Legal Interpretation In International Commercial Arbitration

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Jemielniak's *Legal Interpretation in International Commercial Arbitration* provides a detailed analysis of legal theory underpinning the ever-growing field of International Commercial Arbitration (ICA). In doing so, the book successfully uncovers how arbitrators interpret, proceed with and decide legal conflicts without the backdrop of domestic courts. Jemielniak's book extends this inquiry by providing practical insight in addition to reflecting on the academic position of legal interpretation in this context. This text is therefore valuable for merchants who have numerous potential dispute resolution avenues open to them, as opposed to traditional state-based litigation.

This area of law is becoming increasingly important as private international trade increases and merchants realise the benefits of undertaking ICA. Less obvious, however, is State interest. Though notoriously reserved for private traders, ICA has been somewhat surprisingly adopted by States for many of the same reasons. The leading case on this point at present is the extensive *Softwood Lumber*[1] dispute between Canada and the United States at the London Court of International Arbitration. Such an emerging area of law is deserving of thorough analysis, which Jemielniak provides in her book.

Part one of the book examines 'arbitration as a legal and semiotic phenomenon', a subject of which Jemielniak is a specialist.[2] These three chapters in Part one lay the foundations for ICA, giving historical and contemporary insight into why the practice is a popular choice for international commercial traders. It further elaborates upon how arbitrators can interpret law set against differing origins, culture and language in order to form a just outcome. This introduction successfully argues the legitimacy of ICA and the merits of analysing its use of legal interpretation. The first chapter traces the historical progression of ICA, highlighting the key needs it meets for international traders such as the flexibility of the process, time efficiency and confidentiality of proceedings and judgement. Chapters two and three delve deeper into the theoretical side of this subject by examining how ICA can be reconciled

[1] *Canada v United States of America* (Second Award on Remedy, LCIA, Case 91312, September 21 2009).

[2] Jemielniak is a member of the editorial board of the International Journal for the Semiotics of Law.

alongside domestic law and legal semiotics are captured and expounded by arbitrators in cases of conflict.

Following on from this, Jemielniak introduces the institutional structure of ICA, beginning with basics and not assuming presupposed knowledge on the readers' behalf. This approach is helpful in offering accessibility to legal and non-legal readers alike. This section of the book takes a highly practical turn, discussing concepts such as ad hoc versus institutional arbitration, the role of soft law in ICA and the increasing number of institutions offering ICA services. However, in evaluating such issues, the author refrains from taking a clear stance, such as whether she believes ad hoc or institutional arbitration has more value for those seeking resolution. This lack of argument continues in chapter five, where the author highlights the controversial issue of 'colonization [sic] of arbitration by litigation', popularly examined by other academics in this field.[3] This issue concerns the consequence of whether or not in the search for legitimacy, the flexibility of procedure which sets ICA apart and which entices traders to engage in this format is being lost to standardisation and formality. Although Jemielniak succinctly alludes to the ways in which standardisation is and is not taking place, she fails to provide a definitive answer as to whether this is ultimately beneficial or detrimental to the parties involved and, more fundamentally, to the objective and integrity of the ICA process more generally. This seems to suggest that the book is intended to be directed towards readers seeking a reputable reference and introduction to the field, rather than advancing an argument to extend ICA scholarship to new ground. However, the former aim could have been improved with the addition of a final balance of arguments.

The final section re-emphasises the applied component of the book, highlighting key interpretative issues pertinent to the practice of ICA. These include the usefulness and limitations of comparative law as a tool for decision making and advocacy as well as an analysis of the status of the new *lex mercatoria* and *amiable composition* as features of this emerging area of law. This commentary seamlessly oscillates between practical and theoretical ideas, consequently providing a deeper insight for readers seeking information on either side. The final two chapters offer practical and theoretical conclusions through a discussion of the uniquely ICA concept of public orders and the transitioning relevance of ICA as a distinct area of law.

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[3] See Fali S Nariman, 'The Spirit of Arbitration: The Tenth Annual Goff Lecture' (2000) 16 *Arbitration International* 261; Charles Nelson Brower, 'Introduction' in Richard B Lillich and Charles Nelson Brower (eds), *International Arbitration in the Twenty-First Century: Towards 'Judicialization' and Uniformity?: Twelfth Sokol Colloquium* (Transnational International, 1994) ix.

In conclusion, this book provides an interesting and broad analysis of a highly dynamic area of law, exploring the issues of when differing language, culture, traditions and legal systems come into conflict in the private international sphere. Although the book avoids taking a stance in academic debates, it nonetheless sets out clear arguments from various perspectives. This earmarks the book as one suitable for those looking for a comprehensive reference book on this area of law. The primary value of this book is in the practicality of ideas coupled with the accessibility of information, making the information relevant to a range of audiences. It is ideal for those in the profession as well as people seeking a different perspective on this academically-inclined subject. Overall, the book has achieved its aim in thoroughly analysing the characteristics of legal interpretation and their function in ICA and would provide any reader with an interest in the topic an insightful examination of both practical and theoretical concepts key to this area of law.

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