Governing Law Of Arbitration Clauses Linklaters

“This book, by a leading international arbitration practitioner, offers suggested language for every option that a drafter of an international arbitration clause may need. Following a succinct assessment of the choice between arbitration and litigation and commentary on the choices among arbitration rules, the author presents an accessible how-to for drafting. While other works offer theory and a smattering of drafting tips, there is no other comprehensive collection of workable language, presented accessibly with easy-to-reference appendices. This book will be a standard reference for both in-house counsel and outside practitioners. This book provides, in an accessible format, clauses that address all the significant issues that contracting parties face, and in any event should consider, when they decide to draft a dispute resolution clause for an international contract. Those who wish immediate access to suggested language may turn directly to the Appendices. Those who wish to understand the analysis that leads to the suggested language should read the text.”—Publisher's website.

Arbitration Law in America: A Critical Assessment is a source of arguments and practical suggestions for changing the American arbitration process. The book, first published in 2006, argues that the Federal Arbitration Act badly needs major changes. The authors, who have previously written major articles on arbitration law and policy, here set out their own views and argue among themselves about the necessary reforms of arbitration. The book contains draft legislation for use in international and domestic arbitration and a detailed explanation of the precise justifications for proposed legislative changes. It also contains two proposals that might be deemed radical - to ban arbitration related to the purchase of products by consumers and to prohibit arbitration of employment disputes. Each proposal is vetted fully and critiqued by one or more of the other co-authors.

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 drafting 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. International Arbitration and Forum Selection Agreements: Drafting and Enforcing is a concise, practical primer on the fundamentals of drafting and enforcing international arbitration agreements and other dispute resolution clauses. Drawing on a wealth of practical experience and academic analysis by one of the world's leading authorities on international arbitration and litigation, this extensively revised and expanded sixth edition provides model arbitration and forum selection clauses for international contracts and explains the advantages and disadvantages of different approaches to reducing the risks inherent in cross-border transactions. The book is an essential resource for any international practitioner or corporate counsel engaged in international matters. Key Features include: Discussion of practical reasons for international arbitration and forum selection clauses Uncomplicated and practical guidance on drafting international arbitration and forum selection clauses Do's and Don'ts for drafting Model international arbitration and forum selection clauses that permit efficient and effective dispute resolution Nearly 100 different model provisions Ad hoc versus institutional arbitration clauses Overview of leading arbitral institutions (including ICC, SIAC, ICDR/AAA, LCIA, HKIAC, PCA, ICSID, WIPO, VIAC, DIIS, NAI and CRCICA) Overview of advantages and disadvantages of leading arbitral seats Forum selection clauses for national and international courts Multi-tier dispute resolution provisions Optional provisions for international arbitration and forum selection clauses (including arbitrator selection, arbitral procedure, costs of arbitration, provisional measures, waiver of annulment and currency of award) Discussion of pathological arbitration clauses and commonly-encountered defects And covers: Updated extensively to address developments through January 2021 New materials covering international courts and choice-of-law provisions Key reference materials in easy-to-use appendices About the author: Gary B. Born is one of the world's leading authorities on international arbitration and litigation. He has practiced extensively in both fields in Europe, the United States, and Asia. He is the author of International Commercial Arbitration (Kluwer Law International 3rd ed. 2021), International Arbitration: Law and Practice (Kluwer Law International 2nd ed. 2016), International Commercial Arbitration: Cases and Materials (Aspen 2nd ed. 2015) and International Civil Litigation in United States Courts (Aspen 6th ed. 2018). International commercial arbitration raises issues other than the choice of the law applicable to the principal contract. Autonomy may have a wider meaning, extending beyond the choice of applicable law to the choice of arbitration itself, and of the place or places where it is to be conducted. Nor is it altogether clear what the forum is, if any. This paper raises the fundamental question of what gives the arbitrator his or her competence--the will of the parties or the law of the seat of arbitration which the parties may, or may not, have chosen? The paper also suggests an answer to the questions of which choice of law rules, if any, should be applied by the arbitrators, to what extent arbitrators will apply mandatory rules (règles d'application immédiate), as well as which law governs the procedural aspects and whether it has to be the procedural law of a national system. The new English Arbitration Act 1996 has also been taken into account. Provides an unprecedented historical, theoretical and comparative analysis and appraisal of party autonomy in private international law. These issues are of great practical importance to any lawyer dealing with cross-border legal relationships, and great theoretical importance to a wide range of scholars interested in law and globalisation.
With this newly updated edition of the Freshfields Guide to Arbitration Clauses in International Contracts - still in the concise, attractive format that made the original so popular - lawyers and business people will confidently negotiate contracts that ensure a speedy, clear-cut resolution of any dispute likely to arise. Taking into account the many significant developments in the law and practice of international arbitration that have occurred over the years since the previous editions, it offers: clear, uncomplicated contract-drafting advice, derived from the authors' wide-ranging practical experience; model clauses that ensure the effectiveness of dispute resolution provisions - and avoid pitfalls, and important reference materials.

