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FORCE MAJEURE AND HARDSHIP UNDER GENERAL CONTRACT PRINCIPLES

EXEMPTION FOR NON-PERFORMANCE IN INTERNATIONAL ARBITRATION

BY CHRISTOPH BRUNNER

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Emmanuel Obiora Igbokwe

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Force Majeure and Hardship Under General Contract Principles Christoph Brunner,2009-01-01 Lawyers involved in international commercial transactions know well that unforeseen events affecting the performance of a party often arise Not surprisingly exemptions for non performance are dealt with in a significant number of arbitral awards This very useful book thoroughly analyzes contemporary approaches particularly as manifested in case law to the scope and content of the principles of exemption for non performance which are commonly referred to as force majeure and hardship The author shows that the general principles of law approach addresses this concern most effectively Generally accepted and understood by the business world at large this approach encompasses principles of international commercial contracts derived from a variety of legal systems It s most important restatements are found in the 1980 United Nations Convention on Contracts for the International Sale of Goods CISG and the UNIDROIT Principles of International Commercial Contracts UPICC Establishing specific standards and case groups for the exemptions under review the analysis treats such recurring elements as the following contractual risk allocations unforeseeability of an impediment impediments beyond the typical sphere of risk and control of the obligor responsibility for third parties subcontractors suppliers legal impediments acts of public authority and effect of mandatory rules involvement of states or state enterprises interpretation of force majeure and hardship clauses hardship threshold test frustration of purpose irreconcilable differences comparison with exemptions under domestic legal systems impossibility of performance frustration of contract impracticability The book is a major contribution to the development of the use of general principles of law in international commercial arbitration It may be used as a comprehensive commentary on the force majeure and hardship provisions of the UPICC as well as on Art 79 of the CISG In addition as an insightful investigation into the fundamental question of the limits of the principle of sanctity of contracts this book is sure to capture the attention of business lawyers and interested academics everywhere Good Faith in International Commercial Arbitration Georgios Martsekis,2025-05-06 This book demystifies the effectiveness of good faith in international commercial arbitration law In the growing universe of international commercial arbitration it is more pressing than ever to discuss the role of good faith and challenge residual conservative skepticism regarding its usefulness The book employs principles standards and concepts which are normatively ingrained in good faith These include the principle of pacta sunt servanda the estoppel doctrine the transnational standard of cooperation and fair dealing among merchants It also discusses the pertinence of good faith to corrective justice proportionality prohibition of discrimination and unconscionability international public policy and due process among other concepts This granular approach demonstrates how good faith is integrated into the practice of international commercial arbitration The book sheds light on the technical functions of the principle in parties substantive protection contractual interpretation and arbitral procedure with an ultimate view to reinforcing the soundness and persuasive value of arbitral decision making Throughout the book establishes a uniform and

enforceable conceptualization of good faith in transnational disputes The book will be of interest to practitioners and researchers in the fields of commercial law arbitration transnational disputes and international law **International Commercial Agreements** William Fox,Ylli Dautaj,2023-12-05 Precise planning drafting and vigorous negotiation lie at the heart of every international commercial agreement But as the international business community moves toward the third decade of the twenty first century a large amount of the detail of these agreements has migrated to the Internet and has become part of electronic commerce This incomparable one volume work now in its seventh edition begins by discussing and analyzing all the basic components of international contracts regardless of whether the contracting parties are interacting face to face or dealing electronically at some distance from each other The work stands alone among contract drafting guides and has proven its enduring worth Using an established and highly practical format the book offers precise information and analysis of a wide variety of issues and forms of agreement as well as the various forms of international commercial dispute resolution The seventh edition includes new and updated material on a large number of issues and concepts such as new developments and technical progress in electronic commerce the use of concepts of standardization i e the work of the International Organization for Standardization as a contract drafting tool new developments in artificial intelligence in contract drafting the use of cryptocurrencies as a payment device expedited arbitration early neutral evaluation and digital procedures for dispute resolution online dispute resolution including the phenomenon of the robot arbitrator and foreign direct investment investment law and investor state dispute resolution Each chapter provides numerous references to additional sources including websites journal articles and texts Materials from and citations to appropriate literature and languages other than English are included Recognizing that business executives entering into an international commercial transaction are mainly interested in drafting and negotiating an agreement that satisfies all of the parties and that will be performed as promised this superb guide will measurably assist any lawyer or business executive in planning and implementing contracts and resolving disputes even when that person is not interested in a full blown understanding of the entire landscape of international contracts Business executives who are not lawyers will find that this book gives them the understanding and perspective necessary to work effectively with legal experts **The Law of Political Risk Insurance** Özge Tosun,2025-03-29 This book explores the scope of host states sovereign powers and the rights of foreign investors Investors from developed countries engage in business with developing countries for various purposes including political reasons expanding and diversifying their operations accessing essential natural resources and skilled labor forces lowering their production costs and in some cases even mitigating global warming Correspondingly in order to attract foreign investment host countries can provide incentives or make concessions However once the investment has been made these ventures are vulnerable to the actions of the host state Political risk insurance as the name suggests serves to protect investments made in foreign countries where the sovereigns are more likely to interfere in the business activities of foreign

investors This book offers a comprehensive understanding of the general mechanics of each main type of political risk the entities responsible for these risks insurers their unions and the subrogation process Bridging the fields of investment law insurance law and international law it offers valuable insights from both practical and academic perspectives

