

OXFORD INTERNATIONAL
ARBITRATION SERIES

DAMAGES
IN INTERNATIONAL
ARBITRATION UNDER
COMPLEX LONG-TERM
CONTRACTS

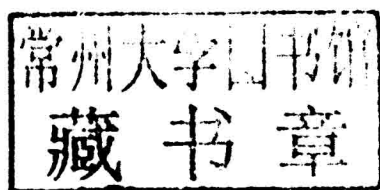
HERFRIED WÖSS
ADRIANA SAN ROMÁN RIVERA
PABLO T. SPILLER
SANTIAGO DELLEPIANE



OXFORD

DAMAGES IN INTERNATIONAL ARBITRATION UNDER COMPLEX LONG-TERM CONTRACTS

HERFRIED WÖSS,
ADRIANA SAN ROMÁN RIVERA,
PABLO T. SPILLER,
SANTIAGO DELLEPIANE



OXFORD
UNIVERSITY PRESS

OXFORD
UNIVERSITY PRESS

Great Clarendon Street, Oxford, OX2 6DP,
United Kingdom

Oxford University Press is a department of the University of Oxford.
It furthers the University's objective of excellence in research, scholarship,
and education by publishing worldwide. Oxford is a registered trade mark of
Oxford University Press in the UK and in certain other countries

© Herfried Woss, Adriana San Román, Pablo Spiller, Santiago Dellepiane 2014

The moral rights of the authors have been asserted

First Edition published in 2014

Impression: 1

All rights reserved. No part of this publication may be reproduced, stored in
a retrieval system, or transmitted, in any form or by any means, without the
prior permission in writing of Oxford University Press, or as expressly permitted
by law, by licence or under terms agreed with the appropriate reprographics
rights organization. Enquiries concerning reproduction outside the scope of the
above should be sent to the Rights Department, Oxford University Press, at the
address above

You must not circulate this work in any other form
and you must impose this same condition on any acquirer

Crown copyright material is reproduced under Class Licence
Number C01P0000148 with the permission of OPSI
and the Queen's Printer for Scotland

Published in the United States of America by Oxford University Press
198 Madison Avenue, New York, NY 10016, United States of America

British Library Cataloguing in Publication Data
Data available

Library of Congress Control Number: 2013950203

ISBN 978-0-19-968067-2

Printed in Great Britain by
CPI Group (UK) Ltd, Croydon, CR0 4YY

Links to third party websites are provided by Oxford in good faith and
for information only. Oxford disclaims any responsibility for the materials
contained in any third party website referenced in this work.

OXFORD INTERNATIONAL ARBITRATION SERIES

Series Editor: LOUKAS MISTELIS

*Professor of Transnational Commercial Law and Arbitration
Queen Mary, University of London*

DAMAGES IN INTERNATIONAL ARBITRATION
UNDER COMPLEX LONG-TERM CONTRACTS

OXFORD INTERNATIONAL ARBITRATION SERIES

Series Editor: LOUKAS MISTELIS

The aim of this series is to publish works of quality and originality on specific issues in international commercial and investment arbitration. The series aims to provide a forum for the exploration of important emerging issues and those issues not adequately dealt with in leading works. It should be of interest to both practitioners and scholarly lawyers.

Editorial Board

PROFESSOR LAWRENCE BOO

National University of Singapore, Bond University, Australia

LORD LAWRENCE COLLINS OF MAPESBURY

Professor, University College London

Honorary and Emeritus Fellow, Wolfson College, Cambridge

PROFESSOR CATHERINE KESSEDJIAN

*Professor of European Business Law and International Dispute Resolution,
University of Panthéon-Assas, Paris II, France*

PROFESSOR VAUGHAN LOWE

*Chichele Professor of Public International Law and Fellow of All Souls College,
University of Oxford*

PROFESSOR WILLIAM W. PARK

Professor of Law, Boston University

PROFESSOR HANS VAN HOUTTE

*Director of the Institute for International Trade Law,
University of Louvain (KULeuven)*

PROFESSOR FRANCISCO ORREGO VICUÑA

Professor of law at the Heidelberg University Center for Latin America in Santiago

PAUL FRIEDLAND

Global Head of the White & Case International Arbitration practice group, New York

SERIES EDITOR'S PREFACE

This series of monographs is dedicated to specific issues in international arbitration law and practice, and gives authors the opportunity and the challenge of a more in-depth treatment than is possible in leading generalist works. It also provides an international forum for the profound exploration of important practical and theoretical matters and will further the development of arbitration as a self-luminous academic discipline and major international legal practice area.

