

国际商事仲裁

Fouchard Gaillard Goldman

on International Commercial Arbitration

[法] 菲利普·福盖德、伊曼纽尔·盖拉德、贝托尔德·戈德曼/著

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Edited by Emmanuel Gaillard, John Savage

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国际商事仲裁

GUOJI SHANGSHI ZHONGCAI

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序

吴志攀

加入世界贸易组织表明我国经济发展进入了一个新的发展时代——一个国际化商业时代。商业与法律的人才流动将全球化，评介人才标准将国际化，教育必须与世界发展同步。商业社会早已被马克思描绘成为一架复杂与精巧的机器，维持这架机器运行的是法律。法律不仅仅是关于道德与公理的原则，也不单单是说理论道的公平教义，还是具有可操作性的精细的具体专业技术。像医学专业一样，这些专业知识与经验是从无数的案例实践积累而成的。这些经验与知识体现在法学院的教材里。中信出版社出版的这套美国法学院教材为读者展现了这一点。

教育部早在2001年1月2日下发的《关于加强高等学校本科教学工作提高教学质量的若干意见》中指出：“为适应经济全球化和科技革命的挑战，本科教育要创造条件使用英语等外语进行公共课和专业课教学。对高新技术领域的生物技术、信息技术等专业，以及为适应我国加入WTO后需要的金融、法律等专业，更要先行一步，力争三年内，外语教学课程达到所开课程的5%~10%。暂不具备直接用外语讲授条件的学校、专业，可以对部分课程先实行外语教材、中文授课，分步到位。”

引进优质教育资源，快速传播新课程，学习和借鉴发达国家的成功教学经验，大胆改革现有的教科书模式成为当务之急。

按照我国法学教育发展的要求，中信出版社与外国出版公司合作，瞄准国际法律的高水平，从高端入手，大规模引进畅销外国法学院的外版法律教材，以使法学院学生尽快了解各国的法律制度，尤其是欧美等经济发达国家的法律体系及法律制度，熟悉国际公约与惯例，培养处理国际事务的能力。

此次中信出版社引进的是美国ASPEN出版公司出版的供美国法学院使用的主流法学教材及其配套教学参考书，作者均为富有经验的知名教授，其中不乏国际学术权威或著名诉讼专家，历经数十年课堂教学的锤炼，颇受法学院学生的欢迎，并得到律师实务界的认可。它们包括诉讼法、合同法、公司法、侵权法、宪法、财产法、证券法等诸多法律部门，以系列图书的形式全面介绍了美国法律的基本概况。

这次大规模引进的美国法律教材包括：

伊曼纽尔法律精要 (Emanuel Law Outlines) 美国哈佛、耶鲁等著名大学法学院广泛采用的主流课程教学用书，是快捷了解美国法律的最佳读本。作者均为美国名牌大学权威教授。其特点是：内容精炼，语言深入浅出，独具特色。在前言中作者以其丰富的教学经验制定了切实可行的学习步骤和方法。概要部分提纲挈领，浓缩精华。每章精心设计了简答题供自我检测。对与该法有关的众多考题综合分析，归纳考试要点和难点。

案例与解析 (Examples and Explanations) 由美国最权威、最富有经验的教授所著，这套丛书历经不断的修改、增订，吸收了最新的资料，经受了美国成熟市场的考验，读者日众。这次推出的是最新版本，在前几版的基础上精益求精，补充了最新的联邦规则，案例也是选用当今人们所密切关注的问题，有很强的时代感。该丛书强调法律在具体案件中的运用，避免了我国教育只灌输法律的理念与规定，而忽视实际解决问题的能力培养。该丛书以简洁生动的语言阐述了美国的基本法律制度，可准确快捷地了解美国法律的精髓。精心选取的案例，详尽到位的解析，使读者

