

COMMERCIAL ARBITRATION: CASES AND PROBLEMS

LexisNexis Law School Publishing Advisory Board

Paul Caron

Charles Hartsock Professor of Law
University of Cincinnati College of Law

Olympia Duhart

Associate Professor of Law
Nova Southeastern University Shepard Broad Law School

Samuel Estreicher

Dwight D. Opperman Professor of Law
Director, Center for Labor and Employment Law
NYU School of Law

Steve Friedland

Professor of Law
Elon University School of Law

Joan Heminway

College of Law Distinguished Professor of Law
University of Tennessee College of Law

Edward Imwinkelried

Edward L. Barrett, Jr. Professor of Law
UC Davis School of Law

Paul Marcus

Haynes Professor of Law
William and Mary Law School

John Sprankling

Distinguished Professor of Law
McGeorge School of Law

Melissa Weresh

Director of Legal Writing and Professor of Law
Drake University Law School

COMMERCIAL ARBITRATION: CASES AND PROBLEMS

Third Edition

Christopher R. Drahozal
John M. Rounds Professor of Law
University of Kansas School of Law

ISBN: 978-0-7698-5987-3 (hardbound)

ISBN: 978-0-7698-5988-0 (loose-leaf)

ISBN: 978-0-3271-7919-1 (eBook)

Library of Congress Cataloging-in-Publication Data

Drahozal, Christopher R.

Commercial arbitration : cases and problems / Christopher R. Drahozal, John M. Rounds Professor of Law,
University of Kansas School of Law. -- Third Edition.

pages cm

Includes index.

ISBN 978-0-7698-5987-3 (hardbound)

1. Arbitration and award--United States--Cases. 2. Arbitration and award--United States. I. Title.

F9085.D73 2013 347.73'9--dc23

2012050156

This publication is designed to provide authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional services. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

LexisNexis and the Knowledge Burst logo are registered trademarks of Reed Elsevier Properties Inc., used under license. Matthew Bender and the Matthew Bender Flame Design are registered trademarks of Matthew Bender Properties Inc.

Copyright © 2013 Matthew Bender & Company, Inc., a member of LexisNexis. All Rights Reserved.

No copyright is claimed by LexisNexis or Matthew Bender & Company, Inc., in the text of statutes, regulations, and excerpts from court opinions quoted within this work. Permission to copy material may be licensed for a fee from the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, telephone (978) 750-8400.

NOTE TO USERS

To ensure that you are using the latest materials available in this area, please be sure to periodically check the LexisNexis Law School web site for downloadable updates and supplements at www.lexisnexis.com/lawschool.

Editorial Offices

121 Chanlon Rd., New Providence, NJ 07974 (908) 464-6800

201 Mission St., San Francisco, CA 94105-1831 (415) 908-3200

www.lexisnexis.com

MATTHEW  BENDER

Dedication

For Kaye

Preface

This book provides an overview of the law and practice of commercial arbitration. By agreeing to arbitrate, parties “opt out” of the public court system in favor of having a private judge (or judges) resolve their dispute. Courts can continue to play a role — by enforcing arbitration agreements and awards, as well as by providing assistance to the arbitrators during the course of the proceeding. But in most cases, arbitration provides an alternative to judicial dispute resolution that operates without any court involvement.

Commercial arbitration has grown rapidly as a form of alternative dispute resolution. (I use the term “commercial arbitration” broadly, to include arbitration between businesses and consumers or employees as well as arbitration among businesses — and to exclude labor arbitration.) The use of arbitration to resolve international commercial disputes is commonplace and will continue to grow with the increasing “globalization” of national economies. In the last several decades, however, a series of decisions by the United States Supreme Court — expanding the arbitrability of federal statutory claims and restricting the power of states to regulate commercial arbitration — have led to the increasing use of arbitration to resolve consumer and employment disputes. The policy issues raised by this “consumerization” of arbitration recur in various contexts throughout the book.

