



“Two Ideas” of Arbitration

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Two ideas related to the arbitration clause...

Severability of arbitration agreements

Scope of an arbitration agreement



Severability of the arbitration clause

Substantive rule of law that holds that the determination of the validity of the arbitration agreement contained in the arbitration clause should be assessed separately from the assessment of the validity of the contract in which it is included.

Without it... would wreak havoc with international process



Severability of the arbitration clause

Justification: If it is correct that it would wreak havoc.... then there be an enormous difference in terms of consequences between cases where there is an arbitration clause in a contract and in other cases where the clause is not included in the contract, but written on a separate piece of paper (and its validity examined separately).



What is the scope of an arbitration agreement if it is properly drafted?

The scope of the arbitration agreement is not necessarily co-extensive with the scope of the contract.

The arbitration agreement is broader than the contract itself.



Construction contract example

Properly constructed arbitration clause that gives the arbitrators a broad mandate to resolve any disputes arising under or in connection with the contract.



Mitsubishi v. Soler Chrysler-Plymouth 473 U.S. 614 (1985)

“Where the parties have agreed that the arbitral body is to decide a defined set of claims which includes, as in these cases, those arising from the application of American antitrust law, the tribunal therefore should be bound to decide that dispute in accord with the national law giving rise to the claim.”