读后对同一问题均有清晰的思路，透彻的理解，能举一反三，灵活运用。该丛书匠心独具之处在于文字与图表、图例穿插，有助于理解与记忆。

案例教程系列 (Casebook Series) 覆盖了美国法学院校的主流课程，是学习美国法律的代表性图书，美国著名的哈佛、耶鲁等大学的法学院普遍采用这套教材，在法学专家和学生中拥有极高的声誉。本丛书所选的均为重要案例，其中很多案例有重要历史意义。书中摘录案例的重点部分，包括事实、法官的推理、作出判决的依据。不仅使读者快速掌握案例要点，而且省去繁琐的检索和查阅原案例的时间。书中还收录有成文法和相关资料，对国内不具备查阅美国原始资料条件的读者来说，本套书更是不可或缺的学习参考书。这套丛书充分体现了美国法学教育以案例教学为主的特点，以法院判例作为教学内容，采用苏格拉底式的问答方法，在课堂上学生充分参与讨论。这就要求学生不仅要了解专题法律知识，而且要理解法律判决书。本套丛书结合案例设计的大量思考题，对提高学生理解概念、提高分析和解决问题的能力，非常有益。本书及时补充出版最新的案例和法规汇编，保持四年修订一次的惯例，增补最新案例和最新学术研究成果，保证教材与时代发展同步。本丛书还有配套的教师手册，方便教师备课。

案例摘要 (Casenote Legal Briefs) 美国最近三十年最畅销的法律教材的配套辅导读物。其中的每本书都是相关教材中的案例摘要和精辟讲解。该丛书内容简明扼要，条理清晰，结构科学，便于学生课前预习、课堂讨论、课后复习和准备考试。

除此之外，中信出版社还将推出教程系列、法律文书写作系列等美国法学教材的影印本。

美国法律以判例法为其主要的法律渊源，法律规范机动灵活，随着时代的变迁而对不合时宜的法律规则进行及时改进，以反映最新的时代特征；美国的法律教育同样贯穿了美国法律灵活的特性，采用大量的案例教学，启发学生的逻辑思维，提高其应用法律原则的能力。

从历史上看，我国的法律体系更多地受大陆法系的影响，法律渊源主要是成文法。在法学教育上，与国外法学教科书注重现实问题研究，注重培养学生分析和解决问题的能力相比，我国基本上采用理论教学为主，而用案例教学来解析法理则显得薄弱，在培养学生的创新精神和实践能力方面也做得不够。将美国的主流法学教材和权威的法律专业用书影印出版，就是试图让法律工作者通过原汁原味的外版书的学习，开阔眼界，取长补短，提升自己的专业水平，培养学生操作法律实际动手能力，特别是使我们的学生培养起对法律的精细化、具体化和操作化能力。

需要指出的是，影印出版美国的法学教材，并不是要不加取舍地全盘接收，我们只是希望呈现给读者一部完整的著作，让读者去评判。“取其精华去其糟粕”是我们民族对待外来文化的原则，我们相信读者的分辨能力。

TABLE OF CONTENTS

Table of Abbreviations	
Foreword	
Introduction (1 to 4)	

CHAPTER I DEFINITION OF INTERNATIONAL COMMERCIAL ARBITRATION (6 to 126)

Section I. – Definition of Arbitration (7 to 57)	9
§1. – The Arbitrators' Judicial Role (12 to 43)	12
A. – Arbitrators' Decisions Are Binding (15 to 29)	12
1° <i>Arbitration, Conciliation and Mediation</i> (16 to 21)	12
2° <i>Arbitration and the Role of the Engineer</i> <i>in FIDIC Contracts</i> (22 to 24)	17
3° <i>Arbitration and Expert Proceedings</i> (25 to 29)	18
B. – Arbitrators' Decisions Resolve Disputes (30 to 43)	22
1° <i>Amiable Composition</i> (31)	23
2° <i>Quality Arbitrations</i> (32)	23
3° <i>The Completion or Adaptation of Contracts</i> (33 to 43)	24
a) <i>In the Absence of a Hardship Clause</i> (35 to 37)	25
b) <i>Where the Contract Contains a Hardship Clause</i> (38 to 43)	26
§2. – The Contractual Basis of Arbitration (44 to 57)	29
A. – Party Autonomy in International Arbitration (46 to 52)	31
1° <i>The Choice of a National Law to Govern the Procedure</i> <i>or the Merits of a Dispute</i> (47 to 50)	31
2° <i>The Choice of Substantive Transnational Rules to Govern</i> <i>the Procedure or the Merits of a Dispute</i> (51 to 52)	32
B. – The Institutionalization of International Commercial Arbitration (53 to 57)	33
Section II. – The Meaning of "Commercial" (58 to 77)	35
§1. – Civil and Commercial Arbitration (60 to 68)	36

