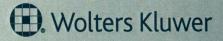
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EDITED BY TONY COLE



The Roles of Psychology in International Arbitration

Edited by

Tony Cole



Published by:
Kluwer Law International B.V.
PO Box 316
2400 AH Alphen aan den Rijn
The Netherlands
Website: www.wolterskluwerlr.com

Sold and distributed in North, Central and South America by:
Wolters Kluwer Legal & Regulatory U.S.
7201 McKinney Circle
Frederick, MD 21704
United States of America
Email: customer service@wolterskluwer.com

Sold and distributed in all other countries by:
Quadrant
Rockwood House
Haywards Heath
West Sussex
RH16 3DH
United Kingdom
Email: international-customerservice@wolterskluwer.com

Printed on acid-free paper.

ISBN 978-90-411-5921-2

e-Book: ISBN 978-90-411-5928-1 web-PDF: ISBN 978-90-411-6605-0

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Printed in the United Kingdom.

The Roles of Psychology in International Arbitration

International Arbitration Law Library

VOLUME 40

Editor

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Introduction

Since its first volume published in 1993, this authoritative practitioner-oriented series has published in-depth and analytical works on niche aspects of international arbitration, authored by specialists in the field.

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Editor

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Preface

It can hardly be described as a ground-breaking claim to argue that the study of psychology can provide useful insights for the practice of international commercial arbitration. After all, mental processes are central to arbitration in various ways, whether in terms of the reasoning of arbitrators, the presentation of evidence, the structuring of arguments by counsel, or the evaluation by parties of both the arbitral process and the final decision. Indeed, any successful arbitration practitioner necessarily operates as a sort of "amateur psychologist," constantly making evaluations of how certain modes of presentation will affect the arbitrators, how best to get a witness to reveal something they are attempting to hide, how to draft an award so that it will be acceptable to the parties, and so on.

No book on arbitration and psychology, then, can claim to be bringing a fundamentally new topic to the study of arbitration, as though by finally considering the insights available from psychology, arbitration will be revolutionized and achieve goals it has hitherto failed to achieve. Instead, any serious study of arbitration and psychology needs to build from two directions, importing expertise from psychology that can provide insights into issues of particular relevance to arbitration, while also benefiting from the already-existing "amateur" psychological expertise of arbitration practitioners.

The current book represents a particular take on how to approach this problem. Rather than simply collecting a set of independently written chapters that each attempts to combine arbitration with psychology, the book was instead constructed through a fundamentally collaborative process. This book, that is, is based on a rejection of the notion that expertise is fundamentally a matter of knowing certain facts, such that if an expert in one field merely takes the time to read some research from another field, that will suffice to allow her to discuss that research as though she were now an expert in both fields. Instead, this book reflects the view that expertise is domain-specific: merely reading a few papers on psychology, or on arbitration, does not equip anyone, no matter how intelligent, with the ability to discuss that research with the insight and depth of understanding that characterizes the work of a true expert. Work based on interdisciplinary reading is certainly not worthless, and the more those of us who specialize in arbitration are willing to engage with other fields,

the richer our own understanding of arbitration will become. But such work can never benefit from the broader contextual understanding that true expertise provides.

Of course, once one accepts that expertise is domain-specific, the difficulty becomes identifying how high-quality interdisciplinary work can be undertaken. After all, such work requires the combination of two or more disciplines, but the domain-specific nature of expertise means that expertise in a new field of research will always take years to develop. The present book is what has resulted from one particular attempt to solve this problem, by bringing together experts in a process designed to facilitate genuine collaboration.

The project underlying this book saw its initial outlet in a three-day conference in May 2013 at Brunel University, co-funded by Brunel University and by Transnational Dispute Management. This conference included twenty-two presentations, from international commercial arbitration practitioners, from academics who work on arbitration, and from experts in psychology, statistics, mediation, and cross-cultural communication. No previous knowledge of arbitration was required of non-arbitration specialists, and arbitration specialists were not expected to contribute more psychological expertise than the "amateur" psychological insights they had already developed. This was because while formally structured around a series of presentations, the conference was actually designed to operate as a workshop in which, over the course of three days, a reasonably stable group of individuals would work together to explore ways that their own perspectives and expertises could be combined. The widely shared feeling that this approach had been successful, and real insights developed, lay behind the decision to push this collaboration further, into the development of the present book.

