



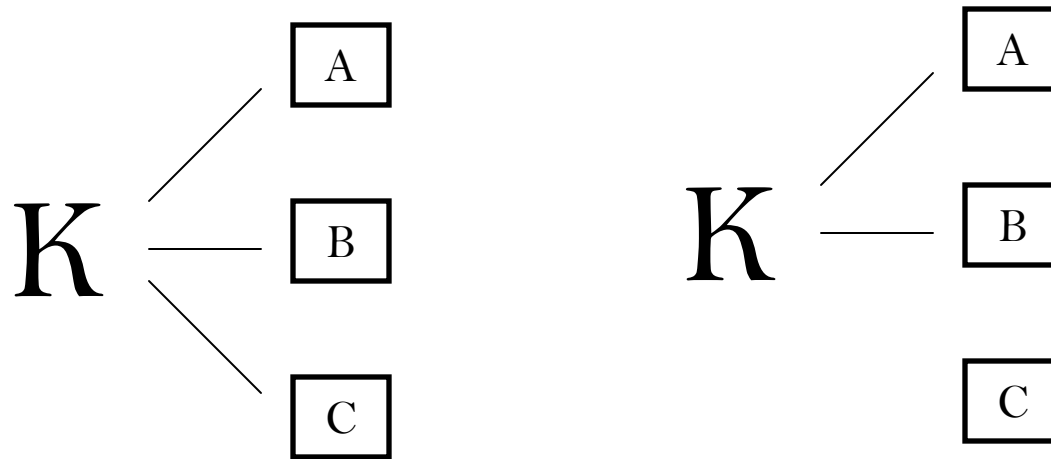
PRACTICAL EXAMPLES OF MULTIPARTY/MULTICONTRACT ARBITRATIONS

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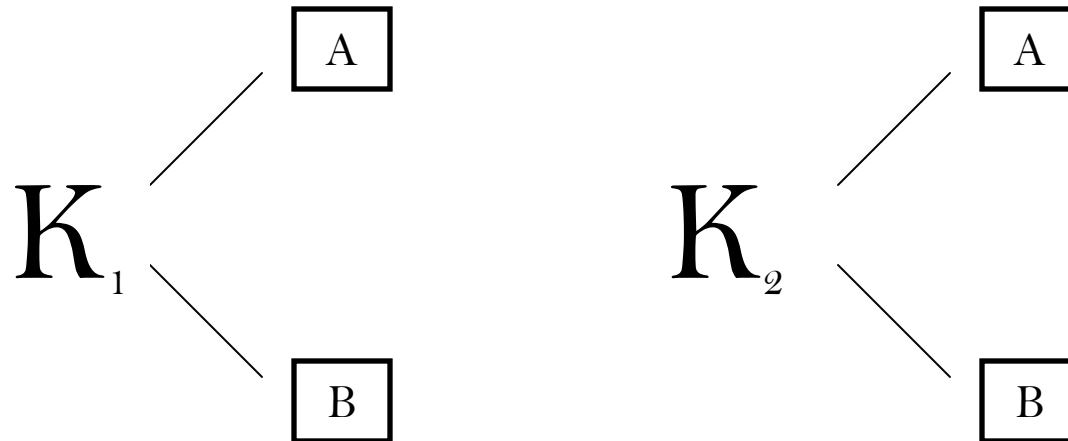
MULTIPARTY

Possible scenarios:



