

LOWENFELD  
ON  
INTERNATIONAL  
ARBITRATION

COLLECTED  
ESSAYS  
OVER THREE  
DECADES

ANDREAS F. LOWENFELD

# Lowenfeld On International Arbitration

**Won L. Kidane**



## **Lowenfeld On International Arbitration:**

Lowenfeld on International Arbitration Andreas F. Lowenfeld, 2005      *The Roles of Psychology in International Arbitration* Tony Cole, 2017-03-15 The system of international arbitration is built on private contractual relations yet has been endorsed by governments around the world as a fair and reliable alternative to litigation in State courts As a private process however its authority and legitimacy derive entirely from the views and actions of those involved in the arbitral process whether arbitrators counsel or parties It is though increasingly clear that psychological factors complicate and in some cases radically change every arbitral proceeding In this context psychological insights are crucial for understanding how international arbitration genuinely operates and whether the legal framework currently applied to it is well suited to achieving the aims of ensuring a fair and reliable dispute resolution procedure This is the first book to focus on this important issue the insights into international arbitration that can be gained from contemporary psychology With contributions from nineteen internationally known figures in their fields arbitrators mediators lawyers law professors psychology professors psychologists and drawing from a longer term project on the role of psychology in arbitration this ground breaking volume addresses a range of topics including the following the decision making processes of arbitrators the ability of arbitration to serve as a genuine dispute resolution mechanism the impact of particular procedures on the arbitral process bias self deception and vested interests in judgment and decision making the role of arbitrators in managing the arbitral process cultural differences in the evaluation of arguments psychological influences on witness testimony the impact of tribunal composition on arbitral decision making the influence of arbitration's professional context on arbitrators and legal counsel and methods for arbitrators and legal counsel to more effectively manage the arbitral process Informed by the behavioural insights in these essays counsel and arbitrators will be enabled to think critically about the underlying assumptions and the potential behavioural effects of a prospective arbitration while individuals researching arbitration will gain a greater understanding of the psychological context in which every arbitration occurs This book meets the increasingly recognized need for understanding the role of psychology in arbitral proceedings and forms an indispensable foundation for subsequent work in this area Its innovative and forward thinking analysis will be of immeasurable value to the international arbitration community as well as to institutions supporting arbitration and to academics in the field      **The Culture of International Arbitration** Won L. Kidane, 2017-02-24 Although international arbitration has emerged as a credible means of resolution of transnational disputes involving parties from diverse cultures the effects of culture on the accuracy efficiency fairness and legitimacy of international arbitration is a surprisingly neglected topic within the existing literature *The Culture of International Arbitration* fills that gap by providing an in depth study of the role of culture in modern day arbitral proceedings It contains a detailed analysis of how cultural miscommunication affects the accuracy efficiency fairness and legitimacy in both commercial and investment arbitration when the arbitrators and the parties their counsel and witnesses

come from diverse legal traditions and cultures The book provides a comprehensive definition of culture and methodically documents and examines the epistemology of determining facts in various legal traditions and how the mixing of traditions influences the outcome By so doing the book demonstrates the acute need for increasing cultural diversity among arbitrators and counsel while securing appropriate levels of cultural competence To provide an accurate picture Kidane conducted interviews with leading international jurists from diverse legal traditions with first hand experience of the complicating effects of culture in legal proceedings Given the insights and information on the rules and expectations of the various legal traditions and their convergence in modern day international arbitration practice this book challenges assumptions and can offer a unique and useful perspective to all practitioners academics policy makers students of international arbitration

**International Arbitration and Private International Law** George A. Bermann, 2017-05-15 No field of legal scholarship or practice operates in the world of private international law as continuously and pervasively as does international arbitration commercial and investment alike Arbitration's dependence on private international law manifests itself throughout the life cycle of arbitration from the crafting of an enforceable arbitration agreement through the entire arbitral process to the time an award comes before a national court for annulment or for recognition and enforcement Thus international arbitration provides both arbitral tribunals and courts with constant challenges Courts may come to the task already equipped with longstanding private international law assumptions but international arbitrators must largely find their own way through the private international law thicket Arbitrators and courts take guidance in their private international law inquiries from multiple sources party agreement institutional rules treaties the national law of competing jurisdictions and an abundance of soft law some of which may even be regarded as expressing an international standard In a world of this sort private international law resourcefulness is fundamental