A. – The UNCITRAL Model Law (61 to 63)	36
B. – Modern Legislation (64 to 65)	37
C. – International Conventions on Arbitration (66 to 68)	38
§2. – Public Law Arbitration and Commercial Arbitration (69 to 77)	40
A. – The Arbitration of State Contracts (70 to 74)	41
B. – Public International Law Arbitrations (75 to 77)	43
Section III. – The Meaning of “International” (78 to 126)	45
§1. – The International Nature of Arbitration and the Connection of an Arbitration to a Specific Legal Order (81 to 97)	45
A. – National Arbitration and Foreign Arbitration (83 to 94)	46
B. – National Arbitration and A-national Arbitration (95 to 97)	50
§2. – The International Nature of Arbitration and the Application of Specific Substantive Rules (98 to 126)	51
A. – Treaty and Comparative Law (101 to 106)	51
B. – French Law (107 to 126)	55
1° <i>Article 1492 of the New Code of Civil Procedure</i> (114 to 118)	57
2° <i>The Application of Article 1492 by the French Courts</i> (119 to 126)	58

CHAPTER II

SOURCES OF INTERNATIONAL COMMERCIAL ARBITRATION (127 to 384)

Section I. – Public Sources (129 to 302)	63
§1. – National Sources (130 to 189)	63
A. – French Law (131 to 151)	63
1° <i>The 1980-1981 Reforms (136 to 147)</i>	64
2° <i>Developments Since the 1981 Reform (148 to 151)</i>	68
B. – Other Legal Systems (152 to 189)	70
1° <i>Analysis (155 to 174-6)</i>	71
a) Europe (156 to 167)	71
i) United Kingdom (157)	71
ii) Belgium (158)	73
iii) The Netherlands (159)	74
iv) Germany (160)	75
v) Portugal (161)	76
vi) Switzerland (162)	76
vii) Spain (163)	78
viii) Italy (164)	78
ix) Sweden (164-1)	79
x) Other countries of the European Union (165)	80
xi) Central and East European countries (166)	81

xii) States of the former USSR (167)	83
b) Other Continents (168 to 174-6)	83
i) United States of America (169)	83
ii) Canada (170)	85
iii) Latin America (171 to 172)	87
iv) Africa (173)	88
v) The Middle East (173-1)	91
vi) Asia and the Pacific Rim (174 to 174-6)	92
2° Trends (175 to 189)	96
a) Diversity of Legislative Techniques (176 to 185)	96
b) Convergence of Legislative Objectives (186 to 189)	102
§2. – International Sources (190 to 302)	103
A. – Optional Instruments (193 to 205)	104
1° Arbitration Rules (195 to 202)	104
2° The UNCITRAL Model Law (203 to 205)	107
B. – Bilateral Agreements (206 to 238)	109
1° Bilateral Agreements Concerning Arbitration	
Incidentally (208 to 235)	110
a) Bilateral Treaties Governing Economic Relations	
(209 to 215)	110
b) Conventions on Judicial Assistance (216 to 235)	112
2° Conventions Primarily Concerning Arbitration	
(236 to 238)	114
C. – Multilateral Conventions (239 to 302)	116
1° The Early Conventions (240 to 246)	120
a) The Geneva Protocol of September 24, 1923	
(241 to 243)	120
b) The Geneva Convention of September 26, 1927	
(244 to 246)	121
2° The 1958 New York Convention (247 to 272)	122
a) Principal Characteristics (250 to 254)	124
b) The Scope of the Convention (255 to 272)	125
3° Regional Conventions (273 to 300)	138
a) The European Convention of April 21, 1961 (274 to 287)	138
b) The Paris Agreement of December 17, 1962	
(288 to 289)	143
c) The Strasbourg Convention of January 20, 1966	
(290 to 291)	144
d) The Moscow Convention of May 26, 1972	
(292 to 293)	145
e) Inter-American Conventions	
(294 to 296)	146
f) Inter-Arab Conventions	
(297 to 299)	148
g) The OHADA Treaty of October 17, 1993 (300)	149

