Governing Law Of Arbitration Clauses Linklaters

This book gives a comprehensive overview of all relevant aspects of the issue of applicable substantive law in the context of investor/State arbitration. It is a comparative survey of both the International Center for Settlement of Investment Disputes (ICSID) and non-ICSID arbitral practice. The applicable substantive law represents an important issue in investment disputes as it determines the rules of law that should be applied to the merits of the dispute. This study demonstrates the need for a discussion on the applicable law before examining the merits of the case, as it appears to be non-existent in most arbitral awards. The author gives an extensive survey of choice of law clauses as found in direct agreements between parties and in multilateral or bilateral investment treaties. Furthermore, the author analyzes the following issues: stabilization clauses in investment agreements, the application of the residual rule (if parties failed to agree on the applicable law), the special position of the Iran-US Claims Tribunal and various annulment decisions.

With an overburdened and cumbersome system of court litigation, arbitration is becoming an increasingly attractive means of settling disputes. Government enforcement of arbitration agreements and awards is, however, rife with tensions. Among them are tensions between freedom of contract and the need to protect the weak or ill-informed, between the protections of judicial process and the efficiency and responsiveness of more informal justice, between the federal government and the states. Macneil examines the history of the American arbitration law that deals with these and other tensions. He analyzes the personalities and forces that animated the passing of the United States Arbitration Act of 1925, and its later revolutionizing by the Supreme Court. Macneil also discusses how distorted perceptions of arbitration history in turn distort current law.

Written in a deliberate and concise manner, devoid of United States colloquialisms, Drafting Contracts in Legal English: Cross-border Agreements Governed by U.S. Law is designed for classroom use as well as self-study. Teaching a strategic approach and sequential steps to drafting contracts, the text includes examples and exercises based on cross-border agreements such as distribution agreements, licensing, franchises and equipment leases. Special drafting issues in cross-border agreements are also considered: choice of language clauses, choice of forum clauses, indemnification provisions, force majeure clauses, counterpart clauses, international alternative dispute resolution clauses, and the choice to opt in or out of the CISG. By providing appropriate explanations of United States law, the text increases student comprehension as suggested drafting approaches are placed in legal context. This unique guide discusses the purpose of and provides drafting tips for contract parts, contract organization and formatting, basic contract provisions, letters of intent, and the craft of reviewing and revising contracts. End-of-chapter exercises test overall comprehension and apply drafting concepts presented in the chapter. To increase the non-native speakers lexical range, vocabulary is derived from a statistical analysis of thousands of authentic contracts. To help with contract sentence structures that are challenging for non-native speakers, syntax structures are based on comparison to databases with authentic contracts. A glossary of contract terms is based on frequency counts from thousands of authentic contracts and usage in text, contextualized and cross-referenced with most common collocations.

International Arbitration and Forum Selection Agreements: Drafting and Enforcing is a concise, practical primer on the fundamentals of drafting and enforcing international arbitration agreements and other dispute resolution clauses. Drawing on a wealth of practical experience and academic analysis by one of the world's leading authorities on international arbitration and litigation, this extensively revised and expanded sixth edition provides model arbitration and forum selection clauses for international contracts and explains the advantages and disadvantages of different approaches to reducing the risks inherent in cross-border transactions. The book is an essential resource for any international practitioner or corporate counsel engaged in international matters. Key Features include: Discussion of practical reasons for international arbitration and forum selection clauses Uncomplicated and practical guidance on drafting international arbitration and forum selection clauses Do's and Don't's for drafting Model international arbitration and forum selection clauses that permit efficient and effective dispute resolution Nearly 100 different model provisions Ad hoc versus institutional arbitration clauses Overview of leading arbitral institutions (including ICC, SIAC, ICDR/AAA, LCIA, HKIAC, PCA, ICSID, WIPO, VIAC, DIS, NAI and CRCICA) Overview of advantages and disadvantages of leading arbitral seats Forum selection clauses for national and international courts Multi-tier dispute resolution provisions Optional provisions for international arbitration and forum selection clauses (including arbitrator selection, arbitral procedure, costs of arbitration, provisional measures, waiver of annulment and currency of award) Discussion of pathological arbitration clauses and commonly-encountered defects And covers: Updated extensively to address developments through January 2021 New materials covering international courts and choice-of-law provisions Key reference materials in easy-to-use appendices About the author: Gary B. Born is one of the world's leading authorities on international arbitration and litigation. He has practiced extensively in both fields in Europe, the United States, and Asia. He is the author of International Commercial Arbitration (Kluwer Law International 3rd ed. 2021), International Arbitration: Law and Practice (Kluwer Law International 2nd ed. 2016), International Commercial Arbitration: Cases and Materials (Aspen 2nd ed. 2015) and International Civil Litigation in United States Courts (Aspen 6th ed. 2018).

