Preface				V
Part I.	Formi	ng Internatio	onal Commercial Agreements	1
One:	Intro	ntroduction		
	\$1.1	INTERNAT	TIONAL TRADE AND THIS BOOK	1
	\$1.2	AN OVERV	JIEW OF INTERNATIONAL	
		COMMER	CIAL TRANSACTIONS	3
	§1.3	HOW TO	USE THIS BOOK	9
Two:	Sourc	es of the Lav	v of International Commercial	
		ments		13
	§2.1	INTRODU	CTION	13
	§2.2	PROMULO	GATION AND ENFORCEMENT	
		OF PRINC	IPLES OF COMMERCIAL LAW	14
	<b>§2.3</b>	THE WOR	LD'S MAJOR LEGAL SYSTEMS	17
	\$2.4	THE CIVII	LAW SYSTEM	20
	<b>§2.5</b>	THE BRIT	ISH COMMON LAW SYSTEM	24
	\$2.6	COMMER	CIAL LAW IN THE UNITED STATES OF	
		<b>AMERICA</b>		27
	§2.7	SOCIALIST	Γ LEGAL SYSTEMS	29
		\$2.7.1 Lif	e After the Soviet Union	31
		\$2.7.2 Th	e Peoples Republic of China	32

	<b>§2.8</b>		C LEGAL SYSTEMS	33
	\$2.9		IPACT OF INTERNATIONAL PRINCIPLES	25
			MMERCIAL LAW	35
		§2.9.1	International Law Generally	35
		§2.9.2	The 1980 Vienna Convention on Contracts	20
			for the International Sales of Goods	38
Three:	Plann	ing Inter	national Commercial Agreements	45
	§3.1	INTRO	DUCTION	45
	§3.2	TO THE THE PART OF THE OFF		
	CONTRACT LAW		RACT LAW	48
		§3.2.1	Formation and Subject Matter	49
		§3.2.2	Performance	56
		§3.2.3	Breach of Contract and Excused	
			Performance	60
		§3.2.4	Remedy	65
		§3.2.5	Dispute Resolution	68
	§3.3		IFFERENT FORMS OF INTERNATIONAL	
			IERCIAL AGREEMENT	68
			Sales of Goods or Services	69
			Agency and Distributorship Agreements	74
			Franchises	77
			Licensing and Technology Transfer	80
			Joint Ventures	83
		§3.3.6	Other Forms of Agreement	86
	§3.4	PLANN	NING FOR DISPUTE RESOLUTION	87
		§3.4.1		89
		-	Renegotiation	89
		§3.4.3		90
			Arbitration	90
			Litigation	92
			Other Forms of Dispute Resolution	93
	§3.5	FINAN	ICING AND PAYING FOR	06
			NATIONAL COMMERCIAL AGREEMENTS	96
		§3.5.1	Direct Payment	96
			Payment Devices	97
		§3.5.3	Insuring Against Risks	102

				Contents
	§3.6	OTHE	R CONSIDERATIONS IN PLANNING	
		COMM	IERCIAL AGREEMENTS	103
		§3.6.1	Tax Matters	104
		§3.6.2	Antitrust Issues	105
		§3.6.3	Antidumping and Countervailing Duty	
			Issues	108
		-	Export and Import Controls	109
		\$3.6.5	Ethical Considerations	110
		§3.6.6	Criminal Matters	113
	§3.7	<b>SPECIA</b>	AL REGIONAL CONSIDERATIONS IN	
		PLANN	NING INTERNATIONAL COMMERCIAL	
		<b>AGREE</b>	EMENTS	114
		§3.7.1	Trade with the European Union	115
		§3.7.2	The North American Free Trade	
			Agreement	119
our:	Draft	ing Inter	national Commercial Agreements	127
	641	INTERO	DUCTION	127
	§4.1		DUCTION THRESHOLD CONSIDERATIONS	127
	§4.2			120
			Identifying Goals and Objectives Research as a Planning and Drafting Tool	132
		§4.2.2 §4.2.3		134
	612	•	SE AND EFFECT OF A LETTER	134
	§4.3	OF INT		147
	§4.4		SING THE LANGUAGE AND THE LAW	14/
	94.4		E AGREEMENT	149
				149
		§4.4.1	Choosing the Contract's Language	150
	645	§4.4.2	Choosing the Contract's Applicable Law	
	§4.5		STANDARDIZED CLAUSES AND FORMS	) 13/
	§4.6		LE CLAUSES IN INTERNATIONAL	
			MERCIAL AGREEMENTS — FORMATION	150
			ERFORMANCE	159
		-	The Quantity Term	160
		_	The Price Term	161
			The Payment Term	163
		§4.6.4	6	164
			Shipment	164

