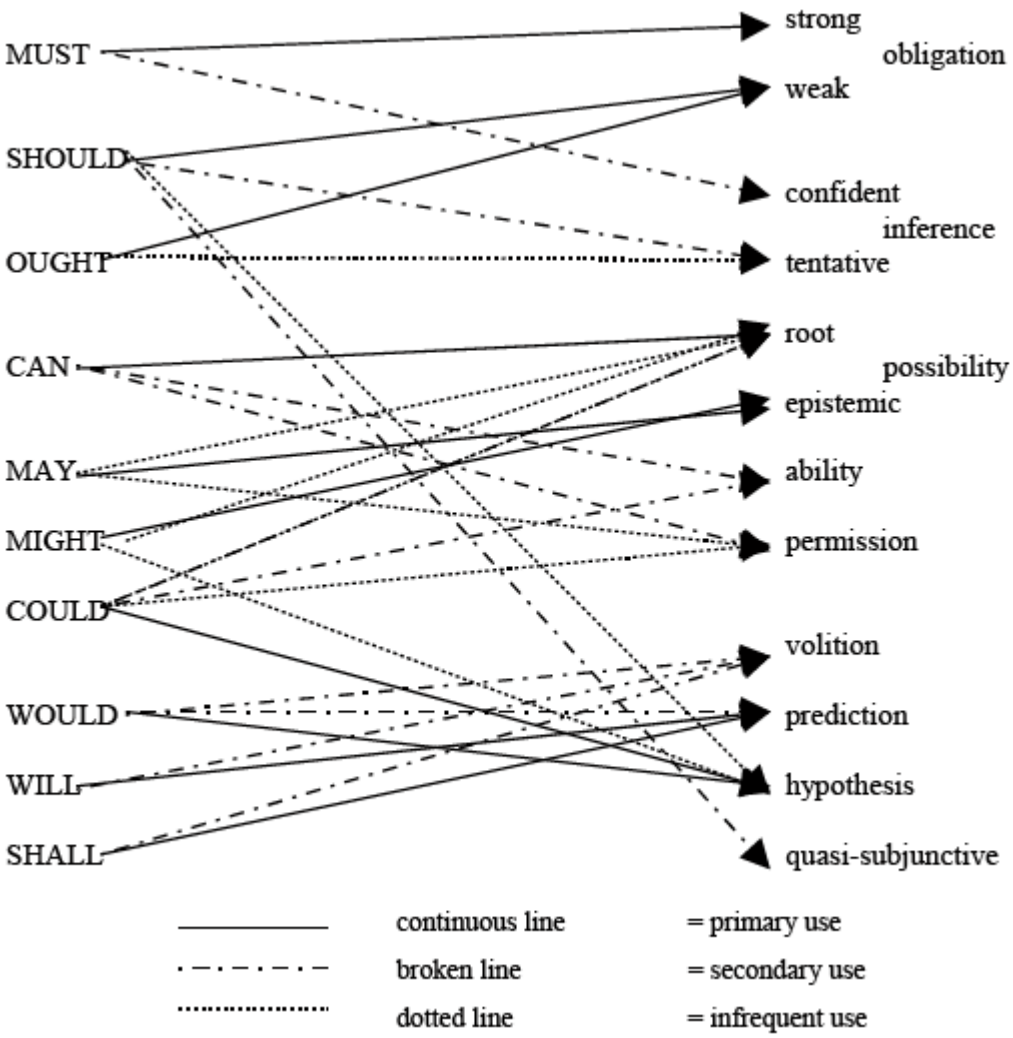

Figure 2.14. Enlish modals and their conceptual meaning (based on Coates 1983: 26)

One of the phenomena very closely related to the issue of subjectivity is grammaticalization. In general terms, we could define grammaticalization as a process through which some loose lexical items get incorporated into the morpho-syntactic layer of language. We have already observed that some authorities (cf. Sweetser 1990) are of the opinion that epistemic (or psychological) meaning historically stems from the root meaning (psychosocial or deontic meaning, although the sameness of the two: root and deontic is sometimes defied), in particular when it comes to modal verbs. Sweetser (1990) argues that meanings in general become more and more grounded in the speaker's perception, evaluation and cognition. Some authors go even so far as to claim that the direction of change is always the following: from the more objective to more subjective meanings. Traugott, for instance, characterizes subjectification as, a

pragmatic-semantic process whereby meanings become increasingly based in the speaker's subjective belief/state/attitude towards the proposition, in other words, what the speaker is talking about (Traugott 1995:31). She argues that it was not until the 17th and 18th centuries that epistemic modals gained their real subjective dimension. Hitherto they had been interpreted as concerning ″possibility in a world independent of the speaker″(Traugott 1989:42). Lyons is also of the opinion that English modal verbs together with other categories such as speech act verbs underwent some sort of transformation in the course of language evolution. Their first focus was the reference to some external evidence and it was not until the 18th century that traces of 'strongly subjective' (epistemic) meaning came to light (Lyons 1982). Epistemicity becomes more obvious when a given action or state does not originate in human agency but rather is due to some external circumstances about which we can only venture hypotheses. As stated by Radden, probably the most important cognitive contribution to our understanding of modality is its characterization in terms of force dynamics, i.e. the opposition of forces and counterforces or barriers (Radden 2009: 172). Force-dynamic situations can apply to the socio-physical world of root modality and the epistemic world of reasoning (Johnson 1987, Talmy 1988, Sweetser 1990).

2.4.3 Epistemic modality and stance/attitude (interactional linguistics)

We should also advance a depiction of epistemic modality with placing the notion of epistemicity within the frames of interactional linguistics concerned with the studies of linguistic expressions of attitude and stance. As observed by Szczyrbak, these expressions subsume a wide range of related notions. Apart from epistemicity, we might list the following: appraisal, evaluation, evidentiality, hedging and boosting, mitigation (Szczyrbak 2014). The "umbrella term" is that of a stance, which has been covered by authors such as Biber and Finegan 1988, Biber 1999, do Bois 2007 or Keisanen 2007.

As far as stance-taking is concerned, it is generally considered one of the most fundamental functions of language, expressing our relationships with the external world as well as with other human beings. Approached from a sociolinguistic point of view, it becomes means of aligning or disaligning ourselves with others and should be always studied in relation to the moral, social and political order since through language we manifest our positioning towards norms, values,

beliefs and feelings that we are imbued with as members of various communities. As argued by Do Bois, all acts of evaluation are simultaneously acts of alignment or disalignment (2007: 143). The definition of stance the author provides us with is as follows: "stance is a public act by a social actor, achieved dialogically through overt communicative means, of simultaneously evaluating objects, positioning subjects (self and others), and aligning with other subjects, with respect to any salient dimension of the sociocultural field" (ibid : 143).

The social dimension of stance-taking is also emphasized by Thompson and Hunston who characterize it as 'an index of coherent individual or community value systems' (2000: 5). Others, such as du Bois and Kärkkäinen (2003) approach stance from interactional perspective. Biber, in turn, defines stance as an additional element of the propositional content, something different than the informational load, thus feelings, attitudes, value judgments or assessments (Biber et al., 1999: 966). Also, as claimed by Mushin (2001) and reiterated by Clift, stance, together with evidentiality, is a realization of the phenomenon of deixis insofar as it might be defined as the indexing of the information to some point of origin (Clift 2006: 570). As claimed by Berman, the conceptualization of the notion of discourse stance involves three dimensions: orientation, attitude, and generality (of reference and quantification) (Berman 2004: 107).

Orientation may be described as the relation between the sender, the text and the recipient as three elements involved in the text production and interpretation. Whereas the sender orientation is typically subjective since it is speaker who as its deictic center, the recipient-orientation is motivated communicatively. The expressions used would therefore reflect the interest in the reader/hearer (e.g. 'you know'). Lastly, a text orientation takes the piece of discourse itself as a conceptual point of reference. This may be either more or less subjective depending on whether the object under construction (in speech or writing) is represented in a more or less distanced manner. Berman gives several examples to illustrate this variable. Statements such as e.g. *"I'm not quite sure how to formulate the problem,* or *What I'm going to talk (or write) about is"* will constitute a more subjective orientation whereas introductions of the type *"When discussing issues such as this …*", or *"in considering the topic of …*" will represent a more distanced and objective reasoning.

The second dimension, to which the notion of stance is related is attitude, which may be epistemic, deontic or affective. As far as epistemic attitude is concerned, it expresses a relation

between the speaker–writer and the possibility, certainty, or evidence for the individual's belief about the truth of a given state of affairs (Berman 2004: 107). A deontic attitude involves an authoritative relation between the speaker and the hearer/the addressee: the latter is judged or instructed to carry out a specific course of actions. The third type of attitude, the affective attitude, will concern the emotions on the part of the speaker with respect to a given state of affairs (ibid: 107).

The third dimension, generality, refers to the degree of specificity towards people, places and times evoked in the text. As Berman argues, it is also dependent upon the other two dimensions: the orientation and the attitude. Usually more specificity is attributed to statement that are speaker-oriented, i.e. those that are more subjective. There will be more deictic expressions that relate to concrete objects and persons in the external reality. On the other hand, where the text deals with some academic issue (i.e. research articles etc.), the orientation is towards the text and the attitude is more general. The author thus attempts to equip his/her contribution with traces of objective reasoning, which will be reflected in the use of more distanced and non-affective terms.

At the level of discourse, stance can be realized through various lexical and grammatical means. In the case of grammar, it is typically the whole proposition which is framed by stance although in the case of modal verbs the issue is somewhat debatable since modal verbs are incorporated as parts of the verb phrases and therefore, do not embrace the whole sentence. Semantically though, they provide the stance frame for the clause understood in its entirety (Vazquez Orta 2010: 78). As far as the lexical devices are concerned, the type of a stance-taking technique is inferred on the basis of the presence of some lexical evaluative item, be it a noun phrase, the verb phrase or an adjective (ibid 2010: 78).

Although attitude is usually considered in relation to other linguistic phenomena, most often modality or illocution, some authors regard it as a category on its own. As claimed for instance by Local (2005):

"Attitude is widely acknowledged as making an important contribution to the meanings which can be attributed to utterances (…) within pragmatics, too, claims about particular pragmatic practices and stylistic effects (e.g. epistemic markers, facticity, irony, politeness, reported speech, sarcasm) and the intended force of utterances are routinely linked to speaker attitude."

As far as the impact of an attitude is concerned, Moraes (2010) claims that it may be twofold: it either affects the propositional content of an utterance (irony, incredulity, obviousness, surprise etc.) or it is connected to the social relationship established between interactants in a communication event (politeness, arrogance, authority, irritation etc.) Mello et al. 2011: 4 after Moraes 2010).

As Mushin observes, when speaking about subjectivity and subjectivization of discourse we should not forget about the notion of deixis. Although prototypically, it is associated with categories which orient the addressees towards the time, the place, and the identity of participants of those events, some accounts associate it with notions such as modality and subjectivity. What all have in common is, undoubtedly, the fact that they are gradable, that is relative to the involvement of the speaker and to his/her attitude towards the status of the proposition. Categories that are usually invoked as representative of deixis are tense systems and time adverbials, demonstratives and location phrases that locate events in time and space, pronouns and proper names identifying participants.

As Mushin argues:

"The use of language particular to a culturally determined social relationship can be used to index information to the subjective perspective of some conceptualizing indivicual in a particular speech situation, and therefore can be analysed as having a deictic function" (Mushin 2001: 6). Therefore "All subjective phenomena are deictic phenomena, since they function to identify a 'speaker imprint' – a point of origin from which to interpret all expressions." (ibid: 7).

One of the classifications of modality based on the attitude of the speaker is a tri-partite distinction between attitudinal, persuasive and volitional modality. According to Kačmárová, stance implies a speaker's reaction to the communicative situation through making a statement (declarative or exclamatory), giving orders or asking questions (Kačmárová 2011). Projecting a certain degree of subjectivity onto the utterance, it is possible to render it more or less persuasive and by incorporating the element of will, a speaker allows the idea to be interpreted

as necessary or (un)desirable (Kačmárová 2011). A figure below may demonstrate this classification in a more reader-friendly fashion:

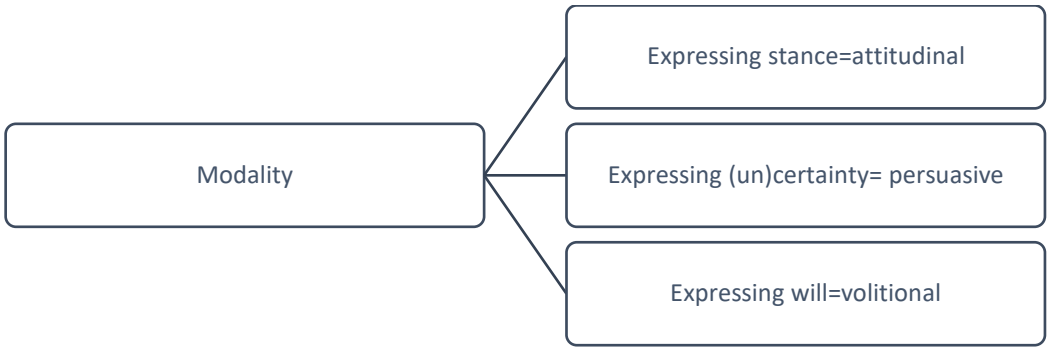

Figure 2.15. Modality expressing stance, certainty and will (based on: Kačmárová 2011)

As Kačmárová observes, every single predication is a realization of a particular type of modality for it carries the information about the actual speaker and their perception of the extra-linguistic reality (Kačmárová 2011).

The problem that arises here, however, is where we should place the borderline between statements that are "epistemically marked" from those that are neutral and unmarked and should not, therefore, be included in our divagations. This would roughly correspond to the distinction we will introduce here, namely into inherent, objective and epistemological modality.

Within such a framework, epistemicity is defined as an interactional and linguistic means by which discourse participants display their certainty or doubt towards some state of affairs or piece of information – it thus involves a subjective point of view of certainty and the degree of the speaker's commitment towards the utterance. Epistemic forms include not only grammaticalized ways of expressing modality in English but also varied lexical means which convey modal meanings, e.g. hedges (Lakoff 1972), Holmes' modal expressions (1982) and Biber's epistemic markers represented by various word classes: adjectives, adverbs, nouns and verbs.

2.4.4 Epistemicity and evidentiality

Evidentiality also occupies an important part in the studies dedicated to stance-related strategies. As maintained by e.g. Chafe (1986), Palmer (1986, 2001) and Rooryck (2001a, 2001b), the term "evidentiality" refers to any expression of attitude towards knowledge.

According to van Fintel (2007), epistemic modals signal the presence of an indirect inference or deduction rather than of a direct observation. This amounts to claiming that epistemic modals incorporate a kind of evidential meaning component within them. According to Jakobson, (1957: 135), evidentials can be defined as 'the alleged source of information about the narrated event'. Bybee, in turn, claims that evidentials 'indicate something about source of the information in the proposition' (Bybee 1995: 184). Mushin views them as marking the sources from which a speaker comes to know something that they want to express in language (Mushin 2001: 18). These sources can be either direct, i.e. witnessed first-hand by the speaker, or indirect (see figure 2.15.).

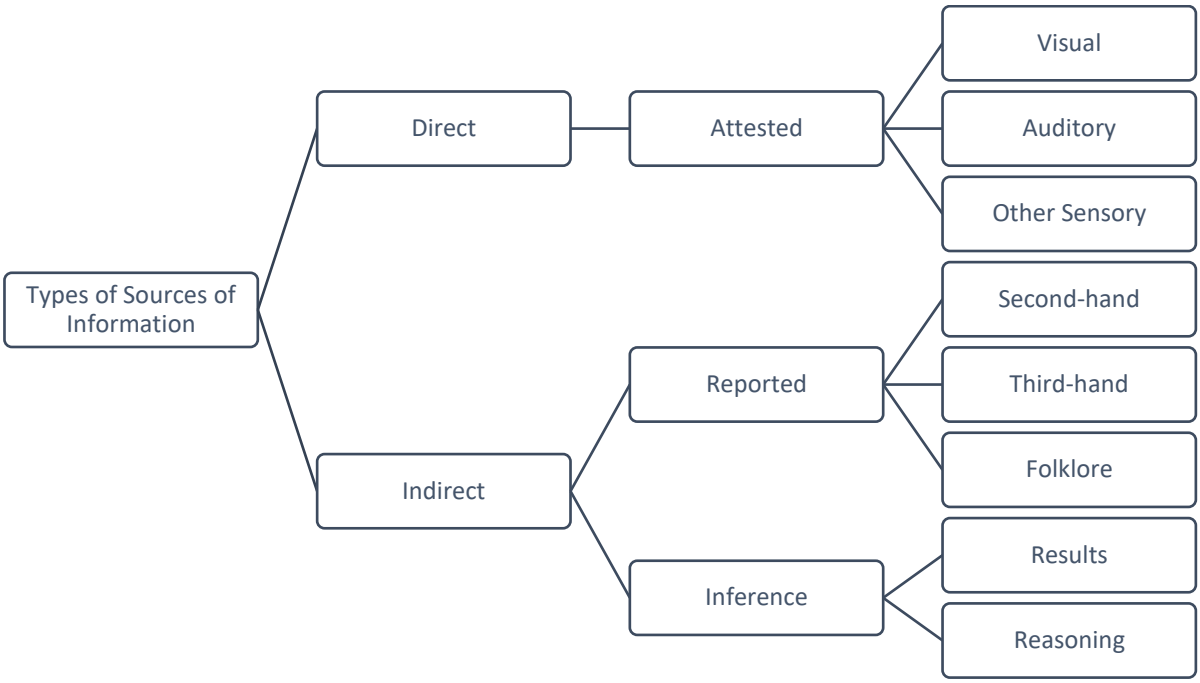

Figure 2.16. Classification of sources of information (based on Willet's taxonomy of evidentials:1988)

Whether direct evidentiality is more subjective in comparison with what remains outside of the speaker's domain of experience is a rather debatable issue. One could argue that being experientially involved in an event or states of affairs renders the information encoding those events more subjective than the indirect, i.e. reported information about some states of affairs. According to Mushin, it undoubtedly represents a higher degree of speaker commitment but the subjectivity/objectivity scale should not be considered as synonymous with the distance or perspective although they are interlocked to a considerable extent. The author argues that 'although the use of a direct evidential may necessarily represent the speaker as more involved,

and the use of a reportive evidential may represent the speaker as more 'distanced' from the event, these parameters are independent of whether the speaker believes in the validity of the information they report' (Mushin 2001: 21). We will abide by this view: in our opinion, to report something that we experienced first-hand will necessarily involve greater subjectivity be subjective. Thus, the concept of subjectivity is somehow proportional to the degree of directness of evidence. What is being questioned here, is the belief in the validity, or the reliability of the information that one mediates. This assessment of the reliability will depend on a variety of factors, for example on the relationship between the speaker and the reported source.

The reportive evidentiality might be used to attest to the authority of the cited information, a phenomenon which is called 'assumption of authority': someone who 'vouches for' the truth of the message becomes automatically responsible for the content that is being announced, independently of who the source of that 'truth'. In such cases, the degree of commitment is considerably higher than when the speakers quote something half-heartedly and without really being convinced that the quoted information corresponds to the actual state of affairs. On the other hand, there are statements where the speakers or the experiencers are dubious and suspicious about the propositional content of the information are marked linguistically by expressions that signal the lack of involvement or some sort of ambivalence towards the validity of the information. In the words of Mushin: 'in these circumstances they shift responsibility for the truth of the information to the reported speaker, essentially washing their own hands of the affair' (Mushin 2001: 22). The truth validity is put into question if the person from whom the information originates is considered to be unreliable and untrustworthy. Criticism in weighing the reliability of the information is one of the crucial skills judges should be vested with. We will see in a case described below how accepting the evidence without prior adequate review and assessment might prove detrimental to the defendant in a criminal trial.

As evaluators of truth validity of arguments put forward in the course of the proceedings, judges are expected to weigh various, sometimes contradictory, testimonies supported by evidence, either witnessed directly or experienced second-hand by the trial participants. This variety of situations forces them to adopt a particular approach with respect to the reliability of witness statements. In the case of the American common law, some standards have emerged in the course of the history of adjudicating, which now allow for the application of the so called

Roberts test in order to qualify the testimonies as bearing 'adequate indicia of reliability'. Such tests are conducted where the witness is not able to participate in the trial, that is, where the so called Confrontation Clause is not observed. According to Duhaime's Law Dictionary, the Confrontation Clause is the constitutional guarantee in the Sixth Amendment to the United States Constitution which requires that an accused person have the right to be confronted with the witnesses against him[40]. One of the most significant cases as far as the Confrontation Clause is concerned, is the Crawford v Washington (2004), where the defendant was convicted without the presence of the witness, i.e. his wife, who brought charges against him. In the decision of the Supreme Court delivered by justice Scalia, a rule that is assumed at the beginning is as follows: '[A]n unavailable witness's out-of-court statement may be admitted so long as it has adequate indicia of reliability; i.e. falls within firmly rooted hearsay exception or bears particularized guarantees of trustworthiness'[41]. The State Supreme Court agreed with the decision of the first-instance court which resulted in the upholding of the conviction. The defendant's motion to confront the witness stating against him was thus rejected since the reliability test was passed. In the explanation that the appellate court provided, this 'reliability' lay in the fact that defendant's and his wife's statements were almost identical. What justice Scalia argues in his opinion, is that the reliability of evidence is an entirely subjective notion and that what the appellate court did was in fact the violation of the Sixth Amendment. The test applied by the judges should not replace the constitutionally prescribed method of assessing the truth validity. He goes so far as to claim that: ' Dispensing with confrontation because testimony is obviously reliable is akin to dispensing with jury trial because a defendant is obviously guilty. This is not what the Sixth Amendment prescribes'[42.]

Scalia further argues that:

[40] source: http://www.duhaime.org/LegalDictionary/C/ConfrontationClause.aspx
[41] Crawford v Washington, 541 US 36 (2004).
[42] Justice Antonin Scalia's remark in Crawford v Washington, 541 US 36 (2004), source: https://supreme.justia.com/cases/federal/us/541/36/opinion.html

‘Reliability is an amorphous, if not entirely subjective, concept. There are countless factors bearing on whether a statement is reliable (…) Whether a statement is deemed reliable depends heavily on which factors the judge considers and how much weight he accords each of them. Some courts wind up attaching the same significance to opposite facts. For example, the Colorado Supreme Court held a statement more reliable because its inculpation of the defendant was “detailed,” *(...)*, while the Fourth Circuit found a statement more reliable because the portion implicating another was “fleeting” ‘[43].

In the above case, the appellate court which applied the test to assess the witness statement that was crucial to the proceedings, was criticized by the Supreme Court which deemed it entirely subjective. What this suggests is that any reportive or evidential statement bears traces of subjectivity, a quality which is rather to be avoided in the realm of law. The degree of this subjectivity of course varies but it does not have to boil down to the distinction into direct evidentials as less objective/reliable and indirect evidentials as more objective/reliable. There are also other criteria at stake which determine whether the utterance is personalized or general.

The accounts of evidentiality usually consider it as belonging to the realm of epistemic modality. Apart from encoding the speaker’s attitude or stance, which is a feature commonly ascribed to epistemicity, evidentials also mark the source of the information (cf. Willett 1988). The above would constitute a narrow definition of this type of modality.

However, the indication of the source of information as a cornerstone of grammaticalized evidentiality is not widely accepted among linguists concerned with modality. Palmer (1986) and Chafe (1986) have adopted a somewhat broader concept and have proposed instead to include evidentiality under the label ‘epistemic modality’. Such an approach is tantamount to stating that coding the source of information is closely related, if not synonymous, with the degree of speaker commitment. However, the epistemological assessment of the knowledge we are communicating does not go hand in hand with our involvement, the conclusion we have thus far drawn from the arguments put forward earlier.

If we were to adapt a classification of epistemic modality that accounts for the grammaticality of stating the knowledge source, we would end up with evidentials versus judgments where the former do encode the origin whence the information comes and the latter cannot become a basis

[43] Justice Antonin Scalia’s remark in Crawford v Washington, 541 US 36 (2004), source: https://supreme.justia.com/cases/federal/us/541/36/opinion.html

for such an inference. Chafe's classification of evidentials is somewhat different from the one provided by Palmer insofar as he distinguishes the relationships between the source of knowledge (e.g. sensory, evidence, language, hypothesis) and the type of knowledge (belief, induction, hearsay, deduction). Figure 2.17. below might illustrate these dependencies.

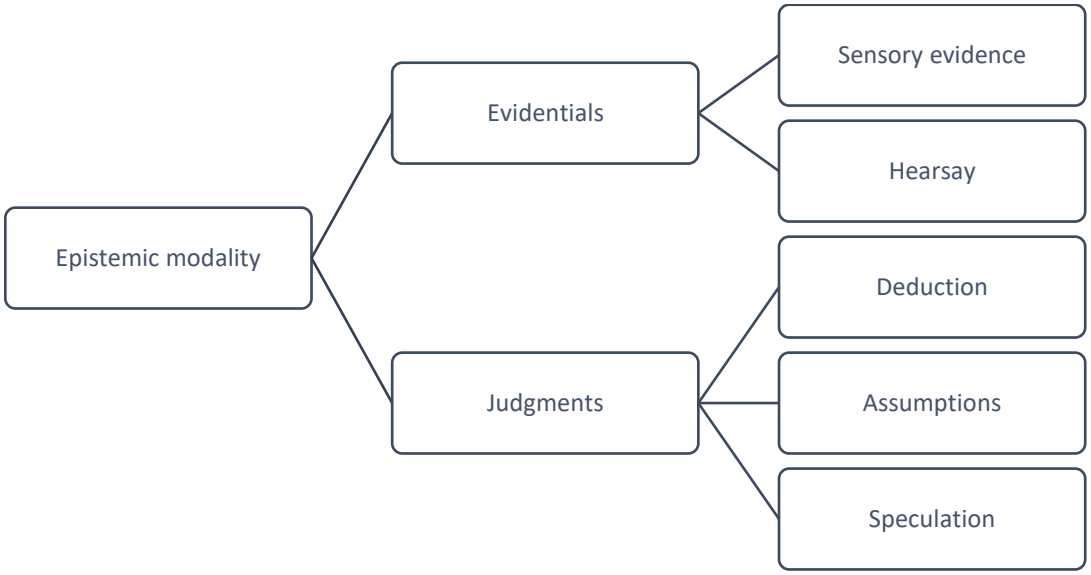

Figure 2.17. Palmer's model of Epistemic Modality (1986)

Apart from the above distinction, Chafe differentiates between induction and deduction. While induction is based on evidence and includes evidential expressions of direct perception and inference, deduction relies solely on the hypothesis, that is, reasoning beyond the inference from evidence (Mushin 2001: 29).

Source of knowledge	Mode of knowing	reliable K N O W L E D G E unreliable	Knowledge matched against
???	belief		
Evidence	induction		
Language	hearsay		Verbal resources
Hypothesis	deduction		expectations

Table 2.8. Chafe's model of knowledge types (1986: 263)

When it comes to relations between stance, epistemicity and evidentiality, while stance is unquestionably regarded as the broadest term, there is a certain uncertainty with regard to the last two. Szczyrbak argues, however, that they should be considered as distinct notions.

2.4.5 Knowledge and belief: philosophical overview

As Halliday argues, "modality refers to the area of meaning that lies between yes and no: the intermediate ground between positive and negative polarity" (Halliday 1994: 356). In fact, if we were to draw an axis representing this "intermediate ground" we would end up with the following gradation:

0%		50%		100%
Could	May/Might		Should	Must
(hypothetical possibility)	(epistemic possibility)		(epistemic inference)	(epistemic necessity)

"Must" would be closest to the positive polarity whilst "could" would be closest to negative extreme (representing something which is least probable in the view of the speaking subject).

If we were to examine the very origins of the distinction into statements that are necessarily true and those that are problematic, we should point to Aristotle and Kant. Aristotle drew a line between apodictic, assertoric and dialectic propositions, which was afterwards resumed by Kant in his "Critique of Pure Reason". Apodictic statements refer to states of affairs that are self-evident, logical and scientifically proven. In contrast, dialectic (or problematic) propositions only assume the possibility of something being true and assertoric ones describe the states of affairs without any declarations as to the necessity or impossibility of it being true.

The epistemic relation is in fact the relation between our own knowledge and the world/reality as depicted by the science. This would approximately correspond to the subjective versus objective reasoning. Scientifically proven assertions are given more faith since they are based on empirical data and experiments. As more attention is dedicated to a given phenomenon and research advances, the theories initially proposed become refined and exceptions are accounted for. It turns out, therefore, that both subjective and objective reasoning involve dubiousness, uncertainty and skepticism towards the propositional content. The thesis, according to which any belief or opinion (regardless of how well grounded in science it would be or how well supported by evidence and empirical data) can be proven to be false, is called fallibilism. In its

strongest version, fallibilism goes so far as to deny the existence of knowledge: if any belief or thesis can be refuted, how can there be knowledge and absolute truth? If we were to accept such reasoning, all assertions would be hedged around with countless "iffs" and all of them would to a lesser or greater extent represent some modal value on the scale from 0 to 100%, whereby absolute values would be unattainable. Values such as knowledge and truth are regarded here as full and unqualified. However, many epistemologists refer to the concept of fallible knowledge. Is it not, therefore, a contradiction in itself? According to Hetherington, philosophers who embrace this idea also accept that knowledge is rarely, if ever, based upon infallible justification: they believe that there is little, if any, solid rationalization with the means available to human beings. Hence, most epistemologists, it seems, accept that when people do gain knowledge, this usually involves fallibility[44]. The above conclusion is usually based on three of the below contentions:

— Any belief, if it is to be knowledge, needs to be conclusively justified.
— No belief is conclusively justified.
— Hence, no belief is knowledge. [45]

In line with such argumentation, anything we claim, as inquirers, will necessarily involve fallibility but what epistemologists do is simple acceptance of the cognitive deficiencies of the human being. We are thus justified in our strife for knowledge in spite of our fallibility.

Subjectivity as a linguistic phenomenon is also related to the notion of explanation, which verges on the science (objective reasoning) and non-scientific domains where the reasoning is more subjective (the Humanities: religion, theology, history etc.). The former one is sometimes referred to as non-purposive explanation and as such is attributed to Newton and his mechanical theory of the universe. Before Newtonian physics came to the fore, however, human behavior had been accounted for in purposive terms even by scientists and philosophers. Philosophers and linguists alike have often wondered how it is possible that human cognition has no relation whatsoever with causality nor is it rooted in any logic. Aristotelian reasoning, for that matter, is based on purposive explanation, which refers to final causes and attempts to answer the

[44] Source: The Internet Encyclopedia of Philosophy; http://www.iep.utm.edu/fallibil/
[45] Source: ibid.

fundamental questions in teleological terms, that is, invoking motives, ands and purposes. For instance, the biblical account of the origin of species, which explicitly invokes God's purposes, is teleological. Nowadays, purposive explanation has been almost entirely eliminated from the domain of science and theories such as the evolutionary theory of the origin of species is non-teleological. In the course of history, sciences such as physics and biology have been gradually deprived of any traces of purposive explanation. As claimed by Salmon, 'When an explanation makes reference to motives, purposes, or ends, we call it teleological. Such an explanation involves final causes in Aristotle's sense. Aristotelian physics is teleological: nature abhors a vacuum and terrestrial matter seeks its proper place in the cosmos' (Salmon 1998: 7).

2.5 **Concluding remarks**

The picture of epistemic modality that has emerged thus far is by no means homogenous. A lot of issues arouse controversies: the terminology and the borderline between grammar and semantics, between mood and modality, between modality and illocution, between evidentiality, epistemicity and stance. Finally, what criteria should be drawn to tell apart the *realis* from the *irrealis* and what status should be given to assertives: should they be considered as unmarked? Or should they be included in the epistemic domain? The problems that the linguists deal with when faced with such dichotomies are usually due to the differences between grammatical systems of various languages, sometimes even those that belong to one family or are closely related. Not all of them manifest an equal degree of grammaticalization of moods as specific as e.g. jussive, desiderative, intentive, hypothetical, potential, obligative, dubitative, hortatory, exclamative (see Bybee et al. 1995: 2). The degree of grammaticalization is one of the factors that need to be taken into account when advancing a synchronic and cross-linguistic comparison of some aspect of modality. Amidst all the dilemmas that remain to be resolved, we are trying to outline a framework for the analysis that will be presented in the chapters to follow. As a linguistic phenomenon, which spans grammar, semantics, pragmatics and discourse, epistemicity, to use very broad terms, makes apparent the attitude of the speaker towards the propositional content he/she is communicating.

As far as legal register is concerned, epistemic modality becomes 'entangled' in the problem of the interpretation, i.e. the adaptation of the statutory norms and the existing body of adjudication, to the actual situation. The judge has to, therefore, follow the process of

subsumption. i.e. matching or assigning what he/she is confronted with, to the norms and principles prescribed by the law. In section 1.5., we attempted to get an in-depth picture of the decision-making process and answer the question whether the judge is to be deemed as a the rule-creator or the rule-follower. The answer is not so simple since the degree of discretion enjoyed by the adjudicators depends on the variety of factors. As we have already observed, crucial objective any judge has in mind when deciding upon the particular case, is to make sure that decisions are made in accordance with a certain already established line of reasoning and thus avoid chaos and incoherence within the legal system itself as well as keep under surveillance the compatibility of law with the changing political and social circumstances.

Notwithstanding the confusion with all the classifications of modality presented so far, crucial for the present analysis will be the basic distinction into deontic modality and epistemic modality as well as modal values which allow for the analytic approach towards the 'vague', as it would seem, concept of epistemicity and subjectivity. The method proposed by Halliday appears, therefore, to be most useful for the purposes of the current research. What we should also bear in mind is the fact that epistemic modality is context sensitive and that epistemic modals act as quantifiers over sets of possible worlds and epistemic modals involve a kind of non-propositional comment on their prejacents. This observation will also prove useful in the next chapter, which is concerned with the presentation of the method employed to conduct the analysis as well as the Corpus and its distinctive features.

Chapter 3

Methodology and the Corpus

3.1 **Methodology**

3.1.1 Introductory remarks

The underlying questions which the subsequent analysis is to answer are as follows:

— Does the language employed by the judiciary reflect its constitutional order and the doctrines embedded within it?
— If so, can we conclude which of the legal systems, American or Polish, allows for greater autonomy and discretion (and, consequently, subjectivity) of the judges?
— If not, is the use of modal verbs, adverbs and other expressions subject to convention and history (which would hinder a corpus-based analysis)?

By way of simplification one could say that in the civil law systems the judge's statement represents an interpretation of the existing norms or, in the case of common law, comparing the facts and the existing legal rules formulated in the precedents to determine whether a particular rule can be followed. However, there is also the social element, the extra-linguistic factors, that need to be taken into consideration. As such, the sentence is to reflect the 'common sense' of the community understood as an ordinary meaning ascribed to the word. Thus, the interpretation advanced by the judges is theoretically intended as a 'common sense' reflection of what the community deems just. However, since no statistics-based research has been conducted to date, the views concerning the discretionary powers of judges of both systems vary. Some, as Arruñada and Andonova, are of the opinion that in countries like England the evolution towards free-market economy was gradual and more natural than on the Continent (Arruñada and Andonova, 2008). Consequently, no artificial barriers needed to be established with regard to the judiciary branch. In contrast, control had to be exercised over judges in those countries where changes were of a more revolutionary nature. We could mention the nineteenth-century upsurges on the part of the oppressed social classes aimed at introducing a more liberal and democratic social system based on equality and free-market. As the authors themselves argue:

" ...common law countries featured greater judicial discretion because, given their more gradual evolution away from the Ancient Regime, judges did not threaten the development of a modern market economy. Reformers in the civil law realm, in contrast, limited the discretion previously enjoyed by judges and put more rule-making in the hands of the legislature in an attempt to shelter free-market relations, and especially freedom of contract, from a potential judicial backlash. Both of these policies, promulgating codes and reducing judges' discretion, shared the same goal: that of protecting freedom of contract and promoting market relationships and economic prosperity in areas previously suffering from mandatory rules and judicial regulation of private contracts" (Arruñada and Andonova, 2008: 81-130).

The opinion found on www.law.berkeley.edu is, likewise, reassuring that the role of the civil law judge is indeed marginal :

"Though the [civil law] judge often brings the formal charges, investigates the matter, and decides on the case, he or she works within a framework established by a comprehensive, codified set of laws. The judge's decision is consequently less crucial in shaping civil law than the decisions of legislators and legal scholars who draft and interpret the codes."[46]

Despite such convincing arguments, others point that the inquisitorial character of the civil law trial renders judge a more active participant in the course of law-application and enforcement. When it comes to the common law judges, in turn, authorities vary in their approaches towards the controversial, as it turns out, concept of 'interpretation'. Some would like to limit the judge's word to the domain of 'finding what already exists' in the body of previous decisions in analogical cases while as others argue that each decision carries with it a huge amount of responsibility for the consequences likely to occur in due course. In fact, judges' function consists in various tasks. One of them, which takes place even before any interpretation is possible, is the reconstruction of facts or the fact-finding. What follows is the interpretation proper. According to Walker, "the process of fact-finding is a dynamic interaction between fact finder decision-making and constraining rules with the general trend in many areas of law being in the direction of adding more constraining rules."[47] The fact-finding process typically contains

[46] source: https://www.law.berkeley.edu/library/robbins/CommonLawCivilLawTraditions.html

[47] source: Walker, Vern R.: " Epistemic and Non-epistemic Aspects of the Factfinding Process in Law", originally published in *APA Newsletter on Philosophy and Law*, Fall 2003.

very few evaluative phrases in comparison with the part where the judge's opinion is presented. The language is, however, marked with evidential phrases since it is the parties that contend their case. Such phrases include: "according to", "in the opinion of", "as xxx claims". Below an example of how the fact-finding process operates through arguing one's cause by one the parties:

"According to Granite Rock, IBT not only instigated this strike; it supported and directed it. IBT provided pay and benefits to union members who refused to return to work, directed Local's negotiations with Granite Rock, supported Local financially during the strike period with a $1.2 million loan, and represented to Granite Rock that IBT had unilateral authority to end the work stoppage in exchange for a hold-harmless agreement covering IBT members within and outside Local's bargaining unit."

Such "intrusions", where a considerable part represents the version of events as claimed by one of the parties, is typically found at the beginning of a judgment preceding the opinion and arguments supported by the previous decisions in analogical cases. Apart from testimonies of the witnesses, judges are also to evaluate the material evidence with which they are confronted. The latter also involves a considerable amount of subjectivity measured with qualities such as '*certainty'* and *'probability'* or *'possibility'*. In the criminal as well as the civil law trials, the above qualities correspond to two types of the standard of proof, namely: the proof beyond a reasonable doubt and the balance of probabilities. According to the FindLaw online dictionary, the standard of proof is understood as the level of certainty and the degree of evidence necessary to establish proof in criminal or civil proceedings[48]. The standard of proof to convict is the proof beyond a reasonable doubt whereas the test employed in the civil law cases is the one of balance of probabilities which requires that the case which is more probable should win. All that it involves is choosing which of the litigants has presented more convincing version of the facts. According To Walker:

[48] source: http://dictionary.findlaw.com/definition/standard-of-proof.html

"Standards of proof describe for the fact-finder the quality of support required between the available evidence and the finding. For most issues in civil cases, the standard of proof is a "preponderance of the evidence": the fact finder is to make a finding that p if, but only if, the evidence supports p more than it supports p's negation, not-p. For some issues of fact, the law imposes a "clear-and-convincing-evidence" standard of proof, while criminal cases employ the familiar "beyond-a-reasonable-doubt" standard of proof. In contrast to the standard of proof, the burden of persuasion instructs the fact-finder as to which party loses if the evidence does not satisfy the standard of proof." (Walker 2003).

Cheng and Cheng have hitherto conducted a research where the frequency of usage of subjective explicit epistemic modality and objective epistemic modality is scrutinized in judicial expressions pertaining to the standard of proof in Scottish and Hong Kong legal systems. By examining a number of judgments, the authors have arrived at a conclusion that:

"The law does not require the prosecution to prove its case with absolute certainty. In other words, both jurisdictions accept the widely held view in law that absolute certainty is unattainable and would entail excessive rigidity. Hence it is understood that a prescription by law may inevitably involve some degree of vagueness and may require clarification by the courts, whether in substantive law or in the law of procedure" (Cheng and Cheng 2014: 15-26).

What it entails is that expressions reflecting uncertainty are indeed inevitable in the language of the judges. Similarly, what the witnesses state in depositions and testimonies will not be marked by categorical expressions but rather will involve a large amount of "ifs" and question marks. Let us again refer to what Walker has observed as regards formulating definitions in the language of the judges:

"In a civil or criminal trial, the presiding judge instructs the jury concerning the issues of fact about which the jury must make findings. The judge leaves undefined most of the words employed in those instructions, for definitions always lead to more words and defining must end somewhere. The meanings of most words are left to be determined by the fact-finder on the basis of the fact-finder's knowledge and background. With respect to certain critical terms, however, courts may adopt rules of definition. Using the example of negligence in tort law, judges routinely tell juries that the law defines "negligence" as "lack of ordinary care" and the failure to use that degree of care that a reasonably prudent person

would have used under the same circumstances. However, such terms as ordinary, prudent or degree of care will not be defined any further."[49]

This conclusion is an important one since it will also apply in the case of the Supreme Court judges who very often engage in linguistic divagations when reflecting upon a particular case. This shows the awareness of not only the Supreme Court judges but of the judiciary in general that the interplay of law and language will inevitably lead to clashes.

To sum everything up, although the legislature seeks to determine beyond reasonable doubt, as it were, the boundaries between what constitutes a prohibited act and what remains within the realm of 'lawfulness', it cannot avoid falling victim of various 'traps' of language which abounds in vague and ambiguous expressions understandable only if discussed in a particular context. As already remarked in the first chapter, the dichotomous character of legal discourse as opposed to the 'continual' character of common every day speech gives rise to a 'conflict of interests'. As observed by Kielar:

"The quality of vagueness is considered to be a consequence of the relativity of all classification inherent to names of general character. Classification ensues simplification of much richer objective reality, in which transition zones exist between classes of objects or phenomena to which language signs apply. Fringe elements are the basis of vagueness of words." (Kielar 1977: 34)

3.1.2 Some remarks on Genre Analysis

Numerous systemic discrepancies between common law and civil law systems will reflect themselves in the manner court judgments are rendered, that is in their structure and approach towards facts of the case and the law. The interaction of these formal factors results, in turn, in a specificity of language employed by the judges to put forward the arguments, take a particular stance towards the case at hand as well as towards the previous cases of similar nature. One of the methods of analysing the particularities of a genre is the genre analysis. As a methof of analazing language, it is relatively recent and has undergone a certain evolution. The approach

[49] source: Walker, Vern R.: " Epistemic and Non-epistemic Aspects of the Factfinding Process in Law", originally published in *APA Newsletter on Philosophy and Law*, Fall 2003.

which would be of interest to us is the investigation of repetitive communicative patterns that influence the structure of a genre (Mamet 2005 after Yates and Orlikowski 1992). These patterns, referred to as rhetorical situations, comprise the following elements: the necessity (of performing an act), the existence of a receiver (upon whom we are to exert an influence) and restrictions (persons, events, objects as well as relations that might affect the rhetorical situation) (Mamet 2005: 77 after Yates and Orlikowski 1992). The above method is referred to as a contextual approach. A somewhat enriched version is also proposed by Yates and Orlikowski and involves the element of subjectivity. The basic assumption here is that a rhetorical situation is motivated by personal communicative goals rather than by objective circumstances. Summarizing, a communicative genre may be defined as a typified communicative act in reaction to a repetitive situation (Mamet 2005 after Yates, Orlikowski 1992).

As Bhatia describes it:

"Analysing genre means investigating instances of conventionalised or institutionalised textual artefacts in the context of specific institutional and disciplinary practices, procedures and cultures in order to understand how members of specific discourse communities construct, interpret and use these genres to achieve their community goals and why they write them the way they do." (Bhatia 1993: 6)

What is drawn to our attention here is the interplay of various factors, both inherent to a discipline as well as cultural, that will determine the specific lexico-grammatical features, syntactic patterns, communicative goals et caetera. With all the above distinctive properties in mind, Bhatia identifies many problems related to, inter alia, the development and the resulting hybridity of various genres, the typical textualization patterns being transformed by novel solutions and the recognized communicative objectives being exploited to convey private intentions (Bhatia 1993: 7).

Swales summarizes the most salient features of a genre:

"A genre comprises a class of communicative events, the members of which share some set of communicative purpose. These purposes are recognized by the expert members of the parent discourse community, and thereby constitute the rationale for the genre. This rationale shapes the schematic structure of the discourse and influences and constrains choice of content and style." (Swales 1990: 58)

In the above definition, priority is given to factors such as the purposes to be fulfilled as well as the schematic structure, that is, linguistic and discursive patterns most frequently employed. This is particularly true for genres such conventionalized as judgments whose structure as well as the lexis, are subject to restrictions, be it legislative principles that are codified (as is the case in the Polish legal system where the obligatory parts are meticulously enumerated in the Polish Code of Criminal Procedure) or conventions passed down by word of mouth (as is most often the case in the common law countries). Referring to Swales, Bhatia also remarks that, due to evolution, allowances have to be made for the genres:

"Most often it is highly structured and conventionalized with constraints on allowable contributions in terms of their intent, positioning, form and functional value." (Bhatia 1993: 13).

The above has to be borne in mind when referring to genres such as court judgments which evolve considerably slower than the ones which are not so conventionalized. Nonetheless, changes affect them as well and we might point to phenomena such as Plain Language Campaign to substantiate our claim.

Another problem recognized by numerous authors (cf. Martin 1985, Duszak 1998, Mamet 2005) is the differentation between the genre and the register, which may be a source of confusion. As claimed by Martin, genres are the basis of distinguishing registers in a given culture. The latter, in turn, enable the speakers of a language to identify a given situation in relation to language so that appropriate linguistic means are chosen depending on the specific communicative needs (e.g. the colloquial register, the official register) (Martin 1985).

3.1.3 The description of the method employed throughout the analysis

As remarked on several occasions in the previous sections, the presence of some form of modality within a sentence marks either its degree of imperativeness, necessity and needfulness or its being to some degree colored by the speaker's personal approach. Thus, the modality of a sentence, makes possible placing a given phrase somewhere on an axis whose extremes represent absolute (ideal) values of something being 100 % true or something being 100% untrue. Yet another problem is whether this "(un)truthfulness" of a sentence is a matter of our personal belief and internal conviction or some external unquestionable knowledge associated with objectivity and neutrality but whose sources are impossible to track. These kinds of statements are very rare. In the majority of situations in the real life we encounter statements uttered under certain circumstances which lead the speaker to adopt a certain point of view and, correspondingly, employ particular "marked" language which would reflect their dubiousness, positivity, presumption, admiration, volition, inference, desideration, necessity, interrogation, possibility – a catalogue that might roughly correspond to the types of moods presented in the previous chapter: not all of them though, are marked grammatically in all languages (cf. section 2.3.). That is why we approach the theme from the intra-linguistic point of view since grammatical structures available within one particular language may not be available within the other.

The method employed throughout the analysis is the one of collecting phrases indicating high, median and low modal values taken out of the selected American and Polish Supreme Court rulings which will then serve to point to some general distinctive features characteristic for the judicial discourse within the American and Polish legal systems. The key terms which will underlie the research into modal idiosyncrasies of both languages are the Chomskean terms of *frequency* and *representativeness*. Both are notions running through the discipline referred to as corpus linguistics which is based on statistical inquiry into what seems to be rare and what, in turn, occurs with greater frequency in a given corpus of empirical data (Butler 1985: 61). As Butler suggests, there is a difference between quantitative and qualitative approach to the analysis of a specific material.

Whereas the former one focuses specifically on the phenomena which occur with greater frequency, in the latter it is mostly the rare and outstanding occurrences which receive particular

attention. Since qualitative analysis aims at a detailed and elaborate inquiry into the matter, its method is different than in the quantitative analysis where only representative and statistically significant data are being foregrounded (Butler ibid. 62). According to Butler it is the quantitative analysis that determines greater reliability and credibility as far as generalizations are concerned (ibid: 62). It also enables to draw the line between what seems to represent certain normal behavior patterns of a given language variety and what, in turn, diverges from normality and does not deserve any particular attention. It is necessary, therefore, to omit data which are of no importance. As Butler observes, this may give rise to various omissions since the research tends to give precedence to more common linguistic phenomena. Both methods, it seems, have some disadvantages. However, if appropriately combined, they complement each other well and are the source of reliable and credible information. Today's corpus linguistics relies most of all on computer-assembled data and this also allows for more accuracy and precision while examining a variety of texts representing certain genre or paradigm. For the quantitative approach to be of relative validity for the study of a given issue, it is necessary to restrict oneself to a very narrow and specific field. Moreover, as may be deemed obvious, corpus-based analyses are more suited to written materials since it would be particularly difficult to grasp the distinctive features of a given speech community relying solely on the material gathered from tape-recordings or the like.

3.1.4 The variable – the selection of phrases and the classification into categories

Another important term with respect to the statistical linguistics is the variable. In our analysis it is the modal 'intensity' or modal values which are taken as variables together with grammatical categories which a given phrase represents. There are three subtypes of degrees of probability as proposed in Halliday (1994: 76 and 358-363): high, median and low. The low degree includes the expressions which indicate lack of knowledge in the truth of the utterance and can be followed by expressions such as "doubt", "not know" and "wonder" (Carretero 2002: 16-17). Carretero also mentions phrases which can be used twice in the same sentence in a coordinating construction such as in the example below:

She may or may not be at home.

The median degree, in turn, can be characterized by the use of such expressions as: the adverb "probably", "I believe", "I guess", "I think", "alleged(ly)", "to judge from...", "if I remember", "from what I can understand". According to Carretero, this category also comprises phrases which allow negative raising such as:

I don't think that X and it is not probable that X are roughly equivalent to

I think that not-X and it is probable that not-X, respectively.

The median degree, as it turns out, encompasses all the evidentials which signal the source of the evidence the speaker has and its incompleteness (Carretero 2002: 17).

Lastly, the expressions that fall under the category "high degree modality" are considered to convey the commitment to either truthfulness or falsity of a given proposition. To such we will include the following: "surely", "certainly", "obviously", "impossible", the modal verbs "must", "need", "can't" or the expression "have no reason to believe".

The tables below present a classification of modality categories as proposed by Halliday:

HIGH	Must, ought to, need, have to, be to
MEDIAN	Will, would, shall, should
LOW	May, might, can, could

Table 3.1. Three values of modality. Adapted from Halliday (1985, p. 337)

	PROBABILITY	USUALITY	OBLIGATION	INCLINATION
High	Certain	Always	Required	Determined
Median	Probable	Usually	Supposed	Keen
Low	Possible	Sometimes	Allowed	Willing

Table 3.2. Semantic distinction of modal verbs according to their value. Adapted from Halliday (1985, p. 339).

Epistemic modality in legal settings encodes the speaker's (in this case: the judge's) stance towards the truth value of the proposition. Various studies have indicated its relation to e.g. conviction (Halliday 1994). Additionally, it can be realized through various means such as modal verbs (e.g., 'may,' 'might' and 'must'), adjectives (e.g., 'possible,' 'probable,' 'necessary'), adverbs (e.g., 'probably,' 'likely,' 'perhaps'), nouns (e.g., 'possibility,'

‘probability,’ ‘necessity’), and phrases (e.g., ‘in my opinion,’ ‘in all likelihood’) (Halliday & Matthiessen, 2004, pp. 613–625).

As far as the analysis is concerned, only selected phrases occurring with greatest frequency in the Corpus have been taken into consideration while conducting the research. The choice of the epistemic phrases accounted for in the study has been motivated by the qualitative manual analysis of a smaller body of rulings. This part can be considered ‘a preliminary’ part which served as a departure point for the subsequent conclusions. Both in the case of the Polish and American corpus, 20 sample judgments have been studied and all possible phrases that would point to the certainty or doubt on the part of the ‘narrator’ have been listed. Out of this list, the author ‘extracted’ such phrases that formed fairly predictable and representative collocations. After such a preliminary manual analysis of both Polish and American sample set of 20 judgments from both corpora, the author undertakes to arrange them into grammatical categories and modal values in order to be able to conduct a comparative analysis of the frequency of occurrence of particular types of epistemic modals. This original ‘manual’ list has been compared with various sources found in the literature on the subject and expanded by possible lexical items independently for the Polish Corpus and for the American body of judgments. In the case of Polish epistemic markers, these authorities included: Kakietek (1991), Ligara (1997), Grzegorczykowa (2001) and Warchał (2014). In the case of English (American corpus), the contributions in the field that were referred to include: Palmer (1986), Coates (1983), Quirk et al. (1985), Hoye (1997).

