

TABLE OF CONTENTS

PREFACE TO THE SEVENTH EDITION	V
TABLE OF CASES	XXIX
Chapter I. Introduction	1
I.1. Approaches to Dispute Resolution.....	1
I.1.a. Note	1
I.1.b. Arbitration: Characteristics.....	3
American Almond Products Co. v. Consolidated Pecan Sales Co., Inc.....	3
Pupuke Service Station Ltd v. Caltex Oil (NZ) Ltd.....	3
Kruppa v. Benedetti & Anor	4
Private Contractor vs. Local Authority	6
Questions and Comments	7
I.1.c. Arbitration and Litigation	9
James H. Carter, Dispute Resolution and International Agreements	9
2018 International Arbitration Survey: The Evolution of International Arbitration	11
Siemens' Dispute Resolution Circular 2007	15
Questions and Comments	16
I.1.d. Expert Determination, Adjudication and Contract Adaptation.....	18
Note	18
International Chamber of Commerce, Rules for the Administration of Expert Proceedings	21
A. SA (State Entity) v. B. SA (France)	21
Frydman v. Cosmair, Inc.....	24
Questions and Comments	29
I.1.e. Mediation, Conciliation and Multi-Tier Clauses	33
Note	33
World Intellectual Property Organization Guide to WIPO Mediation.....	36
ICC Commission Report—Controlling Time and Costs in Arbitration, 2018.....	43
Arbitration Rules of the German Institute for Arbitration 2018.....	44
Klaus Peter Berger, Law and Practice of Escalation Clauses	44
An Example from Practice	49
Questions and Comments	50
I.1.f. Institutional and Ad Hoc Arbitration.....	53
Gerald Aksen, Ad Hoc Versus Institutional Arbitration	53

	Questions and Comments	61
I.1.g.	Expedited Arbitration	62
	Note	62
	Stockholm Rules for Expedited Arbitrations	63
	Questions and Comments	63
I.2.	On the Evolution of the Standing of Arbitration Within the Legal System	69
I.2.a.	Note	69
I.2.b.	Historical Developments in Selected Jurisdictions	70
	Arthur von Mehren, International Commercial Arbitration: The Contribution of the French Jurisprudence	70
	Kulukundis Shipping Co., S.A. v. Amtorg Trading Corp.....	73
	Tibor Várady: How Did the Hostility Towards Arbitration End?	78
	Questions and Comments	81
I.3.	The Sources of Relevant Norms and Possible Conflicts Between Various Sources	82
I.3.a.	Note—The Sources	82
	Questions and Comments	90
I.3.b.	Conflicts Between Various Sources	90
I.3.b.i.	Party Stipulation Versus Institutional Rules.....	91
	Preliminary Award Made in Case No. 2321 in 1974 (ICC)	91
	AQZ v. ARA.....	93
	Questions and Comments	99
I.3.b.ii.	Party Stipulation Versus State Norms	101
	Rederi Aktiebolaget Sally (Finland) v. S.R.L. Termarea (Italy)	101
	Tarmarea S.R.L. (Italy) v. Rederi Aktiebolaget Sally (Finland)	104
	Albert Jan Van Den Berg, The New York Arbitration Convention of 1958: Towards a Uniform Judicial Interpretation.....	108
	Questions and Comments	110
	Problem	111
I.3.b.iii.	Institution Versus Institution	113
	Award of the Court of Arbitration at the Hungarian Chamber of Commerce and Industry No: V-99130	113
	Insigma Technology Co. Ltd v. Alstom Technology Ltd	115
	Questions and Comments	120
	Chapter II. On the Authority of Arbitration Tribunals	125
II.1.	The Arbitration Agreement as the Cornerstone of the Arbitration Process.....	125
II.1.a.	Note	125

