

Preface	xxxvii
Acknowledgments	xliii
Chapter 1 Introduction to International Arbitration	1
A. Historical Overview of International Arbitration	2
1. Historical Development of Arbitration Between States	2
a. Inter-State Arbitration in Antiquity	3
b. Inter-State Arbitration in the European Middle Ages	5
c. Inter-State Arbitration in the 18th and 19th Centuries	6
d. Arbitral Procedures in Inter-State Arbitrations	8
2. Historical Development of Commercial Arbitration	12
a. Commercial Arbitration in Antiquity	12
b. Commercial Arbitration in the European Middle Ages	16
c. Commercial Arbitration in England	19
d. Commercial Arbitration in France	23
e. Commercial Arbitration in the United States of America	24
f. Commercial Arbitration in Other European Jurisdictions in the 18th and 19th Centuries	31
B. Contemporary International Arbitration Conventions	33
1. 1899 and 1907 Conventions for the Pacific Settlement of International Disputes	34
2. Geneva Protocol and Geneva Convention	35
3. New York Convention	38
4. Inter-American Convention on International Commercial Arbitration	45
5. European Convention on International Commercial Arbitration	46
6. ICSID Convention	47
7. Bilateral Investment Treaties and Other Investment Protection Agreements	50
C. Overview of National Arbitration Legislation	51
1. Supportive National Arbitration Legislation	53
a. UNCITRAL Model Law and 2006 Revisions	54
	xiii

b. United States of America	59
(1) Unenforceability of Arbitration Agreements Under U.S. Law in the 19th Century	60
(2) U.S. Federal Arbitration Act: Chapter One	61
(3) U.S. Federal Arbitration Act: Chapters Two and Three	62
(4) U.S. State Arbitration Laws	65
c. Swiss Law on Private International Law	69
d. French Code of Civil Procedure	71
e. English Arbitration Act, 1996	75
2. Less Supportive National Arbitration Legislation	78
D. Overview of Institutional and Ad Hoc Arbitration	81
1. Institutional Arbitration	81
2. Ad Hoc Arbitration	83
3. Relative Advantages and Disadvantages of Institutional and Ad Hoc Arbitration	83
4. UNCITRAL Arbitration Rules	84
5. Leading International Arbitral Institutions	86
a. International Chamber of Commerce (ICC) International Court of Arbitration	87
b. Singapore International Arbitration Centre (SIAC)	90
c. American Arbitration Association (AAA) and International Centre for Dispute Resolution (ICDR)	91
d. London Court of International Arbitration (LCIA)	93
e. International Centre for Settlement of Investment Disputes (ICSID)	94
f. Permanent Court of Arbitration (PCA)	95
g. Hong Kong International Arbitration Centre (HKIAC)	97
E. Elements of International Arbitration Agreements	98
1. Agreement to Arbitrate	99
2. Scope of Arbitration Agreement	99
3. Institutional Versus Ad Hoc Arbitration	100
4. Seat or Place of Arbitration	101
5. Number, Method of Selection and Qualifications of Arbitrators	101
6. Language of Arbitration	103
7. Choice-of-Law Clauses	103
8. Other Provisions of International Arbitration Agreements	104
F. Overview of Choice of Law in International Commercial Arbitration	104
1. Law Applicable to Substance of Parties' Dispute	105
2. Law Applicable to Arbitration Agreement	105

Contents	xv
3. Procedural Law Applicable to Arbitral Proceedings	106
4. Choice-of-Law Rules Applicable in International Arbitration	107
G. Overview of Sources of Information About International Arbitration	107
1. ICCA Yearbook of Commercial Arbitration and Handbooks	108
2. Mealey's International Arbitration Reports	108
3. Journal du Droit International (Clunet)	108
4. Revue de l'Arbitrage	109
5. Arbitration International	109
6. ASA Bulletin	109
7. Collection of ICC Arbitral Awards	109
8. International Legal Materials	110
9. Born on International Commercial Arbitration	110
10. Fouchard Gaillard Goldman on International Commercial Arbitration	110
11. Redfern and Hunter on International Arbitration	110
12. Commentary on International Chamber of Commerce Arbitration	110
13. Commentary on the New York Convention	111
14. A Guide to the UNCITRAL Model Law on International Commercial Arbitration	111
15. International Arbitration Law Databases	111
16. KluwerArbitration and Kluwer Arbitration Blog	112
17. ALI Restatement of U.S. Law on International Commercial and Investor-State Arbitration	112
Chapter 2 Legal Framework for International Arbitration Agreements	113
A. Reasons for International Arbitration	113
<i>W. Crum & G. Steindorff, Koptische Rechtsurkunden aus Djeme</i>	114
<i>M. Bloch, Feudal Society</i>	114
<i>N.Y. Weekly Post-Boy (May 20, 1751)</i>	114
<i>Transparency International, Global Corruption Barometer 2017</i>	115
<i>Loewen Group v. United States of America</i>	116
<i>Treaty of Washington, Arts. I-VI, X</i>	119
<i>1907 Hague Convention for the Pacific Settlement of International Disputes</i>	119
<i>Arbitration Agreement Between the Government of Sudan and the Sudan People's Liberation Movement/Army on Delimiting the Abyei Area</i>	119
<i>Rainbow Warrior Affair</i>	120