4° <i>The 1965 Washington Convention</i> (301 to 302)	150
Section II. – Private Sources (303 to 384)	151
§1. – Model Arbitration Agreements (307 to 320)	153
A. – Model Arbitration Agreements Prepared by Individual Institutions (308 to 316)	153
B. – Inter-Institutional Agreements (317 to 320)	156
§2. – Arbitration Rules (321 to 370)	157
A. – The Diversity of Arbitration Rules (322 to 356)	158
1° <i>Rules Prepared by Arbitral Institutions</i> (323 to 350)	158
a) Classification of Arbitral Institutions (330 to 348)	160
b) The International Court of Arbitration of the International Chamber of Commerce (349 to 350)	174
2° <i>Rules of Other Organizations</i> (351 to 356)	177
a) Rules of Evidence (352 to 353)	177
b) Rules Governing Arbitrators' Ethics (354 to 356)	178
B. – The Authority of Private Arbitration Rules (357 to 370)	179
1° <i>Basis of the Authority of Arbitration Rules</i> (358 to 363)	179
a) The Contractual Value of Arbitration Rules (359 to 361)	179
b) Arbitration Rules as Usages or Principles of International Arbitration (362 to 363)	180
2° <i>The Status of Private Arbitration Rules in International</i> <i>Arbitration Law</i> (364 to 370)	181
a) Arbitration Rules Take Priority over Other Sources (365 to 368)	181
b) Arbitration Rules Are Generally Sufficient to Regulate the Arbitration (369 to 370)	183
§3. – Arbitral Awards (371 to 384)	183
A. – Autonomy of Arbitral Awards (375 to 378)	184
B. – Consistency of Arbitral Case Law (379 to 382)	187
C. – Publication of Arbitral Awards (383 to 384)	188

PART II

THE ARBITRATION AGREEMENT

CHAPTER I

THE AUTONOMY OF THE ARBITRATION AGREEMENT

(388 to 451)

Section I. – Autonomy of the Arbitration Agreement from the Main Contract (389 to 419)	198
§1. – Nature of the Rule (391 to 407)	198
A. – Recognition of the Principle in Leading Arbitration Rules (393 to 397)	199

B. – Recognition of the Principle in Arbitration Statutes (398 to 405)	202
C. – Recognition of the Principle in International Arbitral Case Law (406)	206
D. – Recognition of the Principle by International Courts (406-1 to 407)	209
§2. – Consequences of the Autonomy of the Arbitration Agreement (408 to 419)	209
A. – Direct Consequences of the Principle of Autonomy (409 to 414)	209
1° <i>The Status of the Main Contract Does Not Affect the Arbitration Agreement</i> (410 to 411)	210
2° <i>The Arbitration Agreement May Be Governed by a Law Different from that Governing the Main Contract</i> (412 to 414)	212
B. – Indirect Consequences of the Principle of Autonomy (415 to 419)	213
1° <i>The Principle of Autonomy and "Competence-Competence"</i> (416 to 417)	213
2° <i>The Principle of Autonomy, the Principle of Validity and the Rejection of the Choice of Law Method</i> (418 to 419)	214
Section II. – Autonomy of the Arbitration Agreement from all National Laws (420 to 451)	218
§1. – The Choice of Law Method (422 to 434)	218
A. – Legal Categories (423 to 425)	219
1° <i>The Arbitration Agreement and Procedure</i> (424)	220
2° <i>The Arbitration Agreement and the Main Contract</i> (425)	222
B. – Connecting Factors (426 to 434)	224
1° <i>The Place Where the Arbitration Agreement Was Concluded</i> (427)	224
2° <i>Factors Specific to Certain Arbitration Agreements</i> (428)	225
3° <i>The Seat of Arbitration</i> (429 to 434)	225
§2. – The Substantive Rules Method (435 to 445)	228
A. – French Case Law Establishing the Substantive Rules Method (436 to 437)	228
B. – Criticism of the Substantive Rules Method (438)	230
C. – Scope and Merit of the Substantive Rules Method (439 to 445)	231
1° <i>Application of the Substantive Rules Method by Courts Reviewing Arbitral Awards</i> (442)	232
2° <i>Application of the Substantive Rules Method by Arbitrators</i> (443 to 445)	234
§3. – Combining <i>In Favorem Validitatis</i> Choice of Law Rules and Substantive Rules (446 to 451)	236

