

The Healthy Award

Challenge in International Commercial Arbitration

Dr. Christoph Liebscher

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Tony Cole



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The Healthy Award Christoph Liebscher, 2003 Covers 5 jurisdictions Austria England France Germany and Switzerland

Bias Challenges in International Commercial Arbitration Sam Luttrell, 2009-01-01 Shows how dirty challenge tactics are made viable primarily by the prevalence of a judicially derived test for bias which focuses on appearances rather than facts and He argues that the most commonly used test of bias the reasonable apprehension test makes it easy to allege a lack of impartiality and independence

Arbitration and Mediation in International Business Christian Bühring-Uhle, Lars Kirchhoff, Gabriele Scherer, 2006-01-01 Arbitration and mediation in international business was first published in 1996 and was one of the first comprehensive studies on the practice of international business dispute resolution covering both international commercial arbitration and the so called alternative techniques such as mediation The book also provided an empirical analysis of how both arbitration and mediation are conducted in a crossborder context along with a normative guide to the relative costs and benefits of these two methods This second edition is not just an updated version of the first edition but a new book in itself Benefitting from the contributions of two co authors the work has been enhanced by discussions of innovative tools for making settlement negotiations more effective and by the in depth analysis of practical techniques to integrate mediation and arbitration in international business Also a comprehensive new empirical survey was conducted in order to capture new trends in this rapidly developing field The result is a must have resource for anyone having to deal with potential conflict in international business relationships Publisher's website

Party-Appointed Arbitrators in International Commercial Arbitration Alfonso Gómez-Acebo, 2016-04-26 The agreement of disputing parties to each make a unilateral appointment of an arbitrator is among the most distinctive features of arbitral practice A detailed examination long overdue of how this feature affects the actual process of arbitration is presented in this book The study includes a historical analysis of unilateral nominations a critical assessment of how the unilateral appointments system currently works and an empirical study of challenges of arbitrators The author's critical assessment addresses several issues including limits to the right of the parties to make unilateral appointments the principle of equality of the parties in the constitution of the arbitral tribunal arbitrators duty to be impartial and independent specific problems of bias in tribunals with party appointed members the question of whether a different standard of impartiality and independence in party appointed arbitrators makes any sense the presumption that party appointed arbitrators can do things that presiding arbitrators cannot and the question of whether it is worth keeping the system of unilateral appointments as the default method for the constitution of multiple member tribunals or keeping it at all The empirical study in which the author offers a comparative analysis of challenges of arbitrators taking into account the method of appointment of the arbitrator reveals interesting differences and coincidences between party appointed and non party appointed arbitrators The book ends with some suggestions on how the system of unilateral appointments could be improved namely in order to increase the trust of

each party in the arbitrator appointed by the other party and to allow an accurate match between what arbitration end users may want from party appointed arbitrators and what they ultimately get For both its thorough and well informed analysis and its sound recommendations the book is sure to be welcomed by professionals in the arbitral community worldwide as well as by arbitration law academics *Good Faith in International Commercial Arbitration* Sabrina Pearson-Wenger,2024-07-15

From the perspective of users of international commercial arbitration the uncertainties surrounding the application of good faith by an arbitral tribunal create an unwelcome unpredictability Acknowledging this prevalent situation this book is the first to study in depth the available international arbitral awards that have applied good faith thus providing detailed guidance on how this notion is and can be applied by tribunals in international commercial arbitration Moreover the author proposes a set of deeply informed guidelines for the future application of good faith by arbitral tribunals to both the parties contract and the arbitration agreement This book provides a comprehensive description of the role and scope of good faith under governing laws in key jurisdictions England New York Switzerland France Germany China Singapore Hong Kong Australia and Canada as well as under the CISG the UNIDROIT Principles and other uniform law and soft law instruments The book greatly clarifies the source and role of good faith with respect to the following issues surrounding the arbitration agreement formal validity of the arbitration agreement incorporation of the arbitration agreement by reference interpretation of the arbitration agreement capacity and power of the parties to arbitrate extension of an arbitration agreement to a non signatory party pre arbitration requirements to negotiate or mediate and performance of the arbitration agreement Proposed guidelines for the application of good faith to each of these issues are included along with useful figures summarizing the content of the obligations to negotiate or mediate in good faith prior to resorting to arbitration as well as the obligation to arbitrate in good faith By analysing the role and scope of good faith under different national and non national laws this book will prove of inestimable value not only by providing invaluable insight into the recourse to good faith by arbitral tribunals but also by providing guidance on how good faith should be applied to the parties contract in international commercial arbitration Arbitrators as well as users of arbitration will welcome the clarity on how good faith is applied to the various issues surrounding the arbitration agreement and in particular to the pre arbitration requirements to negotiate or mediate as well as the performance of the arbitration agreement *Pervasive Problems in International Arbitration* Loukas A. Mistelis,Julian D. M. Lew,2006-01-01 This important book will be of great interest to arbitration lawyers international lawyers and business people as well as to academics libraries and students of dispute resolution Publisher s website **Confidentiality in International Commercial Arbitration** Ileana M. Smeureanu,2011-07-14 After neutrality and international enforcement the next most valued feature of international commercial arbitration is confidentiality For reasons easy to imagine businessmen do not want their trade secrets business plans strategies contracts financial results or any other types of business information to be publicly accessible as would commonly happen in court