The book addresses four main topics: enforcing agreements to arbitrate (Chapters 1-5); the arbitration proceeding (Chapter 6); enforcing arbitration awards (Chapter 7); and drafting arbitration clauses (Chapter 8). Each chapter contains a number of problems that require careful analysis of the relevant statutes, cases, and rules. The problems provide a focal point for class discussion, as well as setting the legal and policy issues in a practical context. Some of the problems (or at least some of the sub-parts of the problems) are quite easy. That is intentional. I have tried to design the problems so that they begin with the easy cases and progress to the more difficult ones, rather than presenting only the difficult (albeit often more interesting) cases.

The materials in the book consist largely of court cases, with some secondary materials. I have included the leading United States Supreme Court cases dealing with commercial arbitration, as well as other cases that contain either useful discussions of the issues or particularly interesting facts. Omissions from the text of cases and articles are indicated by ellipses. I have deleted citations and footnotes without so indicating, and have used short citation forms when the case appears elsewhere in the text. The governing treaties and statutes are reprinted in the accompanying Documentary Supplement, as are a number of sets of arbitration rules and related materials.

The book also includes a handful of arbitration awards. Unlike judicial opinions, arbitration awards generally are not published. Indeed, one of the important attributes of commercial arbitration is its greater degree of confidentiality, which precludes routine publication of awards. I have tried to choose court cases and secondary readings that describe arbitration proceedings and typical practices in arbitration, in an attempt to deal with the limited availability of arbitration awards. I also include or refer to empirical studies on commercial arbitration (particularly ones examining the terms of arbitration clauses) to add further insight into actual arbitration practice.

I am grateful to a number of people for assistance and support. My thanks to Roger

Preface

Alford, Ken Dunham, Michael Helfand, Rusty Park, Bo Rutledge, Amy Schmitz, Steve Ware, and Mark Weidemaier for helpful comments on and discussions about the book. Thanks also to my commercial arbitration classes for their questions and comments both in and out of class. I appreciate the research assistance of John Richer and Jeff Stowell on the first edition, Matt Koenigsdorf on the second edition, and Richard Shie on the third edition, as well as financial support from the University of Kansas School of Law and the University of Kansas General Research Fund.

I hope you find this material as interesting and challenging as I do.

Christopher R. Drahozal
August 2012
Lawrence, Kansas

Acknowledgments

I am grateful to the following for granting permission to reprint excerpts contained in this book:

BRUCE L. BENSON, *THE ENTERPRISE OF LAW: JUSTICE WITHOUT THE STATE* 221-222 (1990). Copyright © 1990 by the Pacific Research Institute for Public Policy. Reprinted with permission.

George A. Bermann, *The “Gateway” Problem in International Commercial Arbitration*, 37 *YALE J. INT’L L.* 1, 13-28 (2012). Copyright © 2012 by the Yale Journal of International Law. Reprinted with permission.

Stephen R. Bond, *How to Draft an Arbitration Clause (Revisited)*, ICC INTERNATIONAL COURT OF ARBITRATION BULLETIN (vol. 1/no. 2), Dec. 1990, at 14, 16–21. Copyright © 1990 by the International Chamber of Commerce. Reprinted with permission.

Christopher R. Drahozal, *In Defense of Southland: Reexamining the Legislative History of the Federal Arbitration Act*, 78 *NOTRE DAME L. REV.* 101, 105–07 (2002). Copyright © 2002 by the Notre Dame Law Review. Reprinted with permission.

Paul D. Friedland, *Combining Civil Law and Common Law Elements in the Presentation of Evidence in International Commercial Arbitration*, *MEALEY’S INT’L ARB. REP.*, Sept. 1997. Copyright © 1997 by Paul D. Friedland. Reprinted with permission.

Stephen L. Hayford, *Law in Disarray: Judicial Standards for Vacatur of Commercial Arbitration Awards*, 30 *GA. L. REV.* 731, 751–56 (1996). Copyright © 1996 by the Georgia Law Review Association, Inc. Reprinted with permission.

William M. Landes & Richard A. Posner, *Adjudication as a Private Good*, 8 *J. LEGAL STUD.* 235, 235–40 (1979). Copyright © 1979 by The University of Chicago. Reprinted with permission.

