Contemporary Issues in International Arbitration and Mediation

The Fordham Papers

2008

Arthur W. Rovine
Editor

MARTINUS NIJHOFF PUBLISHERS
2009
## Contents

*Introduction* ............................................................... ix  
*Arthur W. Ravine*

*Contributors* ............................................................ xxix  

*List of Abbreviations and Acronyms* ............................... xlvii

### Part I  
**Investor-State Arbitration**

Overview of Investor-State Arbitration ............................... 3  
*Gabrielle Kaufmann-Kohler*

New Generation of Bilateral Investment Treaties: Consensus or Divergence? ...................................................... 5  
*John Beechey and Antony Crockett*

Eclipse of Expropriation? .................................................. 27  
*W. Michael Reisman and Rocio Digón*

Interim Measures: An Arbitrator's Provisional Views .............. 47  
*L. Yves Fortier, C.C., Q.C.*

Treatment of Non-Disputing State Party Views in Investor-State Arbitrations ....................................................... 59  
*Andrea J. Menaker*

### Part II  
**Recent Significant Domestic Judicial Decisions Involvingor Potentially Involving International Arbitration**

Current Developments in the United States ........................... 83  
*Donald Francis Donovan*

England: A Look Back on a Year of Authority and Hilarity .......... 97  
*Sophie Nappert*

Recent Significant French Judicial Decisions Involving International Arbitration .................................................. 109  
*Philippe Pinsolle*
Recent Austrian, German, and Swiss Judicial Decisions Involving International Arbitration ................................................. 123
Hilmar Raeschke-Kessler

Part III
Class Actions and Consolidation in International Arbitration

Overcoming Obstacles to Consolidation of International Arbitrations ................................................................. 143
Michael Marks Cohen
Should No-Class Action Arbitration Clauses Be Enforced? .... 153
Frédéric Bachand
Desirability of International Class Arbitration ...................... 171
Dana H. Freyer and Gregory A. Litt
Feasibility of Class Arbitration ........................................... 183
John Fellas

Part IV
Intellectual Property and Information Technology Issues in International Arbitration

Choice of Law in International Intellectual Property Arbitrations: A Three-Dimensional Chess Game? .............. 199
Thomas D. Halket
International Arbitration of Intellectual Property Validity ...... 227
Joel E. Lutzker
Using Information Technology Efficiently in International Arbitration ................................................................. 239
Erik Schäfer
Electronic Discovery and Arbitration: A Shortcut Through E-Discovery ............................................................... 255
Irene C. Warshauer

Part V
Mediation: Issues, Solutions, and Expanding Applications

How Confidential Is Mediation Confidentiality? ...................... 273
John Michael Richardson
Mediators Take Note: Are We a Cottage Industry? Are We a Profession? Who Will Decide? ................................. 293
Judith P. Meyer and Michael Leathes
# Table of Contents

Using Mediation Techniques to Improve M&A Outcomes .......................... Patricia Barclay 305

European Directive on Commercial Mediation: What It Provides and What It Doesn’t ................................. F. Peter Phillips 311

Commercial Mediation in China: Challenge of Shifting Paradigms ................................................... F. Peter Phillips 319

Mediation Trends in Australia—Déjà Vu and Innovation ................................................................. Ian Hanger 331

Final Step: Issues in Enforcing the Mediation Settlement Agreement ....................................................... Edna Sussman 343

Index ....................................................................................................................................................... 361