The growth of national economic regulation and the process of globalisation increasingly expose international transactions to an array of regulations from different jurisdictions. These developments often contribute to widespread international contractual failures when parties claim the incompatibility of their contractual obligations with regulatory laws. The author challenges conventional means of dispute resolution and argues for an interdisciplinary approach whereby disciplines such as international economic law, conflict of laws, contract law and economic regulations are functionally united to resolve international and multifaceted regulatory disputes. He identifies the normative foundation of contract law as an important determinant in this process, contending that contract law is essentially neutral and underpinned by the concept of corrective justice, while economic regulations are mainly prompted by distributive justice. Applying this corrective/distributive justice dichotomy to international contracts, the author critically assesses major conflict of laws approaches such as 'proper law', the 'Rome Convention' and 'governmental interest analysis', which could disregard either public interest or private rights. The author, taking these theories into account, proposes an alternative two-dimensional interest analysis approach. He tests the viability of this approach with reference to arbitral awards and court decisions in various jurisdictions and concludes that it uniquely fits into the structure of international commercial arbitration. In adopting this approach arbitrators would take into account both corrective and distributive justice, and to the extent that corrective justice prevails, would be able to avert a total failure of the contract.

This title provides the reader with immediate access to understanding the world of international arbitration. Arbitration has become the dispute resolution method of choice in international transactions. This book explains how and why arbitration works. It provides the legal and regulatory framework for international arbitration, as well as practical strategies to follow and pitfalls to avoid. It is short and readable, but comprehensive in its coverage of the basic requirements, including changes in arbitration rules, laws, and guidelines. In the book, the author includes insights from numerous international arbitrators and counsel, who tell firsthand about their own experiences of arbitration and their views of the best arbitration practices. Throughout the book, the principles of arbitration are supported and explained by the practice, providing a concrete approach to an important means of resolving disputes.

This book is a second, revised edition of the original 1986 publication. Since then, the issue of contract change has increasingly challenged the business community and legal practitioners. The world-wide recession may well have accelerated the need to secure contractual relationships by reasonable flexibility. Successful foreign investment, a relentless challenge, is subject to many unpredictable errors. Of all these variables, however, successful investment is most dependent on the investor-host country relationship, which is the object of the present study. In particular, the pressure by host countries for contract change and its counterpart: the investor's defence of contract stability. The book is essentially a reference handbook for legal practitioners. It analyzes a variety of increasingly important questions concerning international investment agreements that come under pressure for change by one of the contracting parties: either a transnational corporation or a host country government. The seven case studies and the analytical chapters which follow are based on the author's research and the assistance of corporate and government officials, experts from the United Nations and other organizations, and members of academic research institutes.

The book verifies the impact of national law and transnational rules on international contracts, particularly those with an arbitration clause. Essay from the year 2018 in the subject Law - Miscellaneous, grade: A, Lyon Catholic University, course: International Contract Law, language: English, abstract: The paper discusses the Definition and Purpose of the Arbitration Clause, Two Types of Contracts where the Arbitration Clause is typically found. Legal Basis & Regime, Differences in the use and interpretation of the Contract Clause between common law and civil law jurisdictions. You may use your home jurisdictions as illustrative, and Proper drafting of the Contract Clause and advice to avoid the pitfalls of relying on a "boilerplate" clause.

