

ARBITRATION – DOCTRINES OF SEPARABILITY AND COMPETENCE-COMPETENCE

- ✚ Arbitration is contractual in nature - > arbitration agreement
- ✚ Two related doctrine have developed that maintain the integrity of the arbitration process: the doctrine of separability (or severability) and the doctrine of competence – competence
- ✚ Both doctrine are closely related but distinguishable
- ✚ Both are well respected under the rules of two important arbitral organizations: The Court of Arbitration of the ICC + United Nations Commission on International Trade Law (UNCITRAL)
- ✚ While the separability doctrine provides for autonomy of arbitration clause, the competence – competence provides that the arbitrator has the competence to judge his own jurisdiction
- ✚ Competence – competence is a corollary to the doctrine of separability

Separability doctrine

- ✚ Arbitration clause embedded in a contract is considered separate from the main contract – two separate sets of contractual relations
- ✚ The clause continues to be valid even if the main contract is void
- ✚ There is a legal presumption of the existence of two agreements
- ✚ 4 milestones: intention of the parties to solve their disputes in arbitration + two contracts with different purpose + control function of the state courts after issuing the award + integrity of whole proceeding (don't need to be interrupted by the state courts)

Competence – competence doctrine

- ✚ The arbitrator may determine the existence of the arbitration clause, the validity of the arbitration clause and the scope of the arbitration clause - > parties need not invoke the jurisdiction of the national court to determine this issue
- ✚ Two grounds – jurisdictional power has been conferred by the will of the parties when they entered into the Arbitration agreement + this power is inherent in all judicial bodies and essential to their ability to function

Relation (interrelation)

- ✚ Competence – competence is corollary to the separability doctrine: arbitration tribunal needs to have the jurisdictional to rule not only on the main contract 's validity but on the validity of the arbitration agreement
- ✚ Well established in international arbitration

- ✚ UNCITRAL Rules: art. 21
- ✚ UNCITRAL Model Law: art. 16
- ✚ NY Convention on Recognition and Enforcement of Foreign Arbitral Awards
- ✚ Czech Commercial Code: §267/3 + Czech Act on Arbitration: §15
- ✚ US: Federal Arbitration Act + NY Convention