

RULES OF
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INTERNATIONAL
ARBITRATION:
AN ANNOTATED GUIDE
SECOND EDITION

NATHAN D. O'MALLEY

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Rules Of Evidence In International Arbitration An Annotated Guide

Navin G. Ahuja



Rules Of Evidence In International Arbitration An Annotated Guide:

Rules of Evidence in International Arbitration Nathan D. O'Malley, 2013-06-19 Rules of Evidence in International Arbitration An Annotated Guide is a valuable reference for practitioners arbitrators and in house counsel involved in cross border dispute resolution Filled with examples drawn from arbitration case precedent the book considers common issues and questions relating to evidentiary procedure Features Benefits Focuses on evidentiary procedure with extensive case based commentary and examples addressing common issues in international arbitration related to evidence Extensive annotations which allow the reader to locate key precedents for use in practice Practitioner focused meaning common misconceptions and questions arising from the international arbitration procedure are addressed Organised in an easy to use style for quick reference This book will be an essential reference guide on evidence for practitioners of international arbitration Filled with examples drawn from arbitration case precedent the book considers common issues and questions relating to evidentiary procedure Arbitrators and counsel will gain from this publication a better view of the best practices accepted solutions to difficult procedural issues and fundamental due process considerations which arise in connection with the use of evidence in international arbitration Rules of Evidence in International Arbitration Nathan O'Malley, 2019-01-16 Now in a fully updated second edition Rules of Evidence in International Arbitration An Annotated Guide remains an invaluable reference for lawyers arbitrators and in house counsel involved in cross border dispute resolution Drawing on current case law this book looks at the common issues brought up by the evidentiary procedure in international arbitration Features of this book include An international scope which will inform readers from around the world A focus on evidentiary procedure with extensive case based commentary and examples Extensive annotations which allow the reader to locate key precedents for use in practice This book gives essential insight into best practice for practitioners of international arbitration Readers of this publication will gain a fuller understanding of accepted solutions to difficult procedural issues as well as the fundamental due process considerations of the use of evidence in international arbitration International Arbitration and the Rule of Law, 2017-09-22 Volume 19 of the Congress Series contains the proceedings of ICCA s 2016 Mauritius Congress the first ICCA Congress held in Africa In this volume renowned practitioners scholars and jurists from the region and around the world explore the contribution of arbitration to the rule of law and economic development the conformity of arbitration with international standards of due process and the rule of law and the benefits and challenges of arbitration in Africa Topical issues of interest for practitioners academics and students of arbitration in the region and internationally include Due process issues in constituting the arbitral tribunal and challenging its members Interim measures issued by arbitral tribunals and domestic courts Burden standard and types of proof in the corruption defence What to do and what to avoid doing to prepare a persuasive case Do post award remedies ensure conformity of the arbitral process with the rule of law Do rules and guidelines properly regulate the conduct of arbitration The interface between domestic courts and arbitral tribunals What

are appropriate remedies for findings of illegality in investment arbitration The effect of foreign national court judgments relating to the arbitral award What does the future hold for investment arbitration in Africa and beyond

Introduction to Investor-State Arbitration Yves Derains, Josefa Sicard-Mirabal, 2018-10-17 Today thousands of investors act globally in markets providing services technology or capital in countries all around the world This activity can be peacefully accomplished when both the investor and the host State know that the disputes will be resolved under the aegis of the investor State arbitration regime wherein an investor is provided with a direct right of action against a State most commonly stemming from a bilateral or multilateral investment treaty This book approaches the substantive and sometimes difficult concepts of investor State arbitration in a clear and concise explanatory fashion In the course of acquainting the reader with the basic legal concepts and policies of the regime the authors address such issues as the following consent to jurisdiction State responsibility possible conflict of interests mechanisms for reviewing an award damages and costs and enforcement The book examines a number of arbitration procedures arising from various perspectives with differing underlying assumptions while highlighting important cases Given that investor State arbitration is now under the public watch and facing many challenges this remarkably clear and concise overview of the regime will prove to be of great value to in house counsel and other practitioners as well as to government policymakers and students x