A. – The Swiss Model (447 to 448)	237
B. – The Position in France (449 to 451)	238

CHAPTER II

FORMATION OF THE ARBITRATION AGREEMENT

(452 to 623)

Section I. – Capacity and Power (453 to 470)	242
§1. – The Choice of Law Method (455 to 462)	243
A. – The Law Governing the Capacity to Enter into an Agreement (456 to 460)	243
1° <i>Natural Persons</i> (457 to 458)	243
2° <i>Juridical Persons</i> (459 to 460)	245
B. – The Law Governing Powers (461 to 462)	246
§2. – The Substantive Rules Method (463 to 470)	247
A. – The Exclusive Use of Substantive Rules (464 to 469)	248
1° <i>Capacity</i> (465 to 467)	248
2° <i>Powers</i> (468 to 469)	250
B. – The Corrective Use of Substantive Rules (470)	252
Section II. – Consent (471 to 531)	253
Subsection I. – The Existence of Consent (472 to 524)	254
§1. – Interpreting the Parties' Consent (473 to 482)	254
A. – The Principle of Interpretation in Good Faith (477)	257
B. – The Principle of Effective Interpretation (478)	258
C. – The Principle of Interpretation <i>Contra Proferentem</i> (479)	258
D. – Rejection of the Principle of Strict Interpretation (480)	260
E. – Rejection of the Principle of Interpretation <i>In Favorem Validitatis</i> (481 to 482)	261
§2. – The Degree of Certainty Required of the Parties' Consent (483 to 496)	262
A. – Pathological Clauses (484 to 486)	262
1° <i>Selecting an Institution Which Does Not Exist or Which Is Inadequately Defined</i> (485)	264
2° <i>"Blank Clauses"</i> (486)	266
B. – Combined Clauses (487 to 490)	268
1° Option to Choose Between Arbitration and the Courts (488)	268
2° The Courts as an Appeal Jurisdiction (489)	269
3° Conflict Between Arbitration and the Courts (490)	270
C. – Arbitration Clauses Incorporated by Reference (491 to 496)	272

1° <i>Arbitration Clauses Incorporated by Reference and the Autonomy of the Arbitration Agreement</i> (492)	272
2° <i>Arbitration Clauses Incorporated by Reference and Requirements of Form</i> (493 to 495-1)	272
3° <i>Arbitration Clauses Incorporated by Reference and the Interpretation of the Consent of the Parties</i> (496)	278
§3. – Scope of the Parties' Consent (497 to 524)	280
A. – Which Parties Are Bound by the Consent to Arbitrate? (498 to 511)	280
1° <i>Groups of Companies</i> (500 to 506)	282
a) <i>Arbitral Case Law</i> (501)	284
b) <i>French Case Law</i> (502 to 506)	286
2° <i>States and State-Owned Entities</i> (507 to 511)	290
a) <i>Extension of an Arbitration Agreement Signed by a State-Owned Entity to the State</i> (508 to 510)	292
b) <i>Extension of an Arbitration Agreement Signed by a State to a State-Owned Entity</i> (511)	296
B. – What Subject-Matter Is Covered by the Parties' Consent? (512 to 524)	297
1° <i>Diversity of Disputes Arising from a Single Contract</i> (513 to 517)	298
a) <i>Omission of Disputes Concerning the Validity or Interpretation of the Contract</i> (514 to 516)	299
b) <i>Submission to Arbitration of Disputes Concerning only Interpretation</i> (517)	300
2° <i>Groups of Contracts</i> (518 to 523)	301
a) <i>Contracts with the Same Purpose</i> (519 to 522)	301
b) <i>Successive Contracts Between the Same Parties</i> (523)	305
3° <i>Extra-Contractual Disputes</i> (524)	306
Subsection II. – Validity of the Parties' Consent (525 to 531)	307
§1. – Duress (529)	309
§2. – Misrepresentation (530)	310
§3. – Mistake (531)	310
Section III. – Arbitrability (532 to 589-1)	312
§1. – Subjective Arbitrability (534 to 558)	313
A. – The Choice of Law Method (536 to 540)	315
B. – Substantive Rules (541 to 558)	318
1° <i>French Law</i> (542 to 546)	318
2° <i>General Principles of International Arbitration</i> (547 to 558)	322
a) <i>International Conventions</i> (548)	322
b) <i>Comparative Law</i> (549)	323
c) <i>International Arbitral Case Law</i> (550 to 556)	325