William W. Park, *Private Adjudicators and the Public Interest: The Expanding Scope of International Arbitration*, 12 *BROOK. J. INT’L L.* 629, 635–40 (1986). Copyright © 1986 by William W. Park. Reprinted with permission.

Rand Institute of Civil Justice, *Business-to-Business Arbitration in the United States: Perceptions of Corporate Counsel* 2-22 (2011). Copyright © 2011 by the Rand Corporation. Reprinted with permission.

Alan Scott Rau, *The New York Convention in American Courts*, 7 *AM. REV. INT’L ARB.* 213, 251–56 (1996). Copyright © 1996 by the Parker School of Foreign & Comparative Law. Reprinted with permission.

Peter B. Rutledge & Christopher R. Drahozal, *Contract and Choice*, 2013 *BYU L. REV.* ____ (forthcoming). Copyright © 2013 by Peter B. Rutledge and Christopher R. Drahozal. Reprinted with permission.

David S. Schwartz, *Enforcing Small Print to Protect Big Business: Employee and Consumer Rights Claims in an Age of Compelled Arbitration*, 1997 *WIS. L. REV.* 33, 60–61. Copyright © 1997 by the Board of Regents of the University of Wisconsin System. Reprinted with permission.

Acknowledgments

Jean R. Sternlight, *Gateway Widens Doorway to Imposing Unfair Binding Arbitration on Consumers*, FLA. BAR J., Nov. 1997, at 8, 8–12. Copyright © 1997 by the Florida Bar Journal. Reprinted with permission.

Jean R. Sternlight, *Panacea or Corporate Tool?: Debunking the Supreme Court's Preference for Binding Arbitration*, 74 WASH. U. L.Q. 637, 686–93 (1996). Copyright © 1996 by Washington University. Reprinted with permission.

John M. Townsend, *Drafting Arbitration Clauses: Avoiding the 7 Deadly Sins*, DISP. RESOL. J. Feb./Apr. 2003. Copyright © 2003 by the American Arbitration Association. Reprinted with permission.

GORDON TULLOCK, TRIALS ON TRIAL: THE PURE THEORY OF LEGAL PROCEDURE 127–129 (1980). Copyright © 1980 by the Columbia University Press. Reprinted with permission.

Katherine Van Wezel Stone, *Rustic Justice: Community and Coercion Under the Federal Arbitration Act*, 77 N. CAR. L. REV. 931, 969–91 (1999). Copyright © 1999 by Katherine Van Wezel Stone. Reprinted with permission.

Stephen J. Ware, *The Case for Enforcing Adhesive Arbitration Agreements — with Particular Consideration of Class Actions and Arbitration Fees*, 5 J. AM. ARB. 251, 254–64 (2006). Copyright © 2006 by the Journal of American Arbitration. Reprinted with permission.

W. Mark C. Weidemaier, *Toward a Theory of Precedent in Arbitration*, 51 WM. & MARY L. REV. 1895 (2010). Copyright © 2010 by the William & Mary Law Review. Reprinted with permission.

Summary Table of Contents

CHAPTER 1.	INTRODUCTION TO COMMERCIAL ARBITRATION	1
CHAPTER 2.	ENFORCING DOMESTIC AGREEMENTS TO ARBITRATE	63
CHAPTER 3.	FEDERAL LAW RESTRICTIONS ON THE ENFORCEABILITY OF ARBITRATION AGREEMENTS	169
CHAPTER 4.	THE FEDERAL ARBITRATION ACT AND STATE LAW	245
CHAPTER 5.	ENFORCING INTERNATIONAL AGREEMENTS TO ARBITRATE	327
CHAPTER 6.	THE ARBITRATION PROCEEDING	405
CHAPTER 7.	ENFORCING ARBITRAL AWARDS	553
CHAPTER 8.	DRAFTING ARBITRATION CLAUSES	683