II.1.a.i.	The Arbitration Agreement: Forms and Content.....	125
II.1.a.ii.	Applicable Law(s) to the Arbitration Agreement.....	126
II.1.a.iii.	“Referring the Parties to Arbitration . . .”	127
II.1.a.iv.	Existence, Validity, and Scope Issues Before Courts and Arbitrators.....	128
	Three Stages of the Arbitration-Litigation Process.....	129
II.1.a.v.	Formal Requirements	131
II.1.a.vi.	Scope Revisited	132
II.1.a.vii.	Issues Pertaining to the Range and Limits of the Arbitration Agreement.....	133
II.1.b.	The Arbitration Agreement—Forms and Content	134
	Carr & Ors v. Gallaway Cook Allan	134
	Questions and Comments	139
II.1.c.	Enforcing Arbitration Agreements: An Overview and the Problem of Pathological Clauses.....	141
	Tennessee Imports, Inc. v. P.P. Filippi & Prix Italia S.R.L.	141
	Questions and Comments	149
	HKL Group Co. Ltd v. Rizq International Holdings Pte Ltd.....	150
	Questions and Comments	153
II.1.d.	The Law Applicable to the Arbitration Agreement.....	156
	Note	156
	Sulamérica Cia Nacional De Seguros S.A. & Ors v. Enesa Engenharia S.A. & Ors.....	158
	Swiss Private International Law Act (PILA) Article 178	166
	Dallah Real Estate and Tourism Holding Company (Appellant) v. The Ministry of Religious Affairs, Government of Pakistan (Respondent).....	167
	Questions and Comments	167
II.1.e.	Compelling the Reluctant Party to Arbitrate: An Overview on the Ways of Enforcing an Arbitration Agreement.....	170
II.1.e.i.	Note	170
	UNCITRAL Model Law.....	172
	Questions and Comments	172
II.1.e.ii.	Parallel Proceedings and Their Avoidance—Herein of Antisuit Injunctions.....	173
	PepsiCo Inc. v. Oficina Central De Asesoria y Ayuda Tecnica, C.A.	173
	Ust-Kamenogorsk Hydropower Plant JSC (Appellant) v. AES Ust-Kamenogorsk Hydropower Plant LLP (Respondent)	176
	Questions and Comments	181

II.1.e.iii.	Waiver of the Right to Compel Arbitration	184
	Menorah Insurance Co., Ltd. v. INX	
	Reinsurance Corp.	184
	Questions and Comments	189
II.1.f.	Kompetenz-Kompetenz and Separability	191
	Note	191
II.1.f.i.	Kompetenz-Kompetenz of the Arbitrator	197
	Texaco Overseas Petroleum Co. & California Asiatic Oil Co. v. The Government of the Libyan Arab Republic.....	197
	Questions and Comments	204
II.1.f.ii.	Negative Effect of Kompetenz-Kompetenz Provided for in the Arbitration Law: The French Example	205
	American Bureau of Shipping v. Jules Verne et al.	205
	Questions and Comments	206
II.1.f.iii.	Negative Effect of Kompetenz-Kompetenz: Jurisdictions Without Clear Statutory Guidance	209
	Nigel Peter Albon v. Naza Motor Trading Sdn Bhd & Ors (No 3)	209
	Questions and Comments	216
II.1.f.iv.	Negative Effect of Kompetenz-Kompetenz in U.S. Law.....	222
	First Options of Chicago, Inc. v. Kaplan, et Ux. and MK Investments, Inc.....	223
	Howsam v. Dean Witter Reynolds, Inc.	228
	Questions and Comments	229
II.1.f.v.	Separability Revisited and the Void Ab Initio Doctrine.....	231
	Sojuznefteexport (SNE) (USSR) v. Joc Oil, Ltd. (Bermuda)	231
	Harbour Assurance Co. (UK), Ltd. v. Kansa General International Assurance Co., Ltd....	238
	Questions and Comments	242
II.1.g.	The Form of the Arbitration Agreement	244
	Note	244
II.1.g.i.	“An Agreement in Writing”—The Traditional Approach	247
	Howard M. Holtzmann & Joseph E. Neuhaus, A Guide to the [1985] UNCITRAL Model Law on International Commercial Arbitration: Legislative History and Commentary	247
	Robobar Limited (UK) v. Finnecold SAS (Italy)....	249

