

Interpreting Arbitration Clauses

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Arbitration Clauses

“Any dispute arising from this charter or any bill of lading issued hereunder shall be settled in accordance with the provisions of the *Arbitration Act* 1950 (UK) ... in London ...”.

Hi-Fert v Kiukiang Carriers

Arbitration Clauses

Claims in negligence, breach of carrier's duty, and breach of contract were claims that "arose from this charter".

BUT claims as to misleading and deceptive conduct, negligent misrepresentations and collateral contract were not.

Arbitration Clauses

- ▶ What is interpretation?
- ▶ Reasonable person in position of the parties
- ▶ Surrounding circumstances
- ▶ Purpose and object of transaction

Toll v Alphapharm

Arbitration Clauses

Comandate Marine v Pan Aust Shipping

“All disputes arising out of this contract shall be arbitrated at London ...”.

Allsop J: “... a benevolent and encouraging approach ...”.

Arbitration Clauses

Arbitral clause wide enough to include claims under the *Trade Practices Act*.

“arising under”

“arising out of”

“connected with”

Arbitration Clauses

“Arising out of” covers every dispute except a dispute as to whether there was ever a contract at all.

Fiona Trust v Privalov

Arbitration Clauses

Consequence:

Trade Practices claims to be determined under London Arbitration.

Slavishly follow "London Arbitration".

Arbitration Clauses

The parties agree that any dispute in relation to this agreement will be determined by arbitration in Melbourne/Brisbane/Sydney pursuant to the MLAANZ Arbitration Rules.