Table of Contents

Chapter 1	INTRODUCTION TO COMMERCIAL ARBITRATION	1
§ 1.01	OVERVIEW	1
§ 1.02	A THEORY OF PRIVATE DISPUTE RESOLUTION	2
	William M. Landes & Richard A. Posner, <i>Adjudication as a Private Good</i>	2
	GORDON TULLOCK, TRIALS ON TRIAL: THE PURE THEORY OF LEGAL PROCEDURE	5
	Notes	6
	W. Mark C. Weidemaier, <i>Toward a Theory of Precedent in Arbitration</i>	9
	Note	13
	BRUCE L. BENSON, THE ENTERPRISE OF LAW: JUSTICE WITHOUT THE STATE	14
	Problem 1.1	15
	<i>Smith v. American Arbitration Association, Inc.</i>	16
	Notes	18
	Problem 1.2	18
§ 1.03	WHAT IS ARBITRATION?	19
	<i>AMF Inc. v. Brunswick Corp.</i>	19
	Notes	22
	<i>Cheng-Canindin v. Renaissance Hotel Associates</i>	23
	Note	28
	<i>Kabia v. Koch</i>	28
	Note	31
	Problem 1.3	32
§ 1.04	WHY ARBITRATE?	32
	Rand Institute for Civil Justice, <i>Business-To-Business Arbitration in the United States: Perceptions of Corporate Counsel</i>	32
	Notes	37
	<i>C & L Enterprises, Inc. v. Citizen Band Potawatomi Indian Tribe</i>	37
	Notes	41
	David S. Schwartz, <i>Enforcing Small Print to Protect Big Business: Employee and Consumer Rights Claims in an Age of Compelled Arbitration</i>	43
	Notes	44
	Problem 1.4	47

Table of Contents

§ 1.05	A BRIEF HISTORY OF COMMERCIAL ARBITRATION	48
	Katherine Van Wezel Stone, <i>Rustic Justice: Community and Coercion Under the Federal Arbitration Act</i>	48
	Notes	53
	Jean R. Sternlight, <i>Panacea or Corporate Tool?: Debunking the Supreme Court’s Preference for Binding Arbitration</i>	55
	Stephen J. Ware, <i>The Case for Enforcing Adhesive Arbitration Agreements — With Particular Consideration of Class Actions and Arbitration Fees</i>	57
	Notes	60
	Problem 1.5	61
Chapter 2	ENFORCING DOMESTIC AGREEMENTS TO ARBITRATE	63
§ 2.01	OVERVIEW	63
§ 2.02	WHO DECIDES ARBITRABILITY	64
	<i>Prima Paint Corp. v. Flood & Conklin Mfg. Co.</i>	64
	Notes	67
	Problem 2.1	69
	<i>First Options of Chicago, Inc. v. Kaplan</i>	70
	Notes	73
	<i>Buckeye Check Cashing, Inc. v. Cardegna</i>	76
	Notes	79
	Problem 2.2	82
	<i>Rent-A-Center, West, Inc. v. Jackson</i>	82
	Notes	86
	Problem 2.3	88
§ 2.03	DEFAULT IN PROCEEDING WITH ARBITRATION	89
	<i>Perry Homes v. Cull</i>	89
	Notes	96
	Problem 2.4	98
	Problem 2.5	98
§ 2.04	THE SCOPE OF THE ARBITRATION AGREEMENT	99
	<i>Simula, Inc. v. Autoliv, Inc.</i>	99
	Notes	104
	Problem 2.6	106
§ 2.05	GENERAL CONTRACT LAW DEFENSES	106
[A]	Assent and Formalities	107
	<i>Specht v. Netscape Communications Corp.</i>	107
	Notes	111
	Problem 2.7	112