Compagnie de Navigation et Transports SA (France) v. Mediterranean Shipping Co. SA (Switzerland).....	251
Questions and Comments	255
II.1.g.ii. Jurisdiction by Virtue of Tacit or Post- Agreement Submission or Estoppel	258
William Co. v. Guangzhou Ocean Shipping Co.	258
Jiangxi Provincial Metal and Minerals Import and Export Corp. v. Sulanser Co., Ltd.	262
Claimant (Austria) v. Respondent (Germany)....	264
Questions and Comments	266
II.1.h. Liberalizing the Writing Requirement Through National Legislation.....	270
UNCITRAL Model Law	270
Questions and Comments	272
Bundesgerichtshof [Federal Supreme Court of Germany]	273
Questions and Comments	274
II.1.i. Inclusion of Arbitration Agreements by Reference	275
International Research Corp PLC v. Lufthansa Systems Asia Pacific Pte Ltd. and Another	275
United Nations Convention on the Carriage of Goods by Sea	283
Questions and Comments	284
II.1.j. Scope of the Arbitration Clause—Settlements, Renewals and Promissory Notes.....	285
Mediterranean Enterprises, Inc. v. Ssangyong Corp.	285
Ermenegildo Zegna Corp. v. Lanificio Mario Zegna S.P.A. ...	290
Hart Enterprises International, Inc. v. Anhui Provincial Import & Export Corp.	295
Becker Autoradio v. Becker Autoradiowerk	298
Rals International Pte Ltd v Cassa di Risparmio di Parma e Piacenza SpA.....	299
Questions and Comments	302
II.1.k. Non-Signatory Parties.....	307
Note	307
Peterson Farms Inc v. C & M Farming Ltd.....	308
Questions and Comments	314
Dallah Real Estate and Tourism Holding Company (Appellant) v. The Ministry of Religious Affairs, Government of Pakistan (Respondent).....	318
The Ministry of Religious Affairs, Government of Pakistan v. Dallah Real Estate and Tourism Holding Company.....	328
Questions and Comments	329
Review Problem (Sale of Lumber)	331
II.1.l. Split Arbitration Clauses	333
Astra Footwear Industry v. Harwyn International, Inc.	333

Yugoslav Co. v. PDR Korea Co.	337
Questions and Comments	341
II.1.m. Ad Hoc Arbitration in China	345
Supreme People's Court's Reply Letter to the Request for Instructions Concerning the Validity of the Arbitration Clause in the Sales Contract Dispute Case Between Sichuan Huahong International Economic and Technical Investment Co., Ltd. and Hanwha Corporation (Korea)	345
Questions and Comments	346
II.2. Limits on Arbitrability	347
II.2.a. Note	347
II.2.b. Statutory Definitions of Arbitrability and Their Interpretation	350
Fincantieri-Cantieri Navali Italiani Spa (Italy) v. Ministry of Defense, Armament and Supply Directorate of Iraq, Republic of Iraq	351
Questions and Comments	356
II.2.c. Arbitrability Tested in Court Practice	363
II.2.c.i. Arbitrability of Antitrust Claims	364
Mitsubishi Motors Corporation v. Soler Chrysler-Plymouth, Inc.	364
Questions and Comments	371
Baxter International, Inc. v. Abbott Laboratories	377
Questions and Comments	382
Note: Arbitrating Competition Law Issues and the Efficacy of the "Second Look"—Two European Rulings	383
SNF v. Cytec	384
Questions and Comments	385
X (S.p.A.) v. Y (S.r.l.)	385
Questions and Comments	385
II.2.c.ii. Arbitrability of Cargo Damage (COGSA) Claims	387
Vimar Seguros y Reaseguros, S.A. v. M/V Sky Reefer	388
Questions and Comments	390
II.2.d. Arbitrability of Corporate Law Disputes	391
Tomolugen Holdings Ltd and Another v Silica Investors Ltd and Other Appeals	391
Questions and Comments	398
II.2.e. Law Applicable to Arbitrability	399
M.S.A. (Belgium) v. Company M (Switzerland)	399
Questions and Comments	402
Review Problem	404

Chapter III. The Arbitrators.....	409
III.1. The Arbitrators—Qualifications, Rights and Responsibilities	409
III.1.a. Note	409
III.1.b. Oaths as Safeguards of Impartiality	414
M. Tod, International Arbitration Amongst the Greeks	414
Questions and Comments	415
III.1.c. Getting Closer to More Modern Considerations and Devices (Neutrality, Independence, Disclosure).....	416
Note	416
Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration Under the ICC Rules of Arbitration (2017)	418
Questions and Comments	419
III.1.d. The Relevance or Irrelevance of Group Affiliation	423
Note	423
Jivraj v. Hashwani.....	431
Questions and Comments	440
III.1.e. A Fresh Angle on Neutrality—The Problem of “Issue Conflict”.....	444
CC/Devas (Mauritius) Ltd., et al. v. The Republic of India ...	445
Urbaser S.A., et al. v. The Argentine Republic.....	448
Questions and Comments	451
III.1.f. How to Get (or Not to Get) the Right Arbitrator	454
Note	454
Questions and Comments	458
Testing Professional and Linguistic Skills.....	460
Questions and Comments	465
III.1.g. Codes of Ethics.....	466
The IBA Rules of Ethics for International Arbitrators	467
AAA/ABA Code of Ethics for Arbitrators in Commercial Disputes (2004)	468
Bruce Meyerson and John Townsend, Revised Code of Ethics for Commercial Arbitrators Explained	469
Questions and Comments	474
III.1.g.i. An Example of Reliance on the IBA Guidelines in Court Practice.....	478
The Swedish Supreme Court	478
Questions and Comments	481
III.1.h. Rights and Responsibilities of the Arbitrators	482
Philippe Fouchard, Relationships Between the Arbitrator and the Parties and the Arbitral Institution	482
Questions and Comments	492
III.1.h.i. The Issue of Fees	494
Introduction—A Note on Arbitrators’ Fees.....	494
Questions and Comments	499