d) Resolution of the Institute of International Law (557 to 558)	329
§2. – Objective Arbitrability (559 to 589-1)	330
A. – French Law (560 to 579)	330
1° <i>Methodology</i> (561 to 570)	331
a) Scope of Objective Non-Arbitrability (562 to 568)	331
b) Establishing Non-Arbitrability (569)	338
2° <i>Specific Applications</i> (571 to 579)	339
a) Matters Which Do Not Involve an Economic Interest (572)	340
b) Inalienable Rights (573)	340
b) Other Sensitive Areas (574 to 579)	342
B. – International Arbitral Case Law (580 to 589-1)	348
1° <i>Antitrust Law</i> (581 to 582)	349
2° <i>Intellectual Property</i> (583)	352
3° <i>Corruption</i> (584 to 586)	353
4° <i>Bankruptcy Proceedings</i> (587)	355
5° <i>Exclusive Sales Concessions</i> (588)	356
6° <i>Embargoes</i> (589)	358
7° <i>Taxation Disputes</i> (589-1)	359
Section IV. – Form and Proof (590 to 623)	360
§1. – French Law (592 to 610)	361
A. – Formal Validity and Autonomy of the Arbitration Agreement (593 to 598)	361
1° <i>The Cassia Decision</i> (594 to 595)	361
2° <i>The Prevailing Position in French Law</i> (596 to 598)	363
B. – Rules Governing the Formal Validity of an Arbitration Agreement (599 to 610)	364
1° <i>The Choice of Law Method</i> (600 to 604)	365
2° <i>Substantive Rules</i> (605 to 610)	369
§2. – International Conventions (611 to 623)	373
A. – The New York Convention (612 to 620)	373
1° <i>The Relationship Between the Requirements of Form of the New York Convention and Those of National Arbitration Laws</i> (613 to 615)	373
a) Can National Laws Be More Liberal than the New York Convention? (614)	374
b) In Order to Rely on the New York Convention, Is It Necessary to Comply with All Its Terms? (615)	375
2° <i>Provisions of the New York Convention Regarding the Form of the Arbitration Agreement</i> (616 to 620)	376
B. – The 1961 European Convention (621 to 623)	378

CHAPTER III
EFFECTS OF THE ARBITRATION AGREEMENT
(624 to 688)