Table of Contents

	Problem 2.8	112
	<i>Badie v. Bank of America</i>	113
	Notes	118
	Problem 2.9	118
	<i>Hill v. Gateway 2000, Inc.</i>	119
	Notes	122
	Problem 2.10	124
[B]	Lack of Consideration	125
	<i>Gibson v. Neighborhood Health Clinics, Inc.</i>	125
	Problem 2.11	128
[C]	Unconscionability and Contracts of Adhesion	129
	<i>Samaniego v. Empire Today, LLC</i>	129
	Notes	133
	Problem 2.12	135
[D]	Fraud and Breach of Fiduciary Duty	136
	<i>Engalla v. Permanente Medical Group, Inc.</i>	136
	Notes	139
	<i>Hodges v. Reasonover</i>	140
	Note	146
	Problem 2.13	146
[E]	Material Breach	146
	<i>Hooters of America, Inc. v. Phillips</i>	146
	Notes	151
	Problem 2.14	151
	Problem 2.15	152
§ 2.06	BINDING NON-SIGNATORIES TO AGREEMENTS TO ARBITRATE	152
	<i>Thomson-CSF, S.A. v. American Arbitration Association</i>	153
	Notes	158
	Problem 2.16	159
§ 2.07	PROCEDURAL ISSUES IN ENFORCING DOMESTIC ARBITRATION AGREEMENTS — PART 1	159
	<i>Green Tree Financial Corp.-Alabama v. Randolph</i>	161
	Notes	163
	Problem 2.17	167
Chapter 3	FEDERAL LAW RESTRICTIONS ON THE ENFORCEABILITY OF ARBITRATION AGREEMENTS	169
§ 3.01	OVERVIEW	169
	William W. Park, <i>Private Adjudicators and the Public Interest: The Expanding Scope of International Arbitration</i>	170

Table of Contents

	Notes	172
	Problem 3.1	173
§ 3.02	EXPRESS STATUTORY RESTRICTIONS ON THE ENFORCEABILITY OF ARBITRATION AGREEMENTS	174
	<i>Volkswagen of America, Inc. v. SUD's of Peoria, Inc.</i>	175
	Notes	179
	<i>Cox v. Community Loans of America, Inc.</i>	180
	Note	184
	<i>Holmes v. Air Liquide USA LLC</i>	184
	Notes	187
	Problem 3.2	188
§ 3.03	IMPLIED STATUTORY RESTRICTIONS ON THE ENFORCEABILITY OF ARBITRATION AGREEMENTS	188
[A]	The Rise and Decline of the Nonarbitrability Doctrine	189
	<i>Wilko v. Swan</i>	189
	Notes	191
	<i>Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.</i>	194
	Notes	200
	Problem 3.3	200
	Problem 3.4	203
	Problem 3.5	204
	<i>Gilmer v. Interstate/Johnson Lane Corp.</i>	205
	Notes	210
	Problem 3.6	213
[B]	Current Issues in the Arbitrability of Federal Statutory Claims	213
	<i>In re American Homestar of Lancaster, Inc.</i>	213
	Notes	219
	Problem 3.7	220
	<i>Clary v. Helen of Troy, L.P.</i>	220
	Problem 3.8	225
	<i>In re United States Lines, Inc.</i>	225
	Problem 3.9	229
[C]	Arbitrability and Statutory Rights and Remedies	230
	<i>Green Tree Financial Corp.-Alabama v. Randolph</i>	230
	Notes	231
	<i>Graham Oil Co. v. ARCO Products Co.</i>	235
	Notes	239
	Problem 3.10	242
	Problem 3.11	242

Table of Contents

Chapter 4	THE FEDERAL ARBITRATION ACT AND STATE LAW	245
§ 4.01	OVERVIEW	245
§ 4.02	PREEMPTION AND THE FAA	245
	<i>Southland Corp. v. Keating</i>	245
	Notes	253
	Problem 4.1	256
	Problem 4.2	256
	<i>Allied-Bruce Terminix Cos. v. Dobson</i>	256
	Notes	263
	Problem 4.3	265
	Problem 4.4	265
§ 4.03	SCOPE OF THE FAA	265
	<i>Citizens Bank v. Alafabco, Inc.</i>	266
	Notes	269
	Problem 4.5	270
	<i>Circuit City Stores, Inc. v. Adams</i>	271
	Note	277
	Problem 4.6	278
	Problem 4.7	278
§ 4.04	FAA PREEMPTION AND GENERALLY APPLICABLE CONTRACT DEFENSES	278
	<i>AT&T Mobility LLC v. Concepcion</i>	279
	Notes	285
	Problem 4.8	287
§ 4.05	EXCEPTIONS AND FURTHER APPLICATIONS	288
	<i>Southern Pioneer Life Insurance Co. v. Thomas</i>	288
	Notes	291
	<i>Keystone, Inc. v. Triad Systems Corp.</i>	292
	Notes	295
	Problem 4.9	296
	<i>Rosenthal v. Great Western Financial Sec. Corp.</i>	297
	Notes	300
	Problem 4.10	300
§ 4.06	CHOICE-OF-LAW ISSUES	301
	<i>Volt Information Sciences, Inc. v. Board of Trustees of the Leland Stanford Junior University</i>	301
	Notes	305
	<i>Mastrobuono v. Shearson Lehman Hutton, Inc.</i>	306
	Notes	310
	Problem 4.11	312