Collected courses of the Hague Academy of International Law
International Commercial Arbitration in New York
International Commercial Arbitration: Commentary and Materials
International Commercial Contracts
Czech (& Central European) Yearbook of Arbitration - Borders of Procedural and Substantive Law in Arbitral Proceedings - 2013

Internationale Schiedsverfahren und CISG bilden eine neutrale Plattform für internationale Handelsstreitigkeiten. Allerdings ist unklar, ob Schiedsrichter das CISG überhaupt anwenden müssen. Diese Arbeit untersucht zunächst die Rechtsnatur der Anwendungsnormen des CISG, mit dem Ergebnis, dass es sich um Internationales Privatrecht handelt. Dies führt zu der grundsätzlichen Frage nach der Bindung von Schiedsrichtern an IPR, in deren Prüfung völker- und europarechtliche sowie rechtspraktische Aspekte einbezogen werden. Eine Bindung wird abgelehnt. Schließlich wird ergänzend ein Blick auf die Bindungswirkung von materiellem Recht in Schiedsverfahren geworfen.

Today, a California resident can incorporate her shipping business in Delaware, register her ships in Panama, hire her employees from Hong Kong, place her earnings in an asset-protection trust formed in the Cayman Islands, and enter into a same-sex marriage in Massachusetts or Canada--all the while enjoying the California sunshine and potentially avoiding many facets of the state's laws. In this book, Erin O'Hara and Larry E. Ribstein explore a new perspective on law, viewing it as a product for which people and firms can shop, regardless of geographic borders. The authors consider the structure and operation of the market this creates, the economic, legal, and political forces influencing it, and the arguments for and against a robust market for law. Through jurisdictional competition, law markets promise to improve our laws and, by establishing certainty, streamline the operation of the legal system. But the law market also limits governments' ability to enforce regulations and protect citizens from harmful activities. Given this tradeoff, O'Hara and Ribstein argue that simple contractual choice-of-law rules can help maximize the benefits of the law market while tempering its social costs. They extend their insights to a wide variety of legal problems, including corporate governance, securities, franchise, trust, property, marriage, living will, surrogacy, and general contract regulations. The Law Market is a wide-ranging and novel analysis for all lawyers, policymakers, legislators, and businesses who need to understand the changing role of law in an increasingly mobile world.

Egypt, and in particular the Cairo Regional Centre for International Commercial Arbitration (CRCICA), has clearly cemented its status as a preferred seat for arbitration cases in both the Middle East–North Africa (MENA) region and the African continent. To assist parties with a need or desire to arbitrate disputes arising in these regions – whether commercial or investment – this incomparable book, the first in-depth treatment in any language of arbitration practice under Egyptian law, provides a comprehensive overview of the arbitration process and all matters pertaining to it in Egypt, starting with the arbitration agreement and ending with the recognition and enforcement of the arbitral award. Citing more than 2,500 cases – both awards and arbitral-related court judgments – the book's various chapters examine in detail how Egypt's arbitration law, based on the UNCITRAL model law, encompasses such internationally accepted arbitral provisions and aspects as the following: application of the New York Convention; concept of arbitrability; choice of applicable law; formation of the arbitral tribunal; selection, rights, duties, liability, and challenge of arbitrators; arbitral procedures; evidence and experts and burden of proof; form and content of arbitral awards; annulment and enforcement procedures; interaction between Sharia law and arbitration; role of Egypt's Technical Office for Arbitration (TOA); and judicial fees. Special issues such as third-party funding and public policy as well as particular areas of dispute such as construction, sports, real estate, labor and employment, tax, competition, intellectual property, and technology transfer are all covered. The author offers practical guidelines tailored to arbitration in these specific areas of law. An added feature is the many figures and other visuals that accompany the text. For whoever is planning to or is currently practicing arbitration in the Middle East, this matchless book gives arbitrators, in-house counsel and arbitration practitioners everything that is needed to answer any question likely to arise. This book should be on the shelf of every practitioner and academic wishing to comprehend arbitration in Egypt as construed by the Egyptian Courts.

Also available as an e-book Competence-competence and corruption have, for different reasons, been mainstays of international dispute resolution thought and practice for the longest time. In the last few years, their intersection has become increasingly important and problematic. These lectures seek to define the problem and to provide acceptable solutions where possible. They attempt to derive support from both a stringent dogmatic approach and pragmatic attention to real-life expectations and conduct. More so than in other areas of private international law, the intersection between the powers of the arbitrator and the illegality of the subject matter or the parties' conduct poses a particular challenge. That challenge is to postulate proper solutions under the law, including principles of transnational or international law, to conduct which can take on a multiplicity of appearances owing to conflicting cultural understandings of what is and is not legal in commercial life. The statement that bribery and corruption offend transnational or international public policy does not relieve the arbitrator from the burden of scrutinizing that statement doctrinally and exploring its consequences in a period of ever-increasing globalization of economic activity and investment.