This ninth book in this series addresses a topic of major practical importance and also one that has various pervasive theoretical and comparative law ramifications, namely damages in international arbitration under complex long-term contracts. Ultimately all parties involved in arbitration are concerned about the amount of damages they may recover or the amount of damages they will have to part with. There are already a few very good books on damages, including one in this series (focusing on investment arbitration and law) but one has the feeling, given the complexity of the topic, that further thorough analysis of the topic is needed. This is most certainly what this book does with particular focus on complex long-term contracts.

This book offers a systematic analysis of the different legal and financial implications associated with damages in international arbitration and provides a lucid analysis of how different rules of law on damages and loss of income are applied to various heading of damages in long-term contracts, including infrastructure contracts and public-private partnerships. The systematically surveyed jurisdictions include the UK, US, France, Germany, Mexico, and also international instruments such as the CISG and the UNIDROIT Principles. The authors also refer to best national and international practices on determination and quantification of damages. Throughout the book the authors make extensive references to major awards in ICC, UNCITRAL (ad hoc) and ICSID proceedings.

This book also addresses the many competing factors that define the nature and amount of damages and is written by prominent lawyers and economists/damages experts. This is a measured, academically thorough and practically very useful analysis of methods used for calculation of damages against specific categorizations and headings of damages claims. Consequently the book provides a comprehensive coverage of issues arising when planning, structuring, arbitrating, or making an award on damages.

The book is arranged in eight chapters. Chapter 1 introduces the subject and the terminology used and also spells out the methodology and the scope of the monograph. Chapter 2 addresses the role and importance of damages for breach of contracts, while Chapter 3 focuses on the features and key characteristics of complex long-term contracts. Chapter 4 examines damages claims for breach of contract under comparative and transnational law. Then Chapter 5 highlights the main aspects of structuring, analysing and proving a damages claim and proposes legal solutions that facilitate the application of general rules of law to damages deriving from complex long-term contracts, particularly those based on income stream, Chapter 6 focuses on the quantification of damages while Chapter 7 explores interest as damages and other related claims. Finally Chapter 8 provides a systematic and insightful set of conclusions.

On this highly important topic the team of authors offer their readership thorough research, profound analytical skills and practical experience which combines facilitate insights, measured critique, and a very accessible style of writing, taking an important topic and presenting it in an appealing fashion for both academics and practitioners. The book will provide very useful guidance to lawyers and arbitrators alike as well as to damages experts.

I am pleased to introduce this book, the ninth in the Oxford International Arbitration Series, which originates from the desire of the authors to systematize their vast professional expertise and to provide also to that practical experience an academic backbone so that it appeals both to an academic and professional audience. It certainly makes a real contribution.

Loukas Mistelis
London
19 November 2013

PREFACE

I am delighted to introduce this latest book on damages in international arbitration under complex long-term contracts, which is authored by four respected practitioners and scholars in the field. It is a distinguished and valuable addition to the Oxford International Arbitration Series.

Damages have arguably become one of the most important and complex issues in international arbitration, and for good reason, because for a claimant at least, the damages are the arbitration's very *raison d'être*. As is commonly observed, an arbitration award is worth only as much as the prevailing party's ability to obtain the payment awarded to it. Yet, at the same time, damages remain an issue that is little understood generally and is oftentimes inaccurately addressed by arbitrators, leading all involved in an arbitration to expect results that resemble the proverbial 'splitting of the baby'. The participation of economists and damages experts, particularly those well-versed in international arbitration, has greatly improved the understanding of how to value and calculate damages, but out of concern that tribunals may be diverted while being walked through the particulars of this process, many continue to treat damages as a thorny path that should be carefully trodden.

