DOYLES DISPUTE RESOLUTION PRACTICE

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BOOK REVIEWS

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A reference book for attorneys, arbitrators and other practitioners of international arbitration, this volume presents in detail the derivation of the UNCITRAL Model Law from a recommendation of the Asian-African Legislative Consultative Committee to its adoption in final form by the General Assembly of the United Nations on 11 December 1985.

The structure of the work is that after the text of each Article of the Model Law the authors add an explanatory commentary to which is appended a lengthy series of extracts of early drafts of the texts and excerpts from committee development of the final text. These background materials will be extremely helpful where the interpretation of some nation’s enactment of the Model Law is in question. However, a more intensive name-indexing system would have made access to the background materials faster for the professional by permitting a rapid assemblage of national viewpoints (for example).

For the foreseeable future new directions in international arbitration will take their lead from the UNCITRAL Model Law and Model Rules which are fast becoming the industry standard, globally used and acknowledged as universally applicable (notwithstanding their recent rejection in certain English quarters). As more nations legislate for the conduct of arbitrations by reference to local adaptations of the Model Law and Rules, court decisions upon the various terms will assist practitioners in their application of these formulae. Until then this text and others like it will be standard reference works for those dealing with international commerce.

Finally, the volume has very extensive treatment of the scope of the Model Law as designated by Article 1 (pp. 27-149) and a counter-balancing concluding section which deals with matters which do not form part of the final draft but may be considered by each jurisdiction seeking to adopt the Model Law.


This book is a good example of today’s current writings about dispute settlement. The author’s international perspective, while centring upon arbitration, is alert to the variations and permutations of third-party intervention in mediation and conciliation.

Dr Rubino-Sammartano discusses the distinctions between domestic, foreign and international arbitrations with simplicity and brevity. The work introduces the reader to the most important international conventions, with particularly useful references to the ICSID and New York Conventions, as well as chapter-length discussions of the arbitrations conducted under the Algiers Declarations, and the role of the Permanent Court of Arbitration in the settlement of disputes between nations.

The scope of the text together with its uniformly clear explanation necessarily means that some issues in practice will require further investigation but this text is a complete compendium of all the major topics which the reader will seek: from arbitrators to awards. The extensive footnotes signpost further research. Additionally the
bibliography provides useful access to texts on arbitration in the French and Italian languages.


The liability of third party intervenors for acts done in the course of dispute resolution is of great interest to modern arbitrators and mediators. While this book does not address the problems mediators or conciliators might have with party suits alleging negligence or worse, it does provide a framework in which to analyse the major issues of law likely to bear on the question of immunity in 13 nations, including Australia and Japan.

Unusually for a “conference” book (held in London in 1987), the chapters are of even length and standard and address the same topics in roughly similar order making cross-referencing easy. In each jurisdiction the contributors ask in what way arbitrator immunity is distinguished from judicial immunity (if at all). Three axes of liability are explored: liability for criminal acts compared with civil wrongs, differences in domestic and international arbitral contexts and whether or not the arbitrator’s exposure can be removed or reduced by contractual provisions. The answers to these questions can often be surprising since neither the common law nor continental traditions provide a consistent guide to the law in any particular country. Some chapters also discuss whether immunity criteria are different for interlocutory rulings or final awards, and there are also helpful explanations of the likely measure of damages that may be allowed in the different systems. Chapters on England, the United States, Australia and Japan, as well as on Norway, Sweden, Spain, Argentina, Germany, France and the Netherlands, make this work a handy reference to the approaches taken to immunity among nations. The book will retain its usefulness notwithstanding that in this much-litigated area the law will be under rapid evolution. (See, for example, Doyles Dispute Resolution Practice — North America ¶80-005, ¶80-021.


There are very few case books used in law school which deal with subjects in the arbitration field. The establishment of post-graduate courses in ADR and arbitration as is now occurring across the globe, i.e. City Polytechnic in Hong Kong and Macquarie and New South Wales Universities in Australia, will provide a pool of users who will justify the publication of such texts. This text, for the quality of its commentary on the general principles covering the various topics in arbitration, and in the exposition and analyses of the case included, could be used with profit by any student of the subject in the Commonwealth jurisdictions. A good case book is one which can lead the student to have a feeling for the way the law is likely to develop before it does so (and therefore before the textwriters have commenced their analyses). To do so by means of interstitial remarks requires great courtesy and candour since judges’ opinions must oftimes be criticised before time and circumstances blunt the edge of difference.