La presentación de l'éditeur : "In recent years, a growing body of provisions called "protocols," "guidelines," "checklists" or even "rules" has emerged in international arbitration. Unlike national or international law, or institutional arbitral rules, these provisions are not "mandatory" for arbitration participants. They range from provisions that can be incorporated into the parties' agreement to arbitrate to suggestions as to the best practices that arbitrators and other arbitration participants may choose to follow. These materials are often collectively referred to as "soft law." Soft Law in International Arbitration provides a guide to what the editors consider to be the most useful of such materials. The book organizes these materials into five categories, each introduced with commentary by a prominent member of the international arbitration community. Thus, the eighteen documents contained in this book can be regarded as helping to fill in the spaces that substantive law and arbitration rules have intentionally left blank. Soft Law in International Arbitration is an indispensable commentary for practitioners and academicians alike."

Reviewing the legal context within which international commercial arbitration operates, this text has been updated to reflect recent developments in international law.

The Freshfields Guide to Arbitration Clauses in International Contracts Kluwer Law International B.V.

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. INTERNATIONAL ARBITRATION AGREEMENTS 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 Annulement
of International Arbitral Awards Recognition and Enforcement of International Arbitral Awards Preclusion, Lis Pendens and Stare
Decisis in International Arbitral Awards

A unique collaboration between academic scholars, legal practitioners, and arbitrators, this handbook focuses on the intersection of arbitration - as an alternative to litigation - and the court systems to which arbitration is ultimately beholden. The first three parts analyze issues relating to the interpretation of the scope of arbitration agreements, arbitrator bias and conflicts of interest, arbitrator misconduct during the proceedings, enforceability of arbitral awards, and the grounds for vacating awards. The next section features fifteen country-specific reviews, which demonstrate that, despite the commonality of principles at the international level, there is a significant amount of differences in the application of those principles at the national level. This work should be read by anyone interested in the general rules and principles of the enforceability of foreign arbitral awards and the grounds for courts to vacate or annul such awards.

India has a long-standing tradition of dispute resolution through arbitration, with arbitral-type regulations going back to the eighteenth century. Today, amendments to the 1996 Indian Arbitration Act, a steady evolution of case law and new arbitral institutions position India’s vibrant system once more at the forefront of international commercial dispute resolution. In this handbook, over forty members of the international arbitration community in India and beyond offer authoritative perspectives and insights into topics on arbitration that matter in India. International arbitration practitioners, Indian practitioners, and scholars have combined efforts to produce a practical and informative guide on the subject. Among numerous notable features, the contributors provide detailed analysis and description of such aspects of arbitration as the following, with a focus on the Indian context: Indian application of the 1958 New York Convention; law governing the merits of the dispute and awards; investor-state dispute settlement; drafting arbitration clauses for India-centric agreements; managing costs and time; rise of virtual arbitration and technology; effect of public policy in light of extensive Indian jurisprudence; and arbitration of claims relating to environmental damage. Practical features include checklists for drafting arbitration clauses and a comparative chart of major commercial arbitration rules applicable to India. Also included is a comparative analysis of arbitral regimes in India, Singapore and England; chapters on the India Model Bilateral Investment Treaty and ISDS reforms; a special section on the enforcement of foreign awards; a section on the drafting of the award guided by leading arbitrators and stakeholders and a review of the new 2021 ICC Rules. For foreign counsel and arbitrators with arbitrations in India, this complete and up-to-date analysis provides guidelines for practitioners, corporate counsel, and judges on considerations to be borne in mind with respect to arbitration with an Indian nexus and whilst seeking enforcement and execution of an arbitral award in India. It will prove an effective tool for students and others in understanding and navigating the particularities and peculiarities of India’s system of domestic and international commercial arbitration.