<i>Bühning-Uhle, A Survey on Arbitration and Settlement in International Business Disputes</i>	121
<i>Queen Mary, Univ. of London, International Arbitration Survey: Corporate Choices in International Arbitration</i>	123
<i>United Kingdom/Bosnia-Herzegovina BIT, Arts. 8, 9</i>	124
Notes	123
B. Jurisdictional Requirements for International Arbitration Agreements Under International Arbitration Conventions and National Arbitration Legislation	132
1. Definition of “Arbitration Agreement”	134
<i>United Nations Charter, Art. 33(1)</i>	134
<i>Jivraj v. Hashwani</i>	134
<i>Walkinshaw v. Diniz</i>	143
<i>Elberon Bathing Co. v. Ambassador Insurance Co.</i>	148
Notes	149
2. Jurisdictional Requirements of International and National Arbitration Regimes	158
a. “Commercial” Relationship Requirement	158
<i>U.S. Commercial Relationship Reservation to New York Convention</i>	158
<i>Bautista v. Star Cruises, Norwegian Cruise Line, Ltd</i>	159
<i>RM Investment & Trading Co. Pvt Ltd v. Boeing Co.</i>	163
<i>Judgment of 10 November 1993</i>	165
<i>Agreement between the United States of America, the United Mexican States, and Canada, Art. 31.22</i>	166
Notes	166
b. “Existing or Future Disputes” and “Defined Legal Relationship”	170
<i>Roose Industries Ltd v. Ready Mixed Concrete Ltd</i>	170
<i>Halki Shipping Corp. v. Sopex Oils Ltd</i>	172
Notes	176
c. “Foreign” or “International” Arbitration Agreements	181
<i>Bergesen v. Joseph Muller Corp.</i>	182
<i>Brier v. Northstar Marine Inc.</i>	185
Notes	188
d. Reciprocity Requirements Under International Conventions and National Arbitration Legislation	193
<i>National Iranian Oil Co. v. Ashland Oil, Inc.</i>	194
Notes	195

Contents	xvii
Chapter 3 International Arbitration Agreements: Basic Issues	201
A. Presumptive Validity of International Arbitration Agreements	201
<i>Judgment of 10 July 1843, Cie l'Alliance v. Prunier</i>	202
<i>Decision 24 of the Andean Commission Concerning Treatment of Foreign Capital, Art. 51</i>	204
<i>Saudi Arabian Arbitration Law, 2012, Art. 10(2)</i>	204
<i>Arkansas Code, 2010, §16-108-201</i>	204
<i>Brazilian Law No. 9,307 of 23 September 1996, Arts. 3, 7</i>	205
<i>Ledee v. Ceramiche Ragno</i>	205
<i>Judgment of 20 December 1993, Municipalité de Khoms el Mergeb v. Société Dalico</i>	207
<i>Judgment of 7 September 2005, Hotels.com v. Zuz Tourism Ltd</i>	208
Notes	211
B. Separability of International Arbitration Agreements	216
<i>Kulukundis Shipping Co., SA v. Amtorg Trading Corp.</i>	217
<i>Judgment of 7 October 1933, Tobler v. Justizkommission des Kantons Schwyz</i>	220
<i>Judgment of 27 February 1970</i>	221
<i>All-Union Export-Import Ass'n Sojuznefteexport (Moscow) v. JOC Oil, Ltd</i>	225
<i>Buckeye Check Cashing, Inc. v. Cardegna</i>	229
<i>Fiona Trust & Holding Co. v. Privalov</i>	232
Notes	239
C. Allocation of Competence to Decide Disputes Over Interpretation and Validity of International Arbitration Agreements	247
<i>Swedish Arbitration Act, 2019, §§2, 34(1)</i>	248
<i>Swedish Arbitration Act [repealed in 2019], §§2, 34(1)</i>	248
<i>Kulukundis Shipping Co., SA v. Amtorg Trading Corp.</i>	249
<i>Final Award in ICC Case No. 5294</i>	249
<i>Judgment of 7 December 1994, V 2000 v. Project XJ 220 Ltd</i>	251
<i>Shin-Etsu Chemical Co. Ltd v. Aksh Optifibre Ltd</i>	254
<i>Buckeye Check Cashing, Inc. v. Cardegna</i>	261
<i>First Options of Chicago, Inc. v. Kaplan</i>	261
<i>BG Group plc v. Republic of Argentina</i>	265
<i>Fiona Trust & Holding Co. v. Privalov</i>	280
<i>Dallah Real Estate & Tourism Holding Co. v. Ministry of Religious Affairs, Government of Pakistan</i>	280

<i>European Convention on Human Rights, Art. 6(1)</i>	306
Notes	306
D. Law Applicable to International Arbitration Agreements	325
<i>Judgment of 30 May 1994</i>	326
<i>Jordanian Amendment to Merchandise Maritime Law, Law No. 35 of 1983</i>	328
<i>Interim Award in ICC Case No. 6149</i>	329
<i>Final Award in ICC Case No. 5294</i>	331
<i>Dallah Real Estate & Tourism Holding Co. v. Ministry of Religious Affairs, Government of Pakistan</i>	331
<i>Enka Insaat Ve Sanayi AS v. OOO Insurance Company Chubb</i>	331
<i>Judgment of 20 December 1993, Municipalité de Khoms el Mergeb v. Société Dalico</i>	338
<i>Ledee v. Ceramiche Ragno</i>	338
<i>Rhone Mediterranee Compagnia Francesa Di Assicurazioni E Riassicurazioni v. Achille Lauro</i>	338
<i>BG Group plc v. Republic of Argentina</i>	340
Notes	341
E. Effects of International Arbitration Agreements	358
1. Positive Effects of International Arbitration Agreements: Obligation to Arbitrate in Good Faith	358
<i>All-Union Export-Import Ass'n Sojuznefteexport (Moscow) v. JOC Oil, Ltd</i>	359
<i>Judgment of 30 May 1994</i>	359
Notes	359
2. Negative Effects of International Arbitration Agreements: Obligation Not to Litigate	364
<i>Judgment of 30 May 1994</i>	365
<i>Judgment of 7 September 2005, Hotels.com v. Zuz Tourism Ltd</i>	365
<i>WSG Nimbus Pte Ltd v. Board of Control for Cricket in Sri Lanka</i>	365
<i>Ibeto Petrochemical Industries Ltd v. M/T Beffen</i>	370
Notes	373
Chapter 4 Formation and Validity of International Arbitration Agreements	381
A. Formation of International Arbitration Agreements	381
1. Essential Terms of International Arbitration Agreements	382
<i>Judgment of 3 February 1990</i>	382
<i>E. Gaillard & J. Savage, Fouchard Gaillard Goldman on International Commercial Arbitration</i>	384
<i>Lucky-Goldstar International (H.K.) Ltd v. Ng Moo Kee Engineering Ltd</i>	385

