

Consent In International Arbitration Oxford

International Arbitration

The Oxford Handbook of International Arbitration
CONSENT IN INTERNATIONAL
ARBITRATION 2ND ED. Multiple Party Actions in International Arbitration Interest in
International Arbitration Emergency Arbitration The Evolution of International
Arbitration Treaty Interpretation in Investment Arbitration Procedure and Evidence
in International Arbitration EU Law and International Arbitration Consent in
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of Law in International Investment Arbitration Arbitration Tribunal Secretaries in
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in Investor-State Arbitration Dealing with Bribery and Corruption in International
Commercial Arbitration Abuse of Rights in International Arbitration Thomas Schultz
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this handbook brings together many of the key scholars and leading practitioners

in international arbitration to present and examine cutting edge knowledge in the field innovative in its breadth of coverage chapter topics range from the practicalities of how arbitration works to big picture discussions of the actors involved and the values that underpin it the book includes critical analysis of some of international arbitrations most controversial aspects whilst providing a nuanced account overall that allows readers to draw their own informed conclusions the book is divided into six parts after an introduction discussing the formation of knowledge in the field part i provides an overview of the key legal notions needed to understand how international arbitration technically works such as the relation between arbitration and law the power of arbitral tribunals to make decisions the appointment of arbitrators and the role of public policy part ii focuses on key actors in international arbitration such as arbitrators parties choosing arbitrators and civil society part iii examines the central values at stake in the field including efficiency legal certainty and constitutional ideals part iv discusses intellectual paradigms structuring the thinking in and about international arbitration such as the idea of autonomous transnational legal orders and conflicts of law part v presents the empirical evidence we currently have about the operations and effects of both commercial and investment arbitration finally part vi provides different disciplinary perspectives on international arbitration including historical sociological literary economic and psychological accounts

interest plays a vital and increasing role in international arbitration proceedings with almost every case having an element of interest involved however until now the topic has received very little attention meaning that arbitrators have had very little concrete foundation on which to judge decisions on interest awards this book is the first authoritative guidance to address this providing a uniform approach to the awarding of interest in international arbitration interest in international arbitration aligns arbitrators decisions with standard commercial practice offering a practical and logical approach to how interest should be awarded it sets out traditional approaches that arbitrators have followed in the past such as using conflict of law to apply a statutory rate from a given law or awarding instead a subjectively reasonable rate and examines how these inconsistent approaches have resulted in a variety of awards and decisions the author uses this analysis as a basis for a uniform approach to the issue granting compound interest at appropriate rates unless constrained by truly mandatory law the author sets out the calculation method explores the benefits and limitations and presents a thorough argument for the movement toward a uniform approach to interest awards

this is the first work to provide clear guidance on the increasingly utilized

procedure of emergency arbitration setting out the procedural frameworks common to the leading emergency arbitration rules and establishing fifteen common principles it provides greater control and certainty in bringing and defending applications for emergency measures

this book charts and assesses the extent to which the major arbitration houses including the international chamber of commerce and the international centre for the settlement of investment disputes are evolving governance functions that would normally be associated with state courts

this systematic and comprehensive analysis of the interpretation of treaties in investment arbitration presents a wealth of material and a thorough assessment of the practice of foreign investment arbitral tribunals

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

eminently readable one need look nowhere else i regularly teach courses on this subject and have encountered no work that comes close to achieving what von papp has achieved george a berman columbia law school european law review this timely book addresses the main areas of tension between eu law and international arbitration looking at both commercial and investment treaty

arbitration it opens pathways for practical solutions based on communication between the different regimes at the same time it offers a sound theoretical basis that allows for addressing the core problem as normative conflict between legitimate public interests and the privatisation of justice the book is divided into five parts it introduces key aspects of the overall tension between eu law and international arbitration before setting out the theoretical framework that understands eu law international commercial arbitration and investment treaty arbitration as closed regimes the author then addresses the core problem of finding the limits to contracting out of the eu legal regime both on a jurisdictional and a substantive level this is then linked to the question of trust building in legal outcomes of the relevant regimes the book concludes with a short summary and key theses combining a theoretical and normative with a more pragmatic approach to very topical issues this book offers invaluable insights for academics and practitioners private and public commercial and investment treaty lawyers alike