The list of grammatical categories into which the selected lexical units have been grouped in the case of Polish is based on Kakietek (1991) and Ligara (1997). The grammatical categories in the case of American corpus have been based on Halliday (1985), Palmer (1986) and Quirk et al. (1985).

Below a list of grammatical categories :

- in the case of the Polish Corpus: nouns and nominal phrases, modal verbs, adjectives (attributives and predicatives), adverbs and modal modifiers and lexical verbs;

- in the case of the American corpus: nouns and nominal phrases, modal verbs, semi-modals, adjectives (attributives and predicatives), adverbs and modal modifiers and lexical verbs.

The analysis is conducted with the use of **AntConc 3.4.4.** which allowed to analyse a single word depending upon the context in which it occurred in a corpus and a frequency list is compiled in order to study the recurring patterns in both corpora and draw conclusions which of the lists displayed higher frequency of occurrence of high and low value epistemic markers of modality.

3.2 **The Corpus**

3.2.1 The Corpus (the Polish part): description and classification into modal values

In the case of the Polish Corpus, the analysis encompasses 520 judgments and rulings that have been issued in the course of two years from 1st January 2014 up till 31st December 2015. Since the total number of cases largely exceeds five hundred, the author has decided to select from 20 to 30 judgments issued each month beginning from January 2014 and ending on December 2015 in order to obtain the number that would approximate 500 and, at the same time, to make the research representative enough.

Altogether 37, 921 documents can be found in the database of the Polish Supreme Court. The judgments, decisions and resolutions are listed according to their gravity, i.e. the more serious the matter is, the greater possibility that it will be heard by the whole chamber, by the joined chamber or by the Supreme Court in full composition. Consequently, there is only a small number of resolutions that have been adopted by the court in full composition when compared with the ordinary judgments issued by the panel of three judges. Below the classification high, median and low values of the linguistic exponents of epistemic modality:

<u>HIGH MODAL VALUE:</u>

- NOUNS: pewność, przekonanie, przeświadczenie, bezzasadność, lakoniczność, brak podstaw;
- MODAL VERBS: musieć, nie móc;

- ADJECTIVES AND PREDICATIVES: niemożliwy, pewny, błędny, nieuzasadniony, bezpodstawny, konieczny, chybiony, niecelowy, irrelewantny, nieuprawniony, absurdalny, kontrowersyjny;
- ADVERBS AND MODAL MODIFIERS: niewątpliwie, ponad wszelką wątpliwość, na pewno, bez wątpienia, wyjątkowo, w ewidentny sposób, naturalnie, ewidentnie, wcale, nieprawidłowo;

- LEXICAL VERBS: nie ma/ nie ulega wątpliwości, nie ma racji, nie ma racjonalnych argumentów do twierdzenia, że...;

MEDIAN MODAL VALUE:

-NOUNS: w ocenie (Sądu Najwyższego), zdaniem (Sądu Najwyższego);

-MODAL VERBS: nie musieć, trzeba, należy, należałoby, warto;

-ADJECTIVES (ATTRIBUTIVES AND PREDICATIVES): prawdopodobny, zasadny, wymowny, przekonujący, trafny;

-ADVERBS AND MODAL MODIFIERS: najpewniej, najprawdopodobniej, prawdopodobnie, trafnie, słusznie, niekiedy, jednoznacznie;

-LEXICAL VERBS: uważa się, przyjmuje się, wydaje się/zdaje się , nie wydaje się, przemawia za, warto, wypada, (można/ należy) podejrzewać;

LOW MODAL VALUE:

-NOUNS: możliwość, pojawiają się/ powstają/ nasuwają się/pozostają, wątpliwości/podejrzenia, można mieć wątpliwości, prawdopodobieństwo, przeczucie, wrażenie, zastrzeżenie;

-MODAL VERBS: można;

-ADJECTIVES AND PREDICATIVES: możliwy, niewykluczony, wątpliwy;

- ADVERBS AND MODAL MODIFIERS: chyba, być może, jakoby, może, rzekomo, wątpliwie, rzadko, w pewnym sensie, zapewne;

3.2.2 The Corpus (the American part): description and classification into modal values

The most recent 20 volumes issued by the United States Supreme Court and selected for the purpose of the analysis are the volumes 541-561 which comprise 516 judgments from 2nd March 2004 until 30th September 2010. This would give us approximately 25 cases reported per volume. However, this number includes only those decisions that are elaborated on via opinions of the court referred to as decision *per curiam* (a Latin term which translates as "by the court"). Typically, only those decisions that are unanimous, i.e. are not followed by any dissenting opinion, are labelled as "per curiam". The majority, though, is comprised of both: concurring and dissenting opinions signed by individual justices. It is these opinions that are taken into consideration. The vast number of the remaining cases are included in the so-called "orders", i.e. the information whether a motion regarding the proceedings has been granted or denied. Below a few examples of such 'orders':

- No. 03M49. Under Seal v. United States. Motion for leave to file petition for writ of certiorari under seal with redacted copies for the public record granted.
- No. 02–572. Intel Corp. v. Advanced Micro Devices, Inc. C. A. 9th Cir. [Certiorari granted, 540 U. S. 1003.] Motion of the Commission of the European Communities for leave to participate in oral argument as amicus curiae and for divided argument granted. Motion of the Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument granted. Justice O'Connor took no part in the consideration or decision of this petition.
- No. 02–1609. City of Littleton, Colorado v. Z. J. Gifts D–4, L. L. C., dba Christal's. C. A. 10th Cir. [Certiorari granted, 540 U. S. 944.] Motion of petitioner for divided argument denied. Motion of Ohio et al. for leave to participate in oral argument as amici curiae and for divided argument granted.[50]

As regards the method, approximately the same criteria have been applied as with the Polish Corpus: 10 judgments have been taken as a sample corpus to select the most representative epistemic modal markers and their frequency of occurrence is subsequently analyzed in the

[50] source: http://www.supremecourt.gov/opinions/boundvolumes/541bv.pdf

whole corpus of 516 most recent judgments to be found on the official site of the American Supreme Court: http://www.supremecourt.gov/opinions/boundvolumes.aspx.

Epistemic phrases were first identified in contexts (the words marked in bold indicate which word pairs and word settings have been taken as representative and afterwards classified into grammatical categories and modal values). The resulting classification is presented below.[51]

HIGH MODAL VALUE:

NOUNS: no doubt, absurdity, irrationality**;**

MODAL AND SEMI-MODAL VERBS: must, cannot, need (not), should not, ought to, be bound to, be going to, have to, need to, obliged to;

ADJECTIVES: certain, impossible, inconceivable, not possible, sure, undeniable, obvious, untenable, necessary, fully consistent, inconsistent, undisputed, wrong, imperative, mistaken, far from clear, misconstrued, unpardonable, faulty;

ADVERBS AND MODAL MODIFIERS: undoubtedly, perfectly, undisputedly, certainly, of course, surely, perfectly, most notably, no doubt, necessarily, particularly, certainly, obviously, by no means, certainly, definitely, doubtless, for certain, for sure, incontestably, incontrovertibly, indisputably, indubitably, on no account, unarguably, undeniably, unquestionably, without (a shadow of a) doubt;

LEXICAL VERBS: reject, decline, dissent, not agree, fail, contradict, mislead, fall short, err, disregard, disagree, misapprehend;

[51] Apart from modal verbs and semi-modals, Quirk et al (1985: 137) lists categories such as marginal modals (e.g. dare, need, ought to, used to), catenatives (e.g. appear to, happen to, seem to) and modal idioms (would rather, would sooner). However, since the Polish epistemic expressions do not fall into so many categories as far as modality is concerned, we have merged the category of marginal modals and catenatives with that of semi-modals and we have omitted the sub-category of modal idioms since the legal register under study does not feature colloquial expressions nor idioms.

MEDIAN MODAL VALUE:

NOUNS: implausibility, in our view/opinion;

MODAL AND SEMI-MODAL VERBS: should, will, shall, be supposed to, be willing to, be about to;

ADJECTIVES: (most) likely, plausible, probable, clear, (in)appropriate, plain, correct, problematic, irrelevant, adequate, reasonable, persuasive, proper, (un)reliable, relevant, sufficient, not wrong, not surprising, (in)conclusive, admissible, true, plausible, accurate, ambiguous, convinced, superfluous;

ADVERBS AND MODAL MODIFIERS: arguably, in all likelihood , (most) likely, presumably, probably, supposedly, (im)properly, (in)correctly, reliably, (im)plausibly, tellingly, indeed, unjustifiably, arguably, importantly, not enough, truly, (un)necessarily, convincingly;

LEXICAL VERBS: assume, expect, imagine, presume, suppose , think, believe, contend, argue, find, agree, (not) think, suggest, consider, believe, hold, conclude, deem, support, exclude, rely, disagree, view, concede, recognize, acknowledge, reiterate, emphasize;

LOW MODAL VALUE:

NOUNS: uncertainty, possibility, suspicion, probability, doubts**;**

MODAL AND SEMI-MODAL VERBS: may, might, can, could, would, be able to;

ADJECTIVES: conceivable, doubtful, not likely, possible , uncertain, unlikely, indeterminate, conceivable, doubtful, not likely, possible, uncertain, unlikely, questionable, hypothetical, far-fetched;

ADVERBS AND MODAL MODIFIERS: allegedly, conceivably, maybe, perhaps, hypothetically, possibly, purportedly, hardly;

LEXICAL VERBS: doubt, guess, speculate, suspect, it is thought

3.2.3 Subjective, intersubjective and neutral variant of epistemic expressions

Additionally, we also employ the taxonomy proposed by Carretero (2002) who, following Nuyts (2001a) divides epistemic expressions into high, median and low (following the classification of Halliday), but additionally distinguishes between subjective, intersubjective and neutral shades through which the above expressions may be characterized.

As far as the subjective variant of epistemic modal expressions is concerned, we speak of it in cases when the speaker assumes strictly personal responsibility for the epistemic evaluation. Thus it will be the speaker who is the source of epistemic evaluation. On the other hand, the intersubjective modality can be characterized by expressions which suggest that the facts, information, knowledge or evidence made public in the sentence is accessible to a larger group of people (Carretero, 2002). The neutral category, as it seems, remains the most vague among the three. Nuyts argues that epistemic adjectives such as "possible" and "probable" are intersubjective; adverbs and modal verbs are neutral, and mental state predicates such as "I think" are subjective (Carretero 2002). Tables 3.3., 3.4. and 3.5 present the division into categories of expressions so far collected in a manner proposed by Nuyts (2001a) and Carretero (2002). Certain additional epistemicity markers are also included. In the current analysis we have limited ourselves to the primary classification into high, median and low probability. Further distinction and specification into subjective and intersubjective classes or employing the criterion of 'accessibility' to a larger public remains out of scope of the thesis and requires a separate account. Nevertheless, we mention these criteria in order to clarify certain inaccuracies. As such, the classification comprises:

-expressions of high probability (subjective, intersubjective, neutral),

-expressions of median probability (subjective, intersubjective, neutral),

-expressions of low probability (subjective, intersubjective, neutral).

Expressions of high probability		
Subjective	Inter-subjective	Neutral
– Expressions with modal lexical verbs in the 1st person singular: PL: *Nie mam wątpliwości, nie mam powodów by…(wątpić, podważać, kwestionować)* (AM) ENG: *come to a/the conclusion, not doubt, have no doubt, have no reason to believe, know, emphatically say, see no reason to doubt* – Adjectives with the verb be in the first person singular: PL: *pewny, przekonany, utwierdzony, zdecydowany, przeświadczony;* (AM) ENG: *certain, confident, convinced, positive, sure.* – Adverbials: no formal (suitable for the judicial language) high-value adverbials have been identified neither in the case of Polish nor in the case of the American corpus. – Nouns or nominal expressions: no formal (suitable for the judicial language) high-value adverbials have been identified neither in the case of Polish nor in the case of the American corpus.	– Adjectives: PL: *oczywisty, kategoryczny, pewny, przekonujący, przekonywający, definitywny, ewidentny, bezdyskusyjny, bezsporny, bezsprzeczny, niekwestionowany, niepodważalny, niewątpliwy, niezaprzeczalny, niezbity, pozadyskusyjny;* (AM) ENG: *obvious, glaring, indisputable, noticeable, self-evident, straightforward, undeniable, unmistakable;* – Adverbs and adverbials: PL: *bezsprzecznie, bez wątpienia, zdecydowanie, bezdyskusyjnie, niezaprzeczalnie, niepodważalnie, bezspornie, niewątpliwie;* (AM) ENG: *clearly, evidently, obviously, of course, plainly, without question;* – Verbs in the first person plural: PL: w*iemy, jest nam wiadome* (AM) ENG: *we know, it is known (to us)* – Nominal expressions within existential constructions:	– Auxiliaries or semi-auxiliaries: PL: *nie można, musi;* (AM) ENG: *cannot, could not, have (got) to, must, shall, will, would (past time).* – Adverbials PL: *definitywnie, jednoznacznie, oczywiście, naturalnie, ewidentnie, widocznie, po prawdzie,* (AM) ENG: *certainly, definitely, in all probability, (in) no doubt, in truth, indeed, surely, without question.* – Adjectives and adjectival expressions: PL: *wysoce nieprawdopodobne, prawdziwe* (AM) ENG: *highly unlikely, true.* – Nouns and nominal expressions: PL: *przekonanie, przeświadczenie, pewność, wniosek, stwierdzenie* (AM) ENG: *(the) claim, (that) conclusion, statement, conviction, certainty.*

	PL: *jak powszechnie wiadomo, jest spore prawdopodobieństwo, nie ma wątpliwości* (AM) ENG: *it's common ground, there is a considerable possibility, there is no doubt/suggestion/question.*	

Table 3.3. Expressions of high probability according to Nuyts (2001a) and Carretero (2002)

Expressions of median probability		
Subjective	Intersubjective	Neutral
– Expressions with modal lexical verbs in the first person singular: PL: *myślę, przypuszczam, mniemam, sądzę, jestem/jesteśmy zdania, że, wnioskuję, uważam, miarkuję, wnoszę, domniemywam;* (AM) ENG: *I am inclined to think, assume, believe, could say, estimate, expect, feel, find, gather, gathered, guess, hope, imagine, recall, regard, seem to remember, should expect, should have thought, should think, suggest, suppose, take the view, think, thought, understand, would cavil, would expect, would have thought, would take it, would think; occur to me*. – Adverbials: PL: no formal (suitable for the judicial language) median-value adverbials have been identified in the case of the Polish Corpus; (AM) ENG: *as far as I can see, as far as I know, as far as I remember, as I*	– Semi-auxiliary: PL: no formal (suitable for the judicial language) median-value semi-auxiliaries have been identified in the case of the Polish Corpus; (AM) ENG: be supposed to. – Expressions with lexical verbs: PL: *(to) zdaje się, sprawia wrażenie, wygląda;* (AM) ENG: *appear, look, seem, sound, (it) would suggest;* – Adjectives or participles: PL: *jasny, czytelny, klarowny, konkretny, niedwuznaczny, przejrzysty, wymowny, wyrazisty, wyraźny, zdecydowany, zrozumiały, jaskrawy rzekomy, przypuszczalny, domniemany, potencjalny, ewentualny, przybliżony, szacunkowy,*	– Auxiliaries or semi-auxiliaries: PL: *powinien, powinno* (AM) ENG: *ought, should*. – Adverbs and adverbials: PL: *prawdopodobnie* (AM) ENG: *(not very) likely, probably.* – Adjective: PL: *prawdopodobny, możliwy* (AM) ENG: *probable, possible, likely.* – Nominal groups with the definite article a(n) or the: PL: *szacunek, myśl, przybliżenie* (AM) ENG: *estimate, guess, guesswork, thought.*

understand it, in my mind, in my view, if I remember, from what I (can) understand, to my mind. – Nouns and nominal expressions: PL: *rachuba, szacunek,* (AM) ENG: *(my) estimate.*	(AM) ENG: *clear, evident, accessible, conspicuous, discernible , distinct , evident, overt , pronounced, recognizable, visible, plain, prominent, transparent, alleged, apparent, suggested, estimated, purported, potential, approximate;* – Adverbials: PL: *widocznie, rzekomo, przypuszczalnie, ewentualnie, w przybliżeniu, potencjalnie, szacunkowo;* (AM) ENG: *apparently, presumably, seemingly, supposedly; so far as appeared, to judge from...*	

Table 3.4. Expressions of median probability according to Nuyts (2001a) and Carretero (2002)

Expressions of low probability		
Subjective	Intersubjective	Neutral
– Expressions with lexical verbs in the first person singular: PL: *zastanawiam się, wątpię, nie wiem, nie wykluczam,* (AM) ENG*: I am wondering, doubt, not know, wonder; the expression, I do not rule out* – Adjectival expressions: PL: *niepewny, nieprzekonany,* (AM) ENG: *not certain, not sure.*	– Expressions with lexical verbs: PL: *nie wiemy, nie mamy pewności* (AM) ENG: *we don't know.*	– Auxiliaries: PL: *mogłoby/mogłaby, może, można*, (AM) ENG: *could, may, might, would (hypothetical).* – Adverbials: PL: *może, być może, możliwie*, (AM) ENG: *maybe, perhaps, possibly.* – Nouns: PL: *możliwość* (AM) ENG: *possibility*.

Table 3.5. Expressions of low probability according to Nuyts (2001a) and Carretero (2002)

3.3 **Concluding remarks**

The principal aim of the present chapter was to present the devices and methodology which will subsequently serve to analyze the corpus of judgments of the Polish and American Supreme Courts. Since we deem both qualitative and quantitative methods as complementing each other and yielding reliable results, the analysis combines manual investigation with frequency counts in search for most representative collocations that we categorized as markers of epistemic modality. The process of categorization will at times fail to reflect as accurately as possible the real state of affairs. This being said, we might refer to discourse epistemicity, already discussed in Chapter 2, as proof that syntactic classifications do not always account for every particular case where the analyzed phenomenon occurs. We have pointed to various authorities and their attempts to draw certain common properties thereby establishing boundaries between high, median and low values of modality. Nevertheless, this element of the research, although crucial for the present analysis, is also tainted with subjective criteria. It should be therefore noted at the end of this theoretical part that objectivity of the obtained results is an unattainable ideal. We have also pointed to advantages and disadvantages of methods employed by corpus linguistics. Pure calculation and analytical inquiries, it seems, should be also enriched by qualitative remarks and observations. The examples below may explain the point highlighted here:

"It also implies that the Court erred in Western Nuclear, not by interpreting the term "minerals" too broadly to include sand and gravel, but by interpreting "minerals" too narrowly by reading into the term a requirement that the minerals can be used for commercial purposes."

Although we spot the occurrence of the modal auxiliary "can", it does not account for the meaning of the whole sentence which should be considered in its entirety. Similarly, we do not account for cases where lexical and collocational coinages do not represent well-established and frozen constructs. They are rather "ad hoc" expressions that occur only once and are rather omitted in the analysis. To such marginal expressions we included for instance certain phrases, which were not accounted for in the main analysis:

High-value Polish epistemicity markers: *Jest poza sporem, nie bez znaczenia, xxx nie ma jakiejkolwiek podstawy, brak powodów, rzecz jasna, xxx nie wytrzymuje krytyk*,

Median value Polish epistemicity markers: *pozostało poza polem widzenia, nie daje podstawy, trudno byłoby uznać, nie przekreśla oceny, wymaga podkreślenia, rozważenia (więc) wymaga, czy..., nie byłoby to uzasadnione.../nie jest (to) uzasadnione, pozostawić można (jednak) na uboczu kwestie, nie ulega także zakwestionowaniu, w pewnym sensie, przemawiają za trafnością poglądu, na uwagę zasługuje, znajduje również oparcie, prowadzi to „do zafałszowania rzeczywistego przedmiotu sprawy, implikuje to konieczność rozważenia..., nie powinno podlegać kwestii, wątpliwości prawne dalekie są od jednoznacznych, opisane okoliczności podważają stanowisko, nie było przesłanek, nie można zatem wykluczyć, doznaje wsparcia, pozostaje w ewidentnej sprzeczności, rażącym błędem prawnym była…, (jest) nie do zaakceptowania , nic nie stoi (natomiast) na przeszkodzie.*

High-value American epistemicity markers:

- *It is beyond dispute, however, that we had jurisdiction to enter a stay in order to give us time to determine whether we have jurisdiction to reach the merits of Kunkle's federal claim.*
- *Surely there is no contention that the Telecommunications Act of 1996 by its own force entails a state agency's entitlement to unappropriated funds from the state treasury, or to the exercise of state bonding authority.there is every reason to… (believe/expect/suppose);*
- *This provision is in marked contrast to the language in Exemption 6, pertaining to "personnel and medical files," where withholding is required only if disclosure "would constitute a clearly unwarranted invasion of personal privacy."*

Median-value American epistemicity markers:

- *Treating the working owner as a participant in an ERISA-sheltered plan also avoids the anomaly that the same plan will be controlled by discrete regimes:*
- *The only timely authority The Chief Justice cites is King v. Eriswell, 3 T. R. 707, 100 Eng. Rep. 815 (K. B. 1790), but even that decision provides no substantial support.*
- *However, this Court has little difficulty in finding in case law and traditions the right of family members to direct and control disposition of a deceased's body and to limit attempts to exploit pictures of the deceased's remains for public purposes.*

Chapter 4

The analysis: the Polish Corpus

4.1 Introductory remarks: forms of court statements

Globally embraced, a judgment (a civil or a criminal one) may be defined as a declaration of will of imperative nature vested with the force of law and issued by an adjudicating body (a court acting in the name of the Republic of Poland) (Świda, Skorupka, 2012: 239). The validity of judgments has its source in the legal norm. Concerning the classification of court rulings, the judgment belongs to the general group of rulings, to which we also include judgments, decisions, resolution of the Supreme Court as well as orders of payment. Below a scheme illustrating the types of rulings as outlined by Młodawska:

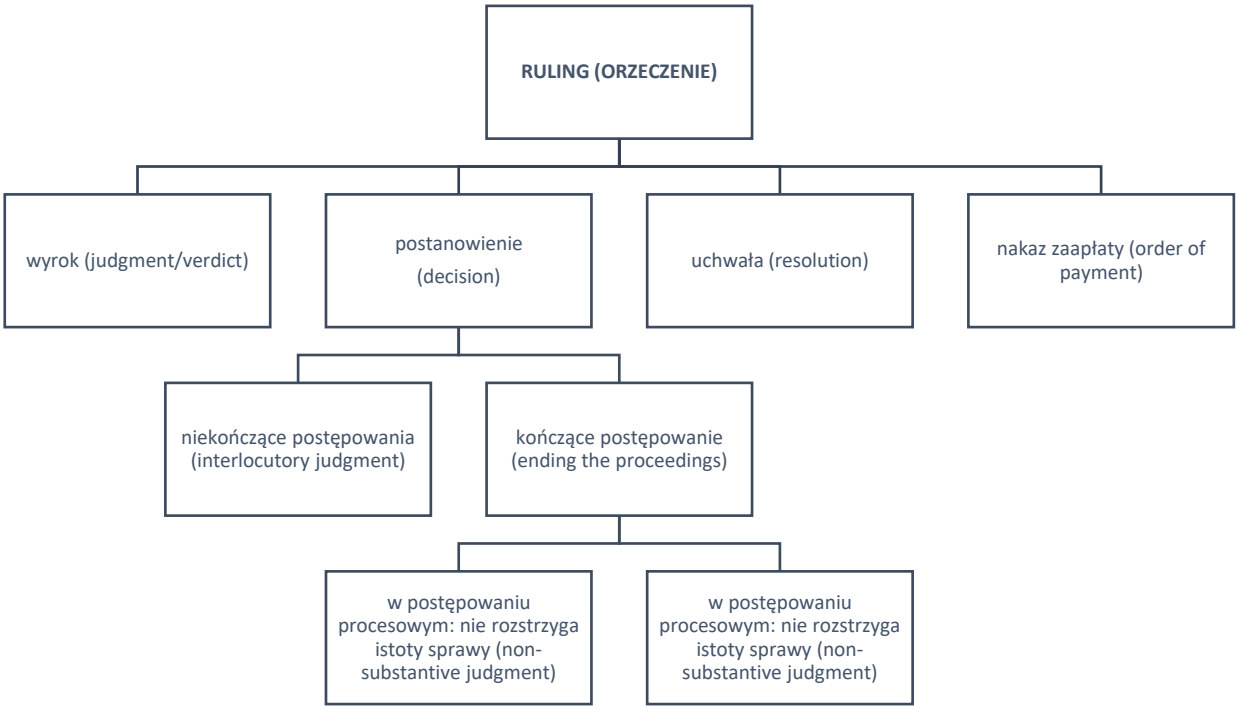

Figure 4.1. Types of rulings in the Polish legal system: on the basis of Młodawska (2012).

Both civil and criminal judgments should contain a sentence (an introduction and the resolution) as well as a statement of reason. As far as criminal proceedings are concerned, the introductory

part of a judgment (presentation of the parties) must meet the requirements of article 413, paragraph 1 items 1–6 of the Polish Code of Criminal Procedure and contain:

- the designation of the court rendering it, as well as the names of the judges, lay assessors, prosecutors and recording clerk,
- the date and place of the hearing of the case and of rendering the judgment,
- the name and surname and other personal data pertaining to the identity of the accused,
- the description and legal classification of the act which has been imputed to the accused by the prosecutor,
- the resolution of the court, and
- an indication of the criminal statute applied (source: article 413, paragraph 1 items 1–6 of the Code of Criminal Procedure, Act of 6 June 1997).

The dispositive part, in turn, contains the resolution of the court and the indication of the legal provisions that have been invoked. This part will differ depending on the outcome of the proceedings. In the case of the criminal judgment it may be a conviction, an acquittal or the discontinuing of proceedings whilst in the civil judgment it will determine whether to satisfy the claims of the plaintiff or the defendant. In the case of a convicting sentence, article 413, paragraph 2 of the Code of Criminal Procedure, clearly stipulates that the judgment should contain:

- a detailed description of the act of which the court has found the accused guilty, and the legal classification of the act,
- the sentence or penal sanctions to be imposed on the accused and a decision as to whether the time of preliminary detention or arrest, if any, should be credited to the penalty imposed; as well as the decision on preventive measures described in Article 276 [52].

The second part of the judgment, the statement of reason, is obligatory in the case of the criminal judgment but does not have to occur in civil judgments unless upon request of a party to the proceedings or if a judgment has been challenged by one of the parties.

[52] source: Code of Criminal Procedure, Act of 6 June 1997.

For the purpose of the present study the following equivalents have been used to refer to the statements of the court:

- wyrok SN [judgment/verdict]
- wyrok siedmiu sędziów SN [judgment issued by the seven judges]
- postanowienie SN [decision]
- postanowienie siedmiu sędziów SN [decision issued by the seven judges]
- postanowienie całej izby SN [decision of the whole chamber]
- uchwała SN [resolution],
- uchwała siedmiu sędziów SN [resolution of the seven judges]
- uchwała siedmiu sędziów SN – zasada prawna [legal principle]
- uchwała całej izby SN [resolution of the whole chamber]
- uchwała całej izby SN- zasada prawna [resolution of the whole chamber – legal principle]
- uchwała połączonych izb SN [resolution of the joint chambers]
- uchwała połączonych izb SN - zasada prawna [resolution of the joint chambers - legal principle]
- uchwała pełnego składu SN [resolution of the Supreme Court en bloc]
- uchwała pełnego składu SN - zasada prawna [resolution of the Supreme Court en bloc – legal principle]
- orzeczenie [ruling],
- zarządzenie [ordinance/disposition/order],
- opinia [opinion],
- wyciąg z protokołu [extract from records].

Throughout the analysis three general forms occurred with the highest frequency. These were:

- decision of the Supreme Court (postanowienie SN),

- judgment of the Supreme Court (wyrok SN),

- resolution of the Supreme Court (uchwała SN).

We have already elaborated on the resolutions as a specific form of a court statement and what conditions need to be fulfilled for a resolution to be adopted. These are indicated in art. 61 of the Act on the Supreme Court (cf. section 1.4.). Some resolutions are granted the power of a legal principle: if a bench of seven judges decides that the status of a particular matter is grave enough, it might distinguish it from among 'simple' decisions by bestowing upon it the quality of a legal principle. Resolutions typically begin with forging a legal question followed by the formula: "has adopted the resolution".

Below an example:

"Czy sąd, orzekając o umieszczeniu dziecka w jednej z rodzinnych form pieczy zastępczej, powinien wyznaczyć konkretną rodzinę zastępczą, rodzinny dom dziecka, czy też może przenieść swoje uprawnienia na rzecz jednostki organizacyjnej pomocy społecznej?

podjął uchwałę:

„Sąd opiekuńczy, orzekając umieszczenie dziecka w rodzinnej pieczy zastępczej, oznacza konkretną rodzinę zastępczą lub rodzinny dom dziecka."

["In adjudicating the necessity of placing a child in one of the family child replacement institutions, is the court obliged to specify the foster family or a family-type children's home or shall its authority be transferred to a social welfare organizational institution?

has adopted the resolution:

„In adjudicating the necessity of placing a child in one of the family child replacement institutions, the guardianship court shall specify the foster family or a family-type children's home."][53]

or:

"I. Czy po zakończeniu postępowania upadłościowego spółki akcyjnej i wykreśleniu jej z rejestru byli akcjonariusze tej spółki są uprawnieni do dochodzenia przypadających im należności z majątku, który ujawniony został po wykreśleniu spółki z rejestru, a jeżeli tak, to w jakim powinno nastąpić to trybie?

podjął uchwałę:

[53] translation mine

„W razie ujawnienia po wykreśleniu spółki akcyjnej z rejestru przedsiębiorców majątku spółki nie objętego likwidacją, stosuje się w drodze analogii przepisy kodeksu spółek handlowych dotyczące likwidacji spółki akcyjnej w organizacji."

[„I. Are former shareholders of a joint-stock company entitled to pursue claims for amounts due from the company's assets which have been revealed after the company had been removed from the register when the bankruptcy proceedings are completed and the company has been removed from the register? If so, what shall be the procedure used?

has adopted the following resolution:

"In the event the company's assets not subject to bankruptcy proceedings are revealed after the joint-stock company has been removed from the register of entrepreneurs, the appropriate provisions of the code of commercial companies regarding the dissolution of the joint-stock company in the process of formation shall apply."][54]

As far as the differences between a judgment and a decision are concerned, the list below presents selected beginnings and endings that might shed some light on the scope of matters dealt with through each of the court statement.

Analysis of formulaic and material differences between judgment and decision:

JUDGMENT	DECISION
BEGINNINGS:	BEGINNINGS:
*w sprawie z powództwa U.P. przeciwko Urzędowi Miasta S. *o przywrócenie do pracy;*	*w sprawie z powództwa Przedsiębiorstwa Produkcyjno - Handlowo - Usługowego przeciwko L.N. o zapłatę;
[action brought by U.P. against the Municipal Office for reinstatement at work]	*[action brought by the Commercial-Production-Service Company against L.N. for payment]*
* w sprawie z powództwa M. R. przeciwko C. spółce z ograniczoną odpowiedzialnością i Polskiemu Komitetowi Olimpijskiemu w Warszawie o uchylenie kar dyscyplinarnych orzeczonych w wyroku Trybunału Arbitrażowego przy Polskim Komitecie Olimpijskim w dniu 21 lutego 2013 r.;	*w sprawie z powództwa Polskiej Telefonii Komórkowej C. Sp. z o.o. w W. przeciwko Prezesowi Urzędu Komunikacji Elektronicznej o nałożenie kary pieniężnej;
[*action brought by M.R. against limited liability company C. and the Polish Olimpic Committee for quashing the*	[*action brought by the Polish Mobile Telephony C., a limited liability company against the President of the Electronic Communications Office for the order of payment of pecuniary penalty]*

[54] translation mine

disciplinary penalty determined in the judgment of Arbitrary Tribunal by the Polish Olimpic Committee as of 21st February 2013]

*w sprawie J. N. skazanego z art. 178a § 4 kk w zw. z art. 64 § 1 kk sprawa R.C. uniewinniony od zarzutu popełnienia przestępstwa ;

[action brought by J.N. convicted in pursuance to art. 178a § 4 of the Polish Penal Code in relation to art. 64 § 1 of the Polish Penal Code [the case of R.C.] acquitted from the criminal charges]

*w sprawie J. W., A. Z. i L. J. skazanych z art. 228 § 3 kk, art. 229 § 3 kk w zw. z art. 27 c ust. 1 pkt 2 ustawy o rybactwie śródlądowym (Dz.U. z 1999 r. Nr 66, poz. 750 z późn. zm.);

[*action brought by J.W., A.Z. and L.J. charged in pursuance to art. 228 § 3 of the Polish Penal Code, art. 229 § 3 of the Polish Penal Code in pursuance to art. 27 c, section 1, point 2 of the Law on Inland Fishing Industry (Dz.U. as of 1999, No 66, item 750 as amended.)]*

*w sprawie z powództwa M. H. przeciwko Agencji Nieruchomości Rolnych w W. o nakazanie złożenia oświadczenia woli;

[*action brought by M.H. against Agricultural Property Agency in W. for the order of submitting the declaration of intent]*

*w sprawie z powództwa K. G. przeciwko Ciepłowni S. Spółce z ograniczoną odpowiedzialnością w S. o przywrócenie do pracy;

[*action brought by K.G, against S., a heating plant and a limited liability company for the reinstatement at work]*

*w sprawie z powództwa G. Spółki z ograniczoną odpowiedzialnością w S. przeciwko Muzeum Historycznemu w G. o zapłatę;

[*action brought by G., a limited liability company in S. against the Museum of History for payment]*

*w sprawie z powództwa K. K. przeciwko Syndykowi Masy Upadłości Zakładów Motoryzacyjnych I. Spółce z ograniczoną odpowiedzialnością w upadłości w I. o ustalenie istnienia stosunku pracy, wynagrodzenie za pracę w przedmiocie skargi powoda o wznowienie postępowania zakończonego prawomocnym wyrokiem Sądu Okręgowego w R. z dnia 19 lutego 2014 r.;

[*action brought by K.K against the Trustee in Bankruptcy of the Automotive Factory I, a limited liability company in bankruptcy, for determining the employment relationship, remuneration for work following the plaintiff's appeal to resume the proceedings concluded with a legally-binding judgment of the Regional Court in R. dated 19th February 2014]*

*w sprawie z powództwa W. S. przeciwko Urzędowi Wojewódzkiemu w O. o przywrócenie do pracy;

[action brought by W.S. against the Voivedeship Office in O. for the reinstatement at work]

*w sprawie skargi uczestniczki postępowania o stwierdzenie niezgodności z prawem prawomocnego postanowienia Sądu Okręgowego w G.;

[*complaint brought by the party to the proceedings for determining the non-compliance with law of the legally-binding decision of the Regional Court in G.]*

*sprawa J. P.skazanego z art. 200 § 1 k.k. w zw. z art. 12 k.k;

[action brought by J.P. convicted pursuant to art. 200 § 1 of the Polish Penal Code in relation with art. 12 of the Polish Penal Code]

*sprawa M.J.skazanego z art. 279 § 1 k.k. w zw. z art. 91 § 1 kk i art. 65 § 1 kk i art. 65 § 2 kk i i innych;

*w sprawie z powództwa K. C., R. F. i D. G. przeciwko Szpitalowi Wojewódzkiemu […] o wynagrodzenie;

[*action brought by K. C., R. F. and D. G. against the Regional Hospital for the payment of remuneration]*

RESULTS:

- oddala skargę kasacyjną; nie obciąża powoda kosztami zastępstwa prawnego na rzecz pozwanych w postępowaniu kasacyjnym.
  [Dismisses the cassation appeal; does not burden the plaintiff with costs of legal representation for defendants in the cassation proceedings]

- uchyla zaskarżony wyrok i przekazuje sprawę Sądowi Apelacyjnemu do ponownego rozpoznania i rozstrzygnięcia o kosztach postępowania kasacyjnego;
  [Repeals the judgment under appeal and refers the matter back to the Court of Appeals for reconsideration and settlement of costs of the cassation proceedings]

- uchyla zaskarżony wyrok Sądu Okręgowego w Ł. i zmieniony nim wyrok Sądu Rejonowego w P. i sprawę przekazuje do ponownego rozpoznania Sądowi Rejonowemu w P.;
  [Repeals the judgment of the Regional Court in Ł. appealed against in Ł. and the judgment of the District Court in P. and refers the matter back to the District Court in P for reconsideration]

- oddala skargę, zasądza od powoda A. S. na rzecz Banku […] kwotę 1350 (jeden tysiąc trzysta pięćdziesiąt złotych) tytułem zwrotu kosztów zastępstwa procesowego w postępowaniu kasacyjnym;

  [Dismisses the action, awards from the plaintiff S. A. an amount of PLN 1,350 (one thousand three hundred and fifty zlotys] for the benefit of Bank

[action brought by M.J. convicted pursuant to art. 91 § 1 of the Polish Penal Code and art. 65 § 2 of the Polish Penal Code and other]

****

RESULTS:

- zasądza od wnioskodawcy na rzecz Spółki J. spółki z o.o. w
- K. kwotę 120 zł (sto dwadzieścia złotych) tytułem zwrotu kosztów postępowania kasacyjnego;
  [Awards from the applicant an amount of 120 zł (one hundred twenty zlotys) for the benefit of the Company J., a limited liability company in K., to cover the costs of the cassation proceedings]

- oddala zażalenie, pozostawia rozstrzygnięcie o kosztach postępowania zażaleniowego w orzeczeniu kończącym postępowanie;
  [Dismisses the complaint, leaves the decision on the costs of the complaint proceedings to be determined through an official decision closing the proceedings]

- postanowił oddalić kasację obrońcy skazanego jako oczywiście bezzasadną i obciążyć skazanego J. P. kosztami sądowymi za postępowanie kasacyjne;
  [has decided to dismiss the cassation of the counsel for the defence as unfounded and charge the convict J. P. with legal fees for the cassation proceedings]

- uchyla zaskarżone postanowienie, pozostawiając Sądowi Okręgowemu w R. orzeczenie o kosztach postępowania zażaleniowego;
  [Repeals the contested decision, leaving the decision on the costs of the complaint proceedings with the Regional Court in R.]

[...] for the costs of legal representation in the cassation proceedings]

- oddala skargę kasacyjną, zasądza od strony powodowej na rzecz strony pozwanej kwotę 1 800 (jeden tysiąc osiemset) zł tytułem zwrotu kosztów postępowania kasacyjnego.
  [Dismisses the cassation appeal, awards from the plaintiff the amount of 1 800 (one thousand eight hundred zlotys) to the defendant for the costs of cassation proceedings]

- p o s t a n o w i ł utrzymać w mocy zaskarżone zarządzenie i odmawia podjęcia uchwały;
  [has decided to uphold the contested order and refuses to adopt the resolution]

In line with art. 354 of the Code of Civil Procedure:, a court is expected to issue a judicial decision if the Code does not provide for passing a judgment or an order for payment[55]. As a general rule, decisions are issued in non-litigious proceedings and judgments in litigious proceedings when a trial has been conducted. Cases concerning the division of marital property after divorce are heard in non-litigious proceedings (art. 566 of the Code of Civil Porocedure). Therefore, such issues are dealt with in the form of a decision which can be appealed against in the same way as the judgments.

As can be seen, the scope of matters dealt with in decisions and judgments does not differ considerably as the formulas used are often the same, the formal difference being the distinction into litigious and non-litigious proceedings. Whether the case will be handled by the Supreme Court in the form of a decision or a judgment, depends upon the case's history, i.e.: if the court of the first instance found it should be resolved in such and such a form, the Supreme Court will retain this form. For instance, if the case involved the division of marital property after divorce, the result will assume the form of a decision. Let us also refer to the forms of appeal that enter the Polish Supreme Court after being heard by the courts of second instance. In accordance with art.. 398 § 1 of the Code of Civil Porcedure, a plea of nullity (or cassation) can be brought against the final and non-appealable judgment or a decision of the court of the second instance regarding the dismissal of the lawsuit or the discontinuance of the proceedings

[55] source: art. 354 of the Code of Civil Procedure, Journal of Laws dated 1964, no. 43, item 296.

[56]. The following statements of the courts of second instance can thus be appealed against with plea of nullity:

- judgment dismissing the appeal;
- a judgment modifying the judgment of the court of first instance;
- a decision setting aside/annulling the judgment of the first-instance court and dismissing the suit;
- a decision setting aside/annulling the judgment of the first-instance court and discontinuing the proceedings;
- a decision dismissing the complaint on the decision of the first-instance court and dismissing the suit;
- a decision dismissing the complaint on the decision of the first-instance court and discontinuing the proceedings;
- a decision dismissing the suit as a result of admitting the complaint on the decision of the first-instance court refusing to dismiss the claim.

In turn, the judgment of the second-instance court annulling/setting aside the judgment of the first-instance court and remanding the case one can lodge a complaint with the Supreme court on the basis of art. 394, 1 11 of the Code of Civil Procedure. Likewise, one can lodge a complaint against decisions of the second-instance courts dismissing the plea of nullity/cassation in accordance with art. 3941 § 1 of the Code of Civil Procedure or dismissing the appeal and discontinuing only appellate proceedings on the basis of art. 394 1 § 3 of the Code of Civil Procedure.

Other matters that are resolved either by means of judgments or decisions include: payment, damages, monetary penalty charges, the dissolution of co-ownership, precaution measures preventing from performing business activity, protection of personal goods, job reinstatement and remuneration, determining the period of employment, determining the financial equivalent for the paid leave, determining the unlawfulness of a final and binding judgment, the right to a retirement pension, updating the entry in land and mortgage register according to the current legal status and many other.

[56] source: art. 398 § 1 of the Code of Civil Procedure, Journal of Laws dated 1964, no. 43, item 296.

The question we are trying to answer via the following analysis will be: what is the amount and percentage of epistemic markers classified into three values displayed by the Polish Corpus? What conclusions can be drawn from the data thus collected? Can we determine, at least tentatively, whether Polish judges are indeed more dependent upon statutory laws and less autonomous in terms of their discretionary power in adjudicating and sentencing?

4.2 **The analysis:**

4.2.1 Polish nouns and nominal phrases as markers of epistemic modality

Although nouns are included in the present analysis, they are not a very reliable category since it is difficult to measure their epistemic value. It was necessary thus, to take into account the environment in which a given word occurred. Thus, in the example below, the occurrence of the word *'bezzasadność'* will not be accounted for since it relates to the court of the lower instance:

1. *Sąd ten uznał bezzasadność roszczenia o naprawienie szkody wynikłej z zaprzestania przez pozwaną opłacania czynszu najmu oraz z tytułu utraconych korzyści.*
   [This court has deemed unfounded the claims to redress the damage as a result of failure to pay the rent and due to lost profits]

Likewise, when comparing the sentences in which a given category appears, we also took into consideration whether the phrase really pertains to the Supreme Court itself or whether it only reports the actions undertaken by the lower instances or somehow describes a general state of affairs. In the example below, it is clearly seen that the high-value epistemic marker 'pewność' *[certainty]* is of a general nature rather than associated with the court's view or opinion:

2. *Natomiast w postępowaniu karnym sąd, który rozpoznaje sprawę karną, aby skazać oskarżonego musi mieć pewność, że przestępstwo zostało przez niego popełnione.*
   [In the criminal proceedings the court which considers the case must be sure that the crime has been committed]

		HIGH MODAL VALUES	MEDIAN MODAL VALUES	LOW MODAL VALUES
Nouns and nominal phrases		pewność *[certainty]*, przekonanie *[conviction]*, przeświadczenie *[belief, persuasion]*, bezzasadność *[groundlessness]*, lakoniczność *[brevity]*, brak podstaw *[lack of grounds];*	w ocenie (Sądu Najwyższego) *[in the opinion of the Supreme Court]* : 65 zdaniem (Sądu Najwyższego) *[in the view of the Supreme Court]* : 62	możliwość *[possibility]*: 511 Wątpliwości *[doubts]:* 93 Prawdopodobieństwo *[probability]:* 13 niepewność *[uncertainty]:* 4 przeczucie, wrażenie, zastrzeżenie *[premonition, impression, restriction]:* 0 Total number of high-value nouns: 15 (2%) Total number of median-value nouns: 127 (19%) Total value of low-value nouns: 544 (79%)

Table 4.1. Polish nouns and nominal phrases as markers of epistemic modality

There were very few occurrences of high-value nouns: if words such as ‘pewność’ or ‘przekonanie’ *[‘certainty’, ‘conviction’]* appeared, they most often referred to the reasoning of lower instance courts or to the litigants who sought the compensation of their claims. Although at first sight nouns such as ‘pewność’ *[‘certainty’]* will be categorized as high-value epistemic markers and ‘możliwość’ *[‘possibility’]* as an instance of low-value epistemic marker, the issue is not such a straightforward one. Let us have a look at two examples:

3. *(…) wypada zatem przyjąć, że spełniając określone zamierzenie ustawodawcy, chroni ona (ustawa nowelizująca) również wspomniane wartości, tj. równość wobec prawa, pewność prawa oraz zaufanie obywateli do państwa i prawa.*
   [(...) therefore, it seems right to assume that by meeting the specific requirements of the legislator, the amending act also protects the above mentioned values, i.e. the equality before the law, legal certainty and the confidence of citizens in the state and law.]

4. *(...) na przeszkodzie zasiedzeniu stały przepisy dekretu, mające charakter nacjonalizacyjny i odczytywane jako wyłączające możliwość nabycia „gruntów dekretowych" przez jakikolwiek inny podmiot.*
   [(...) the usucaption/acquisitive prescription was hindered by the provisions of the Decree of nationalist character and interpreted as precluding the possibility of acquiring "decree land" by any other entity.]

In sentence 3, the underlined collocation does not reveal any true stance- taking on the part of the speaking subject. The same holds for sentence 4, where the word 'możliwość' [*'possibility'*] is used in strictly legal settings. The same applies to 'przekonanie' *['conviction']*.

5. *Przepis ten nie został naruszony, gdyż o ustaleniach faktycznych nie decydowało opisane w zarzucie przekonanie powoda, lecz niesporne fakty, takie jak wybór rady pracowników.*
   [This provision has not been violated because the statement of facts has not been determined under the influence of the plaintiff's conviction put forward in the complaint but rather in consideration of the undisputed facts, such as the choice of the council of workers.]
6. *Roszczenia właściciela przeciwko posiadaczowi rzeczy określone w art. 224 - 225 k.c. są instytucją prawa rzeczowego i przekonanie posiadacza o przysługiwaniu mu prawa do rzeczy musi obejmować przekonanie o przysługiwaniu mu konkretnego prawa rzeczowego.*
   [Claims of the owner against the possessor of the things referred to in Article. 224 - 225 of the Civil Code are the institution of in rem rights and the claims of the possessor that he be entitled to a thing must be of concrete nature.]

As we can see, in both cases, the word in question refers to the third parties' standpoint, not to the reasoning of the court. It turns out that nouns are not a trustworthy category to measure the degree of subjectivity/epistemicity in the Corpus. A solution to this problem might be to concentrate only on head-nouns as occurring in "that-clauses" and derived either from verbs or adjectives. Thus, in a sentence like:

7. *(...) in order to avert the possibility that inadvertent cues from the lineup administrator will suggest the "correct" answer and thereby subvert the independent memory of the witness.*[57]

the expression 'the possibility that' would be included in our analysis on grounds that it is a noun that begins the next clause. In English, this particular approach is favored by authors such as Quirk et al. (1985, p. 1231, pp. 1260–1) and Huddleston et al. (2002, p. 965) who associate

[57] source: https://en.wikipedia.org/wiki/Eyewitness_identification

the ability of head-nouns to take *that-clauses* with their level of abstractness or their being derived from verbs or adjectives. This suggests that nouns are only derivative markers and their occurrence in the corpus should undergo careful scrutiny. Were we to assume that the above theory regarding the head-nouns is relevant in our case, we would omit the following strings in the Polish Corpus:

- *budzić wątpliwość – to raise doubts*
- *wątpliwość zrodziła się/powstała – doubts arose/emerged*
- *ponad wszelką wątpliwość – beyond the shadow of doubt*
- *powziąć wątpliwość – to be in doubt*
- *podać coś w wątpliwość – to put sth into doubt/question*

which are all legitimate markers of epistemicity. We will not, therefore embrace the view above in its entirety although it might be of use if a different research were to be conducted. Therefore, examples below should be included in the analysis.:

8. *Skoro obywatele polscy mają prawo dostępu do służby publicznej na jednakowych zasadach, to przy ocenie kandydatur winna obowiązywać jednolitość systemu ocennego, który ponad wszelką wątpliwość winien cechować się sprawiedliwością.*
   [Since Polish citizens have the right to access to public service on equal terms, this equality should, beyond the shadow of doubt, also apply to the evaluation of the candidates.]
9. *W tej sytuacji budzi uzasadnioną wątpliwość stwierdzenie Sądu Okręgowego, że wnioskodawcy zajęli nieruchomość samowolnie.*
   [In this situation the statement of the Regional Court that the applicant occupied the property unauthorized raises a reasonable doubt.]

As far as ‘możliwość’ *[‘possibility’]* is concerned, we have determined on the basis of 511 occurrences of the word in the Polish Corpus that it does not carry any epistemic load in it. As a derivative of an adjective ‘możliwy’ [‘*possible*’], it would carry some epistemic meaning if, according to the theory of Quirk et al. and Huddleston et al., it occurred as a head-noun, i.e. with the nominal clause such as the one below:

10. *Możliwość, że na pokładzie samolotu była bomba, jest znacząca i wiarygodna.*

    [The possibility that there was a bomb on the board of the plane, is significant and plausible].

It would be noteworthy in this place to delve a bit further into the semantic settings in which the word ‘możliwość’ may occur. From the philosophical point of view, possibility is interpreted as a quality, although it should not be considered as being of binary nature, i.e. being of either positive or negative value. It is usually contrasted with probability which can be always thought of in terms of a scale from 0 to 100%. Therefore, probability has a quantitative definition. On the other hand, possibility has an infinite scale to which it can be attributed.

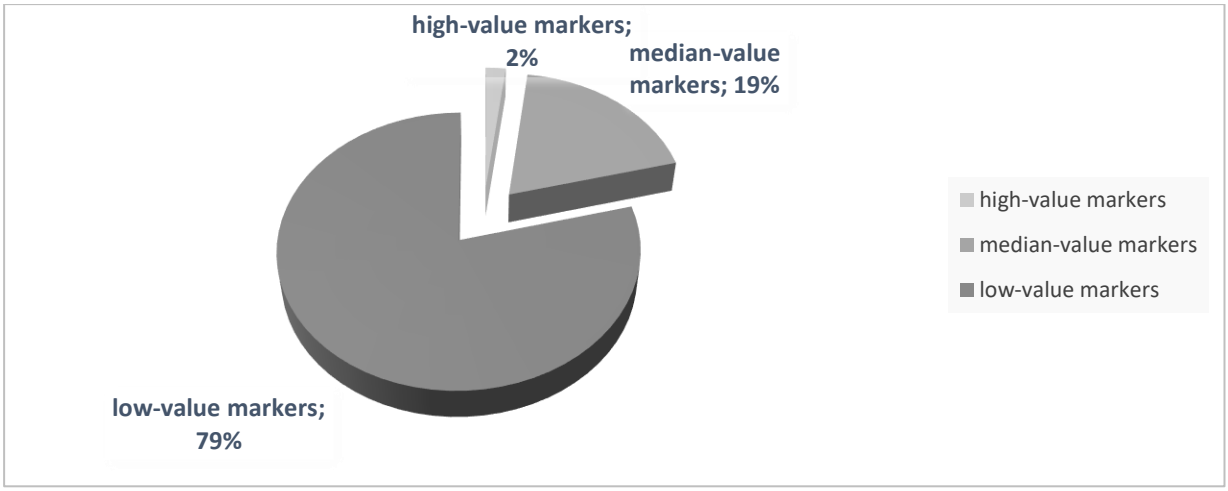

Figure 4.2. High, median and low-value nouns in the Polish Corpus

4.2.2 Polish modal verbs as markers of epistemic modality

	HIGH MODAL VALUES	**MEDIAN MODAL VALUES**	**LOW MODAL VALUES**
Modal verbs	musi *[must]* – 347 *[“cannot” in its various conjugational forms]* - nie można: 480 - nie może: 842 - nie mógł: 138 - nie mogła: 72 - nie mogło: 72 - nie mogą: 30	nie musi *[does not have to]:* 69 trzeba *[have to]:* 341 należy [have to]: 1822 (DEONTIC) należałoby *[would have to/would need to]:* 72 warto *[it is worth]:* 49	*[“can” and “could” in their various conjugational forms]* można: 512 może: 1618 mógł: 138 mogła: 72 mogło: 72 mógłby+ moglaby + mogłoby = 204

	- nie mogli/nie mogły: 56		Total number of high-value modal verbs: 2037 (39%) Total number of median-value modal verbs: 531 (11%) Total number of low-value modal verbs: 2616 (50%)

Table 4.2. Polish modal verbs as markers of epistemic modality

As claimed by Coates, in its most normal usage, epistemic meaning conveys the speaker's confidence in the truth of what he says, based on a logical process of deduction from facts known to him. Thereby we need to take two factors into consideration: logical inference and the extent to which the speaker expresses his confidence in the truth of this inference (Coates 1983: 41). Coates argues that we might represent it on a scale: from the subjective core where the speaker confidently infers that something is the case to the objective periphery where he/she concludes that 'in the light of what is known, it is necessarily the case that x' (ibid: 41).