<i>Lea Tai Textile Co. v. Manning Fabrics, Inc.</i>	388
<i>Judgment of 21 November 2003</i>	390
<i>Hoogovens Ijmuiden Verkoopkantoor BV v. MV Sea Cattleya</i>	393
<i>Judgment of 1 February 1979</i>	394
<i>WSG Nimbus Pte Ltd v. Board of Control for Cricket in Sri Lanka</i>	395
<i>Int'l Law Commission Model Rules on Arbitral Procedure, Art. 2</i>	395
Notes	395
2. Formation of International Arbitration Agreements	404
<i>Kulukundis Shipping Co., SA v. Amtorg Trading Corp.</i>	404
<i>Republic of Nicaragua v. Standard Fruit Co.</i>	404
<i>Judgment of 30 March 1993, Nokia-Maillefer SA v. Mazzer</i>	409
<i>Buckeye Check Cashing, Inc. v. Cardegna</i>	410
<i>First Options of Chicago v. Kaplan</i>	410
<i>BG Group plc v. Republic of Argentina</i>	410
<i>Interim Award in ICC Case No. 6149</i>	410
Notes	411
3. Formal Validity of International Arbitration Agreements	428
<i>GE Energy Power Conversion France SAS v. Outokumpu</i>	
<i>Stainless USA</i>	428
<i>Sphere Drake Insurance plc v. Marine Towing, Inc.</i>	432
<i>Kahn Lucas Lancaster, Inc. v. Lark International Ltd</i>	433
<i>Judgment of 5 November 1985</i>	437
<i>Award in VIAC Case No. SCH-4366</i>	439
Notes	440
4. Substantive Validity of International Arbitration Agreements	451
a. Unconscionability and Duress	451
<i>Netherlands Code of Civil Procedure, Art. 1028(1)</i>	452
<i>Brower v. Gateway 2000, Inc.</i>	452
<i>Bautista v. Star Cruises, Norwegian Cruise Line, Ltd</i>	456
<i>Judgment of 17 February 1989</i>	458
<i>Judgment of 26 January 1989</i>	460
<i>Gutierrez v. Academy Corp.</i>	461
Notes	463
b. Fraudulent Inducement or Fraud	472
<i>Fiona Trust & Holding Co. v. Privalov</i>	472
<i>Judgment of 30 May 1994</i>	472
<i>Republic of the Philippines v. Westinghouse Electric Corp.</i>	472
Notes	476

c. Impossibility, Frustration and Repudiation	482
<i>Awards in ICC Cases Nos. 10373 & 10439</i>	482
<i>Gatoil International v. National Iranian Oil Co.</i>	486
<i>National Iranian Oil Co. v. Ashland Oil, Inc.</i>	489
<i>Partial Decision of 2 April 1992</i>	491
<i>Astra Footwear Industry v. Harwyn International</i>	493
Notes	495
d. Illegality	498
<i>Judgment of 27 February 1970</i>	499
<i>Buckeye Check Cashing, Inc. v. Cardegna</i>	499
<i>Judgment of 7 May 1994, Fincantieri-Cantieri Navali Italiani SpA</i> <i>v. Min. of Def., Armament & Supply Directorate of Iraq</i>	499
<i>Final Award in ICC Case No. 5294</i>	504
<i>Interim Award in ICC Case No. 6149</i>	504
Notes	504
e. Consumer Disputes, Employment Contracts and Bankruptcy	511
<i>Belgian Judicial Code, Art. 1676(5)</i>	512
<i>Italian Code of Civil Procedure, Art. 806</i>	513
<i>Japanese Arbitration Law, Supplementary Provisions Art. 4</i>	513
<i>Arkansas Code, 2010, §16-108-201</i>	513
<i>Bautista v. Star Cruises, Norwegian Cruise Line, Ltd</i>	513
<i>Judgment of 28 November 2011, Hatem Tamimi v. Médecins Sans</i> <i>Frontières</i>	513
<i>EU Unfair Terms in Consumer Contracts Directive, Arts. 1-3, Annex</i>	514
<i>Québec Consumer Protection Act, §§1(e), 11</i>	515
<i>Ontario Consumer Protection Act, §§1, 6-8</i>	515
<i>Polish Bankruptcy and Recovery Law (Repealed in 2015), Arts 142, 147</i>	516
<i>Polish Bankruptcy Law, Art. 147a</i>	516
<i>In re Marcia L. Pate</i>	516
<i>In re United States Lines, Inc.</i>	519
Notes	521
f. Lack of Capacity	527
<i>Centroamericanos, SA v. Refinadora Costarricense de Petroleos, SA</i>	528
<i>Constitution of Islamic Republic of Iran, Art. 139</i>	529
<i>B.V. Bureau Wijsmuller v. U.S.A. as Owner of the Warship Julius A. Fuurer</i>	529
<i>Restatement (Second) Conflict of Laws, §198</i>	532
<i>Benteler v. State of Belgium</i>	532
Notes	536

Contents	xxi
g. Waiver of Right to Arbitrate	540
<i>Stone v. E.F. Hutton & Co.</i>	540
Notes	541
B. Nonarbitrability Doctrine	543
1. Introduction to Nonarbitrability Doctrine	543
<i>Arkansas Code, 2010, §16-108-201</i>	544
<i>Jordanian Amendment to Merchandise Maritime Law,</i> <i>Law No. 35 of 1983</i>	544
<i>Award in ICC Case No. 6149</i>	544
<i>Wilko v. Swan</i>	544
<i>Judgment of 18 July 1987</i>	546
Notes	548
2. Contemporary Status of Nonarbitrability Doctrine	552
<i>Scherk v. Alberto-Culver Co.</i>	553
<i>Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.</i>	556
<i>Eco Swiss China Time Ltd v. Benetton International NV</i>	562
<i>Judgment of 7 May 1994, Fincantieri-Cantieri Navali Italiani</i> <i>SPA v. Min of Def., Armament & Supply Directorate of Iraq</i>	564
<i>Restatement of The U.S. Law of International Commercial and</i> <i>Investor-State Arbitration (Proposed Final Draft), §§2.16, 4.15</i>	564
Notes	565
3. Contemporary Nonarbitrability, Choice-of-Law and Enforcement Issues	574
<i>Roby v. Corp. of Lloyd's</i>	575
<i>Convention on the Law Applicable to Contractual Obligations</i> <i>("Rome Convention") Arts. 3(3), 7(1)</i>	579
<i>Regulation on the Law Applicable to Contractual Obligations</i> <i>("Rome I Regulation") Art. 9</i>	579
<i>Restatement (Second) Conflict of Laws, §187</i>	580
Notes	580
C. Arbitration Agreements in Investor-State Disputes	584
<i>Decision 24 of Andean Commission Concerning Treatment of</i> <i>Foreign Capital, Art. 51</i>	586
<i>United States of America-Haiti Treaty Concerning the Encouragement</i> <i>& Reciprocal Protection of Investments, Art. 7(3)</i>	586
<i>Spain-Algeria Agreement on the Promotion & Reciprocal Protection</i> <i>of Investments, Art. 11(2)</i>	587
<i>BG Group plc v. Republic of Argentina</i>	587
Notes	587