**Decision-making in International Construction Arbitration** Haytham Besaiso, 2023-10-03 This book contributes to the empirical understanding of how arbitrators make their decisions on the substance of commercial disputes arising from international construction projects It is based on in depth interviews with 28 international construction arbitrators and on the analysis of dozens of international construction arbitration awards The combined experience of those who participated in the author's research amounted to hundreds of international construction arbitrations 300 cases in addition to several hundred international commercial arbitrations It presents the results of the first and largest research to be undertaken in this area and it will be useful to arbitration practitioners and scholars and to the wider audience of dispute resolution students practitioners and theorists In turn the book examines to what extent international arbitrators apply the law as the substantive norm providing an explanation for that and then offers insights into whether arbitrators in fact lean towards commercial and transnational norms to construe the parties contract before discussing to what extent international arbitrators take into account fairness considerations to reach their decisions on the merits of the parties claims The book also examines to what extent

international arbitrators apply mandatory rules of foreign law. Lastly, it provides insight into the effect of arbitrators' background characteristics on their decisions. Written for arbitration practitioners, arbitrators, and legal counsel and scholars, the book will be useful for both experienced arbitrators and those starting their arbitration career or studying for their arbitration qualification. It will also be useful for project professionals involved in contract management and dispute resolution.

Rethinking International Commercial Arbitration Gilles Cuniberti, 2017-05-26 Arbitration is the normal and preferred mode for resolving international commercial disputes. It presents an essential advantage over national courts by offering neutrality of adjudication but is currently only available where both parties have consented to it. This innovative book proposes a fundamental rethink of this assumption and argues that arbitration should become the default mode of resolution in international commercial disputes.

**The Evolution and Future of International Arbitration** Stavros Brekoulakis, Julian D.M. Lew, 2016-06-24 The School of International Arbitration of the Centre for Commercial Law Studies at Queen Mary University of London celebrated its 30th anniversary in April 2015 with a major conference featuring presentations by 35 international arbitration practitioners and scholars from many countries representing a variety of legal systems. This volume has emerged from that conference. What is striking is not only the range and diversity of the topics examined but also the emergence of new subjects for examination demonstrating that arbitration law and practice do not stand still but are constantly evolving. The issues and topics covered include the following: Evolution of case law and practice in international arbitration; The concept and autonomy of arbitral award; Parties in international arbitration; Parallel proceedings in international arbitration; Court review of arbitration awards; Geographic expansion of international arbitration; Counsel regulation and conflicts disclosures; The use of technology in international arbitration; Teaching and research in international arbitration. This superbly organised and edited volume like earlier conference volumes from the School of International Arbitration is sure to be welcomed and acclaimed and like them will prove of lasting value.

Procedure and Evidence in International Arbitration Jeffrey Waincymer, 2012-05-23 Central to the book's purpose is the procedural challenge facing arbitrators at each and every stage of the arbitral process when fairness arguments conflict with efficiency concerns and trade offs must be determined. Some key themes include how can a tribunal be fair and in particular be neutral if parties are so diverse; How can arbitration be made efficient and cost effective without undue inroads into fairness and accuracy; How does a tribunal do what is best if the parties are choosing a suboptimal process; When can or must an arbitrator ignore procedural choices made by the parties. The author thoroughly evaluates competing arguments and adds his own practical tips expertly synthesizing and engaging with the conference literature and differing authors' views. He identifies criteria that offer a harmonized approach to each stage of the arbitral process with particular attention to such aspects of international arbitration as appropriate trade offs between flexibility and certainty; the rights, duties and powers of arbitrators; appointment and challenge of arbitrators; responses to guerilla tactics; drafting of arbitration agreements including specialty

clauses drafting of required commencement notices and response documents set off fast track arbitration and other efficiency options strategic use of preliminary conferences and timetabling online arbitration multi party multi contract class arbitration amicus and third party funders pre arbitral referees and interim relief witness evidence both factual and expert documentary evidence production obligations and challenges to production identifying applicable law and remedies and costs