Confidentiality in International Commercial Arbitration Ileana M. Smeureanu,2011-07-14 After neutrality and international enforcement the next most valued feature of international commercial arbitration is confidentiality For reasons easy to imagine businessmen do not want their trade secrets business plans strategies contracts financial results or any other types of business information to be publicly accessible as would commonly happen in court proceedings Yet the case law of arbitration shows that in practical terms confidentiality is not to be taken for granted in fact it has become one of the most undetermined matters in international arbitration Although the emperor of arbitration may have clothes as one scholar has quipped his raiments of secrecy can be torn with surprising ease This book deciphers the current degree of confidentiality in international commercial arbitration as reflected by the most important arbitration rules national laws other arbitration related enactments and practices of arbitral tribunals and domestic courts globally Drawing on this data and analysis the author then sets forth criteria to assess the breach of confidentiality in international arbitration and the proper rules for protecting or sanctioning such breaches What do we understand by confidentiality in arbitration What are its limitations Who is bound to observe it How can we quantify its breach In addressing these questions the book engages such issues as the following reasons for disclosure e g for the establishment of a defence for the enforcement of rights in the public interest or in the interests of justice disclosure by consent express or implied circumstances triggering statutory obligation of disclosure recent trends towards greater transparency in investor State arbitration court measures in support of arbitral confidentiality such as award of damages for breach of confidentiality and categories of persons bound by confidentiality including third parties such as witnesses and experts Structured along the main stages of the arbitral process the analysis covers the duty of confidentiality from the initiation of arbitral proceedings through their unfolding to the issuance of the award and after The scope of confidentiality is reviewed in the practice of arbitral tribunals and domestic courts and from the perspective of international arbitration institutions with detailed attention to various arbitration rules and numerous significant cases In its elucidation of the amount of confidentiality that veils each phase of the arbitral process and its ground breaking identification of patterns of disclosure this book is sure to raise awareness about the various facets and problems posed by confidentiality in arbitration Although its scholarly contribution to the law of international commercial arbitration cannot be gainsaid corporate counsel worldwide will quickly prize its more practical value **Bias Challenges in International Commercial Arbitration** Sam Luttrell,2009-01-01 Shows how dirty challenge tactics are made viable primarily by the prevalence of a judicially derived test for bias which focuses on appearances rather than facts and He argues that the most commonly used test of bias the reasonable apprehension test makes it easy to allege a lack of impartiality and independence **Dealing**

with Bribery and Corruption in International Commercial Arbitration Emmanuel Obiora Igbokwe,2023-01-10 International Arbitration Law Library Volume 65 International commercial arbitration is by no means free from bribery and corruption Although a plethora of legal scholarship clearly affirms this contention a thorough study on the particularly important question of the authority and duty of international commercial arbitrators to investigate a suspicion or indication of bribery or corruption sua sponte that is on their own initiative has been surprisingly lacking This important book fills this gap inter alia by locating sua sponte authority in the position of arbitral tribunals in establishing the facts of a case and ascertaining and applying the applicable normative standards In addition to providing a comprehensive examination of how the issue of bribery and corruption is dealt with in contemporary international commercial arbitration the book also highlights the role of arbitrators in global efforts to combat transnational commercial bribery and corruption Among others the following critical issues are thoroughly investigated arbitrability of issues of public interests intermediary contracts role of arbitrators in the fact finding process party autonomy versus overriding mandatory rules iura novit curia in international commercial arbitration in the context of bribery and corruption notion of transnational or truly international public policy arbitrators duty to act as guardians of international commerce investigative tools available to arbitrators dealing with manifestly recalcitrant parties possible consequences of violating the obligation to sua sponte investigate and the view from developing countries The analysis leans primarily on Swiss law as Switzerland is one of the most important jurisdictions in international commercial arbitration Switzerland has also been involved in some of the most famous and controversial arbitration cases wherein bribery and corruption became an issue However the study also includes a comparative analysis of the relevant laws jurisprudence and doctrine of other major arbitration venues particularly England France and Germany Not only in the light it sheds on how and whether international commercial arbitrators have hitherto justified the trust States have placed in them regarding the protection of the public interests but also in the practical solutions it offers arbitrators faced with issues of bribery and corruption this deeply researched book equips arbitration practitioners and arbitration institutions with a hitherto lacking in depth analysis on the question of sua sponte investigation It also provides invaluable insights on how this issue might affect the future legitimacy and expansion of this dispute settlement mechanism Outside the field of arbitration the book also provides jurists legal scholars in house counsel for companies doing transnational business and public officials with highly enlightening perspectives on the interaction between international commercial arbitration and public interests **The Decision-Making Process of Investor-State Arbitration Tribunals** Mary Mitsi,2018-12-28 In the course of a single investor state dispute an arbitrator may make numerous decisions from interpreting the treaty or national laws to taking into account case law customs and policies In practice this process raises important issues regarding the consistency of decisions and the predictability and legitimacy of the decision making process in general Investment arbitration tribunals have developed a specialised process of legal decision making adapted to the interpretational needs that