Chapter 5	Interpretation of International Arbitration Agreements	593
A.	Scope of International Arbitration Agreements	593
1.	Rules of Construction for International Arbitration Agreements	594
	<i>Mediterranean Enterprises, Inc. v. Ssangyong Corp.</i>	594
	<i>Hi-Fert Pty Ltd v. Kiukiang Maritime Carriers Inc.</i>	597
	<i>Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.</i>	598
	<i>Roose Industries Ltd v. Ready Mixed Concrete Ltd</i>	602
	<i>Judgment of 3 February 1990</i>	602
	<i>Fiona Trust & Holding Co. v. Privalov</i>	602
	<i>Judgment of 27 February 1970</i>	602
	<i>Interim Award in ICC Case No. 6149</i>	602
	<i>Italian Code of Civil Procedure, Art. 808-quater</i>	603
	<i>BG Group plc v. Republic of Argentina</i>	603
	<i>Judgment of 30 March 1993, Nokia-Maillefer SA v. Mazzer</i>	603
	Notes	603
2.	Allocation of Competence to Interpret International Arbitration Agreements	613
	<i>First Options of Chicago v. Kaplan</i>	613
	<i>Apollo Computer, Inc. v. Berg</i>	613
	Notes	615
B.	Interpretation of Procedural and Related Issues in International Arbitration Agreements	621
	<i>Final Award in ICC Case No. 8445</i>	622
	<i>Gone to the Beach LLC v. Choicepoint Services, Inc.</i>	622
	<i>Astra Footwear Industry v. Harwyn International</i>	624
	<i>BG Group plc v. Republic of Argentina</i>	624
	Notes	624
Chapter 6	Non-Signatories and International Arbitration Agreements	633
A.	Non-Signatories to Arbitration Agreements	633
	<i>Bridas SAPIC v. Government of Turkmenistan</i>	634
	<i>Bridas SAPIC v. Government of Turkmenistan</i>	641
	<i>Interim Award in ICC Case No. 4131</i>	641
	<i>Award in ICC Case No. 8385</i>	646
	<i>Judgment of 30 May 1994</i>	650
	<i>Peterson Farms Inc. v. C&M Farming Ltd</i>	650
	<i>Kabab-Ji SAL (Lebanon) v. Kout Food Group (Kuwait)</i>	654
	<i>Kabab-Ji SAL v. Kout Food Group</i>	654

<i>Judgment of 17 February 2011, Gov't of Pakistan, Ministry of Religious Affairs v. Dallah Real Estate & Tourism Holding Co.</i>	654
<i>Dallah Real Estate & Tourism Holding Co. v. Ministry of Religious Affairs, Government of Pakistan</i>	658
<i>GE Energy Power Conversion France SAS, Corp. v. Outokumpu Stainless USA</i>	658
Notes	658
B. Allocation of Competence to Decide Non-Signatory Issues	677
<i>Oriental Commercial & Shipping Co. (U.K.) Ltd v. Rosseel, NV</i>	677
<i>Builders Federal (H.K.) Ltd v. Turner Construction</i>	679
<i>Bridas SAPIC v. Government of Turkmenistan</i>	681
<i>Peterson Farms Inc. v. C&M Farming Ltd</i>	681
<i>Dallah Real Estate & Tourism Holding Co. v. Ministry of Religious Affairs, Government of Pakistan</i>	681
<i>Judgment of 17 February 2011, Gov't of Pakistan, Ministry of Religious Affairs v. Dallah Real Estate & Tourism Holding Co.</i>	681
Notes	682
Chapter 7 Selection of Arbitral Seat in International Arbitration	687
A. Meaning and Importance of Arbitral Seat in International Arbitration	687
<i>PT Garuda Indonesia v. Birgen Air</i>	689
<i>Karaha Bodas Co., LLC v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara</i>	694
Notes	710
B. Applicable Procedural Law in International Arbitration	716
<i>Karaha Bodas Co., LLC v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara</i>	717
<i>Union of India v. McDonnell Douglas Corp.</i>	717
<i>Preliminary Award in ICC Case No. 5505</i>	721
<i>Sapphire Int'l Petroleum Ltd v. National Iranian Oil Co.</i>	724
Notes	725
C. Selection of Arbitral Seat by Parties' Agreement or Arbitral Tribunal in International Arbitration	733
<i>PT Garuda Indonesia v. Birgen Air</i>	733
<i>In the Matter of Charles R. Stevens v. Coudert Brothers</i>	734
<i>ADF Group Inc. v. United States of America</i>	734
Notes	739