proceedings Yet the case law of arbitration shows that in practical terms confidentiality is not to be taken for granted in fact it has become one of the most undetermined matters in international arbitration Although the emperor of arbitration may have clothes as one scholar has quipped his raiments of secrecy can be torn with surprising ease This book deciphers the current degree of confidentiality in international commercial arbitration as reflected by the most important arbitration rules national laws other arbitration related enactments and practices of arbitral tribunals and domestic courts globally Drawing on this data and analysis the author then sets forth criteria to assess the breach of confidentiality in international arbitration and the proper rules for protecting or sanctioning such breaches What do we understand by confidentiality in arbitration What are its limitations Who is bound to observe it How can we quantify its breach In addressing these questions the book engages such issues as the following reasons for disclosure e g for the establishment of a defence for the enforcement of rights in the public interest or in the interests of justice disclosure by consent express or implied circumstances triggering statutory obligation of disclosure recent trends towards greater transparency in investor State arbitration court measures in support of arbitral confidentiality such as award of damages for breach of confidentiality and categories of persons bound by confidentiality including third parties such as witnesses and experts Structured along the main stages of the arbitral process the analysis covers the duty of confidentiality from the initiation of arbitral proceedings through their unfolding to the issuance of the award and after The scope of confidentiality is reviewed in the practice of arbitral tribunals and domestic courts and from the perspective of international arbitration institutions with detailed attention to various arbitration rules and numerous significant cases In its elucidation of the amount of confidentiality that veils each phase of the arbitral process and its ground breaking identification of patterns of disclosure this book is sure to raise awareness about the various facets and problems posed by confidentiality in arbitration Although its scholarly contribution to the law of international commercial arbitration cannot be gainsaid corporate counsel worldwide will quickly prize its more practical value

Document Production in International Arbitration Reto Marghitola, 2015-10-20 Because document production can discover written evidence that would otherwise not be available it is often the key to winning a case However document production proceedings can be a costly and time consuming exercise and arbitral awards in particular are often challenged on grounds that relate to document production orders The task of balancing the conflicting interests of the parties in this context is a major responsibility of arbitral tribunals This book's analysis focuses on whether there exist legal principles on which arbitrators should establish rules of document production in both civil law and common law countries and shows how international arbitration is affected The author examines the relevant discretion of arbitral tribunals under US English Swiss German and Austrian law and under nine of the most important sets of institutional rules including the ICC Rules the LCIA Rules and the Swiss Rules The presentation mines case law and legal literature for concepts based on the common expectations of the parties the legitimate expectations of a party the duty to balance different procedural expectations of the

parties the presumed intent of the parties the underlying hypothetical bargain implied terms and the arbitrators discretion Among the topics and issues investigated are the following procedural rules on document production versus procedural flexibility how arbitral tribunals can modify the IBA Rules on a case by case basis discretion granted by legislation in each country covered electronic document production how to deal with privilege and confidentiality objections how to formulate or answer document production requests effective sanctions in case of non compliance with procedural orders of the arbitral tribunal what grounds for annulment and non enforcement a losing party can raise in what countries Perhaps the greatest benefit of the book is the inclusion of model clauses commensurate with both civil law and common law expectations The author explicates the advantages and inconveniences of each model clause and clarifies the influence of each clause on the efficiency of the proceedings and the enforcement risk For practitioners the book not only gives counsel a thorough overview of possible arguments for and against document production but also assists arbitrators find a way through the jungle of opinions on the interpretation of the IBA Rules Legal academics will appreciate the author s deeply informed analysis and commentary and the book s contribution to increasing the predictability of arbitral decisions on document production and showing how issues in dispute can be narrowed by tailor made rules thus helping to raise the efficiency and reduce the costs of arbitral proceedings