Handbook of Evidence in International Commercial Arbitration Franco Ferrari, Friedrich Rosenfeld, 2022-04-07 In arbitration evidence provides the basis for almost every decision be it procedural jurisdictional or substantive However users from different legal traditions may not share the same understanding as to how an arbitral tribunal ought to proceed in this regard Therefore it is important for lawyers to know how to collect develop and present evidence in arbitration proceedings not only from a legal perspective but also from a cultural point of view It is against this backdrop that the editors have invited a diverse group of distinguished arbitration practitioners and academics to contribute to this matchless Handbook of Evidence in International Commercial Arbitration Key concepts and issues related to evidence in arbitration covered include the following the normative framework on evidence in arbitration proceedings the burden and standard of proof means of evidence including documents experts and witnesses questions of admissibility including issues of privilege and confidentiality the assessment of evidence and its probative value court assistance and sanctions With its systematic analysis of the key concepts of evidence holistic discussion of the applicable normative framework cross cultural perspectives on the taking of evidence in arbitration and reference to case law from major arbitration hubs this book will become an undisputed point of reference for academics and practitioners alike Critical acclaim This handbook elegantly captures the range of issues that arises regarding evidence in international arbitration Bringing together the foremost experts in the field each contribution offers a thoughtful analysis on these issues and the compilation deserves a prominent spot in every practitioner s arbitral library Chiann Bao Independent Arbitrator Arbitration Chambers and Vice President of the ICC Court of Arbitration This publication well

deserves recognition as a landmark handbook on evidence in international commercial arbitration. It comprehensively discusses the whole evidentiary process from its foundations taking a comparative and harmonizing perspective as well as the burden and standards of proof to the various evidentiary means up to the assessment of evidence. Written by leading academics and practitioners from all over the world, it will be a safe haven for anyone facing discrete evidentiary issues and looking for answers to fundamental or actual questions including as to privileges, confidentiality, virtual hearings or data protection. Professor Filip De Ly, Chair of the ILA International Commercial Arbitration Committee, *International Commercial Arbitration* Gary B. Born, 2020-11-23. International Commercial Arbitration is an authoritative 4 250 page treatise in three volumes providing the most comprehensive commentary and analysis on all aspects of the international commercial arbitration process that is available. The Third Edition of International Commercial Arbitration has been comprehensively revised, expanded and updated. To include all legislative, judicial and arbitral authorities and other materials in the field of international arbitration prior to June 2020. It also includes expanded treatment of annulment, recognition of awards, counsel ethics, arbitrator independence and impartiality and applicable law. The revised 4 250 page text contains references to more than 20 000 cases, awards and other authorities and will enhance the treatise's position as the world's leading work on international arbitration. The first and second editions of International Commercial Arbitration have been routinely relied on by courts and arbitral tribunals around the world, including the highest courts of the United States, United Kingdom, Singapore, India, Hong Kong, New Zealand, Australia, the Netherlands and Canada, and international arbitral tribunals, including ICC, SIAC, LCIA, AAA, ICSID, SCC and PCA. e.g. U.S. Supreme Court, *GE Energy Power Conversion France SAS Corp v Outokumpu Stainless USA LLC*, 590 U.S. 572 (2020); BG Group plc v Republic of Argentina, 572 U.S. 25 (2014); Canadian Supreme Court, *Uber v Heller*, 2020 SCC 16; Canadian S.Ct., *Yugraneft Corp v Rexx Mgt Corp*, 2010 1 R.C.S. 649, 661; Canadian S.Ct./U.K. Supreme Court, *Jivraj v Hashwani*, 2011 UKSC 40, 78 U.K.S.Ct.; *Dallah Real Estate*, Swiss Federal Tribunal Judgment of 25 September 2014, DFT 5A_165/2014; Swiss Fed. Trib., *Indian Aluminium v Kaiser Aluminium C.A.*, No. 7019/2005, 138 39 142 148 49 Indian S.Ct. 2012; Singapore Court of Appeal, *Rakna Arakshaka Lanka Ltd v Avant Garde Maritime Servs Ltd*, 2019 2 SLR 131; Singapore Ct. App., *PT Perusahaan Gas Negara Persero TBK v CRW Joint Operation*, 2015 SGCA 30; Singapore Ct. App., *Larsen Oil Australian Federal Court Hancock Prospecting Pty Ltd v Rinehart*, 2017 FCAFC 170; Australian Fed. Ct., *Hague Court of Appeal Judgment of 18 February 2020*, Case No. 200 197 079 01; Hague Gerechtshof Arbitral Tribunals, *Lao Holdings NV v Lao People's Democratic Republic I Award* in ICSID Case No. ARB/AF/12/6, 6 August 2019; *Gold Reserve Inc v Bolivarian Republic of Venezuela*, Decision regarding the Claimant's and the Respondent's Requests for Corrections, ICSID Case No. ARB/AF/09/1, 15 December 2014; *Total SA v The Argentine Republic*, Decision on Stay of Enforcement of the Award, ICSID Case No. ARB/04/01, 4 December 2014; *Millicom Int'l Operations B.V. v Republic of Senegal*, Decision on Jurisdiction of the Arbitral Tribunal, ICSID Case No. ARB/08/20, 16 July 2010; *Lemire v Ukraine*, Dissenting