International & Comparative Perspectives
International Commercial Arbitration in United States Courts
Arbitration in Egypt
Choice of Law and Language
Towards a Science of International Arbitration

V.3: " ... provides a detailed discussion of the issues arising from international arbitration awards. It includes chapters covering the form and contents of awards; the correction, interpretation and supplementation of awards; the annulment and confirmation of awards; the recognition and enforcement of arbitral awards; and issues of preclusion, lis pendens and staredecisis."--Descripción del editor.

This book provides an unprecedented analysis and appraisal of party autonomy in private international law - the power of private parties to enter into agreements as to the forum in which their disputes will be resolved or the law which governs their legal relationships. It includes a detailed exploration of the historical origins of party autonomy as well as its various theoretical justifications, and an in-depth comparative study of the rules governing party autonomy in the European Union, the United States, common law systems, and in international codifications. It examines both choice of forum and choice of law, including arbitration agreements and choice of non-state law, and both contractual and non-contractual legal relations. This analysis demonstrates that while an apparent consensus around the core principle of party autonomy has emerged, its coherence as a doctrine is open to question as there remains significant variation in practice across its various facets and between legal systems.

With this newly updated edition of the Freshfields Guide to Arbitration Clauses in International Contracts - still in the concise, attractive format that made the original so popular - lawyers and business people will confidently negotiate contracts that ensure a speedy, clear-cut resolution of any dispute likely to arise. Taking into account the many significant developments in the law and practice of international arbitration that have occurred over the years since the previous editions, it offers: ; clear, uncomplicated contract-drafting advice, derived from the authors' wide-ranging practical experience; model clauses that ensure the effectiveness of dispute resolution provisions - and avoid pitfalls, and important reference materials.

International Commercial Arbitration in New York focuses on the distinctive aspects of international arbitration in New York. Serving as an essential strategic guide, this book allows practitioners to represent clients more effectively in cases where New York is implicated as either the place of arbitration or evidence or assets are located in New York. Each chapter elucidates a vital topic, including the existing New York legal landscape, drafting considerations for clauses designating New York as the place of arbitration, and material and advice on selecting arbitrators. The book also covers a series of topics at the intersection of arbitral process and the New York courts, including jurisdiction, enforcing arbitration agreements, and obtaining preliminary relief and discovery. Class action arbitration, challenging and enforcing arbitral awards, and biographical materials on New York-based international arbitrators is also included, making this a comprehensive, valuable resource for practitioners.

Arbitration Clauses for International Contracts - 2nd Edition
International Commercial Arbitration
The Law Applicable to the Arbitration Agreement and the Arbitrability of a Dispute
The Arbitrator's Discretion in Conflict of Laws Matters
Applicable Sources and Enforceability

The distinguished international lawyer Michael Pryles, who launched a meteoric career as an arbitrator after many years of teaching and writing on conflicts of law and other topics, has made a mark on arbitral law and practice that is recognized worldwide. In this book, over forty prominent arbitrators and arbitration scholars offer insightful essays on the thorny matters of jurisdiction, admissibility and choice of law in arbitration – topics which have long interested Professor Pryles and are of wide interest. Among the specific issues and topics examined are the following: • res judicata; • investment arbitration; • free trade agreements; • party autonomy; • application of provisional measures; • issue estoppel; • evidentiary inferences; • interim measures; • emergency and default proceedings; • the intersection of financing and jurisdiction; • consolidation of cases; and • non-contractual claims. Remarkable for its roster of highly distinguished contributors, this book is the only in-depth treatment of its subject. By turns thought-provoking and practical, it is bound to appeal to and be put to use by arbitrators and other lawyers who handle international cases. It will also prove of great value to global law firms and companies doing transnational business.

With the aim of creating an autonomous regime for the interpretation and application of the contract, boilerplate clauses are often inserted into international commercial contracts without negotiations or regard for their legal effects. The assumption that a sufficiently detailed and clear language will ensure that the legal effects of the contract will only be based on the contract, as opposed to the applicable law, was originally encouraged by English courts, and today most international contracts have these clauses, irrespective of the governing law. This collection of essays demonstrates that this assumption is not fully applicable under systems of civil law, because these systems are based on principles, such as good faith and loyalty, which contradict this approach.

Most books on international commercial arbitration approach the subject through legal theory supported by anecdotal evidence. This remarkable book is distinguished by its focus on the application of quantitative empirical research to the study of international arbitration. It collects, together with commentary, the existing empirical literature on the subject, and also presents several studies published here for the first time. Beginning with a basic overview of the methods of empirical research (surveys, observational studies, experimental studies), the book goes on to reprint the existing empirical studies under six headings: why parties agree to arbitrate; arbitration clauses; arbitral procedures; arbitrator selection; rules of decision and applicable law; and, arbitration awards. Written in an easily accessible, non-technical manner, Towards a Science of International Arbitration provides the starting point for future empirical research on international arbitration by collecting the existing empirical literature in one place and by suggesting possible topics for research. It will be of inestimable value to lawyers and others involved in international dispute resolution, whether as arbitrators, parties, party representatives, or in-house counsel, as well as to academics interested in methods of resolving disputes in international commerce.

