

Contents

<i>Note on Citation and Tables</i>	xv
<i>Tables of International Treaties and Conventions</i>	xix
<i>Tables of Municipal Legislation</i>	xxxvii
<i>Tables of Authorities</i>	liii
<i>Tables of Arbitral Awards</i>	xcix
<i>Tables of Arbitration Rules</i>	cvii
<i>Tables of Model or Proposed Legislation, Restatements, etc</i>	cxxi
<i>List of Abbreviations and Short Titles</i>	cxxxi
 Chapter 1 INTRODUCTION	 1.01
I. The Area of Inquiry: International Commercial Arbitration	1.06
II. The Object of Inquiry	1.15
1. The Elements and Functions of the <i>Lex Fori</i>	1.15
2. Difficulties with the Concept of the <i>Lex Fori</i> in International Arbitration	1.18
3. Why the <i>Lex Arbitri</i> is Potentially Relevant to the Arbitral Procedure	1.38
III. The Purpose and Method of the Inquiry	1.42
IV. The Structure and Argument of this Book	1.45
 Chapter 2 THE THEORETICAL THINKING ON THE LAW OF THE ARBITRATION	 2.01
I. Introduction to the Notions	2.04
II. Seat Theories	2.08
1. The Territorialists	2.08
2. Imputed Choice of Forum: The 1957 Resolution of the <i>Institut de Droit International</i>	2.18
III. Legal Localization	2.28
1. The Procedural Law Criterion	2.29
2. The Legal Continuum Theory	2.34
3. The Displacement of Jurisdiction Criterion	2.36
IV. Approaches to Delocalization	2.38
1. Transnational Arbitration	2.39
2. Delocalization by Contract Theory	2.46
V. Concluding Remarks: Desiderata	2.52
 Chapter 3 THE LAW OF THE ARBITRATION IN NATIONAL LAWS	 3.01
I. Localization by Choice of Law: Its Shortcomings and Abandonment	3.02
1. Greece, pre-1999	3.03
2. Germany, pre-1998	3.07

3. France, pre-1981: <i>Déni de Justice</i> ?	3.10
4. England, pre-1996: Presumptions Canonized	3.14
5. Conclusions	3.29
II. The Basic Tenets of Modern Arbitration Law	3.30
1. The Concept of the Seat of the Arbitration as the Basis of Functional Jurisdiction	3.31
2. Procedural Autonomy as a Matter of Substantive Law	3.73
3. Exclusion of Setting Aside by Agreement	3.84
III. Supervision and Support at the Seat of an Arbitration	3.99
1. An International Law Requirement	3.99
2. Setting Aside for Procedural Misconduct	3.102
3. Support Jurisdiction	3.120
Chapter 4 HUMAN RIGHTS LAW REQUIREMENTS IN INTERNATIONAL ARBITRATION	4.01
I. International Law Creates Obligations for States	4.04
II. An Arbitration Agreement is a Waiver of the Right to State-Administered Justice	4.11
1. A Waiver of What?	4.11
2. Formal and Substantive Requirements of Validity	4.13
3. Waiver of the Right to have Recourse to the Courts to Challenge an Arbitral Award	4.18
4. The Implications of Arbitration Costs for the Right of Access to Justice	4.40
III. A Right to a 'Fair Arbitration'?	4.50
1. Independence and Impartiality	4.53
2. Party Equality and Due Process	4.85
3. Reasonable Time and Public Hearing	4.92
IV. Are Arbitral Tribunals Bound by the ECHR?	4.95
1. Arbitral Tribunals	4.96
2. Arbitral Institutions	4.108
V. An International Obligation to Supervise and Assist Arbitral Proceedings?	4.113
1. Jurisdiction and Responsibility	4.115
2. Consensual and Statutory Arbitration	4.118
VI. Conclusions	4.127
Chapter 5 PROCEDURAL LAW AND RULES IN ARBITRAL PRACTICE	5.01
I. What is 'Procedure' and 'Procedural Law' in Arbitral Practice?	5.05
1. No Need to Characterize an Issue as Procedural	5.06
2. The Parties may Vary the Law of the Arbitration and Arbitration Rules	5.07
3. An International Arbitral Tribunal must Strive to Apply Generally Accepted Procedural Principles	5.16
II. A Survey of Arbitration Rules	5.23
1. Rules of National Institutions for Foreign Trade	5.25
2. Universal Rules	5.38

