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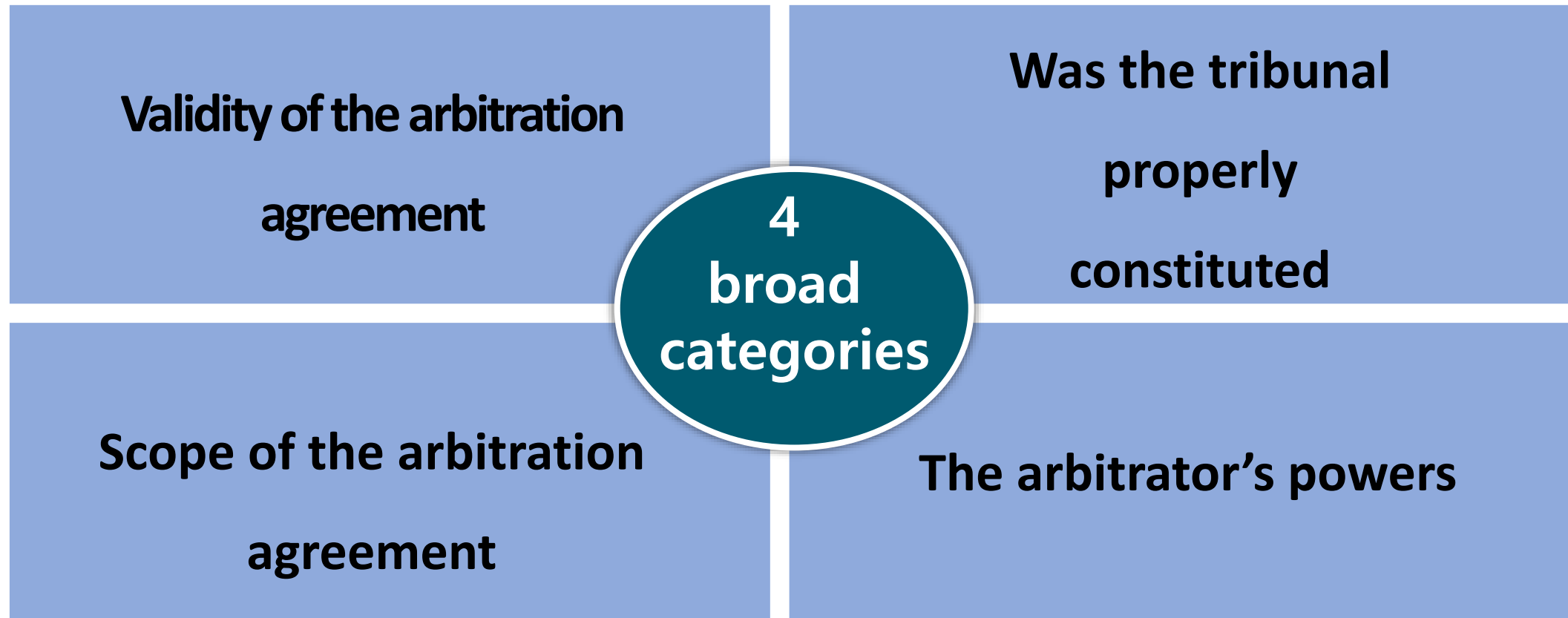
**Topic 1: You Have No Authority Here
Jurisdictional Challenges-Why And Why Not?**

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Party autonomy- a key advantage of arbitration

- Party-autonomy is foundational to the arbitration procedure.
- A party will challenge the jurisdiction of a tribunal when it has reasons to believe that the tribunal is assuming power beyond its mandate.
- The aim of the contesting party is to bar the tribunal from exercising jurisdiction over the matter.
- In other situations, it could also be to challenge the enforcement of an award at a later stage.

Categories of jurisdictional challenges



Validity of the arbitration agreement

A jurisdictional issue concerning the validity of the arbitration agreement could include questions as to:

1. validity of the arbitration agreement itself. Example- if it was properly executed.
2. any issue with the underlying contract that contains the arbitration agreement (i.e., separability issue).

Whether the tribunal was properly constituted

Jurisdictional issues relating to the constitution of the arbitral tribunal may concern:

1. whether the appointment procedure (as agreed between the parties or statutory default) was followed.
2. whether the respondent was effectively served with the appropriate notice.
3. whether the tribunal is precluded by the arbitration agreement and/or by the arbitration rules or the law of the seat.

Scope of the arbitration agreement

Jurisdictional questions to the scope of the arbitration may concern:

1. the identity of the parties.
2. the arbitration agreement itself and the disputes that it does and does not cover.
3. whether the subject matter of the dispute can be arbitrated (arbitrability).
4. time limits for commencing arbitration.
5. Compliance with condition precedent.

Arbitral tribunal's powers

Jurisdictional challenges relating to the arbitrator's powers may concern:

1. the tribunal's ability to award certain remedies.
2. the tribunal's ability to render an interim or partial award.
3. the tribunal's power to award costs and/or interest.

How to raise a jurisdictional challenge

- Under most legal systems, a tribunal has the power to rule on its own jurisdiction.
- The right to challenge the tribunal's substantive jurisdiction may be lost if it is not taken at the outset of the arbitration.
- Therefore, any challenge to the tribunal's substantive jurisdiction should be raised at the earliest possible opportunity in proceedings.
- However, a challenge that the tribunal has exceeded its jurisdiction may be raised during the course of the arbitration.

Jurisdiction challenges post-award

Possible in the following manner:

- By commencing a specific challenge to the award.
- Resisting enforcement on grounds of lack of jurisdiction.
- In certain circumstances, non-participants may also challenge an award if it affects their rights.



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