arise in the context of an investor state dispute and to the transnational characteristics of the investment arbitration framework This is the first book to offer an in depth analysis of the transnational characteristics of investment arbitration and to analyse the interpretive arguments of investment tribunals and the way they use treaties precedent policies general principles of law and customary law in their decision making process Drawing on publicly available arbitral case law supplemented with personal interviews with investment arbitrators the author touches on such concepts and practices as the following an overview of various decision making genres of arbitral tribunals attitudinal economic strategic and legal the legal argumentation triptych of language rhetoric dialogue the specific language arbitrators have developed when interpreting the law how arbitrators use the concepts standards rules principles and rights the importance of the legal reasoning of arbitral awards and the role of rhetoric therein concepts of acceptability audience and legitimacy limitations of the public international law interpretive methodology enshrined in the Vienna Convention interpretation of precedents customary law general principles of law and policies the way national and international legal orders interact in the context of interpretation and how decision making is connected to the issues of predictability consistency and the rule of law The core of the book proposes a novel full edged dialogical network theory for analysing the interpretation process As an exemplary demonstration of developing theory to keep up with practice this unique book provides a deeply engaged means for enhancing the practice of international arbitration Its introduction of a new field of interdisciplinary analysis employing legal argumentation theories is sure to provide inestimable guidance for institutions and policymakers especially in light of recent proposals for the creation of a permanent investment arbitration court Given that unveiling the legal decision making process is critical for the well being of the whole dispute resolution procedure and that being aware of how arbitrators interpret the law can constitute a roadmap for counsel s arguments and approaches when dealing with cross border disputes the topic of this book is relevant for both academics and practitioners and its signifcance can only grow as recourse to investor state arbitration continues to expand **Current Publications in Legal and Related Fields** ,2009 The British National Bibliography Arthur James Wells,2009 The Library of World Affairs London Institute of World Affairs,1969 *News and Notes from the Institute for Transnational Arbitration* ,1986 **United Nations Library on Transnational Corporations** ,1993 Hardship and Force Majeure in International Commercial Contracts Fabio Bortolotti,Dorothy Ufot,2019-07-15 Force Majeure and Hardship are commonly invoked in international trade when unforeseen events occur making performance impossible or impracticable Most national legislators provide rules to deal with these issues but the specifi c solutions adopted in domestic laws vary substantially from one country to another In recent years the growing complexity of trade in a globalized world has greatly increased the number of situations where a party can invoke force majeure or hardship Parties need to be able to analyse the nature and characteristics of force majeure and hardship and look for contractual clauses which can regulate these issues in conformity with their needs Written by international practitioners this

dossier explores the evolution of the rules on hardship the ICC Clause on Hardship and the perspectives of contract adaptation by arbitrators The section on Force Majeure includes an overview of recent arbitral case law impediment beyond sphere of control and risk of the obligor foreseeability causation notice requirement analysis of the ICC 2003 Force Majeure Clause and an update on its revision Two other important themes are included the relationship between force majeure and applicable law general principles of law and trade usages as well as the impact of economic sanctions **The Encyclopædia Britannica** Hugh Chisholm,1922 **The Software Encyclopedia** ,1988 *Force Majeure and Frustration of Contract* Ewan McKendrick,2013-12-13 This updated edition includes an examination of force majeure in French law the drafting of force majeure clauses its usage in shipbuilding contracts and the application of commercial impracticality under article 2 165 of the Uniform Commercial Code *Damages Under the Convention on Contracts for the International Sale of Goods* Bruno Zeller,2009 This work presents a practical and detailed analysis of the methods used to determine and calculate damages under the United Nations Convention on Contracts for the International Sale of Goods CISG **Force Majeure and Frustration of Contract** Ewan McKendrick,1995 **Frustration and Force Majeure** Edwin Peel,2022 The fourth edition of Frustration and Force Majeure provides a thorough examination of the principles governing the conflict between the sanctity of contract and the discharge of contractual obligations in response to supervening events The author guides the reader through the types of supervening events which may be encountered in any commercial transaction setting out the principles involved together with judicial interpretations from a number of common law jurisdictions

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