International Litigation and Arbitration Andreas F. Lowenfeld, 2006 Preface Acknowledgments Table of Cases Chapter Public Law and the Conflict of Laws The Public Law Taboo The Revenue Rule Reconsidered Jurisdiction to Prescribe A First Look at Extraterritoriality The Search for Criteria The Same Problems a Generation Later Jurisdiction of Courts The U S Supreme Court and Jurisdiction to Adjudicate Jurisdiction of Courts in Comparative Context The European Perspective Suing a Multinational Enterprise Service of Process Across International Frontiers The Hague Service Convention Property as a Basis of Jurisdiction Forum Non Conveniens Lis Pendens and Parallel Litigation Arbitration of International Disputes Forum Selection Clauses in International Transactions Litigation Arbitration and the Question of Arbitrability A Primer on International Commercial Arbitration The United Nations Convention on Recognition and Enforcement of Arbitral Awards Judicial Review of Arbitral Awards at the Place of Arbitration ICSID Bilateral Investment Treaties and Arbitration of Investment Disputes Enforcement of Foreign Judgments Development of the Law of Foreign Judgments in the United States Jurisdiction Default Judgments and the Public Policy Defense Recognition of Foreign Judgments in Europe A Look Ahead Can the Law of Judgments Go Global The Act of State Doctrine The Act of State Doctrine Attempts to Limit the Act of State Doctrine Exceptions to Application of the Doctrine The Situs of Debts and the Act of State Doctrine Act of State in a Non Expropriation Context Claims Against Foreign States in Domestic Courts The Development of Sovereign Immunity Law in the United States The Foreign Sovereign Immunity Act of 1976 Special Problems in Suing Foreign Governments and Instrumentalities Abuse of Human Rights Terrorism and Civil Litigation Resort to United States Courts The Alien Tort Statute Expanded Resort to the Alien Tort Statute American Plaintiffs and Action in Congress Discovery of Information Located Abroad Introduction The Foreign Compulsion Defense Public and Private Interests Intertwined Law Enforcement and Secrecy Laws International Judicial Assistance      *General Principles of Law and International Due Process* Charles T. Kotuby, Jr., Luke A. Sobota, Center for International Legal Education (CILE) University of Pittsburgh School of Law, 2017-02-10 Article 38 of the Statute of the International Court of Justice defines international law to include not only custom and convention between States but also the general principles of law recognized by civilized nations within their municipal legal systems In 1953 Bin Cheng wrote his seminal book on general principles identifying core legal principles common to various domestic legal systems across the globe This monograph summarizes and analyzes the general principles of law and norms of international due process with a particular focus on developments since Cheng's writing The aim is to collect and distill these principles and norms in a single volume as a practical resource for international law jurists advocates

and scholars The information contained in this book holds considerable importance given the growth of inter state intercourse resulting in the increased use of general principles over the past 60 years General principles can serve as rules of decision whether in interpreting a treaty or contract determining causation or ascertaining unjust enrichment They also include a core set of procedural requirements that should be followed in any adjudicative system such as the right to impartiality and the prohibition on fraud Although the general principles are by definition basic and even rudimentary they hold vital importance for the rule of law in international relations They are meant not to define a rule of law but rather the rule of law

*International Economic Law* Andreas F. Lowenfeld, 2008-03-27 As conflict and cooperation among states turn to an ever greater extent on economic issues this fully updated and expanded second edition presents a comprehensive exploration of the legal foundations of the international economy It not only examines the current status of the law but also explores the origins political tensions and development of outcomes that are often difficult to comprehend Lowenfeld examines the major elements of economic law in the international arena including the World Trade Organization and its antecedents dumping subsidies and other devices that alter the market the International Monetary System including the collapse of the Bretton Woods system the debt of developing countries the law of foreign direct investment including changing perceptions of the rights of host states and multinational enterprises and economic sanctions The book also contains chapters on competition law environmental law and new chapters on intellectual property and the various forms of arbitration demonstrating how these subjects fit into the framework of international economic law Professor Lowenfeld brings to his task a lifetime of practice and teaching experience to produce a book that will be of use to international lawyers and non specialists alike