The Interpretation and Uniformity of the UNCITRAL Model Law on International Commercial Arbitration Dean Lewis, 2016-03-22 Numerous jurisdictions worldwide have augmented their ratification of the New York Convention of 1958 with the UNCITRAL Model Law 1985 UML which takes a giant step forward toward global uniformity in legal application and understanding of the arbitration process This book develops a standard or benchmark for the UML objective of uniformity using the relevant legislation and case law of Hong Kong Singapore and Australia to consider whether a uniform approach to implementation of the UML and its interpretation is being achieved across those jurisdictions The author s methodological tools are eminently adaptable to other jurisdictions Given the importance of the ability to set aside an arbitral award the body of case law on setting aside and the directly related area of enforcement the emphasis throughout is on Article 34 In addition the study considers the meaning of uniformity in law and in the context of the UML the correct approach to interpretation of the UML pre and post Article 2A the interpretational relationship between the UML and the Convention on Contracts for the International Sale of Goods CISG the relationship between the UML and the New York Convention the degree of textual uniformity of Article 34 with the three jurisdictions focused on and the degree of applied uniformity of Article 34 both in terms of juristic methodology and similarity of results The author with more than thirty years of practice in the field of commercial arbitration in Hong Kong has had access to voluminous cases spanning decades and brings his specialist expertise to the subject This book considers whether the UML has succeeded in its aim of achieving uniformity It serves as a guide both academic and practical to exploring and adopting the correct approach to the interpretation of the UML as well as to the method of classification of court decisions under the UML This study is of

immeasurable academic and practical value *Twilight Issues in International Arbitration* George Bermann, 2023-03-09

There are many issues of arbitral practice that remain largely unaddressed or very poorly addressed in the sources to which tribunals and counsel conventionally turn for procedural guidance the arbitration agreement the lex arbitri and rules of procedure This book brings together the most frequently recurring of such twilight issues so called because all participants in the arbitral process when facing them find themselves in the dark showing in each case where it is best for arbitrators counsel and parties to look for solutions offering logic certainty and predictability The issues ably covered by the author include among others the following Is a non signatory bound by or entitled to invoke an arbitration agreement When may res judicata or collateral estoppel subject Should a tribunal issue an anti suit injunction When may a tribunal treat as mandatory a law other than the chosen one On what basis may a witness invoke testimonial privilege When may a tribunal sanction counsel for what it considers misconduct By what standards is a determination of corruption to be made How should a tribunal determine the interest rate applicable to an award On what basis are costs to be allocated Examining in turn the guidance that may be provided by normative sources national law and if so which one simple exercise of good judgment or international standards derived from soft law arbitral jurisprudence international law and scholarly and professional commentary the analysis clearly shows how when conventional sources of legal guidance are unavailing decisions on important matters of arbitral practice and procedure are best made The book will prove of major relevance and value to any and all stakeholders in the international arbitral process whether commercial or investor state **The Roles of Psychology**

in International Arbitration Tony Cole, 2017-03-15 The system of international arbitration is built on private contractual relations yet has been endorsed by governments around the world as a fair and reliable alternative to litigation in State courts As a private process however its authority and legitimacy derive entirely from the views and actions of those involved in the arbitral process whether arbitrators counsel or parties It is though increasingly clear that psychological factors complicate and in some cases radically change every arbitral proceeding In this context psychological insights are crucial for understanding how international arbitration genuinely operates and whether the legal framework currently applied to it is well suited to achieving the aims of ensuring a fair and reliable dispute resolution procedure This is the first book to focus on this important issue the insights into international arbitration that can be gained from contemporary psychology With contributions from nineteen internationally known figures in their fields arbitrators mediators lawyers law professors psychology professors psychologists and drawing from a longer term project on the role of psychology in arbitration this ground breaking volume addresses a range of topics including the following the decision making processes of arbitrators the ability of arbitration to serve as a genuine dispute resolution mechanism the impact of particular procedures on the arbitral process bias self deception and vested interests in judgment and decision making the role of arbitrators in managing the arbitral process cultural differences in the evaluation of arguments psychological influences on witness testimony the impact