Table of Contents

	Problem 4.12	312
	Problem 4.13	313
§ 4.07	PROCEDURAL ISSUES IN ENFORCING DOMESTIC ARBITRATION AGREEMENTS — PART 2	313
	<i>Vaden v. Discover Bank</i>	314
	Notes	317
	Problem 4.14	318
	<i>Ansari v. Qwest Communications Corp.</i>	319
	<i>Specialty Bakeries, Inc. v. Robhal, Inc.</i>	321
	Notes	325
	Problem 4.15	326
Chapter 5	ENFORCING INTERNATIONAL AGREEMENTS TO ARBITRATE	327
§ 5.01	OVERVIEW	327
§ 5.02	SCOPE OF THE NEW YORK CONVENTION	328
[A]	“Agreement in Writing”	328
	<i>Kahn Lucas Lancaster, Inc. v. Lark International Ltd.</i>	328
	Notes	333
	Problem 5.1	335
[B]	Foreign or Non-Domestic	335
	<i>Jones v. Sea Tow Services Freeport NV Inc.</i>	336
	Notes	340
	Problem 5.2	341
[C]	“Commercial”	341
	<i>Bautista v. Star Cruises</i>	342
	Notes	346
	Problem 5.3	346
[D]	Reciprocity	346
	<i>E.A.S.T., Inc. v. M/V Alaia</i>	347
	Notes	349
	Problem 5.4	350
§ 5.03	DEFENSES TO ACTIONS TO ENFORCE INTERNATIONAL ARBITRATION AGREEMENTS	350
[A]	Who Decides Arbitrability	350
	George A. Bermann, <i>The “Gateway” Problem in International Commercial Arbitration</i>	351
	<i>Apollo Computer, Inc. v. Berg</i>	358
	Notes	361
	Problem 5.5	362
[B]	Assent	362

Table of Contents

	<i>Filanto, S.p.A. v. Chilewich International Corp.</i>	363
	Notes	366
	Problem 5.6	368
[C]	“Null and Void” Arbitration Agreement	368
	<i>Lindo v. NCL (Bahamas), Ltd.</i>	369
	Notes	374
	Problem 5.7	376
	<i>Rhone Mediterranee Compagnia Francese di Assicurazioni e</i> <i>Riassicurazioni v. Lauro</i>	377
	Note	379
	Problem 5.8	380
[D]	“Subject Matter Capable of Settlement by Arbitration”	380
	<i>ESAB Group, Inc. v. Zurich Insurance PLC</i>	381
	Notes	386
	Problem 5.9	387
§ 5.04	PROCEDURAL ISSUES IN ENFORCING INTERNATIONAL ARBITRATION AGREEMENTS	388
	<i>Jain v. De Méré</i>	388
	Notes	392
	<i>Storm LLC v. Telenor Mobile Communications AS</i>	393
	Notes	400
	Problem 5.10	402
	Problem 5.11	403
Chapter 6	THE ARBITRATION PROCEEDING	405
§ 6.01	OVERVIEW	405
§ 6.02	INITIATING THE PROCEEDING	406
	<i>Val-U Construction Co. v. Rosebud Sioux Tribe</i>	407
	Notes	410
	Problem 6.1	412
§ 6.03	REPRESENTATION	412
	<i>Nisha, LLC v. Tribuilt Construction Group, LLC</i>	413
	Note	417
	Problem 6.2	417
	<i>Birbrower, Montalbano, Condon & Frank, P.C. v. Superior Court</i> . . .	418
	Notes	424
	Problem 6.3	426
§ 6.04	SELECTING ARBITRATORS	426
[A]	The Mechanics of Selecting Arbitrators	426
	<i>Khan v. Dell Inc.</i>	428
	Notes	433