D. Selection of Arbitral Seat by National Courts in International Arbitration	746
Swedish Arbitration Act, §47	747
Japanese Arbitration Law, Art. 8(1)	747
<i>Econo-Car International, Inc. v. Antilles Car Rentals, Inc.</i>	747
<i>Lea Tai Textile Co. v. Manning Fabrics, Inc.</i>	748
<i>Bauhinia Corp. v. China Nat'l Machinery & Equipment Imp. & Exp. Corp.</i>	749
<i>National Iranian Oil Co. v. Ashland Oil, Inc.</i>	751
<i>Tolaram Fibers, Inc. v. Deutsche Engineering Der Voest-Alpine Industrieanlagenbau GmbH</i>	751
Notes	753
Chapter 8 Selection, Challenge and Replacement of Arbitrators in International Arbitration	761
A. Selection of Arbitrators by Parties or Appointing Authority in International Arbitration	761
1. Parties' Autonomy in Selection of Arbitrators	762
Geneva Protocol, Art. 2	763
<i>Sumukan Ltd v. Commonwealth Secretariat</i>	763
<i>Certain Underwriters at Lloyd's London v. Argonaut Insurance Co.</i>	766
<i>Karaha Bodas Co., LLC v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara</i>	769
<i>Jivraj v. Hashwani</i>	769
<i>Americo Life, Inc. v. Myer</i>	770
<i>Judgment of 24 February 1994</i>	773
Notes	774
2. Exercise of Parties' Autonomy to Select Arbitrators	780
<i>Glossner, Sociological Aspects of International Commercial Arbitration</i>	780
<i>Jivraj v. Hashwani</i>	781
2015 Netherlands Arbitration Institute Rules, Art. 14	781
IBA Rules of Ethics for International Arbitrators, Art. 5(1)	782
IBA Guidelines on Conflicts of Interest	782
<i>XL Insurance Ltd v. Toyota Motor Sales U.S.A. Inc.</i>	782
Notes	786
B. Selection of International Arbitrators by National Courts	795
<i>Judgment of 18 January 1991</i>	796
<i>Astra Footwear Industry v. Harwyn International</i>	798
<i>Partial Decision of 2 April 1992</i>	798

Contents	xxv
<i>Gatoil International Inc. v. National Iranian Oil Co.</i>	798
<i>XL Insurance Ltd v. Toyota Motor Sales U.S.A. Inc.</i>	798
Notes	798
C. Identity Requirements for Arbitrators in International Arbitration	804
1. Restrictions on Arbitrators Identities	804
<i>Netherlands Code of Civil Procedure, Arts. 1023, 1028</i>	804
<i>Chinese Arbitration Law, Art. 13</i>	805
<i>Rules for the Implementation of the Saudi Arabian Arbitration Regulation, 1985, §3</i>	805
<i>Saudi Arabian Arbitration Law, 2012, Art. 14</i>	805
<i>Ecuadorian Organic Law of the Judiciary, 1974, Art. 89, 90</i>	805
<i>Uzbek Law on Arbitration Tribunals, Art. 14</i>	806
<i>Jivraj v. Hashwani</i>	806
<i>Judgment of 26 January 1989</i>	806
Notes	806
2. Requirements for Arbitrators' Independence and Impartiality	811
<i>Veritas Shipping Ltd v. Anglo-Canadian Cement, Ltd</i>	812
<i>Commonwealth Coatings Corp. v. Continental Casualty Co.</i>	813
<i>Sphere Drake Insurance Ltd v. All Am. Life Insurance Co.</i>	817
<i>Americo Life, Inc. v. Myer</i>	821
<i>ASM Shipping Ltd of India v. TTMI Ltd of England</i>	821
<i>Judgment of 9 February 1998</i>	825
<i>ICS Inspection & Control Services Ltd (U.K.) v. Republic of Argentina</i>	827
<i>Halliburton Co. v. Chubb Bermuda Ins. Ltd</i>	829
<i>Judgment of 19 April 2017, ASA Bioenergy Holding AG v. Adriano Ometto Agricola LTDA</i>	835
<i>Judgment of 1 October 2019</i>	837
Notes	838
D. Procedures for Challenging Arbitrators in International Arbitration	873
<i>Jivraj v. Hashwani</i>	874
<i>Certain Underwriters at Lloyd's v. Argonaut Insurance Co.</i>	874
<i>Judgment of 9 February 1998</i>	881
<i>ASM Shipping Ltd of India v. TTMI Ltd of England</i>	881
<i>AAOT Foreign Economic Ass'n (VO) Technostroyexport v. Int'l Development & Trade Services, Inc.</i>	882
Notes	883

Chapter 9	Procedural Issues in International Arbitration	895
A.	Applicable Procedural Rules in International Arbitration	895
	Belgian Judicial Code, Arts. 1699, 1700, 1708	897
	Guatemalan Code of Civil and Commercial Procedure, 1963, Arts. 287, 288	897
	<i>Sapphire Int'l Petroleum Ltd v. National Iranian Oil Co.</i>	898
	<i>Interim Award in ICC Case No. 5029</i>	898
	<i>Final Award in ICC Case No. 7626</i>	900
	<i>Card v. Stratton Oakmont, Inc.</i>	901
	<i>Corporacion Transnacional de Inversiones, SA de CV v.</i> <i>Stet International, SpA</i>	903
	Notes	904
B.	Limited Grounds for Interlocutory Judicial Review of Arbitrators' Procedural Decisions	918
	<i>Stanton v. Paine Webber Jackson & Curtis Inc.</i>	919
	<i>Mobil Oil Indonesia Inc. v. Asamera (Indonesia) Ltd</i>	920
	<i>Elektrim SA v. Vivendi Universal SA</i>	921
	Notes	928
C.	Arbitrators' Exercise of Procedural Authority in International Arbitration	933
	UNCITRAL Notes on Organizing Arbitral Proceedings	933
	Representative Procedural Order in ICC Arbitration	933
	2010 IBA Rules on the Taking of Evidence	933
	Mediterranean and Middle East Institute of Arbitration Standard Rules of Evidence, Art. 5	933
	Procedural Order in ICC Case No. 7170	934
	Procedural Order in ICC Case No. 5542	935
	<i>Final Award in ICC Case No. 7626</i>	937
	<i>Certain Underwriters at Lloyd's v. Argonaut Insurance Co.</i>	937
	<i>Parker v. United Mexican States (U.S.A. v. Mexico)</i>	937
	Notes	938
D.	Evidence-Taking and Disclosure in International Arbitration	956
	1. Authority of International Arbitral Tribunals Over Evidence-Taking and Disclosure	956
	Belgian Judicial Code, Art. 1700	957
	Guatemalan Code of Civil and Commercial Procedure, 1963, Arts. 287, 288	957
	IBA Rules on the Taking of Evidence	957