Opinion of J rgen Voss ICSID Case No ARB 06 18 1 March 2011

Fact-Finding in International Arbitration Julian

Bickmann,2022-12-09 Establishing a factual basis on which to apply the law can be an extraordinarily challenging process and perhaps more so in international arbitration than in any other proceedings due to the very different notions of fact finding that prevail among jurisdictions This important book assesses for the first time the contours of an emerging transnational law of fact finding that promises to greatly enhance the efficiency and reliability of this crucial arbitral procedure In his analysis focusing on bases that reflect current but fluid transnational practice the author assembles a viable lex evidentiæ from an in depth examination and synthesis of the following bodies of source material published arbitration proceedings and awards the general framework of fact finding issues as provided for under the arbitration acts of England and Wales the United States Germany Brazil Spain Switzerland Austria and Italy as well as under the Model Law fact finding stipulations under UNCITRAL Arbitration Rules as well as under various institutional rules soft law such as the IBA Rules Prague Rules ALI UNIDROIT Principles of Transnational Civil Procedure best practices as captured by legal commentary and investment arbitration proceedings where many decisions and awards are nowadays publicly available In the course of the analysis a comprehensive description and analysis of what fact finding entails including both gathering of facts and taking of evidence is fully elaborated Given that it is an essential task of international arbitration proceedings to define the disagreements between the parties and seek to determine the truth the international arbitration community must be able to rely on a robust consistent and predictable albeit flexible and adaptive set of fact finding rules Against this background the present study not only provides a stocktaking of current practice but also makes a signal contribution to meeting the need for legal certainty and reliability in international arbitration

The International Arbitration Rulebook Arif Hyder Ali,Jane

Wessel,Alexandre de Gramont,Ryan Mellske,2019-10-24 The numerous arbitral regimes around the world differ in subtle yet complex ways These variations can have a profound effect on the procedural rights and obligations of the parties Broadly speaking the choice of regime will impact the way in which an arbitration is conducted its duration and expense the outcome of the dispute and the ultimate enforceability of the award To inform the parties choice this book is the first to deal specifically and in depth with a broad range of institutional and ad hoc arbitration rules on a comparative basis It provides a practical guide to the rules in one book a one stop shop from a distinctly rule and guide point of view This book has its genesis in the authors experience as practitioners and educators in international commercial and investor state arbitration and as advisers to and trainers for arbitral institutions arbitrators judges and government officials around the world This comprehensive descriptive and analytical road map covers the broad range of issues addressed in nine representative major sets of arbitration rules The authors detail the distinct ways in which rules governing such important issues as the following may differ among the various arbitral regimes the governance structure and role of the administering institutions in the arbitration including case management and administrative support the critical and recommended issues to be established in

the agreement to arbitrate such as the place of arbitration and the governing law among others the requirements and best practices for starting the arbitration on the right foot the procedures for selecting appointing and challenging arbitrators the impact of the initial procedural conference on the proceedings the rules on presenting the case in chief written submissions documentary evidence witness and expert testimony and more the costs and fees of leading institutions the procedures and standards for award scrutiny and enforceability and a range of special and innovative procedures such as expedited proceedings interim relief and consolidation of proceedings The comparative analysis is organized around the chronological phases of an international arbitration and supported by rule comparison tables and clear explanations of each step of the process With this eminently practical book contract negotiators counsel and arbitrators can confidently navigate any international arbitration Thorough coverage of the applicable rules and guidelines enables parties and or the tribunal to design bespoke arbitration procedures based upon the various rules of leading regimes Arbitral institutions can survey the different approaches and identify emerging best practices in the design and drafting of arbitral regimes All in all this volume is a useful guide and comprehensive framework of rules for both arbitration practitioners and users of arbitration services as well as for students and teachers of international arbitration