This book, however, is also not merely a collection of independently authored papers, and has instead attempted to incorporate the collaborative approach that proved so beneficial at the initial conference. It was, therefore, expressly developed as a collaborative enterprise, providing a forum in which individuals with expertise from either psychology or arbitration could benefit from the expertise of other participants in the project. While each author or team of authors ultimately had responsibility for their own contribution, each chapter was distributed to at least two other authors for comment, the commentators being selected to ensure complementary expertise to that of the original author(s). In this way, an author who specialized in arbitration would receive comments from at least one specialist in psychology, and a specialist in psychology would receive comments from at least one specialist in arbitration. The goal of this process was to reflect the reality, described above, that expertise is by its nature domain-specific, and that as a result attempts by any individual to attain dual expertise will rarely be the most effective way to pursue interdisciplinary work. Instead, effective collaboration is far more likely to produce genuinely insightful results.

Of course, this book is in no way intended to be the last word on how psychology and arbitration can be combined, and that should come across clearly from the way the book is structured. There was no attempt to make the book a systematic treatment of the application of psychology to international arbitration, in which important topics were identified, authors assigned to write on a specific issue, and then a book compiled

that could be used as a standard reference handbook on the topic. Handbooks of this type are only appropriate once a topic has been the subject of serious study for a sustained period, at which point it becomes possible to produce an overview of the results that have been produced.

Rather, the approach adopted for this book reflects the early stage at which the combination of arbitration and psychology remains. Authors were invited to contribute on topics of particular interest to them personally, while the editor attempted to ensure that the book as a whole evidences a suitably broad range of ways in which attending to psychology can provide insight into international arbitration.

This book, then, is best understood as an exploration of ways that insights from psychology can be used to develop an understanding of international arbitration that extends beyond the "amateur psychologist" observations that practitioners already make. Ideally, then, it will serve two purposes. On a practical level, the quality of the authors involved in this book should provide assurance that it will contain a variety of useful insights for arbitration practitioners, which can be used to refine and improve arbitration as a dispute resolution process. Perhaps more importantly, however, this book will hopefully also demonstrate the benefits to be gained from genuinely collaborative interdisciplinary work, and will thereby provide a model to be further refined by others in their own attempts to get beyond the domain-specific nature of true expertise.

Summary of Contents

Editor	V
Contributors	vii
Preface	xxvii
PART I The Decision-Making Processes of Arbitrators	1
CHAPTER 1 Rules and Reliability: How Arbitrators Decide William W. (Rusty) Park	3
CHAPTER 2 Bias, Vested Interests and Self-Deception in Judgment and Decision-Making: Challenges to Arbitrator Impartiality Peter Ayton & Geneviève Helleringer	21
CHAPTER 3 Biases and Heuristics in Arbitrator Decision-Making: Reflections on How to Counteract or Play to Them Edna Sussman	45
CHAPTER 4 Cultural Differences in Perceptions of Strong and Weak Arguments Jos Hornikx	75

Summary of Contents

Part II Arbitration and the Resolution of Disputes	93
Chapter 5 The Arbitrator as Leader and Facilitator Ran Kuttner	95
CHAPTER 6 Disputant Psychology in International Arbitration: What Can a Comparison with Domestic Arbitration Teach Us? Pietro Ortolani & Donna Shestowsky	113
CHAPTER 7 The Potential Impacts of Psychology in the Resolution of Foreign Direct Investment Disputes by International Investment Arbitration Richard Earle	143
Part III Arbitral Procedure	173
CHAPTER 8 Going First Makes a Difference: Decision-Making Dynamics in Arbitration Mark A. Cymrot & Paul Levine	175
CHAPTER 9 Human Memory and Witness Evidence in International Arbitration Ula Cartwright-Finch	199
CHAPTER 10 Separate Awards for the Advance on Costs: Psychological Phenomena That Account for Biased Risk Assessment Generated by Early Victories and Identify Methods for Legal Counsel to De-bias Risk Assessment Cornel Marian & Sean P. Wright	231
PART IV The Role of the Arbitrator	265
CHAPTER 11 Some Psychological Preconditions for the Process of International Arbitration: Preliminary Findings of a Research Project with a Qualitative Approach	
Dieter Flader & Charles W. Anderson III	267