Contents	xxvii
Prague Rules on the Efficient Conduct of Proceedings	957
Final Award in ICC Case No. 7626	957
Corporacion Transnacional de Inversiones, SA de CV v. Stet International, SpA	957
Notes	957
2. Discovery Ordered by National Courts in Aid of Arbitration at Request of Tribunal or Party	966
28 United States Code §1782	967
<i>Oceanic Transp. Corp. of Monrovia v. Alcoa Steamship Co.</i>	967
<i>Commercial Solvents Corp. v. La. Liquid Fertilizer Co.</i>	968
<i>Koch Fuel International Inc. v. M/V South Star</i>	970
<i>In re Arbitration in London, England Between Norfolk S. Corp. & Ace Bermuda Ltd</i>	972
Notes	974
E. Confidentiality and Transparency in International Arbitration	981
<i>Hassneh Insurance Co. of Israel v. Mew</i>	981
<i>Esso Australia Resources Ltd v. Plowman</i>	987
<i>Biwater Gauff (Tanzania) Ltd v. United Republic of Tanzania</i>	992
Arbitration Agreement Between the Government of Sudan and the Sudan People's Liberation Movement/Army on Delimiting the Abyei Area	997
Notes	998
Chapter 10 Provisional Measures in International Arbitration	1005
A. Arbitrators' Authority to Order Provisional Measures in International Arbitration	1006
1. Effect of National Arbitration Legislation on Arbitrators' Authority to Order Provisional Measures	1006
Argentine Code of Civil and Commercial Procedure, Art. 753	1007
Italian Code of Civil Procedure, Art. 818	1007
Swiss Intercantonal Concordat, 1969, Art. 26	1007
Notes	1008
2. Effect of Institutional Arbitration Rules on Arbitrators' Authority to Order Provisional Measures	1012
<i>Charles Construction Co. v. Derderian</i>	1013
<i>Certain Underwriters at Lloyd's v. Argonaut Insurance Co.</i>	1015
Notes	1015
3. Arbitrators' Exercise of Authority to Order Provisional Relief	1020

<i>Decision of Geneva Chamber of Commerce of 25 September 1997</i>	1020
<i>Interim Award in ICC Case No. 8786</i>	1022
<i>Certain Underwriters at Lloyd's v. Argonaut Insurance Co.</i>	1025
Notes	1025
B. Judicial Enforcement of Provisional Measures Ordered by Arbitrators in International Arbitration	1034
<i>Charles Construction Co. v. Derderian</i>	1035
<i>Certain Underwriters at Lloyd's v. Argonaut Insurance Co.</i>	1035
<i>Sperry International Trade, Inc. v. Government of Israel</i>	1035
Notes	1039
C. National Courts' Authority to Order Provisional Measures in Aid of International Arbitration	1043
1. Effect of New York Convention on Authority of National Courts to Grant Provisional Measures in Aid of International Arbitration	1044
<i>Cooper v. Ateliers de la Motobecane, SA</i>	1045
New York Civil Practice Law and Rules, §7502(c)	1048
<i>Carolina Power & Light Co. v. Uranex</i>	1048
<i>Halki Shipping Corp. v. Sopex Oils Ltd</i>	1050
Notes	1050
2. Effect of National Arbitration Legislation on Authority of National Courts to Grant Provisional Measures in Aid of International Arbitration	1057
<i>Rogers, Burgun, Shahine & Deschler, Inc. v. Dongsan Construction Co.</i>	1057
<i>Borden, Inc. v. Meiji Milk Products Co.</i>	1060
Notes	1062
D. Appropriate National Court to Grant Pre-Award Provisional Measures in Aid of International Arbitration	1068
<i>Channel Tunnel Group Ltd v. Balfour Beatty Constr. Ltd</i>	1068
<i>Borden, Inc. v. Meiji Milk Products Co.</i>	1072
Notes	1073
Chapter 11 Multiparty Issues in International Arbitration	1077
A. Consolidation, Joinder and Intervention Under National Arbitration Legislation	1077
British Columbia International Commercial Arbitration Act, §§27.01	1080
Netherlands Code of Civil Procedure, Art. 1046	1081
Massachusetts General Laws Annotated, Chapter 251, §2A	1082

Contents	xxix
California Code of Civil Procedure, §1281.3	1082
Hong Kong Arbitration Ordinance, 2013, §99, Schedule 2, §2	1083
Belgian Judicial Code, Art. 1709	1084
Government of United Kingdom v. Boeing Co.	1084
Karaha Bodas Co., LLC v. Perusahaan Pertambangan <i>Minyak Dan Gas Bumi Negara</i>	1088
Notes	1089
B. Consolidation, Joinder and Intervention Under Institutional Arbitration Rules	1096
<i>Partial Award in ICC Case No. 5625</i>	<i>1096</i>
2012 Swiss International Arbitration Rules, Art. 4	1097
2018 HKIAC Rules, Arts. 27, 28	1098
Judgment of 7 January 1992, Sociétés BKMI et Siemens v. Société Dutco	1101
Notes	1102
 Chapter 12 Choice of Substantive Law in International Arbitration	 1109
A. Choice of Law Governing Merits of Parties' Dispute in Absence of Agreement on Applicable Law	1111
Japanese Arbitration Law, Art. 36	1113
Swiss Rules of International Arbitration, Art. 33(1)	1113
Singapore International Arbitration Centre Rules, Art. 31	1113
<i>Final Award in ICC Case No. 5460</i>	<i>1114</i>
<i>Award in ICC Case No. 4237</i>	<i>1114</i>
<i>Award in ICC Case No. 2930</i>	<i>1116</i>
<i>Award in ICC Case No. 4491</i>	<i>1116</i>
<i>Preliminary Award in ICC Case No. 4132</i>	<i>1117</i>
<i>Final Award in ICC Case No. 18203</i>	<i>1118</i>
Notes	1121
B. Choice of Law Governing Merits of Parties' Dispute Pursuant to Choice-of-Law Agreement	1138
1. Presumptive Validity of Parties' Choice of Law in International Arbitration	1139
Regulation on the Law Applicable to Contractual Obligations ("Rome I Regulation"), Arts. 3, 9	1139
Restatement (Second) Conflict of Laws, §187	1140
Second Interim Award in ICC Case No. 4145	1141
Final Award in ICC Case No. 18203	1141
Ruler of Qatar v. International Marine Oil Co. Ltd	1141