Guide to Damages in International Arbitration John A. Trenor, 2016-11-05 Global Arbitration Review s The Guide to Damages in International Arbitration is a desktop reference work for those who d like greater confidence when dealing with the numbers The guide edited by John A. Trenor of Wilmer Cutler Pickering Hale and Dorr LLP covers all aspects of damages from the legal principles applicable to the main valuation techniques and their mechanics to industry specific questions and topics such as tax and currency For each of the major methodologies employed by damages experts the book describes the basics of the approach the areas of general agreement and the points at which consensus can break down The book acts as a compass for non accountants and non economists enabling them to argue or umpire the damages part of cases more effectively This guide contains 27 chapters sectioned into four parts I Legal Principles Applicable to the Award of Damages II Procedural Issues and the Use of Damages Experts III Approaches and Methods for the Assessment and Quantification of Damages IV Industry Specific Damages Issues Contributors include top names at organisations like White to make the subject of damages in international arbitration more understandable and less intimidating for arbitrators and other participants in the field and to help participants present these issues more effectively to tribunals Anthony Connerty Barrister in practice IDR Group and 4 5 Gray s Inn Square

Taming the Guerrilla in International Commercial Arbitration Navin G. Ahuja, 2022-05-23 The book explores the definition and nature of guerrilla tactics in international commercial arbitration It analyses various such tactics deployed pre Covid and during Covid times and portrays them in a way that enables one to visualise how and possibly why they might be deployed Attempts to codify ethical standards and rules regulating the behaviour of legal representatives in international arbitration are examined The book covers a range of culture clashes addresses several elephants in the room and looks at factors

inherent in the arbitral process that create opportunities and increase temptations to misbehave. It considers the remedies and sanctions available in international arbitration and compares them to those available to the courts in civil litigation. In addition to recommendations for future research, the book offers solutions to curb the problem in line with party autonomy and with a critical analysis. This manuscript is an essential solutions-based text that not only addresses a comprehensive range of modern-day guerrilla tactics in international commercial arbitration but also offers thoughtful methods to deal with the shenanigans that parties may bring to the arbitral process.

Chiann Bao, Independent Arbitrator, Arbitration Chambers and Vice President of the International Chamber of Commerce Court of Arbitration. Dr. Ahuja's book is a thoughtful and highly practical contribution to the study of procedures in international commercial arbitration. It is replete with scholarly analysis, careful treatment of authority, pragmatic insights, and policy discussions. Any practitioner or student of international arbitration would benefit from this volume.

Gary Born, Author, *International Commercial Arbitration* 3d ed 2021. A highly readable and informative book which identifies and analyses the numerous guerrilla tactics parties may attempt to deploy in international commercial arbitration, the factors which may encourage such behaviour, and practical mechanisms to keep the proceedings on track. Both erudite and practical, this book is a must-read for parties, counsel, and arbitrators alike.

Prof Benjamin Hughes, Independent Arbitrator, The Arbitration Chambers. Guerrilla tactics are a pertinent problem in arbitration. Dr. Ahuja's well-written book not only describes the various tactics in a succinct way but provides extremely useful guidance on how to tackle them. It will be a primary source of reference for every practitioner faced with such tactics.

Prof Dr Stefan Kröll, Chairman of the Board of Directors of the German Arbitration Institute (DIS). *Taming the Guerrilla in International Commercial Arbitration* offers a refreshingly candid and balanced discussion of sharp practices in international arbitration. The book collects a wealth of information on guerrilla tactics previously only available in separate survey reports, articles, and guidelines on the topic. It additionally includes a chapter addressing tactics deployed in virtual or remote arbitrations due to the Covid-19 pandemic. The comprehensive research and analysis presented in this book make it a valuable resource to counsel, parties, arbitrators, academics, and those who deliver practical arbitration training. A must-read for those who want to better understand the practices that may lead some to disfavor arbitration and ways the arbitration community can respond to guerrilla tactics to improve the arbitration process for all participants.

Dana MacGrath, Independent Arbitrator. MacGrath, *Arbitration: From an unreasoned fiat of a wise man who left both sides equally unhappy but resolved the disputes effectively*. Arbitration has evolved into a full-scale trial before a party-chosen tribunal. Its informality and expedition puts in peril the fundamental right of the recalcitrant to delay proceedings. Dr. Ahuja has assiduously articulated the measures aptly christened Guerrilla Tactics used to disrupt and derail arbitrations. An indispensable read for the practitioner and an insightful treatise for the policy maker.

Harish Salve, SA, QC, Blackstone Chambers. This book shines a spotlight on arbitration's dark arts guerrilla tactics. Dr. Ahuja illuminates this shadowy world with excellent and much-needed scholarship that is

practice based and useful for all stakeholders in arbitration His examination of the root causes of this problem recommendations on how to control it comparisons with litigation practice and suggestions for future research marvellously combine to make this a work that is required to be consulted by all serious counsel arbitrators institutions and academics in the field of arbitration Romesh Weeramantry Head International Dispute Resolution Centre for International Law National University of Singapore

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Rules Of Evidence In International Arbitration An Annotated Guide Introduction

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