

LUISS GUIDO CARLI

DOTTORATO DI RICERCA IN DIRITTO DELL' ARBITRATO INTERNO ED
INTERNAZIONALE
XXII CICLO

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ABSTRACT DELLA TESI IN LINGUA INGLESE

The d.l. n. 40, 2nd of February 2006 brought the arbitration agreement of not-contractual field. The art. 808-*bis* c.p.c. provides for the plaintiffs can set, with a proper agreement, that the next disputes concerning one or more no contractual disputes will be settled by arbitration. This is an important change, considering that before the reform tend to rule out the possibility to settled down these disputes with an arbitration agreement. Whereas with the “compromesso” the parties can obtain an arbitral decision on the existing contractual or not-contractual disputes, with the “clausola compromissoria” can only be decided by the arbitration future disputes arising from contracts, with the exclusion of all others. This essay analyzes the doctrinal and jurisprudential situation before that the reform became effective, and then it dwell on the required determination of the object of the agreement, requested by the mentioned law on penalty of nullity of the arbitration agreement.

Afterwards it examines the matter of the form of the agreement in not-contractual field, that in absence of legal provisions, is deemed to should be the one requested for the preliminary but binding agreement (written form *ad substantiam actus*), as well as the required capacities to contract, are not the ones requested by the art. 808 c.p.c. for the contract of the arbitration clause, but must be those requested for the stipulation of acts of routine, as for the preliminary but binding agreement.

An entire chapter deals with the subjective restrictions of the new not-contractual arbitration agreement, taking care most of all of the matter of the contractual connections, since the possibility to include those rights, with a not-contractual nature, in the arbitration agreement opens to new perspectives, because in this case it allows to exceed

the subjective restriction of the “*clausola compromissoria*” so that all the parties of the connection are involved in the arbitration.

The potential uses of the arbitration agreement in not-contractual matters will be: future disputes in matters of property rights, joint ownership, not-contractual relationships between parties involved in a contractual relationship (contractor's liability *ex art. 1669 c.c.*), disputes between private and public subjects, inheritance quarrels.