Table of Contents

	Problem 6.4	434
	Problem 6.5	435
[B]	Challenging Arbitrators for Partiality	435
	<i>Commonwealth Coatings Corp. v. Continental Casualty Co.</i>	436
	<i>Positive Software Solutions, Inc. v. New Century Mortgage Corp.</i>	440
	Notes	448
	Problem 6.6	451
	<i>Aviall, Inc. v. Ryder System, Inc.</i>	452
	Problem 6.7	453
§ 6.05	PROVISIONAL REMEDIES	454
	<i>Janvey v. Alguire</i>	454
	Notes	458
	<i>McCreary Tire & Rubber Co. v. CEAT S.p.A.</i>	460
	<i>Carolina Power & Light Co. v. Uranex</i>	461
	Notes	463
	<i>Contichem LPG v. Parsons Shipping Co.</i>	464
	Notes	468
	Problem 6.8	469
§ 6.06	CONSOLIDATION AND CLASS ARBITRATION	470
	<i>Stolt-Nielsen S.A. v. Animalfeeds Int'l Corp.</i>	470
	Notes	477
	Problem 6.9	482
	Problem 6.10	483
§ 6.07	DISCOVERY	483
	<i>Hay Group, Inc. v. E.B.S. Acquisition Corp.</i>	485
	Notes	488
	Problem 6.11	490
	<i>Deiulemar Compagnia di Navigazione S.p.A. v. M/V Allegra</i>	490
	<i>Consorcio Ecuatoriano de Telecomunicaciones S.A. v. JAS Forwarding (USA), Inc.</i>	495
	Notes	501
	Problem 6.12	502
§ 6.08	CONFIDENTIALITY	503
	<i>Zuver v. Airtouch Communications, Inc.</i>	503
	<i>Parilla v. IAP Worldwide Services VI, Inc.</i>	505
	Notes	507
	Problem 6.13	510
§ 6.09	PRE-HEARING PROCEDURE AND MOTIONS PRACTICE	510
	<i>Schlessinger v. Rosenfeld, Meyer & Susman</i>	512
	Notes	515
	Problem 6.14	515

Table of Contents

§ 6.10	THE HEARING	516
	<i>Bowles Financial Group, Inc. v. Stifel, Nicolaus & Co.</i>	516
	<i>Tempo Shain Corp. v. Bertek, Inc.</i>	519
	Notes	521
	Problem 6.15	522
	Paul D. Friedland, <i>Combining Civil Law and Common Law</i>	
	<i>Elements in the Presentation of Evidence in International Commercial</i>	
	<i>Arbitration</i>	523
	<i>Buckamier v. Islamic Republic of Iran</i>	524
	Notes	527
	<i>Iran Aircraft Industries v. Avco Corp.</i>	527
	Notes	531
	Problem 6.16	532
§ 6.11	THE AWARD	533
	<i>Government of India v. Cargill Inc.</i>	534
	Notes	536
	<i>Advanced Micro Devices, Inc. v. Intel Corp.</i>	537
	Notes	543
	Problem 6.17	545
§ 6.12	ONLINE ARBITRATION PROCEEDINGS	545
	United Nations Commission on International Trade Law, Note by the	
	Secretariat, Online Dispute Resolution for Cross-Border Electronic	
	Commerce Transactions	545
	Notes	550
	Problem 6.18	551
	Problem 6.19	551
Chapter 7	ENFORCING ARBITRAL AWARDS	553
§ 7.01	OVERVIEW	553
§ 7.02	CHALLENGING AWARDS BEFORE THE ARBITRAL	
	TRIBUNAL	553
	<i>Development & Resources Corp. v. Government of The Islamic</i>	
	<i>Republic of Iran</i>	554
	<i>Colonial Penn Insurance Co. v. Omaha Indemnity Co.</i>	557
	Notes	562
	Problem 7.1	563
§ 7.03	ENFORCING AND CHALLENGING DOMESTIC ARBITRATION	
	AWARDS	563
[A]	Grounds for Vacating Domestic Arbitration Awards	564
	<i>A.G. Edwards & Sons, Inc. v. McCollough</i>	564
	Notes	567