III.1.h.ii.	Conduct and Misconduct of Arbitrators Regarding Fees	505
	K/S Norjarl A/S v. Hyundai Heavy Industries Co., Ltd.	505
	Questions and Comments	512
III.1.i.	Rights and Responsibilities of the Arbitral Institution	516
	Cubic Defense Systems Inc. v. ICC	516
	Questions and Comments	524
III.1.j.	Can the Arbitrators Abandon Their Function?	527
III.1.j.i.	Truncated Tribunals	527
	Stephen M. Schwebel, The Validity of an Arbitral Award Rendered by a Truncated Tribunal.....	527
	Questions and Comments	536
III.1.j.ii.	How Safe are Institutional Rules That Allow Decision-Making by Truncated Tribunals?	540
III.2.	Appointment and Appointing Authorities	542
III.2.a.	Introduction—Options in Appointment of Arbitrators	542
III.2.b.	Appointment by Courts	547
III.2.b.i.	Note on Appointment by Courts.....	547
	Questions and Comments	552
III.2.b.ii.	Can Courts or Other Appointing Authorities Depart from Arrangements Agreed upon Between the Parties?.....	553
	Union of India v. Singh Builders Syndicate	554
	Questions and Comments	555
III.2.b.iii.	Appointment by Court in Order to Prevent Denial of Justice	556
	National Iranian Oil Co. v. State of Israel.....	556
	National Iranian Oil Co. v. State of Israel.....	558
	Questions and Comments	563
III.2.c.	Appointing Authorities Chosen by the Parties.....	565
III.2.c.i.	The Nature of the Decision of the Appointing Authority.....	565
	Sapphire International Petroleums Ltd. v. National Iranian Oil Company	565
	Anstalt F. (Liechtenstein) v. Company T. (Panama)	570
	Elf Aquitaine Iran (France) v. National Iranian Oil Co. (Iran)	572
	Questions and Comments	574
III.2.c.ii.	An Appointing Authority Not Relied upon	578
	Philips Hong Kong, Ltd. (Hong Kong) v. Hyundai Electronics Industries Co. Ltd. (Hong Kong)	578
	Questions and Comments	582

III.2.c.iii.	An Appointing Authority That Ceased to Exist ...	583
	Gatoil International, Inc. (Panama) v. National Iranian Oil Co. (Iran)	583
	Questions and Comments	587
III.2.d.	The Role of Lists of Arbitrators in the Appointment Process.....	588
	Encyclopaedia Universalis, S.A. v. Encyclopaedia Britannica, Inc.	590
	Questions and Comments	599
III.2.e.	Multi-Party Arbitration and Selection of Arbitrators	600
	Note	600
	Siemens AG and BKMI Industrieanlagen GmbH v. Dutco Construction Co., Ltd.	601
	Questions and Comments	603
III.3.	Challenges.....	605
III.3.a.	Introduction	605
	Questions and Comments	611
III.3.b.	Challenges Before the Arbitral Institution.....	613
III.3.b.i.	Challenges in Institutional Practice	613
	Questions and Comments	624
III.3.b.ii.	How Conclusive Is the Challenge Before the Arbitral Institution?.....	625
	Refineries of Homs and Banias (Syria) v. International Chamber of Commerce.....	625
	Questions and Comments	627
III.3.c.	Challenge of Arbitrators in the Context of Challenging the Award	629
III.3.c.i.	The Issue of Disclosure	629
	Applied Industrial Materials Corp. v. Ovalar Makine Ticaret Ve Sanayi, A.S.....	629
	Questions and Comments	636
	AT & T Corporation and Another v. Saudi Cable Co.....	640
	Questions and Comments	649
III.3.c.ii.	Some Further Issues Pertaining to Disclosure.....	650
	Questions and Comments	653
III.3.d.	Can an Arbitrator Challenge a Co-Arbitrator?.....	654
	High Court at Kuala Lumpur	654
	Questions and Comments	659
III.3.e.	Can an Attorney (Rather than the Arbitrator) Be Challenged on the Ground of Links Between the Attorney and the Arbitrator?.....	661
	Hrvatska Elektroprivreda, d.d. v. The Republic of Slovenia (ICSID Case)	661
	Questions and Comments	665