of tribunal composition on arbitral decision making the influence of arbitration's professional context on arbitrators and legal counsel and methods for arbitrators and legal counsel to more effectively manage the arbitral process Informed by the behavioural insights in these essays counsel and arbitrators will be enabled to think critically about the underlying assumptions and the potential behavioural effects of a prospective arbitration while individuals researching arbitration will gain a greater understanding of the psychological context in which every arbitration occurs This book meets the increasingly recognized need for understanding the role of psychology in arbitral proceedings and forms an indispensable foundation for subsequent work in this area Its innovative and forward thinking analysis will be of immeasurable value to the international arbitration community as well as to institutions supporting arbitration and to academics in the field **China-Africa**

Dispute Settlement Won Kidane, 2011-11-02 The nature and magnitude of the growth in China Africa economic relations in recent years is unprecedented and extraordinary According to recent estimates the value of China's trade with African nations grew from a mere USD 10 million in the 1980s to USD 55 billion in 2006 and to more than USD 100 billion by the end of 2009 at which time nearly 1 600 Chinese companies were doing business in Africa with a direct stock investment of about USD 7 8 billion The accelerating impetus of China Africa trade has overtaken some crucially important features of an effective trade regime most notably a fully trustworthy dispute resolution system It is the current and potential future efficacy of such a system that is taken up in this book with great understanding and skill The author evaluates existing mechanisms of dispute resolution in all aspects of China Africa economic relations in light of the parties economic and cultural profiles and their evolving legal traditions and goes on to propose a comprehensive institutional model of dispute resolution that takes full account of the economic needs and legal cultures of both China and the various African countries Among the topics and issues that arise in the course of the book are the following suitability of the WTO's dispute resolution mechanism for China Africa trade relations domestic bilateral regional and multilateral law sources affecting China Africa commerce the role of intra Africa bilateral investment treaties competing interests that underpin international investment law relevant legal economic and political challenges and cultural barriers permissible scope of regional trade regimes national treatment versus duty to compensate and harmonization initiatives model laws incoterms restatements The author includes in depth analysis of how China Africa economic relations fare in the varieties of dispute resolution methods available at the major arbitral European and American institutions ICSID AAA ICC LCIA PCA as well as under the rules of the China International Economic and Trade Arbitration Commission CIETAC and the important arbitral fora in Cairo Kuala Lumpur and Lagos Endorsing institutional arbitration as the most appropriate form of resolving trade investment and commercial disputes arising between China and African countries this ground breaking analysis outlines the obstacles and shortcomings of the available means of dispute settlement both in international and domestic contexts and offers deeply informed recommendations for improvement of the existing system Although the book will be welcomed by interested scholars and

practitioners for its detailed discussion of how China Africa trade relations are situated within the global trade regime its most enduring value lies in its thorough evaluation of the available options and its proposals for structuring a legal framework within which future disputes will be effectively resolved

Sovereign Immunity from Execution and International Arbitration Ylli Dautaj, 2025-06-16 International Arbitration Law Library In international arbitration a State's plea of sovereign immunity complicates post award proceedings In this invaluable book the intersection of international arbitration law and the law of sovereign immunity in particular the back end of the arbitral procedure where a creditor is seeking to enforce an award against a reluctant debtor State is thoroughly investigated The author asks whether the current doctrinal understanding of sovereign immunity from execution and its interpretation and application in the international arbitration context sit well with a 21st century global marketplace and offers well informed suggestions on what improvements are available The discussion proceeds as follows whether and how domestic legislators and courts have contributed to shaping the law on sovereign immunity from execution in general and in the arbitration context in particular whether and how domestic legislators and courts have facilitated award execution through procedural rules and court practices and whether and how non legal and pragmatically driven solutions can assist an award creditor when the award debtor State refuses to comply voluntarily with a pecuniary award The book engages in an in depth analysis of the practice of the courts in seven chosen jurisdictions primarily the United Kingdom and the United States then France India and Sweden and then in a less rigorous manner China and Russia These jurisdictions were selected for their strong economic positioning in the contexts of commerce trade and investment and also for the major global patterns they reveal of how sovereign immunity is interpreted A comparative method is used to underscore areas of uniformity potential for cross fertilization opportunities for harmonization and where divergence persists As an incomparable guide to the interpretation of sovereign immunity law in the international arbitration context this book provides arbitrators judges and policymakers with practical strategies that can be used to confront the plea of sovereign immunity For policymakers and scholars it offers possibilities for new tools positions amendments and reforms in this challenging legal territory that attempts to balance the two legitimate interests of sovereign immunity and arbitral expectations

