



The Culture of International Arbitration and The Evolution of Contract Law

Joshua D H Karton

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This study proposes a theory of international arbitration culture, tests this theory against real-world outcomes, and uses it to make predictions about the contract law principles that international arbitrators are likely to favour. Drawing on interviews with prestigious practitioners from a range of jurisdictions, as well as published arbitral awards, the writings of international arbitrators, and available statistical data on international arbitration, it presents a comparative analysis of arbitral and judicial responses to contract law issues.

Part I develops a theory of arbitral decision-making as influenced by a legal culture specific to the international commercial arbitration community. It identifies the specific social norms that make up that culture and considers how these norms might affect arbitrators decision-making on matters of substantive contract law. Part II tests the explanatory power of the theory developed in Part I by applying it to published decisions of international commercial arbitrators on two discrete areas of contract law: suspension of performance in response to non-performance and the interpretation of contracts. These case studies demonstrate that arbitrators and judges are likely to take divergent approaches, even when they are applying the same substantive laws. This divergence is explicable on the basis of international arbitrations unique culture. Finally, the cultural theory of international arbitral decision-making is applied to make predictions about the ways that contract law is likely to evolve through the decisions of international arbitrators.

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