Chapter IV. Focal Points in the Arbitration Process	669
IV.1. Selected Elements of Procedure Before Arbitration Tribunals	669
IV.1.a. Introduction	669
IV.1.b. The Scope and Relative Importance of the Lex Arbitri.....	671
Union of India v. McDonnell Douglas Corporation	672
Rules of the ICC International Court of Arbitration.....	679
World Intellectual Property Organization Arbitration Rules	679
Questions and Comments	680
Note: The Seat's Arbitration Law as the Presumptive Lex Arbitri	681
Questions and Comments	682
IV.1.c. Party Discretion, Discretion of the Arbitrators, and Due Process.....	683
Abati Legnami (Italy) v. Fritz Häupl	684
Firm P (U.S.A.) v. Firm F (F.R.G.)	685
Questions and Comments	686
IV.1.d. What Belongs to Arbitration Proceedings?	693
Hebei Import & Export Corp. v. Polytek Engineering Co. Ltd.....	694
Court of Final Appeal Opinion, 1999.....	696
Questions and Comments	698
IV.1.e. Third Party Funding	699
Report of the ICCA-Queen Mary Task Force on Third-Party Funding in International Arbitration.....	700
Questions and Comments	706
IV.1.f. Organizing Arbitral Proceedings—And the Terms of Reference	709
Note	709
ICC Rules of Arbitration [2017]	711
Carte Blanche (Singapore) PTE. Ltd. v. Carte Blanche International, Ltd.	713
Questions and Comments	719
IV.1.g. Records and Minutes of the Hearing.....	721
Questions and Comments	727
IV.1.h. Presentation of the Case	728
IV.1.h.i. Problems with Discovery and Other Forms of Court Assistance in Taking Evidence	728
National Broadcasting Company, Inc. and NBC Europe, Inc., Appellants, v. Bear Stearns & Co., Inc.....	730
Questions and Comments	734
In re Roz Trading Ltd.....	737
In re Application of Babcock Borsig AG.....	742
Questions and Comments	746
An Australian Example	749

	A Case on Production of Documents by Court	
	Order in a European Setting	751
	Swedish Supreme Court Decision	752
	Questions and Comments	756
IV.1.h.ii.	Experts	759
	Martin Hunter, Expert Conferencing and New Methods in International Arbitration 2006: Back to Basics?	759
	Paklito Investment Ltd. v. Klöckner East Asia Ltd.	767
	Questions and Comments	775
IV.1.h.iii.	Language Issues	777
	Note	777
	N.Z. (No Nationality) v. I. (Romania).....	787
	Seller (Denmark) v. Buyer (Germany)	788
	Questions and Comments	789
	The Language of the Documents in Recognition and Enforcement Proceedings	793
	Questions and Comments	798
IV.1.i.	Action or Inaction in Presenting the Case That Amounts to Waiver	799
	Minmetals Germany GmbH v. Ferco Steel Ltd.	799
	Questions and Comments	807
IV.1.j.	“Taking the Parties by Surprise”	811
	An Introductory Note	811
	Questions and Comments	814
IV.1.k.	Confidentiality and/or Transparency	820
	Introductory Note	820
IV.1.k.i.	Confidentiality of the Arbitration Proceedings and of the Award	823
	Esso Australia Resources Ltd v. Plowman Esso Australia Resources Limited and Others Defendants, Appellants; and Plowman and Others Plaintiff and Defendants, Respondent.....	823
	Bulgarian Foreign Trade Bank v. A.I. Trade Finance Inc.....	826
	Questions and Comments	831
	Société d’Investissements l’Excellence Inc. c. Rhéaume	839
	Questions and Comments	847
IV.1.k.ii.	Testing Transparency Rules in Investment Arbitration	848
	BSG Resources Limited v. Republic of Guinea....	848
	Questions and Comments	853