Investment Arbitration and International Climate Change Law

Thomas Lehmann, 2025-04-23 Climate change policies are triggering an increasing number of investment disputes even as political concern grows that international investment treaties may impede climate change action This indispensable book presents the first in depth analysis of the nexus of international climate change law ICCL with investors legitimate expectations offering practical ways to integrate ICCL in the resolution of energy investment disputes Drawing on forty two publicly available arbitral awards and on state of the art doctrinal research the author provides compelling new insights on the following energy sector's predominance in investment disputes doctrinal debates on fair and equitable treatment scope of energy investors legitimate expectations and ways to bridge divergent views legal compatibility of ICCL with international

investment law impact of ICCL on energy investors legitimate expectations Energy Charter Treaty reform and whether it supports net zero objectives and investment arbitration as an instrument to enforce climate change commitments An invaluable annex presents details of a range of energy disputes and awards including decisions on legitimate expectations investor due diligence and climate change This timely work provides key insights for arbitration practitioners and policymakers on the interplay between investment protection and climate change The ordered structure of its presentation will be of immeasurable value to energy investors and their counsel government officials arbitrators and scholars

Complex Arbitrations Bernard Hanotiau, 2020-07-10 Complex Arbitrations Multi party Multi contract and Multi issue A Comparative Study Second Edition Bernard Hanotiau Arbitrations involving more than two parties and complex multi contractual issues are becoming more and more prevalent every year in every major jurisdiction worldwide This fully updated extensively revised edition of a far seeing 2006 book that has been greatly valued and widely used remains the only comprehensive analysis of all the issues arising from multi party multi contract arbitrations including those involving States and groups of companies The numerous factors and problems analysed in depth include the following theories on the basis of which various courts and tribunals determine who are parties to the arbitration clause and whether a non signatory may be part of the proceedings to what extent one can bring to a single arbitration proceeding the various parties who have participated in a single economic transaction through several contracts reasoning to follow when it comes to deciding whether another company of the group can be joined to the arbitration whether a party to a complex contractual structure can intervene voluntarily in the proceedings under what conditions arbitrations may be consolidated to what extent res judicata applies when a second arbitration is initiated between the same parties on different legal grounds how and to what extent one can overcome the inconveniences that arise from having several parallel proceedings and enforcement of multi party multi contract awards Features of particular value to the practitioner include in depth analysis of ad hoc and institutional awards rendered under the auspices of numerous arbitral institutions analysis of relevant national case law based on hundreds of court decisions from all over the world and appendices specifying multi party multi contract arbitration clauses provisions of international conventions and relevant national legislative and institutional rules The first edition has been used all over the world frequently referred to by courts and tribunals when one of its topics is addressed The second edition with its increased volume of arbitral awards and cases from many more jurisdictions its new scenarios its updates on new legislation and rules and its newly researched jurisprudence will help lawyers and corporate counsel solve the increasingly complex procedural issues confronting them in dealing with multi party multi contract disputes Law professors and students of dispute resolution have here a powerfully authoritative consideration of one of the most salient aspects of current international practice

Dealing with Bribery and Corruption in International Commercial Arbitration Emmanuel Obiora Igbokwe, 2023-01-10 International Arbitration Law Library Volume 65 International commercial arbitration is by no