Section I. – Positive Effects of the Arbitration Agreement (625 to 660)	381
§1. – The Parties' Obligation to Submit Disputes Covered by the Arbitration Agreement to Arbitration (626 to 646)	381
A. – The Principle that Parties Are Obligated to Submit Disputes Covered by Their Arbitration Agreement to Arbitration (627 to 630)	382
B. – The Obligation to Submit to Arbitration Disputes Covered by the Arbitration Agreement Is Capable of Specific Performance (631 to 634)	384
C. – The Obligation to Submit Disputes Covered by the Arbitration Agreement to Arbitration Prevails over Jurisdictional Privileges and Immunities (635 to 646)	387
1° <i>Jurisdictional Privileges</i> (636 to 640)	387
2° <i>Jurisdictional Immunities</i> (641 to 646)	390
§2. – The Arbitral Tribunal Has Jurisdiction to Resolve Disputes Covered by the Arbitration Agreement (647 to 660)	393
A. – The Extent of the Jurisdiction of the Arbitral Tribunal (648 to 649)	394
B. – The Arbitral Tribunal's Jurisdiction to Rule on Its Own Jurisdiction ("Competence-Competence") (650 to 660)	395
1° <i>Recognition of the Principle</i> (653 to 656)	397
2° <i>Basis of the Principle</i> (657 to 658)	399
3° <i>Meaning of the Principle</i> (659 to 660)	400
Section II. – Negative Effects of the Arbitration Agreement (661 to 688)	402
§1. – The Principle that the Courts Have No Jurisdiction (662 to 667)	402
A. – International Conventions (663)	402
B. – Arbitration Legislation (664 to 667)	403
§2. – Implementation of the Principle that the Courts Have No Jurisdiction (668 to 682)	405
A. – The Courts Cannot Declare <i>Ex Officio</i> that They Have No Jurisdiction as a Result of the Existence of an Arbitration Agreement (669 to 670)	405
B. – When Can the Courts Review the Existence and Validity of the Arbitration Agreement? (671 to 682)	406
1° <i>The Position Adopted in Comparative Law</i> (672 to 676)	407
2° <i>Policy Considerations</i> (677 to 682)	410
§3. – The Limits of the Courts' Lack of Jurisdiction (683 to 688)	413
A. – The Constitution of the Arbitral Tribunal (684)	413
B. – Provisional and Conservatory Measures (685)	414
C. – Review of the Award by the Courts (686 to 688)	414

CHAPTER IV
ASSIGNMENT AND EXPIRATION OF THE
ARBITRATION AGREEMENT

(689 to 741)

Section I. – Assignment of the Arbitration Agreement (690 to 725)	417
§1. – The Choice of Law Method (693 to 703)	419
A. – The Law Governing Voluntary Assignments (694 to 700)	419
1° <i>Determining the Applicable Law (695 to 697)</i>	419
a) Contractual Assignment of the Arbitration Agreement (696)	419
b) Other Forms of Voluntary Assignment of the Arbitration Agreement (697)	421
2° <i>Scope of the Applicable Law (698 to 700)</i>	421
a) The Law Governing Formalities Aimed at Ensuring Enforceability Against the Initial Co-Contractor (699)	422
b) International Mandatory Rules (700)	422
B. – The Law Governing Statutory Assignments (701 to 703)	422
1° <i>Determining the Applicable Law (702)</i>	423
2° <i>Scope of the Applicable Law (703)</i>	423
§2. – Substantive Rules (704 to 725)	424
A. – Conditions Governing the Assignment of the Arbitration Agreement (705 to 722)	424
1° <i>Enforceability Against the Assignee of the Assignment of an Arbitration Agreement (706 to 715)</i>	425
a) Voluntary Assignments (707 to 712)	425
1) The Assignee Must Consent to the Assignment (708 to 710)	425
2) Acceptance of the Assignment of the Main Contract Raises a Presumption of Acceptance of the Arbitration Agreement (711 to 712)	427
b) Other Means of Assigning the Arbitration Agreement (713 to 715)	429
1) Statutory Subrogation (714)	429
2) Universal Succession (715)	430
2° <i>Conditions Governing the Enforceability of the Assignment of the Arbitration Agreement Against the Initial Co-Contractor (716 to 722)</i>	430
a) The Presumption that the Initial Co-Contractor Accepts the Assignability of the Arbitration Agreement (717 to 719)	431
1) Contractual Assignments (718)	431
2) Assignment by Subrogation (719)	432
b) Situations Where Express Acceptance by the Initial Co-Contractor Is Required for the Assignment of the Arbitration Agreement (720 to 722)	433