This book deals with the contractual platform for arbitration and the application of contractual norms to the parties’ dispute. Arbitration and agreement are inter-linked in three respects: (i) the agreement to arbitrate is itself a contract; (ii) there is scope (subject to clear consensual exclusion) in England for monitoring the arbitral tribunal’s fidelity and accuracy in applying substantive English contract law; (iii) the subject-matter of the arbitration is nearly always a ‘contractual’ matter. These three elements underlie this work. They appear as Part I (arbitration is founded on agreement), Part II (monitoring accuracy), Part III (synopsis of the English contractual rules frequently encountered within arbitration). The book will be a useful resource to foreign lawyers or English non-lawyers, English lawyers seeking a succinct discussion, and to arbitral tribunals.

Today, a California resident can incorporate her shipping business in Delaware, register her ships in Panama, hire her employees from Hong Kong, place her earnings in an asset-protection trust formed in the Cayman Islands, and enter into a same-sex marriage in Massachusetts or Canada—all the while enjoying the California sunshine and potentially avoiding many facets of the state’s laws. In this book, Erin O’Hara and Larry E. Ribstein explore a new perspective on law, viewing it as a product for which people and firms can shop, regardless of geographic borders. The authors consider the structure and operation of the market this creates, the economic, legal, and political forces influencing it, and the arguments for and against a robust market for law. Through jurisdiccional competition, law markets promise to improve our laws and, by establishing certainty, streamline the operation of the legal system. But the law market also limits governments’ ability to enforce regulations and protect citizens from harmful activities. Given this tradeoff, O’Hara and Ribstein argue that simple contractual choice-of-law rules can help maximize the benefits of the law market while tempering its social costs. They extend their insights to a wide variety of legal problems, including corporate governance, securities, franchise, trust, property, marriage, living will, surrogacy, and general contract regulations. The Law Market is a wide-ranging and novel analysis for all lawyers, policymakers, legislators, and businesses who need to understand the changing role of law in an increasingly mobile world.

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.

This book presents an overview of online arbitration and electronic contracting worldwide, examining their national and international contexts, and assessing their ongoing relevance. It offers solutions to the salient challenges facing both online arbitration and electronic contracting, dealing first-hand with online arbitration as an online dispute resolution technique for solving both traditional and electronic commerce disputes that may arise out of the breach of contractual obligations in international commercial contracts, while also comparing between
common law and civil law countries. In the theory of law, this book analyses the international legal framework that regulates e-commerce, and its impact on electronic contracting, including Model Laws and International Conventions such as the Model Law on Electronic Commerce of 1996 and the Electronic Communications Convention of 2005. It also investigates whether the UN Convention on Contracts for the International Sale of Goods of 1980 ‘The CISG’ applies to e-commerce contracts. In addition, it extensively examines the possibility for the enforcement of online arbitration agreements and online arbitral awards under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958. Regarding the practice of law, the volume examines how national courts apply both national laws and the New York Convention of 1958 when dealing with the enforcement of online arbitration agreements, and whether courts apply the provisions of national laws of arbitration liberally. As such, it encourages the adoption of a more liberal judicial regime in favour of the enforcement of online arbitral awards and online arbitration agreements in national courts. This book represents a valuable resource for academics, arbitrators, practicing lawyers, corporate counselors, law students, researchers, and professionals who are willing to solve their cross-border commercial disputes through online arbitration.