This book therefore comes as a welcome addition—particularly because it focuses on complex long-term contracts, which govern large-scale private and public infrastructure and technology projects that implicate a matrix of different actors with different risks and, for this reason, necessitate more complicated damages calculations than those required for discrete transactions or simple long-term contracts. As the authors observe, complex long-term contracts are fundamentally important to the global economy and have been at the centre of many high-profile and high-stakes commercial and investor–State arbitrations. Complex long-term contracts are used, for instance, in virtually all major energy and mining projects and in projects involving the construction of transportation infrastructure.

Compared to their importance, however, international legal rules for such contracts are underdeveloped. The authors believe that, as a solution, in situations of breach of complex long-term contracts in international arbitration, private law can and should be adapted as a guideline for formulating damages. To that end, they provide a detailed comparative analysis of the domestic laws of the United Kingdom, United States, and other jurisdictions, as well as frameworks such as the CISG and the UNIDROIT Principles of International Commercial Contracts

(PICC), to facilitate this adaptation of general rules to damages deriving from the breach of complex long-term contracts.

The authors also discuss in great depth the *but-for* premise that was first developed by Frederick Mommsen and which is now common parlance in international arbitration. The premise provides a framework for analysing, framing, and proving damages claims, beginning from the point that the contract was breached to ensure that the injured party is awarded compensation that places it in the financial position in which it would have been had the wrongful act not occurred. The *but-for* premise leads ultimately to a so-called expectation interest that is seen by the authors as achieving a fairer measure of damages because it avoids both overcompensating and undercompensating the claimant.

A portion of this discourse is devoted, in particular, to the distinct features of damages claims under complex long-term contracts with state entities in investment arbitration. The foundation of the modern international law of restitution and compensation is of course the well-known and almost universally referenced *Chorzów Factory* case of the Permanent Court of International Justice, which established a general reparation obligation that required states to put the victim of an internationally wrongful act in the same economic position that it would have possessed but for the unlawful act.

As the authors note, the importance of the *Chorzów* case comes from its comprehensive damages analysis based on clear legal principles and its guidelines on how to achieve the full compensation principle in international law—both of which are now followed by many arbitral tribunals. Based on the *Chorzów* standard, when a business is taken illegally or its value is destroyed by a government's illegal act, the measure of damages is the fair market value of the business; when the business is not taken or is only partially destroyed, the measure of damages is the difference between the *but-for* situation and the business' fair market value. Also provided in this book is a chapter, especially valuable for practitioners, that uses *Chorzów* and more recent investment arbitration cases as a basis for identifying specific strategies for valuing the damages arising from the breach of complex long-term contracts or the violation of an international legal rule affecting such contracts.

Finally, besides the primary damages awarded to a claimant, complicated issues are also raised by such secondary items as interest. The currency in which an award should be denominated is also an issue that has gained importance in light of exchange rate fluctuations and tax obligations that the prevailing party may have in certain jurisdictions. While tribunals have traditionally expressed their disapproval of misbehaviour during the arbitration by awarding the costs of arbitration against the misbehaving party, other forms of damages that have more recently sparked debate in investment arbitration are moral and punitive damages, awarded in cases in which the state has acted in a manner that the arbitral tribunal considers particularly reprehensible. As our understanding of these issues continues to

evolve, I imagine that further works will emerge that address these issues in greater detail.

Of the eight chapters in this content-rich publication, Mr Herfried Wöss and Ms Adriana San Román have authored Chapters 1 through 5 and 7 through 8, while Professor Pablo T. Spiller and Mr Santiago Dellepiane have authored Chapter 6. In aggregate, what they offer the reader is an authoritative and comprehensive work for understanding, valuing, and calculating damages arising from the breach of complex long-term contracts, and both the international arbitration practitioner and the academic will find this book to be of great insight and value.

I invite you to delve into, and to benefit from, this product of the authors' combined professional expertise and scholarship.