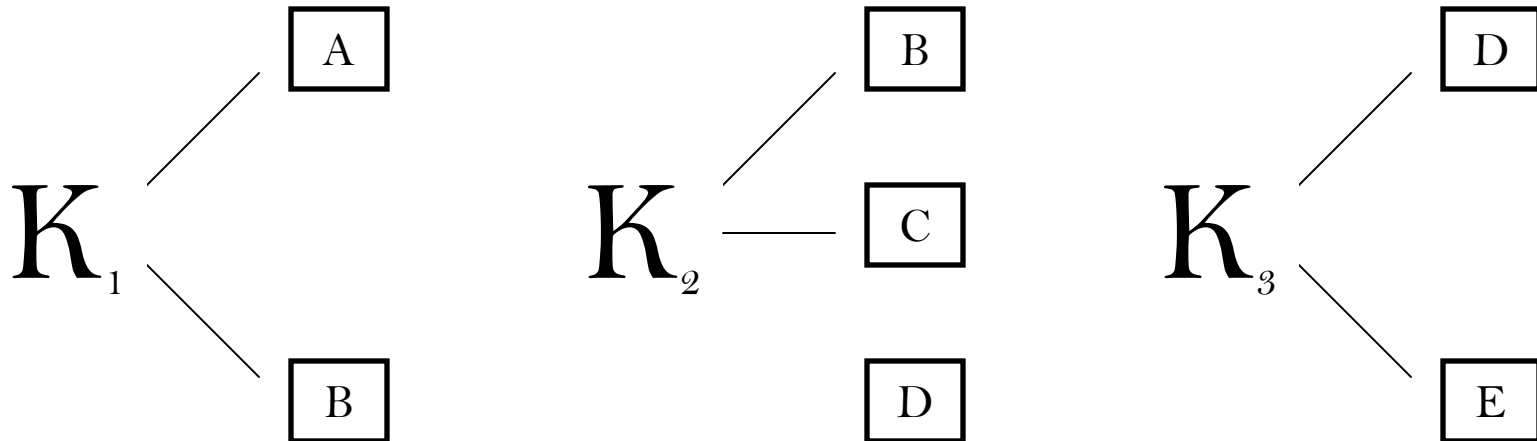
MULTICONTRACT

Possible scenario:



MULTIPARTY, MULTICONTRACT

Possible scenario:



MULTIPARTY, MULTICONTRACT

Example 1 (Joinder):

- Institutional rules allow for joinder, but no application made to institution
- Application made to tribunal
- Tribunal rejects application because after constitution of the tribunal
 - No joinder without consent of all parties
 - Unless arbitration agreement provides otherwise
 - Parties named in the Request for Arbitration cannot be presumed to have taken into consideration a participation in the proceedings by the joinder party

MULTIPARTY, MULTICONTRACT

Example 2 (Joinder?):

- Class action arbitration
- Current state of law in the U.S. after Stolt-Nielsen: Arbitrators may permit class arbitration by analyzing the parties' intent, but may not base their decision on public policy grounds reserved to courts
- Enforceability issues abroad
- As compared to mass claims

MULTIPARTY, MULTICONTRACT

Example 3 (Consolidation):

- Eight separate contracts, signed sometimes by overlapping parties, sometimes not
- Claimant parties filed eight separate arbitrations, same tribunal constituted in each
- Claimants parties then requested consolidation; Respondent parties objected
- Consolidation rejected by arbitral institution
- Tribunal solution: Procedural Order issued, deciding to instruct the eight cases together, but to render a separate Award in each case

MULTIPARTY, MULTICONTRACT

Example 4 (Consolidation):

- K_1 signed by A and B as “parties” and C as a “necessary participant”; calls for institutional arbitration in Greenacre
- K_2 signed by A and C; calls for same institutional arbitration in Greenacre
- K_2 also provides that any dispute arising under K_2 that also constitutes a dispute under K_1 should be settled in accordance with arbitration provisions of K_1
- B starts one proceeding against A under K_1 , C starts a second proceeding against A under K_2 ; then A starts a third proceeding against B and C under K_1 and K_2 , then argues that all proceedings should be consolidated
- Arbitral institution then rejects the request for consolidation
- Tribunals’ solution: Second tribunal decided to suspend until third tribunal rendered an Award; then all tribunals proposed coordination between proceedings
- Parties’ solution: withdraw first and second proceedings, all claims consolidated into third

MULTIPARTY, MULTICONTRACT

Example 5 (Consolidation?):

- One Partnership Agreement contains an arbitration clause
- Signed subsequently and separately by each new incoming partner via a letter referring to the Partnership Agreement
- Claimants filed one arbitration; Respondents objected
- Tribunal solution: Solicited parties' agreement to conduct one proceeding with separate awards for each Respondent

MULTIPARTY, MULTICONTRACT

Strategy concerns:

- Filing the Request for Arbitration
- Content of the arbitration agreement
- Constituting the arbitral tribunal
- Involvement of arbitral institutions
- Appointing creative arbitrators
- Forcing the arbitrators to be creative
- Forcing your adversary to agree