examining the notion nature and extent of consent in both commercial arbitration and investment arbitration this book provides practitioners and academics with a thorough case related analysis of an issue which raises many questions whilst considering the evolution of arbitration and its consensual nature enlargement of the parties freedom to consent to arbitration and development from commercial arbitration to investment arbitration it addresses important theoretical questions to offer practical solutions these include how consent to arbitrate is expressed and when mutual consent to arbitration is reached which law shall govern the arbitration agreement or more particularly consent as an element of the substantive validity of it and conversely according to which law will a possible lack of consent be judged how consent should be interpreted which relationship exists between consent as part of the substantive validity of an arbitration agreement and its formal validity which if any are the implied terms when consenting to arbitration how consent to arbitrate influences procedural aspects counterclaims joinder consolidation and which solutions adopted by treaties national laws or arbitration rules are or would be the most respectful of parties consent in this respect what in investment arbitration is the relationship between consent and most favoured nation clauses or the influence of umbrella clauses the book includes original arguments and puts forward new suggestions with regard to the changeable consensual character of arbitration it also provides a particular focus on problems that frequently arise in practice of international arbitration for example issues related to complex multiparty arbitration and to jurisdictional questions in investment arbitration

most literature on international arbitration is practice oriented technical and

promotional it is by arbitrators and largely for arbitrators and their clients outside analyses by non participants are still very rare this book boldly steps away from this tradition of scholarship to reflect analytically on international arbitration as a form of global governance it thus contributes to a rapidly growing literature that describes the profound economic legal and political transformation in which key governance functions are increasingly exercised by a new constellation that include actors other than national public authorities the book brings together leading scholars from law and the social sciences to assess and critically reflect on the significance and implications of international arbitration as a new locus of global private authority the views predictably diverge some see the evolution of these private courts positively as a significant element of an emerging transnational private legal system that gradually evolves according to the needs of market actors without much state interference others fear that private courts allow transnational actors to circumvent state regulation and create an illegitimate judicial system that is driven by powerful transnational companies at the expense of collective public interests still others accept that these contrasting views serve as useful starting points of an analysis but are too simplistic to adequately understand the complex governance structures that international arbitration courts have been developing over the last two decades in sum this book offers a wide ranging and up to date analytical overview of arguments in a vigorous nascent interdisciplinary debate about arbitration courts and their exercise of private governance power in the transnational realm this debate is generating fascinating new insights into such central topics as legitimacy constitutional order and justice beyond classical nation state institutions

international law can be created by other means than treaties between states this book investigates the philosophical questions posed by the treatment of international arbitration as law such as those relating to sovereignty and territoriality and sets out conditions which international arbitration must meet in order to form legitimate law

in recent years there has been a noticeable increase in references by investor state arbitral tribunals to general principles of law as a source of law however these references have rarely been accompanied by detailed explanation this book aims to provide the actors involved in investor state arbitration with a set of comprehensive guidelines to better understand the nature meaning and function of general principles of law in the field of international investment law applying these principles to practice the book assesses seventeen concepts and notions in the field of investment arbitration to provide counsel and arbitrators with clear guidance on what should and should not be considered a general principle of law

very short introductions brilliant sharp inspiring arbitration is a legal dispute

resolution mechanism alternative to courts it provides binding decisions enforceable around the world it is where parties take their disputes when they have agreed that courts for one reason or another do not suit them which happens more often than one might think some of the most politically sensitive disputes on the largest scale go to arbitration countries which need to settle their boundaries in areas of the oceans rich in oil gas and other resources sometimes arbitrate and much of the war in sudan was eventually tied up with an arbitration investors who have staked billions of dollars in unstable developing countries rely on arbitration clauses to protect their investments but also much smaller everyday cases are routinely dealt with by arbitration millions of consumers whether they know it or not enter into arbitration contracts when they conclude routine transactions even athletes get involved in arbitration cases of great notoriety for instance when these relate to doping offences during the olympic games this very short introduction explains what arbitration is how it works what parties who have agreed to go to arbitration should expect the relationship between arbitration and the law and the politics of arbitration it also considers where the global system of arbitration is headed about the series the very short introductions series from oxford university press contains hundreds of titles in almost every subject area these pocket sized books are the perfect way to get ahead in a new subject quickly our expert authors combine facts analysis perspective new ideas and enthusiasm to make interesting and challenging topics highly readable