means free from bribery and corruption Although a plethora of legal scholarship clearly affirms this contention a thorough study on the particularly important question of the authority and duty of international commercial arbitrators to investigate a suspicion or indication of bribery or corruption sua sponte that is on their own initiative has been surprisingly lacking This important book fills this gap inter alia by locating sua sponte authority in the position of arbitral tribunals in establishing the facts of a case and ascertaining and applying the applicable normative standards In addition to providing a comprehensive examination of how the issue of bribery and corruption is dealt with in contemporary international commercial arbitration the book also highlights the role of arbitrators in global efforts to combat transnational commercial bribery and corruption Among others the following critical issues are thoroughly investigated arbitrability of issues of public interests intermediary contracts role of arbitrators in the fact finding process party autonomy versus overriding mandatory rules iura novit curia in international commercial arbitration in the context of bribery and corruption notion of transnational or truly international public policy arbitrators duty to act as guardians of international commerce investigative tools available to arbitrators dealing with manifestly recalcitrant parties possible consequences of violating the obligation to sua sponte investigate and the view from developing countries The analysis leans primarily on Swiss law as Switzerland is one of the most important jurisdictions in international commercial arbitration Switzerland has also been involved in some of the most famous and controversial arbitration cases wherein bribery and corruption became an issue However the study also includes a comparative analysis of the relevant laws jurisprudence and doctrine of other major arbitration venues particularly England France and Germany Not only in the light it sheds on how and whether international commercial arbitrators have hitherto justified the trust States have placed in them regarding the protection of the public interests but also in the practical solutions it offers arbitrators faced with issues of bribery and corruption this deeply researched book equips arbitration practitioners and arbitration institutions with a hitherto lacking in depth analysis on the question of sua sponte investigation It also provides invaluable insights on how this issue might affect the future legitimacy and expansion of this dispute settlement mechanism Outside the field of arbitration the book also provides jurists legal scholars in house counsel for companies doing transnational business and public officials with highly enlightening perspectives on the interaction between international commercial arbitration and public interests

Substantive Law in Investment Treaty Arbitration Monique Sasson, 2016-04-24 This new edition of what has rapidly become the pre eminent work on the role of municipal law in investment treaty arbitration is justified not only by the accelerating appearance of investment treaty awards but also by the continuing serious flaws in the application of international law by investment treaty arbitral tribunals As a matter of international law arbitrators need to be attentive to the circumstances where municipal law supplies the necessary substantive legal rule They will find this book to be the best guide to this complex challenge The author has maintained the overall structure of the first edition and added a new chapter on Article 42 of the ICSID Convention Certain descriptions and

arguments have been rethought and revised to clarify their significance and their applicability The treatment focuses on the role of municipal law in providing the substance for concepts such as contracts property rights and shareholders rights which are relevant in the international investment treaty context but are not regulated under international law Among the complex questions considered are the following If the application of international law requires a renvoi to municipal law how should that renvoi be conducted In investment disputes what role if any should municipal law have in assessing State attribution under international law Should shareholders receive compensation for damages suffered by their company due to a violation of an international obligation vis vis the company Does a contractual right exist to foreign investment property Under what conditions may a violation of municipal law become internationally wrongful May foreign investors rely on expectations as an autonomous source of rights in investment treaty disputes Does an alleged breach of an umbrella clause transform a breach of contract claim covered by municipal law into an international law claim The chapters answer these and many other questions in extraordinary depth drawing on detailed analyses of the issues and implications posed by major relevant cases and arbitral decisions The author s analysis of the unavoidable interaction of municipal law and international law in investment treaty arbitration and the consequences stemming from rejecting the application of municipal law when relevant will continue to prove of immeasurable value to arbitrators arbitration counsel corporate counsel and scholars of international law

Fact-Finding in International Arbitration Julian Bickmann, 2022-12-09 Establishing a factual basis on which to apply the law can be an extraordinarily challenging process and perhaps more so in international arbitration than in any other proceedings due to the very different notions of fact finding that prevail among jurisdictions This important book assesses for the first time the contours of an emerging transnational law of fact finding that promises to greatly enhance the efficiency and reliability of this crucial arbitral procedure In his analysis focusing on bases that reflect current but fluid transnational practice the author assembles a viable *lex evidentiæ* from an in depth examination and synthesis of the following bodies of source material published arbitration proceedings and awards the general framework of fact finding issues as provided for under the arbitration acts of England and Wales the United States Germany Brazil Spain Switzerland Austria and Italy as well as under the Model Law fact finding stipulations under UNCITRAL Arbitration Rules as well as under various institutional rules soft law such as the IBA Rules Prague Rules ALI UNIDROIT Principles of Transnational Civil Procedure best practices as captured by legal commentary and investment arbitration proceedings where many decisions and awards are nowadays publicly available In the course of the analysis a comprehensive description and analysis of what fact finding entails including both gathering of facts and taking of evidence is fully elaborated Given that it is an essential task of international arbitration proceedings to define the disagreements between the parties and seek to determine the truth the international arbitration community must be able to rely on a robust consistent and predictable albeit flexible and adaptive set of fact finding rules Against this background the present study not only provides a stocktaking of current

practice but also makes a signal contribution to meeting the need for legal certainty and reliability in international arbitration