IV.1.1. Time Limits for Accomplishing the Mission of the Arbitrators.....	854
M. Tod, International Arbitration Amongst the Greeks	854
England Arbitration Act 1996	856
Peru—Arbitration Act, Legislative Decree No. 1071	856
Romania, Code of Civil Procedure, Book IV on Arbitration.....	857
Spain Arbitration Act	857
Belgian Judicial Code—Chapter 6: Arbitration	858
Rules of the ICC International Court of Arbitration.....	858
Questions and Comments	858
IV.2. Choice of Law Issues Before the Arbitrators	862
IV.2.a. Note	862
IV.2.b. Applicable Substantive Law—The Prevailing Concept:	
Party Choice or Choice by the Arbitrators.....	867
1961 European (Geneva) Convention on International Commercial Arbitration, Article VII	868
2017 International Chamber of Commerce Rules of Arbitration, Article 21	868
Howard M. Holtzmann & Joseph E. Neuhaus, A Guide to the UNCITRAL Model Law on International Commercial Arbitration	868
Questions and Comments	875
IV.2.c. Interpreting Choice of Law Clauses and the Role of the Lex Arbitri.....	876
Union of India v. McDonnell Douglas Corporation	876
Claimant: Buyer (Mozambique) v. Defendant: Seller (The Netherlands)	876
A. von Mehren & E. Jiménez de Aréchaga, Final Report on Arbitration Between States and Foreign Enterprises....	886
Questions and Comments	888
A (South Africa) v. B (U.S.A.)	889
Questions and Comments	890
IV.2.d. Applicable Law in the Absence of Party Choice	891
IV.2.d.i. Relying on National Choice-of-Law Rules	891
Seller (Korea) v. Buyer (Jordan).....	891
Questions and Comments	898
IV.2.d.ii. The Role of the Lex Mercatoria	900
Norsolor S.A. (France) v. Pabalk Ticaret Sirketi S.A. (Turkey).....	900
Questions and Comments	902
IV.2.e. The Problem of Mandatory Law	903
Principal (Italy) v. Distributor (Belgium)	903
Questions and Comments	909
George Bermann, “Mandatory Rules of Law in International Arbitration”	910

Yves Derains, Public Policy and the Law Applicable to the Dispute in International Arbitration.....	914
Ole Lando, Conflict-of-Laws Rules for Arbitrators, in Festschrift für Konrad Zweigert	917
Questions and Comments	919
IV.3. The Award.....	925
IV.3.a. Form and Content of the Award	925
IV.3.a.i. Statutory and Institutional Rules—Note	925
The Netherlands—Arbitration Act.....	927
American Arbitration Association International Arbitration Rules.....	929
China International Economic and Trade Arbitration Commission (CIETAC) Arbitration Rules.....	930
Questions and Comments	931
IV.3.a.ii. The Issue of Statement of Reasons	935
Bay Hotel & Resort v. Cavalier Construction Co. Ltd. et. al	935
Questions and Comments	942
IV.3.a.iii. An Award Written by Someone Else.....	945
Sacheri (Italy) v. Robotto (Italy).....	945
Questions and Comments	947
IV.3.b. Interventions After the Award Is Written	950
IV.3.b.i. Institutional Scrutiny	950
Questions and Comments	952
IV.3.b.ii. Correction, Interpretation, and Additional Award	953
Dempsey Pipe & Supply, Inc. v. T. Co. Metals	953
American Arbitration Association International Arbitration Rules.....	956
China International Economic and Trade Arbitration Commission (CIETAC) Arbitration Rules.....	957
Questions and Comments	958
IV.3.c. Deposit, Notarization, Authentication, Certification	962
Appellant R. SA v. Appellee A. Ltd.	967
Questions and Comments	969
Chapter V. The Effects and Limits of Awards Rendered in International Commercial Arbitration	973
V.1. Confirmation, Merger into Judgment, Concurrent and Consecutive Proceedings	974
V.1.a. Note	974
V.1.b. Confirmation, Leave to Enforce	975
V.1.c. Confirmation and Conversion.....	977
COSID, Inc. (U.S.) v. Steel Authority of India, Ltd. (India)	977

