

Table of Contents

About the Author	v
Foreword	xi
Preface	xiii
Acknowledgements	xv
CHAPTER 1	
Introduction	1
§1.01 The Issue: Uncertainties Regarding the Definition of Arbitral Award	1
§1.02 Theory and Methodology	4
§1.03 Scope and Limitations	8
§1.04 Structure and Summary of the Analysis	10
CHAPTER 2	
Diverging Understandings of Arbitration	13
§2.01 Introduction	13
§2.02 Overview of the Monodimensional Model: The Arbitrator Resolves a Dispute in a Final Manner	15
§2.03 Overview of the Multidimensional Model: The Arbitrator Renders Justice	17
§2.04 The Silence of the New York Convention	20
§2.05 Conclusion	23
CHAPTER 3	
The Influence of Arbitral Institutions on Today's International Commercial Arbitration	25
§3.01 Introduction	25
§3.02 A Theoretical Overview of Institutionalism	26

Table of Contents

§3.03	Arbitration in the Nineteenth Century: A Weak Competitor of State Justice	28
§3.04	Arbitration in the First Half of the Twentieth Century: The Rise after Institutionalization	30
	[A] A Historical Overview of the ICC	31
	[B] The ICC's Impetus in Favour of Arbitration	33
	[C] The ICC's Difficulties Implementing International Commercial Arbitration	35
§3.05	Arbitration in the Second Half of the Twentieth Century: The ICC's Success in Creating an Effective International Regime	38
§3.06	Arbitration at the Beginning of the Twenty-First Century: The Consecration of Institutions	41
	[A] Further Actors Contributing to Institutionalization: An Overview	41
	[B] The Privatization of Justice as an Important Motor of Arbitration's Institutionalization	43
§3.07	The Consequences of the Institutional Roots of International Commercial Arbitration	46
§3.08	Conclusion	49
CHAPTER 4		
	Contentious Awards	51
§4.01	Introduction	51
§4.02	The Notion of Contentious Judgment in Western Law	52
	[A] Historical Inceptions	52
	[1] Classic Roman Procedure and the Absence of <i>Ius Dicere</i>	53
	[2] The <i>Extra Cognitio</i> and the Emergence of <i>Ius Dicere</i>	55
	[B] Contemporary Epiphanies: The Purpose(s) of Judgments	56
	[C] The Effects of Judgments	59
§4.03	The Notion of Contentious Award in National Arbitration Acts	61
	[A] The Scope of the Enquiry	61
	[B] France	61
	[1] Formal Requirements	62
	[2] The Substantive Requirements	65
	[C] England	70
	[1] Formal Requirements	71
	[2] Substantive Requirements	73
§4.04	The Notion of Contentious Award in Arbitral Practice	82
§4.05	Conclusion	84
CHAPTER 5		
	Jurisdictional Awards	87
§5.01	Introduction	87
§5.02	A Comparative Overview of the Role of State Courts in the Pre-award Phase	90

[A] France	90
[B] England	92
[C] Allocation of Jurisdiction and Arbitral Practice: The Issue of Bifurcation	94
§5.03 Jurisdictional Decisions Can Take the Form of Awards and Are Thus Enforceable	97
[A] The Romano-Canonical and Common Law Traditions on Jurisdictional Rulings	97
[1] The Romano-Canonical Perspective	97
[2] The Common Law Perspective	98
[B] Positive Jurisdictional Rulings Are Enforceable Awards: The Convergence of French and English Law	99
[C] Negative Jurisdictional Rulings Can Be Enforced as Awards	101
[1] Negative Jurisdictional Rulings Are Not Awards: An Out-dated Conception	102
[2] Negative Jurisdictional Rulings Are Enforceable Awards	103
[D] The Peculiarities of the Recourse under Article 16(3) of the <i>Model Law</i>	105
§5.04 Conclusion	107
CHAPTER 6	
Consent Awards	109
§6.01 Introduction	109
§6.02 The Award by Consent in ICC Arbitration	110
§6.03 The Award by Consent and the UNCITRAL <i>Model Law</i> on International Commercial Arbitration	114
§6.04 Consent Awards in England	118
[A] The National Framework	118
[B] Consent Awards under the <i>Arbitration Act 1996</i>	121
[1] The Role of the Arbitrators	121
[2] Challenges	122
[3] Enforcement	127
§6.05 Consent Awards in France	128
[A] The National Legal Framework	128
[1] <i>Contrat de Transaction</i>	128
[2] <i>Jugement sur accord des Parties</i>	130
[B] Consent Awards under French Arbitration Law	131
[1] Only International or Foreign Consent Awards Can Be Enforced in France?	131
[2] Alternatives in Light of the Lack of Enforcement of Domestic Consent Awards	134
[3] Challenges to Domestic Consent Awards	137
§6.06 Conclusion	137

Table of Contents

CHAPTER 7	
Awards <i>Ante Causam</i>	141
§7.01 Introduction	141
§7.02 Provisional Measures in the Romano-Canonical and Common Law Traditions	143
§7.03 Provisional Protection <i>Ante Causam</i> and the Interplays Between Courts and Arbitrators	144
[A] Courts' Jurisdiction on Provisional Measures Before the Constitution of the Tribunal	144
[B] The Principle of Complementarity in French and English Arbitration Law	145
§7.04 The Emergence of a Provisional Adjudicatory Power <i>Ante Causam</i>	151
[A] The Precursor: The <i>International Arbitration Rules</i> of the ICDR	151
[B] The <i>Arbitration Rules</i> of the SCC: A Relief That Is Truly <i>Ante Causam</i>	152
[C] The 2014 <i>Arbitration Rules</i> of the LCIA	154
[D] The <i>Arbitration Rules</i> of the International Court of Arbitration (ICC): A Missed Opportunity?	157
[1] Exclusion of Emergency Arbitration	158
[2] Emergency Arbitration Application and Proceedings	159
[3] The Emergency Arbitration Decision	163
[4] The Effects of the Emergency Arbitration Decision on the Arbitration Proceedings	164
[5] The Interplays with State Courts	165
§7.05 The Nature and Enforcement of Emergency Decisions: The 2006 Amendments to The UNCITRAL <i>Model Law</i>	165
§7.06 Conclusion	173
CHAPTER 8	
Conclusion: The Need for a Non-unitary Notion of Award	175
Bibliography	185
Table of Cases	197
International Tribunals and Arbitral Tribunals	201
Conventions	203
Index	205