Overriding Mandatory Rules in International Commercial Arbitration discusses the applicability of mandatory rules of law in international commercial arbitration and addresses the concerns of the arbitrators and judges at various stages of arbitration and the enforcement of the award.

Law and Practice in China
Collected Empirical Research
Applicable Law in Investor-State Arbitration
Boilerplate Clauses, International Commercial Contracts and the Applicable Law
International Commercial Agreements, 1995

Essay from the year 2018 in the subject Law - Miscellaneous, grade: A, Lyon Catholic University, course: International Contract Law, language: English, abstract: The paper discusses the Definition and Purpose of the Arbitration Clause, Two Types of Contracts where the Arbitration Clause is typically found, Legal Basis & Regime, Differences in the use and interpretation of the Contract Clause between common law and civil law jurisdictions. You may use your home jurisdictions as illustrative, and Proper drafting of the Contract Clause and advice to avoid the pitfalls of relying on a "boilerplate" clause.

Provides an unprecedented historical, theoretical and comparative analysis and appraisal of party autonomy in private international law. These issues are of great practical importance to any lawyer dealing with cross-border legal relationships, and great theoretical importance to a wide range of scholars interested in law and globalisation.

The oil and gas industry's wide international exposure and constantly changing landscape leave it particularly vulnerable to disputes. As this practical book demonstrates, the risks associated with disputes can be mitigated by parties utilising governing law and dispute resolution clauses in contractual agreements within the sector. Examining a global range of jurisdictions, the book offers clear guidance on the most appropriate choice of law and choice of dispute resolution forum for oil and gas contracts, analysing the key issues and defining the legal contours involved. Key Features: Insightful contributions from over 40 leading practitioners and expert legal scholars Examination of domestic and international case law, with analysis of the local laws of 24 jurisdictions globally Consideration of the future of disputes in the oil and gas industry by tracking the evolution and latest trends of the global energy market Examination of the dispute resolution mechanisms used to mitigate disputes, with a focus on international arbitration as a forum for dispute resolution Discussions of a range of operations in the oil and gas industry, including upstream, midstream and downstream projects, and the various contracts that exist within these Featuring a comparative and practice-oriented perspective, this highly informative book will prove an essential resource for practitioners advising parties concerning contractual agreements in the oil and gas sector, as well as a valuable reference point for scholars of energy law and arbitration.

International commercial arbitration relies on the possibility of enforcing arbitral decisions against recalcitrant parties. In China, a crucial world market, where the annual arbitration caseload has reached 200,000 and where arbitration is evolving, authorities attach great importance to judicial review of arbitration. This is the first book to address issues concerning the recognition and enforcement of arbitral awards under applicable law in "Greater China"—the People's Republic (PRC), Taiwan, Hong Kong and Macao—describing and analyzing the effect of judicial review on a wealth of recent issues and cases. After providing an overview of the legal framework for Chinese arbitration and judicial review of arbitration, the book introduces and discusses the key aspects of the enforcement application process, such issues and topics as the following are covered in detail: • significant judicial interpretations of the Supreme People's Court as recent as 2018; • examination of the validity of arbitration agreements; • setting aside and enforcement of arbitral awards by PRC arbitration institutions; • role of the New York Convention and other treaties; • assessment of contract; • examination of evidence; and • role of competition law and intellectual property law. In the discussion of each case and each type of issue, the book shows clearly what kind of arbitral awards can be recognized and enforced in China and what kind cannot. Comparative studies of foreign laws and practices are included where relevant, and an abundance of primary source material is provided in appendices. Practitioners, global law firms, companies doing transnational business, jurists and academics from all countries concerned with matters regarding international and foreign-related arbitration in China will welcome this invaluable source of detailed information.

Competence-Competence in the Face of Illegality in Contracts and Arbitration Agreements
International Arbitration Law and Practice, Third Edition
Procedure and Evidence in International Arbitration
International Contracts and National Economic Regulation:Dispute Resolution Through International Commercial Arbitration
Party Autonomy in Private International Law

