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The Born Supremacy: Review of International Arbitration: Cases and Materials

Roger Alford (General Editor) (Notre Dame Law School) · Monday, February 28th, 2011

Gary Born has just published a [great new casebook](#) that is certain to become a standard text for international arbitration courses around the world. Everyone knows Born's [multi-volume treatise](#), which is invaluable as a reference tool, but hardly appropriate for the classroom. Now we have both, a great casebook to introduce the material to students and a definitive treatise for the practitioner. The Born empire continues to grow.

The most distinctive feature of the casebook is its comparative focus. Each chapter addresses a specific topic from the perspective of multiple jurisdictions. As a result, it is the kind of casebook that will be adopted by professors in law schools around the globe. As Born puts it,

This casebook's international and comparative focus rests on the premise that different national legal systems' treatment of international commercial arbitration 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 ... regarding international arbitration agreements, proceedings, or awards have direct and material relevance to similar issues in other jurisdictions.

The drawback of this approach, of course, is that law professors in many jurisdictions will need to contextualize the discussion to fit the particularities of their jurisdiction.

The book is particularly strong in discussing arbitration proceedings. Many casebooks give undue attention to court decisions, but part two of book (chapters 7-13) presents the subject of arbitration proceedings with appropriate emphasis on excerpts from arbitral awards. Amazingly, inadequate attention to the arbitration proceedings is one of the greatest failings of most international arbitration casebooks on the market. Born's book does not repeat that failing.

Anyone who knows Born's work appreciates the notes at the end of each section of his books. This casebook is no different, with dozens of issues and questions covered in the notes after each section. Generous cross-referencing to Born's treatise allows for further reading on topics of particular interest to the professor or student.

One of the most difficult questions in teaching international arbitration is striking the appropriate

balance between private and public international arbitration. The Born casebook addresses commercial, investment, and state-to-state arbitration, on the theory that there are great contrasts and parallels that can be drawn by their inclusion. In Chapter 2, for example, the material on reasons for arbitration include a discussion of *Loewen*, *Alabama Claims*, *Abyei*, *Rainbow Warrior*, and an excerpt from Chris Drahozal and Richard Naimark's book on traditional commercial reasons to arbitrate. This inclusive approach affords one a more comprehensive appreciation of why parties choose arbitration over the alternatives.

The book is beefy, with sixteen chapters and over 1,200 pages of text. My tastes when teaching are to not overwhelm students with reading material, which means judicious selection of topics and pages when covering a book of this size. Given the breadth of material available in each chapter, a professor like me would need to parse the readings to a manageable size to cover all the topics in the book.

Most law professors are guided by the law of inertia. They are objects at rest who resist change at almost all costs, particularly when it comes to changing casebooks after years of teaching. It requires a particular force of nature to overcome this law of inertia. Gary Born is a force of nature.

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