*International Commercial Arbitration* Gary Born, 2009 International Commercial Arbitration Third Edition is an authoritative treatise providing the most complete available commentary and analysis on all aspects of the international commercial arbitration process This completely revised and expanded edition of Gary Born's authoritative work is divided into three main parts dealing with the International Arbitration Agreement International Arbitral Procedures and International Arbitral Awards The Third Edition provides a systematic framework for both current analysis and future developments as well as exhaustive citations from all leading legal systems

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 Legal Framework for International Arbitration Agreements International Arbitration Agreements and the Separability Presumption Choice of Law Governing International Arbitration Agreements Formation Validity and Legality of International Arbitration Agreements International Arbitration Agreements and Competence Competence Effects and Enforcement of International Arbitration Agreements Interpretation of International Arbitration Agreements

INTERNATIONAL ARBITRAL PROCEDURES AND PROCEEDINGS  
 Legal Framework for International Arbitral Proceedings Selection Challenge and Replacement of Arbitrators in International Arbitration Rights and Duties of International Arbitrators Selection of Arbitral Seat in International Arbitration Procedures in International Arbitration Disclosure and Discovery in International Arbitration

Provisional Measures in International Arbitration Consolidation Joinder and Intervention in International Arbitration Choice of Substantive Law in International Arbitration Confidentiality in International Arbitration Legal Representation and Professional Conduct in International Arbitration INTERNATIONAL ARBITRAL AWARDS Legal Framework for International Arbitral Awards Form and Content of International Arbitral Awards Correction Interpretation and Supplementation of International Arbitral Awards Annulment of International Arbitral Awards Recognition and Enforcement of International Arbitral Awards Preclusion Lis Pendens and Stare Decisis in International Arbitral Awards International Arbitration in Times of Economic Nationalism Bjorn Arp, Rodrigo Polanco, 2022-07-06 Numerous developments across the world in recent years bear witness to States increasing skepticism about the benefits of international cooperation and the efficiency of international economic law understood as a multilateral set of rules equally binding on all States This timely book reviews situations where this new economic nationalism may impact the way arbitration in both commercial and investment disputes is practiced Distinguished international arbitrators and academic experts analyze a wide array of topics covering a broad spectrum of juristic traditions geographic areas foreign investment protection laws and dispute resolution mechanisms and issues Topics covered include the following evolution of the definitions of arbitrable standards amendments to procedural rules States policy choices as reflected in recent investment treaties procedural trends to restrict access to investment arbitration the effects of the Achmea decision in the European Union growing use of the public policy exception dispute settlement of public private partnership agreements and diversification of dispute resolution methods e g business courts An important feature of the book is the ability it offers to compare various contemporary transformations of dispute settlement mechanisms with attention to developments in a number of jurisdictions including the United States the European Union China Canada Switzerland Turkey and the Latin American countries With its comprehensive analysis of how economic nationalism may lead to limiting the jurisdictional procedural and substantive scope of arbitration the authors underscore the crucial importance of a robust system of international arbitration of economic disputes to ensure a stable and secure world order The global coverage of the contributions and the insightful views offered in them speak eloquently about their usefulness and outreach for arbitration practitioners and scholars as well as for professionals involved in drafting policies for economic development or in the negotiation of investment agreements **International Investment Law and Arbitration** C. L. Lim, Jean Ho, Martins Paparinskis, 2021-03-11 A new edition connecting extracts from arbitral decisions treaties and scholarly works with concise up to date and reliable commentary **Towards a Science of International Arbitration** Christopher R. Drahozal, Richard W. Naimark, 2005-01-01 Most books on international commercial arbitration approach the subject through legal theory supported by anecdotal evidence This remarkable book is distinguished by its focus on the application of quantitative empirical research to the study of international arbitration It collects together with commentary the existing empirical literature on the subject and also presents several studies published here for the first time Beginning