As far as the high-value modal 'musi' ['*must*'] is concerned, in our corpus it was sometimes difficult to establish the boundaries between its two varieties of 'musi': its root and epistemic alternative. Let us have a look at the two following examples:

11. *Tego rodzaju zarzut musi być oparty na wskazaniu konkretnie oznaczonych przepisów proceduralnych, których naruszenie prowadziło do niedokonania określonych ustaleń.*
    [Such an objection must be based on the identification of procedural rules, the violation of which led to the failure in finding the specific facts.]
12. *(...) niewątpliwe pozostaje jedynie to, że potrzeba wznowienia postępowania karnego musi wynikać z rozstrzygnięcia wskazanego w tym przepisie organu międzynarodowego*.
    [the only thing that remains beyond doubt is the fact that the need to resume the criminal proceedings must derive from the settlement indicated in the provision of an international authority.]

In both cases, we could replace the word *'musi' ['must']* with *'powinien' ['should']* that renders the meaning deontic. Where as in example 11 the context clearly refers us to the obligation/duty on the part of the agent, in example 12 it is somehow less evident due to the occurrence of the modal modifier *'niewątpliwie' ['doubtless', 'undoubtedly', 'beyond doubt']*. However, both

have been classified as deontic since one can 'sense' the presence of some external authority (relevant provisions of the statutes, regulations etc.). Of the overall 347 occurrences, the most frequent colocations where the modal verb 'musi' was to be encountered, include the following:

musi być	*must be*	*106*
musi mieć	*must have*	*14*
musi wykazać	*must show*	*11*
'musi uwzględniać	*must take into account*	*10*
musi wynikać	*must follow from*	*7*
musi oznaczać	*must mean*	*4*
musi istnieć	*must exist*	*6*
musi prowadzić	*must lead to*	*6*

Table 4.3. 'Musi' ['must']: the most frequent collocations

Throughout the analysis, we have observed certain repetitive patterns characteristic for the epistemic settings of the modal verb *'musi'*. There was, however, a number of contexts where epistemic meaning was bound to occur. To these we included:

- *czego konsekwencją musi być (whose consequence must be): 2*
- *musi prowadzić do (must lead to): 6*
- *musi oznaczać (must mean): 4*
- *musi skutkować (must result in): 4*
- *musi wiązać się z (must be related to): 3*
- *musi dojść (must come to): 1*
- *musi budzić (must raise): 2*
- *musi być uznany (must be considered): 4*

When it comes to the most frequent collocation *'musi być' ('must be'),* of all the 106 occurrences, only 6 were of epistemic nature. To these, we included the clusters mentioned above: *'czego konsekwencją musi być' and 'musi być uznany':*

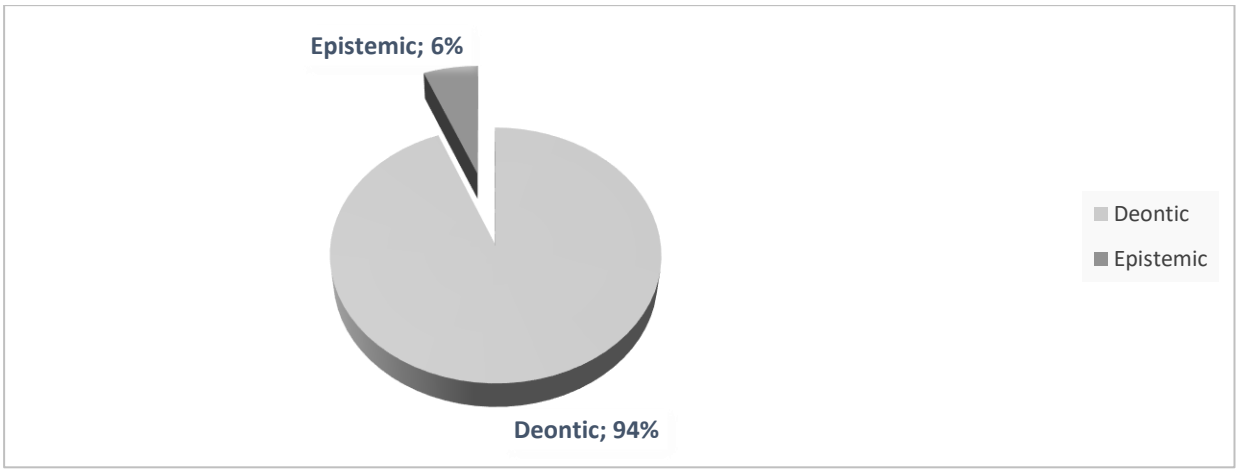

Figure 4.3. 'Musi być' ['must be']: distribution of deontic and epistemic occurrences in the Polish Corpus

Figure 4.4. shows the distribution of deontic and epistemic occurrences of the other most frequent collocations of the high-value modal verb *'musi':*

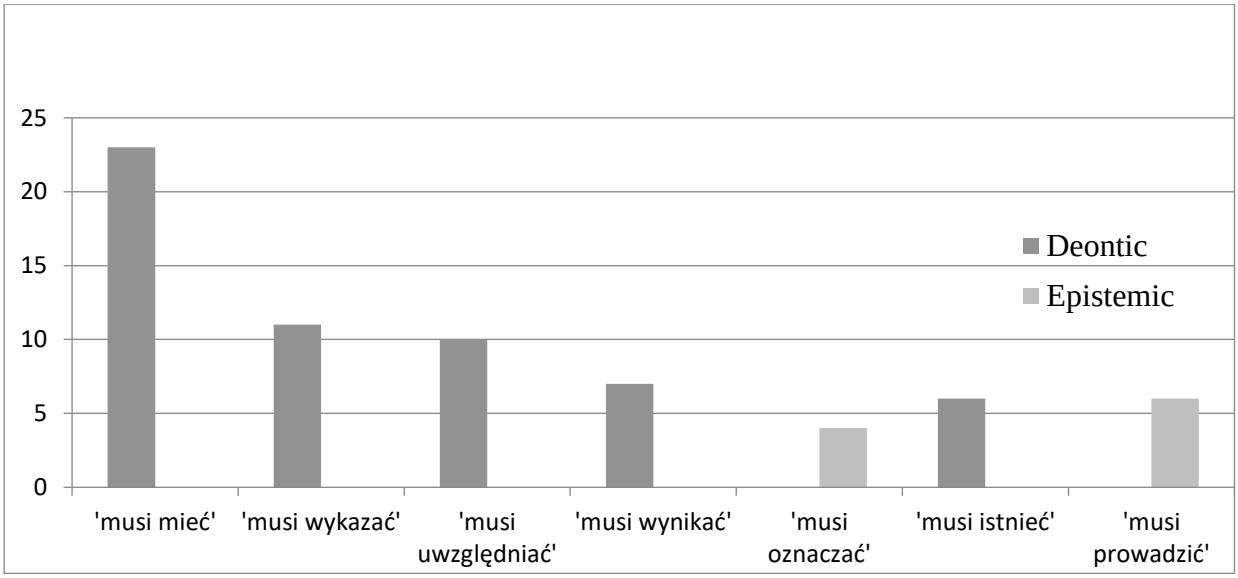

Figure 4.4. The most frequent collocations of the high-value modal 'musi' ['must']

As we can see, the most ubiquitous collocations are deontic with no exceptions. The only cases where the reasoning of the subject was detected include the following two types of phrases: 'musi oznaczać' and 'musi prowadzić'. The analysis of the 'epistemic' collocations, reveals that they form part of the judge's conclusions drawn independently of the external sources and referring to the premises stated earlier. Below we have listed examples where such epistemic settings were observed and included in the analysis:

13. *Wobec tego istotnego braku nie jest możliwa ocena skargi kasacyjnej w granicach jej podstaw, opartych na naruszeniu prawa materialnego, co w konsekwencji musi prowadzić do uchylenia zaskarżonego orzeczenia.*
    [In view of this significant omission, it is not possible to assess the cassation appeal within the limits of its grounds based on a breach of the substantive law, which, in turn, must lead to the annulment of the judgment appealed against.]
14. *kontrola sądu pracy w zakresie stosunków pracy urzędników mianowanych określona w art. 9 ust. 1 ustawy o służbie cywilnej musi oznaczać sankcjonowanie bezprawnych czynności pracodawcy.*
    [The control of the Labour Court in terms of the employment relationships of the appointed officials referred to in Article. 9 paragraph. 1 of the Act on the Civil Service, must mean sanctioning the illegal actions of the employer.]
15. *Już w tym miejscu można zauważyć, że nie są w zgodzie z tym zarzutem przedstawione w odwołaniu wnioski, bowiem skarżący powinien dostrzec, iż potwierdzenie zasadności zarzutu musi skutkować wyłącznie uchyleniem zaskarżonego wyroku oraz wydaniem odpowiedniego orzeczenia następczego.*
    [At this point, one will notice that the conclusions presented in the appeal are not in line with the charges because the applicant should be aware that admitting the substance of the complaint will only result in repealing the judgment appealed against and issuing an appropriate ruling.]
16. *Zakłada, że doszło do naruszenia przepisu oraz pozbawienia możliwości działania. Jasne jest, że między tymi czynnikami musi dojść do interakcji.*
    [It is assumed that there has been a breach of rules and that there was no possibility to act. It is clear that there must be a relation between these factors.]
17. *(...) planowanie pracy w ramach dyżuru medycznego jest związane z przeciętną tygodniową normą czasu pracy, a nie z normą dobową, czego konsekwencją musi być stwierdzenie, że i rozliczanie czasu pracy w ramach pełnienia tego dyżuru musi odnosić się do przeciętnej tygodniowej normy czasu.*
    [(...) Working on medical duty is subject to an average weekly norm of working time, rather than the standard daily. Such a statement leads to the conclusion that settling the working time of the medical staff must be correlated to the average weekly norm of time.]
18. *Tak się jednak nie stało, co musi prowadzić do konstatacji, że termin do wniesienia przez pokrzywdzonego subsydiarnego aktu oskarżenia w ogóle nie rozpoczął w tej sprawie swego biegu.*
    [This has not happened, which must lead to a conclusion that the injured party's deadline for filing a subsidiary indictment has not started at all.]
19. *Odpowiedniość ta musi wiązać się również ze stwierdzeniem, że w odniesieniu do sędziego nie ma zastosowania standard przeciętnego obywatela, co musi mieć znaczenie dla oceny jakości i skuteczności podejmowanych przez sędziego czynności procesowych.*
    [With respect to a judge, such a principle must lead to the conclusion that he/she should not be treated in the same way as an average citizen, the fact which has to be taken into consideration while evaluating the quality and efficiency of the procedural actions undertaken by him/her.]

20. *dołączenie do akt przedmiotowej sprawy tylko odpisów wyroków wydanych w sprawach Sądu Rejonowego, sygn. akt II K 937/09/N oraz Sądu Rejonowego, sygn. akt II K 1369/10, a także zaakceptowanie takiego postąpienia przez sąd odwoławczy musi budzić głęboką dezaprobatę.*
    [adding to the file of the case only the copies of judgments delivered in the cases of the Regional Court, ref. Act II K 937/09 / N and the District Court, ref. Act II from 1369 to 1310 K, as well as accepting such a conduct by the Court of Appeal must arouse deep disapproval.]
21. *Zarzut dokonania ustaleń „bez rzetelnej i pełnej analizy całokształtu zebranego w sprawie materiału dowodowego" z powołaniem się na naruszenie art. 233 k.p.c. musi być uznany za chybiony.*
    [The allegation of determining the facts "without a thorough and comprehensive analysis of the whole evidence" with reference to the violation of Art. 233 k.p.c. must be regarded as ineffective.]
22. *Musi to rzutować na oceną legalności działań podejmowanych od momentu rzeczywistego ogłoszenia tego dekretu.*
    [This must affect the assessment of the legality of actions taken since the actual announcement of the decree.]

There have been also some controversial cases where the boundary between the internal (=epistemic) and external (=deontic) type of modality does not seem to hold clearly enough. For instance in the sentence below, the first part seems to indicate epistemic-related type of reasoning, the second part leaves no doubt as to their deontic tinge.

23. *Nie budzi również wątpliwości, że zgoda inwestora musi się odnosić do zindywidualizowanego podwykonawcy (element podmiotowy), jak również musi dotyczyć konkretnej umowy o roboty budowlane (element przedmiotowy) i nie może być to zgoda blankietowa ogólnie akceptująca możliwość zawarcia przez wykonawcę umów z podwykonawcami.*
    [The consent of the investor must relate to an individual subcontractor (a subject) and must concern a concrete contract for construction services (an object). The said consent should not be of blanket character meaning that it should not generally accept the possibility of concluding contracts between the contractos and the subcontractors.]

The above example has been therefore classified as deontic. In general, the level of abstractness of the verbs that collocate with 'musi' and have been classified as epistemic, is greater than in the case of deontic readings. Pairings such as *'musi zapewnić' ('must ensure'), 'musi wykazać' ('must show/demonstrate')* all refer to actions, not to mental processes of inference. On the other hand, *'musi budzić głęboką dezaprobatę' ('must arouse strong disapproval')* or *'musi prowadzić do konstatacji' ('must lead to a consideration')* are not related to any action on the

part of the agent, but rather evoke some mode of reasoning of the subject. However, we can see that the prototypical meaning of the modal verb ‘musi’ in the Polish part of the Corpus is evidently deontic, as the results of the analysis show.

Let us now proceed to the analysis of the high-value modals ‘nie móc, *[‘cannot’]* in its various conjugational forms. In the below list of the contexts in which the verb “nie może” takes on an epistemic meaning, we might observe certain regularities, amongst other things, the abstractness of the verbs that collocate with ‘nie może’ . This abstractness was also the case with the epistemic occurrences of the verb ‘musi’. Epistemic settings for “nie może” are as follows:

— *nie może być uznany/-a/-e : 38*	— *can not be considered*
— *nie może mieć (zatem) (żadnego) znaczenia/ wpływu/ związku/charakteru decydującego: 19*	— *cannot (therefore) have (any) significance / impact /relationship /decisive character*
— *nie może stanowić podstawy : 18*	— *cannot constitute the grounds*
— *nie może prowadzić do : 13*	— *cannot lead to*
— *nie może być mowy/ mowy być nie może: 12*	— *there can be no question*
— *nie może być traktowana/-y/-e : 12*	— *cannot be treated*
— *nie może jednak : 10 (with conjunctions communicating that something is contrary to someone’s expectations)*	— *cannot, however (with conjunctions communicating that something is contrary to someone’s expectations)*
— *nie może być utożsamiany/-a/-e : 8*	— *can not be identified*
— *nie może odnieść (zamierzonego skutku/pożądanego rezultatu): 8*	— *cannot achieve (the desired effect / the desired result)*
— *zatem nie może/ więc nie może/ z tego względu nie może: 7*	— *therefore can not*
— *nie może budzić wątpliwości: 7*	— *cannot raise any doubts*
— *nie może być interpretowany/-a/-e: 4*	— *cannot be interpreted*
— *nie może uzasadniać: 4*	— *cannot justify*
— *nie może to być (argument decydujący/okoliczność/środek: 3*	— *cannot be a (decisive argument / circumstance / center*
— *nie może skutkować: 3*	— *cannot result in*
— *nie może ulegać wątpliwości: 2*	— *there can be no doubt:*
— *nie może być postrzegany/-a/-e : 2*	— *cannot be seen as*

— *nie może dotyczyć : 2*	— *cannot apply to*
— *nie może zostać uwzględniony/-a: 2*	— *can not be accepted*
— *nie może być kwestionowany/-a/-e: 2*	— *can not be challenged*
— *nie może przemawiać za: 2*	— *cannot speak for*
— *nie może być rozumiany/-a/-e: 2*	— *can not be understood*
— *nie może być uważany/-a/-e: 2*	— *cannot be considered*
— *nie może podlegać (ocenie/wykładni rozszerzającej): 2*	— *cannot be subject to (assessment / broad interpretation)*
— *nie może być podważany/-a/-e: 1*	— *cannot be challenged*
— *nie może być odczytywany/-a/-e: 1*	— *can not be read*
— *nie może zostać kwalifikowany/-a, zakwalifikowany/-a : 1*	— *can not be qualified*
— *nie może być oceniony/-a/-e: 1*	— *cannot be assessed*
— *nie może być odnoszony: 1*	— *cannot be referred to*
— *nie może być poddawany/-a w wątpliwość: 1*	— *cannot be put into in question*
— *nie może być przedmiotem analizy (?): 1*	— *cannot be the subject of analysis*
— *nie może w żadnym stopniu: 1*	— *cannot in any way*
— *nie może determinować: 1*	— *cannot determine*
— *nie może wchodzić w rachubę: 1*	— *cannot be taken into account*
— *nie może świadczyć o : 1*	— *cannot prove*
— *nie może być miarodajne: 1*	— *cannot be reliable*
— *nie może zostać inaczej zinterpretowany: 1*	— *cannot be interpreted otherwise*
— *nie może być rozpatrywany/-a/-e: 1*	— *cannot be considered*
— *nie może się utrzymać: 1*	— *cannot be maintained*

Table 4.4. 'Nie może' ['cannot']: list of epistemic settings

As regards the collocation *'nie może być uznany' ['cannot be considered'*], it can be either deontic or epistemic:

24. *(...) skarżący również abstrahuje od wiążących ustaleń faktycznych, wobec czego zarzut ten nie może być uznany za trafny.*
    [(...) the applicant also disregards the binding findings of fact, therefore the plea cannot be considered accurate.]
25. *Wskazał także, że Skarb Państwa przed 1960 r. nie może być uznany samoistnym posiadaczem spornej nieruchomości z tego względu, że nieruchomość została uznana za mienie opuszczone w rozumieniu art. 1 dekretu ... .*

[He also pointed to the fact that the State Treasury before 1960 cannot be considered an autonomous possessor of the property in question on the grounds that the property has been recognized as an abandoned property within the meaning of art. 1 of the Decree ....]

Whilst sentence 24 shows traces of reasoning beyond the statutes and can therefore be considered epistemic, sentence 25 invokes some previous decisions on the basis of which the said property should be considered deserted. Figure 4.5. illustrates the distribution of deontic and epistemic settings in the case of the Polish modal verb ‘nie może’ . [‘cannot’]. Altogether, out of 842 total occurrences of the modal ‘nie może’ 236 (28%) were classified as epistemic and 606 (72%) as deontic.

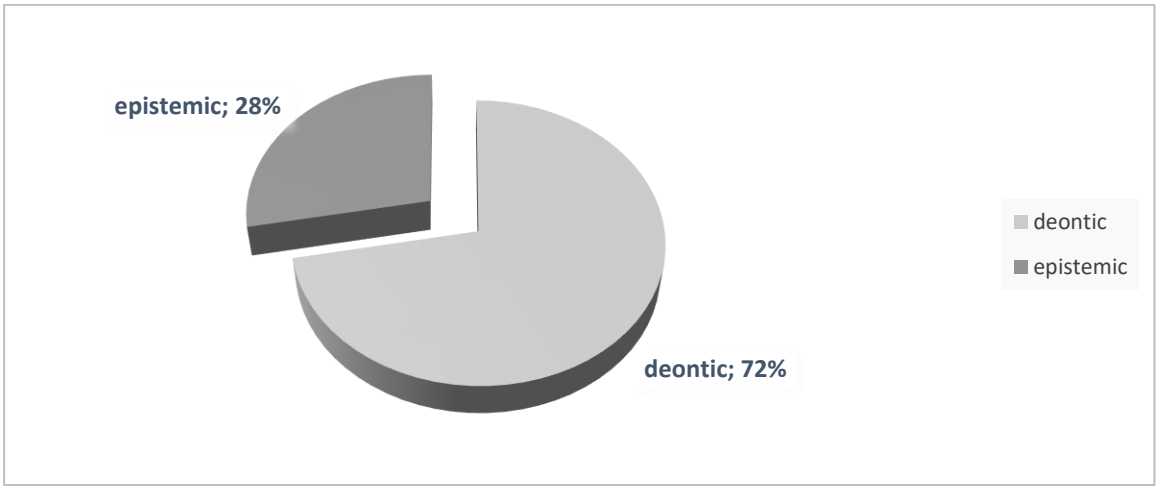

Figure 4.5. High-value modal verb 'nie może' [‘cannot’]: deontic and epistemic occurrences in the Polish Corpus

As can be seen, the verb ‘nie może’ is encountered considerably more often in the deontic context than in the epistemic one. This is probably to be attributed to its ‘personal’ and ‘concrete’ character. Due to its prohibitory meaning, it usually refers to an act-situation where one ought not to do something. The epistemic meaning is thus secondary in comparison with the deontic one (the prototypical one).

Similar observations emerge when we analyzed the same verb in the plural form: *‘nie mogą’.* Here, as in the previous case, it is the deontic meaning that prevails and seems to represent the prototypical meaning ascribed to this particular verb form. Of all 212 instances 30 have been classified as expressing an opinion, surmising and presuming. All of them belong to one set, namely: *‘nie mogą być uznane/ traktowane/ utożsamiane/postrzegane/uważane/zakwalifikowane/interpretowane’ [cannot be*

considered/treated/ regarded/ deemed/ qualified/ interpreter]. The rest have been classified as deontic since they lean heavily towards the sense of legal obligation and conformity with written norms. As in the sentence below: the Court explains the principles of the easement of passage which should not be based on family relations.

> 26. *Podstawą ukształtowania służebności przechodu nie mogą być tylko dotychczasowe relacje zainteresowanych, oparte na stosunkach rodzinnych i zezwolenie na przejście będące wynikiem życzliwości.*

In the English translation we would be inclined to use 'should not' which evidently points to the normative aspect rather than the point of view of the Court:

> *26b. Establishing the easement of passage should not be based on the to-date relations of the parties being a result of affinity or a permit granted out of kindness*.

The same applies to the majority of cases where *'nie mogą'* occurred: *'nie mogą stanowić podstawy', 'nie mogą służyć ocenie' or 'nie mogą prowadzić do'* would be of deontic rather than epistemic type due to the authority of norms which are always invoked or their presence is somehow noticeable and deducible from the context:

> 27. *Prawidłowa wykładnia tego przepisu prowadzi do wniosku, że powyższe okoliczności mogą wpłynąć na samą interpretację faktycznie złożonego oświadczenia woli, ale nie mogą prowadzić do wprowadzenia dodatkowych treści (zastrzeżeń) warunkujących skuteczność tego oświadczenia, które nie wynikają z jego literalnego brzmienia.*
>
> *[The correct interpretation of that provision leads to the conclusion that these circumstances may affect the interpretation of a declaration of intent that was actually filed but may not lead to the introduction of additional content (reservations) determining the effectiveness of this statement, which did not result from its literal wording.]*

Figure 4.6. presents the most frequent occurrences of the high-value modal verb 'nie mogą' ['cannot' -3rd person pl] and table 4.5. provides a closer context of the said phenomenon.

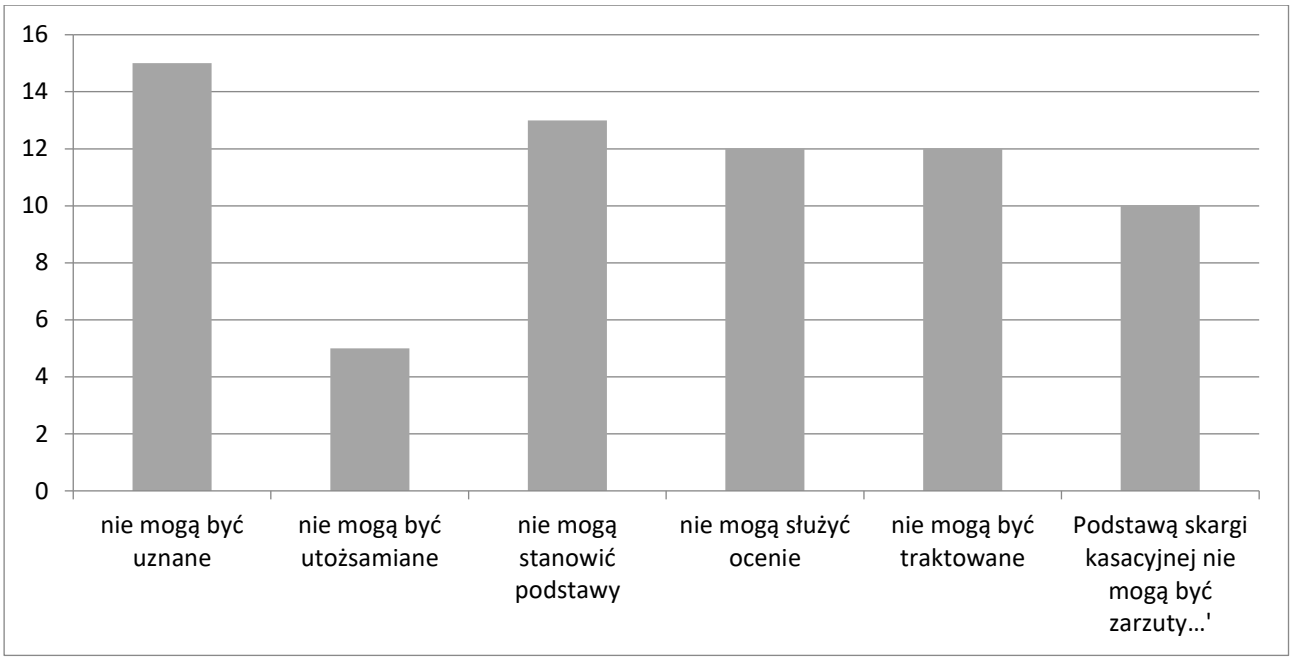

Figure 4.6. The most frequent clusters of the modal verb 'nie mogą' [‘cannot’ 3rd person pl] in the Polish Corpus

— *nie mogą być uznane/ traktowane/ utożsamiane/postrzegane/ uważane/ zakwalifikowane/interpretowane: 30*	— *can not be considered / treated / identified / seen / considered / classified / interpreted: 30*
— *Według art. 3983 § 3 k.p.c. podstawą skargi kasacyjnej nie mogą być zarzuty dotyczące ustalenia faktów lub oceny dowodów : 16*	— *According to Art. 3983 § 3 of the Code of Civil Procedure, complaints concerning the determination of facts and assessment of evidence cannot constitute the basis for a cassation appeal : 16*
— *nie mogą stanowić podstawy’: 9*	— *cannot serve as a basis: 9*
— *nie mogą służyć ocenie’: 4*	— *cannot be used for evaluation : 4*
— *nie mogą prowadzić do: 3*	— *cannot lead to: 3*

Table 4.5. The most frequent clusters of the modal verb 'nie mogą' [‘cannot’ 3rd person pl

On the basis of *‘nie mogą być’* we can also observe how fixed the legal language can be: the sentence *‘Według art. 3983 § 3 k.p.c. podstawą skargi kasacyjnej nie mogą być zarzuty dotyczące ustalenia faktów lub oceny dowodów’* [58] appeared 16 times in almost the same form: the court refers to the said principle due its being infringed considerably often. As far as

[58] ‘According to art. 3983 § 3 of the Polish Code of Civil Procedure, the complaint in cassation cannot be based on charges concerning the determination of facts and assessment of evidence '.

the verb ‘nie można’ is concerned, its occurrences in the corpus were mostly of epistemic character. Altogether, out of 588 occurrences of the high-value modal *‘nie można’,* 480 (82%) were classified as epistemic whereas 108 (18%) belonged to the deontic-type of modality (see fig. 4.7).

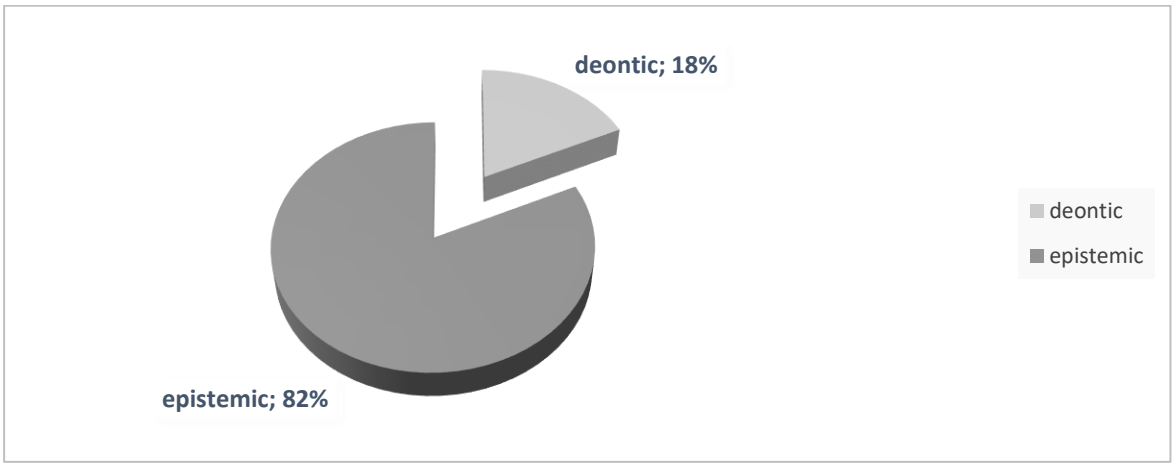

Figure 4.7. High-value modal verb 'nie można' [‘one cannot’]: deontic and epistemic occurrences in the Polish Corpus

The reason behind this is probably to be associated with its impersonality. Our list of epistemic contexts for ‘może’ included a lot of passive constructions (‘może być uznany’, ‘może być traktowany’ etc). This leads us to a conclusion that epistemic settings display a greater level of abstractness, a regularity that can be observed not only in the case of ‘można’ but ‘musi’ as well. The above inference would confirm the claims of those who deem the epistemic meaning as derivative (evolved in the course of language change) from deontic, or root meaning. Indeed, in the majority of its occurrences, epistemic ‘musi’, ‘nie może’ and ‘nie można’ collocated with abstract verbs to form metaphorical expressions. In the sentences below we might see some proofs of the observed phenomenon:

28. *Nie można jednak nie zauważyć, że immunitet formalny prokuratora (art. 54 ust. 1 ustawy z dnia 20 czerwca 1985 r. o prokuraturze, Dz. U. 2014.504) stwarza przeszkodę prawną, w rozumieniu art. 104 § 1 k.k.,*
    [One cannot fail to notice that the formal immunity prosecutor (art. 54 paragraph. 1 of the Act dated 20 June 1985 on the Prosecutor's Office, Journal of Laws no 2014, 504) creates a legal obstacle, within the meaning of art. 104 § 1 of the Polish Penal Code.]
29. *Skardze kasacyjnej nie można odmówić słuszności, chociaż nie wszystkie podniesione w niej zarzuty zasługiwały na uwzględnienie.*

[It cannot be denied that the application for cassation is justified though not all charges raised therein deserved consideration.]

In example 28, although a reference to the statute is clearly made, the structure *'nie można nie zauważyć' ['one cannot ignore the fact that…'*] should be considered epistemic since it is indicative of the mental processes going on in the mind of the speaker/writer. In sentences 30 and 31 below one can also detect metaphorical coloring :

30. *Nie można też, przed przedstawieniem ostatecznego rezultatu wykładni, pozostawić poza zakresem rozważań kierunek zmian legislacyjnych.*
    [Before determining the final interpretation, one cannot ignore the direction of legislative changes.]
31. *(…) nie można mieć jakichkolwiek wątpliwości, iż sąd II instancji oparł swoje rozstrzygniecie nie tylko na okolicznościach, które nie zostały w ogóle ustalone, ale i na takich, które nie mają wyznacznika w normie zawartej w art. 115 § 2 k.k.,… .*
    [(...)one cannot have any doubt that the second instance court based its decision not only on the circumstances that were not fixed at all, but on also on those that cannot be referred to the norm contained in Article. 115 § 2 of the Polish Peanl Code.

Only several expressions with which high-value modal 'nie można' collocated were classified as deontic. The majority took on epistemic meaning which only confirms what has been stated so far: that the impersonal character of 'nie można' determines the proximity of abstract reasoning on the part of the Supreme Court judges. Example 32 can again confirm this regularity.

32. *Reguła wnioskowania z większego na mniejsze (argumentum a maiori ad minus) i elementarne zasady logiki nakazują zatem przyjąć, że w odniesieniu do lżejszej kategorii przewinień dyscyplinarnych nie można przyjąć założenia odmiennego.*
    [The rule of inference from a larger to smaller (argumentum a maiori ad minus) and the elementary principles of logic lead to a conclusion that, in relation to the lighter disciplinary offenses one cannot make a different assumption.]

The deontic occurrences were observed where the lexical verb clearly referred to some action.

33. *(…) nie można ani obecnie ani również w przyszłości przypisać mu deliktu dyscyplinarnego, gdyż stoi temu na przeszkodzie zakaz reformationis in peius.*

[(...)he cannot be charged for a disciplinary tort neither now nor in the future, as precluded by the prohibition of reformatio in peius.]

Figure 4.8. illustrates what types of clusters were most frequent in the case of the verb ‘nie można’.

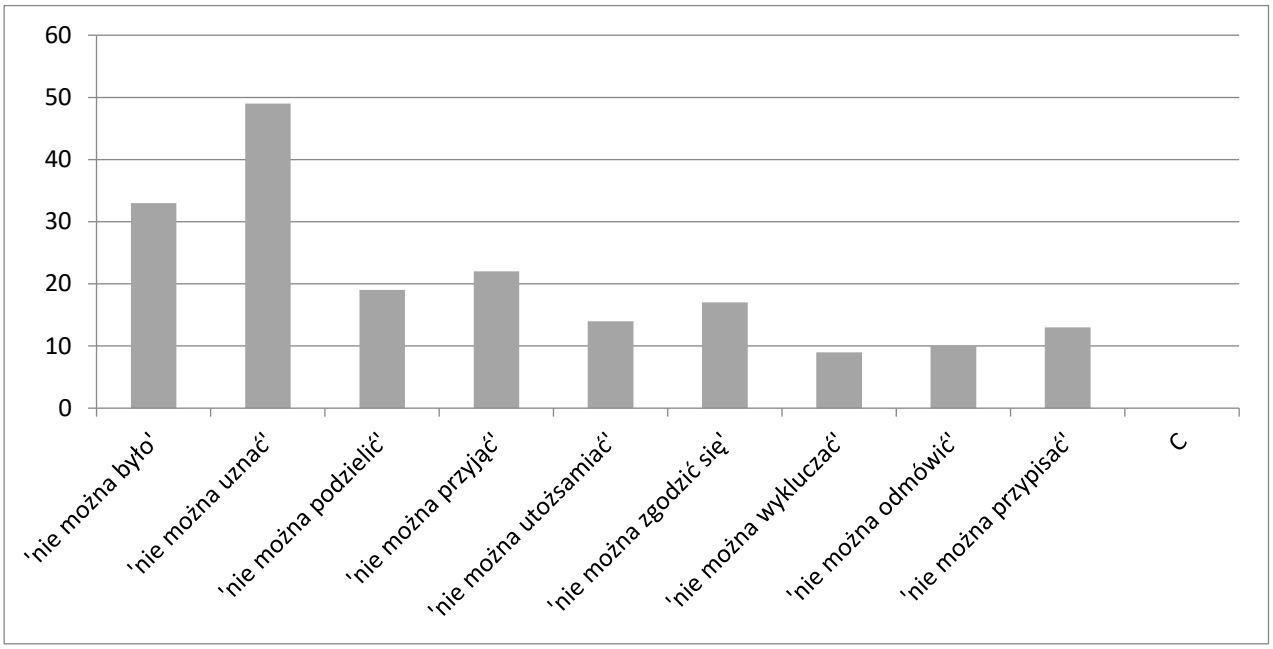

Figure 4.8. The most frequent clusters of the modal verb 'nie można' [‘one cannot’] in the Polish Corpus

We might observe that the most often encountered clusters include *‘nie można było’ and ‘nie można uznać’*. Let us analyse these two cases. The deontic *‘nie można było’* occurred in 18 (55%) sentences and the epistemic was detected in 15 (45%) of them (see fig. 4.9.)

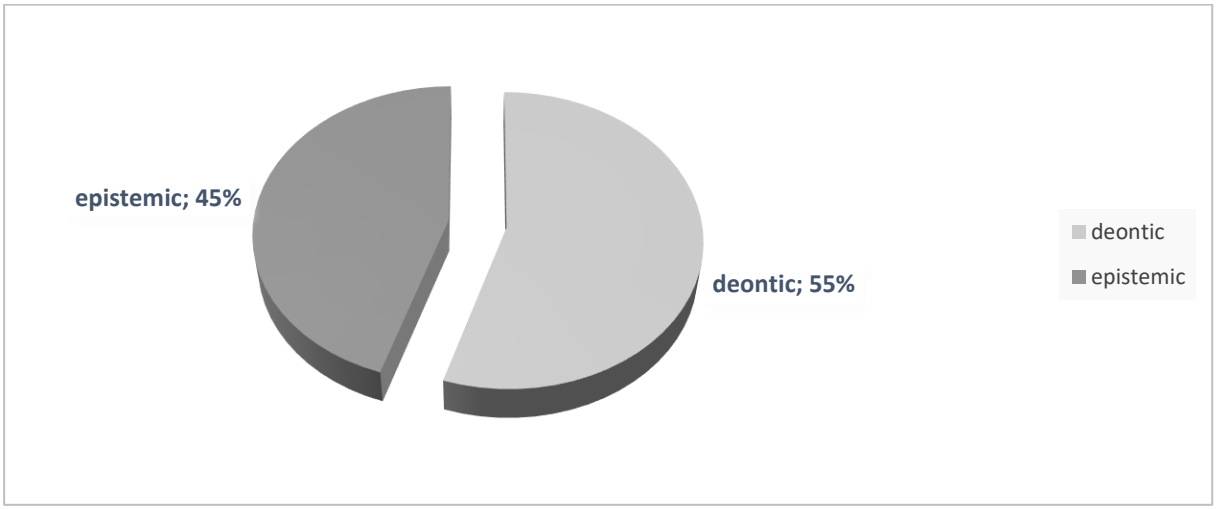

Figure 4.9. 'Nie można było' [‘one cannot/could not have’]: deontic and epistemic occurrences in the Polish Corpus

The modal verb ‘nie można było’ *[‘one could not have’]* tends to occur more frequently in the deontic sense. Based on the previous remarks, we might assume that deontic sense goes hand

in hand with active verbs, verbs that semantically refer to some action on the part of the agent. Greater amount of the deontic variant in the past constructions seems to indicate that we refer to the past more often to give account of some activities, events that involved some operation, process, reaction. In our case, it referred to the lack of capability to perform that action. Statistically, we are therefore less induced to reconstruct our state of mind or reflections in which we indulged. The above observation, therefore, seems to work equally well for the legal register as for the everyday use of modals. The second most frequently encountered collocation ‘nie można uznać’ was predominantly epistemic. Of 49 occurrences, only 5 (10%) were classified as deontic.

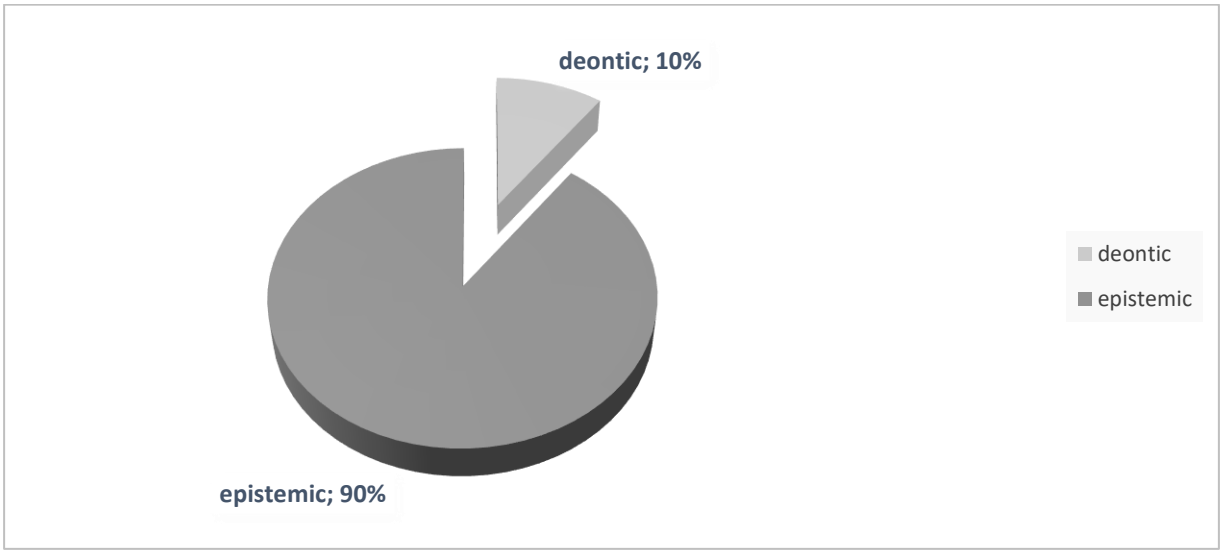

Figure 4.10. 'Nie można uznać' [‘one cannot consider’]: deontic and epistemic occurrences in the Polish Corpus

Upon analysis of the cluster, we drew a conclusion that depending on the context, it displayed various degrees of abstractness. In some cases it was evident at first sight that we are dealing with an epistemic variant of the modal verb occurrence. In some contexts, however, the choice whether to classify a given unit to either this or that category turned out more difficult. These ‘fuzzy’ boundaries’ show us how subtle the nuances of meaning might be and how the difficult it is to tell the derivative (abstract) sense apart from the literal one. We concluded, therefore, that where ‘nie można uznać’ swayed more in the direction of obligation and duty and could be equated with ‘should not be deemed’ it was to be classified as deontic. Where, in turn, it could

be translated as ‘cannot be deemed/considered just/sufficient/coherent’ because it would defy the principles of reason and logic, then it would have to be classified as epistemic. The above remark would apply to the cluster ‘nie można’ in general. Let us take a look at the following several examples:

34. *(…) nie można odmówić skarżącemu badania bezskuteczności egzekucji w zakresie zajętych ruchomości i zaniechania ich dalszej egzekucji… - DEONTIC*
    [(...) the applicant cannot be refused the inquiry into the ineffectiveness of enforcement of the seized movables and abandoning of their further executions…]
35. *Nie można odmówić słuszności odwołaniu obrońcy sędzi, w którym wyartykułowane zostały okoliczności wskazujące na faktyczną niemożność właściwego wywiązania się z wszystkich obowiązków. – EPISTEMIC/METAPHORICAL*
    [The appeal of the judge's counsel for the defence cannot be denied validity since it articulated the circumstances indicating the actual inability to properly comply with all the obligations.]

The first example takes on the deontic shade since the applicant cannot be refused the inquiry due to some external binding rules or authority that require this to take place in a given fact-situation. In the second one, in turn, we come across a more figurative variant of the collocation ‘nie można odmówić’ [*‘one cannot deny’*], in this case ‘one cannot deny the validity of the decision to recall the judge who is no able to fulfill all his duties’.

Let us now return to the case of past modal forms of the high-value category ‘nie mógł’, ‘nie mogła’, ‘nie mogło’. By default their meaning will be deontic (lack of ability or capability of the agent in the past). However, since we deal here with the genre of a court judgment, we need to take into account the specificity of a context where these phrases occur. Thus, their settings will mostly be epistemic, i.e. referring to the findings of the judge who reconstructs the scenario of events that led to the crime, violation or infringement.

As the following examples show, the type of meaning they represent may be either deontic or epistemic. The case is thus not so straightforward.

36. *W tej sytuacji niezłożenie przez powoda reklamacji, o której mowa w § 9 rozporządzenia wykonawczego, nie mogło przyczynić się do powstania po jego stronie szkody.*
    [In this situation, the plaintiff's failure to lodge a complaint, referred to in § 9 of the executory order, could not have contributed to the damage.]

37. *W tym przypadku, gdy trwał stan naruszenia prawnych zakazów nie mogło dojść do naruszenia miesięcznego terminu do rozwiązania umowy o pracę.*
    [In this case, in the state of continued violations of bans, one-month's notice to terminate the contract of employment could not have been breached.]
38. *Tym samym ministerstwo stało się urzędem cywilnym, a więc nie mogło być w jego strukturach jednostek organizacyjnych, w których pełnili służbę funkcjonariusze Policji.*
    [Thus, the ministry has become a civil office, and thus it could not have consisted of organizational units, where police officers were on duty.]
39. *Rację ma skarżąca zarzucając naruszenie art. 172 § 1 i 2 k.c. wskutek przyjęcia przez Sąd odwoławczy, że przed 2002 r. zasiedzenie nie mogło biec przeciwko rodzicom wnioskodawczyni, skoro wnioskodawczyni nie była w konflikcie z rodzicami.*
    [The applicant is right when alleging the breach of Article. 172 § 1 and 2 of the Civil Code due to the Court of Appeal's determining that before 2002 prescription could not run against the parents of the applicant since the applicant was not in conflict with her parents.]
40. *Załączone do kasacji oświadczenie, mające pochodzić od M. R., nie mogło mieć znaczenia dla rozstrzygnięcia, bowiem, pomijając mało stanowczy ton tego oświadczenia, nie sposób mówić o wadliwości orzeczenia Sądu odwoławczego, z punktu widzenia kontroli kasacyjnej, w sytuacji, gdy oświadczenie to nie było Sądowi znane.*
    [The statement attached to the appeal supposedly written by M.R., could not be of any importance for the resolution. Leaving aside its inassertive tone, it was not known to the Court of Appeal and thus, its judgment cannot be blamed for faultiness in terms of the review function.]

While as examples 36-38 point to 'common sense' reconstruction of events by the judge investigating the matter, examples 39 and 40 are not so clear-cut examples of either epistemic or deontic type of meaning. Upon first analysis of the expression in example 39, we would be tempted to relate it to legal provisions which are even mentioned at the beginning of the sentence. However, a closer look enables us to deduce that what is more important here is the fact that the applicant 'was not in conflict with her parents'. It is thus this circumstance that precludes the running of the prescription period. All the above examples would be, therefore, classified by the author as instances where epistemic type of modality comes to the fore. The total number of occurrences in the case of *'nie móc'* in the past is 282. More detailed statistics are presented in figure 4.11.

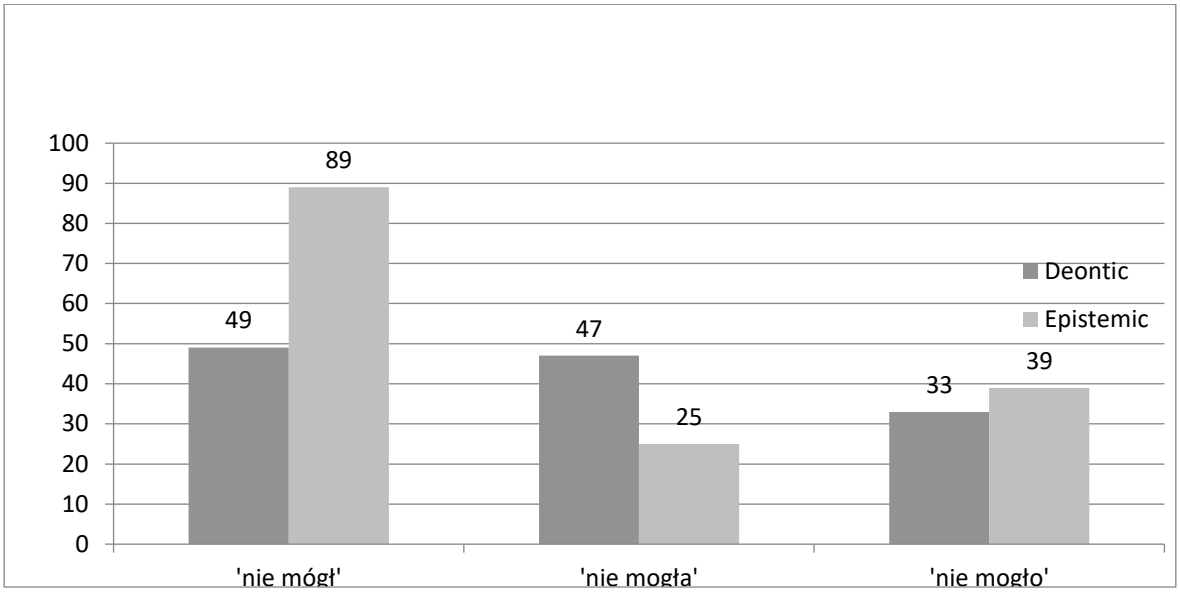

Figure 4.11. 'Nie móc' [‘cannot’] clusters in the past [3rd person sng]: deontic and epistemic occurrences in the Polish Corpus

The overall outcome of deontic versus epistemic distribution of ‘nie móc’ in the past in the Polish Corpus is 129 (46%) versus 153 (54%) readings respectively. The distribution is thus quite even. It turns out that despite the general assumption that ‘nie móc’ represents mostly lack of capacity or possibility due to some external constraints, which in the legal register are obviously related to provisions and norms imposed from above, on the basis of the data obtained, we might advance a claim that the epistemic-type of meaning is equally well represented. Most probably, it is due to the character of the genre of the legal judgment: the reasoning underlying each argumentation indicates that the logic employed by the subject is not only a matter of the existing codes and statues but also of the ‘common sense’, the term so willingly used when referring to the argumentation of the common law judges. What we find out, therefore, is that Polish judges are not so far behind as far as the ‘common sense’ is concerned. It is, however, the conclusion we draw on the basis of the judgments of the Supreme Court. We cannot overgeneralize and apply it to the whole judiciary since additional research would have to be conducted to investigate whether these findings apply for the lower instances as well. Figure 4.12. illustrates the deontic and epistemic modality in the case of the high-value modal verb 'nie móc' in the past:

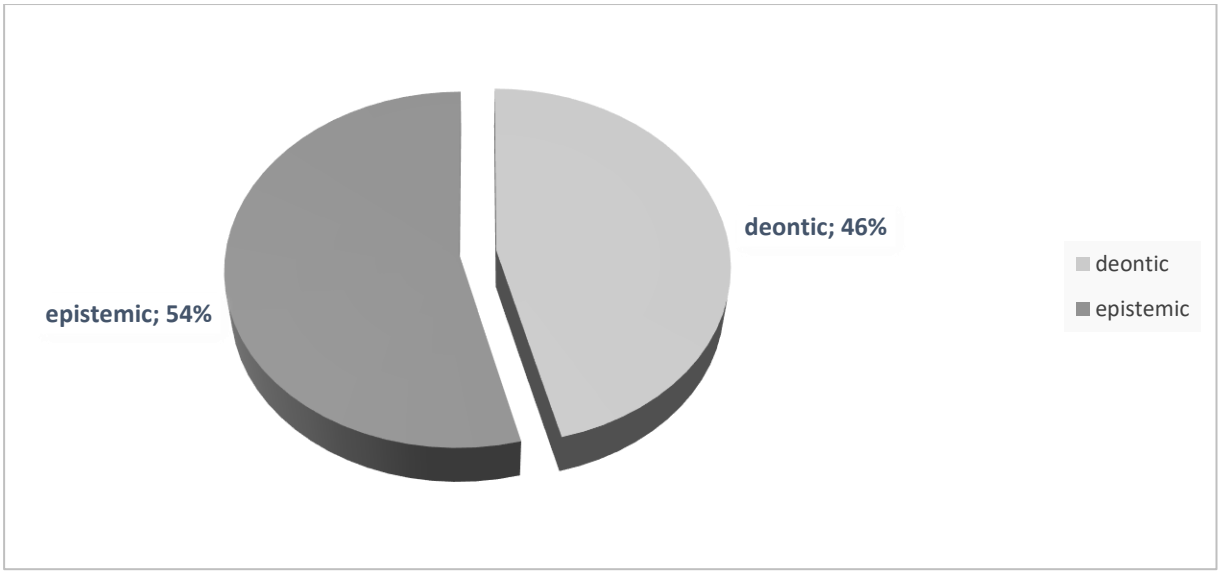

Figure 4.12. High-value modal verb 'nie móc' [‘cannot’] in the past: deontic and epistemic occurrences in the Polish Corpus

Let us proceed to the epistemic versus deontic nature of the most frequent clusters of the low-value modal ‘może’ in its different conjugational forms. Of all 1618 occurrences, the most frequent ones include:

— *może być: 423*	— *can be*
— *może stanowić: 67*	— *can constitute*
— *może mieć: 57*	— *can have*
— *może nastąpić: 55*	— *can follow*
— *może zostać: 54*	— *can become*
— *może prowadzić: 21*	— *can lead*
— *może żądać: 36*	— *can demand*
— *może dochodzić: 15*	— *can claim*
— *może polegać: 10*	— *can rely*
— *może uzasadniać: 10*	— *can justify*
— *może wynikać: 14*	— *can be the result of*

Table 4.6. Low-value modal ‘może’ [‘can’]: the most frequent clusters

Figure 4.13 illustrates the types of clusters of the low-value modal ‘może’ that were most often to be found in the Polish corpus apart from ‘może być’ which will be accounted for separately:

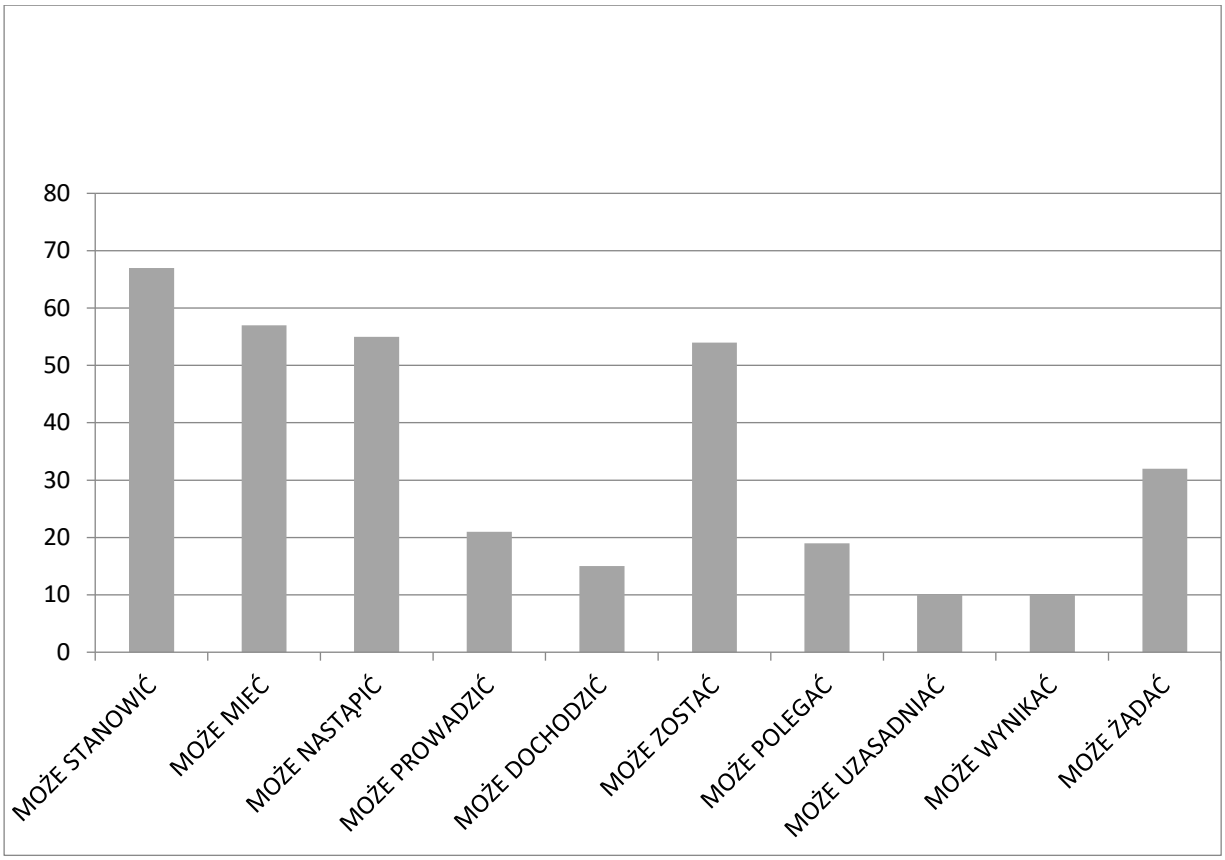

Figure 4.13. Low-value modal 'może' ['can'] : the most frequent types of clusters in the Polish Corpus

According to our observations presented with regard to the high-value modals 'musi' and 'nie może' (with its variations), epistemic meanings are most often to be found in rather abstract settings where the semantics of the modal is considered to be derivative in relation to the 'root' (primary) reference. Let us thus analyse the settings for the above collocations to verify whether this rule holds in the present case.