		\$4.6.5	Performance Clauses and Express	
		y 1.0.0	and Implied Warranties	165
	§4.7	SAMPI	E CLAUSES — BREACH, REMEDIES	
	y 1.,		IISCELLANEOUS	166
			Force Majeure Clauses	166
		§4.7.2		168
	<b>§4.8</b>	DRAFT	ING THE DISPUTE RESOLUTION AND	
	y 1.0		CE OF FORUM CLAUSES	169
	<b>§4.9</b>		CONCLUDING COMMENTS	176
Five:	Nego	tiating Ir	nternational Commercial Agreements	177
	<b>§5.1</b>	INTRO	DUCTION	177
	§5.2	THE PARTY OF THE P		
	3-1-		EGOTIATION	178
			Diagramming a Negotiation	179
		§5.2.2	Separating the People from the Problem	186
		<b>§5.2.3</b>	Focus on Interests, not Positions	187
		§5.2.4	Create Options for Mutual Gain	188
		§5.2.5	Insist on Objective Criteria	189
		§5.2.6		
			Negotiated Agreement"	190
	§5.3	THE S'	TAGES OF COMMERCIAL	
		NEGO	TIATION	191
		§5.3.1	Orientation and Positioning	191
		-	Argumentation	194
		§5.3.3	Emergence and Crisis	194
		§5.3.4	_ 11	194
	<b>§5.4</b>	NEGO	TIATING STYLES, STRATEGY,	
		AND T	TACTICS	195
	<b>§5.5</b>	CROSS-CULTURAL NEGOTIATION		200
	§5.6		TIATION WHEN DISPUTES ARISE	
		UNDE	ER AN EXISTING TRANSACTION	205
	§5.7	THE E	THICS OF NEGOTIATION	206
			Ethics Generally	206
		<b>§5.7.2</b>	Ethical Constraints on U.S. Lawyer-	
			Negotiators	209
		§5.7.3	Statutory Controls on Negotiator Conduct	210

			Contents
Part II.	Resol	ving International Commercial Disputes	213
Six:	The L	ess-Drastic Forms of Commercial Dispute Resolution	n 213
	§6.1	INTRODUCTION	213
	\$6.2	CONTRACT ADAPTATION	214
	40	§6.2.1 Gap Filling Mechanisms in the	
		Underlying Law	218
		§6.2.2 Coping with Uncertainty Through	
		Express Contractual Provisions —	
		Some Typical Adaptation Clauses	221
	\$6.3		224
	\$6.4	MEDIATION AND CONCILIATION	224
		§6.4.1 Mediation and Conciliation Generally	224
		§6.4.2 A General Theory of Mediation	225
		§6.4.3 Procedures for International	
		Commercial Mediation	229
		§6.4.4 Mediation in the Future	231
	§6.5	THE MINITRIAL	231
		§6.5.1 The Minitrial Generally	231
		\$6.5.2 Specific Minitrial Rules	232
		§6.5.3 Minitrials in the Future	234
Seven:	Litiga	ation	237
	<b>§</b> 7.1	INTRODUCTION	237
	§7.2	LITIGATION — GENERALLY	238
	\$7.3	SUBJECT MATTER JURISDICTION	240
	<b>§7.4</b>	FOREIGN SOVEREIGN IMMUNITY AND THE	
		ACT OF STATE DOCTRINE	242
		§7.4.1 Sovereign Immunity	242
		§7.4.2 The Act of State Doctrine	245
	<b>§7.5</b>	PERSONAL JURISDICTION OVER PRIVATE	
		PARTIES	247
	<b>§7.6</b>	SERVICE OF PROCESS	253
	\$7.7	the state of the s	
		NON CONVENIENS	255
	<b>§7.8</b>	CHOICE OF LAW	260