3. Conclusions	5.65
III. Overview of Arbitration Practice with Particular Reference to ICC Practice	5.68
1. Choice of Procedural Law in Arbitration Agreements	5.68
2. The Practice of Arbitral Tribunals	5.89
IV. General Principles of Arbitral Procedure	5.118
1. The Need for Statements of Good Practice	5.119
2. Certain Procedural Principles Applicable in International Arbitration	5.125
Chapter 6 ARBITRATIONS INVOLVING A STATE OR AN INTERNATIONAL ORGANIZATION	6.01
I. Introduction	6.02
II. The Iran–United States Claims Tribunal	6.09
1. The International Law Foundations of the Tribunal	6.11
2. The Netherlands has no International Responsibility for the Acts of the Tribunal	6.15
3. The Algiers Declarations and the Jurisprudence of the Tribunal	6.22
III. Foreign Investment Treaty Arbitration	6.50
1. Arbitration under Bilateral Investment Treaties	6.52
2. Arbitration under Multilateral Investment Agreements	6.60
3. ICSID Arbitration in Particular	6.63
IV. Arbitrations between Private Parties and International Organizations	6.76
1. Arbitration before <i>ad hoc</i> and other Non-Permanent Arbitral Tribunals	6.77
2. Particular Arrangements: Standing International Tribunals	6.114
V. States as Arbitrating Parties	6.119
1. Arbitral Practice	6.120
2. Who Needs Internationalization of Arbitral Proceedings?	6.150
3. Literature Survey	6.159
4. As a Rule, an Arbitration Agreement with a Private Party will Constitute a State's Consent to the Jurisdiction of the Courts	6.164
5. Principles of Interpretation of Arbitration Agreements	6.172
VI. Conclusions	6.177
Chapter 7 ENFORCEABILITY OF AWARDS ANNULLED IN THEIR STATE OF ORIGIN	7.01
I. Article V(1)(e) within the General Convention Framework	7.04
1. The Text and its History: Does 'May' Mean what it Says?	7.06
2. Article V(1)(e) in Context	7.14
II. The Case Law	7.25
1. The French Paradigm: Discounting Annulment Exclusively through Article VII	7.25

2. A Discretionary Standard: The United States <i>Chromalloy</i> Case	7.45
III. The Proper Limits for Discounting Annulment	7.50
1. Correlating Articles V and VII of the Convention	7.51
2. Grounds for Exercising Discretion to Enforce	7.55
IV. Policy Considerations: The Case for Restraint	7.68
1. The Principles Involved	7.69
2. Corrective Mechanisms	7.76
3. Finality at All Cost?	7.81
V. Conclusions	7.86
Chapter 8 A NEXUS BETWEEN AN AWARD AND A MUNICIPAL LAW? INTERNATIONAL AND A-NATIONAL AWARDS IN THE NEW YORK CONVENTION	8.01
I. Some Clarifications	8.01
II. Foreign and Non-Domestic Awards	8.08
1. Legislative History	8.08
2. Analysis: Article I(1) as a Single-Purpose Vehicle	8.28
3. Non-Domestic Awards	8.51
4. Conclusions	8.65
III. Awards of the Iran–United States Claim Tribunal	8.67
1. The Issues	8.67
2. The Approach of the Courts	8.73
3. Some Distinctions and a Postscript on Nomenclature	8.83
IV. A-National and Stateless Awards	8.87
1. The Enforcement of A-National and Homeless Awards in Practice	8.90
2. An Award by Any Other Name	8.100
V. Conclusions	8.105
Chapter 9 WHAT DOES THE FUTURE HOLD?	9.01
<i>Bibliography</i>	389
<i>Index</i>	423