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International Commercial Arbitration

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Like its subject-matter, my book on "International Commercial Arbitration" is intended to be of use and interest to the widest possible audience around the world. It aspires to provide a comprehensive description and analysis of the contemporary constitutional structure, law, practice and policy of international commercial arbitration. It also endeavors to identify prescriptive solutions for the conceptual and practical problems that arise in the international arbitral process. In so doing, the treatise's 3400 pages focus on the law and practice of international commercial arbitration in the world's leading arbitral centers and on the constitutional structures established by the world's leading international arbitration conventions, legislation and institutional rules.

The treatise begins with an Overview, in Chapter 1, which introduces the subject of international commercial arbitration. This introduction includes a reasonably detailed historical summary, as well as an overview of the legal framework governing international arbitration agreements and the principal elements of such agreements. The remainder of the treatise is then divided into three Parts, each roughly 1000 pages.

Part I of the treatise deals with international commercial arbitration agreements. It describes the legal framework applicable to such agreements, the presumptive separability or autonomy of international arbitration agreements, the law governing international arbitration agreements, the substantive and formal rules of validity relating to such agreements, the competence-competence doctrine, the legal effects of international arbitration agreements, the interpretation of arbitration agreements and identifying the parties to international arbitration agreements.

Part II of the treatise deals with international arbitration proceedings. It addresses the legal framework applicable to such proceedings, the selection and challenge of arbitrators, the rights and duties of international arbitrators, the selection of the arbitral seat, the conduct of arbitral procedures, disclosure or discovery, provisional measures, consolidation and joinder, the selection of substantive law, confidentiality and legal representation.

Part III of the treatise deals with international arbitral awards. It addresses the legal framework for international arbitral awards, the form and contents of such awards, the correction and interpretation of arbitral awards, actions to annul or vacate arbitral awards, the recognition and enforcement of international arbitral awards and the application of principles of *res judicata*, preclusion and *stare decisis* in international arbitration.

The focus of the treatise, in all three Parts, is on international standards and practices, rather than a single national legal system. Particular attention is devoted to the leading international arbitration conventions — New York Convention"), the European Convention on International Commercial Arbitration and the Inter-American Convention on International Commercial Arbitration.

These instruments, and particularly the New York Convention, establish a constitutional framework for the conduct of international commercial arbitrations around the world. That framework is given effect through national arbitration legislation, with Contracting States enjoying substantial autonomy to give effect to the basic principles of the Convention. At the same time, the Convention also imposes important international limits on the ability of Contracting States to deny effect to international arbitration agreements and arbitral awards. These limitations form a critical constitutional foundation for the contemporary international arbitral process. Identifying and refining these limits is a central aspiration of the treatise.

The treatise's international and comparative focus also rests on the premise that the treatments of international commercial arbitration in different national legal systems are not diverse, unrelated phenomena, but rather form a common corpus of international arbitration law which has global application. From this perspective, the analysis and conclusions of a court in one jurisdiction (i.e., France, the United States, Switzerland, India, or Hong Kong) regarding international arbitration agreements, proceedings or awards have direct and material relevance to similar issues in other jurisdictions. Although different solutions may sometimes be adopted they both are and should be adopted in light of cognate developments in other jurisdiction.

Despite the time which went into it, like international commercial arbitration itself, the treatise must be seen as a work in progress. It is the successor to two earlier editions, in a complex field, which is continuously evolving in response to changing conditions and needs. I fully recognize that the treatise inevitably contains errors, omissions and confusions, which will require correction, clarification and further development in future editions, to keep pace with the field. Corrections, comments and questions are very strongly encouraged, by email to garybornbooks@googlemail.com.

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