With grace and style these authors chronicle the extraordinary growth of arbitral jurisprudence in Hong Kong in the last decade. The premier city on the Chinese mainland has changed from enforcing English domestic arbitration law, through two substantial legislative enactments in 1982 and 1989, to a position in 1992 whereby Hong
Kong may be the first jurisdiction to employ the UNCITRAL Model Law for both its domestic and international arbitration law. The very developments which justify a work of this length paradoxically call for its replacement by a second edition since there have been a large number of significant decisions on Hong Kong arbitration law handed down since the book went to press. The text is said, nevertheless, to contain all the Hong Kong cases, reported and unreported, which are likely to bear upon the interpretation of the modern legislation up until the beginning of 1991, thus making the work of considerable reference value for practitioners in Hong Kong where arbitration and ADR are in all probability likely to flourish in keeping with the region’s staggering economic expansion.

The volume contains over 300 pages of appendices, a bibliography and an extensive index.


This volume is the first of the new generation of texts which see arbitration as but one aspect of the more inclusive category, alternative dispute resolution. This work covers the field of ADR in Australia at a level which will prove valuable for the tertiary student, especially the non-law student who will benefit from its clear, cheerful style. The authors have found a nice balance in the proportion of the book devoted to international disputes and that devoted to disputes of a smaller scale. Almost all the issues which have been mooted in the field of ADR over the past decade are introduced through manageable sub-headings and discussed in the Australian context. This is an impressive achievement in three specific areas where formerly little was known: court-annexed ADR in Australia, the legal profession and ADR, and the training and recruitment of mediators.

For the Australian or New Zealand practitioner looking to come to grips quickly with the fast-moving trend to mediation in the family, environmental and consumer dispute arenas this volume is a very good starting point. Those whose experience is chiefly of binding decisions made by arbitrators would do well to understand the diverse cultures of mediation more fully by reading a work whose standpoint is closer to re-negotiation and distributive justice than non-appellable “winner takes all” determinations. The drawbacks common to the fixed text in fields of sudden change lead us to hope that the work will run to several editions. The *Coal Cliffs Collieries* decision (¶80-028) was handed down a month after this volume went to press, which has meant the authors’ discussion of the critical area of the enforceability of agreements to mediate is somewhat dated being limited to the agenda of *Alco Steel* (at ¶80-018). See also *AWA Ltd v Daniels* ¶80-047.) Hopefully this text will take its place in comparative courses at institutions around the world. It will not only represent its country of origin superbly, but form a model for similar texts elsewhere.


London still has its aura of the arbitrator’s Mecca. Despite the passing of a century since the greatest days of worldwide empire, a majority of the globe’s largest mercantile contracts still contain London arbitration clauses. As a major European port, London has
always had a central role to play in commodity arbitration, and the great commodity associations which administered the various trades were the focal point of arbitration lore. Derek Kirby Johnson’s book is worthy of a place in every arbitrator’s library because it has preserved the lore of the commodity arbitrator at a time when the whole business of commodity trading is changing under the influence of new transportation techniques such as bulk carriers and, of course, containerisation and multi-modal carriage contracts.

In preserving the lore of arbitral practice in London, Kirby Johnson also affords us valuable insight into the development of English arbitration law. More than that, this volume not only contains a detailed discussion of the arbitration rules of seven commodity associations, it also provides detailed practical advice on how an arbitrator should conduct his or her self, and extremely pointed remarks on often troublesome elements of English law of special relevance to arbitrations.

Changes to UK law in 1979 required arbitrators to provide reasoned awards. Since the commodity associations allow legal representation only by special application, the costs questions which bedevil arbitrations in other parts of the world do not arise. The author’s discussion of the covert use of lawyers in commodity arbitrations does not distract him, so the clarity of his exposition of matters of law remains (for non-lawyers). Equally the material dealing with “string contracts” under the commodity arbitration rules will be of interest to all those considering consolidation or “vouching in” procedures in other jurisdictions. Extracts from the UK Sale of Goods Act, the Arbitration Act and amending legislation, together with the Rules of the Supreme Court and the rules of the following organisations: the Grain and Feed Trade Association (GAFTA), the Federation of Oils, Seeds and Fats Associations (FOSFA), the Cocoa Association of London (CAL), the Sugar Association of London (SAOL), the Refined Sugar Association (RSA), the Coffee Trade Association and the London Rice Brokers Association (LRBA), make the volume a handy reference aid.
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