The Decision-Making Process of Investor-State Arbitration Tribunals Mary Mitsi, 2018-12-28 In the course of a single investor state dispute an arbitrator may make numerous decisions from interpreting the treaty or national laws to taking into account case law customs and policies In practice this process raises important issues regarding the consistency of decisions and the predictability and legitimacy of the decision making process in general Investment arbitration tribunals have developed a specialised process of legal decision making adapted to the interpretational needs that arise in the context of an investor state dispute and to the transnational characteristics of the investment arbitration framework This is the first book to offer an in depth analysis of the transnational characteristics of investment arbitration and to analyse the interpretive arguments of investment tribunals and the way they use treaties precedent policies general principles of law and customary law in their decision making process Drawing on publicly available arbitral case law supplemented with personal interviews with investment arbitrators the author touches on such concepts and practices as the following an overview of various decision making genres of arbitral tribunals attitudinal economic strategic and legal the legal argumentation triptych of language rhetoric dialogue the specific language arbitrators have developed when interpreting the law how arbitrators use the concepts standards rules principles and rights the importance of the legal reasoning of arbitral awards and the role of rhetoric therein concepts of acceptability audience and legitimacy limitations of the public international law interpretive methodology enshrined in the Vienna Convention interpretation of precedents customary law general principles of law and policies the way national and international legal orders interact in the context of interpretation and how decision making is connected to the issues of predictability consistency and the rule of law The core of the book proposes a novel full edged dialogical network theory for analysing the interpretation process As an exemplary demonstration of developing theory to keep up with practice this unique book provides a deeply engaged means for enhancing the practice of international arbitration Its introduction of a new field of interdisciplinary analysis employing legal argumentation theories is sure to provide inestimable guidance for institutions and policymakers especially in light of recent proposals for the creation of a permanent investment arbitration court Given that unveiling the legal decision making process is critical for the well being of the whole dispute resolution procedure and that being aware of how arbitrators interpret the law can constitute a roadmap for counsel s arguments and approaches when dealing with cross border disputes the topic of this book is relevant for both academics and practitioners and its significance can only grow as recourse to investor state arbitration continues to expand

Transnational Due Process and Article V(1)(b) of the New York Convention Dan Xie, 2024-06-18 Widely regarded as the most important ground for refusal under the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards New York Convention Article V 1 b commonly referred to as the due process clause is interpreted in diverse ways across jurisdictions This book not only thoroughly examines the variety of

approaches to the clause adopted by different national courts but also presents a particular understanding of the transnational approach to the due process defence grounded in the interpretative framework of the Vienna Convention on the Law of Treaties Drawing on insights and methods from comparative law that consider not only national legal systems but also international commercial arbitration and other international legal regimes the author specifically leverages the principle of *audiatur et altera pars* and subsequent state practice Among the matters examined are the following threshold requirements for the due process defence policy considerations of and relevant limits to the interpretation and application of the due process defence proper notice of the appointment of the arbitrator or of the arbitration proceedings opportunity to present a case and equal treatment and the *lex arbitri* *lex fori* and uniform transnational approaches to the applicable law for the due process defence The book includes a detailed comparative analysis of numerous domestic judicial decisions across jurisdictions A comprehensive bibliography includes references to cases awards treaties UN Documents legislation institutional rules and soft laws The book shows clearly how an understanding of transnational due process grounded in the interpretative framework mandated by international law can contribute to the uniform interpretation and application of Article V 1 b thus contributing to debates on the decentralised interpretation of international law by domestic courts Resolving a range of practical questions about the precise content of the due process defence the book's stable and principled framework for interpreting the due process defence will be greatly appreciated by arbitration professionals Judges will benefit from its endorsement of international judicial cooperation through the recognition and consideration of foreign court decisions fostering a more harmonised interpretation of the New York Convention

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