Fratelli Damiano (Italy) v. August Topfer & Co. (Germany).....	981
Seetransport Wiking Trader Schiffahrtsgesellschaft MBH & Co. v. Navimpex Centrala Navala	983
Oriental Commercial & Shipping Co. (UK), Oriental Commercial & Shipping Co. (Saudi Arabia), Abdul Hamid Bokhari v. Rosseel, N.V.	988
Questions and Comments	994
V.1.d. Concurrent and Consecutive Proceedings.....	997
V.1.e. Concurrent Proceedings	999
Sumitomo Corporation, Oshima Shipbuilding Co. v. Parakopi Compania Maritima	999
Renusagar Power Co. (India) v. General Electric Co. (U.S.).....	1004
Questions and Comments	1007
V.1.f. Effects of a Partial Award	1010
Mexican Construction Co. v. Belgian Co.....	1010
Questions and Comments	1012
V.2. Judicial Control over the Award: Setting Aside	1014
V.2.a. Note—Judicial Control in the Country Where the Award Is Considered to Be Domestic	1014
V.2.b. Domestic and Foreign Awards.....	1023
International Standard Electric Corp. v. Bridas Sociedad Anonima Petrolera.....	1023
Croatian Company v. Swiss Company	1027
National Thermal Power Corporation v. The Singer Company.....	1028
Jan Paulsson, Comment, The New York Convention’s Misadventures in India	1034
Questions and Comments	1038
Questions and Comments on Indian Set-Aside Jurisdiction Under the 1996 Indian Arbitration and Conciliation Act.....	1042
V.2.c. Public Policy, Fraud, and Evident Partiality as Grounds for Setting Aside	1044
Spector v. Torenberg.....	1044
United Nations Commission on International Trade Case Law on UNCITRAL Texts (CLOUT)	1050
European Gas Turbines SA (France) v. Westman International Ltd. (United Kingdom)	1051
Questions and Comments	1059
X (SpA) v. Y (Srl).....	1061
Questions and Comments	1065
V.2.d. Standard of Review.....	1066

V.2.d.i.	Judicial Deference—or Lack Thereof—to Arbitrator Discretion.....	1066
	Transport En Handelsmaatschappij “Vekoma” B.V. (Netherlands) v. Maran Coal Corp. (U.S.A.)	1066
	Arab Republic of Egypt v. Southern Pacific Properties, Ltd & Southern Pacific Properties (Middle East), Ltd.	1070
	Questions and Comments	1073
	BG Group PLC v. Republic of Argentina	1076
	Questions and Comments	1083
V.2.d.ii.	Can the Parties Provide for Heightened Judicial Scrutiny of Arbitral Awards?	1086
	Hall Street Associates, L.L.C. v. Mattel, Inc.	1087
	Questions and Comments	1099
V.2.e.	Due Process in Setting Aside as an Issue of Human Rights	1103
	Stran Greek Refineries & Stratis Andreadis v. Greece	1103
	Questions and Comments	1114
V.2.f.	Penalizing a Party for a Frivolous Challenge to an Award	1116
	Flexible Manufacturing Systems Pty. Ltd. v. Super Products Corporation.....	1116
	Questions and Comments	1121
V.3.	Judicial Control over the Award: Recognition and Enforcement	1121
V.3.a.	Awards Subject to the New York Convention.....	1121
V.3.a.i.	An Award Rendered in the State Where Recognition or Enforcement Is Sought	1122
	Sigval Bergesen v. Joseph Muller Corporation	1122
	Questions and Comments	1128
V.3.a.ii.	Binding Awards and Awards Producing Only “Obligatory Effects”	1129
	Decision of 8 October 1981.....	1129
	Questions and Comments	1131
V.3.a.iii.	Partial Awards.....	1133
	Puerto Rico Maritime Shipping Authority v. Star Lines Ltd.....	1133
	WTB (Germany) v. CREI (Italy)	1135
	Questions and Comments	1138
V.3.b.	Grounds Under the Convention for Refusing Recognition and Enforcement—An Introductory Case	1139
	Parsons and Whittemore Overseas Co. v. Societe Generale de L’industrie du Papier (RAKTA)	1139
	Questions and Comments	1147
V.3.c.	Procedural Grounds Under the Convention for Refusing Recognition and Enforcement.....	1148