with a basic overview of the methods of empirical research surveys observational studies experimental studies the book goes on to reprint the existing empirical studies under six headings why parties agree to arbitrate arbitration clauses arbitral procedures arbitrator selection rules of decision and applicable law and arbitration awards Written in an easily accessible non technical manner Towards a Science of International Arbitration provides the starting point for future empirical research on international arbitration by collecting the existing empirical literature in one place and by suggesting possible topics for research It will be of inestimable value to lawyers and others involved in international dispute resolution whether as arbitrators parties party representatives or in house counsel as well as to academics interested in methods of resolving disputes in international commerce

Dealing with Bribery and Corruption in International Commercial Arbitration  
Emmanuel Obiora Igbokwe, 2023-01-10 International Arbitration Law Library Volume 65 International commercial arbitration is by no means free from bribery and corruption Although a plethora of legal scholarship clearly affirms this contention a thorough study on the particularly important question of the authority and duty of international commercial arbitrators to investigate a suspicion or indication of bribery or corruption sua sponte that is on their own initiative has been surprisingly lacking This important book fills this gap inter alia by locating sua sponte authority in the position of arbitral tribunals in establishing the facts of a case and ascertaining and applying the applicable normative standards In addition to providing a comprehensive examination of how the issue of bribery and corruption is dealt with in contemporary international commercial arbitration the book also highlights the role of arbitrators in global efforts to combat transnational commercial bribery and corruption Among others the following critical issues are thoroughly investigated arbitrability of issues of public interests intermediary contracts role of arbitrators in the fact finding process party autonomy versus overriding mandatory rules iura novit curia in international commercial arbitration in the context of bribery and corruption notion of transnational or truly international public policy arbitrators duty to act as guardians of international commerce investigative tools available to arbitrators dealing with manifestly recalcitrant parties possible consequences of violating the obligation to sua sponte investigate and the view from developing countries The analysis leans primarily on Swiss law as Switzerland is one of the most important jurisdictions in international commercial arbitration Switzerland has also been involved in some of the most famous and controversial arbitration cases wherein bribery and corruption became an issue However the study also includes a comparative analysis of the relevant laws jurisprudence and doctrine of other major arbitration venues particularly England France and Germany Not only in the light it sheds on how and whether international commercial arbitrators have hitherto justified the trust States have placed in them regarding the protection of the public interests but also in the practical solutions it offers arbitrators faced with issues of bribery and corruption this deeply researched book equips arbitration practitioners and arbitration institutions with a hitherto lacking in depth analysis on the question of sua sponte investigation It also provides invaluable insights on how this issue might affect the future legitimacy and expansion of this dispute

settlement mechanism Outside the field of arbitration the book also provides jurists legal scholars in house counsel for companies doing transnational business and public officials with highly enlightening perspectives on the interaction between international commercial arbitration and public interests

**International Arbitration and International Commercial Law** Eric E. Bergsten, 2011-01-01 Over the last half century as UNCITRAL official professor arbitrator and father of the Willem C Vis Arbitration Moot Eric Bergsten has been at the forefront of progress in international commercial arbitration Now on the occasion of his eightieth birthday the international arbitration and sales law community has gathered to honour him with this substantial collection of new essays on the many facets of the field to which he continues to bring his intellect integrity inquisitive nature eye for detail precision and commitment to public service Celebrating the long standing and sustained contribution Eric Bergsten has made in international commercial law international arbitration and legal education more than fifty colleagues among them quite a few of the best known arbitrators and arbitration academics in the world present 45 pieces that individually both engaging and incisive collectively present a thorough and far reaching account of the state of the field today with contributions covering international sales law commercial law commercial arbitration and investment arbitration In addition nine essays on issues in legal education mirror the great importance of the renowned Willem C Vis International Commercial Arbitration Moot Eric's Vienna project which has offered a life changing experience for so many young lawyers from all over the world

