

A THEORETICAL OVERVIEW OF THE FOUNDATIONS OF INTERNATIONAL COMMERCIAL ARBITRATION

*Hong-lin Yu**

ABSTRACT

In this paper, the author tries to explain differences in interpreting the nature of arbitration among various national courts by comparing different theories on arbitration. Four theories are introduced in this article: jurisdictional theory, contractual theory, hybrid theory and autonomous theory. Both the arguments and evaluation of each of the four theories will be discussed by, firstly, looking into the nature of international commercial arbitration to see how each theory defines the mechanism of international commercial arbitration and the kind of relationship that should exist between arbitration and national courts. Secondly, the nature and scope of the arbitrator's power will be discussed from the viewpoint of the relationship between the arbitrators and the parties. Thirdly, the status of arbitral awards under the different theories will be studied in order to examine the conflicts arising at the enforcement stage. Finally, the issue of the choice of the proper law will be discussed.

* Reader in Law, University of Stirling, United Kingdom. h.l.yu@stir.ac.uk. The author has been involved in the research and teaching of international commercial arbitration since 1997. Since then, the author has published articles in major arbitration journals.

KEYWORDS: *international commercial arbitration, jurisdictional theory, contractual theory, hybrid theory, autonomous theory*