International Commercial Arbitration is an authoritative 4,250 page treatise, in three volumes, providing the most comprehensive commentary and analysis, on all aspects of the international commercial arbitration process that is available. The Third Edition of International Commercial Arbitration has been comprehensively revised, expanded and updated, To include all legislative, judicial and arbitral authorities, and other materials in the field of international arbitration prior to June 2020. It also includes expanded treatment of annulment, recognition of awards, counsel ethics, arbitrator independence and impartiality and applicable law. The revised 4,250 page text contains references to more than 20,000 cases, awards and other authorities from around the world on international arbitration. The first and second editions of International Commercial Arbitration have been routinely relied on by courts and arbitral tribunals around the world ((including the highest courts of the United States, United Kingdom, Singapore, India, Hong Kong, New Zealand, Australia, the Netherlands and Canada) and international arbitral tribunals (including ICC, SIAC, LCIA, AAA, ICSID, SCC and PCA), e.g.: U.S. Supreme Court – GE Energy Power Conversion France SAS, Corp. v. Outokumpu Stainless USA, LLC, 590 U.S. - (U.S. S.Ct. 2020); BG Group plc v. Republic of Argentina, 572 U.S. 25 (U.S. S.Ct. 2014); Canadian Supreme Court – Uber v. Heller, 2020 SCC 16 (Canadian S.Ct.); Yugraneft Corp. v. Rexx Mgt Corp., [2010] 1 R.C.S. 649, 661 (Canadian S.Ct.); U.K. Supreme Court – Jivraj v. Hashwani [2011] UKSC 40, ¶78 (U.K. S.Ct.); Dallah Real Estate & Tourism Holding Co. v. Ministry of Religious Affairs, Gov't of Pakistan [2010] UKSC 46 (U.K. S.Ct.); Swiss Federal Tribunal – Judgment of 25 September 2014, DFT 5A_165/2014 (Swiss Fed. Trib.); Indian Supreme Court – Bharat Aluminium v. Kaiser Aluminium, C.A. No. 7019/2005, ¶¶138-39, 142, 148-49 (Indian S.Ct. 2012); Singapore Court of Appeal – Rakna Arakshaka Lanka Ltd v. Avant Garde Maritime Servs. Ltd, [2019] 2 SLR 131 (Singapore Ct. App.); PT Perusahaan Gas Negara (Persero) TBK v. CRW Joint Operation, [2015] SGCA 30 (Singapore Ct. App.); Larsen Oil & Gas Pte Ltd v. Petroprod Ltd, [2011] SGCA 21, ¶19 (Singapore Ct. App.); Australian Federal Court – Hancock Prospecting Pty Ltd v. Rinehurt, [2017] FCAFC 170 (Australian Fed. Ct.); Hague Court of Appeal – Judgment of 18 February 2020, Case No. 200.197.079/01 (Hague Gerechtshof); Arbitral Tribunals – Lao Holdings NV v. Lao People's Democratic Republic I, Award in ICSID Case No. ARB(AF)/12/6, 6 August 2019; Gold Reserve Inc. v. Bolivarian Republic of Venezuela, Decision regarding the Claimant's and the Respondent's Requests for Corrections, ICSID Case No. ARB(AF)/09/1, 15 December 2014; Total SA v. The Argentine Republic, Decision on Stay of Enforcement of the Award, ICSID Case No. ARB/04/01, 4 December 2014; Millicom Int'l Operations B.V. v. Republic of Senegal, Decision on Jurisdiction of the Arbitral Tribunal, ICSID Case No. ARB/08/20, 16 July 2010; Lemire v. Ukraine, Dissenting Opinion of Jürgen Voss, ICSID Case No. ARB/06/18, 1 March 2011.

Irrespective of the increasing harmonization of law at the transnational level, every arbitration raises a number of confl ict of laws problems relating to procedural questions as well as to issues concerning the merits of the case. Unlike a state court judge, the arbitrator has no "lex fori" in the proper sense providing the relevant confl ict rules to determine the applicable law. This raises the question of what confl ict of laws rules to apply and, consequently, of the extent of the freedom the arbitrator enjoys in dealing with this and related issues. The best example of the importance of confl ict of laws questions in arbitration is the Vivendi-Elektrim saga where the outcome of the various proceedings depended on the question of characterization. This very beneficial book is dealing with - the arbitration agreement, - the jurisdiction of the arbitral tribunal, - the law applicable to the merits and - the arbitration procedure.

The growth of national economic regulation and the process of globalisation increasingly expose international transactions to an array of regulations from different jurisdictions. These developments often contribute to widespread international contractual failures when parties claim the incompatibility of their contractual obligations with regulatory laws. The author challenges conventional means of dispute resolution and argues for an interdisciplinary approach whereby disciplines such as international economic law, conflict of laws, contract law and economic regulations are functionally united to resolve international and multifaceted regulatory disputes. He identifies the normative foundation of contract law as an important determinant in this process, contending that contract law is essentially neutral and underpinned by the concept of corrective justice, while economic regulations are mainly prompted by distributive justice. Applying this corrective/distributive justice dichotomy to international contracts, the author critically assesses major conflict of laws approaches such as 'proper law', 'the Rome Convention' and 'governmental interest analysis', which could disregard either public interest or private rights. The author, taking these theories into account, proposes an alternative two-dimensional interest analysis approach. He tests the viability of this approach with reference to arbitral awards and court decisions in various jurisdictions and concludes that it uniquely fits into the structure of international commercial arbitration. In adopting this approach arbitrators would take into account both corrective and distributive justice, and to the extent that corrective justice prevails, would be able to avert a total failure of the contract.