tribunal secretaries in international arbitration adopts a transnational approach to systematically answer questions about tribunal secretaries often discussed but thus far unresolved with useful analysis and practical guidelines it is an essential tool for all practitioners and academics involved in international arbitration

the first comparative book exploring the relative merits of arbitral seats worldwide this work is both a tool for strategic choice of venue and a companion for practitioners in unfamiliar jurisdictions expert analysis of the history and development of arbitration is coupled with guidance on the practical realities of all major venues

this is an open access title available under the terms of a cc by nc nd 3 0 international licence it is free to read at oxford scholarship online and offered as a free pdf download from oup and selected open access locations this book examines the law national and or international that arbitral tribunals apply on the merits to settle disputes between foreign investors and host states in light of the freedom that the disputing parties and the arbitrators have when designating the applicable law and because of the hybrid nature of legal relationship between investors and states there is significant interplay between the national and the

international legal order in investor state arbitration the book contains a comprehensive analysis of the relevant jurisprudence legal instruments and scholarship surrounding arbitral practice with respect to the application of national law and international law it investigates the awards in which tribunals referred to consistency between the legal orders and suggests alternatives to the traditional doctrines of monism and dualism to explain the relationship between the national and the international legal order the book also addresses the territorialized or internationalized nature of the tribunals relevant choice of law rules and methodologies and the scope of the arbitration agreement including the possibility of host states presenting counterclaims in investment treaty arbitration ultimately it argues that in investor state arbitration national and international law do not only coexist but may be applied simultaneously they are also interdependent each complementing and informing the other both indirectly and directly for a larger common good enforcement of rights and obligations regardless of their national or international origin

international arbitration law library volume 65 international commercial arbitration is by no means free from bribery and corruption although a plethora of legal scholarship clearly affirms this contention a thorough study on the particularly important question of the authority and duty of international commercial arbitrators to investigate a suspicion or indication of bribery or corruption sua sponte that is on their own initiative has been surprisingly lacking this important book fills this gap inter alia by locating sua sponte authority in the position of arbitral tribunals in establishing the facts of a case and ascertaining and applying the applicable normative standards in addition to providing a comprehensive examination of how the issue of bribery and corruption is dealt with in contemporary international commercial arbitration the book also highlights the role of arbitrators in global efforts to combat transnational commercial bribery and corruption among others the following critical issues are thoroughly investigated arbitrability of issues of public interests intermediary contracts role of arbitrators in the fact finding process party autonomy versus overriding mandatory rules iura novit curia in international commercial arbitration in the context of bribery and corruption notion of transnational or truly international public policy arbitrators duty to act as guardians of international commerce investigative tools available to arbitrators dealing with manifestly recalcitrant parties possible consequences of violating the obligation to sua sponte investigate and the view from developing countries the analysis leans primarily on swiss law as switzerland is one of the most important jurisdictions in international commercial arbitration switzerland has also been involved in some of the most famous and controversial arbitration cases wherein bribery and corruption became an issue however the study also includes a comparative

analysis of the relevant laws jurisprudence and doctrine of other major arbitration venues particularly england france and germany not only in the light it sheds on how and whether international commercial arbitrators have hitherto justified the trust states have placed in them regarding the protection of the public interests but also in the practical solutions it offers arbitrators faced with issues of bribery and corruption this deeply researched book equips arbitration practitioners and arbitration institutions with a hitherto lacking in depth analysis on the question of sua sponte investigation it also provides invaluable insights on how this issue might affect the future legitimacy and expansion of this dispute settlement mechanism outside the field of arbitration the book also provides jurists legal scholars in house counsel for companies doing transnational business and public officials with highly enlightening perspectives on the interaction between international commercial arbitration and public interests

based on the author s doctoral thesis submitted to queen mary university of london

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