The most prominent collocation, 'może być', has been classified as epistemic in the neighborhood of evaluative expressions such as *'może być określane/oceniane/postrzegane/rozumiane/uznawane/traktowane/rozpatrywane' [can/might be determined/evaluated/understood/considered/deemed/regarded]*. Altogether 70 occurrences of such clusters were identified. Thus, out of 417 incidents of *'może być',* mere 70 (17%) were related to epistemic possibility, expressing an opinion, surmising and presuming. All the other (347 or 83%) were deontic, that is, expressing what is allowable and legitimate given the

binding norms and paragraphs. Below a figure illustrating a percentage distribution of deontic and epistemic modality in the case of the low-value modal verb ‘może być’:

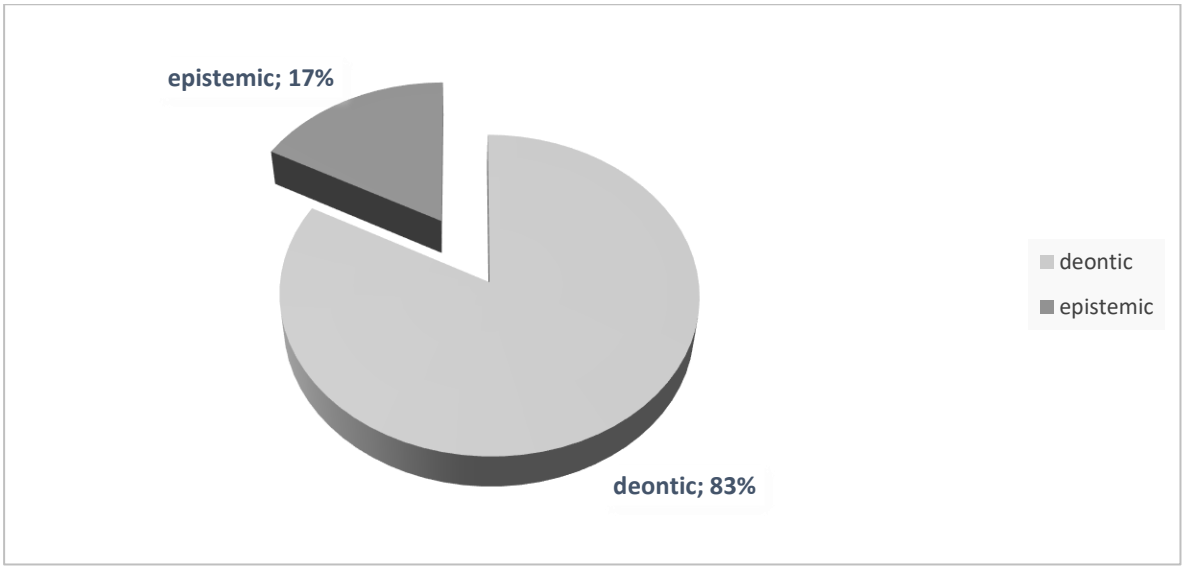

Figure 4.14. Low-value modal verb 'może być' [‘can be’]: deontic and epistemic occurrences in the Polish Corpus

As with the high-value Polish modals in the passive form, the probability for the analyzed expression to be epistemic was considerably higher if it occurred in the passive voice.

41. *Na wstępie (...) wskazać należy, że zgodnie z art. 519 k.p.k. przedmiotem zaskarżenia kasacją może być tylko prawomocny wyrok sądu odwoławczego kończący postępowanie.*
    [At the beginning (...) it should be noted that in accordance with Art. 519 of the Code of Criminal Procedure, only a final judgment of the Court of Appeal terminating the proceedings can be subject to the cassation complaint].
42. *Według powołanego ostatnio przepisu, zasada ograniczenia zatrudnienia do wymiaru nie niższego niż ½ obowiązkowego wymiaru zajęć może być stosowana, gdy z przyczyn, o których mowa w art. 20 ust. 1, nie ma możliwości zatrudniania nauczyciela w pełnym wymiarze zajęć.*
    [According to the recently established rule, the principle of limitation of employment to not less than ½ of compulsory teaching time can apply, if due to the reasons referred to in Article. 20 paragraph. 1, there is no possibility of hiring a full-time teacher.]
43. *Oznacza to, że podstawę stwierdzenia przyczynienia stanowi zachowanie, które może być uznane za jedno z ogniw w normalnym toku zdarzeń.*
    [This means that the conduct which may be considered as one of the links in the normal course of events may constitute a basis for determining a contribution.]
44. *Pomówienie może być uznane za pełnowartościowy dowód tylko wówczas, gdy w kontekście określonych ustaleń nie jest sprzeczne z innymi dowodami, przede wszystkim nie relacjonuje różnych wersji tego samego zdarzenia.*
    [Slander can be considered a competent proof only if it is consistent with other evidence in the context of the specific findings. Above all, there should not be different versions of the same event.]

Examples 41 and 42 have been classified as deontic since they explicitly invoke the relevant articles that are applicable in particular cases. On the other hand, examples 43 and 44 contain evaluative instances of ‘może być’ in the passive voice where something is possible given the state of knowledge of the subject.

In the case of the other most frequent clusters featuring the modal auxiliary *‘może’*, it was mostly the verb and its semantics that determined whether a given expression was qualified as deontic or epistemic. Thus, depending on either ‘active’ or ‘passive’ meaning, the expressions were grouped as follows (the total number of instances calculated in the Corpus are given next to each verbal group):

DEONTIC	***EPISTEMIC***
Może żądać [can/may demand]ć: 32 *Może dochodzić [can/may pursue his/her claim]: 15*	*Może nastąpić [can follow]: 55* *Może stanowić [can constitute]: 67* *Może polegać [can/may consist]: 19* *Może mieć [can have]: 57* *Może zostać [can become]: 54* *Może wynikać [can be the result fof]: 10* *Może prowadzić [can lead to]: 20* *Może uzasadniać [can justify]: 10*

Table 4.7. Low-value modal ‘może’ [‘can’]: deontic and epistemic clusters

As we can see, the verbs occurring mostly in the deontic settings are ‘personalized’ and require an agent that performs a particular action. In contrast, those that displayed epistemic tendencies usually express some abstract and potential situation. Out of all 529 analyzed verbal clusters, 395 (75%) instances were classified as deontic and 134 (25%) as epistemic. Figure 4.15. illustrates this dependency.

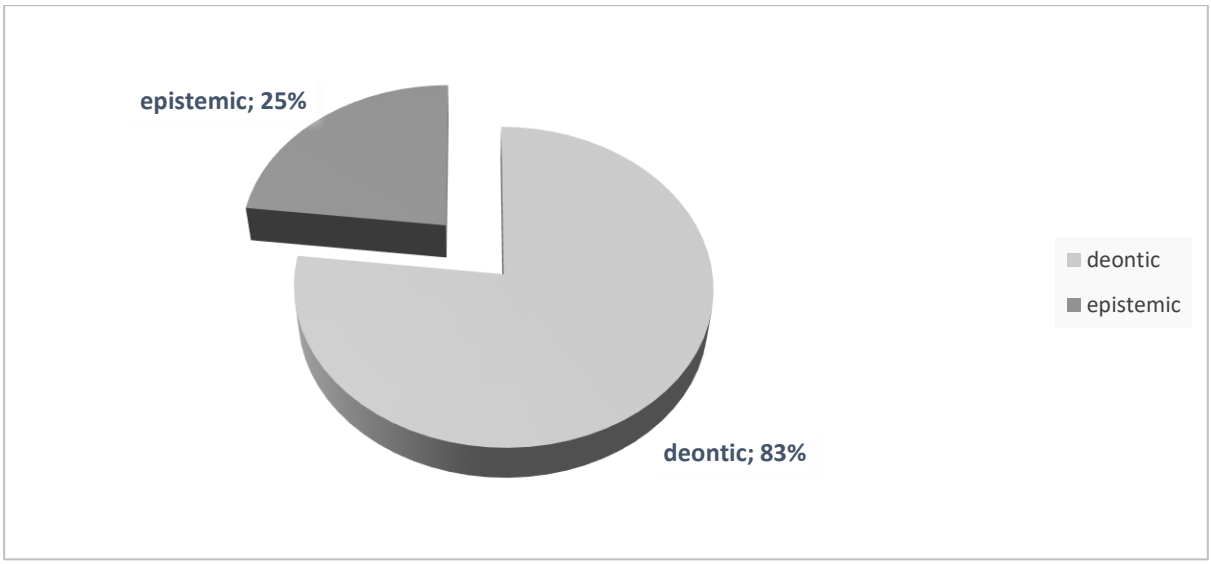

Figure 4.15. Low-value modal verb 'może' [‘cannot’]: deontic and epistemic occurrences in the Polish Corpus

In general, it is sometimes difficult to categorize a particular verb as either deontic or epistemic since the borderline between permission and possibility is not always so straightforward. For example, in the sentence below the subject is entitled to pursue his claims within the limits set by the statutes but should we interpret it as : “the subject is allowed /authorized to pursue his claims” or “it is possible for the subject to pursue his claims”? The author is more inclined to interpret it as the ‘authorization’ or ‘entitlement’ in the light of the pertinent articles but cases like this abound and the majority of them had to be ‘deconstructed’ and given either one or the other label to render the analysis more illustrative:

45. *Zważywszy na cywilnoprawny charakter tego odszkodowania Skarb Państwa ponosi odpowiedzialność tylko za normalne następstwa działania lub zaniechania, z którego szkoda wynikła i w tych granicach uprawniony może dochodzić naprawienia szkody obejmującej poniesione straty oraz utracone korzyści.*
    [Considering the civil charcter of the damage, the State Treasury bears liability only for the ordinary consequences of an act or omission that gave rise to the damage and only within such limits can the injured party claim the redress as encompassing both the incurred lossed and lost profits.]

As far as the low-value modal ‘można’ is concerned, of all 512 instances, the following collocations have been classified as most frequent. As we can see, certain verbs can be grouped into semantically similar sets (e.g. *można*

rozpatrywać/upatrywać/rozważać/traktować/postrzegać/uznać/poczytać)[59] all relate to the same notion of conceiving of something as having certain qualities or viewing something as being of a given kind). As in the case of 'nie można' we employed a semantic test to distinguish between the deontic and epistemic type of meaning inherent in the analysed verbs. Those that were classified as deontic necessarily involved some sort of active participation on the part of the addressee. The semantics requires that if something is allowable or prohibited, then the verb must be of an active character since prohibiting usually involves that the recipient refrains from doing something. Thus, the verb 'żądać' ('demand', 'claim', 'charge') is deontic since we can prohibit charging or demanding something. Consequently, sentence 46 would be grammatically correct:

46. *You may not demand modification of the ruling pertaining to the obligation of paying alimony (=Nie można żądać zmiany orzeczenia dotyczącego obowiązku alimentacyjnego).*

On the other hand, Polish collocations like the ones below would not be grammatical since they defy the inherent semantics of the verbs that follow:

47. *You may not/It is prohibited to -> Nie możesz/nie można/Jest zabronione:*

**wyciągać wniosku/podkreślać/domyślać się/interpretować/zaakceptować/przewidzieć/powiązać (draw conclusions/emphasize/deduce/interpret/accept/predict/associate)*

These verbs will therefore be classified as epistemic. Below a complete list of the analysed items with the number of records next to each. Those that appeared problematic have been marked with an asterisk (*) .[60]

[59] *one can consider/view/contemplate/treat/deem/acknowledge/regard*

[60] Although a translation of 'można' would be more natural if rendered as passive, we have translated all expressions with the aid of 'one' for the sake of clarity.

— *można uznać: 47;*	— *one can consider: 47;*
— *można przyjąć: 30;*	— *one can accept: 30;*
— *można mówić: 26;*	— *one can speak 26;*
— *można twierdzić: 25;*	— *one can claim 25;*
— *można żądać: 17;*	— *one can demand: 17;*
— *wskazać/wykazać: 16;*	— *one can indicate / show: 16;*
— *można (było) przypisać: 14;*	— *one can attribute: 14;*
— *można zauważyć: 12;*	— *one can discern: 12;*
— *10: można dodać, można (było) odnieść/ odnosić się;*	— *10: one can add, one can (could) refer / apply;*
— *9: można wywieść/wywnioskować, można (było) zakwalifikować, można zgodzić się, można dokonać;*	— *9: one can derive / infer/ one can qualify/one can agree/ one can make;*
— *8: można zarzucić/podnieść/postawić zarzut;*	
— *7: można rozpatrywać/rozważać/upatrywać, można (było) określić;*	— *8: one can accuse / raise / plead;*
— *6: można znaleźć;*	
— *5: można (było) ustalić, można wnieść, można zakwalifikować, można zastosować, można traktować, można wykorzystać, można spotkać;*	— *7: one can be view / consider /regard determine;* — *6: one can find;*
— *4: można (było) wymierzyć (karę, sprawiedliwość), można oprzeć,* ***można powiedzieć, można traktować, można zaliczyć,*** *można wymagać;*	— *5: one can (could have) determine(d), conclude(d), qualify (-ied), apply (ied), treat (ed), use(d), encounter (ed);*
— *3: można (było) przewidzieć, można (było) porównać*, można (było) podzielić*, można domagać się, można kwestionować, można oczekiwać, można domyślać się, można wydać, można udzielić, można odwołać się;*	— *4: one can (could have) impose(d) (punishment, justice), base(d),* ***say (said), consider(ed), include(d),*** *demand(ed);* — *3: one can (could have) foresee(n) compare(d) *, share(d) *, insist(ed), question(ed), expect(ed), guess(ed), give(n), grant(ed), appea(ed)l;*
— *2:* ***można wyprowadzić (wniosek),*** *można zaspokoić, można zawrzeć, można uzupełnić,* ***można wyczytać, można spodziewać się****, można powtórzyć?,* ***można wnioskować****, można ustanowić, można (było) przeprowadzić,* ***można powiązać, można nazwać,*** *można (było) objąć, można powołać, można (było) prześledzić*, można (było) wyróżnić*,* ***można dojść do wniosku, można podkreślić,*** *można wykonywać, można nabyć przez zasiedzenie,* ***można rozumieć;***	— *2 :* ***one can draw (conclusion),*** *satisfy, enter into, complement****, read, expect,*** *repeat ?,* ***conclude****, establish, (was) carry out,* ***associate, name****, cover, appoint, trace back*, distinguish* ****, come to a conclusion, emphasize,*** *peprform, acquire by prescription,* ***understand;***
— *1: można (było) pogrupować, można (było) powziąć wątpliwość, można (było) dowiedzieć się, można (było) wyciągnąć (wnioski), można (było) zawrzeć (umowę), można (było) uważać, można (było) wyprowadzić, można (było) pokonać, można byłoby prowadzić (przedsiębiorstwo), można wydzielić,*	

można użyć, można zrekonstruować, można zająć (stanowisko), można zakończyć (rozważania), można wprowadzić (w orbitę rozważań sądu), można podnosić, można sprowadzić, można zobiektywizować, można kierować, można osiągnąć, można oszacować, można ominąć, można postrzegać, można postawić tezę, można prognozować, można przeczytać, można przekonać się, można prowadzić, można przechodzić (na emeryturę), można przelać (wierzytelność), można przetłumaczyć, można przypuszczać, można przyznać, można rozpoznać, można rozszerzyć (zadanie pozwu o), można skarżyć, można wnosić, można skompensować, można skorygować, można zastrzec, można sporządzić, można sądzić, można interpretować, można tłumaczyć, można odpowiedzieć, można uchwycić?, można uniknąć, można umówić się co do, można formułować, można wypłacać, można podsumować, można przeciwstawić, można wymienić, można wyrokować, można wzruszyć (orzeczenie), można zabezpieczyć, można zaobserwować, można zaoferować, można zapłacić, można zasiedzieć, można zasądzić, można zgłosić, można zobrazować, można zaakceptować, można obalić, można odczytać, można odmówić, można odkodować, można odnotować, można odstąpić (od wymierzenia kary), można przenieść, można miarkować, można mieć (uzasadnione wątpliwości), można usunąć, można utrzymać w mocy, można domniemywać, można dopatrywać się, można dopuścić się, można doznać, można zawiesić, można orzec, można przypomnieć, można (i należy) brać, można (i należy) wypełnić, można poczytać, można nałożyć (mandat).*	— *1: one (could have) group, be doubtful, find out, draw conclusions,* *conclude (an agreement), be careful, infer, overcome, lead, draw a line, use, reconstruct, take (a stance), you can end (reflections), you can include (in the considerations of the court), raise, reduce, objectify, target, achieve, estimate, miss, view/regard, argue, predict, read, find out, conduct/run (an enterprise), go on retirement, transfer (a receivable), translate *, assume, admit, recognize, extend (the lawsuit), complain, lodge/file, compensate, correct, stipulate, prepare, assume, interpret, explain, answer, capture ?, avoid, arrange for, formulate, pay, sum up, oppose, replace, adjudicate, overrule, secure, observe, offer, pay, acquire by prescription, award, report, visualize, accept, rebut, read, refuse, decode, notice, withdraw (from inflicting punishment), you can transfer, moderate, have (reasonable doubts), remove, you can keep in effect, presume, discern, allow for, experience, suspend, rule, recall, one can (and should) take, one can (and should) fill in, read, impose (a fine).*

Table 4.8. Low-value modal verb ‘można’ [‘one can’]: the most frequent clusters

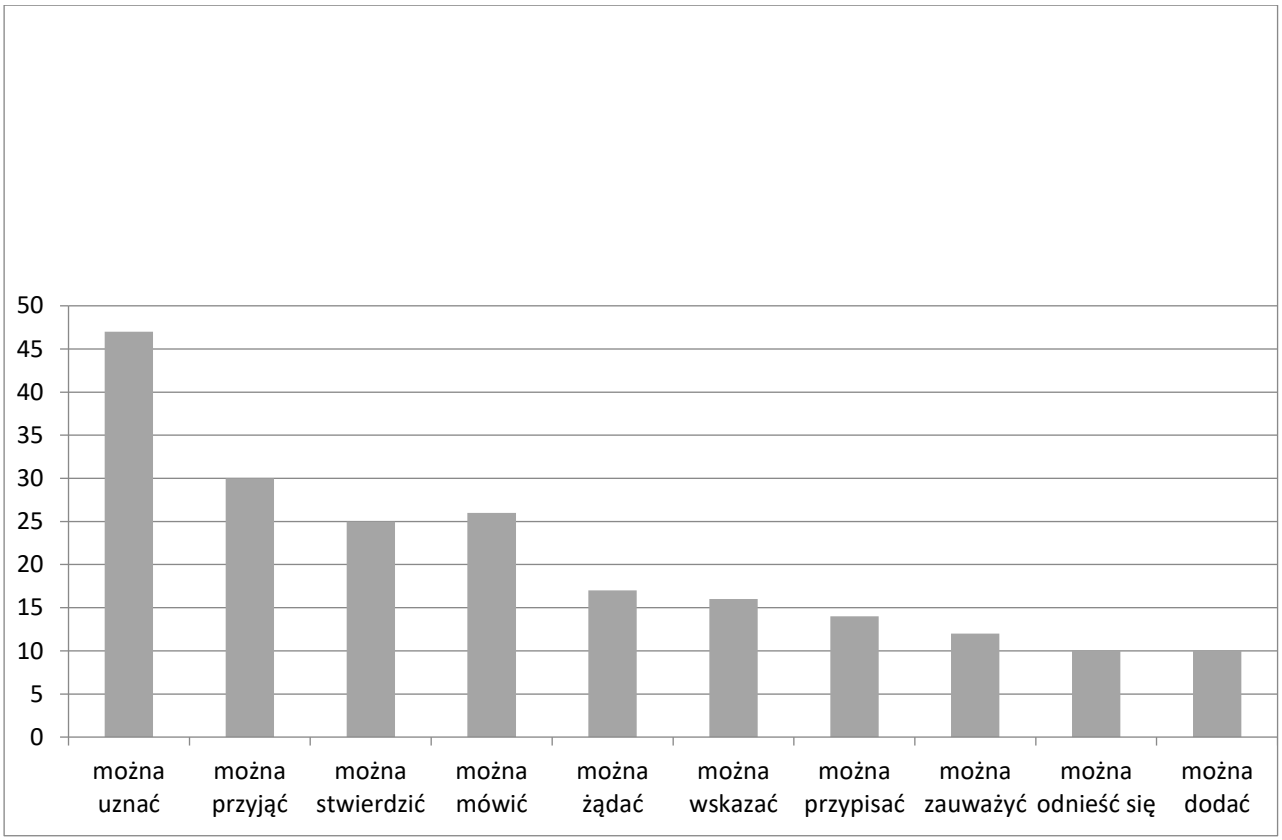

Figure 4.16. Low-value modal verb 'można' ['one can']: the most frequent clusters in the Polish Corpus

As in the case of *'może'* this time again it was mostly the verb and its semantics that determined the deontic or epistemic- type of meaning. Let us have a look at several examples from the Corpus:

48. *Ze względu więc na wyjątkowe okoliczności rozpoznawanej sprawy <u>można uznać</u>, że pomimo spełnienia przesłanek określonych w art. 87 p.u.n., nie powstanie obowiązek zwrotu tego świadczenia, jeśli jego spełnienie okaże się zgodne z zasadami współżycia społecznego, a żądaniu zwrotu sprzeciwia się poczucie sprawiedliwości (art. 411 pkt 2 k.c.).*
    [Due to exceptional circumstances of the case, it can be concluded that despite the fulfillment of conditions set out in Article. 87 of the Bankruptcy and Reorganization Law, the defendant will not be obliged to return the consideration, if its performance is consistent with the principles of social coexistence, and a return opposes the sense of justice (art. 411 paragraph 2 of the Civil Code]
49. *Tylko przy kumulatywnym spełnieniu tych wszystkich przesłanek <u>można mówić</u> o pozbawieniu strony możliwości obrony swoich praw, skutkującym nieważnością postępowania (art. 379 pkt 5 k.p.c.).*
    [Only the cumulative fulfilment of all these prerequisites can one speak about depriving the parties of the possibility to defend their rights, which results in the invalidity of the proceedings (art. 379 point 5 of the Code of Civil Procedure]

50. *Zgodnie z art. 424[1] § 1 k.p.c., <u>można żądać</u> stwierdzenia niezgodności z prawem prawomocnego wyroku sądu drugiej instancji kończącego postępowanie w sprawie, jeżeli przez jego wydanie stronie została wyrządzona szkoda.*
[In accordance with Art. 4241 § 1 k.p.c., you can seek a declaration of illegality of the final judgment of the court of second instance in the main proceedings, if it has caused damage to one of the parties.

If we were to place on a scale the above three contexts, the sentence 48 would be closest to subjective contemplations of the subject and 50 closest to permission granted to the collective addressee of the norm contained in art, 424 § 1 of the Code of Civil Procedure. In contrast, the second example seems somewhat problematic: the frames within which we operate are fixed by the norm from the article 379 point 5 of the Code of Civil Procedure, which could suggest that the norm imposes some kind of duty or obligation upon the addressees. However, due to the metaphorical character of the expression in its entirety we classify it here as epistemic. It would be deontic if the syntax were constructed differently, e.g.:

51. *Tylko przy kumulatywnym spełnieniu tych wszystkich przesłanek <u>można pozbawić</u> stronę możliwości obrony swoich praw.*
[Only in the case of the cumulative fulfilment of all these prerequisites, can the party be deprived of the possibility to defend their rights.]

In the above sentence, the deontic character of the expression becomes more evident: if the specified criteria are met, the 'goal' of depriving the party of their rights can be achieved. Overall, as in the case of 'nie można' the majority of the collocations were epistemic. Of all 474 instances (the problematic ones were not taken into consideration), 352 (74%) were epistemic and 122 (26%) were deontic.

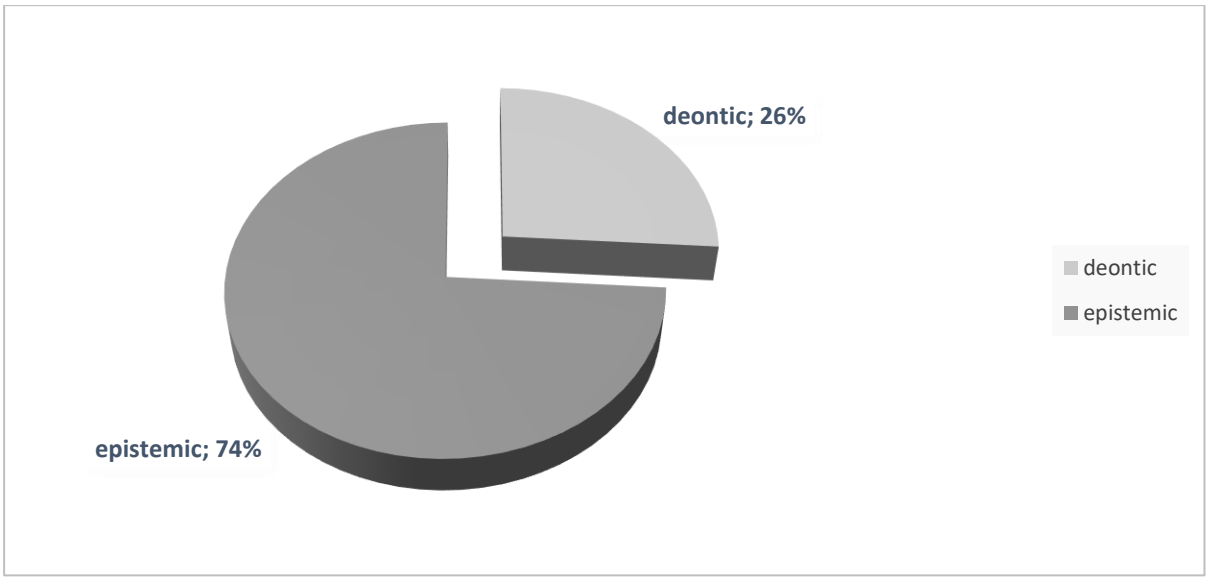

Figure 4.17. Low-value modal verb 'można' [‘one can’]: deontic and epistemic occurrences in the Polish Corpus

When we compare the results obtained so far with regard to modals *‘może’* and *‘można’*, it turns out that *‘może’* is predominantly deontic. As has been reiterated, verbs occurring mostly in the deontic settings are more ‘personalized’ than those that display epistemic tendencies. It would be therefore consistent with the apparent semantics of the two modals: *‘można’* as an impersonal verb form is expected to refer to abstract and intangible reality and the agent is collective and indefinite. In contrast, *‘może’* mostly takes a concrete agent as the performer of an action and refers to more tangible reality.

Let us now turn to the last group of low-value modal auxiliaries: ‘móc’ in the past represented by three finite verb variants in masculine, feminine and neuter forms. The overall distribution of deontic versus epistemic instances is illustrated in figure 4.18.

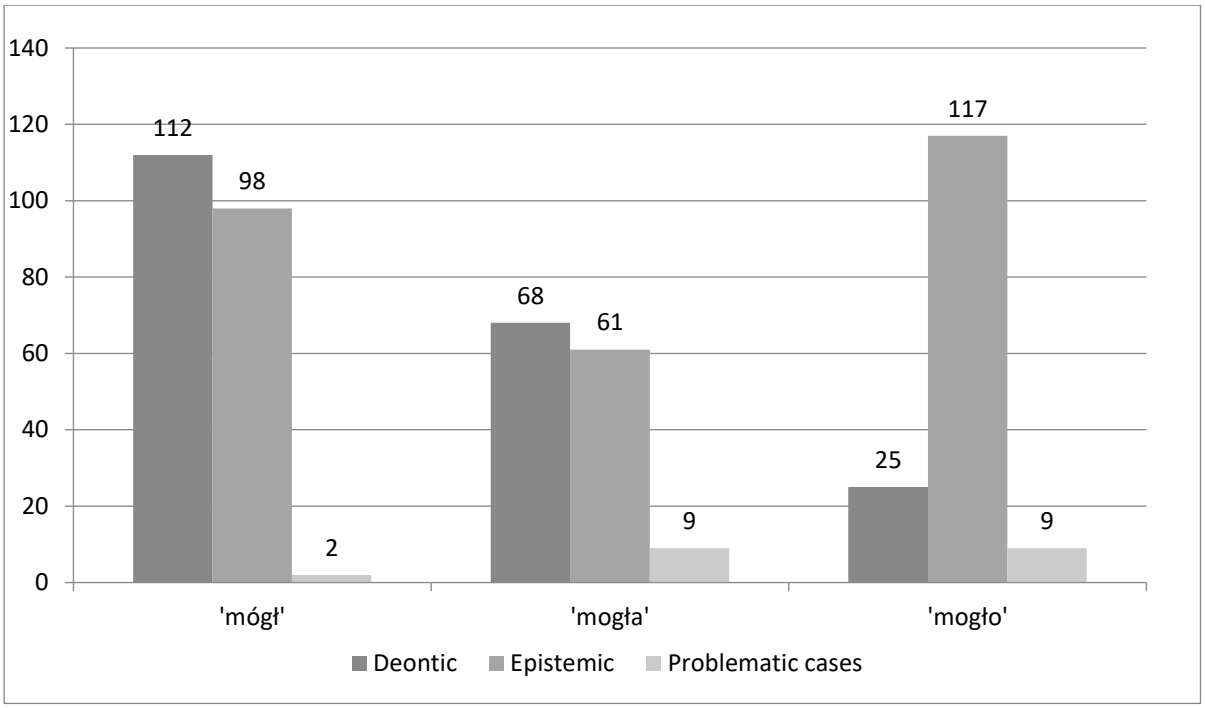

Figure 4.18. 'Mógł', 'mogła', 'mogło' ['can' in the 3rd person sng]: distribution of deontic and epistemic occurrences in the Polish Corpus

As can be seen, the distribution is roughly equal with the exception of 'mogło': the frequency of occurrence of epistemic variant of meaning for this particular modal is considerably greater. However, this disproportion is due to the fact that the expression *'mogło mieć (istotny) wpływ' ('could have a (considerable) impact upon')* is found as many as 51 times. It is classified as epistemic since the phrase inevitably points to conjecture and weighing pros and cons of a certain hypothetical situation. As in sentences 52 and 53 below.

52. *Uchybienie wskazanemu wyżej przepisowi mogło mieć istotny wpływ na wynik sprawy, gdyż przeprowadzenie dowodu z opinii biegłego mogło przesądzić o braku możliwości przeprowadzenia drogi koniecznej w sposób określony przez Sąd Okręgowy.*
    [A breach to the provision indicated above could have had a significant impact on the outcome of the case, since the admission of expert witness evidence could have determined the impossibility of carrying out the easement of access in the manner specified by the Regional Court.]
53. *W realiach omawianej sprawy należy zgodzić się ze skarżącym, że kontrola odwoławcza dokonana przez Sąd Apelacyjny nie była pełna i wyczerpująca, a to mogło mieć istotny wpływ na treść zaskarżonego kasacją orzeczenia (art. 523 § 1 k.p.k.).*

[In the context of the present case, one must agree with the applicant that the review made by the Court of Appeal was not full and exhaustive, and this could have had a significant impact on the content of ruling appealed against bycassation (Art. 523 § 1 of the Code of Criminal Procedure).]

The presence of so many fixed expressions in the Polish Corpus only confirms the general rule that legal register abounds in idiosyncrasies and collocations not to be encountered elsewhere. The problem of recurrent sequences of words is closely related to the problem of recurrent word combinations also referred to as lexical bundles (Biber and Barbieri 2007, Cortes 2002), or clusters (Hyland 2008; Schmitt, Grandage and Adolphs 2004). Such word sequences have customary pragmatic and/or discourse functions, used and recognized by the speakers of a language within certain contexts (Granger and Paquot, 2008). In our case, the presence of so many recurrent sequences may somehow obscure the outcome since the analyzed units are single words classified as epistemic and their recurrence in multi-word combinations reflects the adherence to the convention rather than individual style.

Leaving aside the expression "*mogło mieć istotny wpływ",* we are able to determine, on the basis of the statistics obtained for the other two analyzed items, that the number of deontic and epistemic contexts for this particular modal verb is comparable and neither one dominates. Again, the criteria that were used to distinguish between deontic and epistemic type of meaning were varied and many factors were taken into consideration. The primary one was the verb and its inherent meaning as indicating either action or a state. The former is eligible to appear in the deontic contexts since we forbid or permit the performance of some activity, not a state. However, there exists an exception to this rule: when strictly legal settings are involved and certain concrete norms are referred to, then the context is classified as deontic even though the verb indicates a state or some abstract notion. As in examples 54 and 55 below:

54. *Aby taki regulamin mógł być stosowany, musi być zaakceptowany przez właścicieli w podjętej uchwale, wybór pozwanej Spółdzielni mógł natomiast dotyczyć tylko jednej z trzech metod wymienionych w art. 45a ust. 8 Pr. energ.*
    [If such rules were to be used, it must be approved by the owners in the adopted resolution. In turn, the choice of the sued cooperative could only relate to one of the three methods listed in Article. 45a paragraph. 8 of the Law on Energy.]
55. *Obwiniony zarzucił rażące naruszenie art. 80 ustawy z dnia 26 maja 1982 r. - Prawo o adwokaturze w zw. z art. 24 k.c. poprzez stwierdzenie, że czyn obwinionego mógł stanowić zniesławienie.*

[The defendant alleged violation of Art. 80 of the Act dated 26th May 1982. - Law on the Bar in relation with Article. 24 of the Civil Code by saying that the act of the accused could constitute defamation.]

Although the verbs *'dotyczyć' ('concern') and 'stanowić'* are evidently static and theoretically it would be grammatically incorrect to use them in the prohibitory constructions (**'it is prohibited to concern/constitute' or *'one may not concern'*), their being employed is determined by the pertinent articles of the statutes invoked, thus, by the reference to strictly legal background. As such, the constructions would be translated into English as: *'it could concern'* and *'it could constitute'* (but provided that conformity with the statutes is retained). The classification into deontic paradigm is therefore justified. In contrast, where the verb indicates some train of thought or speculating about the past on the part of the subject, the context is classified as epistemic even though it might point to some action:

56. *Powód wielokrotnie logował się do serwisu internetowego […] prowadzonego we własnym imieniu, a wykonywanie tych operacji zajmowało mu część czasu, w którym mógł świadczyć pracę na rzecz pracodawcy, co spowodowało obniżenie jego wydajności.*
    [The plaintiff logged on to the website run by himself on numerous occasions and the performance of these operations took him some time, which could have been dedicated to providing services for the employer. The above omission has resulted in the decrease of efficiency.]
57. *Pełnomocnik zarzucił zaskarżonemu orzeczeniu naruszenie przepisów postępowania, a to poprzez: nieuzasadnione i nieoparte na zebranym w sprawie materiale dowodowym ustalenia, że wnioskodawczyni jedynie hipotetycznie mogła nieprzerwanie pracować i uzyskiwać dochody do chwili obecnej.*
    [The legal representative accused the ruling appealed against of infringing the procedural provisions through unreasonable findings, which were not based on the collected evidence, that the applicant only hypothetically could have continued work and earned her income until present.]
58. *Powódka nie zgłosiła akcesu gminy do projektu Równe Szanse, dzięki któremu gmina mogła pozyskać środki na pomoc bezrobotnym i osobom zagrożonym wykluczeniem społecznym.*
    [The plaintiff did not put the community forward as a candidate for the "Equal Opportunities" project, so that the municipality could raise the funds to help the unemployed and persons facing social exclusion.]

Despite the fact that the underlined verbs are active, they point to some hypothetical situation which could have occurred if other conditions had not hindered it. Therefore, they have been classified as epistemic. As usual, a considerable amount of occurrences were the ones in the

passive voice. They have been classified as either deontic or epistemic depending upon the criteria adopted for the purposes of the research.

59. *Suma ta mogła być wypłacona wierzycielowi po przedłożeniu przez niego odpowiedniego tytułu.*
    [This sum could be paid to the creditor following the submission of his title to the relevant authorities.]
60. *[Sąd Rejonowy] wyraził zapatrywanie, że odmowa podpisania volkslisty mogła być uznana za "zdradę rasy" i zakończyć się wysłaniem całej rodziny do obozu koncentracyjnego lub przesiedleńczego.*
    [The District Court] expressed the view that the refusal to sign the German People's List could be considered a "betrayal of the race" and could lead to sending the entire family to a concentration or resettlement camp.]

Whereas the first example makes reference to a proper title without which a given amount could not be paid, the second one is qualified as epistemic: it implies the presence of a certain viewpoint (in this case ideology that determined ascribing a person to the lower rank in the hierarchy created by the Nazi Germany). Below a figure illustrating the most common types of clusters to be encountered in the Polish Corpus for the low-value modal ‘mógł’:

- *Mógł wykonać [could perform]: 8*
- *Mógł uznać [could consider]: 7*
- *Mógł osiągnąć [could achieve]: 6*
- *Mógł podejmować/podjąć [could undertake]: 6*
- *Mógł stanowić podstawę [could constitute grounds]:* 5
- *Mógł stracić zaufanie [could lose faith]: 5*

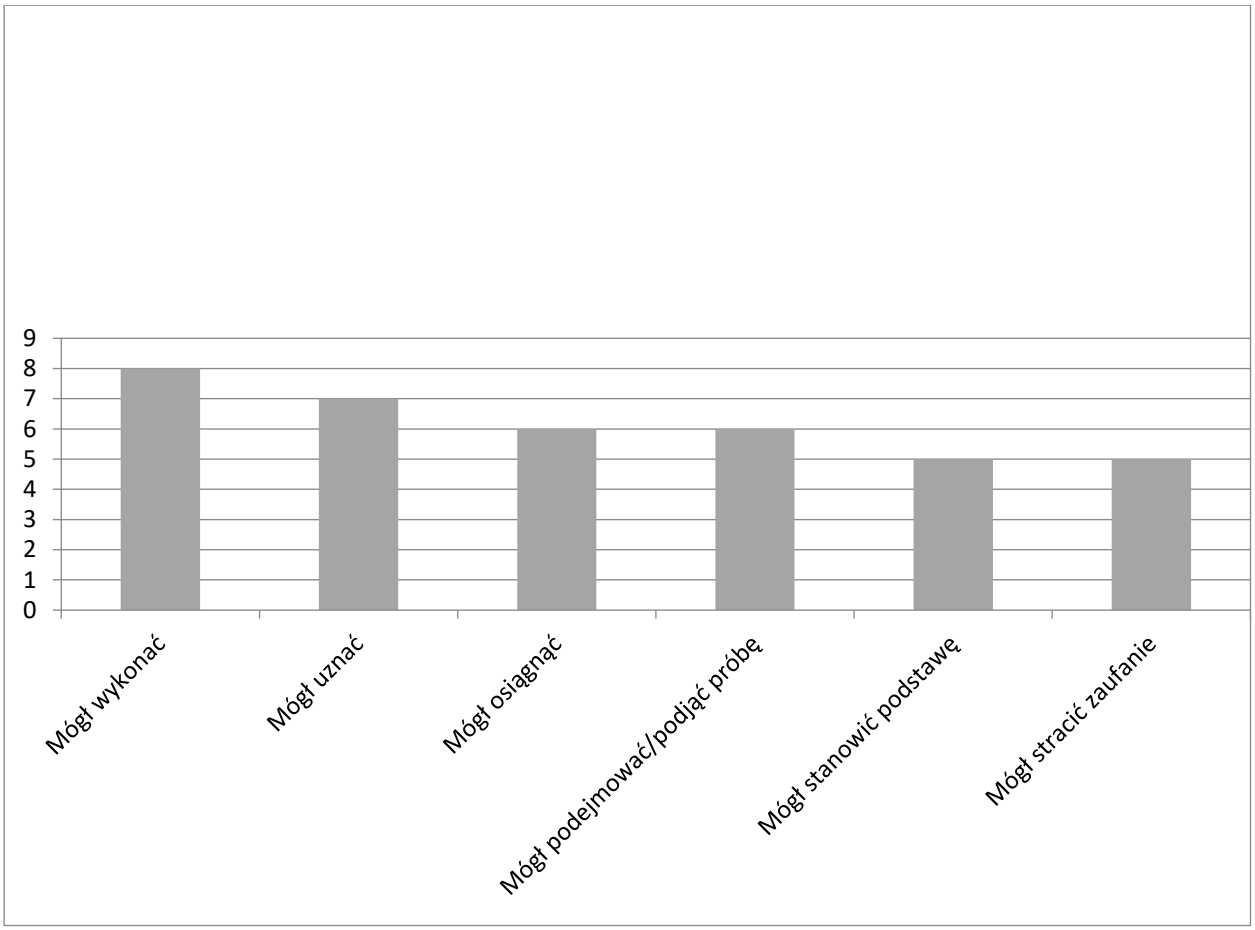

Figure 4.19. Low-value modal verb 'mógł' ['could have' 3rd person sng] : the most frequent clusters in the Polish Corpus

Of 481 items taken into account during the analysis, 276 (57%) represent epistemic type of meaning while as 205 (43%) the deontic type. In summary, we obtain the following results:

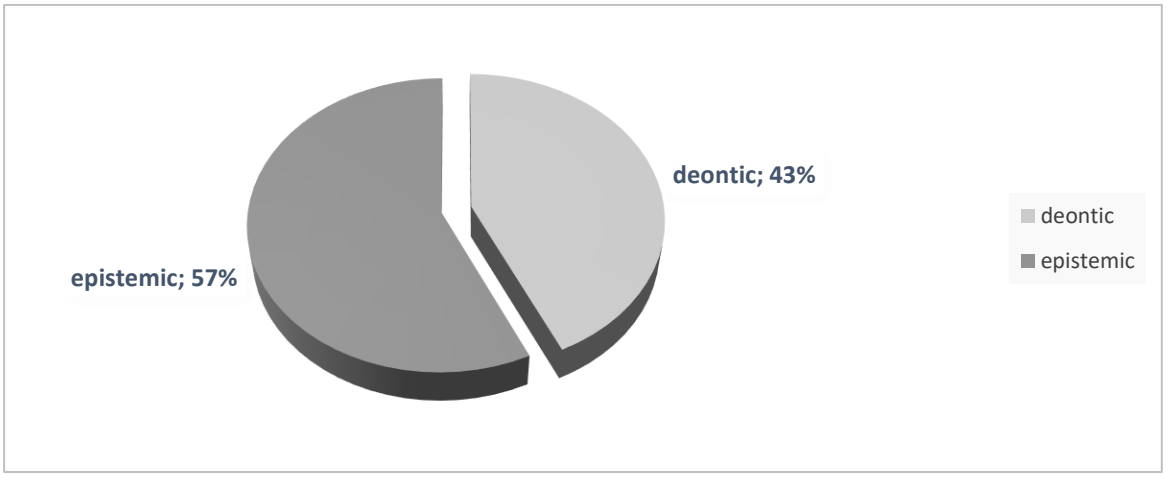

Figure 4.20. Low-value modal verb 'móc' ['can'] in the past: deontic and epistemic occurrences in the Polish Corpus

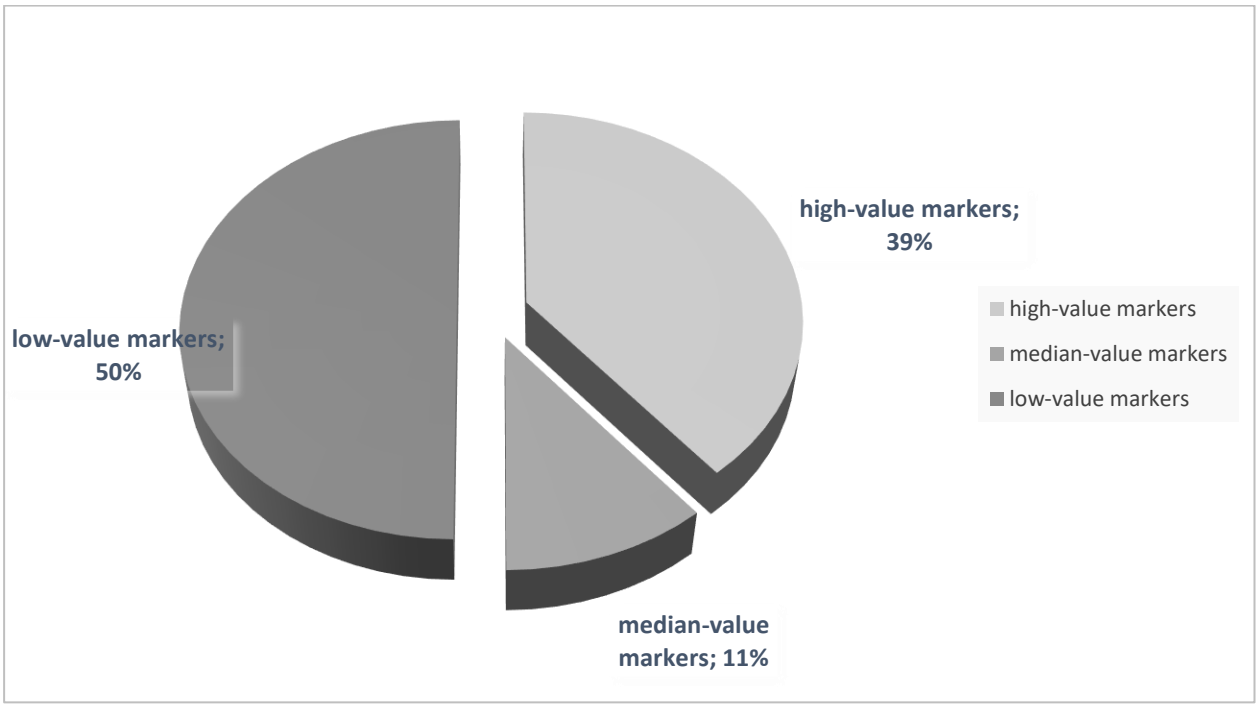

Figure 4.21. High, median and low-value modal verbs in the Polish Corpus

4.2.3 Polish adjectives as markers of epistemic modality

In general, we can distinguish between adjectives that can function as attributive only, those that occur only predicatively or those that function as both attributive and predicative with certain differences in meaning depending on the position the take in the sentence. The first class, i.e. the prenominals that occur only before the noun phrase in the sentence, are also called by Bolinger (1967) reference adjectives. Among the categories listed by the author we encounter one that may be of particular interest to us: adjectives that show the head noun is recognized by law or custom. To such he includes for instance: the (lawful/rightful/legal/true) heir (ibid). In contrast, adjectives that are restricted to the predicative position behave like verbs and adverbs, i.e. they refer to a temporary condition rather than characterize some properties permanently attributed to the noun they modify. As can be seen in table 4.3., both attributive and predicative adjectival structures have been taken into account during the analysis. However, those that were of attitudinal character (i.e. showed some form of stance of the speaker towards the propositional content of the utterance) mostly consisted of *'be 3rd person sng. +adjective'*

('jest' + adjective). Therefore, adjectives that displayed epistemicity were usually of predicative character.

	HIGH MODAL VALUE	MEDIAN MODAL VALUE	LOW MODAL VALUE
Adjectives (attributives and predicatives)	**niemożliwy** *[impossible]:* 54 (p) **pewny** *[certain]:* 8 (p) **błędny** *[faulty]:* 396 (43 predicative, 353 attributive) **nieuzasadniony** *[unjustified]:* 129 (10 attributive, 119 predicative) **bezpodstawny** *[unfounded/groundless]:* 64 (31 attributive and 33 predicative) **konieczny** *[necessary]:* 5 (p) **oczywisty** *[obvious]:* 197 (132 attributive, 65 predicative) **chybiony** *[misconceived]:* 58 (p) **niecelowy** *[misguided]:* 14 (p) **irrelewantny** *[irrelevant]:*5 (p) **nieuprawniony** *[unauthorized]:* 23 (19 predicative, 4 attributive) **absurdalny** *[absurd]:* 2 (p) **kontrowersyjny** *[controversial]:* 5	**prawdopodobny** *[probable]:* 1 (predicative) **zasadny** *[legitimate]:* 272 (271 p) **wymowny** *[meaningful]:* 2 (p) **przekonujący** *[convincing]* : 6 (a)+18 (p) **trafny** *[pertinent/accurate]:*110 (p)	**możliwy** *[possible]:* 335 (4 attributive, 331 predicative) **niewykluczony** *[not out of question]* : 3 (p) **wątpliwy** *[doubtful, dubious]:* 18 (p) Total number of high-value adjectives: 960 (55%) Total number of median-value adjectives: 409 (24%) Total value of low-value adjectives: 356 (21%)

Table 4.9. Polish attributive and predicative adjectives as markers of epistemic modality

Examples 61 and 62 show the contexts where stance-related adjectives occur in both attributive and predicative settings :

61. *Obrońca skazanego adw. M. M. w kasacji zarzucił (...) rażące naruszenie przepisów postępowania karnego (...) poprzez przekroczenie granic swobodnej oceny dowodu w postaci zeznań świadka polegających na bezpodstawnym przyjęciu, że świadkiem tym niejako sterowała żona oskarżonego, co w ocenie Sądu odwoławczego miałoby wynikać z zestawienia faktów, które Sąd ten w sposób nieuprawniony rzekomo ustalił.*
    [The counsel for defence of the convicted attorney, M.M. in cassation pointed to (...) a serious breach of the Criminal Procedure (...) by exceeding the limits of free evaluation of evidence in the form of witness testimony that consisted in the unfounded assumption that the witness was manipulated by his wife, which, in the opinion of the Court of Appeal, stems from the statement of facts that the court allegedly established in an unauthorized manner.]
62. *Nieuprawnione jest zapatrywanie, że przepis ten nie ma zastosowania w sprawie, bo sędzia do ustania stosunku służbowego nie podlegała ubezpieczeniu chorobowemu.*
    [It is unauthorized to claim that this provision does not apply in this case since the judge was not subject to the sickness insurance until the employment relationship terminated.]