The Czech Yearbooks Project, for the moment made up of the Czech Yearbook of International Law® and the Czech (& Central European) Yearbook of Arbitration®, began with the idea to create an open platform for presenting the development of both legal theory and legal practice in Central and Eastern Europe and the approximation thereof to readers worldwide. This platform should serve as an open forum for interested scholars, writers, and prospective students, as well as practitioners, for the exchange of different approaches to problems being analyzed by authors from different jurisdictions, and therefore providing interesting insight into issues being dealt with differently in many different countries. The Czech (& Central European) Yearbook of Arbitration® , the younger twin project within the Czech Yearbooks, primarily focuses on the problematic of arbitration from both the national and international perspective. The use of arbitration as a method of dispute resolution continues to increase in importance. Throughout Central and Eastern Europe, arbitration is viewed as being progressive, due to its practical aspects, and to its meeting the needs of specialists in certain practice areas. Central and Eastern Europe, the primary, but not exclusive, focus of this project, is steeped in the Roman tradition of continental Europe, in which arbitration is based on the autonomy of the parties and on informal procedures. This classical approach is somewhat different from the principles on which the system of arbitration in common-law countries is based. Despite similarities among countries in the region, arbitration in Central and Eastern Europe represents a highly particularized and fragmented system. One shortcoming in the use of arbitration in Central and Eastern Europe is the absence of comparative standards or a baseline that would facilitate the identification of commonalities and differences in individual countries, and help resolve problems that are common throughout the region. The CYArb® project aims to address this issue and provide a forum for comparisons of arbitration practice and doctrine in countries within the region, and in relation to practices internationally. It sheds light on both practical and academic aspects within these countries, and compares these approaches to broader European and international practices. This project will also foster a broad exchange of legal research and other information on the subject. The third volume of the CYArb® focuses on the blurry area which borders the procedural and substantial law. Editors, being motivated with an endeavor to provide the readers with complex insight into the problematic, invited authors of Civil same as Common law jurisdictions to provide their insight and analysis on the problems of i.e. mandatory provisions of procedural same as substantive law, issues of application of law in arbitration, adjudication according to the ex aequo et bono principles, issues of the burden and standard of proof and others. The issues are presented on highly comparative basis provided mostly by practitioners who are simultaneously involved in academic activities. The book is divided into four sections. The backbone sections encompass the doctrinal articles of the authors same as case law analysis of the domestic courts from the region relating to the topic, covering the case law of Constitutional, General same as Arbitral courts of the countries from the Central European Region. The rest of the book covers the news in the arbitration area same as interesting arbitration events or published articles and books of the authors from the region. The new volume of the The Czech (& Central European) Yearbook of Arbitration® : Borders of Procedural and Substantive Law in Arbitral Proceedings (Civil versus Common Law Perspectives) brings useful resource for everyone who is dealing with arbitration in all of its aspects, be it an academic, practitioner, law or international relations student who seeks global compendium on the issue including an overlap to economic and politic aspects of the problematic.

Standard Clauses in International Contracts. The Arbitration Clause
Governing Law and Dispute Resolution in the Oil and Gas Industry
Overriding Mandatory Rules in International Commercial Arbitration
International Contracts
Judicial Review of Arbitration

Central to the book's purpose is the procedural challenge facing arbitrators at each and every stage of the arbitral process when fairness arguments conflict with efficiency concerns and trade-offs must be determined. Some key themes include how can a tribunal be fair, and in particular be neutral, if parties are so diverse? How can arbitration be made efficient and cost-effective without undue inroads into fairness and accuracy? How does a tribunal do what is best if the parties are choosing a suboptimal process? When can or must an arbitrator ignore procedural choices made by the parties? The author thoroughly evaluates competing arguments and adds his own practical tips, expertly synthesizing and engaging with the conference literature and differing authors' views. He identifies criteria that offer a harmonized approach to each stage of the arbitral process, with particular attention to such aspects of international arbitration as: appropriate trade-offs between flexibility and certainty; the rights, duties and powers of arbitrators; appointment and challenge of arbitrators; responses to 'guerilla' tactics; drafting of arbitration agreements, including specialty clauses; drafting of required commencement notices and response documents; set-off; fast track arbitration and other efficiency options; strategic use of preliminary conferences and timetabling; online arbitration; multi-party, multi-contract, class arbitration; amicus and third party funders; pre-arbitral referees and interim relief; witness evidence, both factual and expert; documentary evidence, production obligations, and challenges to production; identifying applicable law; and remedies and costs.