1) <i>Intuitus Personae</i> Inferred from the Facts (721)	434
2) <i>Intuitus Personae</i> Expressly Provided for by Contract (722)	434
B. – Consequences of the Assignment of the Arbitration Agreement (723 to 725)	434
1° <i>The Obligation to Submit Disputes to Arbitration</i> (724)	435
2° <i>The Effect of an Assignment of the Arbitration Agreement on the Composition of the Arbitral Tribunal</i> (725)	436
Section II. – Expiration of the Arbitration Agreement (726 to 741)	437
§1. – Expiration of the Arbitration Agreement as a Result of the Expiration of the Main Agreement? (727 to 733)	437
A. – Performance (728)	437
B. – Statute of Limitations (729)	438
C. – Novation (730)	438
D. – Settlement (731)	439
E. – Rescission (732)	439
F. – Nullity (733)	440
§2. – Causes of Expiration Specific to the Arbitration Agreement (734 to 741)	440
A. – Events Extinguishing the Arbitration Agreement (735 to 737)	440
1° <i>Waiver</i> (736)	441
2° <i>Avoidance</i> (737)	443
B. – Events Which Extinguish Submission Agreements but Do Not Affect Arbitration Clauses (738 to 741)	443
1° <i>The Making of a Final Award</i> (738-1)	443
2° <i>The Default of an Arbitrator</i> (739)	444
3° <i>Expiration of the Deadline for the Arbitrators' Award</i> (740)	445
4° <i>The Setting Aside of an Award</i> (741)	445

PART III THE ARBITRAL TRIBUNAL

CHAPTER I THE CONSTITUTION OF THE ARBITRAL TRIBUNAL (745 to 1008)

Section I. – National and International Rules (748 to 950)	452
§1. – The Appointment of the Arbitrators (750 to 793)	452
A. – The Primacy of the Parties' Agreement (752 to 793)	452
1° <i>The Meaning of the Primacy of the Parties' Agreement (753 to 774)</i>	<i>453</i>
a) Identity of the Arbitrators (761 to 769)	456
b) Number of Arbitrators (770 to 771)	459

c) Method of Appointing Arbitrators (772 to 774)	460
2° <i>Consequences of the Primacy of the Parties' Agreement</i> (775 to 782)	461
3° <i>Limits of the Primacy of the Parties' Agreement</i> (783 to 793)	464
B. – The Subsidiary Role of National Laws (794 to 807)	470
1° <i>French Law</i> (795 to 799)	470
2° <i>Other Legal Systems and International Conventions</i> (800 to 807)	473
C. – Recognition of the Role of Arbitral Institutions (808 to 827)	476
1° <i>International Conventions</i> (809 to 818)	476
a) The 1958 New York Convention (810 to 813)	477
b) The 1961 European Convention (814 to 817)	478
c) The 1965 Washington Convention (818)	480
2° <i>Recent Arbitration Statutes</i> (819)	480
3° <i>French Law</i> (820 to 827)	481
§2. – Difficulties in the Constitution of the Arbitral Tribunal (828 to 940)	484
A. – French Law (832 to 910)	485
1° <i>Conditions Governing Judicial Intervention</i> (836 to 855)	486
a) The International Jurisdiction of the French Courts (837 to 846)	486
b) Non-Mandatory Character of French Courts' Jurisdiction (847 to 850)	492
c) Validity and Content of the Arbitration Clause (851 to 855)	494
2° <i>The Purpose of Judicial Intervention</i> (856 to 884)	496
a) Resolving Initial Difficulties Concerning the Constitution of the Arbitral Tribunal (857 to 864)	497
1) Difficulties Warranting Judicial Intervention (858 to 860)	497
2) Difficulties Not Warranting Judicial Intervention (861 to 864)	498
b) Resolving Subsequent Difficulties Affecting the Constitution of the Arbitral Tribunal (865 to 884)	500
1) The Challenge of an Arbitrator (871 to 878)	502
2) The Replacement of an Arbitrator (879 to 884)	505
3° <i>The Procedure for Judicial Intervention</i> (885 to 910)	508
a) Relevant Jurisdiction (886 to 889)	508
b) Organization of the Proceedings (890 to 901)	510
1) Rules of Procedure (891 to 900)	510
2) Practice of the Court (901)	513
c) Finality of the Court's Decisions (902 to 910)	514
1) An Ordinary Appeal Is Inadmissible (903)	514
2) No Recourse to the <i>Cour de cassation</i> (904)	515