Employment Arbitration Agreements: A Practical Guide is the one source that will immediately enable you to: Be confident that your employment arbitration agreements are valid and enforceable in all states Stay fully apprised of ever-changing laws and critical issues regarding employment arbitrations Keep your existing arbitration agreements current and compliant before any issues arise For many employers, class actions are a major concern, with the potential to escalate issues and damages. This unique resource provides the proper guidance with in-depth analysis of class arbitrations and arbitral class action waiver clauses. Plus, Employment Arbitration Agreements includes numerous sample agreements and several 50-state surveys. These one-of-a-kind features are helpful to you not only in developing an ADR program that will be legally compliant in multiple states, but also in implementing agreements across different jurisdictions. Different states have different rules for how contracts are formed and enforced. Employment Arbitration Agreement s keeps you covered by providing a single source that lets you compare - and stay in compliance with - requirements on a state-by-state basis. Employment Arbitration Agreements helps you: Implement enforceable arbitration agreements in all 50 states Save time, money and effort by drafting agreements that are less likely to be litigated Keep your current employment arbitration agreements in full compliance Successfully manage employment disputes and more Employment Arbitration Agreements delivers: 50-state surveys - to help you ensure that all rules, regulations and standards are being met Sample agreements - to save you time and enable you to reduce the risk of litigation Reliable tips on modifying current agreements - to keep you in complete compliance Extensive coverage of class actions - to help you manage risk and minimize costly disputes Insights into the best in-house dispute resolution procedures - to ensure you act with confidence when disputes arise and much more! Employment Arbitration Agreements has been updated to include: Several new surveys that address issues left open by the U.S. Supreme Court's decision in Hall Street Associates v. Mattel, Inc. including: 50 State Survey - including relevant state statutes and case law regarding grounds for vacating an award, state court's application of "manifest disregard" standard, and whether parties can agree to contractually expand judicial review of arbitration awards Federal Court Survey - regarding whether, under the FAA, federal courts after Hall Street may still consider state-court-created "manifest disregard" to the law" standard to judicial review of arbitrator's awards Updated discussion of changes to state arbitration statutes, including new and proposed legislation Further definition and delineation of those state arbitration statutes that do not apply to pre-dispute employment-related arbitration agreements New court decisions regarding e-mail distribution of arbitration agreements Explanation of trend towards provider's "opt out" class action procedures v. Fair Labor Standard Act's "opt-in" procedure New court rulings regarding mutual assent and non-English-speaking employees A summary of Franco v. Athens Disposal Co., a California Court of Appeal decision finding that a private attorney general waiver in an arbitration agreement unconscionable since the waiver precluded the employee from seeking civil penalties on behalf of current and former employee International Arbitration and the COVID-19 Revolution Edited by Maxi Scherer, Niusha Bassiri & Mohamed S. Abdel Wahab The impact of the COVID-19 pandemic on all major economic sectors and industries has triggered profound and systemic changes in international arbitration. Moreover, the fact that entire proceedings are now being conducted remotely constitutes so significant a deviation from the norm as to warrant the designation ‘revolution’. This timely book is the first to describe and analyse how the COVID-19 crisis has redefined arbitral practice, with critical appraisal from well-known practitioners of the pandemic’s effects on substantive and procedural aspects from the commencement of proceedings until the enforcement of the award. With practical guidance from a variety of perspectives – legal, practical, and sector-specific – on the conduct of international arbitration during the COVID-19 pandemic and beyond, the chapters present leading practitioners’ insights into the unprecedented and multifaceted issues that arise. They provide expert tips and challenges in such practical matters as the following: preventing and resolving disputes of particular types – construction, energy, aviation, technology, media and telecommunication, finance and insurance; arbitrator appointments; issues of planning, preparation and sample procedural orders; witness preparation and cross-examination; e-signature of arbitral awards; setting aside and enforcement proceedings; and third-party funding. Also included are an empirical survey of users’ views and an overview of how the COVID-19 revolution has affected the arbitration rules of leading arbitral seats. With this timely and practical book, arbitration practitioners and scholars will gain up-to-date knowledge of sector-specific challenges brought about by the COVID-19 pandemic and approach arbitration proceedings with an understanding of the most important legal and practical considerations during the crisis and beyond.

V.3: "... 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."--Descripción del editor. Considers the vitality of the international arbitral process through an updated examination of three salient problems. Jurisdiction and arbitration clauses are two different mechanisms that help to ensure impartiality and predictability in international dispute resolution. Despite their benefits, these clauses can be inconvenient for parties that are forced to litigate before distant fora. Moreover, particular problems arise in the context of maritime transport documents. Based on a broad comparative approach, this study seeks to explain the existing rules within their legal context and to develop a coherent system for such clauses, which takes into account the underlying interests as well as economic theory. While offering detailed answers to most issues surrounding jurisdiction and arbitration clauses in maritime transport documents, the book confronts the fundamental question of the limits of freedom of contract in an international setting.