Table of Contents

	<i>Harter v. Iowa Grain Co.</i>	567
	Problem 7.2	572
	<i>Goldfinger v. Lisker</i>	572
	Notes	575
	Problem 7.3	575
	<i>Comprehensive Accounting Corp. v. Rudell</i>	576
	Notes	578
	Problem 7.4	580
	Problem 7.5	581
	<i>Wachovia Securities, LLC v. Brand</i>	581
	Notes	586
	Problem 7.6	590
	Problem 7.7	590
	<i>Siegel v. Prudential Insurance Co.</i>	591
	Note	593
	Problem 7.8	593
[B]	Procedural Issues in Enforcing Domestic Arbitration Awards	593
	<i>Florasynth, Inc. v. Pickholz</i>	594
	Notes	597
	<i>Greenberg v. Bear, Stearns & Co.</i>	598
	Notes	601
	<i>Cortez Byrd Chips, Inc. v. Bill Harbert Construction Co.</i>	603
	Problem 7.9	606
§ 7.04	ENFORCING AND CHALLENGING INTERNATIONAL ARBITRATION AWARDS	607
[A]	Actions to Enforce International Arbitration Awards	607
	<i>Oriental Commercial & Shipping Co. v. Rosseel, N.V.</i>	608
	Notes	611
	Problem 7.10	611
	<i>Lander Co. v. MMP Investments, Inc.</i>	612
	Notes	615
	<i>Base Metal Trading, Ltd. v. OJSC “Novokuznetsky Aluminum Factory”</i>	616
	Notes	620
	Problem 7.11	622
[B]	Grounds for Non-Enforcement of International Arbitration Awards	622
	<i>Parsons & Whittemore Overseas Co. v. Societe Generale de L’Industrie du Papier (RAKTA)</i>	623
	<i>Fertilizer Corp. of India v. IDI Management, Inc.</i>	628
	Notes	636
	Problem 7.12	637
	Problem 7.13	637

Table of Contents

[C]	Actions to Vacate International Arbitration Awards	637
	<i>Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara</i>	638
	Notes	643
	<i>Yusuf Ahmed Alghanim & Sons, W.L.L. v. Toys “R” Us, Inc.</i>	644
	Note	649
	Problem 7.14	649
	<i>In re Chromalloy Aeroservices</i>	650
	Notes	655
	Problem 7.15	657
§ 7.05	MODIFYING THE STANDARD OF REVIEW BY CONTRACT	658
	<i>Hall Street Associates, L.L.C. v. Mattel, Inc.</i>	659
	Notes	665
	Problem 7.16	666
	Problem 7.17	667
§ 7.06	PRECLUSIVE EFFECT OF ARBITRATION AWARDS	667
	<i>Vandenberg v. Superior Court</i>	667
	Notes	674
	<i>Chiron Corp. v. Ortho Diagnostic Systems, Inc.</i>	676
	Problem 7.18	680
Chapter 8	DRAFTING ARBITRATION CLAUSES	683
§ 8.01	OVERVIEW	683
§ 8.02	EMPIRICAL STUDIES OF ARBITRATION AGREEMENTS	683
	Peter B. Rutledge & Christopher R. Drahozal, <i>Contract and Choice</i> . .	683
	Stephen R. Bond, <i>How to Draft an Arbitration Clause (Revisited)</i> . . .	695
	Problem 8.1	703
	Problem 8.2	703
§ 8.03	DRAFTING AN ARBITRATION CLAUSE	703
	John M. Townsend, <i>Drafting Arbitration Clauses: Avoiding the 7 Deadly Sins</i>	703
	Notes	712
	Problem 8.3	712
	Problem 8.4	712
Table of Cases	TC-1
Index	I-1
