

Remedies

Shoben, Elaine

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Remedies Shoben Tabb

Allan R. Brewer Carias



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The Legal, Real and Converged Interest in Declaratory Relief Beata Gessel-Kalinowska vel Kalisz, 2019-05-16 Worldwide in both litigation and arbitration the term declaration refers to both what is sought by the parties and what is granted by the judicial authority In the latter case it can be construed as a remedy known

as declaratory relief where the plaintiff seeks an authoritative judicial statement of the legal relationship. Although of enormous significance in dispute resolution, declaratory relief has not been analysed in detail until this deeply informed study. The book's main focus is on declaratory relief relating to disputes resolved within the framework of international commercial arbitration and litigation. Focusing on the notion of legal interest which the author views as a serious limitation of access to justice, the book sets out to redefine the term in order to respond to the needs of modern legal dealing. Issues and topics such as the following are thoroughly considered: the concept of legal interest as a prerequisite to granting a declaration; circumstances under which relief based on a declaratory judgment may be granted; determination of a plaintiff's legal interest in having a legal relationship established by a judicial ruling; powers of the court or tribunal in various jurisdictions; emphasizing the contrast between legal interest in Germanic law and real interest in English law; combining a declaration with a coercive measure; role of the arbitration agreement and applicable arbitration law; and how arbitration can neutralize the strict notion of legal interest. Converged interest: Case law including numerous previously unpublished arbitration awards is fully taken into account. The final chapter elaborates a new interpretation of the declaratory relief concept encompassing civil substantive and procedural law, enriched by theory of justice, comparative analysis and statistical analysis. Apart from the foregoing analysis by the Author, the publication is supplemented with an annex which presents expert reports by local practitioners on the relevant legal characteristics in Germanic civil law jurisdictions: Austria, Germany, Poland and Switzerland. Given that recent legal scholarship has been increasingly insistent that judicial practice should evolve towards broader use of declarations, particularly where interpretation of contractual stipulations is necessary, this book holds a crucial place in current theory and practice in both litigation and arbitration contexts. With its challenging redefinition of the legal interest concept, it promises to play an important role in formulation of relief in dispute resolution, particularly in international commercial arbitration. Lawyers and arbitrators will benefit from awareness of how other tribunals decide and how awards can be formulated; arbitration institutions as well as academics in the field will welcome this deeply informative analysis.

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