In the first sentence, two epistemic attributive structures have been identified as pertaining to court's attitude: *'bezpodstawne przyjęcie'* and *'nieuprawniony sposób'*. In contrast, *'rażące naruszenie przepisów'* has not been taken into consideration due to its being related to the counsel for the defense rather than to the court's proper opinion. Instances of predicative epistemic structures are, in turn, illustrated in the second and third example. As the analysis further revealed, adjectives such as *'zasadne' ('legitimate' 'justified')* or *'trafne' ('relevant', 'accurate')* have occurred in almost exclusively predicative settings:

63. *Powód miał więc prawo do odszkodowania na podstawie art. 56 i 58 k. p., a zarzuty naruszenia art. 8 k.p. i art. 3531 k.c. nie były zasadne.*
    [The plaintiff was therefore entitled to compensation pursuant to Art. 56 and 58 of the Labour Code and the allegations of infringement of articles 8 of the Labour Code and art. 3531 of the Civil Code were not justified.]
64. *Sąd Apelacyjny za zasadne uznał zarzuty apelującego skierowane przeciwko rozstrzygnięciu o odsetkach od zasądzonego świadczenia.*
    [The Court of Appeal considered reasonable the charges of the appealing party against the judgment on the payment of the interest on adjudged consideration.]

65. *Trafny jest więc wniosek, że w przypadku niezaskarżenia uchwały nr 7 mógłby powód wprawdzie pozostać w T. spółce akcyjnej, lecz już z jej pomniejszonym majątkiem wskutek umorzenia udziałów bez wynagrodzenia.*
    [It is therefore right to conclude that if Resolution No. were not appealed against, the plaintiff could indeed remain in T. limited liability company but with assets already reduced due to the redemption of shares without remuneration.]
66. *W uzupełnieniu argumentacji uznanej przez Sąd kasacyjny za trafną dodać wypada, że z respektowania reguł określonych w art. 399 k.p.k. nie można zrezygnować, czy choćby osłabić ich znaczenia, także w postępowaniu toczącym się przez sądem dyscyplinarnym.*
    [In addition to the arguments considered accurate and proper by the Court of Cassation it should be added that one cannot cease to observe
    the rules set out in article 399 of the Code of Criminal Procedure and weaken their importance, which applies in equal extent to the proceedings before the disciplinary court.]

There was only one case in which the adjective *'zasadny'* in its epistemic alternative occurs in the attributive construction:

67. *Tok postępowania i dokonane w całym postępowaniu nominacyjnym czynności wobec każdego z kandydatów, wykluczają zasadne postawienie zarzutu dyskryminacji.*
    [The procedure and the actions of appointment of each of the candidates preclude any reasonable accusation of discrimination.]

For the adjective 'prawdopodobny' there was only one occurrence which suits the methodological criteria of the analysis:

68. *Jest bardzo prawdopodobne, że miejsce zamieszkania pozwanych wskazane w pozwie jest prawidłowe, zatem doszłoby do skutecznego zawiadomienia o posiedzeniu wyznaczonym na rozprawę.*
    [It is very likely that the place of residence of the defendant indicated in the lawsuit is correct, therefore, there would have been an effective notice of the hearing appointed for the trial.]

Although ‘probable’ and ‘possible’ may seem alike they carry with them various degrees of probability. Sentences below may well illustrate this:

It's possible but I don't think that it is probable.
Now it is not only possible but also probable.

As the usage suggests, therefore, possibility implies that an action or an event may take place but it is exactly the chance and potentiality that are being emphasized. On the other hand, probability implies that a given action is not only likely but may indeed take place. An interesting observation could be made in relation to the adjective *'celowy' ['purposeful']*. While as all predicative occurrences of the adjective were epistemic (i.e. showed some sort of attitude on the part of the subject), its attributive occurrences did not display such property as referring to stance or attitude of the subject. A somewhat reversed tendency is to be observed in the case of the adjective *'błędny' ['wrong', 'faulty', 'mistaken']*. Out of 396 occurrences, 11% (43) were predicative structures and 89% (353) were attributive. The majority of epistemic occurrences of 'błędny' appeared, therefore, in the attributive structures. What is more, there was almost exclusively one collocation, namely *'błędna interpretacja' ['faulty/incorrect interpretation'*]. Out of 396 occurrences of epistemic 'błędny/-a/-e' in total, 353 were of attributive type and among them more than 200 concerned collocation *'błędna wykładnia'.* Why is this particular word pair so popular in the genre of court judgment? According to Bielska- Brodziak:

'Faulty interpretation' is an expression encountered not only in the discourse on interpretation but also in the legal texts. Its understanding is of utmost importance for at least two reasons. Firstly, due to its considerable persuasive force it is often employed by the judiciary in cases where interpretational discrepancies are likely to occur. Secondly, and more importantly, due to its potential as grounds for appeal in many procedures, e.g. grounds for lodging an appeal in the civil proceedings, a plea of nullity in the proceedings before the administrative court as well as for the appeal and plea of nullity in the criminal proceedings' (Bielska-Brodziak 2006: 69, translation mine[61]).

On the other hand, adjectives such as *'bezpodstawny' ['groundless', 'unsubstantiated', 'unfounded'], 'nieuzasadniony' ['unsubstantiated', 'unfounded'*] or *'oczywisty' ['certain']* occurred in both attributive and predicative constructions. In the case of *'bezpodstawny',* out of 64 total occurrences, 31 were attributive and 33 predicative. The attributive structures were

[61] '„Faulty interpretation is an expression occurring not only in the discourse but also in the legal texts. Understanding it is crucial for at least two reasons. Firstly, due to its huge persuasive strength it is often employed by the judiciary in cases where interpretation discrepancies arise with regard to a certain legal regulation. Secondly, and more importantly, since the defense of "faulty interpretation" constitutes the basis for an appeal in numerous proceedings, e.g. the basis for lodging an appeal in the civil proceedings, for the the cassation complaint before the administrative court as well as for the cassation in the criminal proceedings' (Bielska-Brodziak 2006: 69, translation mine).

often fixed collocations such as *'bezpodstawne wzbogacenie' ['unjust enrichment']*. Others included: *'bezpodstawne twierdzenie' ['unfounded claim'], 'bezpodstawne przyjęcie' ['unfounded assumption']* et caetera. In the case of the adjective *'celowy'*, all epistemic occurrences were predicative whereas the attributive occurrences did not display such property as referring to stance or attitude of the subject. Having compared all the contexts where the analyzed adjectives can occur, we end up with four categories:

(Almost) exclusively predicative	**Mostly predicative**	**Attributive and predicative (almost equal distribution)**	**Mostly attributive**
Niemożliwy [impossible] Pewny [certain] Niecelowy [misguided] Chybiony [misconceived] Wątpliwy [dubious] Niewykluczony [not out of question] Trafny [accurate/pertinent] Irrelewantny [irrelevant] Absurdalny [absurd] Wymowny [meaningful] Zasadny [just]	Nieuzasadniony [unfounded] Możliwy [possible] Przekonujący [convincing] Nieuprawniony [unauthorized]	Bezpodstawny [groundless]	Błędny [faulty] Oczywisty [obvious]

Table 4.10. Four categories of adjectives in the Polish Corpus

It would be noteworthy to shed some light on the meaning differences between the attributive and the predicative adjectives. As observed by Bolinger (1967), the attributive adjectives that directly precede nouns suggest more permanent features and characteristics than the post-nominal adjectives that directly follow nouns. The latter, as it seems, reflect states or events that are temporary or shifting. Furthermore, Quirk and Greenbaum (1973: 121) argue that:

"adjectives that characterize the referent of the noun directly are termed inherent; those that do not are termed non-inherent. Some non-inherent adjectives occur also predicatively. For example, both a new friend and a new student are non-inherent, though the former can be used predicatively: -That student is new. -*my friend is new."

The authors (ibid.) also distinguish between two classes of adjectives depending on the effect they exert upon the noun they modify: they are either emphasizers or amplifiers. While emphasizers have a strengthening effect and are attributive only, amplifiers denote the upper extreme of the scale or a high point on the scale and can occur in the post-nominal position [62]. The first class comprises adjectives like:

a certain ('sure') winner

pure (sheer) fabrication

an outright lie

a real (undoubted) hero

To the amplifiers we may include:

a complete victory -> the victory was complete.

their extreme condemnation -> their condemnation was extreme.

his great folly -> his folly was great.

however, when they are non-inherent, they take only the attributive position:

*a complete fool…..*the fool is complete.*

*a perfect idiot……..*the idiot is perfect."*

As far as the Polish part of the research material is concerned, the number of epistemic adjectives that occurred in the attributive structures equaled 541 while the number of predicative constructions amounted to 1.210. It turns out, therefore, that epistemic and stance-related expressions are more typical for predicative constructions, in the case of Polish language this is especially true in structures like *'be in 3rd person sing ['jest']+ adjective+ that +*

[62] see also: Jasim Muhammed Abbas, Mahmoud Arif Edan Attributive-only and Predicative-Only Adjectives, Journal of The Iraqi University 2010: 527-556.

subordinate clause'. Thus, examples of the sort: *'jest pewne, że', 'jest oczywiste,* że' [it is certain that, it is obvious that] are most representative of its kind. Equally often are to be encountered constructions like: *'błędnym jest twierdzenie', 'bezpodstawny jest zarzut', 'skarga/kasacja (...) jest zasadna' [the statement (...) is wrong, the accusation is unfounded, the complaint/cassation is just]*.

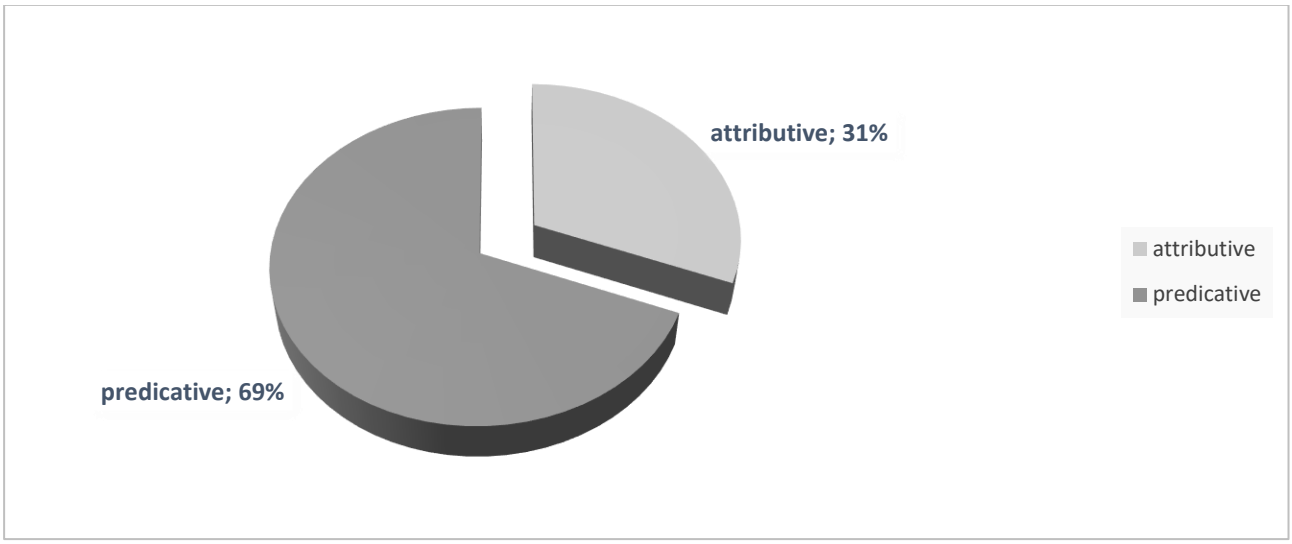

Figure 4.22. Attributive and predicative percentage of epistemic adjectives in the Polish Corpus

If we consider what has been stated so far about the attributive and predicative adjectives, it appears consistent with the research results: epistemic expressions describe some temporary conditions related to the point of view of the speaking subject rather than some permanent state of affairs. If we were to further apply this way of reasoning, the adjectives that occurred in almost exclusively attributive position [*'błędny', 'oczywisty'*] would reflect more durable features than the predicative ones. Is this really the case? As we stated earlier, the adjective '*błędny'* occurred predominantly in the collocation *'błędna interpretacja'*. Similarly, the adjective '*oczywisty'* was mostly found in fixed phrases such as: *'oczywista zasadność', 'oczywista wadliwość', 'oczywista konieczność'*.

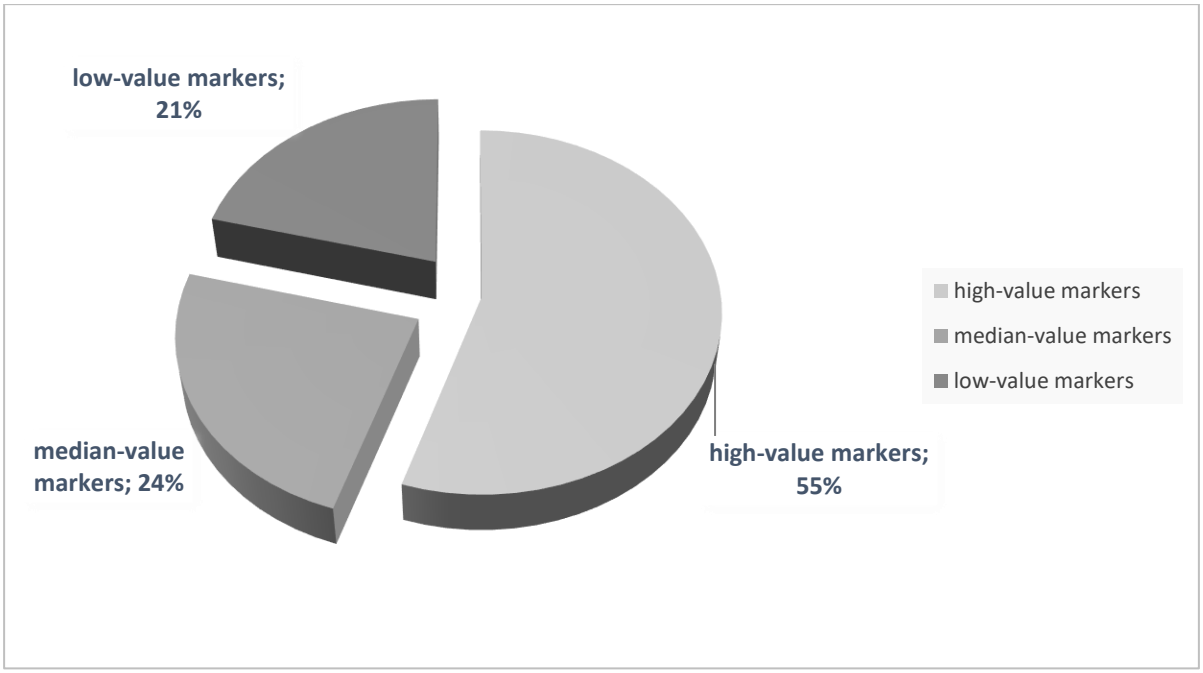

Figure 4.23. High, median and low-value adjectives in the Polish Corpus

4.2.4 Polish adverbs and modal modifiers as markers of epistemic modality:

	HIGH MODAL VALUES	MEDIAN MODAL VALUES	LOW MODAL VALUES
Adverbs and modal modifiers	niewątpliwie [doubtless]: 190 ponad wszelką wątpliwość [beyond the shadow of doubt]: 3 na pewno [for certain]: 15 bez wątpienia [without doubt]: 30 wyjątkowo [exceptionally]: 59 w ewidentny sposób [evidently]: 1 naturalnie [naturally]: 1 ewidentnie [evidently]: 13 wcale [not at all]: 16	najpewniej [most certainly]: 2 najprawdopodobniej [most probably]: 2 prawdopodobnie [probably]: 7 trafnie [appropriately]: 237 słusznie [justly/rightly]: 3 niekiedy [sometimes]: 3 jednoznacznie [unequivocally]: 26	chyba [perhaps]: 2 być może [maybe]: 6 jakoby [purportedly/allegedly]: 53 (when testimonies of the witnesses are reported) rzekomo [purportedly/allegedly] : 20 rzadko [rarely]: 6 w pewnym sensie [in a certain sense/somehow]: 2 zapewne [assuredly]: 26

	nieprawidłowo [inappropriately]: 74 bezsprzecznie [unquestionably]: 10 konsekwentnie [consistently]: 56 jasno i precyzyjnie [clearly]: 1 w żadnej mierze [by no means]: 12		Total number of high-value adverbs: 481 (55%) Total number of median-value adverbs: 280 (32%) Total value of low-value adverbs: 115 (13%)

Table 4.11. Polish adverbs and modal modifiers as markers of epistemic modality

This group of epistemicity markers has been relatively easy to analyse since adverbs are non-inflectional categories. In the case of inflectional categories, the variety of forms may pose a difficulty and the margin of error may be greater. The total number of items analysed is 30: 15 for high-value markers, 7 for median-value markers and 8 for low-value markers. The class of high-value adverbs is thus most strongly represented in the Polish Corpus: it would not be justifiable, therefore, to claim that this discrepancy might indicate that Polish judges are firm and uncompromising in the opinions they present in the judgments they issue on behalf of the Supreme Court. The fact that Polish expressions pointing to certainty outweigh in number those than indicate lack thereof can be attributed to language specificity. These interlinguistic differences have already been described in section 2.3. where we pointed to the problem of grammaticalization: certain meanings might be lexicalized but not grammaticalized in some languages. Others, in turn, do contain grammatical means to express notions such as doubt and certainty. Still other properties will characterize legal register which, as has already been emphasized, differs in many respects from the general register. Thus, expressions such as ‘chyba’ have occurred only two times in the meanings that interests us here. This scarcity may be due to its colloquial character: it is more typical for the spoken language and is rather rarely to be encountered in the legal genres. As far as the context is concerned, in only one of the two examples below ‘chyba’ is uttered by the judge. The other one is a reported speech whereby author is the defendant:

69. *To właśnie w piśmie do Sądu Apelacyjnego z dnia 1 września 2014 r., dotyczącym wznowienia postępowania, skazany użył sformułowania, że „jedynie może chyba zwrócić się o przywrócenie terminu aby mógł złożyć kasację od tych decyzji, jakie zostały wydane przez Sąd pierwszej instancji i Sąd drugiej instancji a potem poczekam na odpowiednie rozstrzygnięcia", które następnie zostało przesłane do Sądu Okręgowego w S., jako wniosek o przywrócenie terminu do wniesienia kasacji.*
    [It was in a letter to the Court of Appeal of 1 September 2014 concerning the resumption of proceedings, that the convicted used the words that "he could only ask for relief to be able to lodge a cassation appeal against those decisions, which have been issued by the court of first instance and the court of second instance and then wait for the appropriate decision ", which was subsequently transferred to the District Court in S., as a request to restore the deadline for filing the cassation.
70. *Tymczasem, jak można sądzić, strony chyba po prostu nie zakładały, że umowa -przewidziana na pięć lat - zostanie rozwiązana po upływie pół roku.*
    [Meanwhile, as can be judged, the parties probably just had not assumed that the agreement, that was to be valid for the period of five years will be terminated after six months.]

Figure 4.24. presents the distribution of high, median and low-value adverbs in the Polish Corpus.

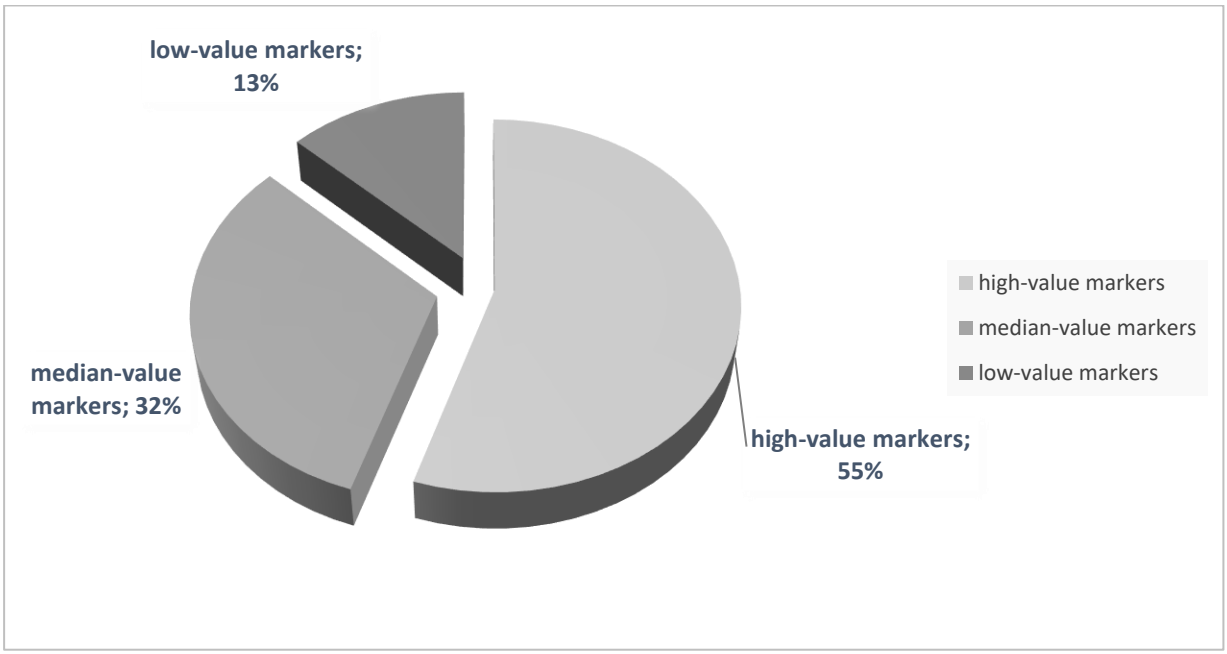

Figure 4.24. The distribution of high, median and low-value adverbs and modal modifiers in the Polish Corpus

4.2.5 Polish lexical verbs as markers of epistemic modality

Verbs have been here divided into only two sets: no considerable meaning differences occurred between median and low value lexical verbs thus they are analyzed in their entirety. Modal

auxiliaries, which have already been accounted for in section 4.2.3., are omitted. The results are presented in table 4.6.

	HIGH MODAL VALUES	**MEDIAN MODAL VALUES**
Lexical verbs	nie ma wątpliwości [there is no doubt]: 10 nie ulega wątpliwości [it is beyond doubt]: 72 nie budzi wątpliwości [raises no doubts]: 57 nie ma racji [is wrong]: 9 nie ma racjonalnych argumentów [there are no rational arguments]: 1	uważa się [it is thought]: 30 przyjmuje się [it is assumed]: 149 wydaje się/zdaje się [it seems]: 67 okazuje się [it turns out]: 9 nie wydaje się [it does not seem]: 10 przemawia za [favor sth]: 34 warto [it is worth]: 49 wypada [it is fitting/proper for sb to/it behooves sb]: 80 (można/ należy) podejrzewać [(one could/should suspect]: 2 Total number of high-value markers: 149 (26%) Total number of median-value markers: 430 (74%)

Table 4.12. Polish lexical verbs as markers of epistemic modality

As we can see, contrary to adverbs and modal modifiers that were presented earlier, among lexical verbs more median and low-value expressions are encountered in comparison with those that express categorical meaning. There were no verbs in the first person singular: Polish judges express their views with regard to cases they hear on behalf of the judiciary as a whole. This places them behind their American counterparts who often indulge in expressing their opinions by using first person singular verbs. More frequently are to be found impersonal verb forms such as: *'uważa się', 'przyjmuje się', 'wydaje się/zdaje się', 'nie wydaje się', 'okazuje się'* as well as verbs accompanied by modals. Of high value verbs the most frequent cluster is *'nie ulega wątpliwości'*. Equally well represented is its synonym: *'nie budzi wątpliwości'.* Below a detailed list of high-value collocations containing the word *'wątpliwości'* ['doubts']:

- *nie ma wątpliwości : 10*
- *nie ulega wątpliwości: 52*
- *nie ulega bowiem wątpliwości: 3*
- *nie ulega jednak wątpliwości: 5*
- *nie ulega najmniejszej wątpliwości: 1*
- *nie ulega ponadto wątpliwości: 1*
- *nie ulega przecież wątpliwości: 1*
- *nie ulega także wątpliwości: 2*
- *nie ulega też wątpliwości: 1*
- *nie ulega więc wątpliwości: 2*
- *nie ulega zaś wątpliwości: 1*
- *nie ulega zatem wątpliwości: 3*
- *nie budzi wątpliwości: 57* [63]

As far as the median and low-value lexical verbs are concerned, they are almost exclusively impersonal verb forms which are very common for the Polish legal register. We can see here a difference between the Polish and American Corpora: while as the former contains a variety of grammatical constructions which indicate neutrality and impartiality (cf. impersonal verb forms ending with "-no", "-to", impersonal verbs with particle "się", passive voice, in certain cases, nominalizations) , the latter seems to rely mostly on the passive voice to convey the idea of objectivity. Strębska (2010) conducted a research where European Union language is scrutinized in order to determine the differences between the parallel documents in English and Polish. The results generally confirmed the hypothesis that language of the European Union is highly impersonal due to the frequent use of passives, nominalizations and impersonal verb forms (Strębska 2010: 22). The reason behind this is probably due to specificity of the genre in question. The Community legislation is a set of normative acts where passivization is a conventional structure employed throughout. The consequences are of course to be felt directly: the meaning becomes "obscured" through the application of various grammatical transformations. This happens due to the density of highly specialized terms. Van Klink (Klink ibid. 268) sees the nominalization as not only transforming the verb, but the whole clause into one nominal phrase. As a result, "the action and relationships described in the clause are compressed, and generally obscured, in a single noun." They further state that instead of

[63] English translation: there is no doubt/there can be no doubt/beyond the shadow of doubt etc.

simplifying the process of reception by reduction of the sentence matter, nominalization makes it even more complex (Klink ibid. 268). What passivization entails is of course the depersonalization of an author or the law-making body. As in the example below:

71. *For the purpose of determining, in pursuance of the third sentence of Article 14a (2) of the Regulation, the principal activity of the person concerned, account* ***shall be taken*** *first and foremost of the locality in which the fixed and permanent premises from which the person concerned pursues his activity is situated..*
72. *W celu określenia głównej działalności danej osoby, zgodnie z przepisami art. 14a 2, zdanie trzecie rozporządzenia,* ***bierze się*** *przede wszystkim pod uwagę stałe miejsce prowadzenia działalności przez tę osobę.*[64]

Median and low value lexical verbs are more often to be encountered. Among them *'przyjmuje się'* is ranked highest (149). Verbs that follow include: *'wypada'* (80), *'wydaje się/zdaje się'* (67), *'warto'* (49), *'uważa się'* (30). Let us have a look again at the types of Polish lexical verbs with particle „się" :

- *przyjmuje się [it is assumed]: 149*
- *uważa się [it is considered]: 30*
- *wydaje się/zdaje się [it seems]: 67*
- *okazuje się [it turns out]: 9*
- *nie wydaje się [it does not seem]: 10*
- *przemawia za [it favors]: 34*
- *warto [it is worth]: 49*
- *wypada [it befits/it seems appropriate]: 80*
- *(można/ należy) podejrzewać [it may be/should be assumed] : 2*

The type most often employed is *'przyjmuje się'*. The most prototypical English translation would undoubtedly be 'it is assumed'. We can see, therefore, that the nature of the language often determines which grammatical construction is to be employed. It has also little to do with the individuality of the text but rather with its appurtenance to a specific genre. It turns out that a variety of factors can determine the quality and quantity of the linguistic phenomena under analysis. Another example which confirms that this is indeed the case would be the verb *'wypada'* which occurs in a fixed set of predictable collocations such as: *'wypada zauważyć',*

[64] Source**: Council Regulation (EEC) No 3795/81 of 8 December 1981 extending Regulation (EEC) No 574/72 to self-employed persons and members of their families.**

'wypada uznać', 'wypada przyjąć', 'wypada przypomnieć', 'wypada odnotować', 'wypada podkreślić'. We have also identified a number of cases which formed fixed collocations and could have been classified into the categories that were distinguished for the purpose of the analysis but their occurrence was one-time and thus, could not be included as affecting the results. Although they exemplify the complexity of legal formulas, they seem well anchored in the Polish judicial discourse. E.g. the phrase *'pozostaje w ewidentnej sprzeczności'*, when entered in the Internet, always appears in its entirety and almost always in the legal settings. This fixedness is a result of a given convention and custom which, in some cases, may affect the results. The figure below illustrates the percentage distribution of the high versus median and low value lexical verbs in the Polish Corpus:

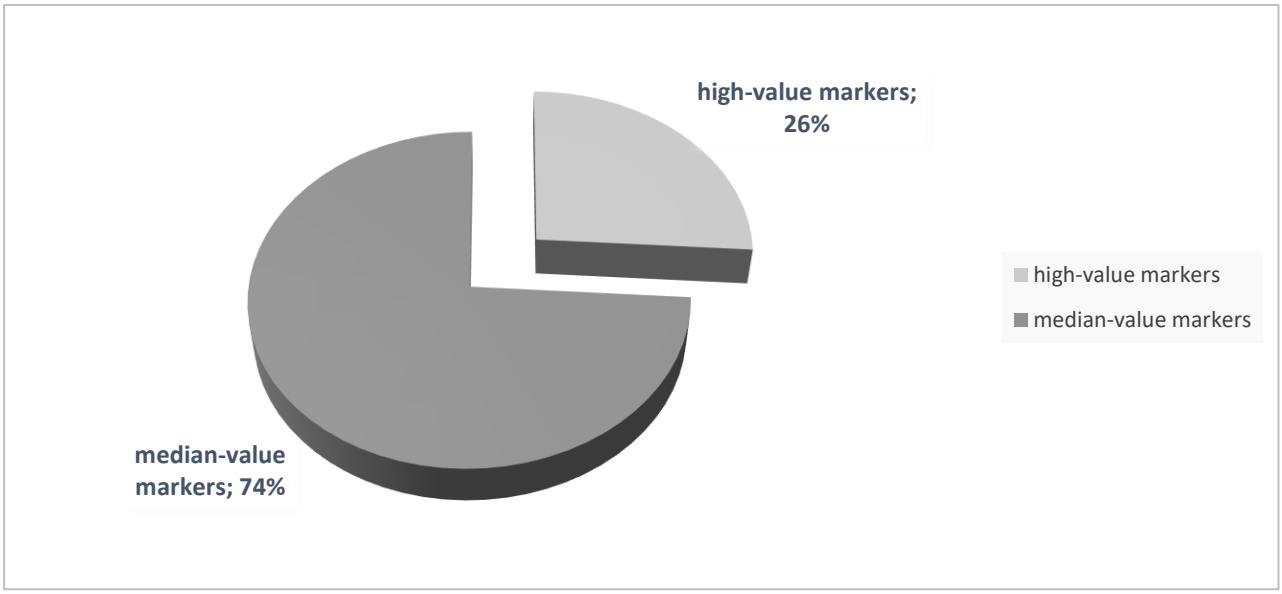

Figure 4.25. High and median-value lexical verbs in the Polish Corpus

Chapter 5

The analysis: the American Corpus

5.1 Introductory remarks

In this chapter we will present the results obtained in the course of the analysis of the American Corpus and at the same time, attempt to confront both materials. The first observation that attracts our attention while comparing both materials is the individuality of the language used in the opinions of the American Supreme Court vis-à-vis the Polish formal style, hardly distinguishable when it comes to personal traits. Indeed, decisions of the American judges are always signed and take the form of scrupulous analysis of history, carefully outlining previous cases that aroused controversy in an attempt to either apply the principle *'stare decisis'*, i.e. to conform to the past decision or justify the distinctness of the present case and, consequently, establish a new precedent by overturning the existing one. The United States Federal Rules of Civil Procedure defines judgment as 'a decree and any order from which an appeal lies and does not include recitals of pleadings, a master's report, or a record of prior proceedings'.[65] The Idaho Consitution, in turn, defines judgment as 'the final determination of the rights of the parties in an action or proceeding'. [66]

As far as the issue of rights and liabilities is concerned, a judgment must address all of the issues raised in the claims of the parties. Otherwise, the litigants may revise their claims and counterclaims. As opposed to oral judgments, written ones are typically provided in more complicated cases likely to exert some influence upon members of the community. Depending on the procedures observed by the judiciary or the parties themselves, the merits of the case as well as the issues that occur in the course of the trial, we might distinguish between the following main types of judgments:

— declaratory judgment,
— default judgment,

[65] source: The United States Federal Rules of Civil Procedure (https://www.law.cornell.edu/rules/frcp/rule_54, last access: 07/01/2016).
[66] (I.C. § 10-701 (repealed effective March 31, 1975).

— summary judgment,

— interlocutory judgment.

As stipulated in The United States Federal Rules of Civil Procedure, the declaratory judgment is an 'alternative relief (…) appropriate when it will "terminate the controversy" giving rise to the proceeding'. It often involves only an issue of law on undisputed or relatively undisputed facts and operates frequently as a summary proceeding [67]. As opposed to the standard judgment it is thus less definitive and seeks a milder solution with no directives or injunctions imposing further actions upon the litigants. It might be compared to a simple injunction present in the Polish legal system. Although the declaratory judgment is not binding, the parties should act in accordance with the court's order.

A default judgment, in turn, is a judgment rendered in favor of one party based on the other party's failure to take action. The United States Federal Rules of Civil Procedure defines the default procedure in the following way: 'when a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default'.[68] Given one of the parties' non-compliance with the procedural concerns, a judge who issues a default judgment simply grants the relief requested by the appearing party and is not required to conduct further factual or legal analysis.

A summary judgment is rendered where the case is considered as significantly violating principles of community life and thus, does not require a trial. According to Black's Law Dictionary, in issuing the summary judgment, the court will consider 'the contents of the pleadings, the motions, and additional evidence adduced by the parties to determine whether there is a genuine issue of material fact rather than one of law'.69 The U.S. Rules of the Civil Procedure oblige the movant to show 'that there is no genuine dispute as to any material fact (…)'.

The last type of judgment, the interlocutory judgment is an interim judgment that provides a temporary decision for the parties to the proceedings. Insofar, the interlocutory judgment is not

[67] source: The United States Federal Rules of Civil Procedure (https://www.law.cornell.edu/rules/frcp/rule_54, last access: 07/01/2016).
[68] source: The United States Federal Rules of Civil Procedure (https://www.law.cornell.edu/rules/frcp/rule_55).
[69] source: Black's Law Dictionary 1664 (10th ed. 2014).

final and may either not be subject to appeal or may follow a different appeal procedure than other kinds of judgments. [70]

As far as the internal structure is concerned, typical common law judgment can be divided into the following parts:

— Facts in issue
— Reference to previous cases that bear resemblance to the case at hand
— Summary of statements and arguments put forward by the parties to the proceeding
— Statement of reason (justification of the decision) (Koszowski 2009: 29-30).

Analogically, the structure of the U.S. Supreme Court will be based on the reference to the facts of the case together with the history of appellation and the justification where reference to precedents is made. A decision is preceded by a syllabus that summarizes a given case.

There is also the tradition long observed in Anglo-Saxon legal systems to include several judicial opinions. One might thus encounter two or more concurring opinions and sometimes a dissenting opinion or *votum separatum* (ibid 2009: 31). A dissent is filed by the member of the adjudicating panel during the debate and signed with the following annotation: *cum voto separato*. It should be noted, however, that the dissenting opinion might be filed only in the appellate proceedings, not during the main hearing (Myrczek-Kadłubicka 2013: 168). Sometimes the dissenting opinion takes the form of a passionate speech filled with metaphors otherwise rarely encountered in the judicial discourse (ibid: 169). As to the style, especially as far as the statement of reasons is concerned, Koszowski indicates that common law judgments rely more on the discursive rather than syllogism-based argumentation.

Let us conclude this introductory part by stating that conventionalized forms such as court documents, agreements, contracts and, for that matter, judgments evolve more slowly than literary genres and consequently, retain more 'fossilized' phrases and expressions. However, gathering a lot of knowledge about the genre and its conventions, the writer has the advantage of knowing its limits (Bhatia 1993: 14-15) and can become more innovative when putting forward his/her ideas. Bhatia concedes that once the writer has become familiar with a certain

[70] source: Black's Law Dictionary 971 (10th ed. 2014).

genre or becomes a specialist within the genre, s/he can be more creative in the use of the given genre than non-specialists. Notwithstanding the above, we should bear in mind the highly structured form of legal judgments as belonging to the register or sublanguage (depending on how we define legal langauge) subject to various syntactic and semantic restrictions, deviant rules of grammar, high frequency of certain constructions, text structure and the use of special symbols (Kittredge 1982: 102). Many authorities such as Harris (1982), Kittredge (1982) or Tomaszczyk (1999) point to the communicative aspect of not only judgments but of legal language in general as a necessary prerequisite of classifying a certain incidental string of sentences as making part of legal 'sublanguage'. Harris observes, that 'a new term or grammatical construction does not become a true part of the sublanguage until its use has been conventionalized by the community of specialists'. Thus, we are again faced with the problem of extra-linguistic factors which play a decisive role in identifying a certain set of sentences as belonging to a specific sublanguage different from the standard language (Kittredge 1982: 102-103). The communicative aspect of the language of law is also stressed in the definition provided by Peter Goodrich who regards it as: "a specific sociolinguistically defined speech community and usage" (Tomaszczyk 1999: 7). As far as the structure is concerned, we can distinguish between the first, informative part, and the second part, often referred to as the statement of reason. As may be expected, the statement of reason will be linguistically marked with epistemicity to a greater extent than the first part. It typically contains the consenting and the dissenting (if any) opinions as well as the argumentation schemes most often employed by the judges. For the time being, let us mention the two types of reasoning: a syllogism and an argumentation. While as the former served as a logic-based model for providing explanations with no regard to the adversarial nature of the process (the fact that there are always two parties that submit claims contradicting each other), the latter is gradually becoming more and more standardized as more heedful of the discursive character of the conflicts of interests that take place in the courtroom.

In the traditional positivism, the essence of law-application in all its types was the so called subsumption syllogism, a type of argumentation based on two premises: the abstract and general norm (the greater premise), the statement of facts (the smaller one) and the conclusion (the decision of the law-applying entity). However, since law is becoming more and more open and indefinite, there is an ever growing need to express it through the means of discourse. This

discursive character of law is also due to the growing openness and indefiniteness of legal terms (cf. the technological processes beginning to overtake legal regulations). The above was noticed as early as in 1922 by Pound in his "Introduction to the Philosophy of Law" and reiterated in 1961 by Hart in his theory of the open texture of law. Common to these theories is the presumption that the meaning is being construed through the act of articulation which can modify meaning components as well as the conviction that legal terms are contextual and context-dependent. Wittgenstein's frequently quoted statement that 'only in the context of a proposition has a name meaning' may also illustrate this (Wittgenstein 1999). In consequence, there is a change in the character of legal reasoning. The time-honored and syllogism-based model of inferencing is being replaced by the argumentation model. The proponents of this model view it as making argument-driven decisions and thus choosing a particular alternative.

5.2 **The analysis**

5.2.1 English nouns and nominal phrases as markers of epistemic modality

	HIGH VALUE NOUNS	**MEDIAN VALUE NOUNS**	**LOW VALUE NOUNS**
Nouns and nominal phrases	no doubt: 221 absurdity: 21 irrationality: 9	implausibility: 17 in my view: 392 in our view: 98 in my opinion: 21 in our opinion: 37	uncertainty: 200 possibility: 754 suspicion: 242 probability: 300 doubt: 1597 Total number of high-value markers: 251 (6%) Total number of median-value markers: 565 (14%) Total number of low-value markers: 3.093 (79%)

Table 5.1. English nouns and nominal phrases as markers of epistemic modality

The most common collocations with ‘no doubt’:

We/I have no doubt [that] … - 16 instances, of which:
I have no doubt that: 5 instances

We have no doubt that: 11 instances

…leave(s)/left no doubt – 19 instances
[Something/there] is no doubt … - 62 instances
[Something] would no doubt – 13 instances
[Something] cast(s) no doubt – 6 instances

Contrary to Polish Corpus, the nouns such ‘absurdity’, ‘controversy’ or ‘anomaly’ that we classified as high-value epistemic markers, appeared quite often. In Polish, it is rather adjectives that are employed more often. However, those that did occur in the Corpus most frequently were indicators of non-conformity with the statutes as far as their meaning is concerned. They included: *‘błędny’, ‘nieuzasadniony’, ‘bezpodstawny’ [faulty, unjustified, unfounded/groundless]*. The context in which they were used always pointed to some legal provision being violated:

1. *Zarzut naruszenia art. 378 § 1 k.p.c. oraz art. 328 § 2 nie jest w istocie zarzutem procesowym, lecz zarzutem naruszenia prawa materialnego polegającym na błędnym zastosowaniu art. 299 § 2 k.s.h. i niezastosowaniu art. 299 § 1 k.s.h. w odniesieniu do ustalonego stanu faktycznego.*

   [The charge of having violated art. 378 § 1 of the Polish Code of Civil Procedure and art. 328 § 2 is not of procedural character but pertains to substantive law and consists in the faulty application of art. 299 § 2 of the Code of Commercial Companies and Partneships and not applying art. 299§ 1of CCCP in relation to the determined findings.

In contrast, nouns such as ‘absurdity’ refer to the author’s point of view more strongly than the nouns/adjectives such as ‘*faulty’, ‘unjustified’, ‘unfounded’, ‘ungrounded’*. In all the cases they indicate clear-cut and emphatic disapproval for something:

2. *Putting aside the lack of any legitimate state interest for application of the rule in this case, its irrationality is apparent when considering the evidence that is allowed. See Washington, supra, at 22 ("The absurdity of the rule is amply demonstrated by the exceptions that have been made to it").*

In the Polish Corpus the adjective '*absurdalny'* appeared only twice where as in the American corpus '*absurdity'* has 21 instances and the adjective '*absurd'* 115 instances of occurrence.

As far as the median-value nouns are concerned, there is an overwhelming number of the instances of the type 'in my/our view/opinion'. In the Polish Corpus none of these expressions is employed which is due to the convention: the only 'allowable' phrase is 'zdaniem Sadu'. Opinions are thus expressed on behalf of the Supreme Court considered collectively: as a body of judges. Indicators of individuality are more hidden and not so easily noticeable as the ones in the American Corpus where opinions carry with them a strong imprint of a person's individual approach towards a given issue.

However, equally well represented are expressions that belong to the low-value category of epistemic markers. Thus, although they tend to mark their presence in the language of the judgment they deliver, American judges are also tentative and careful in what they say and how they justify their verdict. Let us look at several examples of the contexts where the low-value markers occur:

3. *The implausibility of Justice Breyer's contention that Apprendi is unfair to criminal defendants is exposed by the lineup of amici in this case. It is hard to believe that the National Association of Criminal Defense Lawyers was somehow duped into arguing for the wrong side.*
4. *That uncertainty, our precedent establishes, see supra, at 145–146, justifies affording the employer the chance to establish, through the Ellerth/Faragher affirmative defense, that it should not be held vicariously liable.*

American judges are thus more exuberant and expansive in declaring their opinions: this holds for both being certain and being uncertain towards the propositional content. It may thus not be a reliable measure to compare the amount of the neutral expressions such as 'in my view' or 'in my opinion'. Below a figure where data are presented in the percentage form:

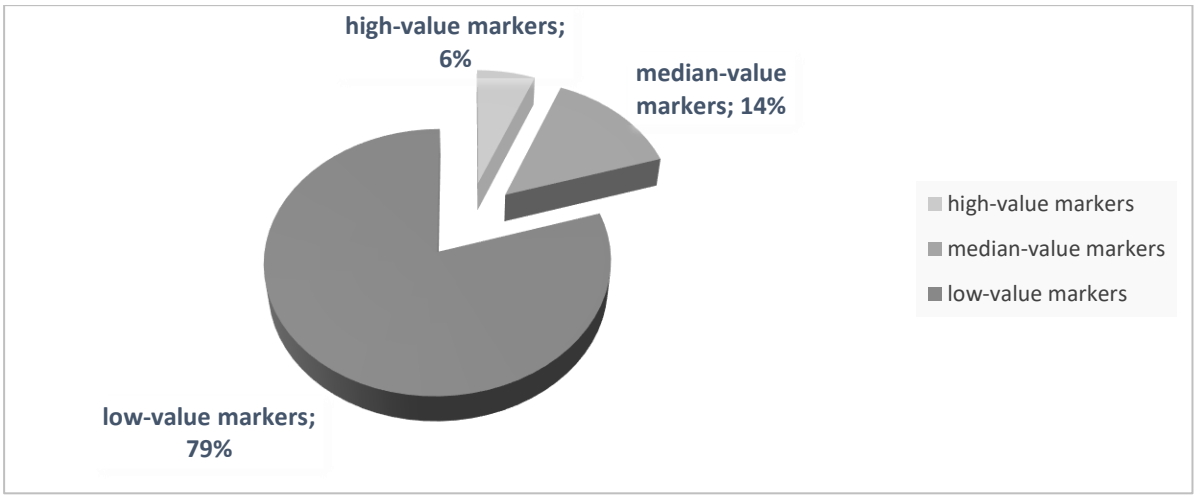

Figure 5.1. High, median and low-value nouns in the American Corpus

5.2.2 English modal and semi-modal verbs as markers of epistemic modality

The table below contains the English modal verbs that have been taken into account while investigating the epistemicity of the American Corpus.

	HIGH VALUE MODALS	**MEDIAN VALUE MODALS**	**LOW VALUE MODALS**
Modal and semi-modal verbs	must : 206 cannot: 560 could not : 1306 need not: 822 should not : 915 ought to: 167 be bound to: 103 be going to: 188 have to: 483 (would have to: 196)	may not: 1073 might not: 82 should : 4545 will: 6232 shall: 3979 be supposed to: 37 be willing to: 150 be about to: 54	may: 1.716 might: 2.155 can: 0 could: 867 would : 16.739 be able to: 544 [negative form: 15]

	need to: 375 obliged to: 70 (not obliged to): 14	appear to be (true/proper/adequate): 138 [negative form: 34] seem to: 107 [negative form: 15]	Total number of high-value modals: 5195 (12%) Total number of median-value modals: 16.397 (38%) Total number of low-value modals: 22.021 (50%)

Table 5.2. High, median and low-value modal and semi-modal verbs in the American Corpus

The first modal that we are going to analyze is 'must'. Below a list of the most frequent clusters of the modal verb 'must' encountered in the American Corpus.

Must be	*2416*
Must have	*299*
Must consider	*112*
Must give	*98*
Must decide	*90*
Must prove	*89*
Must take	*88*
Must make	*87*
Must determine	*83*
Must provide	*62*
Must demonstrate	*62*
Must file	*62*
Must serve	*51*
Must do	*48*
Must be given	*45*
Must be served	*44*
Must state	*44*
Must satisfy	*44*
Must not be	*43*

Must include	*39*
must pay	*38*
must ask	*37*
must look	*37*
must follow	*35*
must contain	*35*
must comply	*35*
must establish	*35*
must find	*35*
must issue	*32*
must proceed	*29*
must apply	*29*
must meet	*27*
must act	*27*
must plead	*25*
must obtain	*23*
must present	*23*
must use	*19*
must dismiss	*18*
must enter	*17*
must seek	*17*
must respect	*16*
must appoint	*16*
must reject	*12*

Table 5.3. 'Must': the most frequent clusters in the American Corpus

As we can see, the vast majority of the analyzed 'must' clusters represent the deontic type of modality, as was the case with the Polish Corpus and 'musi' clusters. Although it is difficult to observe any patterns or regularities when classifying the items, we could see, however, that epistemic 'must' occurred in the following structures:

-where the expressions semantically implied the commitment of an error or mistake, thus were of the type: *(it/there) must be a mistake/an error/ a misstatement/ an omission*, they were bound to represent the deontic type of modality

-where the expressions were of the type:

- *it must be that… - 3*

- *it must be the case that… - 2*
- *(it) must be true – 2*
- *In what must be a* - 1*
- *That must be because… -1*

-where the expressions represented structures "must be + negation" (the total number of such structures: 5). Like in the example below:

The state court's result must be not only incorrect but also objectively unreasonable.

Where the analyzed structures were of the passive type, 'must + adjective' or 'must have', the decision on how to categorize a given expression again depended on the context. However, there was only a handful of clusters that were classified as epistemic. To these we included:

- *Must be concluded – 3*
- *Must be irrelevant - 1*
- *Must have + past participle (necessity in the past → epistemic necessity - 149*

Examples of epistemic necessity with 'must have'+ past partriciple include:

5. *In order for an accused's statement to be admissible at trial, police must have given the accused a Miranda warning.*
6. *Thus, to issue respondent a writ of coram nobis on remand, the NMCCA must have had statutory subject-matter jurisdiction over respondent's original judgment of conviction.*
7. *"[T]he jury must have found when it acquitted Yeager that Yeager himself did not have any insider information that contradicted what was presented to the public").*
8. *He must have been aware of the nature and limited threat of the specific drugs he was searching for, and while just about anything can be taken in quantities that will do real harm, Wilson had no reason to suspect that large amounts of the drugs were being passed around, or that individual\ students were receiving great numbers of pills.*

An example of a verb which represents two types of modality is 'be'. In the below examples, 'must be' represents the epistemic type pf meaning:

9. *Furthermore, that statement was made in the context of the Court of Appeals' holding that a deceptive act must be a misstatement or omission—a holding which the Court unanimously rejects.*

10. *If voluntarily drawing a crossover district brings a State into compliance with § 2, then requiring creation of a crossover district must be a way to remedy a violation of § 2, and eliminating a crossover district must in some cases take a State out of compliance with the statute.*

On the other hand, a handful of 'must' collocations were classified as referring only to the epistemic necessity:

- *Must fail : 24*
- *Must mean: 15*
- *Must have been: 37*

As in the examples below:

11. *Under that view, the first prosecution of Lara was not a delegated federal prosecution, and his double jeopardy argument must fail.*
12. *Because Kentucky's lethal injection protocol is designed to eliminate pain rather than to inflict it, petitioners' challenge must fail.*

Overall, of all the 7798 occurrences of 'must' in the American Corpus only 206 (3%) have been classified as epistemic. All observable patterns and regularities have been mentioned above. Figure 5.2. shows the percentage distribution of the deontic versus epistemic type of modality in the analyzed material.