	§7.9	DISCO	VERY AND GATHERING			
	J. 1.		MATION AND EVIDENCE ABROAD	263		
	\$7.10	TRIAL	, PROCEDURE	269		
	\$7.11		RCEMENT OF JUDGMENTS AT HOME			
	<b>J</b>		ABROAD	271		
	§7.12	CONC	CLUSION	276		
Eight:	International Commercial Arbitration: Commencing					
Ligit.			d the Arbitration Hearing	279		
	§8.1	INTRO	DUCTION	279		
	§8.2		F HISTORY OF COMMERCIAL			
	90.2		RATION	286		
	§8.3		TATUTORY BASIS FOR ARBITRATION	290		
	30.3		The Federal Arbitration Act	290		
			The English Arbitration Acts	292		
		68 3 3	The UNCITRAL Model Law on			
		30.5.5	International Commercial Arbitration	293		
	\$8.4	THEIR	EX LOCI ARBITRI AND "AD HOC"			
	y0.4		S "INSTITUTIONAL" ARBITRATION	294		
	§8.5		CRIPTION OF THE MAJOR INTER-			
	30.5		NAL ARBITRAL INSTITUTIONS			
			DING A BRIEF SUMMARY OF THEIR			
		RULES		297		
			The International Chamber of Commerce	299		
		§8.5.2				
		,	Procedures	303		
		<b>§8.5.3</b>	The UNCITRAL Procedures	306		
		§8.5.4				
		<b>J</b> = 10.12	Organization (WIPO)	309		
	§8.6	COMM	MENCING THE ARBITRATION	311		
	J		Determining the Issues to be Arbitrated	313		
		\$8.6.2		314		
		§8.6.3	_	316		
	<b>§8.7</b>	PREPA	RING FOR AND CONDUCTING			
	•	THE H	EARING	318		
		\$8.7.1	Discovery	319		
		§8.7.2	The Pre-Hearing Conference	321		

			Contents
	\$8.8	§8.7.3 The Hearing DRAFTING THE ARBITRAL AWARD	321 324
Nine:		national Commercial Arbitration: Arbitration Courts	331
	\$9.1	INTRODUCTION	331
	\$9.2	ACTIONS TO COMPEL OR STAY	226
		ARBITRATION	336
	§9.3	RECOGNITION AND ENFORCEMENT OF ARBITRAL AWARDS	339
	60.4	INTERNATIONAL RECOGNITION AND	337
	§9.4	ENFORCEMENT OF ARBITRAL AWARDS	345
		\$9.4.1 The New York Convention	346
		\$9.4.2 Enforcing Awards not Subject to the	
		New York Convention	351
Ten:	Intern	national Commercial Arbitration: Special Regional	
	Consi	derations	353
	§10.1	INTRODUCTION	353
	§10.1		
	y10,2	SETTLEMENT OF INVESTMENT DISPUTES	354
	§10.3	THE EUROPEAN UNION	358
	§10.4		
		TRIBUNAL	361
	§10.5	LATIN AMERICA	364
	\$10.6		369
	§10.7		372
	-	THE PEOPLES REPUBLIC OF CHINA	375
	§10.9	THE FORMER SOVIET UNION	379
Eleven:	Futur	re Trends in International Commercial Agreements	
		Dispute Resolution	383
	C11 1	INTRODUCTION	383
	-	INTRODUCTION TRENDS IN INTERNATIONAL COMMERCIA	
	y11.2	AGREEMENTS	383

§11.:	TRENDS IN INTERNATIONAL COMMERCIAL DISPUTE RESOLUTION CONCLUSION	386 392
Appendices		393
Appendix A:	UN Convention on Contracts for the International Sale of Goods (1980)	393
Appendix B:	United States Uniform Commercial Code	429
Appendix C:	Rules of the ICC Court of Arbitration	485
Appendix D:	International Arbitration Rules of the American Arbitration Association	517
Appendix E:	Arbitration Rules of the UN Commission for International Trade Law (UNCITRAL)	535
Appendix F:	New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards	557
Appendix G:	UNCITRAL Model Law on International Commercial Arbitration	565
Bibliography		583
Index		607