

Table of contents

List of abbreviations and acronyms	13
I Normative acts and soft law instruments	13
II Adjudicative bodies	14
III Institutions, organisations and associations	14
IV Other abbreviations	15
Introduction	17
Part I Arbitration and an arbitration clause: nature and key institutions	21
§ 1 Introductory remarks	21
§ 2 The composite nature of arbitration	23
§ 3 Theories on the nature of international arbitration	33
§ 3 A The juridical theories	33
§ 3 A I The jurisdictional theory	33
§ 3 A II The contractual theory	34
§ 3 A III The mixed or hybrid theory	36
§ 3 A IV The autonomous/sui juris theory	37
§ 3 A V The concession theory	38
§ 3 B The relationship theories on the nature of arbitration	39
§ 3 B I The status/office theory	39
§ 3 B II The agency and power of attorney theories	41
§ 3 B III The partnership theory	42
§ 3 B IV The mixed or hybrid theory	42
§ 3 B V The contract theory	43
§ 4 Arbitration and human rights	44
§ 4 A The applicability of human rights instruments to arbitration	45
§ 4 B The indirect applicability of human rights instruments to arbitration	54
Part I: Conclusions	58

Table of contents

Part II The arbitrator's and the arbitral institutions' roles	61
§ 5 The arbitrator's contract	61
§ 5 A Introductory remarks	61
§ 5 B The key concepts	64
§ 5 C The constitution of an arbitral tribunal and the termination of the arbitrator's mandate	66
§ 6 The legal character of the arbitrator's contract	80
§ 7 The role of arbitral institutions	89
§ 7 A Introductory remarks	89
§ 7 B Defining institutional arbitration and arbitral institutions	91
§ 7 C The activities undertaken by the arbitral institutions	95
§ 7 D The nature of the institutional rules	109
§ 8 Scope of the <i>receptum arbitrii</i> . The role and the powers and duties of the arbitrator	115
§ 8 A The scope of the <i>receptum arbitrii</i>	115
§ 8 B The arbitrator's broad procedural powers	117
§ 8 C The arbitrator's rights	128
§ 8 D The arbitrator's duties	131
§ 8 D I The duty to resolve the dispute in an adjudicatory, diligent, and efficient manner	131
§ 8 D II The duty to treat parties equally and fairly	143
§ 8 D III The duty to personally fulfill the mandate until its statutory expiration	147
§ 8 D IV The duty of confidentiality	152
§ 8 D V The duty of independence and impartiality	161
§ 8 D V 1 The concept of impartiality and independence	164
§ 8 D V 2 The IBA Guidelines on Conflicts of Interest in International Arbitration	177
§ 8 D V 3 The institution of challenge of an arbitrator	187
Part II: Conclusions	195

Part III Liability of arbitrators and arbitral institutions	199
§ 9 Introductory remarks and liability regimes classification	199
§ 10 Arbitrator's civil immunity: an overview	200
§ 11 Institutional rules and soft law instruments	205
§ 12 Liability considerations	207
§ 12 A The contractual dimension: the contractual nature of the arbitral clause and the <i>receptum arbitrii</i>	208
§ 12 B The axiological and teleological dimension	214
§ 12 C The systemic dimension	217
§ 12 A-C: Conclusions	223
§ 13 Liability regimes – a comparative framework	224
§ 13 A Germany	224
§ 13 B Austria	229
§ 13 C Switzerland	232
§ 13 D Poland	239
§ 13 E The USA	243
§ 13 F France	250
§ 13 G England and Wales	254
§ 13 H The Netherlands	258
§ 13 I Other jurisdictions	272
§ 14 Arbitral institutions	274
Part III: Conclusions	280
Part IV The relevant standards: practical assessment and the conflict of laws framework	281
§ 15 The emerging standards	281
§ 16 Conflict of laws framework	349
§ 17 Performance and liability standards: conclusions	362
§ 18 Summary of results	365
List of sources	377