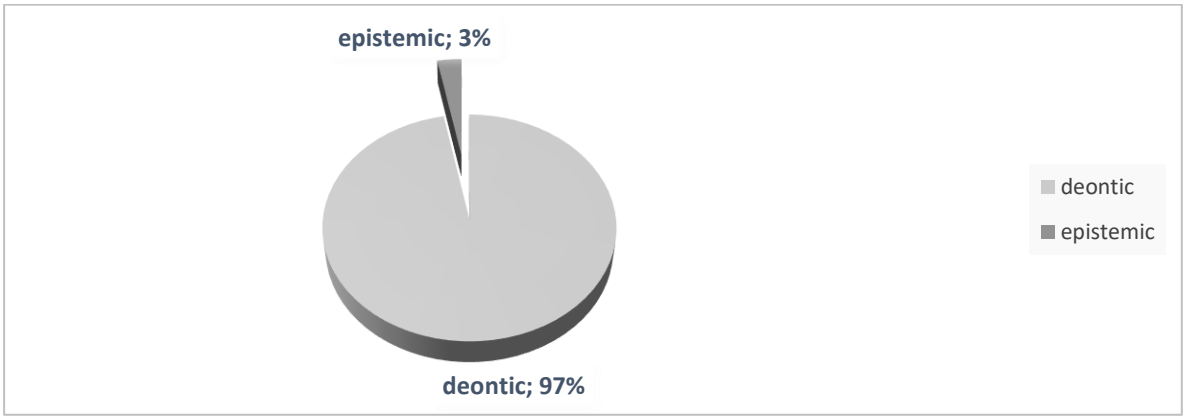

Figure 5.2. High-value modal 'must': the distribution of epistemic and deontic occurrences in the American Corpus

In the case of 'must be', the discrepancy is even more substantial: of all 2419 occurrences, only 18 (1%) have been categorized as epistemic:

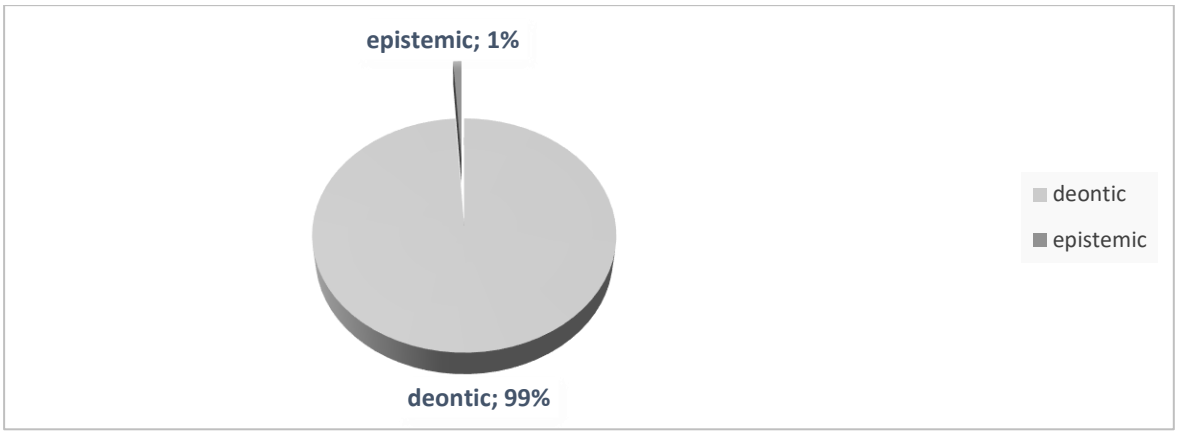

Figure 5.3. 'Must be': the distribution of epistemic and deontic occurrences in the American Corpus

The only repetitive cluster where the occurrence of epistemic type of 'must' cluster was somewhat more considerable was 'must have'. All the past instances were classified as epistemic. Thus, out of 299 instances, 149 were epistemic and 150 dentic. The results are shown in figure 5.4.

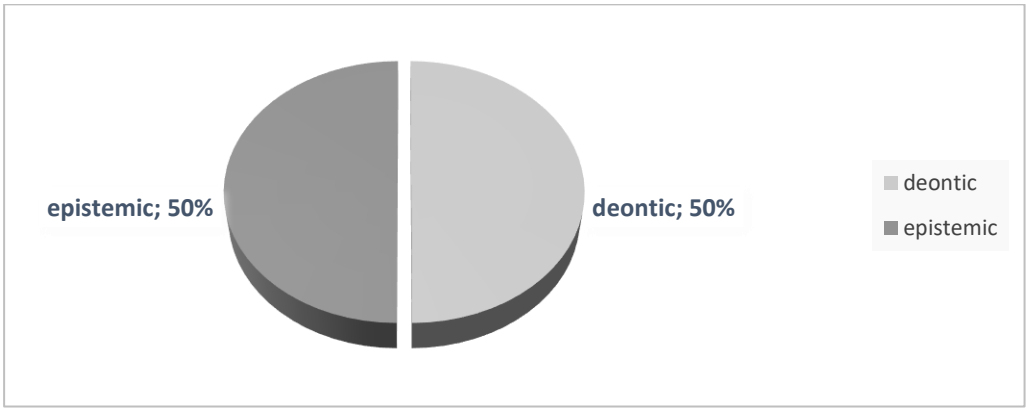

Figure 5.4. Figure 5.4. 'Must have': the distribution of epistemic and deontic occurrences in the American Corpus

What we end up, therefore, is an interesting conclusion that most of the few contexts were 'must' appeared in its epistemic variant, implied some negative consequences or meaning. The percentage of epistemic 'must' in the American Corpus is even narrower than in the case of the Polish Corpus. It turns out again that the prototypical meaning of the modal verb 'must' in the American part of the Corpus is deontic, as the results of the analysis show.

Let us now analyze the occurrence of the epistemic versus root type of modality in the high-value modal 'cannot'. As was to be expected, the deontic type of modality prevailed. However, significantly more epistemic instances were to be detected in the passive clusters featuring the

modal *'cannot'*. As in the case of the Polish Corpus, this was to be attributed to the abstractness or metaphorical character of the analyzed expression. Sentences below may illustrate this phenomenon better:

13. *To the extent that the District Court adopted such a categorical rule, then, its analysis cannot be squared with the principles of equity adopted by Congress. The court's categorical rule is also in tension with Continental.*

All the examples were analysed to distinguish those verbs that semantically relate to the states of thinking, reasoning and drawing conclusions so that we ended up with the following list of 'can' clusters which were classified as representing epistemic modality (the majority of them are passive structures).

- *cannot bear the weight*
- *cannot be assumed*
- *cannot be characterized*
- *cannot be compared*
- *cannot be considered*
- *cannot constitute*
- *cannot be construed*
- *cannot be correct*
- *cannot be deemed*
- *cannot be defined*
- *cannot be explained*
- *cannot be extended*
- *cannot be extracted*
- *cannot be gainsaid*
- *cannot give rise*
- *cannot be ignored*
- *cannot be interpreted*
- *cannot be justified*
- *cannot be known*
- *cannot be meaningfully disntinguished*
- *cannot be overlooked*
- *cannot be overriden*
- *cannot be presumed*

— *cannot be read*
— *cannot be reconciled*
— *cannot be understood*
— *cannot be realized*
— *cannot be regarded*
— *cannot be right*
— *cannot be said*
— *cannot be seen*
— *cannot be seriously disputred*
— *cannot be shrugged aiside*
— *cannot be squared*
— *cannot be squeezed*
— *cannot be sure*
— *cannot be synonymous*
— *(it) cannot be that…*
— *cannot be taken*
— *(it) cannot be the case*
— *cannot be thought*
— *cannot be tolerated*
— *cannot be treated*
— *cannot be true*
— *cannot be understood*
— *cannot be unequivocally established*
— *cannot be viewed*

Altogether, out of 3077 total occurrences of the modal ‘cannot’, 560 (18%) were classified as ‘epistemic’ and 2517 (82%) as deontic. Below a percentage distribution:

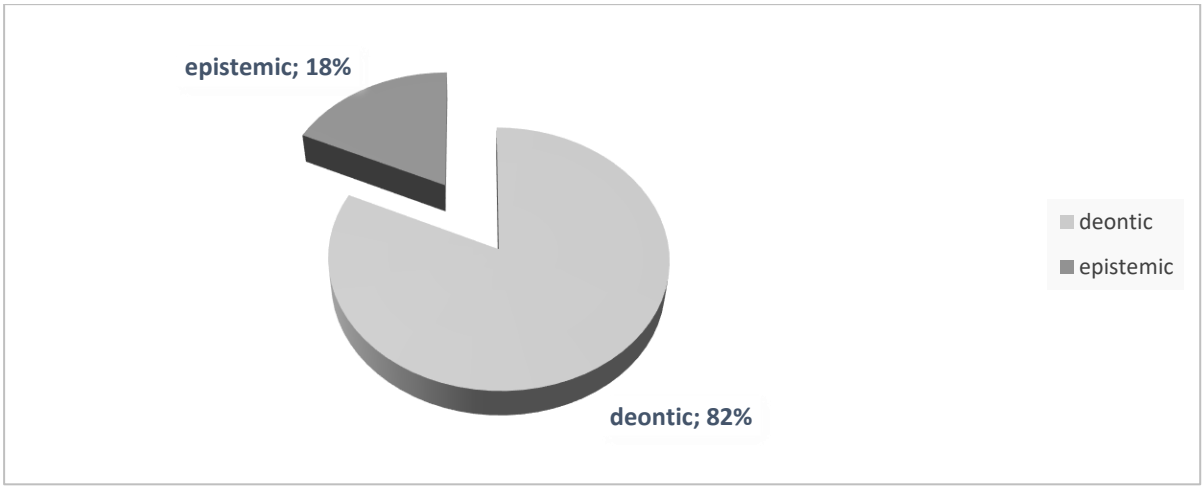

Figure 5.5. High-value modal 'cannot': the distribution of epistemic and deontic occurrences in the American Corpus

Furthermore, if one took as a variable the 1st person sing. or plural to form collocations *'I/we cannot'*, the percentage of epistemic modality in the overall statistics was also considerably higher. Just as in the examples below:

14. *For the record, however, I cannot agree that a bare cross such as this conveys a nonsectarian meaning simply because crosses are often used to commemorate "heroic acts, noble contributions, and patient striving" and to honor fallen soldiers.*

As was the case with the Polish Corpus, where abstract or metaphorical settings were to be observed, epistemic modality was more probable to occur. Examples of such metaphorical settings:

15. *Michael Newdow's challenge to petitioner school district's policy is a well-intentioned one, but his distaste for the reference to "one Nation under God," however sincere, cannot be the yardstick of our Establishment Clause inquiry.*
16. *The language of the statute, read in light of Congress' reasons for enacting it, cannot bear this interpretation.*

Such metaphorical settings were more frequently spotted in the passive constructions than in the active ones. Out of 1089 'cannot be' clusters, 349 were classified as epistemic. The overall percentage distribution of deontic versus epistemic modality in the passive 'cannot' structures is presented in figure 5.6. below.

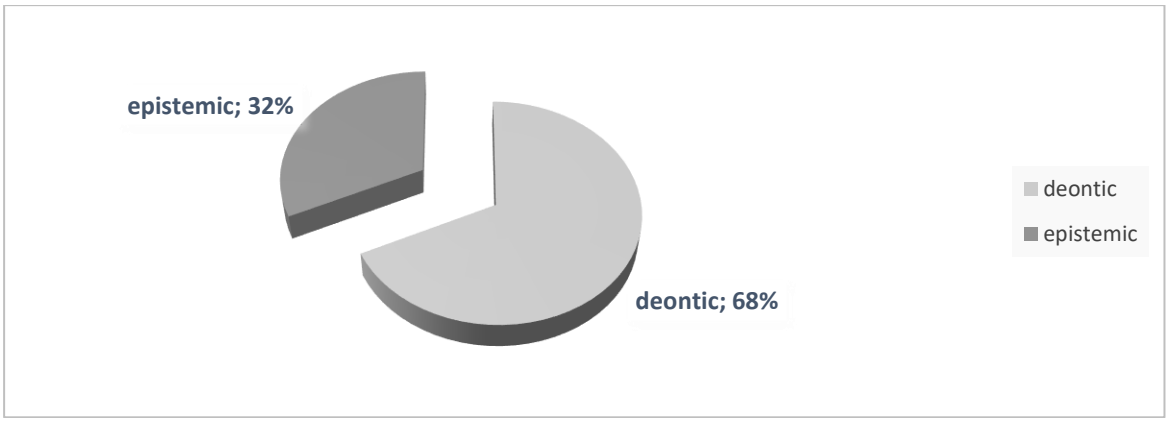

Figure 5.6. 'Cannot be': the distribution of epistemic and deontic occurrences in the American Corpus

As far as the low-value modals are concerned, we have picked out three variables which have respective tentative forms and negations which are analysed separately if their semantic fields do not overlap (which is the case in almost all the cases):

- *Can - could – (negation: 'cannot' [as a high-value epistemic modal already accounted for] and 'could not' as a low-value epistemic modal occurring mostly in 'could not have+ past participle' form and expressing logical inference with reference to the past events)*
- *May – might – (negations: may not and might not)*

Most frequent uses of epistemic 'could' in the American Corpus include:

- *could be read: 31*
- *could be said: 18*
- *could be construed: 11*
- *could be characterized: 9*
- *could be thought: 8*
- *could be understood: 8*
- *could be challenged: 8*
- *could be justified: 7*
- *could be argued: 7*
- *could be seen: 7*
- *could be described: 6*
- *could be interpreted: 6*
- *could be ignored: 3*
- *could be called: 3*
- *could be inferred: 3*
- *could be attributed: 2*

— *could be regarded: 2*
— *could be deemed: 2*
— *could be squared: 1*
— *could be rebutted: 1*
— *could be undermined: 1*
— *could be concluded: 1*
— *could be likened: 1*

Let us have a look at several examples where the above clusters have occurred to analyze their epistemicty:

17. *But even if the illegal entry here could be characterized as a but-for cause of discovering what was inside, we have "never held that evidence is 'fruit' of the poisonous tree' simply because 'it would not have come to light but for the illegal actions of the police.'*
18. *Taken in the abstract—and to its most absurd—any decision on behalf of a child could be construed as a right "relating to" the care of a child.*
19. *In Crawford, we recognized that this history could be squared with the language of the Clause, giving rise to a workable, and more accurate, interpretation of the Clause.*

All the above 'could be' clusters may be described as a product of some reckoning on the part of the judge delivering the opinion. 'Could have' + past participle clusters have been with no exception classified as epistemic. Below a few examples that may confirm that this is indeed the case:

20. *There can be no dispute that petitioner could have filed suit as soon as the allegedly wrongful arrest occurred, subjecting him to the harm of involuntary detention, so the statute of limitations would normally commence to run from that date.*
21. *This Court has never suggested that the question whether the jury could have adequately considered mitigating evidence is a matter purely of quantity, degree, or immutability.*
22. *The transcript reveals that, despite the preceding instructions and information, Juror Z had both serious misunderstandings about his responsibility as a juror and an attitude toward capital punishment that could have prevented him from returning a death sentence under the facts of this case.*
23. *During the Tinker era, a public school could have defined its educational mission to include solidarity with our soldiers and their families and thus could have attempted to outlaw the wearing of black armbands on the ground that they undermined this mission.*
24. *In Elstad, the station house questioning could sensibly be seen as a distinct experience from a short conversation at home, and thus the Miranda warnings could have made sense as presenting a genuine choice whether to follow up on the earlier admission.*

The total occurrence of ‘could have’ + past participle cluster (passive constructions) was 727 and of ‘could’ 4686 (whereby the negative structure was not taken into account). Of all records, 867 (19%) have been classified as epistemic and 3819 (81%) as deontic. The percentage distribution is shown in figure 5.7.

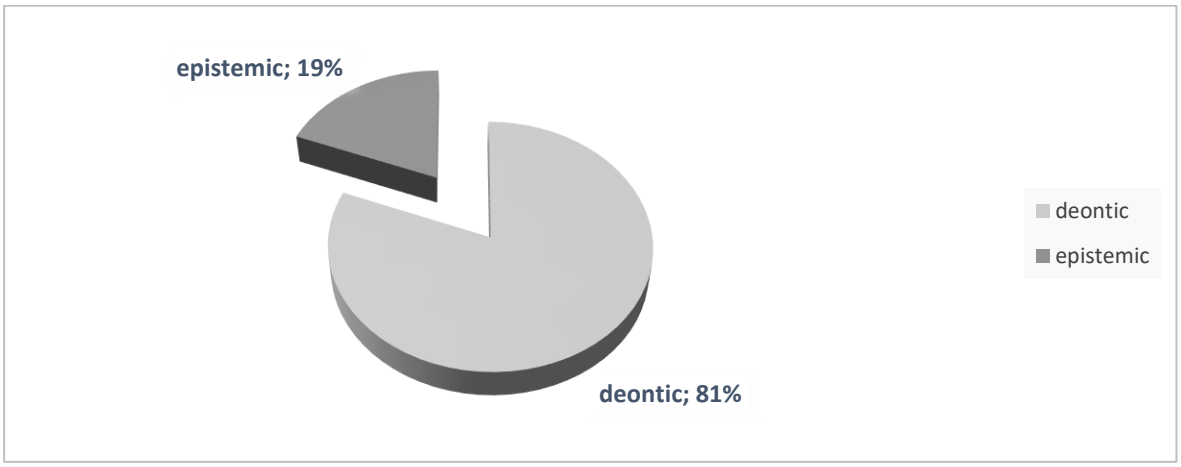

Figure 5.7. ‘Could be’: the distribution of epistemic and deontic occurrences in the American Corpus

The results generally confirm the claim that epistemic occurrences of the modal ‘can’ are negligible or non-existent in the English language. In contrast to ‘can’, however, ‘could’ shows some tendency of evolving towards epistemicity which is probably due to its tentative character. The legal register does not differ in this respect from other genres of the written discourse.

As far as the high-value epistemic modal ‘could not’ is concerned, it is used in past hypothetical conditionals and it expresses impossibility in the past. Its meaning overlaps to a considerable extent with ‘can’t have’. *‘Can't have’* and ‘*couldn't have’* share a similar degree of probability. They are almost identical in meaning when they express the impossibility of something being true. In total, 17% instances of ‘could not’ have been classified as epistemic. The most frequent epistemic clusters of ‘could not’ included:

‘could not be’ + adjective = always epistemic (e.g. *‘could not be clearer’*: 10)

‘could not have’ + past participle (210)

Although it has been suggested several times that the grammatical complexity of a given form or structure might correspond to the higher probability of its being of epistemic character, in the case of *‘could not be’* this hypothesis turns out to be faulty. In the analyzed material all

‘*could not be’* + past participle clusters have been classified as deontic. The most frequent collocations included:

- *could not be raised*
- *could not be adjudicated*
- *could not be proscribed*
- *could not be made*
- *could not be brought*
- *could not be penalized*
- *could not be used*
- *could not be sued*
- *could not be enforced*
- *could not be convicted/held liable*
- *could not be found liable*
- *could not be reinstated*
- *could not be executed*
- *could not be patented*

In contrast, the below ‘could be’ clusters have been classified as not deontic but not entirely epistemic. They are, therefore, borderline cases:

- *could not be seen*
- *could not be construed*
- *could not be ignored*
- *could not be viewed*
- *could not be interpreted*
- *could not be said*
- *could not be denied*
- *could not be considered*
- *could not be presumed*
- *could not be stretched*
- *could not be squared*
- *could not be regarded*

Altogether, *‘could not be’* + past participle (passive) construction occurred 287 times. ‘*Could not’* + adjective was recorded 10 times and *‘could not have’* + past participle instances appeared 210 times. Of 1306 instances of ‘could not’ 220 were found epistemic (all occurrences of the

past hypothetical indicating impossibility : *'could not have'* + past participle and '*could not be*' + adjective). The rest were classified as either deontic (1063 of all records) and 23 as problematic cases. The statistics are shown in figure 5.8.

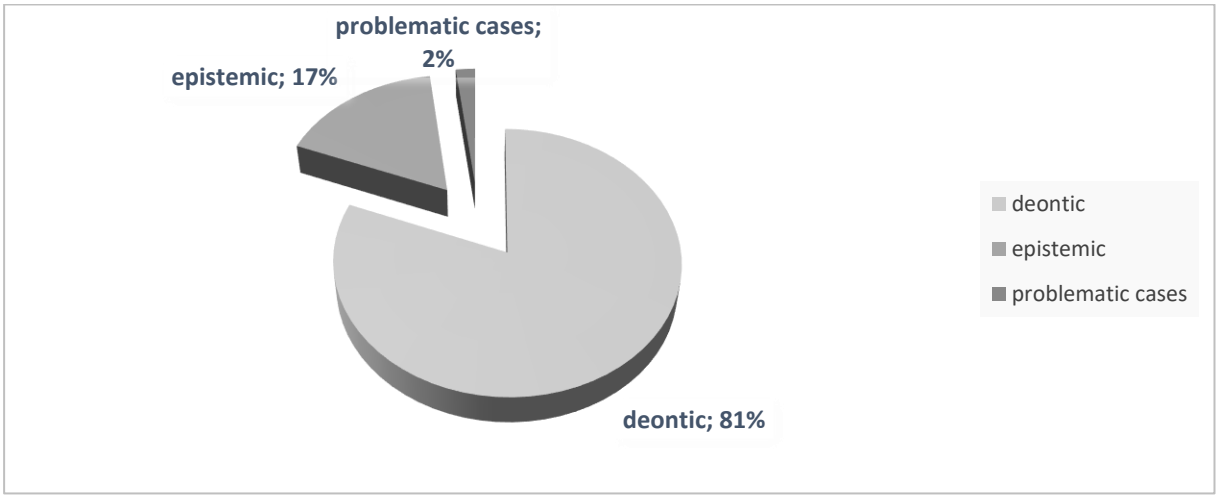

Figure 5.8. High-value modal 'could not': the distribution of epistemic and deontic occurrences in the American Corpus

As can be seen, the verbs 'could not" and 'cannot' are to be encountered considerably more often in the root context than in the epistemic one. Due to their prohibitory meaning, they usually refer to an act-situation where one ought not to do something. The epistemic meaning is thus secondary in comparison with the root one (the prototypical one). When they occur with a subject and reflect a dynamic meaning, we might speak about deonticity. Also, as was the case with the Polish Corpus, the passive constructions increased the probability that one dealt with epistemic sense. This again proves that epistemic settings display a greater level of impersonality and abstractness, a regularity that can be observed not only in the case of 'could not' and 'cannot' but 'must' as well. The results generally confirm the claims that epistemic meaning is derivative in relation to the root meaning. Indeed, in the majority of its occurrences, epistemic 'must', 'cannot' and 'could not' collocated with abstract verbs to form metaphorical expressions.

'*May'* typically communicates both epistemic and root possibility. It is thus relevant to investigate its occurrence in the legal language in order to determine whether it differs considerably from the general register as far as its semantics is concerned. '*May'*, '*might'* and '*could'* express the speaker's lack of confidence in the truth of the proposition, (Coates, 1983). 'Might' and 'may' are frequently interchangeable in their epistemic uses but the role of 'might'

in expressing tentative possibility remains intact. Strictly legal contexts where 'may' appears are always related to deontic modality, i.e. with permission and the external sources of modality. Of all 10.063 records where "may" occurred, 1.716 (roughly 17%) have been classified as epistemic. Figure 5.9. presents the dependency (the calculation does not account for the negative form "may not" which is handled in separate data):

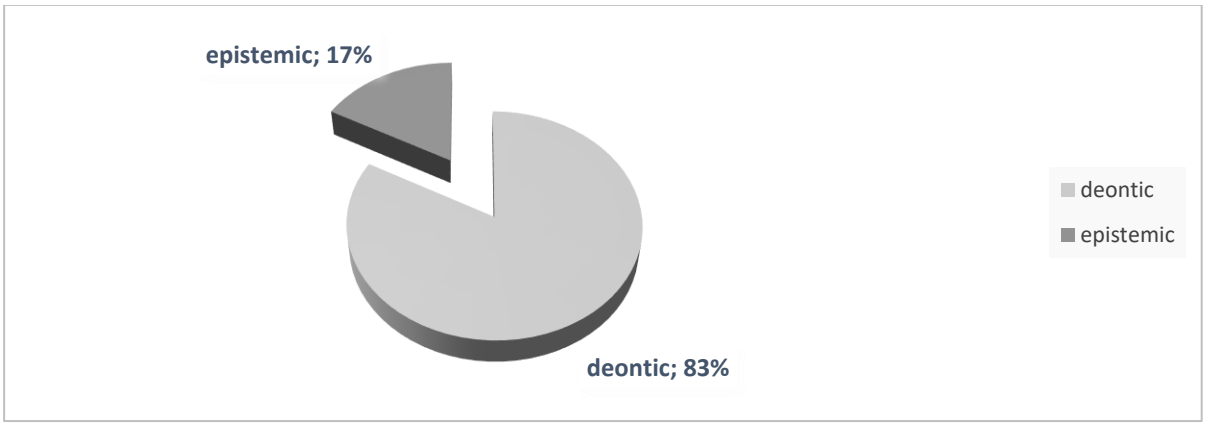

Figure 5.9. Low-value modal 'may': the distribution of epistemic and deontic occurrences in the American Corpus

The following 'may' clusters have been identified as epistemic:

- *may accentuate*
- *may be + an adjective*
- *may be + most noun phrases (excluding strictly legal settings)*
- *may accomplish*
- *may achieve*
- *may + already (implies epistemicity since something has been done -> perfective sense)*
- *may appear*
- *may reflect*
- *may arise*
- *there may be (existential sentences which concern speculations about the reality)*
- *may bear on*
- *may become*
- *may believe*
- *may cause*
- *may come (as surprise/back upon you/into play)*
- *may create (mostly resultative sentences in the sense: may lead to)*
- *may differ*
- *may elapse*

— *may end up*
— *may exhibit*
— *may expect*
— *may experience*
— *may face*
— *may fail*
— *may feel*
— *may give rise*
— *may happen*
— *may harm*
— *may have + noun phrase*
— *may have+ past participle*
— *may lack*
— *may last a generation*
— *may lead to*
— *may lose*
— *may lurk*
— *may mean*
— *may mislead/misunderstand/mistakenly (+lexical verb)*
— *may prove*
— *may reasonably be + adjecitve or past participle*
— *may reflect*
— *may result in*
— *may seem*
— *may suffer*
— *may suffice*
— *may tend*
— *may think*
— *may threaten*
— *may undermine*
— *may understand*
— *may vary*
— *may well + verb phrase*
— *may wish*
— *may wonder*
— *may differ/may find – depending on the context: either deontic or epistemic*

As in the case of other low-value modals, it turns out that verbs indicating cognitive processes such as thinking, believing, perceiving, construing etc. cannot take on a root meaning (the hypothesis already accounted for in the previous sections concerning the secondary nature of epistemic meaning). Another interesting observation is that intrastitive verbs. i.e. those that do not take any complement, are more likely to occur in the epistemic settings since the action or process that results does not have its origin in any human or statutory proscription. Thus, it is a consequence of unpredictable laws of nature. Likewise, existential structures such as 'there may be' do not imply any human interference but are rather due to laws beyond our influence:

25. *As the Government recognized at oral argument, there may be crimes where the nature of the mens rea would require the Government to disprove the existence of duress beyond a reasonable doubt..*
26. *While there may be areas of common definition, employees and their counsel must be careful not to apply rules applicable under one statute to a different statute without careful and critical examination.*
27. *While there may exist categories of wetlands adjacent to tributaries of traditionally navigable waters that, taken cumulatively, have no plausibly discernible relationship to any aspect of downstream water quality, I am skeptical.*

The fact that there exist certain types of crimes that exclude the application of certain legal procedure is not a result of any human action nor laws and is therefore classified as epistemic. Similarly, 'may be' clusters followed by noun phrases were more likely to be epistemic. Instances of 'may be'+ adjective type were almost exclusively epistemic. They all involved elements of human reasoning and evaluation.

28. *Global warming may be a "crisis," even "the most pressing environmental problem of our time."*
29. *I would hold that the answer in law as well as in fact is sometimes yes: a district may be a minority-opportunity district so long as a cohesive minority population is large enough to elect its chosen candidate when combined with a reliable number of crossover voters from an otherwise polarized majority.*

If through 'may' some failure to take action is implied, then the meaning will be epistemic to all intents and purposes:

30. *The debtor may again default and the property may deteriorate from extended use.*

As with the previous cases of modal clusters, there were verbs which tended to occur either in deontic or epistemic context, depending on the overall meaning of the sentence. To such we

included for example *find, define or differ*. In the sentences below, 'find' is identified as reflecting epistemicity:

31. *No doubt a tribal retailer <u>may find</u> an upstream state tax on its suppliers less burdensome than a downstream tax on its consumers.*
32. *We rejected Missouri's "language of proximate causation which ma[de] a jury question [about a defendant's liability] dependent upon whether the jury <u>may find</u> that the defendant's negligence was the sole, efficient, producing cause of injury."*

'May be' as collocating with noun phrases, adjectives or past participles to form sentences reflecting hypothetical situations in the past are either deontic or epistemic. Followed by adjectives, it almost exclusively involves some sort of evaluation and appraisal on the part of the deliberating judge. On the other hand, when followed by past participles to form passive constructions, the pendulum swings towards the deontic variant. Noun phrases, in turn, behave differently depending on the context: if it is strictly legal, then we are dealing with what is allowed and disallowed basing on the statutes and norms. Thus, 'may be a debtor' reflects deonticity where as 'may be a good idea' is a mere suggestion on the part of the speaker. Both variants are accounted for in the Corpus. Of all 82 occurrences of 'may be' + noun phrase, only 6 represented the deontic meaning. In the case of 'may be' + adjectives, all were epistemic with no exception. As far as 'may be' + past participle is concerned, only a handful of verbs that formed the structure were classified as epistemic, i.e. affect, *consider, describe, deem,* and *infer*, thus those that reflected deliberation and speculation. However, consider remain debatable since here it also occurs in contexts where it amounts to 'take into consideration, allow for further proceedings under the specific norms that are the main measure and indicator of lawfulness." Overall, out of all 2881 instances of 'may be':

- *82 were 'may be' + noun phrases (of which 76 epistemic)*
- *564 were 'may be' + adjectives (od which all were epistemic)*
- *43 were epistemic cases of 'may be' + past participle*
- *8 were instances of 'may be' + prepositional phrases (e.g.'may be at stake', 'may be ai its peak', 'may be at odds', 'may be at issue').*

In sum, of 691 'may be' clusters 24% were an epistemic variant .

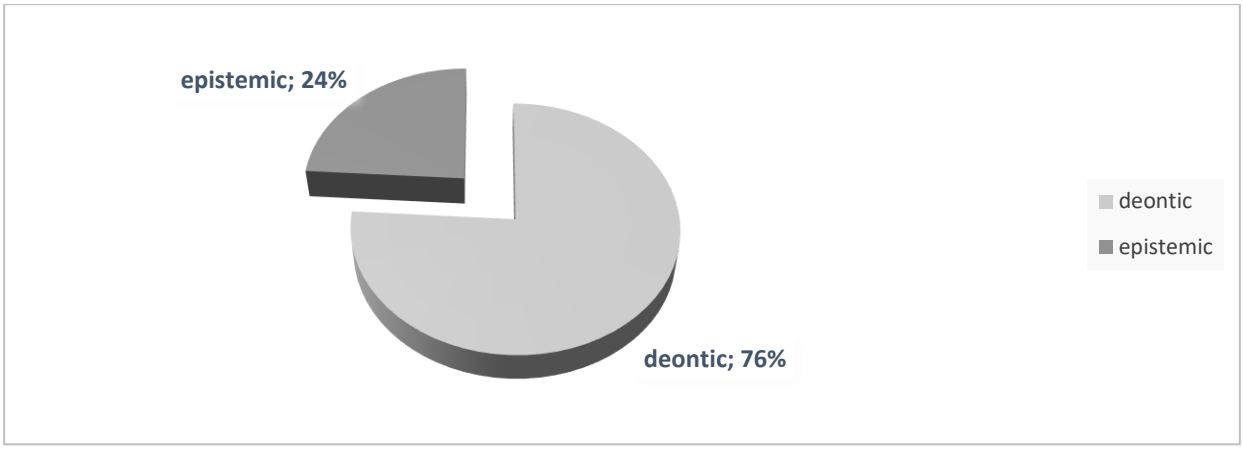

Figure 5.10. 'May be': the distribution of epistemic and deontic occurrences in the American Corpus

'May have' + noun phrase seems to take on a predominantly epistemic meaning since it frequently involves idiomatic expressions which, as has been remarked upon already, represent meanings which are secondary in relation to the root ones indicating possession.

33. *These reasons may have a lot to do with sound separation-of powers principles that ought to govern a democratic society, but they have nothing whatever to do with the protection of individual rights that is the object of the Due Process Clause*

'May have' + past participle is also largely epistemic. Of 572 cases involving the "may have" cluster:

- *59 were of the type: "may have" + noun phrase*
- *20 were of the type "may have to"*
- *6 were of the type "may have no" + noun phrase*
- *5 were of the type "may have difficulty"*
- *487 cases were instances of "may have" + past participle types*

All of the all of "may have" + past participle types have been classified as epistemic. The figure below illustrates the exact percentage distribution of these relations.

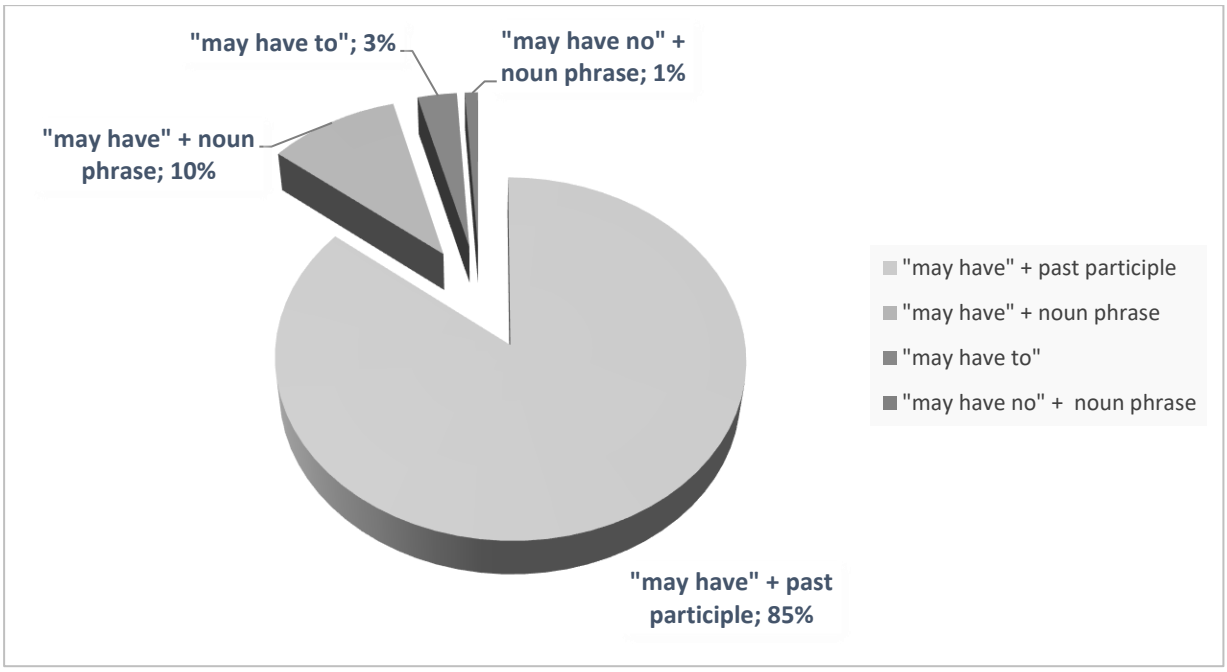

Figure 5.11. 'May have': the distribution of epistemic and deontic occurrences in the American Corpus

As far as might is concerned, it is the past tense of 'may'. If we refer to something which could have happened in the past, the past tense, might, is considered to be more proper:
Although 'might' also appears in strictly legal settings, its occurrences cannot be described as deontic.

34. *As I explain in Part I–B, infra, I do not contest the assertion that in bankruptcy, like admiralty, there <u>might be</u> a limited in rem exception to state sovereign immunity from suit.*

Such cases are, for the purposes of the present analysis, classified as borderline ones. It is namely difficult to determine whether the fact that "there might be a limited in rem exception" is dependent upon the statutory authority or upon the judge's discretion. It probably constitutes an aggregate of both factors being filtered through the human mind' reasoning.
It is thus reasonable to claim that in the case 'might' a reverse trend is to be observed, namely, a greater number of verbs appeared to form epistemic clusters. As already shown, even legal contexts are not so easily classifiable as deontic. Les us have a look the verb 'violate':

35. *Moreover, even if some future unusually harsh sentence <u>might violate</u> the Sixth Amendment because it exceeds some yet-to-be-defined judicial standard of reasonableness.*

Although the Constitution is invoked, one cannot say that the above sentence represents deontic modality since the assertion 'might violate' belongs to the sphere of sheer conjecture rather than deduction based on normative standards. Other legal contexts displayed deonticity expressing what is permissible and allowable:

36. A *state law totally prohibiting the sale of an ordinary article of commerce might impose an even more serious burden on interstate commerce. If Congress may nevertheless authorize the States to enact such laws, surely the people may do*
37. *Those provisions place controls on fees recoverable for attorneys' services, without mentioning costs parents might incur for other professional services and controls geared to those costs.*
38. *Ordering the presentation of evidence early in the trial on a manageable issue that might, on the evidence, be the basis for a judgment as a matter of law under Rule 50(a) or a judgment on partial findings under Rule 52(c).*
39. *In a motion for reconsideration, Wilkins stated that he was unaware that the failure to allege medical treatment might prejudice his claim.*
40. *Under the circumstances, a reasonable employee would be aware that sound management principles might require the audit of messages to determine whether the pager was being appropriately used.*
41. *And the Ninth Circuit might seek guidance on the matter by certifying a question to the California Supreme Court in an appropriate case.*
42. *On this alternative, a judge who found a subsidiary fact specified as a condition for a high subrange sentence might decide to impose a low sentence (independently of the Guidelines' own provisions for downward departure), and a judge who found no such fact might sentence within the high subrange for other reasons that seemed sufficient.*

After reviewing all the instances of 'might' in the American Corpus, it transpires that indeed a greater number of them displayed epistemicity even though the list of verb clusters that repeated themselves was very similar. In certain cases the verb which is categorized as deontic in the neighborhood of 'may' will lose its deontic meaning if it collocates with 'might'. Thus, greater tentativeness also leads to greater degree of epistemicity. The data illustrating the overall tendencies of 'might' also corroborate this assertion: In total, of all 2706 instances of 'might', 551 were classified as deontic and 2155 as epistemic. The results are shown in figure 5.12.

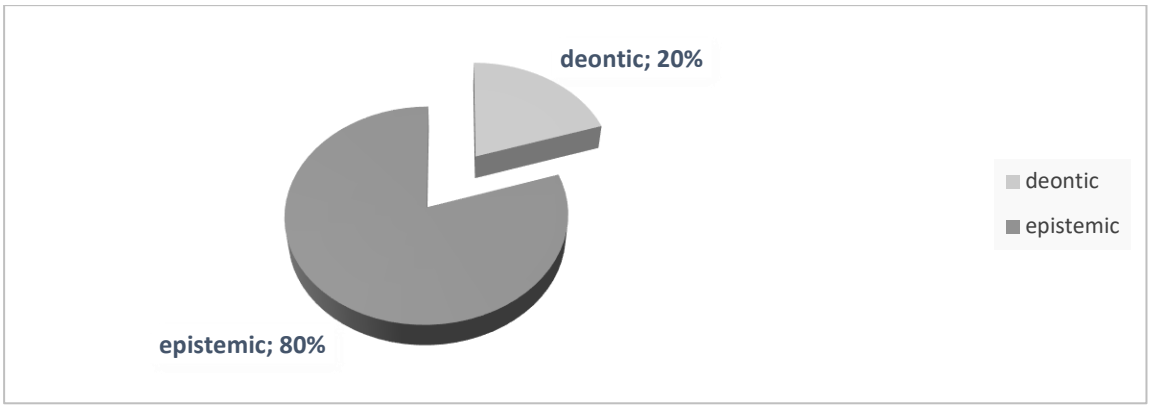

Figure 5.12. Low-value modal 'might': the distribution of epistemic and deontic occurrences in the American Corpus

In general, 'might' verb clusters that occurred in the American Corpus were quite similar to those of 'may'. As we have already observed, their distribution overlaps to a certain extent but is not identical. The best test enabling us to verify how this similarity of contexts operates in practice would be thus to scrutinize the verbs collocating with 'might'. Verbs that reflect external agency include, inter alia: *affect, increase (the chances), arise, create, lead to, cause* etc. As with the passive constructions with 'may be' + past participle, 'might' passives are also mostly deontic:

43. *Occupants who might disregard a certified mail slip not addressed to them are less likely to ignore posted notice, and a letter addressed to them (even as "occupant") might be opened and read.*
44. *Perhaps the most likely potential "collateral consequence" that might be remedied by a judgment in respondent's favor is the requirement that respondent remain registered as sex offender under Montana law.*

While 'might not' largely refers to epistemic modality, 'may not' shares this meaning with 'might' only in certain contexts, e.g. where 'may not be' is followed by an adjective and certain particular noun phrases.

45. *This approach may or may not be the wisest choice in the context of a Registered Student Organization (RSO) program. But it is at least a reasonable choice.*
46. *The above statement is clearly of evaluative character which is also signaled by the adjective 'wise'. The sentences below are, however, not so clear-cut.*
47. *"[I]t may not be doubted, and indeed is not questioned by any one, that the cruel punishments against which the bill of rights provided were the atrocious, sanguinary and inhuman punishments which had been inflicted in the past upon the persons of criminals."*

48. *A proximate cause connection is not itself sufficient to bar the foreign country exception's application, since a given proximate cause may not be the harm's exclusive proximate cause.*

It is difficult to determine whether the motivating source here is an external banning authority or whether it is the speaker himself/herself who deems the punishments as 'unquestionably atrocious'. One may only hypothesize about how far the assertion is motivated by common sense of the community and how far it is purely subjective (motivated by the speaker's own personal prejudices and beliefs). Maybe it is 50 to 50? Such sentences become problematic since they evade precise categorization. The same applies to theorizing about the real cause of a crime based on the test of a proximate cause connection: although it seems that the speaker refers to his/her own conjectures, it may also be based partly on his/her knowledge of the applicable rules . According to the principle of the proximate cause, it is not necessarily the closest cause in time or space nor the first eventthat sets in motion a sequence of events leading to an injury. Proximate cause produces particular, foreseeableconsequences without t he intervention of any independent or unforeseeable cause. It is also known as legal cause. [71] As for certain predictable behavior patterns, we may point to the "may not be" + adjective clusters (including the superlative mode). These will usually belong to the epistemic type of modality although deonticity will sometimes also be the case. The first example below refers to some external sources while as the second is an opinion expressed by the adjudicator:

49. *The case thus held that pictures without real minors (but only simulations, or young-looking adults) may not be the subject of a nonobscenity pornography crime.*
50. *This may not be the most efficient system imaginable, but the Constitution does not permit efficiency to be our primary concern.*

Other examples involving the epistemic type of modality where 'may not be' + adjective clusters are the case include:

51. *This may not be the most efficient system imaginable, but the Constitution does not permit efficiency to be our primary concern.*

[71] Source: legal dictionary online (http://legal-dictionary.thefreedictionary.com/proximate+cause), last access on 31st December 2016.

52. *The analysis may not be the same in every case, for it depends on the regulatory scheme at issue and the federalism concerns implicated.*
53. *Though it may not be the usual style, it does not strike us as illogical for the draftsperson of a statute to write it so that it transfers some specific real and personal property and then proceeds to reserve lands in a much larger classification.*
54. *Therefore, "physical impossibility" may not be the most appropriate standard for determining whether the text of state and federal laws directly conflict.*

Altogether, out of 1212 instances of 'may not' 139 have been classified as deontic and 1073 as epistemic:

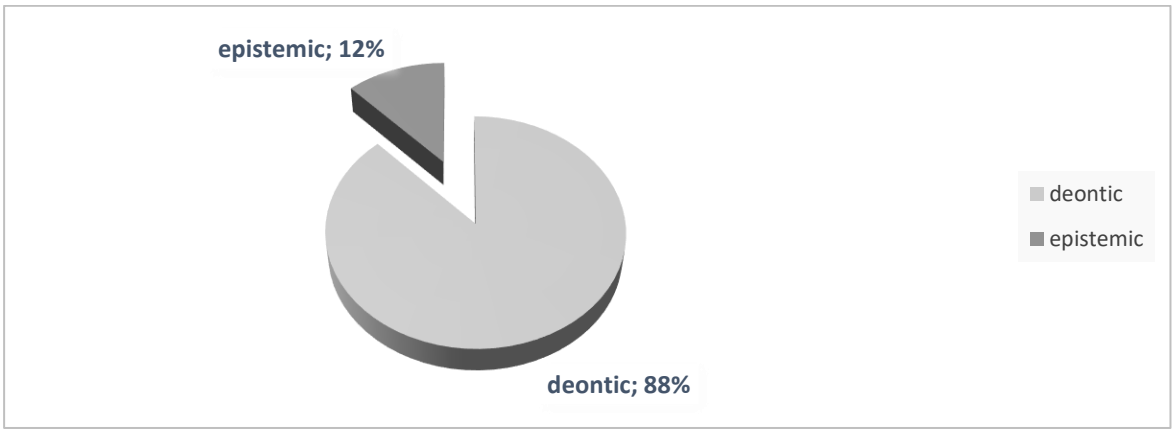

Figure 5.13. 'May not': the distribution of epistemic and deontic occurrences in the American Corpus

Certain knowledge and perception-related 'may not' clusters have been categorized as epistemic. To such we included *may know, may mean:*

55. *Moreover, if the corporation in question operates a PAC, an investor who sees the company's ads may not know whether they are being funded through the PAC or through the general treasury.*
56. *For the non-adherent, who may well be more sensitive than the hypothetical "reasonable observer," or who may not know all the facts, this test fails to capture completely the honest and deeply felt offense he takes from the Government conduct.*

As for the distributional differences between 'may not' and 'might not', 'may not' is often constrained by the context. In contrast, 'might not' would express epistemic possibility where 'may not' refers to prohibition (the epistemic meaning is more frequent in the case of 'might not'). We are referring here to the most prototypical meanings. Hence, the sentence:

57. *The State might not be bound by the federal court's adjudication.*

will mean something different than:

58. *The State may not be bound by the federal court's adjudication.*

The meaning thus oscillates between the epistemic possibility (it is possible that the State is not bound by the federal court's adjudication) and deonticity (the State's being bound by the federal court is against the law or somehow impinges upon the rules and norms applicable in this particular case) . The same conclusion can be drawn on the basis of examples 59 and 60 below.

59. *Schools might not capture this benefit* (=it is possible that they will not capture this benefit).
60. *Schools may not capture this benefit* (=schools are not eligible for this benefit).

The former implies the epistemic impossibility (=impossibility inferred on the basis of available data etc.) while the latter might imply that the schools are in fact not eligible to apply for the benefit in question. On the other hand, contexts where *'might not'* is perfectly grammatical may not be suitable for *'may not'*. Thus, the sentence '*The client might not understand the requirements'* would be more common than *'The client may not understand the requirements'*. This is because 'may not', as referring often to dynamic verbs which can grammatically 'undergo' prohibition, does not collocate with verbs indicating the state of mind, perception or knowledge, thus those referring to epistemicity. Indeed, the Internet search for the clusters 'may not know', may not understand' yields less results than the equivalent tentative clusters where 'may' is replaced by 'might'. Nonetheless, 'may not know' and 'may notr understand' still occur in contexts like:

61. *The great philosopher Ludwig Wittgenstein famously said: "If a lion could speak, we couldn't understand him.* [72]

Of 121 instances of 'might not', 39 reflect root modality, i.e. the obligation not to do something, or, striclty speaking, the prohibition. The majority, therefore, (68%) is considered epistemic. They were considered more tentative versions of 'may', i.e. the speaker referred to some external source of authority but is not so sure that the rule applies or reports what others consider lawful and in accordance with the provisions:

[72] source: https://www.theguardian.com/science/2015/jul/20/alien-life-breakthough-initiative

62. *All the Government had shown was that Aguilar had uttered false statements to an investigating agent "who might or might not testify before a grand jury."*
63. *The rule of lenity might not apply, he thinks, in a case involving an organized crime syndicate or the sale of contraband because the legislative history supposedly contains some views on the meaning of "proceeds" in those circumstances.*

It turns out, therefore, that instances where 'might not' referred to prohibition (reflected deonticity) were rare and sometimes they were used in the reported speech as the equivalent of 'may not' in the past. 'Might not have' always reflects epistemic possibility since it refers to past situation, deduction and inference.

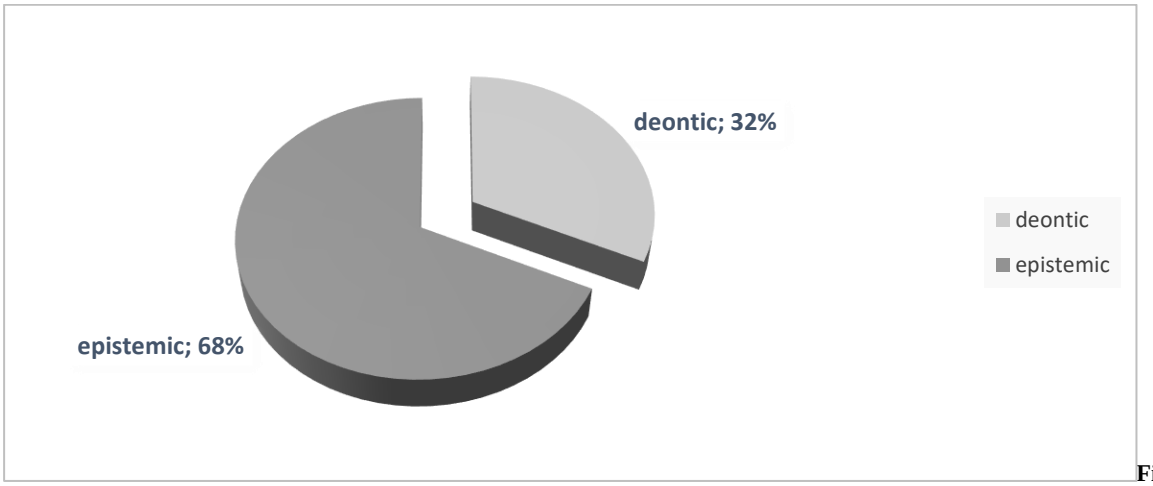

Figure 5.14. 'Might not': the distribution of epistemic and deontic occurrences in the American Corpus

64. *We found our holding consistent with this Court's earlier statement in Massey v. Moore, 348 U. S. 105, 108 (1954), that "[o]ne might not be insane in the sense of being incapable of standing trial and yet lack the capacity to stand trial without benefit of counsel. - DEONTIC*
65. *The fact that an alternative proceeding the use of which might not be offensive to state sovereignty, is irrelevant to whether the particular proceeding actually used subjects a particular State to the indignities of coercive process. - EPISTEMIC*
66. *One could, of course, imagine a situation in which attempted burglary might not pose a realistic risk of confrontation or injury to anyone—for example, a break-in of an unoccupied structure located far off the beaten path and away from any potential interveners. – EPISTEMIC*

To recapitulate, it is sometimes difficult to categorize a particular verb as either deontic or epistemic since the borderline between permission and possibility is not always so

straightforward. For example, in the sentence below the subject is entitled to pursue his claims within the limits set by the statutes :

67. *If the prisoner is dissatisfied with the result of the informal review, or if informal review is waived by the State, the inmate may pursue a three-step review process.*

However, should we interpret it as : "the subject is allowed /authorized to pursue his claims" or "it is possible for the subject to pursue his claims"? The author is more inclined to interpret it as the 'authorization' or 'entitlement' in the light of the pertinent articles but cases like this abound and the majority of them had to be 'deconstructed' and given either one or the other label in order to render the analysis more illustrative. Again, the criteria that were used to distinguish between deontic and epistemic type of meaning were varied and many factors were taken into consideration. The primary one was the verb and its inherent meaning as indicating either action or a state. The former is eligible to appear in the deontic contexts since we forbid or permit the performance of some activity, not a state. However, there exists an exception to this rule: when strictly legal settings are involved and certain concrete norms are referred to, then the context is classified as deontic even though the verb indicates a state or some abstract notion.

