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Sources of Arbitration Law

Abstract: This list of sources for arbitration law has been compiled by Michelle Celik to accompany the article by Nigel Broadbent on alternative dispute resolution.
Keywords: arbitration; legal research

Introduction

Accidents happen and everyone is at risk of litigation. In business, there is a risk of being sued for damages, so companies try to protect themselves by ensuring contracts contain carefully drafted clauses. One of those may exclude the right to sue in the courts and instead bind submission of a case to arbitration. Litigation is both expensive and time-consuming. An alternative approach is to use arbitration. The parties appoint an arbitrator who issues an award which is recognised by, and enforceable through, the courts. Confidentiality is one of the attractions of arbitration and the parties may agree to keep the proceedings confidential. By choosing their own "judge", an expert can be selected with a greater commercial knowledge of a particular trade, who will also be able to view the dispute in a commercial setting, possibly gaining greater insights into the case.

Legislation

The Arbitration Act 1996.[1] The current legislation in force, although original statutes date back to 1698. The Act was passed to increase the powers of arbitrators and give them independence from the courts.

There are also the UNCITRAL Model rules for Arbitration[2] but they do not have many of the powers under the Arbitration Act 1996.

The Civil Procedure Rules, part 62[3] regulate the applications to court regarding arbitration matters

Awards are enforceable by the High Court and awards are also enforceable in many overseas countries under the New York Convention of 1958 for the Recognition and Enforcement of Foreign Arbitral Awards.[4]

For enforcement of foreign awards from some countries that are not party to the New York Convention, the Arbitration Act 1950, Part II remains in force.[5]

The Convention on the Settlement of Investment Disputes between States and Nationals of Other States 1965, the Washington Convention, was implemented in England and Wales by the Arbitration (International Investment Disputes) Act 1966.[6]

In addition to the legislation, the United Kingdom is party to bilateral and multilateral treaties.

Rules

When two parties go to arbitration, they tend to adopt standard terms which may be modified to suit. Institutional arbitration is where the parties refer the dispute to an arbitral organisation which has its own sets of procedures and rules. These include:

The International Chamber of Commerce.[7]
The London Court of International Arbitration.[8]
These deal mainly with international disputes on a formal basis.

In addition to the international organisations, there are also private bodies for specific types of arbitration. Examples of those in shipping and international trade are:

The Grain and Feed Trade Association (GAFTA).[9]
The Federation of Oils, Seeds and Fats Association Limited (FOSFA).[10]
The London Maritime Arbitrators Association (LMAA).[11]
London Metal Exchange (LME).[12]

Textbooks

There are a number of texts covering general and international arbitration:

Merkin, Robert M. (1991) *Arbitration Law* (Looseleaf). London, Informa.
Mustill, Michael J. & Boyd, Stewart C. (1989) *The Law and Practice of Commercial Arbitration in England*. 2nd ed. London, Butterworths.
Mustill, Michael J. & Boyd, Stewart C. (2001) *Commercial Arbitration*. 2001 Companion volume to the second edition. London, Butterworths.

The third edition of this well respected book has been a long time in coming. Instead of producing a new edition in 2001, it was merely updated with a thinner companion volume, that had to be used in tandem with the original book. A third edition is expected in 2010.

Redfern, Alan & Hunter, Martin. (2004) *Law and Practice of International Commercial Arbitration*. 4th ed. London, Sweet & Maxwell.

A new edition is due in 2009.

https://doi.org/10.1017/S1472669609990338 Published online by Cambridge University Press

Sutton, David S. & Gill, Judith. (2007) *Russell on arbitration*. 23rd ed. London, Sweet & Maxwell.

Tackaberry, John & Marriott, Arthur. (2003) *Bernstein's handbook of arbitration and dispute resolution practice*. 4th ed. London, Sweet & Maxwell.

In addition to these, there are specialist texts and an example in shipping and international trade is:

Ambrose, Clare & Maxwell, Karen. (2002) *London Maritime Arbitration*. 2nd ed. London: Informa.

Journals

Arbitration Law Monthly. This title is a newsletter, produced by Informa and covers all types of arbitration offering high quality articles and discussions of recent cases. *Arbitration Law Monthly* is available on i-law.

Lloyd's Maritime Law Newsletter. As arbitration is private, the reports may not be released into the public domain. In shipping and international trade, some London decisions can be found in LMLN. The decisions are identified by a number for a particular year e.g. London Arbitration 1/09. *Lloyd's Maritime Law Newsletter* is available in full text on *i-law.*

International Arbitration Law Review is published by Sweet & Maxwell and is also available in full text on Westlaw back to 1997.

Kluwer publish a bi-monthly journal called *Journal of International Arbitration* and also the quarterly *Arbitration International*, which is the official journal of the London Court of International Arbitration.

Law reports

When arbitration cases are referred to the High Court, most will be heard in the Commercial Court and, if reported, will appear in *Lloyd's Law Reports*. These can be found on i-law and also on Westlaw. Some reports in Commercial Law Cases can be found on Westlaw. Transcripts are found on Lawtel www.lawtel.com and BAILLI www.baillii.org

Online sources

www.i-law.com, is the online database produced by Informa and has a whole module on dispute resolution, reproducing textbooks and journals covering Arbitration. Access to relevant legislation is available. *Lloyd's Law Reports* are included in full text.

PLC www.practicallaw.com has an arbitration module with practice notes, documents, articles and checklists. There is a useful list of links to external resources and also to the Civil Procedure Rules. The updates are written by a team who monitor the latest developments.

Westlaw UK www.westlaw.co.uk has an international commercial arbitration section within its Practice Area Solutions. In addition to full-text Sweet & Maxwell journals and Redfern & Hunter, it includes access to legislation, cases, treaties and conventions and model clauses.

Kluwer Law Online gives electronic access to its journals www.kluwerlawonline.com

Conclusion

Arbitration is preferred for its commercial approach and, in the case of international arbitration, for its neutrality. Recognition of this has been illustrated by well-established databases such as Westlaw and PLC investing in arbitration modules. Despite the move into online services, certain texts will always be heavily consulted as they are written by eminent lawyers with a deep understanding of the subject.

Footnotes

[1]http://www.statutelaw.gov.uk/legResults.aspx?LegType=All+Legislation&title=Arbitration+Act&Year=1996&searchEnacted=0&extentMatchOnly=0&confersPower=0&blanketAmendment=0&TYPE=QS&NavFrom=0&activeTextDocId=1387823&PageNumber=1&SortAlpha=0

[2]http://www.uncitral.org/pdf/english/texts/arbitration/arb-rules/arb-rules.pdf

[3]http://www.justice.gov.uk/civil/procrules_fin/contents/parts/part62.htm

[4]http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention.html

[5]http://www.statutelaw.gov.uk/legResults.aspx?LegType=All+Legislation&title=arbitration+act+&Year=1950&searchEnacted=0&extentMatchOnly=0&confersPower=0&blanketAmendment=0&TYPE=QS&NavFrom=0&activeTextDocId=1152233&PageNumber=1&SortAlpha=0

[6]http://www.statutelaw.gov.uk/content.aspx?LegType=All+Legislation&title=arbitration+(international+investment+disputes+act)&Year=1966&searchEnacted=0&extentMatchOnly=0&confersPower=0&blanketAmendment=0&sortAlpha=0&TYPE=QS&PageNumber=1&NavFrom=0&parentActiveTextDocId=1184167&ActiveTextDocId=1184167&filesize=39093

[7]www.iccwbo.org

[8]www.lcia-arbitation.com

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