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Abstract:

This paper shall consider two questions: 1) can natural claims be pursued de lege lata in arbitration (the issue of arbitrability), 2) can awarding a natural claim in arbitration be a basis for setting aside of an award or for refusing recognition or enforcement of an award. On one hand, a definitional property of natural obligations (claims) is their unsuability, i.e. the incapability of being effectively pursued before a common court. On the other hand, a court proceeding is not the only way to resolve a legal dispute. Parties are able to subject their dispute to arbitration, whose award will obtain legal validity of a State court judgement after its recognition or enforcement. In this context there arises a question whether admissibility of pursuing natural claims in arbitration does not open a way to circumvent their unsuability. The paper focuses on two cases of natural obligations undisputable in Polish law: obligations where a creditor's claim was barred by limitation and the so-called unclassified gaming and bets obligations. The analysis of current regulations presented in the paper leads to the conclusion that in both cases disputes concerning such claims are arbitrable. However – if an arbitral tribunal awards a natural claim – the possibilities of setting aside of such award or refusing recognition or enforcement thereof are very limited. In consequence, the regulations in force to a certain extent make it possible to circumvent the construction of a natural obligation by subjecting of a dispute concerning such obligation to arbitration, which is criticisable.