<i>Cvoro v. Carnival Corp</i>	1143
Notes	1147
2. Public Policy Limitations on Parties' Choice of Law in International Arbitration	1153
<i>Final Award in ICC Case No. 6379</i>	1154
<i>Final Award in ICC Case No. 5622</i>	1155
<i>Cvoro v. Carnival Corp</i>	1160
<i>Final Award in ICC Case No. 5946</i>	1160
Notes	1161
3. Interpretation and Content of Choice-of-Law Agreements	1168
Regulation on the Law Applicable to Contractual Obligations ("Rome I Regulation"), Arts. 3, 9	1168
Restatement (Second) Conflict of Laws, §187	1168
Preliminary Award in ICC Case No. 5505	1168
<i>Award in ICC Case No. 6618</i>	1169
<i>Compagnie d'Armement Maritime SA v. Compagnie Tunisienne de Navigation SA</i>	1169
<i>State of Kuwait v. American Independent Oil Co.</i>	1174
Notes	1176
Chapter 13 Legal Representation and Professional Responsibility in International Arbitration	1189
A. Right to Select Counsel in International Arbitration	1189
Michigan Compiled Laws, §600.916(1)	1190
<i>Williamson v. John D. Quinn Construction Co.</i>	1190
<i>Lawler, Matusky & Skeller v. Attorney General of Barbados</i>	1191
<i>Judgment of 23 May 1995</i>	1192
Singapore Legal Profession Act, §§32(1), 33(1)	1193
<i>Builders Federal (H.K.) Ltd v. Turner (East Asia) Pte Ltd</i>	1193
Singapore Legal Profession (Amendment) Bill (2004), §35	1195
Second Reading Speech on Singapore Legal Profession (Amendment) Bill 2004	1196
2018 GAFTA Arbitration Rules, Art. 17(2)	1196
ICS Inspection & Control Servs. Ltd (U.K.) v. Republic of Argentina	1197
Notes	1197
B. Standards and Supervision of Professional Conduct in International Arbitration	1204
<i>District of Columbia Bar Opinion (1979)</i>	1205
van Houtte, Counsel-Witness Relations and Professional Misconduct in Civil Law Systems	1209

Contents	xxxi
<i>Partial Award in ICC Case No. 8879</i>	1210
<i>Bidermann Industries Licensing, Inc. v. Avmar NV</i>	1211
2018 ABA Model Rules of Professional Conduct, Rules 5.5(c), 8.5(b)	1213
IBA Guidelines on Party Representation	1213
<i>Hrvatska Elektroprivreda, DD v. Republic of Slovenia</i>	1213
ICSID Convention, Regulations and Rules	1216
Notes	1216
Chapter 14 Legal Framework for International Arbitral Awards	1229
A. Definition of “Arbitral Award”	1229
Belgian Judicial Code, Art. 1713	1231
Notes	1232
B. Jurisdictional Requirements of International Arbitral Awards Under International and National Arbitration Regimes	1242
1. “Commercial” and “Defined Legal” Relationships	1246
2. “Foreign,” “Nondomestic” and “International” Awards	1246
<i>Bharat Aluminium Co. (“BALCO”) v. Kaiser Aluminium Tech. Serv., Inc.</i>	1247
<i>Brier v. Northstar Marine Inc.</i>	1255
<i>Bergesen v. Joseph Muller Corp.</i>	1255
<i>Yusuf Ahmed Alghanim & Sons, WLL v. Toys “R” Us, Inc.</i>	1256
Notes	1259
3. Reciprocity Requirements Under International Conventions and National Arbitration Legislation	1270
<i>Fertilizer Corp. of India v. IDI Management, Inc.</i>	1271
<i>National Iranian Oil Co. v. Ashland Oil, Inc.</i>	1272
Notes	1272
C. Limits on Forums for Annulment of International Arbitral Awards	1276
<i>PT Garuda Indonesia v. Birgen Air</i>	1277
<i>Karaha Bodas Co., LLC v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara</i>	1277
<i>Union of India v. McDonnell Douglas Corp.</i>	1277
<i>International Standard Electric Corp. v. Bidas SAPIC</i>	1278
<i>National Thermal Power Corp. v. Singer Co.</i>	1280
<i>Bharat Aluminium Co. (“BALCO”) v. Kaiser Aluminium Technical Service, Inc.</i>	1284
Notes	1284

