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Procedure and Evidence in International Arbitration

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Like any complex human activity, the practice of international arbitration takes place in a context wider than its rules and its "book learning" can articulate. Its hallmark combination of fairness and efficiency is actually accomplished through a web of deliberation and judgment in which particular circumstances play an ever-present role. This highly distinctive book combines an unparalleled familiarity with the key theoretical and practical books in the field and a keen awareness, from procedural and evidentiary perspectives, of what arbitral tribunals and practitioners actually do--or should do.

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.

The discussion of each stage offers practical suggestions informed by insights from various theoretical debates and empirical studies, and a unique appendix outlines the facts of numerous reported challenges to arbitrators.

No previous book has tackled so directly, in an utterly practical context, the question of how issues of

fairness interrelate with efficiency concerns and how this should act as a guide to best arbitral practice. Seeking to identify the essential character and spirit of desirable norms rather than technical detail, the author shows how the exercise of discretion will have a fundamental impact on the outcome of arbitration and the respect in which the practice is held. No one using international arbitration, or considering the use of it, can afford to ignore this book.

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