The scope of an arbitration agreement depends on the wording of the agreement.

Terms commonly used to describe the disputes covered by the arbitration agreement include all disputes arising “under”, “from”, “out of”, “in connection with” or “in relation to” the Agreement.
In the interpretation of an arbitration agreement to determine its scope there has been a movement from a restrictive to a more liberal approach.

**Restrictive approach**

Under the restrictive approach a distinction is drawn between a term covering all disputes arising “under” the agreement and one covering all disputes arising “in connection with” the agreement.

Disputes arising “under” the agreement were regarded as confined to those disputes that may arise regarding the rights and obligations of the parties created by the contract itself. Did not include disputes relating to pre-contract matters such as misrepresentation: *Fillite (Runcorn) Ltd v Aqua-Lift* (1989)
By contrast the phrase disputes arising “in connection with” or “in relation to” was regarded as wide enough to cover not only disputes relating to rights and obligations arising from the contract but also pre-contractual issues such as misrepresentation.

However, the term disputes “arising out of” or “arising from” the agreement originally caused some difficulty. Some judges considered that it was synonymous with the term “arising under”. But some judges took the view that the term “arising out of” was wider than “arising under”.
Eventually a number of English cases established that the term “arising out of” should be given a wide meaning to include non-contractual claims such as a claim based in tort where the claim in tort had a sufficiently close connection to claims under the contract: *The Playa Larga* (1983); *The Angelic Grace* (1995)

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**The Liberal Approach**

There has been a rising tide in favour of a liberal approach to the construction of arbitration agreements.

(i) Australia

In *Commandate Marine Corp v Pan Australia Shipping Pty Ltd* (2006) the Federal Court of Australia said that a liberal approach to the construction of arbitration clauses should be adopted especially in international commercial transactions.
The court said that the liberal approach is underpinned by the sensible commercial presumption that the parties did not intend the inconvenience of having possible disputes from their transaction being heard in two places.

(ii) Germany

_Bundesgerichtshof’s Decision of 27 February 1970_ (1990) _Arbitration International_ vol 6, No. 1 p. 79 which recognised a presumption that “reasonable parties will wish to have the relationships created by their contract and the claims arising therefrom, irrespective of whether the contract is effective or not, decided by the same tribunal and not by two different tribunals.”
(iii) United States
Some courts have taken the view that federal policy in favour of arbitration requires that doubts concerning the scope of arbitral issues should be resolved in favour of arbitration and that arbitration clauses should be construed as widely as possible.

*Threlked & Co Inc v Metallgesellshaft Ltd (London)* (1991);

(iv) Italy
The new Art 808-quarter of the Italian Code of Civil Procedure, which deals with the interpretation of arbitration agreements, provides that:

“In case of doubt, the arbitration agreement shall be interpreted in the sense that the arbitral jurisdiction extends to all disputes arising from the contract or from the relation to which the agreement refers”.

No5 Chambers
(v) United Kingdom


“The construction of an arbitration clause should start from the assumption that the parties, as rational businessmen, are likely to have intended any dispute arising out the relationship into which they have entered or purported to enter to be decided by the same tribunal. The clause should be constructed in accordance with this presumption unless the language makes it clear that certain questions were intended to be excluded from the arbitrator’s jurisdiction”.

No5 Chambers
Clause referring to any dispute “arising under” the agreement was held to be wide enough to cover disputes about the validity of the agreement (pre-contract matters).

Some Lessons

(i) Where the parties intend to give the arbitration agreement a wide scope they should consider using elastic language such all disputes “arising out of or in connection with” the Agreement. See e.g. the recommended clauses of the ICC Rules, LCIA Rules and the 2010 Arbitration Rules of the Chamber of Arbitration of Milan.
(ii) However, in the UK, following the *Fiona Trust* decision, a reference to all disputes “arising under” the agreement is likely to be interpreted more widely today as extending to pre-contract disputes about the validity of the agreement.

(iii) If the arbitration agreement uses elastic and general words to describe the submission to arbitration, clear language should be used if the parties intend to exclude a particular matter from the scope of the agreement.
(iv) Even where general words are used to express the contractual submission to arbitration, not every dispute between the parties will fall within the scope of the agreement.

- *Bilta (UK) Ltd v. Nazir* (2010), (the non-Jetivia sale),