

# Arbitration: choose your own adventure

The competing jurisdiction of courts and tribunals in situations of an alleged  
arbitration agreement

Andrew Kirk

Bachelor of Laws/ Bachelor of Commerce

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I declare that this thesis is my own account of my research and contains as its main content work which has not previously been submitted for a degree at any tertiary education institution.

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## **Abstract**

This thesis explores the competing jurisdiction of courts and tribunals in situations of an alleged arbitration agreement. The primary purpose of this thesis is to illustrate how careful dispute planning at the front-end of a commercial arrangement can reduce the harm caused by any future dispute. In particular, this thesis illustrates how a well-considered arbitration clause will provide flexibility to suit the individual circumstances of each party and increase the likelihood of an enforceable award. A case study is introduced in Chapter Three and referred to throughout subsequent chapters to demonstrate some of the problems which parties may experience when future disputes are not carefully planned for in advance.

This thesis provides a detailed discussion of:

- arbitration in both a global and Australian context;
- the law which will govern the arbitration agreement, the arbitration proceedings and the enforcement of any award;
- the requirements of a valid arbitration agreement;
- the preliminary jurisdiction dispute which may emerge when the nature of the jurisdiction objection raises issues as to whether the court or the tribunal should hear that jurisdiction objection;
- the jurisdiction dispute itself, in particular the consent requirement in light of the doctrine of separability; and
- the remedies and reviews available in arbitration.

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