Irrespective of the increasing harmonization of law at the transnational level, every arbitration raises a number of confl ict of laws problems relating to procedural questions as well as to issues concerning the merits of the case. Unlike a state court judge, the arbitrator has no "lex fori" in the proper sense providing the relevant confl ict of laws rules to determine the applicable law. This raises the question of what confl ict of laws rules to apply and, consequently, of the extent of the freedom the arbitrator enjoys in dealing with this and related issues. The best example of the importance of confl ict of laws questions in arbitration is the Vivendi-Elektirim saga where the outcome of the various proceedings depended on the question of characterization. This very beneficial book is dealing with - the arbitration agreement, - the jurisdiction of the arbitral tribunal, - the law applicable to the merits and - the arbitration procedure.

JOINT WINNER OF THE BRITISH INSURANCE LAW ASSOCIATION BOOK PRIZE 2012 This is the second, revised edition, of
what has become and was described by the English Court of Appeal in C v D as the standard work on Bermuda Form excess insurance policies. The Form, first used in the 1980s, covers liabilities for catastrophes such as serious explosions or mass tort litigation and is now widely used by insurance companies. It is unusual in that it includes a clause requiring disputes to be arbitrated under English procedural rules in London but, surprisingly, subject to New York substantive law. This calls for a rare mix of knowledge and experience on the part of the lawyers involved, each of whom will also be required to confront the many differences between English and US legal culture. A related feature of the Form is that the awards of arbitrators are confidential and not subject to the scrutiny of the courts. Therefore, while many lawyers have been involved in litigating on the Bermuda Form their knowledge remains locked away. The Bermuda Form is thus not well understood, a situation not helped by the lack of publications dealing with it. Accordingly, those required to deal with the Form professionally are confronted with a lengthy and complex document, but with very little to aid their understanding of it. This unique and comprehensive work offers a detailed commentary on how the Form is to be construed, its coverage, the substantive law to be applied, the limits of liability, exceptions and, of course, the procedures to be followed during arbitration proceedings in London. This is a book which will prove invaluable to lawyers, risk managers, and executives of companies which purchase insurance on the Bermuda Form, and clients, lawyers or arbitrators involved in disputes arising therefrom. "...deserves to be in the library of anyone who is, or is contemplating becoming, a party to a Bermuda Form arbitration..."The authors, whom we have been associated with in some cases and opposed in others, have a wealth of experience with the Bermuda Form and the ability to share that experience with their readers in a clear and engaging style." From the foreword by Thomas R Newman and Bernard Eder QC

International Commercial Arbitration in New York focuses on the distinctive aspects of international arbitration in New York. Serving as an essential strategic guide, this book allows practitioners to represent clients more effectively in cases where New York is implicated as either the place of arbitration or evidence or assets are located in New York. Each chapter elucidates a vital topic, including the existing New York legal landscape, drafting considerations for clauses designating New York as the place of arbitration, and material and advice on selecting arbitrators. The book also covers a series of topics at the intersection of arbitral process and the New York courts, including jurisdiction, enforcing arbitration agreements, and obtaining preliminary relief and discovery. Class action arbitration, challenging and enforcing arbitral awards, and biographical materials on New York-based international arbitrators is also included, making this a comprehensive, valuable resource for practitioners.

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.

No lawyer involved in international transactions can afford to ignore this authoritative guide to planning and drafting international arbitration agreements and forum selection clauses. It includes clear, practical explanations of the advantages and disadvantages of different forms of dispute resolution provisions, and detailed discussion of all elements of drafting arbitration and choice-of-court clauses. The primer includes scores of revised model arbitration and forum selection clauses, providing precise wording for use in a wide range of commercial contexts. It is designed for easy reference and use by both general practitioners and specialists. Each model clause is thoroughly annotated, including with reference to relevant scholarship and jurisprudence. The primer is authored by Gary B. Born, one of the world's pre-eminent authorities on international commercial arbitration and litigation. He is the author of International Commercial Arbitration (2d ed. 2001) and International Civil Litigation in U.S. Courts (3d ed. 2000), and a leading international arbitration practitioner. He has brought a wealth of practical experience and academic achievement together to produce a practical, authoritative guide to drafting and planning international arbitration and forum selection agreements.