Generally speaking, each individual jurisdiction has adopted its own approach concerning the rules on the determination of the governing law applicable in proceedings in international matters. In the international practice, arbitral panels usually distinguish four relatively autonomous areas associated with the determination of the applicable law, including the possibility of choosing the lex arbitri, as the areas that come into consideration in connection with arbitration. They include: (1) determination (choice) of the substantive law applicable to the merits of the dispute, (2) determination (choice) of the procedural law and procedural rules (standards) applicable to the procedure, (3) determination (choice) of the conflict-of-laws rules regulating the determination of the applicable law, (both the substantive law applicable to the merits of the dispute and the procedural law applicable to the procedural issues), and (4) determination (choice) of the law applicable to the assessment of validity and effects of the arbitration agreement. The determination of the law applicable to the arbitration agreement is by no means an end in itself. If we accept the premise that the validity of the arbitration agreement is principally governed by substantive rules, the scope of the law applicable to the arbitration agreement is relatively broad. It also encompasses, for instance, the authorization of an agent to enter into the arbitration agreement, etc. The specific features consisted in various approaches to the law applicable to the arbitration agreement, as well as to the proceedings and to the law applicable to the assessment of the merits of the dispute in their mutual interaction, are especially (without limitation) the result of the fact that the principle stipulating that the applicable procedural law is the lex fori usually does not apply in arbitration. Similarly, it is possible to enumerate a number of qualifications, both conceptual and specifically relating to arbitration.

International commercial arbitration raises issues other than the choice of the law applicable to the principal contract. Autonomy may have a wider meaning, extending beyond the choice of applicable law to the choice of arbitration itself, and of the place or places where it is to be conducted. Nor is it altogether clear what the forum is, if any. This paper raises the fundamental question of what gives the arbitrator his or her competence--the will of the parties or the law of the seat of arbitration which the parties may, or may not, have chosen? The paper also suggests an answer to the questions of which choice of law rules, if any, should be applied by the arbitrators, to what extent arbitrators will apply mandatory rules (r è gles d'application imm é diate), as well as which law governs the procedural aspects and whether it has to be the procedural law of a national system. The new English Arbitration Act 1996 has also been taken into account.

"This book, by a leading international arbitration practitioner, offers suggested language for every option that a drafter of an international arbitration clause may need. Following a succinct assessment of the choice between arbitration and litigation and commentary on the choices among arbitration fora and formats, the author presents an accessible how-to for drafting. While other works offer theory and a smattering of drafting tips, there is no other comprehensive collection of workable language, presented accessibly with easy-to-reference appendices. This book will be a standard reference for both in-house counsel and outside practitioners. This book provides, in an accessible format, clauses that address all the significant issues that contracting parties face, and in any event should consider, when they decide to draft a dispute resolution clause for an international contract. Those who wish immediate access to suggested language may turn directly to the Appendices. Those who wish to understand the analysis that leads to the suggested language should read the text."--Publisher's website.

Arbitrability
Cross-border Agreements Governed by U.S. Law
International Arbitration and Forum Selection Agreements, Drafting and Enforcing

The Law Market

Any practising lawyer and student working with international commercial contracts faces standardised contracts and international arbitration as mechanisms for dispute settlement. Transnational rules may be applicable, but national law is still important. Based on extensive practical experience, this book analyses international contract practice and its interaction with the various applicable sources: which role is played by the contractual regulation, which by national law, which by transnational sources, what is the interaction among these factors, and how does this all apply to contracts that refer disputes to international arbitration?

The technical, economic, and social development of the last one hundred years has created a new type of long-term contract which one may call `Complex International Contract'. Typical examples include complex civil engineering and constructions contracts as well as joint venture, shareholders, project finance, franchising, cooperation and management agreements. The dispute resolution mechanism, which normally deals with such contracts, is commercial arbitration, which has been deeply affected in recent decades by attempts to improve its capabilities. Most importantly, there is the trend towards further denationalization of arbitration with respect to the applicable substantive law. In this regard, a new generation of conflict rules no longer imposes on the arbitrators a particular method to be applied for the purpose of determining the applicable rules of law. Moreover, arbitration more frequently took on the task of adapting Complex International Contracts to changed circumstances. Also, special rules have been developed for so-called multi-party arbitration and fast track arbitration facilitating efficient dispute resolution. The author describes these trends both from a practical as well as a theoretical perspective, evaluating not only the advantages, but also the risks involved with the new developments in arbitration. Relevant issues with respect to the drafting and renegotiation of such contracts are also discussed.