**Public-Private Partnerships and Responsibility under International Law** Lisa Clarke, 2014-03-21 Partnerships between the public and private sectors are an increasingly accepted method to deal with pressing global issues such as those relating to health Partnerships comprised of states and international organizations public sector and companies non governmental organizations research institutes and philanthropic foundations private sector are forming to respond to pressing global health issues These partnerships are managing activities that are normally regarded to be within the domain of states and international organizations such as providing access to preventative and treatment measures for certain diseases or improving health infrastructure within certain states to better manage the growing risk of disease In the shadow of the success of these partnerships lies however the possibility of something going wrong and it is to this shadow that this book sheds light This book explores the issue of responsibility under international law in the context of global health public private partnerships The legal status of partnerships under international law is explored in order to determine whether or not partnerships have legal personality under international law resulting in them being subject to rules of responsibility under international law The possibility of holding partnerships responsible in domestic legal systems and the immunity partnerships have from the jurisdiction of domestic courts in certain states is also considered The obstacles to holding partnerships themselves responsible leads finally to an investigation into the possibility of holding states and or international organizations as partners and or hosts of partnerships responsible under international law in relation to the acts of partnerships This book will be of interest to those researching and working in areas of global governance

especially hybrid public private bodies the responsibility under international law of states and international organizations and also global health It provides doctrinal clarification and practical guidance in a developing field of international law

**International Commercial Arbitration: Commentary and Materials** Gary Born, 2021-11-15 International Commercial Arbitration contains detailed commentary case analyses and practice pointers Full annotations and footnotes provide invaluable research assistance while clearly written analyses identify and discuss critical issues Representative international arbitral awards and national court decisions are excerpted and detailed reference is made to leading institutional rules Detailed appendices an easy to use Table of Contents and an extensive index to aid research and provide ready access to key materials Co publication with Kluwer Law International North American sales rights only Published under the Transnational Publishers imprint For class adoption a student edition is available for 85 00 978 1 5710 5175 2 Please contact the Brill sales department to arrange an order

**International Commercial Arbitration** Gary B. Born, 2014-10-01 The second edition of Gary Born s International Commercial Arbitration is an authoritative 4 408 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 first edition of International Commercial Arbitration is widely acknowledged as the preeminent commentary in the field It was awarded the 2011 Certificate of Merit by the American Society of International Law and was voted the International Dispute Resolution Book of the Year by the Oil Gas Mining and Infrastructure Dispute Management list serve in 2010 The first edition has been extensively cited in national court decisions and arbitral awards around the world The treatise comprehensively examines the law and practice of contemporary international commercial arbitration thoroughly explicating all relevant international conventions national arbitration statutes and institutional arbitration rules It focuses on both international instruments particularly the New York Convention and national law provisions in all leading jurisdictions including the UNCITRAL Model Law on International Commercial Arbitration Practitioners academics clients institutions and other users of international commercial arbitration will find clear and authoritative guidance in this work The second edition of International Commercial Arbitration has been extensively revised expanded and updated to include all material legislative judicial and arbitral authorities in the field of international arbitration prior to January 2014 It also includes expanded treatment of annulment recognition of awards counsel ethics arbitrator independence and impartiality and applicable law Overview of volumes Volume I covering International Arbitration Agreements provides a comprehensive discussion of international commercial arbitration agreements It includes chapters dealing with the legal framework for enforcing international arbitration agreements the separability presumption choice of law formation and validity nonarbitrability competence competence and the allocation of jurisdictional competence the effects of arbitration agreements interpretation and non signatory issues Volume II covering International Arbitration Procedures provides a detailed discussion of international arbitral procedures It includes chapters dealing with the legal

framework for international arbitral proceedings the selection challenge and replacement of arbitrators the rights and duties of international arbitrators selection of the arbitral seat arbitration procedures disclosure and discovery provisional measures consolidation joinder and intervention choice of substantive law confidentiality and legal representation and standards of professional conduct Volume III dealing with International Arbitral Awards provides a detailed discussion of the issues arising from international arbitration awards It includes chapters covering the form and contents of awards the correction interpretation and supplementation of awards the annulment and confirmation of awards the recognition and enforcement of arbitral awards and issues of preclusion *lis pendens* and *stare decisis*

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