V.3.c.i.	Burden of Proof.....	1148
	Sa X (Belgium) v. Mr Y (Spain)	1149
	Questions and Comments	1150
	Clothing Manufacturer (Ukraine) v. Textiles Manufacturer (Germany)	1151
	Questions and Comments	1155
V.3.c.ii.	Validity of the Agreement and Standard of Review	1157
	American Construction Machinery & Equipment Corp. Ltd. v. Mechanised Construction of Pakistan Ltd.....	1158
	Southern Pacific Properties (Middle East) Ltd. v. Arab Republic of Egypt	1161
	Questions and Comments	1163
V.3.c.iii.	Notice of Appointment of the Arbitrator and Waivability.....	1164
	Danish Buyer v. German Seller	1164
	Questions and Comments	1168
V.3.c.iv.	Scope of the Parties' Submission to Arbitration	1169
	Management & Technical Consultants S.A. v. Parsons-Jurden International	1169
	First Options of Chicago, Inc. v. Kaplan, et Ux. and MK Investments, Inc.....	1173
	Questions and Comments	1173
V.3.c.v.	Improper Composition of Arbitral Authority or Improper Arbitral Procedure	1174
	China Nanhai Oil Joint Service Corporation, Shenzhen Branch v. Gee Tai Holdings.....	1174
	Questions and Comments	1177
	Compagnie Des Bauxites De Guinee v. Hamermills, Inc.....	1178
	Questions and Comments	1186
V.3.c.vi.	An Award Set Aside in "The Country in Which, or Under the Law of Which, That Award Was Made"	1187
V.3.c.vi.(a)	The 1961 Geneva Convention Approach to V(1)(e).....	1188
	Company A (Nationality Not Indicated) v. Company B (Slovenia).....	1188
	Questions and Comments	1190
V.3.c.vi.(b)	The "Article VII" Approach to V(1)(e)—French and U.S. Practice.....	1191
	Pabalk Ticaret v. Norsolor	1192
	Questions and Comments	1195

	Chromalloy Aeroservices, A Division of Chromalloy Gas Turbine Corp. (U.S.) v. The Arab Republic of Egypt.....	1196
	Questions and Comments	1202
	Note: Other U.S. Authority Undercutting Chromalloy	1207
	Questions and Comments	1208
	American Law Institute, Restatement of the Law 3d— The U.S. Law of International Commercial Arbitration	1209
	Questions and Comments	1210
	Questions and Comments	1211
V.3.c.vi.(c)	The “Public Policy Discretionary” Approach to V(1)(e)—U.S. and Dutch Practice	1212
	Termorio S.A. v. Electranta S. P.	1213
	Questions and Comments	1216
	Maximov v. NLMK	1218
	Questions and Comments	1220
	Note—U.S. and Dutch Decisions Exercising Discretion to Enforce an Annulled Award....	1223
	Corporación Mexicana de Mantenimiento Integral, S. de R.L. de C.V. (“COMMISA”) v. Pemex-Exploración y Producción (“PEP”)	1223
	Yukos Capital S.A.R.L. (Luxembourg) v. OAO Rosneft (Russian Federation)	1224
	Questions and Comments	1226
	Problem	1227
V.3.c.vii.	The Limits of Deference—The Hilmarton Triangle and the Problem of Conflicting Awards	1231
	Hilmarton Ltd. (U.K.) v. Omnium de Traitement et de Valorisation—OTV (France) First Cour de Cassation Opinion	1232
	Second Cour de Cassation Opinion	1234
	Questions and Comments	1235

V.3.c.viii.	Parallel Set-Aside Proceedings and Anti-Suit Injunctions	1239
	Karaha Bodas Co., L.L.C. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara, et al. [Pertamina]	1240
	Questions and Comments	1249
V.3.d.	Review of the Merits Under the Convention	1252
V.3.d.i.	Review of the Merits Under Article V(1) Standards.....	1252
	Fertilizer Corp. of India v. IDI Management, Inc.	1252
	Questions and Comments	1256
	Pabalk Ticaret v. Norsolor	1257
	Questions and Comments	1257
V.3.d.ii.	Review of the Merits for Manifest Disregard of the Law	1258
	Brandeis Intsel Limited v. Calabrian Chemicals Corp.....	1258
	Questions and Comments	1262
V.3.d.iii.	Review of the Merits Under Article V(2)(b)— The Public Policy Standard	1263
	Omnium de Traitement et de Valorisation SA v. Hilmarton Ltd.	1263
	Questions and Comments	1266
V.3.e.	Estoppel.....	1268
	China Nanhai Oil Joint Service Corporation Shenzhen Branch (PR China) v. Gee Tai Holdings Co. (Nationality Not Indicated).....	1268
	Questions and Comments	1273
	INDEX.....	1275