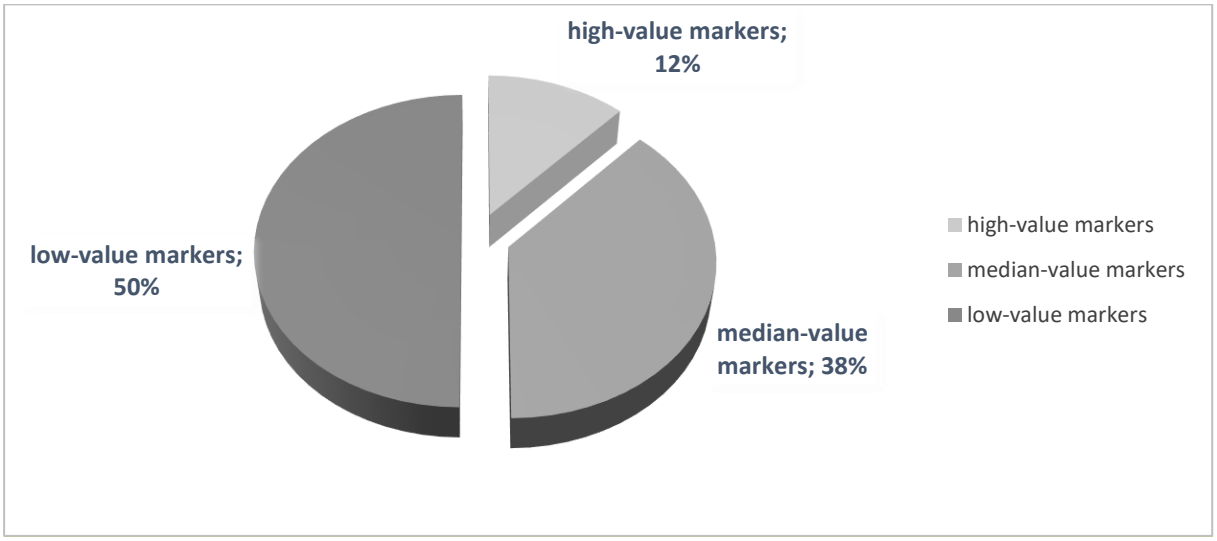

Figure 5.15. The distribution of high, median and low-value modal and semi-modal verbs in the American Corpus

5.2.3 English adjectives as markers of epistemic modality

	HIGH MODAL VALUES	MEDIAN MODAL VALUES	LOW MODAL VALUES
Adjectives	certain: 25 impossible: 249 inconceivable: 17 not possible: 21 sure: 336 undeniable: 31 obvious: 464 untenable: 61 necessary: 2260 fully consistent: 31 inconsistent: 742 undisputed: 166 wrong: 578 imperative: 43 mistaken: 226 far from clear: 38 misconstrued: 10 unpardonable: 2 faulty: 39	(most) likely: 1471 plausible: 261 probable: 434 clear: 2829 appropriate: 1969 inappropriate: 149 plain: 725 correct: 924 problematic: 54 irrelevant: 381 adequate: 710 reasonable: 3188 persuasive: 173 proper: 1407 reliable: 184 unreliable: 70 relevant: 7 sufficient: 1260 not wrong: 2 not surprising: 70 (in)conclusive: 129 inconclusive: 22 admissible: 208 true: 1262 accurate: 164 ambiguous: 374 convinced: 137 superfluous: 117	conceivable: 94 doubtful: 97 not likely: 45 possible: 981 uncertain: 122 unlikely: 305 indeterminate: 72 questionable: 81 hypothetical: 260 Total number of high-value markers: 5.335 (20%) Total number of median-value markers: 18. 681 (72%) Total number of low-value markers: 2. 057 (8%)

Table 5.4. Adjectives as markers of epistemic modality: American Corpus

As with the case of the Polish Corpus, the analysis of adjectives as markers of epistemicity will be based on either attributive or predicative context in which they occurred. The table below presents the distribution of the investigated items in terms of the above categories.

(Almost) exclusively predicative	**Mostly predicative**	**Attributive and predicative (almost equal distribution)**	**Mostly attributive**
certain (epistemic meaning is implied only in the predicative position): 25 predicative *inconceivable***:** 17 predicative *not possible*: 21 predicative *sure*: 336 predicative *fully consistent:* 31 predicative *undisputed:* 166 predicative *far from clear:* 38 predicative *not wrong:* 2 predicative *not surprising :* 70 predicative *convinced* (137 predicative) *superfluous* (117 predicative) *doubtful:* 97 predicative *not likely:* 45 predicative	*impossible*: 241 predicative, 8 attributive *necessary* 1764 predicative, 394 attributive (*not necessary* – only predicative) *clear* (2243 predicative, 586 attributive) *true:* 1176 predicative, 84 attributive *imperative:* 38 predicative, 5 attributive *most likely:* 44 predicative, 8 attributive *plausible:* 102 predicative, 59 attributive *inappropriate:* 129 predicative, 20 attributive *correct:* 682 predicative, 130 attributive *irrelevant:* 378 predicative, 3 attributive	*undeniable:* 18 predicative, 13 attributive *obvious:* 151 predicative, 313 attributive *untenable:* 32 predicative, 29 attributive *wrong*: 453 predicative, 101 attributive *mistaken:* 169 predicative, 32 attributive *problematic:* 37 predicative, 17 attributive *reliable:* 101 predicative, 83 attributive *ambiguous* (117 predicative, 257 attributive) *questionable:* 42 predicative, 39 attributive	*appropriate:* 464 predicative, 1505 attributive *unpardonable:* 2 attributive *faulty:* 39 attributive *probable:* 413 attributive, 21 predicative *plain: 94 predicative, 631 attributive* *adequate:* 44 predicative, 666 attributive *reasonable:* 3047 attributive, 147 predicative *persuasive:* 34 predicative, 139 attributive *proper:* 84 predicative, 963 attributive *relevant:* 231 predicative, 2469 attributive *sufficient:* 261 predicative, 999 attributive *conclusive* : 23 predicative, 106 attributive (*inconclusive*): 22 *accurate* : 12 predicative, 152 attributive *conceivable :* 94 attributive *possible:* 769 attributive, 212 predicative *uncertain:* 26 predicative, 96 attributive *indeterminate:* 5 predicative, 67 attributive

	admissible: 200 *predicative, 8 attributive* *unlikely:* 281 predicative, 24 attributive		*hypothetical:* 260 attributive

Table 5.5. Attributive versus predicative adjectives in the American Corpus

As already observed in the section dedicated to the Polish Corpus, it is not only the position that distinguishes the two classes of adjectives but also the effect they exert upon the noun: they can be either permanently attached to the modifying word or they can describe some temporary state which is not an inherent property of an individual or an abstract notion. The former usually precede the head noun while the latter occupy post-nominal positions. Among the evaluative adjectives we have selected, the distribution was fairly equal: 59 % were of attributive character and 41% took predicative (post-nominal) position. In the case of Polish Corpus, it was the predicative adjectives that prevailed. Whether these figures are the consequence of language (grammar) specificities or whether it is the specificity of legal language itself that account for such distribution, it is difficult to state. The author feels inclined to include both factors. However, the specificity of the Corpus probably has a greater role to play since legal genres abound in fixed phrases, binomials, trinomials etc. All this can influence the data under analysis. As far as the American part of the research material is concerned, the number of epistemic adjectives that occurred in the attributive structures equaled 14.635 while the number of predicative constructions amounted to 10.345. The percentage distribution is shown in figure 5.16.

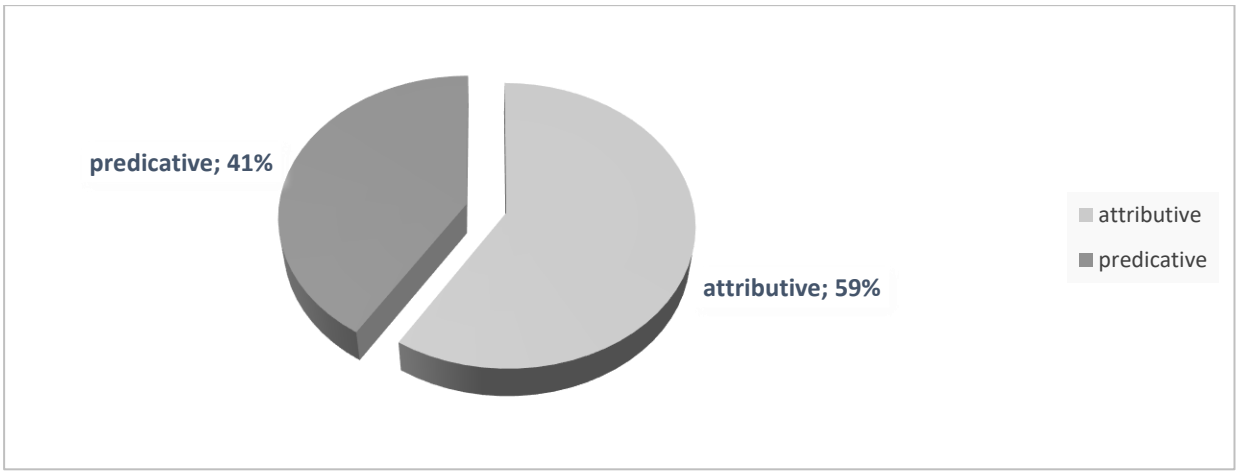

Figure 5.16. Attributive and predicative epistemic adjectives in the American Corpus

It turns out, therefore, that there are more fixed attributive constructions than predicative ones. Attributives are in particular characteristic for formal written genres such as academic articles. It is typical for scholars to use enumerations of adjectives that qualify the head noun. In contributions such as English Corpus Linguistics in Japan' the authors mention the academic category as the one where the frequency of occurrence of attributive modifiers was highest. [73] Indeed, when we look at some of the analysed expressions we encounter a lot of frequently recurring ones. Examples include:

- *untenable interpretation*
- *proper educational environment*
- *proper constitutional balance*
- *proper execution of the work of the Government*
- *proper interpretation of a statute*
- *reasonable doubt*
- *reasonable expenses of expert witnesses*
- *reasonable grounds for concluding*
- *reasonable interpretation*
- *reasonable measures*
- *reasonable nondiscriminatory restrictions'*
- *reasonable suspicion standard*

[73] For further information see: Toshio Saito,Junsaku Nakamura,Shunji Yamazaki, 'English Corpus Linguistics in Japan'

— *sufficient basis for reversal*
— *sufficient depravity to merit a sentence of death*
— *sufficient economic incentive to pursue a claim*
— *sufficient flexibility to permit individualized sentences*
— *sufficient opportunity to engage in express advocacy*
— *sufficient psychological maturity*
— *accurate conviction is seriously diminished*
— *accurate determination of innocence*
— *adequate and effective substitute for the habeas writ*
— *adequate indicia of reliability*
— *adequate consideration of mitigating evidence*
— *appropriate action to overcome language barriers*
— *appropriate exercise of discretionary power*
— *indeterminate sentencing regime*
— *relevant monetary threshold*
— *relevant statutory maximum*

Upon closer analysis of the contexts in which the above expressions occur, it turns out that there is not much evaluative force behind them. They are customary expressions employed on a daily basis by the representatives of the judiciary. Can we, therefore, assume that they constitute an indicator of the epistemicity of the Corpora? If so, we would have to consider the Polish Corpus as more conclusive in this respect. Proportionally, the predicative type of evaluative adjectives was more frequent. However, it would be far-fetched to advance such a claim only on the basis of the distribution of attributive and predicative adjectives considered epistemic. All the more so, since the difference was not conspicuous enough to merit further scrutiny. We will try, therefore, to reach more constructive conclusions through comparison of all the analyzed categories which we intend to undertake in the chapter to come.

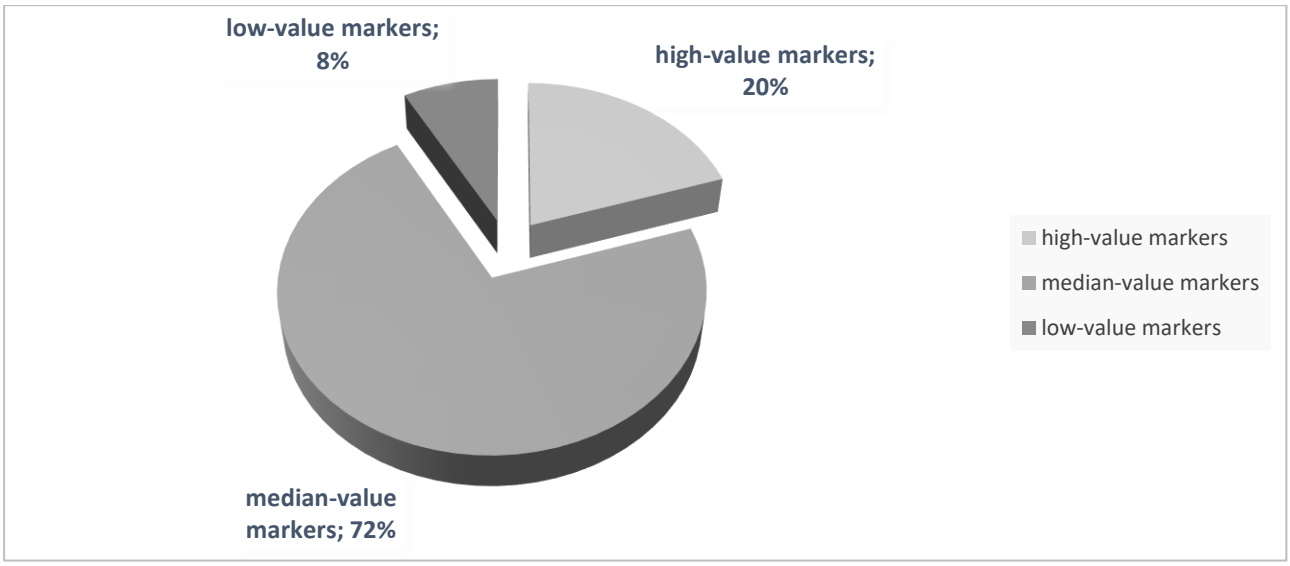

Figure 5.17. The distribution of high, median and low-value adjectives in the American Corpus

5.2.4 English adverbs and modal modifiers as markers of epistemic modality

	HIGH VALUE ADVERBS	MEDIAN VALUE ADVERBS	LOW VALUE ADVERBS
adverbs and modal modifiers	undoubtedly : 135 perfectly: 166 indisputably: 6 certainly : 541 of course : 1010 surely: 438 most notably: 22 no doubt: 221 necessarily: 920 particularly : 699 obviously: 247 by no means: 50	arguably: 207 in all likelihood : 19 (most) likely: 52 presumably: 267 probably: 210 supposedly: 32 properly: 1214 improperly: 158 correctly: 438 incorrectly: 79 reliably: 21 (im)plausibly : 71	Allegedly: 288 Conceivably: 44 Maybe: 64 Perhaps: 571 Hypothetically: 11 Possibly: 184 Purportedly: 41 Hardly: 324

	definitely: 51 doubtless: 30 for certain: 130 for sure : 3 incontrovertibly: 2 indisputably: 42 undeniably : 37 unquestionably: 105 without (a shadow of a) doubt: 7	implausibly: 6 tellingly : 25 indeed: 168 unjustifiably: 21 importantly: 140 truly: 127 unnecessarily: 77 convincingly : 24	Total number of high-value markers = 4862 (43%) Total number of median-value markers = 4873 (43%) Total number of low-value markers = 1527 (14%)

Table 5.6. Adverbs And modal modifiers as markers of epistemic modality: American Corpus

As can be seen in figure 5.19., the distribution of high and median-value modals has turned out to be identical. There are expressions such as "of course" and ", "indeed", "particularly" or "properly" which are frequently recurring phrases and their being encountered so frequently in the American Corpus is not due to the specificity of the analyzed material. In this respect, the language register under study does not diverge considerably from the general register. There are, however, phrases not to be encountered in the general variety of language but are typical for the academic and written forms such as: 'indisputably', 'incontrovertibly', 'indisputably', 'implausibly', 'purportedly' etc. It would be difficult, however, to draw conclusions on the basis of these data since different types of corpora would need to be analyzed to compare the results.

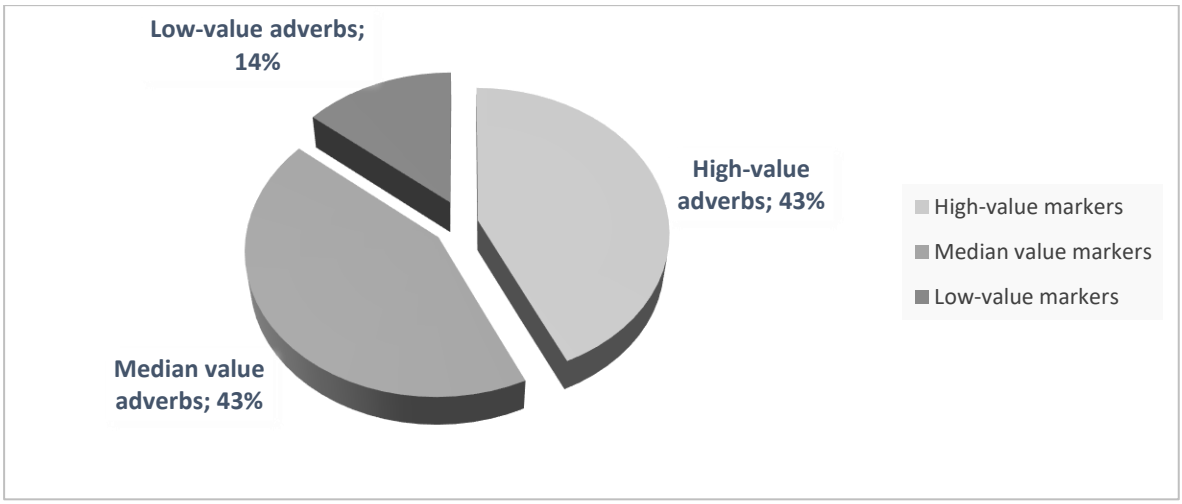

Figure 5.18. The distribution of high, median and low-value adverbs and modal modifiers in the American Corpus

5.2.5 English lexical verbs as markers of epistemic modality

The sub-categories in case of verbs are: present tense and the past tense form.

HIGH MODAL VALUE VERBS	**MEDIAN VALUE VERBS**	**LOW VALUE VERBS**
reject : 423 (present tense), 1415 (past tense) decline : 261 (present tense) + 415 (past tense) dissent : 1966 (present tense) + 92 (past tense) not agree : 54 (present tense) + 7 (past tense) fail: 355 (present tense) + 1170 (past tense) contradict : 59 (present tense) + 38 (past tense) mislead: 37 (present tense) + 33 (past tense)	assume expect imagine presume suppose think believe contend argue find agree (not) think suggest consider hold conclude deem support exclude rely	doubt: 1144+ 38 (past tense) guess: 86 + 3 (past tense) speculate: 42+ 6 (past tense) suspect : 561 + 104 (past tense) it is thought: 2 +4 (past tense)

fall short: 18 (present tense) + 8 (past tense) err : 35+ 380 (past tense) disregard : 249 (present tense) + 59 (past tense) disagree: 402 (present tense) + 152 (past tense) misapprehend: 9 (only past tense forms)	disagree view concede recognize acknowledge reiterate emphasize	Total number of high-value verbs: 7. 637 (15%) Total number of median-value verbs: 40.959 (81%) Total number of low-value verbs: 1.990 (4%)

Table 5.7. Lexical verbs as markers of epistemic modality: American Corpus

MEDIAN VALUE LEXICAL VERBS: OVERVIEW

	PRESENT TENSE	PAST TENSE	of which 1st person sng + pl
assume	589	259	130
expect	159	279	12
imagine	147	31	5
presume	221	242	31
suppose	151	115	22
think	958	627	516
believe	1119	406	356
contend	293	110	1
argue	734	2570	5
find	1376	2641	412
agree	1255	821	443
(not) think	68	22	63
suggest	708	473	25
consider	2217	1495	223
hold	1273	4794	884
conclude	1032	1785	514
deem	67	458	12
support	2571	530	5
exclude	423	341	4
rely	449	800	37
disagree	402	152	221
view	2489	346	15
concede	166	226	38
recognize	513	1555	210
acknowledge	202	414	64
reiterate	24	87	25
emphasize	119	282	60
TOTAL	**19725**	**21861**	**4333**

Table 5.8. An overview of median value lexical verbs in the American Corpus

The number of median-value verbs exceeds considerably the number of high and low-value ones when we compare the data at hand. In the case of the Polish Corpus, it was mostly impersonal forms which dominated. In the case of the American Corpus, it is prevailingly finite active forms that are used. As was observed, Polish contains a whole range of impersonal structures which indicate impartiality while as English resorts to passive voice where the idea of neutrality is to be conveyed. The only passive construction that we classified as low-value

was “it is thought”. The rest are verbs that appear mostly in active constructions, very often in the vicinity of the first person singular or plural. It can be seen clearly that the American Corpus displays greater subjectivity in terms of the use of epistemic lexical verbs. High- and median value expressions frequently follow 1st person singular or plural. ‘I dissent’ was recorded 65 times, ‘I do not agree’ 23 times, and the total number of 1st person singular and plural forms of all median-value verbs was 3105 (almost 8% of the total median value verbs that were recorded).

Figure 5.19. below illustrates the percentage distribution of the high, median and low value lexical verbs in the American Corpus:

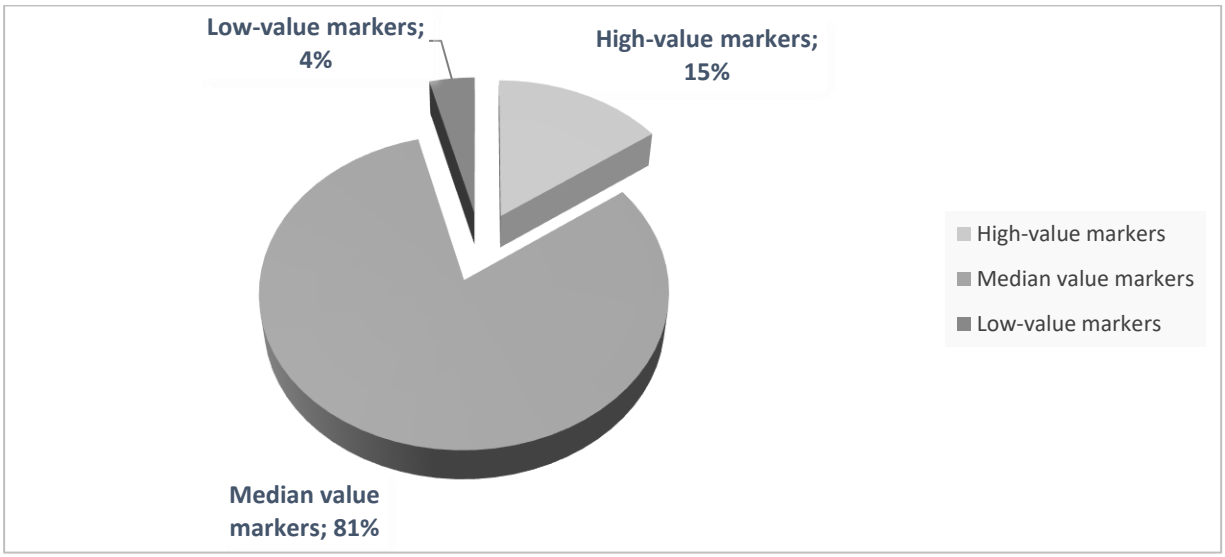

Figure 5.19. The distribution of high, median and low value lexical verbs in the American Corpus

Conclusions

The results that we obtained in the course of the analysis may reveal not only the characteristic features of legal Polish and English but also certain tendencies of the two languages in general. Although specific in many ways, legalese syntactically behaves like an official form of general register, i.e. uses more complex structures, more nominalizations, passivizations and lengthy and intricate syntax. Thus, we should try to consider the data obtained below as both indicative of the 'universal' legal register (trespassing the idiosyncrasies of national languages) and as mirroring some specificities that only Polish or English display (on the level of general register). Tables 6.1, 6.2 and 6.3 below allow us to see which type of epistemic markers are preferred in the Polish and American Corpus as grouped into grammatical categories.

GRAMMATICAL CATEGORIES	**POLISH CORPUS**	**AMERICAN CORPUS**
Nouns and nominal phrases	15 (2%)	251 (6%)
Modal and semi-modal verbs	1951 (39%)	5.195 (12%)
Adjectives	960 (55%)	5335 (20%)
Adverbs and modal modifiers	481 (55%)	4.862 (43%)
Lexical verbs	149 (26%)	7. 637 (15%)

Table 6.1. High-value epistemicity markers in the Polish and American Corpus

GRAMMATICAL CATEGORIES	**POLISH CORPUS**	**AMERICAN CORPUS**
Nouns and nominal phrases	127 (19%)	565 (14%)
Modal and semi-modal verbs	2353 (11%)	16.397 (38%)
Adjectives	409 (24%)	18. 681 (72%)
Adverbs and modal modifiers	280 (32%)	4873 (43%)
Lexical verbs	430 (74%)	40. 959 (81%)

Table 6.2. Median-value epistemicity markers in the Polish and American Corpus

GRAMMATICAL CATEGORIES	POLISH CORPUS	AMERICAN CORPUS
Nouns and nominal phrases	544 (79%)	3.093 (79%)
Modal and semi-modal verbs	2616 (50%)	22.021 (50%)
Adjectives	356 (21%)	2. 057 (8%)
Adverbs and modal modifiers	115 (13%)	1527 (14%)
Lexical verbs	-	1.990 (4%)

Table 6.3. Low-value epistemicity markers in the Polish and American Corpus

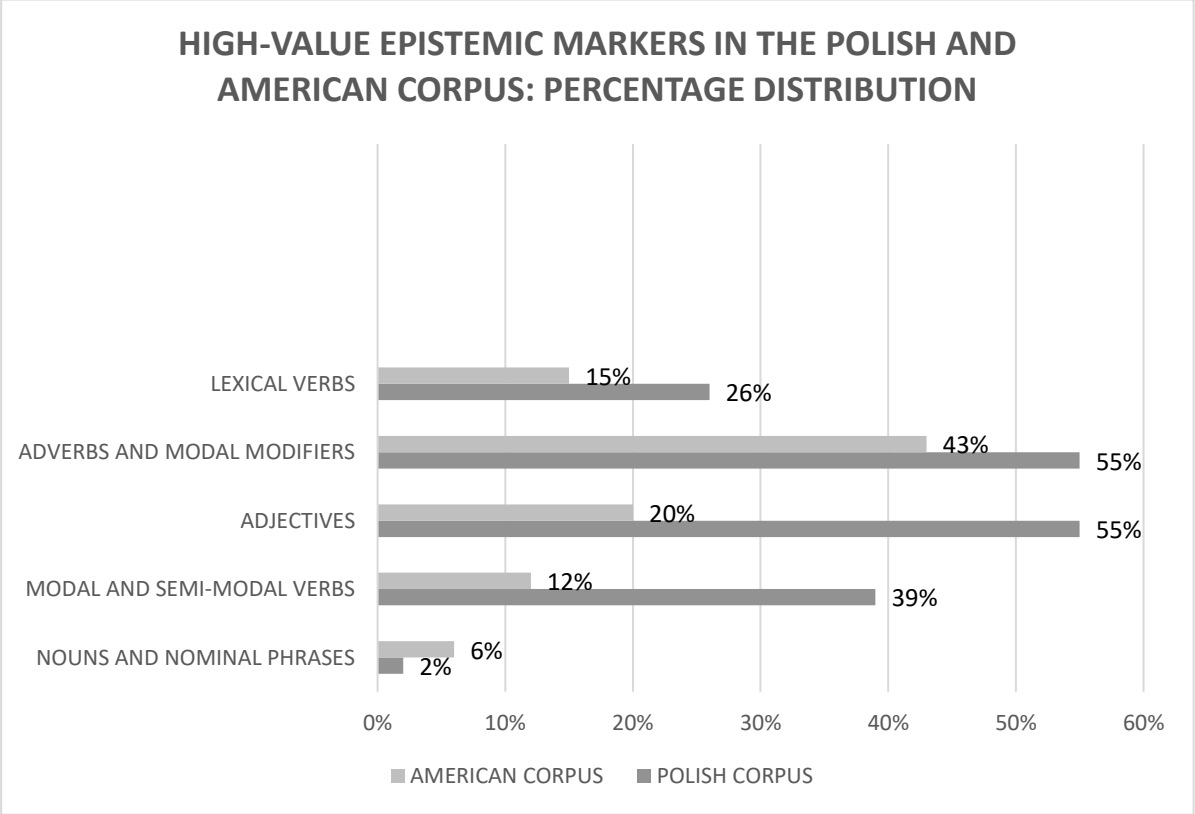

Figure 6.1. High-value epistemic markers in the Polish and American Corpus: percentage distribution

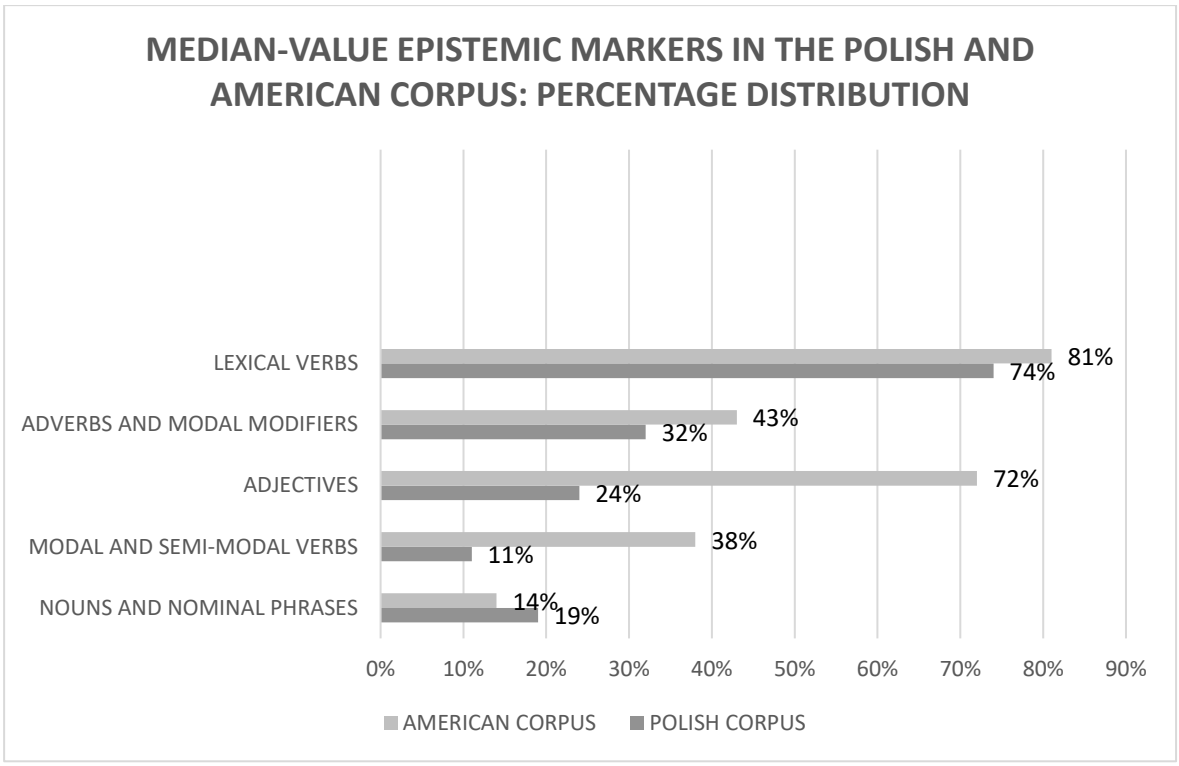

Figure 6.2. Median-value epistemic markers in the Polish and American Corpus: percentage distribution

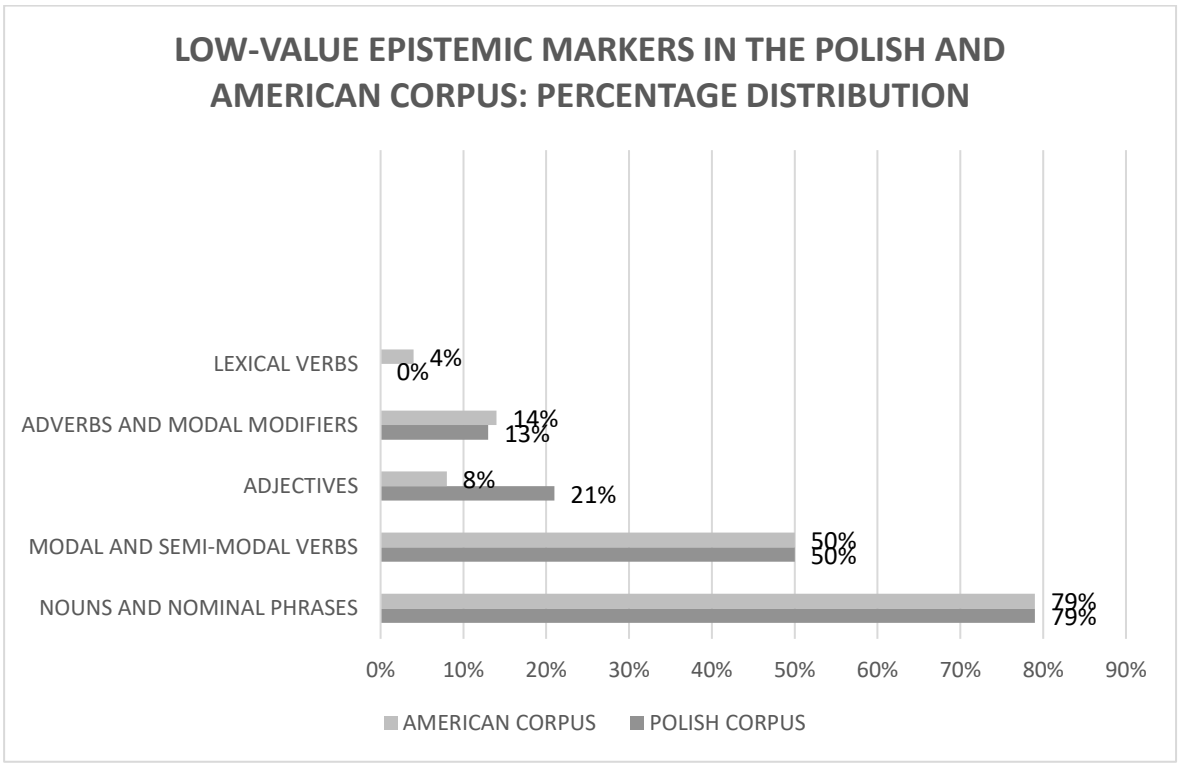

Figure 6.3. Low-value epistemic markers in the Polish and American Corpus: percentage distribution

When we look at the percentage distribution, we can see that the preferences were quite similar in the case of nouns and nominal phrases. In both Polish and American Corpus, high-value nouns were the least represented and low-value nouns the most frequent category encountered. Words like 'possibility', 'probability', 'doubt' or 'uncertainty' are rather common which in both cases points to hesitation and skepticism.

As far as modal verbs are concerned, it turns out that both in the case of Polish and American Corpus, the most frequent type were low-value modals (50% in both cases). High-value modal verbs were better represented in the Polish Corpus where they constituted 38%. In the American Corpus their number was significantly smaller: only 12% in comparison with median and low-value modals. This was probably due to the fact that the majority of the analyzed high-value English modals turned out to represent deontic modality. The highest score of low-value modals in the case of the American Corpus should not surprise us since the English low-value modal 'would' has occurred as many as 16.739 times. But for its frequency, English high-value modals would be represented equally well as the low-value modals and median-value type would be ranked highest.

In the case of Polish high-value modals, the most prominent representative would be 'nie móc' in its both personal as well as impersonal forms. Epistemic type of meaning turned out to be secondary in comparison with the deontic sense. The most frequent syntactic form was 'nie może' (842 instances), which constituted 43% of all high-value Polish modals. However, 72% of all contexts were deontic which we attributed to the personal character of this particular modal: 'nie może' was usually related to prohibiting and disallowing and collocated mostly with active verbs. The most common epistemic occurrences included clusters like '*nie może być uznany/-a/-e', 'nie może' with conjunctions indicating inference*, '*nie może stanowić podstawy'*, '*nie może prowadzić do'*, '*nie może być mowy'*, '*nie może być traktowana/-y/-e' [cannot be considered, cannot with conjunctions indicating inference, cannot constitute the basis/grounds, cannot lead to, there can be no question, cannot be treated/regarded/deemed]*. On the basis of the data thus obtained, we were able to draw a general conclusion that epistemic meaning was most probable if the lexical verb with which it collocated was of abstract or metaphorical character. By way of contrast, the impersonal modal 'nie można' *[one cannot]* was mostly to be encountered in the epistemic type of contexts (82%). It is interesting to observe

these discrepancies since they also confirm what has been claimed by Coates (1983) that epistemic modal meanings tend to collocate with stative verbs and inanimate subjects. The English high-value modal *'cannot'* behaves in a very similar manner: the majority of structures classified as epistemic were *'cannot be'* + past participle verbs. In general, only 18% of all *'cannot'* occurrences were categorized as epistemic. However, this proportion changes if we take only passives into consideration. The percentage of epistemic contexts in the case of *'cannot be'* clusters amounted to 32%. It seems, however, that the observation regarding the passives as more indicative of epistemicity would applies more to the English language, which does not operate with such a variety of syntactic patterns (e.g. impersonal forms), than to Polish. In the case of Polish, it did not matter so much whether the verb was active or passive. An example of 'musi' *[must]* confirms this: of all occurrences of 'musi być' only 6% were of epistemic character. It turns out that the syntactic form does not play such an important role as the semantics of the lexical verb following a modal. When we look at 'musi', we can see that the most frequent collocations included '*musi mieć', 'musi wykazać', 'musi uwzględniać', 'musi wynikać', 'musi oznaczać', 'musi istnieć', 'musi prowadzić'.* The above word combinations were thus indicative of some logical inferences and processes of argumentation. The key factor that determines either deonticity or epistemicity is thus semantics.

As far as epistemic adjectives are concerned, in the Polish Corpus high-value type constituted as much as 56% of all the epistemic adjectives and was the most numerous . The same applies to Polish high-value adverbs and modal modifiers, which also amounted to more than a half of the total number of epistemic adverbs (55%). In turn, the distribution of Polish median and low-value adjectives was almost equal (median-value adjectives: 24% and low-value adjectives: 21%). As far as adverbs are concerned, median-value markers amounted to 32% and low-value markers were the least numerous (mere 13%). The reason behind such a strong representation of high-value adjectives and adverbs in the Polish Corpus is probably due to the highest number of lexical items that were categorized as high-value type of epistemic markers. Apart from it, words such as '*błędny', 'oczywisty'* and *'niewątpliwie'* (classified as high-value) were among the most frequently encountered among all markers.

In the case of the American Corpus, the highest score in the case of both adjectives and adverbs belonged to median-value markers (for adjectives 72% and for adverbs 43%). We can attribute

this result to the richness of English 'categorical' type of adjectives: indeed if we compare the three columns, it turns out that the median-value expressions are best represented. When it comes to adverbs, the number of items for high and median-value type of expressions is fairly even. On the other hand, low-value epistemic markers in the case of English adjectives and adverbs are the least numerous group which is probably the reason why they achieved so 'poor' results (8% for low-value adjectives and 14% for low-value adverbs and modal modifiers).

In the case of Polish lexical verbs, there were more median and low-value epistemic expressions than high-value ones. Whereas the former constituted 74% of all lexical verbs, more categorical expressions amounted to only 26%. Indeed, expressions such as '*nie ma wątpliwości', 'nie ulega wątpliwości', 'nie budzi wątpliwości', 'nie ma racji', 'nie ma racjonalnych argumentów'* were not very frequent which confirms the hypothesis that Polish Supreme Court judges are less assertive in their argumentation than their American counterparts. Seemingly, this contrast is more conspicuous in the case of the American Corpus where median and low-value expressions represented as much as 85% of the total number of lexical verbs. However, if we look closer at the data, we will see that the reason is due to richness and variety of median-value English verbs (their overall percentage was 81% whereas the distribution of low-value lexical verbs amounted to mere 4%).

	POLISH CORPUS	**AMERICAN CORPUS**
High	3.556 (33%)	23.280 (17%)
Median	3.599 (33%)	81.475 (60%)
Low	3.641 (34%)	30.688 (23%)
Total	**10.796**	**135. 443**

Table 6.4. The distribution of high, median and low-value epistemic markers in the Polish and American Corpus: overall statistics

On the basis of table 6.4. we are able to advance some hypotheses as to which of the Corpora displayed more features indicative of categorical and assertive language. As far as the total number is concerned, the American Corpus contains definitely more epistemicity indicators: though in both Polish and American corpora there were about 500 judgments that underwent

analysis, the American judgment turned out to be more lengthy and exhaustive in terms of explanation and investigating the course of events that led to the crime. However, we decided to take the relative distribution, i.e. the percentage, into account in order to see the dependencies more clearly.

In the Polish Corpus the distribution between categories of degree of epistemic modality was surprisingly even: 33%, 33% and 34%. The American Corpus, in turn, is more diversified in this respect: the majority of the epistemic expressions were of median-value (60%). High-value expressions were represented by only 17% of all items. It is less than in the Polish Corpus. However, if we were to add up the number of high and median-value markers, the American Corpus would win with 77% against 66% of high and median-value Polish expressions.

It turns out, therefore, that the American Corpus outruns Polish judgments in terms of the percentage of high and median-value epistemic expressions against the number of all epistemic markers. Statistically therefore, we are authorized to say that its language is more assertive and categorical. This would confirm the opinions of the doctrine and theoreticians that we evoked in the first and second chapters. The American epistemic markers are to be found more frequently and are used more eagerly by the American Supreme Court judges due to the specificity of the English language as such, on the one hand, and on the other, due to the features of the judicial system itself.

Both legal languages are also specific due to different backgrounds and traditions. As observed at the beginning of Chapter 3, "given their more gradual evolution away from the Ancient Regime, [common law] judges did not threaten the development of a modern market economy" (Arruñada and Andonova, 2008: 81-130). The relatively liberal environment within the realm of common law countries turned out to be more conducive to the judiciary. In due course, they retained many of the privileges which their continental counterparts lost in the attempts on the part of the ruling elite to suppress any expressions of free will and discretion. In the case of the Continent, the great processes of codification that began in the 18th century were aimed at systematizing and ordering the laws and consequently, keeping the judges under control. In England, as opposed to the Continent, there was not any dividing line between the feudalism and the Enlightenment since the rights of the individual had long since been respected. Let us quote Pomorski who draws a more accurate picture of this discrepancy:

"England ran far in advance of the Continent in her economic, social and political development. The bourgeois revolution succeeded in England over one hundred years before the French revolution took place. (…) Government based on law was an English tradition with age old roots."

As a result:

"While the Continental judge of the eighteenth century (…) was considered a natural foe of the liberty (…), the independent common law courts in England enjoyed the fame of the natural defenders of civil liberties (Pomorski 1975: 16, 18)."

The results point to more subjective nature of the common law reasoning. As we remarked already, subjectivity has a lot to do with choice (Halliday 1994). According to Halliday, if the speaker leans towards more subjective modalities, he/she has a very clear attitude and does not refrain from the responsibility for a given statement (confidence, certitude, positiveness), but seems not to respect that statement in its entirety (assertiveness, skepticism). On the other hand, if he/she prefers more objective modalities, the statement is respected but the speaker is clearly reluctant to take the responsibility for what he/she is clarifying (ibid). The attitude is thus more of a neutral narrator who distances himself/herself and presents facts that aspire to become scientific truth. That is why objective language typically does not contain any emotive expressions. When we are subjective, in turn, we are more involved in the discourse and we feel more like authors of utterances, not as mere mediators between omniscient authorities and the rest of the world. Subjectivity, therefore, goes hand in hand with being categorical and using relatively strong, definitive and quasi-emotive vocabulary (the subject assumes liability for what he/she is saying, is certain and positive, does not refrain from emphases). The above traits are not encountered in academic and scientific registers where the expressions that occur would be more tentative and careful, low in epistemic value (if the criteria of Halliday were applied). Authors of such restrained and balanced statements aspire to put forward some general truths about the world but are reluctant to be fully held liable for some unconfirmed hypotheses. They present some arguments, evidence, results obtained in the course of their analysis or experiments (depending on the type of discipline) but they hedge their statements with numerous "ifs" and signalize (on all accounts) that "further research is desirable". The analysis is therefore always partial and fragmentary and cannot lead to absolute and clear-cut conclusions. What we can here state, avoiding this absolute and definitive language, is that Polish judges head more in the direction of cautious, impartial and hedged expressions (leaving

the authority with the written laws and codes) whereas the American justices do not refrain from taking responsibility and are less tentative in this respect. The above observation is reflected in numerous statements where fundamental issues such as death penalty are discussed. The below language points to awareness on the part of the judge that any wording may bring with it consequences of enormous nature:

'Our determination that the death penalty is disproportionate punishment for offenders under 18 finds confirmation in the stark reality that the United States is the only country in the world that continues to give official sanction to the juvenile death penalty. This reality does not become controlling, for the task of interpreting the Eighth Amendment remains our responsibility."

When the representatives of the judiciary branch engage in remarks of personal nature, they risk being accused of non-objectivity, which is typically non-desirable in the world of law. The decisions issued in courts should therefore follow a certain pattern and resemble mathematical equations and logical reasoning. However, the above would be an unattainable ideal in the type of discourse which is concerned with evaluating the conduct of human-beings vis-à-vis the society. We cannot say that judicial decisions are predictable. What is more, this lack of predictability will be more conspicuous at higher instances where judges have greater authority and discretion than their colleagues from first and second-instance courts. The unpredictability is also the result of the dynamic nature of the world. New technologies and processes emerge and the written law needs to be continually adjusted and reinterpreted. Even language itself will never provide sufficient means to account for all kinds of real-life situations. And just as language evolves to adapt to these processes, so does the written world of law. It should be emphasized that the American Supreme Court is more bound by the ideal of *jurisprudence constante*, the one which preaches adherence to certain time-honored patterns of reasoning with the goal of maintaining stability and order within the domain of law. These two principles seem, therefore, contradictory: on the one hand the necessity to adjust to the changing social processes and on the other, the imperative to follow the old and well-beaten tracks of the fore-fathers. It seems that the lower instances are more free to depart from the precedents and overrule the existing 'ratio' (see section 1.3.) since their decision is always subject to appeal. This might lead us to conclusion that theirs is a more subjective type of reasoning. We would thus need further analysis in this respect to find out whether any difference in the 'degree' of subjectivity

can be detected between the first and the supreme level of judiciary. In turn, the final and non-appealable decisions on the level of the supreme court should reflect more tentative thinking and reasoning and should aspire to objectivity. Nevertheless, markers of subjective language are bound to appear at the supreme level since issues that arouse doubt or controversy must be carefully scrutinized and are 'hedged' with a significant amount of epistemic expressions. The above can be confirmed by the results of our analysis. Thus, subjectivity is unavoidable even on the level of the supreme judiciary. As claimed by Drobak and North, "the non-doctrinal factors that make up discretion are an invisible part of judicial decision-making that cannot be explained with any precision given our primitive understanding of how the mind works (Drobak and North 2008: 134)." There have been even some who suggested that judges should undergo Freudian psychoanalysis to "better understand their own prejudices and, as a result, become better judges (cf. Frank 1949: 248, 1930: 147)." Let us turn to some cognitive considerations to better ground our theses. Judges reach decisions that "uphold rights, create predictability and certainty, and support the workings of successful social and economic systems" (Drobak and North 2008: 146). Authors such as Hayek bring to the fore concepts such as categorization which we have already evoked in chapter 2. Thus, his definition of perception as leading to the creation of beliefs, resembles the views posited by the cognitivists. The latter understood beliefs as something which is formed on the basis of the mind's classifications reflecting the external environment. As the author argues:

> "Perception is thus always an interpretation, the placing of something into one or several classes of objects. The qualities which we attribute to the experienced object are, strictly speaking, not properties of that object at all, but a set of relations by which our nervous system classifies them. Or, to put it differently, all we know about the world is of the nature of theories, and all experience can do is change these theories" (Hayek 1952: 143).

What this implies is that whatever we say will always bear traces of the subjective "re-interpretation" of the reality through the cognitive filters and biases. We cannot, therefore, speak of objectivity, which, if perceived through this light, will be an unattainable ideal, a utopia. This might bring to mind philosophical theories such as Berkeley's empiricist idealism: he held that things only exist to the extent that they are perceived. We are thus "tricked" by our mind to believe that what we refer to are virtual objects but in fact these objects are categorized by our brain and subsequently verbalized within the frames of language. We will not delve here

into issues such as whether reality exists or whether it is only our perception of it for questions like that have already been accounted for by dozens of philosophers and linguists alike. Our attempt here is merely to establish certain premise upon which to describe the decision processes that are going on in the judge's mind while forming postulates and finally issuing verdicts. The cognitive understanding of subjectivity and categorization as outlined above lead us to think that subjectivity is a result of neural connections and even sets of beliefs like liberal or conservative views upon reality stem from organizational patterns within our mind. We are tempted to accept the notion that categorization through language always leads to some degree of subjectivity since it always carries some marks of the cognitive 'background' of the speaker. In the social sciences, instead of attributing all these differences of perspective to linguistic considerations, scholars also refer to the so called 'framing'. Framing is defined as using mental filters or schemas to interpret and decode the informational input. Speaking otherwise, processing in a particular way and afterwards applying these schemas in order to influence the recipient (Entman 1993: 51).

If we accepted the idea that absolute objectivity is impossible, how should we then look upon the judicial reasoning itself? We have emphasized several times that it is rather desirable to follow certain strict argumentation patterns since that assures continuity and coherence in the body of rulings. This quality becomes even more important on the level of the supreme judiciary. Adjudicating would lose its dignity and prestige if it were a result of some loose and incidental stream of consciousness on the part of the judge. *Jurisprudence constante* is thus yet another criterion of an ideal judgment, apart from the objectivity. The conviction that judges follow certain stringent schemes of reasoning and argumentation patterns is also a deeply-rooted one. However, authors such as Richard Posner argue that

"We describe the lawyer's and the judge's reasoning as the "art" of social governance by rules (which may just be a fancy terms for tacit inference). The fact that law schools do not teach a distinctive method, the heavy rhetorical element in judicial opinions, and the low voltage of the methods of legal reasoning converge to support the idea that law is indeed better regarded as an art (more humbly, as a craft, or, as a skill such as riding a bicycle or speaking a foreign language) than as a system of reasoning) (Posner 1988: 827-865)."

The same author also states that:

"The judge's essential activity is the making of a large number of decisions in rapid succession, with very little feedback concerning the correctness or consequences of the decision. . . . He does not have the luxury of withholding decision until persuaded by objectively convincing arguments that the decision will be correct, and he no more wants to wallow in uncertainty and regrets than a law student wants to retake an exam in his mind after having taken it in the examination room (Posner 1988: 827-865)."

The above idea seems somewhat controversial if we consider all the constraints and criteria, both systemic and social, discussed above without which a rational, coherent and socially acceptable judgment would be impossible. We argue here that coherence and justice go hand in hand since justice is always something socially conditioned and rooted in the beliefs of the society/community, the expression of which can be found in the written codes and statues or the existing body of precedents to which the judges refer. It has been emphasized several times that judges' decisions are equally shaped by the society in which they live, being subject to culture, values, and moral systems. Drobak and North also point to the fact that feedback from court decisions, both in terms of social commentary and visible effects on economic and social affairs, surely creates some incentives for different outcomes in subsequent cases (Drobak and North 2008: 150). Education as such may also strengthen the 'habit' of trying to rely on the doctrine as a key-factor in the decision-making process. It is through continuously going through the process of analyzing and applying statutes and cases that certain thought patterns are consolidated and perpetuated. This inevitably reinforces how the brain processes information and reaches decisions (ibid: 150).

In summary, although so many criteria exist and are either implicitly or explicitly taught at all level of the judges' education, the interference of non-doctrinal factors is unavoidable. We would agree here with Edwin Hutchins that we cannot adequately understand cognition without accounting for the fact that "culture, context, and history are fundamental aspects of human cognition and cannot be comfortably integrated into a perspective that privileges abstract properties of isolated individual minds" (Hutchins 1995: 354). At times when democracy is threatened, the judicial discourse becomes an indicator of the degree of autonomy it enjoys and the linguistic analysis in terms of subjectivity/objectivity markers may turn out to be particularly relevant. The dominance of the executive over the legislature today is the problem of democracies around the world, and in certain countries it assumes dangerous dimensions.

The above seems reminiscent of the long gone-by Communist era. At schools we are being taught about "the tripartite division of authority". However, the English term "checks and balances" is more common in the political discourse and carries more connotations. When the same person bears both legislative and executive powers, there can be no freedom, because the law will be created and enforced in an authoritarian way. All would be lost if one and the same person held the three powers. If we were to turn to the classics, we would have to quote Montesquieu who accurately summarized the phenomenon of the lack of checks and balances system: when one and the same person focuses all the power - there is no chance for political freedom.

I would like to explain, in this place, why the American perspective seemed to me more appropriate than the European perspective. I may be accused of turning to some distant reality instead of concentrating on our own European 'garden'. However, the American perspecitve looked more safe precisely due to its remoteness. Not denying the impact of American politics on the world's economy, this thesis aspires to relative objectivity, a quality which is required from scientific genres. Scholars and authors of academic articles are expected to present in a moderate and humble manner the facts, the results of their analyses, the statistics, the numbers. Absolute objectivity is unattainable, as has been repeated several times throughout the dissertation. Each utterance bears traces of processing and filtering of the incoming information via certain cognitive schemes being a result of the structure of neurons in our brains. Nonetheless, accounting for all statements in terms of 'neurons' would verge on exaggeration and somehow seems to misrepresent the actual state of affairs. Some global and holistic approach is also required from the group involved in the moral evaluation of the human conduct and such approaches are also encountered in numerous statements of the judges. What is more, the method itself is based on the categorization of markers of epistemic modality. The process of categorization, although aspires to reflect as accurately as possible the real state of affairs, can never be hundred percent definite and absolute since language very often avoids categorization and eludes any attempts of systematization.