International Commercial Arbitration Third Edition is an authoritative treatise providing the most complete available commentary and analysis on all aspects of the international commercial arbitration process. This completely revised and expanded edition of Gary Born's authoritative work is divided into three main parts, dealing with the International Arbitration Agreement, International Arbitral Procedures and International Arbitral Awards. The Third Edition provides a systematic framework for both current analysis and future developments, as well as exhaustive citations from all leading legal systems. INTERNATIONAL ARBITRATION AGREEMENTS Legal Framework for International Arbitration Agreements International Arbitration Agreements and the Separability Presumption Choice-of-Law Governing International Arbitration Agreements Formation, Validity and Legality of International Arbitration Agreements International Arbitration Agreements and Competence-Competence Effects and Enforcement of International Arbitration Agreements Interpretation of International Arbitration Agreements INTERNATIONAL ARBITRAL PROCEDURES AND PROCEEDINGS Legal Framework for International Arbitral Proceedings Selection, Challenge and Replacement of Arbitrators in International Arbitration Rights and Duties of International Arbitrators Selection of Arbitral Seat in International Arbitration Procedures in International Arbitration Disclosure and Discovery in International Arbitration Provisional Measures in International Arbitration Consolidation, Joinder and Intervention in International Arbitration Choice of Substantive Law in International Arbitration Confidentiality in International Arbitration Legal Representation and Professional Conduct in International Arbitration INTERNATIONAL ARBITRAL AWARDS Legal Framework for International Arbitral Awards Form and Content of International Arbitral Awards Correction, Interpretation and

Supplementation of International Arbitral Awards Annulment of International Arbitral Awards Recognition and Enforcement of International Arbitral Awards Preclusion, Lis Pendens and Stare Decisis in International Arbitral Awards

It often seems today that no dispute is barred from resolution by arbitration. Even the fundamental question of whether a dispute falls under the exclusive jurisdiction of a judicial body may itself be arbitrable. Arbitrability is thus an elusive concept; yet a systematic study of it, as this book shows, yields innumerable guidelines and insights that are of substantial value to arbitral practice. Although the book takes the form of a collection of essays, it is designed as a comprehensive commentary on practical issues that emerge from the idea of arbitrability. Fifteen leading academics and practitioners from Europe and the United States each explore different facets of arbitrability always with a perspective open to international developments and comparative evaluation of standards. The presentation falls into two parts: in the first the focus is on the general features of arbitrability, its rationale and the laws applicable to it. In the second, arbitrability is specifically examined in the context of administrative, criminal, corporate, IP, financial, commercial, and criminal law This book has its origins in an International Conference on Arbitrability held at Athens in September 2005. Seven papers presented there are here reviewed and updated, and nine others are added. The subject of the book and– arbitrability and– is one that is much talked about, but seldom if ever given the in-depth treatment presented here. Arbitrators and other practitioners in the field will welcome the way the analysis moves logically from theory to practice regarding every issue, and academics will recognize a definitive treatment of arbitrability as understood and applied in the settlement of disputes today.

The Freshfields Guide to Arbitration Clauses in International Contracts

Reformation--Nationalization--Internationalization

Jurisdiction, Admissibility and Choice of Law in International Arbitration: Liber Amicorum Michael Pryles

The Interplay Between National and International Law

Choice of Forum and Laws in International Commercial Arbitration

This book is a second, revised edition of the original 1986 publication. Since then, the issue of contract change has increasingly challenged the business community and legal practitioners. The world-wide recession may well have accelerated the need to secure contractual relationships by reasonable flexibility. Successful foreign investment, a relentless challenge, is subject to many unpredictable errors. Of all these variables, however, successful investment is most dependent on the investor-host country relationship, which is the object of the present study. In particular, the pressure by host countries for contract change and its counterpart: the investor's defence of contract stability. The book is essentially a reference handbook for legal practitioners. It analyzes a variety of increasingly important questions concerning international investment agreements that come under pressure for change by one of the contracting parties: either a transnational corporation or a host country government. The seven case studies and the analytical chapters which follow are based on the author's research and the assistance of corporate and government officials, experts from the United Nations and other organizations, and members of academic research institutes.

This third edition of International Arbitration Law and Practice has been largely enriched by covering international commercial arbitrations, investment treaty arbitrations, arbitrations between public bodies, between states and individuals, the UNCITRAL model law and Iran-US Tribunal proceedings as well as commodity arbitration, online arbitration and sports arbitral proceedings. International Arbitration Law and Practice, 3rd edition elaborates new concepts such as a definition of international arbitration based on procedural law (different from transnational law) and a doctrine (the tronc commun doctrine) to identify the applicable substantive law on disputes between parties belonging to different countries. It further suggests that a law of international arbitration has arisen from the various conventions and laws. Besides dealing with all the aspects of arbitration on a topic by topic basis, the writer presents a third generation arbitration which builds on analysis of major obstacles to a smooth running arbitration.International Arbitration Law and Practice, 3rd edition is a work that anyone involved in arbitral proceedings will find to be absolutely indispensable.

Investment arbitration has become the key forum to settle disputes between investors and the host state. It is not clear from the arbitration agreements which body of law the arbitrators should apply: national or international. This book examines how the legal framework which the arbitral panels operate in influences which body of law they apply.

Article 1(1) of the CISG in International Arbitration

Arbitration in Complex International Contracts

American Arbitration Law

Applicable Law in International Investment Disputes

Drafting Contracts in Legal English