This second edition, extensively updated and revised, includes such features as the following: scores of sample arbitration and forum selection clauses, including leading institutional arbitration clauses, ad hoc clauses and comprehensive guidance on drafting individualized clauses; sample language relating to discovery, language, arbitrators' qualifications, confidentiality, waivers of immunity, interim relief, fast-track procedures, costs, consent to service of process, and other commonly-used provisions; descriptions of all leading international arbitration institutions (ICC, LCIA, AAA, ICSID) and most major regional arbitration institutions, including commentary on individual characteristics of each institution; practically-oriented discussions of the importance of the arbitral seat, means of selecting arbitrators, language, and other key issues; detailed guidance on drafting choice-of-law clauses (including samples) and their role in dispute resolution; and practical analysis of enforcement of international arbitration and forum selection agreements, as well as national court judgments and international arbitral awards, under leading conventions and national laws. An appendix contains texts of the New York and European Conventions and the UNCITRAL Model Law, as well as arbitration rules of leading arbitral institutions. Designed for easy reference and use by both general practitioners and specialists, the book is required for any international practitioner or corporate counsel engaged in international matters.

ADVANCE REVIEWS OF THE SECOND EDITION “An excellent work by one of the world's leading arbitration authorities and practitioners. This comprehensive review of international arbitration is bound to become essential reading for students and practitioners alike, especially for anyone drafting arbitration clauses.” Roberto Danino, Secretary General of the International Centre for Settlement of Investment Disputes (ICSID) "Gary Born's new edition of this classic work covers everything a drafter of dispute resolution clauses needs to consider, with useful model clauses, and is up to the minute on all recent developments." James H. Carter, Chairman of the Board, American Arbitration Association "Many books are devoted to the subject of international arbitration, but this is one of the few which stand out as particularly valuable due to The technical, economic, and social development of the last one hundred years has created a new type of long-term contract which one may call 'Complex International Contract'. Typical examples include complex civil engineering and constructions contracts as well as joint venture, shareholders, project finance, franchising, cooperation and management agreements. The
dispute resolution mechanism, which normally deals with such contracts, is commercial arbitration, which has been deeply affected in recent decades by attempts to improve its capabilities. Most importantly, there is the trend towards further denationalization of arbitration with respect to the applicable substantive law. In this regard, a new generation of conflict rules no longer imposes on the arbitrators a particular method to be applied for the purpose of determining the applicable rules of law. Moreover, arbitration more frequently took on the task of adapting Complex International Contracts to changed circumstances. Also, special rules have been developed for so-called multi-party arbitration and fast track arbitration facilitating efficient dispute resolution. The author describes these trends both from a practical as well as a theoretical perspective, evaluating not only the advantages, but also the risks involved with the new developments in arbitration. Relevant issues with respect to the drafting and renegotiation of such contracts are also discussed.

The distinguished international lawyer Michael Pryles, who launched a meteoric career as an arbitrator after many years of teaching and writing on conflicts of law and other topics, has made a mark on arbitral law and practice that is recognized worldwide. In this book, over forty prominent arbitrators and arbitration scholars offer insightful essays on the thorny matters of jurisdiction, admissibility and choice of law in arbitration – topics which have long interested Professor Pryles and are of wide interest. Among the specific issues and topics examined are the following: • res judicata; • investment arbitration; • free trade agreements; • party autonomy; • application of provisional measures; • issue estoppel; • evidentiary inferences; • interim measures; • emergency and default proceedings; • the intersection of financing and jurisdiction; • consolidation of cases; and • non-contractual claims. Remarkable for its roster of highly distinguished contributors, this book is the only in-depth treatment of its subject. By turns thought-provoking and practical, it is bound to appeal to and be put to use by arbitrators and other lawyers who handle international cases. It will also prove of great value to global law firms and companies doing transnational business.