To conclude, let us refer to an observation made by Thomas who states that

“judges are not passive adjudicators of conflicts but active policy-makers (…). (they) treat the text of the applicable law as a grant of jurisdiction, and then fashion a decision that they believe will yield the most socially desirable results” (Thomas 2005: 6).

References

Arruñada, B., Andonova, V. (2008), Common Law and Civil Law as Pro-Market Adaptations. In: *Washington University Journal of Law and Policy*, volume 26, pp. 81-130.

Alexander L., Sherwin, E. (2001), Judge as Rule Makers in: Edlin, D. E. (2007) *Common Law Theory*, Cambridge University Press.

Alexander L., Sherwin, E. (2007), The Rule of Rules: Morality, Rules, and the Dilemmas of Law, Duke University Press 2001. In: Edlin, D.E. (2007) *Common Law Theory*, Cambridge University Press.

Alexander, L., Sherwin, E. (2008), Demystifying Legal Reasoning, Cambridge University Press.

Austin, J.L. (1961), *Philosophical Papers*, edited by J. O. Urmson and Geoffrey J. Warnock. Oxford, Oxford University Press.

Austin, J.L. (1962), *Sense and Sensibility*, edited by Warnock G. Oxford: Oxford University Press.

Austin, J.L. (1962, 1975), *How To Do Things With Words*, edited by Warnock G., Sbisa M. Oxford, Oxford University Press.

van der Auwera, J., and Plungian. V. A. (1998), *Modality's semantic map. Linguistic typology*, pp. 79–124.

Azar, M. (2006), Transforming Ambiguity into Vagueness. In: Wagner, A., Werner, W., Cao, D., *Interpretation, Law and the construction of meaning. Collected papers on Legal Interpretation in Theory, Adjudication and Political Practice*.

Bader, W. D. (1995), Some Thoughts on Blackstone, Precedent and Originalism in: *Vermont Law Review,* volume 19 (5).

Berman R. A. (2004), Genre and modality in developing discourse abilities. In: Moder, C. L., Martinovic-Ziv A., (eds), *Discourse across languages and cultures: typological studies in language series,* John Benjamins.

Bhatia, V. K. (1993), *Analysing genre: Language use in professional settings.* London: Longman.

Biber D., Finegan E. (1988), Adverbial stance types in English. *Discourse Processes vol. 11 (1),* pp. 1–34.

Biber, D., Federica B. (2007), Lexical bundles in university spoken and written registers. *English for Specific Purposes 26*, pp. 263–286.

Bielska-Brodziak, A. (2006), Zarzut błędnej wykładni. In: *Ruch Prawniczy, ekonomiczny i socjologiczny*, LXVIII, volume 1.

Blakemore, D. (1992), Understanding Utterances. Oxford: Blackwell.

Bojar B., Korytkowska M. (1991), Problemy modelowania kategorii modalności a wykładniki leksykalne tej kategorii w: *Studia gramatyczne bułgarsko-polskie, T.4 Modalność a inne kategorie językowe*, Warszawa.

Bolinger, D. (1967), Adjectives in English: Attribution and predication. *Lingua 18*, pp. 1–34.

Boniecka, b. (1976), O pojęciu modalności (przegląd problemów badawczych) in: *Język Polski*, p. 99-110.

Boniecka B. (1999), Wykład o modalności. In: *Annales UMCS. Sectio FF*, vol. 17, pp. 7-29.

Brezina V. (2012), *Epistemic markers in university advisory sessions. Towards a local grammar of epistemicity*. PhD dissertation. University of Auckland.

Bühler, K. (1934), *Sprachtheorie*. Jena, Fischer.

Butler Ch. (1985), *Statistics in linguistics*, Oxford, Basil Blackwell.

Bybee, J. L., Perkins, R., Pagliuca, W. (1994), *The Evolution of Grammar: Tense, Aspect, and Modality in the Languages of the World*, Chicago, University of Chicago Press.

Bybee, J.L., Fleischmann, S. (1995), Modality in grammar and discourse: An introductory essay. In: Bybee J., Fleischman S. (eds.), *Modality in grammar and discourse*, Amsterdam, John Benjamins.

Cardozo, B. (1921), *The Nature of the Judicial Process*. Yale University Press.

Carretero, M. (2002), The influence of genre and register on epistemic modality in spoken English: a preliminary study, *Estudios Ingleses de la Universidad Complutense*, vol. 10 11-41.

Chafe, W. (1986) Evidentiality in English conversation and academic writing. In: Chafe W., Nichols J. (eds.), *Evidentiality: The linguistic coding of epistemology*, 261–272. Norwood, NJ: Ablex.

Charanjit S. (2014), *Grammaticalisation of Interpersonal Meanings in the Indian and British Newspapers in English*, Guru Nanak Dev University, available online at: *http://shodhganga.inflibnet.ac.in/handle/10603/29757 (last access: 17th February 2017).*

Charnock, R. (2006), Lexical Indeterminacy: Contextualism and Rule-Following. In: Wagner, A., Werner, W., Cao, D. (2006) *Interpretation, Law and the construction of meaning. Collected papers on Legal Interpretation in Theory, Adjudication and Political Practice.*

Cheng, L., King Kui Sin (2011), A socio-semiotic interpretation of linguistic modality in legal settings. *Semiotica: Journal of the International Association for Semiotic Studies*, pp. 123– 146.

Cheng W., Cheng L. (2014), Epistemic modality in court judgments: A corpus-driven comparison of civil cases in Hong Kong and Scotland, *English for Specific Purposes*, vol. 33, pp. 15–26.

Chung, S., Timberlake A. (1985), Tense, aspect, and mood. In: Shopen T. (ed.), *Language typology and syntactic description: Grammatical categories and the lexicon*, 202–258. Cambridge, Cambridge University Press.

Clift, R. (2006), Indexing Stance: Reported Speech as an Interactional Evidential. In: *Journal of Sociolinguistics 10 (5)*, pp. 569-595.

Coates, J. (1983), *The semantics of the modal auxiliaries*. London, Croom Helm.

Cole, D. (2008), Terror Financing, Guilt by Association and the Paradigm of Prevention. In the 'War on Terror', *Georgetown University Law Center*, available at: *http://scholarship.law.georgetown.edu/facpub/442/* (last access: 18th February 2017).

Commager, H. S. (1950), *The American Mind: An Interpretation of American Thought and Character Since the 1880s*, Yale University Press.

Comrie, B. (1976), *Aspect*, Cambridge University Press.

Comrie, B. (1985), *Tense*, Cambridge University Press.

Cortes, V. (2002), Lexical bundles in Freshman composition. In: R. Reppen, S. M. Fitzmaurice and D. Biber (eds.), *Using corpora to explore linguistic variation* (pp. 131–145). Amsterdam: John Benjamins Publishing Company.

Cortes, V. (2004), Lexical bundles in published and student disciplinary writing: Examples from history and biology. *English for Specific Purposes 23*, pp. 397–423.

Cresti, E. (2000), Critère illocutoire et articulation informative, in Bilger M., *Corpus. Méthodologie et applications linguistiques, Actes du colloque Questions de méthode dans la linguistique sur corpus*, Champion, Paris, pp. 350-367.

Cristofaro, C. (2012), Descriptive notions vs. grammatical categories: unrealized states of affairs and `irrealis' *Language Sciences 34*, pp. 131-46

Croft, W. (1991), *Syntactic Categories and Grammatical Relations: The Cognitive Organization of Information*, University of Chicago Press.

de Haan, F. (2006), Typological approaches to modality. In Frawley W. (ed.), *The expression of modality*, pp. 27–69. Berlin, Mouton de Gruyter.

Davidsen-Nielsen, N. (1990), Tense and Mood in English. A Comparison with Danish. Mouton de Gruyter, Berlin/New York. *Topics in English Linguistics*

Dik, S. C. (1989), *The Theory of Functional Grammar. Part I: The Structure of the Clause*. Dordrecht, Foris.

Dik, S. C., Hengeveld K.(1997), *The Theory of Functional Grammar: The structure of the clause*, Dordrecht, Foris.

Downing, A., Locke P. (1992), *A University Course in English Grammar.* London, Prentice Hall.

Drubig, H.B. (2001), *On the Syntactic Form of epistemic modality*, University of Tübingen.

Du Bois J.W. (2007), The stance triangle in: Englrebretson R. (ed.), *Stancetaking in discourse: subjectivity, evaluation, interaction.* Amsterdam, Philadelphia: 139-182.

Ďurovic, L. (1956), Modálnosť. *Vydavateľstvo Slovenskej akadémie vied.*, Bratislava.

Duszak, A. (1998), *Tekst, dyskurs, komunikacja międzykulturowa*, Warszawa, PWN.

Dworkin, R., (1967), *The Model of Rules*, available at: http://www.umiacs.umd.edu/~horty/courses/readings/dworkin-1967-model-of-rules.pdf (last access 17th February 2017).

Ehrich U. (1990), *Bedeutungsanalyse in einem sprachverstehenden System unter Berücksichtigung pragmatischer Faktoren,* Tübingen.

Entman, R. (1993), Tree Beard. Framing: Toward Clarification of a Fractured Paradigm. *Journal of Communication,* vol. 43.

Esa M. (1991), *Bedingungen und Ausdruck der Personenreferenz im Deutschen. Eine funktionale Analyse*, Frankfurt am Main.

Elliott, C., Quinn, F. (2006), *English Legal System Sourcebook*. Longman, 7th edition, Longman.

Erhart, A. (1984), Základy jazykovědy, Praga, *Státní pedagogické nakladatelství.*

Finegan E. (2010), Legal writing: attitude and emphasis. Corpus linguistic approaches to 'legal language': adverbial expression of attitude and emphasis in Supreme Court opinions. – Coulthard M., Johnson A. (eds.) *The Routledge handbook of forensic linguistics*, pp. 65-77.

Foley, W., Van Valin, R.D. JR (1984), *Functional syntax and universal grammar*, Cambridge, Cambridge University Press.

Frank, J. (1930), *Law and the Modern Mind*, New York, Transaction Publishers.

Frank, J. (1949), *Courts on Trial*. Princeton, Princeton University Press.

Garlicki, L. (2011), *Polskie prawo konstytucyjne zarys wykładu*, Warszawa, Wolters Kluwer.

Garner, B. A. (2014), *Black's Law Dictionary*, 10th edition, West Group.

Geeraerts, D., Hubert Cuyckens (2007), *The Oxford Handbook of Cognitive Linguistics,* Oxford University Press.

Gizbert-Studnicki T. (1978), *Wieloznaczność leksykalna w interpretacji prawniczej,* Kraków, Wydawnictwa Uniwersytetu Jagiellońskiego.

Goźdź-Roszkowski, S. (2011), Patterns of Linguistic Variation in American Legal English. A Corpus-Based Study (vol. 22, edited by Lewandowska- Tomaszczyk, B.). Łódź, *Studies in Language.*

Granger, S., Paquot, M. (2008), Disentangling the phraseological web. In S. Granger & Meunier (Eds.), *Phraseology: An interdisciplinary perspective*. Amsterdam, John Benjamins.

Hayek, F.A. (1952), *The Sensory Order: An Inquiry into the Foundations of Theoretical Psychology.*

Grice, H. P. (1975), Logic and Conversation in: Cole, P., Morgan, J.L. (eds.), *Speech Acts*, pp. 41-58, New York Academic Press.

Grzegorczykowa, R. (1998), *Wykłady z polskiej składni*. Warszawa, Wydawnictwo Naukowe PWN.

Grzegorczykowa, R. (2001), *Wprowadzenie do semantyki językoznawczej*, Warszawa, Wydawnictwo Naukowe PWN.

Halliday, M.A.K. (1978), *Language as social semiotic: The social interpretation of language and meaning.* London, Edward Arnold.

Halliday, M.A.K.. (1994), *Functional grammar*. 2nd edition, London: Arnold.

Halliday, M.A.K., Matthiessen C.M. (2004), *Introduction to Functional Grammar*, 3rd edition, London, Edward Arnold.

Harris Z. (1982), Discourse and Sublanguage in: *Sublanguage: Studies of Language in Restricted Semantic Domains* (ed. by Kittredge R. and Lehrberger J.), Berlin, New York, Walter de Gruyter.

Harsing, L. (1982), *Scientific Reasoning and epistemic attitudes*, Akademiai Kiado, Budapest.

Hart, H. L. A. (1958), Positivism and the Separation of Law and Morals in: *Harvard Law Review* 71 (4), pp. 593–629.

Hart, H.L.A. (1983), *Essays in Jurisprudence and Philosophy*, Oxford, Clarendon Press.

Hart, H.L.A. (1990, 2nd ed. 1994). *The Concept of Law*, Oxford, Clarendon Press.

Havranek, B. (1964), The functional differentiation of the standard language in: *A Prague School Reader on Esthetics, Literary Structure and Style*, selected and translated from Czech by Paul L. Garvin; Washington DC, Georgetown University Press, pp. 3-16.

Hemmens C. T., David C. Brody, D. C. , Spohn, C. C. (2012), *Criminal Courts: A Contemporary Perspective*, 2nd edition, Sage Publications.

Hengeveld, Kees (1987), Clause structure and modality in Functional Grammar. In *Ins and Outs of the Predication*, van der Auwera J., Goossens L. (eds), pp. 53-66. Dordrecht: Foris.

Hengeveld, Kees (1988), Illocution, mood and modality in a functional grammar of Spanish. *Journal of Semantics 6*, pp. 227-269.

Hengeveld, Kees (1989), Layers and operators in Functional Grammar. *Journal of Linguistics* 25, pp. 127-157.

Hengeveld, Kees (1990), The hierarchical structure of utterances in: Nuyts J., Bolkestein M.A., Vet C. (eds), *Layers and Levels of Representation. Language Theory. A Functional View*, pp. 1-23, John Benjamins.

Holland, J., Webb, J. (2010), *Learning Legal Rules: A Students' Guide to Legal Method and Reasoning*, 7th edition, Oxford University Press.

Holmes J. (1988), Doubt and certainty in ESL Textbooks. *Applied Linguistics, vol. 9.(1)*, pp. 21-44.

Hopper, P. J., ed. (1982) *Tense–Aspect: Between Semantics and Pragmatics*, John Benjamins.

Hoye, L. (1997), *Adverbs and modality in English*. London, Longman.

Huddleston, R. D. (1976), Some theoretical issues in the description of the English verb. *Lingua 40*, pp. 331–383.

Huddleston, R. D. (1993), *Introduction to the Grammar of English*. Cambridge, Cambridge University Press.

Huddleston, R. D., Pullum, G.K. (2002), *The Cambridge grammar of the English language*. Cambridge, Cambridge University Press.

Hutchins E. (1995), *Cognition in the Wild*, MIT Press.

Hyland K. (1998), *Hedging in scientific research articles*. Amsterdam, Philadelphia.

Hyland, K. (2008), As can be seen: Lexical bundles and disciplinary variation. *English for Specific Purposes* 27, pp. 4–21.

Jakobson, R. (1960), Closing Statement: Linguistics and Poetics. In: T.A. Sebok (ed.), *Style in Language*. Cambridge, MIT, pp. 350-377.

Jenkins, J. (2011), *The American Courts: A Procedural Approach*, Boston, Jones and Bartlett Publishers.

Jędrzejko, E. (1987), *Semantyka i składnia polskich czasowników deontycznych*, Wrocław, Ossolineum.

Jędrzejko E. (2000), Modalność w języku i w tekstach: od gramatyki do stylistyki in: Sławkowa E. (ed.) *Kategorie pragmatyczne w tekście literackim*, Cieszyn, pp. 113-155.

Jespersen, O. (1924, 1992), *The Philosophy of Grammar*, Chicago, University of Chicago Press.

Jopek-Bosiacka, A. (2006), *Przekład prawny i sądowy*, Warszawa, Wydawnictwo Naukowe PWN.

Judycki, T. (2009), Twardy problem realizmu metafizycznego i współczesny antyrealizm, *Roczniki filozoficzne*, Volume 75, no 1/2009.

Kačmárová A. (2011), Modality: A Framework for Conveying Judgments in: SKASE *Journal of Theoretical Linguistics*, Vol. 8, No. 1

Kakietek, P. (1991), Lexical exponents of epistemic modality in English and Polish: A statistical approach. In: Kakietek P. (ed.), *Problems in the modality of natural language*, pp. 95–113. Opole, Uniwersytet Opolski.

Kärkkäinen, E. (2003), *Epistemic Stance in English Conversation. A description of its interactional functions, with a focus on I think*, Amsterdam, John Benjamins.

Keisanen T. (2007), Stancetaking as an interactional activity: Challenging the prior speaker. – Englebretson R. (ed.) *Stancetaking in discourse: Subjectivity, evaluation, interaction.* Amsterdam, Philadelphia, pp. 253-281.

Kiefer, F. (1997), Modality and pragmatics in: *Folia Linguistica XXXI* (3-4), pp. 241–253.

Kielar, B.Z. (1977), *Language of Law in the Aspect of Translation*, Warszawa, Wydawnictwo Uniwersytetu Warszawskiego

Kiklewicz A. (2004), *Podstawy składni funkcjonalnej*. Olsztyn: Wydawnictwo UWM.

Kinkade, M. D. (1998), Is Irrealis a Grammatical Category in Upper Chehalis?' *Anthropological Linguistics 40*, pp. 234-244.

Klink D. (1992), *The Word of Law. Approaches to Legal Discourse.* Ottawa, Carleton University Press.

Kornelius, B. (2009), General Clauses in the Process of Law Application. Chosen Aspects. In: *Studies in Logic, Grammar and Rhetoric*, vol. 19 (32). Białystok, University of Białystok.

Koszowski M. (2009), *Anglosaska doktryna precedensu. Porównanie z polską praktyką orzeczniczą,* Warszawa, Warszawska Firma Wydawnicza.

Kratzer, Angelika. (1977), What 'must' and 'can' must and can mean. *Linguistics and Philosophy* 1(3), pp. 337–355.

Kratzer, Angelika (1981), The notional category of modality. In: Hans-Jurgen Eikmeyer and Hannes Rieser (eds.), *Words, worlds and contexts: New approaches in word semantics*, Berlin, Walter de Gruyter, pp. 38–74.

Kreidler, C. W. (1998), *Introducing English Semantics*, London, New York, Routledge.

Lakoff, G. Johnson, M. (1972), *Metaphors We Live By*, Chicago, The University of Chicago Press (translated by Tomasz Krzeszowski (1988) Warszawa, Państwowy Instytut Wydawniczy).

Lakoff, G. (1987), *Women, Fire and Dangerous Things. What Categories Reveal About the Mind.* Chicago, University of Chicago Press.

Langacker, R. W. (1987), Foundations of Cognitive Grammar. Vol. 1 *Theoretical Prerequisites*. Stanford, Sanford University Press.

Langacker, R. W. (2000), A dynamic usage based model in: Barlow, M., Kemmer, S. (eds.) *Usage-Based Models of Language*, Stanford California: CSLI Publications, pp. 1-63, translated by Kubiński, W and reprinted in: Dąbrowska, E., Kubiński, W. (ed), (2003) *Akwizycja języka w świetle językoznawstwa kognitywnego*, Kraków, Universitas, pp. 30-119.

Lappin, S, Fox C. (eds.) (2005), *The Handbook of Contemporary Semantic Theory*, 2nd edition, Wiley Blackwell, Chichester.

Leech, G. (1983), *The Principles of Pragmatics*, London, New York, Longman.

Leszczyński, L. (2015), *Jednolitość orzecznictwa jako wartość stosowania prawa w: Studia i Analizy Sądu Najwyższego*. Materiały Naukowe, available online at: http://sn.pl/publikacje/BSiA_Materialy_naukowe/Studia_i_Analizy_SN_tom_1.pdf (last access 12th February 2017).

Ligara, B. (1997), *Polskie czasowniki modalne i ich francuskie ekwiwalenty tłumaczeniowe.* Kraków, Universitas.

Lippman, R. M. (2013), *E-Study Guide for Contemporary Criminal Law: Concepts, Cases, and Controversies*, University of Illinois at Chicago.

Local, J. (2005), Phonetic and interactional features of attitude in everyday conversation. Research proposal in: Mello, H., Panunzi, A., Raso, T., eds. (2011), *Pragmatics and Prosody: Illocution, Modality, Attitude, Information, Patterning and Speech Annotation*. Firenze, Firenze University Press.

Loos, E. F., Anderson, S., Day, D. H., Jr.; Jordan, P.C.; Wingate, J. D., eds. (2004), What is mood and modality? *SIL International*.

Ludtke, H. (1980), Auf dem Wege zu einer Theorie des Sprachwandels. In: Ludtke, H. (ed.) *Kommunikationstheoretische Grundlagen des Sprachwandels*, Berlin, Walter de Gruyter, pp. 182-252.

Lyons, J. (1977), *Semantics*. Vol. 2. Cambridge, Cambridge University Press.

Łętowska E. (1993), *Podstawy prawa cywilnego*, Warszawa , Ecostar.

Mamet, P. (2005), *Język w służbie menedżerów – deklaracja misji przedsiębiorstwa*. Katowice, Wydawnictwo Uniwersytetu Śląskiego.

Marcinkowski M. (2010), Modality in academic discourse: Meaning and use of epistemic verbs in research articles. – Jančaříková R. (ed.) *Interpretation of meaning across discourses*. Brno, pp. 47- 59.

Martin, J.R. (1985), Process and text: two aspects of human semiosis. In: Benson, J.D., Greaves, W.S. (eds.), *Systemic Perspectives on Discourse, vol. 1*, Norwood, pp. 248- 274.

Mason A. (2008), *The Mason Papers: Selected Articles and Speeches by sir Anthony Mason* in: Lindell G. (ed.), Federation Press, Annandale, New South Wales.

Mazurkiewicz M. (2004), The Role of the Constitutional Tribunal in Creating the Principles of a Democratic State, Ruled by the Law. In: *the Transition Process, a report*: Strasbourg.

McCarthy, M, Matthiessen, C.M.I.M., Slade, D. (2010), Discourse Analysis in: Schmitt, N., *An Introduction to Applied Linguistics*, Second Edition, United kingdom, Arnold.

McCormick D.N. (1997), Interpreting Precedents: A Comparative Study. In: *Applied Legal Philosophy Series.*

Mello, H., Panunzi, A., Raso, T. (2011), *Pragmatics and Prosody: Illocution, Modality, Attitude, Information, Patterning and Speech Annotation*. Firenze, Firenze University Press.

Mey, J. (1993), *Pragmatics: an Introduction*. Oxford, Blackwell.

Miles, A. S. (2000). Blackstone and his American Legacy. In: *Australia and New Zealand Journal of Law and Education* (Australia and New Zealand Education Law Association) 5 (2).

Mindt, D. (1998), *An empirical grammar of the English verb: modal verbs*. Berlin, Cornelson.

Młodawska, A. (2012), *Advanced Legal English for Polish Purposes*, Warszawa, Wolters Kluwer.

Moon, L. (2011), Modal Verbs in the Common Ground: Discriminating among "Actual" and "Non-Actual" Uses of Could and Would for Improved Text Interpretation. In: *Building Representations of Common Ground with Intelligent Agents*, 2011 AAAI Fall Symposium Series.

Moraes, J., Rilliard, A. Mota, B. e Shochi, T. (2010), Multimodal perception and production of attitudinal meaning in Brazilian Portuguese in: *Proceedings Speech Prosody*, Chicago.

Morawski L. (2010), *Zasady wykładni prawa*. wyd. II, , Toruń, Towarzystwo Naukowe Organizacji i Kierownictwa.

Muczkowski, J. (1836), *Gramatyka języka Polskiego*. Kraków.

Mushin, I. (2001), *Evidentiality and epistemological stance. Narrative retelling*. Amsterdam, John Benjamins.

Myrczek-Kadłubicka, E. (2013), *Egzamin na tłumacza przysięgłego. Przewodnik po prawie karnym,* Wydawnictwo C.H. Beck.

Nagórko, A. (1996), *Zarys gramatyki polskiej*, Warszawa, Wydawnictwo Naukowe PWN.

Narrog, H. (2014), Modality, Subjectivity, and Semantic Change: A Cross-Linguistic Perspective in *Diachronica 31(1).*

Nordström, J. (2010), Modality and Subordinators. In*: Studies in Language Companion Series 116,* Amsterdam, John Benjamins.

Nowakowski, A. (2011), *Uzasadnienie epistemiczne*, Lublin, Wydawnictwo Uniwersytetu Marii Curie-Skłodowskiej.

Nuyts, J. (2001a) *Epistemic modality, language, and conceptualization: A cognitive-pragmatic perspective.* Amsterdam, John Benjamins.

Nuyts, J. (2001b) Subjectivity as an evidential dimension in epistemic modal expressions. *Journal of Pragmatics 33*, pp. 383–400.

Nuyts, J. (2006), Modality: Overview and Linguistic Issues in: Frawley, W., Eschenroeder E., Mills, S., Nguyen, T. (eds.), *Expressions of Modality, Berlin*, Walter de Gruyter.

Palczewski, R. (2014), *Wiedza w kontekstach*, Toruń, Wydawnictwo Naukowe UMK.

Palmer, F. R. (1979), Modality and the English modals. London, Longman.

Palmer, F. R. (1986), *Mood and modality*. Cambridge, Cambridge University Press.

Palmer, F. R. (2001), *Mood and modality*. 2nd edition, Cambridge, Cambridge University Press.

Panek, G. (2008), *Semantic vagueness and terminological equivalence in legal translation.* PhD thesis, University of Silesia, Katowice.

Papafragou, A. (2000a), *Modality: Issues in the semantics-pragmatics interface.* Amsterdam, Elsevier.

Papafragou, A. (2000b), On speech-act modality. In: *Journal of Pragmatics vol. 32*, pp. 519–538.

Perkins, M. R. (1983), *Modal Expressions in English. London*, Frances Pinter.

Piasecki, K. (2007), *Wyroki sądów pierwszej instancji, sądów apelacyjnych oraz Sądu Najwyższego w sprawach cywilnych, handlowych i gospodarczych*, Warszawa, Wolters Kluwer.

Polański, K. (1969), Sentence modality and verbal modality in generative grammar. *Biuletyn Fonograficzny 10*, pp. 91–100. Poznań.

Pomorski S. (1975), *American Common Law and the Principle Nullum Crimen Sine Lege*, Warszawa, PWN.

Portner, P. (2009), *Modality.* Oxford, Oxford University Press.

Posner, R.A. (1990), The Problems of Jurisprudence in: Am*erican Legal Realism, vol. 131*, pp. 164–65.

Pound R. (1930), *An Introduction to the Philosophy of Law*, Yale University Press.

Putnam, H. (1975) The meaning of 'meaning'. In: *Minnesota Studies in the Philosophy of Science vol. 7*, pp. 131-193.

Quirk, R., Sidney G., Geoffrey L. and Svartvik J. 1(985), *A comprehensive grammar of the English language*. London, Longman.

Radden, R., (2009), Affirmative and negatred modality in: *Quaderns de Filologia. Estudis lingüístics. Vol. 14* (2009), pp. 169-192, Hamburg available at: http://roderic.uv.es/bitstream/handle/10550/30269/169.pdf?sequence=1 (last access: 17th February 2017).

Radden, G., Panther, K.-U. (2004), Introduction: Reflections on motivation". In: G. Radden & K.-U. Panther (eds). *Studies in Linguistic Motivation*, pp. 1-46. Berlin/New York, Mouton de Gruyter.

Rooryck J. (2001a), State of the article: Evidentiality, Part I. *Glot International 5*.4, pp. 125-133.

Rooryck J. (2001b), State of the article: Evidentiality, Part II. *Glot International 5.5:*, pp.161-168.

Rosch, E., Mervis, C.B., Gray W., Johnson D., Boyes-Braem P. (1976), Basic objects in natural categories in: *Cognitive Psychology vol. 8*, pp. 382-439.

Roszkowski S. (1999), The language of law as sublanguage. In: Tomaszczyk, J. (ed.), *Apects of Legal Language and Legal Translation*, Łódź, Łódź University Press.

Rytel, D. (1982), *Leksykalne środki wyrażania modalności w języku czeskim i polskim.*, Warszawa, Wydawnictwo Ossolińskich.

Salmon, W.C. (198), *Causality and explanation*, New York, Oxfrd, Oxford University Pres.

Saloni Z. Świdziński M. (1998), *Składnia współczesnego języka polskiego*, rozdz. IV, Warszawa.

Sanders, T. J. M. (2005), *Coherence, Causality and Cognitive Complexity in Discourse*, Utrecht, University of Utrecht.

Schneider, S. (1999), *Il congiuntivo tra modalita e subordinazione*, Rome, Carocci.

Searle, J. (1970), *Speech Acts: An Essay in the Philosophy of Language*. London: Cambridge University Press.

Searle, J. (1979), *Expression and meaning: Studies in the Theory of Speech Acts*, Cambridge, Cambridge University Press.

Siewierska, A. (1991), *Functional Grammar*. London, Routledge.

Sójka-Zielińska, K. (2011), *Historia prawa*, Warszawa: Lexis Nexis.

Schauer F. (1993), *Playing by the Rules. A Philosophical Examination of Rule-Based Decision-Making in Law and in Life*, London, Clarendon Press.

Schmitt N., Grandage S., Adolphs S. (2004), Are corpus-derived recurrent clusters psycholinguistically valid? In: Schmitt, N. (ed.), *Formulaic Sequences: Acquisition, processing and use*, pp. 127-151.

Shapiro M. (1964), *Law and Politics in the Supreme Court: New Approaches to Political Jurisprudence*, London, The Free Press of Glencoe Collier-Macmillan.

Slapper, G., Kelly, D. (2015), *The English Legal System*, 16th edition, Routledge.

Sperber, D., Wilson, D. (1986), *Relevance: Communication and cognition*. Oxford, Blackwell.

Steele, S. (1975), Past and irrealis: Just what does it all mean? *International Journal of American Linguistics vol. 41*, pp. 200–217.

Strębska, K. (2010), *Verbal Constructions in the European-Union legislation. Translation-oriented approach*, MA Thesis, University of Silesia.

Stubbs, M. (1996), Towards a modal grammar of English: A matter of prolonged fieldwork. In: *Text and Corpus Analysis*, Oxford, Blackwell, pp. 196–228.

Swales, J. M. (1990), *Genre analysis: English in academic and research settings*. Cambridge, Cambridge University Press.

Sweetser, E. (1982), Root and epistemic modals: causality in two worlds. *Proceedings of the Annual Meeting of the Berkeley Linguistics Society 8*, pp. 484- 507.

Sweetser, E. (1990), *From etymology to pragmatics: Metaphorical and cultural aspects of semantic structure*. Cambridge, Cambridge University Press.

Szczygłowska, T. (2009), *A contrastive analysis of argumentative techniques in written Polish and English. The application of Halliday's functional model to the analysis of Letters to Edito*r, Ph.D. Thesis, University of Bielsko-Biała.

Szczyrbak M. (2014): Stance-taking strategies in judicial discourse: evidence from US Supreme Court opinions, *Studia Linguistica Universitatis Iagellonicae Cracoviensis, Volume 131, Issue 1*, available online at: http://www.ejournals.eu/Studia-Linguistica/.

Szmulik B. (2008), *Pozycja ustrojowa Sądu Najwyższego w Rzeczypospolitej Polskiej*, Warszawa, Wydawnictwo C.H.Beck.

Śledzińska-Simon, A., Wyrzykowski, M. (2010), *Precedens w polskim systemie prawa*, Warszawa, Zakład Graficzny UW.

Świda Z., Skorupka J., Ponikowski R. (2012), *Postępowanie karne Część ogólna,* Warszawa, Wolters Kluwer.

Talmy, L. (1988), Force dynamics in language and cognition. *Cognitive Science* 12: 49100.

Thomas, E. W., (2005), *The Judicial Process: Realism, Pragmatism, Practical Reasoning and Principles*, Cambridge, Cambridge University Press.

Thompson, G., Hunston, S. (2000), Evaluation: An introduction. In: Thompson, G., Hunston, S. (eds.), *Evaluation in text; Authorial stance and the construction of discourse*, Oxford, Oxford University Press, pp. 1-27.

Tokarczyk R. (2003), *Prawo Amerykańskie,* Warszawa, Wolters Kluwer.

Tomasiewicz, B. (2010), Subjunctive Mood in Polish and the Clause Typing Hypothesis in: Smirnova A., Mihaliček V., Ressue L. (eds.), *Formal Studies in Slavic Linguistics, Newcastle upon Type*, Cambridge, Cambridge Scholar Publishing.

Tomaszczyk, J. (1999), *Aspects of Legal Language and Legal Translation*, pp. 7-16. Łódź, Łódź University Press.

Traugott, E. C. (1989), On the Rise of Epistemic Meanings in English: An Example of Subjectification in Semantic Change. In: *Language vol. 65*, pp. 31- 35.

Traugott, E. C., Dasher, R. B. (2001), Regularity in Semantic Change, *Cambridge Studies in Linguistics*, Cambridge, Cambridge University Press.

Twaddell, W. F. (1963), *The English Verb Auxiliaries*. Providence, Brown Universty Press.

Tytuła M., Łosiak M. (2008), *Polski bez błędów. Poradnik językowy dla każdego*. Warszawa, Park Edukacja.

Ungeheuer, G. (1972), *Sprache und Kommunikation*. Hamburg, Helmut Buske.

van Fintel, K. (2006), Modality and language. In: Borchert, D.M. (ed.), *Encyclopedia of Philosophy Vol. 10.* 2nd ed. Detroit, MacMillan.

Van Hoecke, M. (2002), Law as Communication (2002). In: *European Academy of Legal Theory Series.*

Van Valin R.D. JR, Lapolla, R. J. (1997), *Syntax: structure, meaning and fucntion*, Cambridge, Cambridge University Press.

Vázquez Orta, I. (2010), A contrastive analysis of the use of modal verbs in the expression of epistemic stance in Business Management research articles in English and Spanish. In: *Ibérica vol. 19*, pp. 77-95.

Verhagen A. (2010), Construal and Perspectivization in: Geeraerts D., Cuyckens, H. (2010), *The Oxford Handbook of Cognitive Linguistics*, Oxford, Oxford University Press.

Walker, V. R. (2003), Epistemic and Non-epistemic Aspects of the Fact-finding Process in Law in: *APA Newsletter on Philosophy and Law*, available online at: http://jpsl.org/archives/epistemic-and-non-epistemic-aspects-factfinding-process-law/.

Warchał K., Łyda A. (2009), Epistemic modality markers in Polish-English and English-Polish consecutive interpreting: Modal values and categories. In: Fontański H., Molencki, R., Wolińska, O. (eds.) *W kręgu teorii: Studia językoznawcze dedykowane Profesorowi Kazimierzowi Polańskiemu in memoriam*, Katowice, Uniwersytet Śląski, pp. 247-265.

Warchał, K. (2014), *Certainty and doubt in academic discourse: Epistemic modality markers in English and Polish linguistics articles*. Katowice, Uniwersytet Śląski.

Wilkoń, A. (2002), Kategoria modalności in: Wilkoń A., *Spójność i struktura tekstu. Wstęp do lingwistyki tekstu*, Kraków, pp. 44-50.

Witczak-Plisiecka, I. (2009), Legal Speech Acts in a Cognitive Linguistic Perspective - Focus on Modality. In: *Comparative Legilinguistics (International Journal for Legal Communication) No1 (1),* pp. 159-175.

Wittgenstein, Ludwig (1999), *Tractatus Logico-Philosophicus*, Dover, Mineola.

Wronkowska, S., Ziembiński Z. (2001)., *Zarys teorii prawa*, Poznań, Ars bonii et aequii.

Wróblewski, J. (1971), *Precedens i jednolitość sądowego stosowania prawa*, Warszawa, Państwo i Prawo.

Wróblewski J., Lang W. (1986), *Współczesna filozofia i teoria prawa w USA*, Warszawa, PWN.

Yates, J., Orlikowski, W. (1992), Genres of Organizational Comminication: A Structurational Approach to Studying Communication and Media. In: *Academy of Management Review, vol. 17*, pp. 299-326.

Zedler F. (2011), *Prawo upadłościowe i naprawcze w zarysie,* wyd. 4, Warszawa, Wolters Kluwer.

Zuck, J.G., Zuck, L.V. (1986), Hedging in newswriting. Beads or braclets? How do we approach LSP? In: *Paper presented at the fifth European Symposium on LSP*.

Online resources

1. The database of the Polish Supreme Court: http://www.sn.pl/orzecznictwo.aspx
2. The database of Bound Volumes of the American Supreme Court: http://www.supremecourt.gov/opinions/boundvolumes.aspx
3. "Find law": online legal dictionary: http://dictionary.findlaw.com
4. Scientific materials available at Berkeley Department of Law Library: http://www.law.berkeley.edu/library
5. http://photos.state.gov/libraries/korea/49271/april_2014/dwoa_0313_The_US_Supreme_Court__Equal_Justice_Under_the_Law.pdf
6. Collection of essays on the Supreme Court in the United States functions updated to reflect the appointments of new justices and recent, significant decisions of the court: https://us.sagepub.com/sites/default/files/upm-binaries/43866_1.pdf
7. Studies and Analyses of the Polish Supreme Court, volume 1, available at: http://sn.pl/publikacje/BSiA_Materialy_naukowe/Studia_i_Analizy_SN_tom_1.pdf
8. Rules of the Supreme Court of the United States: https://www.law.cornell.edu/rules/supct/rule_10

List of legal documents

1. Act of 23 November 2002 on the Supreme Court, Journal of Laws dated 2002 no. 240, item 2052
2. The Constitution of the Republic of Poland dated 2nd April, 1997, Journal of Laws no. 78, item 483.
3. Polish Code of Civil Procedure dated 17th November 1964, Journal of Laws no. 43, item 296.
4. Polish Code of Criminal Procedure dated 6th June 1997, Journal of Laws no 89, item 555.
5. Polish Penal Code dated 6th June 1997, Journal of Laws no 88, item 553
6. Judgment of the Constitutional Tribunal dated 28th June 2000, Journal of Laws no 53 item 648, file ref. K 25/99.
7. Annex to the regulation of the Prime Minister as of 20th June 2002 on "Principles of Legislative Technique" ("Zasasy Techniki Prawodawczej") (Journal of Laws, No 100, item 908, translation mine).
8. Resolution of the Polish Constitutional Tribunal dated 7th March 1995, File Ref. no. W 9/94, OTK 1995/1/20.
9. The decision of the Supreme Administrative Court dated 30th November 2005, file Ref. FSK 2396/04.
10. Resolution of the Polish Supreme Court dated 21st November 2001; I KZP 26/2001.
11. Legal Consequences of the judgments passed by the Polish Constitutional Tribunal', a statement made by the President of the Polish Constituional Tribunal, prof. M. Safjan in the Committee of Legal Sciences of the Polish Academy of Sciences on 6th January 2003.

List of cases cited

UNITED KINGDOM:

Balfour v. Balfour (1919) 2 KB 571.

Fisher v. Bell (1961) 1 QB 394.

Adler v George (1964) 2 QB 7.

Merritt v Merritt (1970) 1 WLR 1211.

Regina v. Secretary of State for Health ex parte Quintavalle (on behalf of Pro-Life Alliance) (2003) 2 WLR 692

UNITED STATES

Marbury v. Madison, 5 U.S. 137 (1803).

Brown v. Board of Education of Topeka, 347 U.S. 483 (1954).

Roe v. Wade, 410 U.S. 113 (1973).

Hilton v. South Carolina Public Railways Commission (1991).

Bush v. Gore, 531 U.S. 98 (2000).

Central Green Co. v. United States, 531 U.S. 425 (2001).

Crawford v. Washington, 541 U.S. 36 (2004).

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Summary in English

Modality enables us to place our statement on an axis, whose extremes constitute absolute (ideal) values of truth or false. In attributing various degrees of probability to our statements, we involuntarily convey our own stance and attitude towards a given propositional content. We are thus being subjective in the majority of day-to-day conversations. The above observation applies in an equal degree to judicial discourse and to the general register. The present analysis gives some evidence that subjectivity is traceable in the rulings of the Polish Sąd Najwyższy and in the ones issued by the Supreme Court of the United States. We argue that despite numerous attempts to view the genre of judgment as strictly adopted to some time-honored conventions and argumentation patterns, the presence of various epistemicity markers somehow places it on a par with genres viewed as more subjective (e.g. the journalist discourse). There is also the difference in the degree of subjectivity between the Polish and the American Corpus, the former being less marked with respect to epistemicity and the latter more interlaced with grammatical indicators of epistemic modality.

Although subjectivity, as permeating our communication seems obvious and self-understandable, it has been rather recently that the expressive function of language has been acknowledged and received greater attention. To quote Halliday and his most representative definition: "[epistemic modality]....is the speaker's assessment of probability and predictability. It is external to the content, being part of the attitude taken up by the speaker: his attitude in this case, towards his own speech role as 'declarer (Halliday, 1970: 349)."

As a linguistic phenomenon, which spans grammar, semantics, pragmatics and discourse, epistemicity, to use very broad terms, makes apparent the attitude of the speaker towards the propositional content he/she is communicating**.** The present thesis is concerned with the analysis of the epistemic markers of modality in the discourse of the Supreme Court judges in Poland and the United States. Crucial for the purposes of the analysis will be the basic distinction into root modality (in certain particular cases the term 'deontic' is used) and epistemic modality as well as modal values which allow for the analytic approach towards the 'vague', as it would seem, concept of epistemicity and subjectivity. The point of departure for the methodology endorsed in the practical part is the classification of the linguistic epistemicity indicators into three degrees according to Halliday: high-, median and low-value markers

(Halliday 1994). The doctrinal differences suggest that Polish and Anglo-Saxon judges signalize differently their stance and attitude towards the presented line of argumentation, whether it is doubt or certainty. These linguistic markers might also occur with greater or lesser frequency, depending upon the category of the word.

The results corroborate our hypothesis that that the American Corpus outruns Polish judgments in terms of the percentage of high and median-value epistemic expressions. As far as the most important category, the modal verbs, is concerned, it turns out that both in the case of Polish and American Corpus, the most frequent type were low-value modals (50% in both cases). High-value modal verbs were better represented in the Polish Corpus where they constituted 38%. In the American Corpus their number was significantly smaller: only 12% in comparison with median and low-value modals. This was probably due to the fact that the majority of the analyzed high-value English modals turned out to represent deontic modality

On the basis of the data obtained, we are able to draw a general conclusion that epistemic meaning was most probable if the lexical verb with which it collocated was of abstract or metaphorical character. Both legal languages are also specific due to different backgrounds and traditions. Therefore, the use of certain collocations and phrases might be the consequence of convention rather than an expression of subjectivity. What is more, the Anglo-Saxon doctrine lays emphasis on the idea of *jurisprudence constante*, according to which adjudication should be a predictable and coherent process. It seems that the higher instances are more bound by this imperative to adhere to the existing '*ratio decidenci'* since their decision is final and non-appealable. The decisions issued in courts should therefore follow a certain pattern and resemble mathematical equations and logical reasoning. However, the above would be an unattainable ideal in the type of discourse which is concerned with evaluating the conduct of human beings vis-à-vis the society. As a result, we cannot say that judicial decisions are predictable. At higher instances where judges have greater authority and discretion than their colleagues from first and second-instance courts, this lack of predictability will be more conspicuous. The unpredictability is also the result of the dynamic nature of the world. New technologies and processes emerge and the written law needs to be continually adjusted and reinterpreted. Even language itself will never provide sufficient means to account for all kinds of real-life situations. And just as language evolves to adapt to these processes, so does the

written world of law. These two principles seem, therefore, contradictory: on the one hand, the necessity to adjust to the changing social processes and on the other, the imperative to follow the old and well-beaten tracks of the fore-fathers.

Despite the existence of so many criteria that are either implicitly or explicitly imposed at all level of the judges' education, the interference of non-doctrinal factors is unavoidable. We would agree here with Hutchins that we cannot adequately understand cognition without accounting for the fact that "culture, context, and history are fundamental aspects of human cognition and cannot be comfortably integrated into a perspective that privileges abstract properties of isolated individual minds" (Hutchins 1995: 354).

Summarizing the differences so far outlined, we advance a hypothesis that common law judges enjoy more freedom in interpreting the law as enacted in the rules of the previous judges. Nevertheless, some jurists are reluctant towards granting judges excessive liberty in amending the precedents and are of the opinion that such practices should be confined to exceptional cases. As we have concluded, a relative amount of subjectivity is unavoidable not just in judicial decisions but in all statements, even those that aspire to reflect with the utmost scientific exactness the relations in the external world. As concerned with evaluating, adjudication will not escape categorizing and framing. However, an imperative which is also very often invoked in the debates on the factors influencing the decision-making process is the imperative of common sense. Civil law judges, in turn, are encouraged to adhere to the letter of law as enacted in codes and statutes. The principle, which is of utmost importance, especially in the Polish doctrine, is the principle of the uniformity of judicial decisions. Although it is not yet a standardized practice, some authorities are inclined to adapt certain common law tendencies in order to secure the stability of the legal system. Application of precedents is still associated with lack of autonomy of a judge, an argument which has somehow monopolized the debate on the interpretation of legal norms and provisions that is ongoing among theoreticians and professionals alike.

Summary in Polish (streszczenie w języku polskim)

Tematem niniejszej rozprawy jest analiza wyznaczników epistemiczności w dyskursie sędziów Sadów Najwyższych w Polsce i w Stanach Zjednoczonych. Kluczowym dla celów analizy jest podział modalności na deontyczna i epistemiczną jak również wartości modalne.

Modalność stanowi swoiste kontinuum, którego punkty skrajne to prawda lub fałsz, wartości idealne, do których rzadko aspirujemy jako użytkownicy języka. Nadając naszym wypowiedziom różny stopień prawdopodobieństwa, nieświadomie przekazujemy w treści nasze nastawienie i punkt widzenia w stosunku do treści propozycjonalnej zdania. Jesteśmy zatem subiektywni w większości aktów komunikacyjnych. Powyższa uwaga odnosi się w równym stopniu do dyskursu sędziowskiego. Niniejsza praca dostarcza pewnych dowodów na to, że subiektywność obecna jest w wyrokach Sądu Najwyższego w Polsce oraz w Stanach Zjednoczonych. Pomimo licznych prób postrzegania gatunku wyroku sądowego jako dostosowanego do pewnych usankcjonowanych tradycją konwencji językowych i modeli argumentacyjnych obecność różnorakich wyznaczników epistemiczności upodabnia go do gatunków bardziej subiektywnych (jak np. dyskurs dziennikarski). Zachodzi również różnica w stopniu subiektywności pomiędzy korpusem polskim i amerykańskim. Pierwszy z nich zawiera mniej językowych wyznaczników modalności, podczas gdy w drugim częstotliwość ich występowania jest wyraźnie większa. Choć fakt, iż subiektywność przenika naszą codzienną komunikację, wydaje się czymś oczywistym, ekspresywna funkcja języka dopiero od niedawna stanowi obiekt zainteresowań językoznawców. Cytując Halliday'a, modalność epistemiczną możemy zdefiniować jako "ocenę przez mówiącego prawdopodobieństwa i przewidywalności. Jest zewnętrzna w stosunku do treści, będąc częścią punktu widzenia przyjętego przez mówiącego: w tym przypadku punktu widzenia w stosunku do swojej roli jako "orzekającego" (Halliday, 1970: 349, tłumaczenie własne).” Jako zjawisko językowe z pogranicza składni, semantyki, pragmatyki i dyskursu, modalność epistemiczna ukazuje punkt widzenia mówiącego w stosunku do treści propozycjonalnej, którą ogłasza.

Punktem wyjścia dla metodologii przyjętej w części praktycznej jest klasyfikacja indykatorów epistemiczności na trzy stopnie, według Halliday'a. Różnice doktrynalne sugerują, że sędziowie polscy i anglosascy w różny sposób sygnalizują swój punkt widzenia, czy jest to pewność czy zwątpienie. Owe wyznaczniki pojawiają się z różną częstotliwością, w zależności od kategorii.

Uzyskane wyniki potwierdzają hipotezę zaprezentowaną w pierwszym rozdziale, że w materiale amerykańskim zawarte jest więcej wyznaczników epistemiczności zaklasyfikowanych jako "wysokie" i "średnie". Jeśli chodzi o najważniejszą z analizowanych kategorii, czasowniki modalne, statystycznie w obu materiałach badawczych najliczniejszą grupę stanowiły te o niskim stopniu kategoryczności (50% w obu przypadkach). W polskim korpusie udział czasowników modalnych o wysokim stopniu kategoryczności to 38%, podczas gdy w korpusie amerykańskim jedynie 12%. Zapewne miał na to wpływ fakt, iż większość z analizowanych angielskich czasowników modalnych miały charakter deontyczny, a więc niezwiązany ze stosunkiem mówiącego do treści propozycjonalnej zdania. Uzyskane wyniki pozwalają nam również stwierdzić, że znaczenie epistemiczne pojawiało się częściej, jeśli kolokacja czasownik modalny + czasownik główny miała charakter metaforyczny lub abstrakcyjny.

Oba języki prawne są również specyficzne z uwagi na różnorodne tradycje i zaplecze historyczne. Stąd użycie niektórych kolokacji i zwrotów może być konsekwencją konwencji, nie zaś przejawem różnych stopni subiektywności/epistemiczności. Co więcej, model anglosaski kładzie nacisk na ideę *jurisprudence constante*, według której wyrokowanie powinno być sprawowane w sposób przewidywalny i jednolity. Wydaje się, że wyższe instancje są nawet bardziej związane tym imperatywem, by trzymać się ustalonego "*ratio decidendi*", jako że ich decyzje są ostateczne (prawomocne) i nieodwołalne. Wyroki powinny zatem odzwierciedlać pewne schematy myślowe i przypominać równania matematyczne. Jest to jednak nieosiągalny ideał w typie dyskursu, gdzie ocenie podlegają ludzkie czyny, ich społeczna szkodliwość, skutki działania lub zaniechania. W rezultacie nie jesteśmy w stanie przewidzieć treści wyroku. Owa nieprzewidywalność jest nawet bardziej odczuwalna na wyższych szczeblach sądownictwa, gdzie sędziowie cieszą się większą władzą i autorytetem niż sędziowie niższych instancji.

Nieprzewidywalność jest także skutkiem dynamicznych zmian zachodzących w rzeczywistości. Wraz z pojawianiem się nowych technologii i procesów zachodzi też nieustanna potrzeba nowelizowania kodeksów i ustaw, aby dostosować je do nowych warunków. Także język nigdy nie dostarczy nam wystarczających środków, aby ogarnąć swym zasięgiem wszystkie możliwe scenariusze. Podobnie więc jak język adaptowany jest do wciąż

zmieniających się realiów tak też się dzieje w przypadku prawa stanowionego. Oba powyższe postulaty wydają się sobie przeczyć: z jednej strony potrzeba dostosowania się do przemian społecznych, z drugiej imperatyw trzymania się starych i dobrze przetartych szlaków (przepisów prawa stanowionego lub modeli rozumowania).

Pomimo istnienia tak wielu kryteriów decydujących o "dobrym" bądź "złym" wyroku, wpływ czynników poza-doktrynalnych jest nieunikniony. W ślad za Hutchinsem możemy stwierdzić, że "kultura, kontekst i historia są fundamentalnymi aspektami ludzkiej percepcji i są niezgodne z perspektywą, która ponad nimi stawia abstrakcyjne myślenie wyizolowanych umysłów (Hutchins 1995: 354, tłumaczenie własne). Jak stwierdziliśmy, pewna doza subiektywizmu jest nieunikniona nie tylko w wyrokach sędziowskich, ale we wszystkich rodzajach stwierdzeń, także tych, których autorzy aspirują do oddania z największą naukową precyzją stosunków panujących w świecie zewnętrznym. Stanowiąc ocenę ludzkiego postępowania, wyrokowanie jest pewną formą kategoryzacji. Jednakże imperatyw równie często podnoszony w dyskusjach dotyczących procesu decyzyjnego to imperatyw zdrowego rozsądku. Sędziowie prawa cywilnego zachęcani są, by trzymać się litery prawa w jego formie stanowionej. Jedną z najważniejszych zasad jest zasada jednolitości prawa. Choć nie jest to jeszcze standard, niektórzy skłaniają się w stronę przyjmowania pewnych praktyk z systemu *common law* celem zabezpieczenia stabilności systemu prawnego. Stosowanie reguły precedensu jest wciąż utożsamiane z brakiem autonomii sędziowskiej i argument ten w pewnym stopniu zmonopolizował debatę dotyczącą interpretacji norm prawnych.

Podsumowując różnice do tej pory zakreślone, stwierdzamy, iż sędziowie systemu *common law* cieszą się większą swobodą decydowania o interpretacji zasad prawnych zawartych w precedensach. Jednakowoż, niektórzy prawoznawcy krytykują nadużywanie tych kompetencji przy "naprawie" precedensów oraz są zdania, że takie praktyki powinny być ograniczone do wyjątkowych przypadków.