Chapter 15	Annulment and Revision of International Arbitral Awards	1293
A.	Presumptive Finality and Preclusive Effects of International Arbitral Awards	1293
	German ZPO, §1055	1294
	Japanese Arbitration Law, Art. 45(1)	1295
	Certain Underwriters at Lloyd's v. Argonaut Insurance Co.	1295
	Fertilizer Corp. of India v. IDI Management, Inc.	1295
	Notes	1296
B.	Correction, Interpretation and Supplementation of International Arbitral Awards	1307
	<i>La Vale Plaza, Inc. v. R.S. Noonan, Inc.</i>	1308
	Japanese Arbitration Law, Art. 40(3)	1311
	Judgment of 12 January 2005	1312
	Notes	1314
C.	Grounds for Annulment of International Arbitral Awards	1317
	Belgian Judicial Code (pre-1999 amendments), Art. 1717(4)	1318
	Belgian Judicial Code (pre-2013 amendments), Art. 1717(4)	1319
	Belgian Judicial Code (as amended in 2013), Art. 1718	1319
	Chinese Arbitration Law, Art. 58	1319
	Argentine Code of Civil and Commercial Procedure, Art. 758	1319
	<i>First Options of Chicago, Inc. v. Kaplan</i>	1320
	<i>BG Group plc v. Republic of Argentina</i>	1320
	<i>Judgment of 17 February 2011, Gov't of Pakistan, Ministry of Religious Affairs v. Dallah Real Estate & Tourism Holding Co.</i>	1320
	<i>Laminoirs-Trefileries-Cableries de Lens, SA v. Southwire Co.</i>	1320
	<i>Judgment of 21 November 2003</i>	1322
	<i>Card v. Stratton Oakmont, Inc.</i>	1322
	<i>I/S Stavborg v. National Metal Converters, Inc.</i>	1322
	<i>Judgment of 30 December 1994</i>	1327
	<i>Northcorp Corp. v. Triad International Marketing SA</i>	1330
	<i>Desputeaux v. Editions Chouette</i>	1332
	<i>Hall Street Associates, LLC v. Mattel, Inc.</i>	1335
	Notes	1340
D.	Consequences of Annulment of International Arbitral Awards	1363
	<i>Chromalloy Aeroservices Inc. v. Arab Republic of Egypt</i>	1364
	<i>Termorio SA v. Electranta SP</i>	1367
	Notes	1373

Contents	xxxiii
Chapter 16 Recognition and Enforcement of International Arbitral Awards	1381
A. Presumptive Obligation to Recognize International Arbitral Awards	1381
1. Presumptive Obligations to Recognize International Commercial Arbitral Awards	1382
2. Presumptive Obligation to Recognize International Arbitral Awards Under National Arbitration Legislation	1383
3. Proof of Foreign Awards	1383
a. Proof of Award Under New York and Inter-American Conventions	1383
b. Proof of Award Under National Arbitration Legislation	1384
4. Selected Materials on Presumptive Obligation to Recognize International Arbitral Awards	1384
<i>Parsons & Whittemore Overseas Co. v. Société Générale de l'Industrie du Papier</i>	1384
<i>Dallah Real Estate & Tourism Holding Co. v. Ministry of Religious Affairs, Government of Pakistan</i>	1386
<i>Judgment of 20 August 1984, Navigation Maritime Bulgare v. P.T. Nizwar</i>	1386
<i>GE Energy Power Conversion France SAS, CORP. v. Outokumpu Stainless USA</i>	1386
Notes	1387
B. Grounds for Refusal to Recognize International Arbitral Awards	1393
1. No Valid Arbitration Agreement or Excess of Authority	1394
<i>First Options of Chicago, Inc. v. Kaplan</i>	1394
<i>China Minmetals Materials Imp. & Exp. Co. v. Chi Mei Corp.</i>	1395
<i>Dallah Real Estate & Tourism Holding Co. v. Ministry of Religious Affairs, Government of Pakistan</i>	1404
<i>Kabab-Ji SAL (Lebanon) v. Kout Food Group (Kuwait)</i>	1404
<i>Judgment of 19 July 2000</i>	1404
<i>Parsons & Whittemore Overseas Co. v. Société Générale de l'Industrie du Papier</i>	1406
Notes	1406
2. Denial of Opportunity to Present Party's Case and Irregular Procedural Conduct of Arbitration	1414
a. Denial of Opportunity to Present Party's Case	1415
b. Irregular Procedural Conduct of Arbitration	1415
<i>Parsons & Whittemore Overseas Co. v. Société Générale de l'Industrie du Papier</i>	1416
<i>Judgment of 3 April 1987</i>	1416

<i>Laminoirs-Trefileries-Cableries de Lens, SA v. Southwire Co.</i>	1417
<i>Judgment of 23 April 2004</i>	1417
<i>Judgment of 21 May 1976</i>	1418
<i>Encyclopaedia Universalis SA v. Encyclopaedia Britannica, Inc.</i>	1419
<i>ST Group Co Ltd v. Sanum Investments Limited</i>	1424
<i>Food Services of America Inc. v. Pan Pacific Specialties Ltd</i>	1427
<i>Karaha Bodas Co., LLC v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara</i>	1430
<i>Judgment of 24 February 1994</i>	1431
<i>AAOT Foreign Economic Ass'n (VO) Technostroyexport v. Int'l Development & Trade Services, Inc.</i>	1431
<i>Gold Reserve Inc. v. Bolivarian Republic of Venezuela</i>	1433
Notes	1436
3. Lack of Independence, Bias, Misconduct of Arbitrators and Fraud	1449
<i>Judgment of 21 May 1976</i>	1450
<i>Judgment of 24 February 1994</i>	1450
<i>Commonwealth Coatings Corp. v. Continental Casualty Co.</i>	1450
<i>Fertilizer Corp. of India v. IDI Management, Inc.</i>	1450
<i>Severe Sentences for a Bogus "Arbitration"</i>	1453
<i>Karaha Bodas Co., LLC v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara</i>	1453
<i>AAOT Foreign Economic Ass'n (VO) Technostroyexport v. Int'l Development & Trade Services, Inc.</i>	1453
<i>ASA Bioenergy Holding AG v. Adriauno Ometto Agricola Ltda.</i>	1454
Notes	1454
4. Non-Recognition Based on Award Not Being "Binding"	1459
5. Awards Annulled in Arbitral Seat	1459
6. Awards Contrary to Public Policy	1459
<i>Judgment of 14 February 1995</i>	1460
<i>Parsons & Whittemore Overseas Co. v. Société Générale de l'Industrie du Papier</i>	1461
<i>Karaha Bodas Co., LLC v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara</i>	1462
<i>Laminoirs-Trefileries-Cableries de Lens, SA v. Southwire Co.</i>	1464
Notes	1464

Contents	xxxv
7. Disputes Not “Capable of Settlement” by Arbitration	1471
<i>Eco Swiss China Time Ltd v. Benetton International NV</i>	1471
<i>Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.</i>	1472
<i>Baxter International, Inc. v. Abbott Laboratories</i>	1472
Notes	1475
Table of Abbreviations	1479
Table of Cases	1481
Table of Conventions and Statutes	000
Table of Rules, Codes and Guidelines	000
Index	000