Stanimir A. Alexandrov
Washington DC
15 January 2014

Author Biographies

Herfried Wöss

Herfried Wöss is partner of Wöss & Partners (Mexico D.F.-Washington DC) and has extensive experience in international commercial and investment arbitration, as acknowledged in the *International Who's Who of Commercial Arbitration*. His arbitration experience spans from refinery-ships, thermo-electrical plants and sub-stations, gas and oil pipelines, EPC turnkey projects, public-private partnerships, M&A, joint venture agreements, franchise agreements, international sales contracts, and the telecommunications, automotive, and pharmaceutical industries. He has trained and practiced in Austria, the legal service of the EU-Commission, Great Britain, and Mexico and was visiting scholar at the Georgetown University Law Center. He is the founder of the *Investment Arbitration Forum* and special editor of *Transnational Dispute Management* and holds, amongst others, a doctorate in international economic law (*summa cum laude*).

Adriana San Román Rivera

Adriana San Román Rivera is partner of Wöss & Partners (Mexico DF-Washington DC) and also a financial analyst with more than 20 years of experience in corporate banking, financial engineering, and risk analysis. She engages in the legal-financial structuring of projects including infrastructure projects; she has vast experience in the preparation of legal-financial strategies in damages claims, case and evidence analysis, and the preparation of submissions in complex arbitrations; mergers & acquisitions, and anti-dumping and subsidy procedures. She is attorney at law with

highest honours and was Ford foundation scholar of the University of Exeter where she studied for an *M.A. in Finance & Investment*.

Pablo T. Spiller

Pablo T. Spiller is the *Jeffrey A. Jacobs Distinguished Professor Emeritus of Business & Technology*, at the Haas School of Business, and Professor of Graduate Studies, University of California, Berkeley, *Research Associate*, NBER and Senior Consultant at Compass Lexecon, an international economic consulting company. His current research is in the interface of law, economics, and organizations. He has consulted for the World Bank, the InterAmerican Bank, the UNDP and multiple governments and private companies throughout the world on regulatory, antitrust and investment issues. He has testified in numerous international arbitrations involving contract, regulatory, and investment disputes. Apart from his multiple editorial duties, he has been the President of the *International Society for New Institutional Economics*, a Special Advisor to the Bureau of Economics of the US Federal Trade Commission, and an elected Member of the Board of Directors of the *American Law & Economics Association*.

Santiago Dellepiane

Santiago Dellepiane, a Senior Vice President at the firm Compass Lexecon, works as an economic and valuation consultant for utilities, regulated, and non-regulated businesses, and often acts as independent economic expert in damages assessment in international disputes. His experience spans various industries and geographies in investment and commercial disputes under ICSID, ICC, ICDR, U.S. Court, Canadian Court proceedings, as well as other venues. He is a frequent speaker on damages issues and has been recognized among the world's top arbitration expert witnesses by *Who's Who Legal*.

TABLE OF CASES

INTERNATIONAL ARBITRATION AND COURT CASES

ADC Affiliate Ltd and ADC & ADMC Management Ltd v. The Republic of Hungary, ICSID Case No. ARB/03/16, Award, 2 October 2006	5.149, 5.188, 6.01, 6.80–6.83, 6.110, 6.150, 6.191, 7.30, 7.40, 7.50
Aguas del Tunari S.A. v. República de Bolivia, ICSID Case No. ARB/02/3, Decision on Jurisdiction	6.17
Aguas del Tunari S.A. v. República de Bolivia, ICSID Case No. ARB/02/3, Decision on Respondent's Objections to Jurisdiction, 21 October 2005	6.16
Amco Asia Corp. v. Indonesia (Amco I), Award, 20 November 1984 (1993) 1 ICSID Reports 413	6.150, 6.161, 7.36
Amco Asia Corporation, Pan American Development Limited, PT Amco Indonesia v. Republic of Indonesia, ICSID Case 1984-1990	5.200
American International Group v. The Islamic Republic of Iran (1983) 4 U.S.C.T.R. 106	5.185, 8.33
Anglo-Iranian Oil Co. Case (Jurisdiction) [1952] ICJ Rep. 93.	5.170
Antoine Goetz et al. v. Burundi, Award, 10 February 1999, (2000) 15 ICSID Review 457. . .	7.36
Archer Daniels Midland Company and Tate & Lyle Ingredients Americas Inc. v. United Mexican States, ICSID Case No. ARB(AF)/04/5, Award redacted version 21 November 2007	6.108
Asian Agricultural Products v. Sri Lanka, Award, 27 June 1990 (1997) 4 ICSID Reports 4 246	7.36
Astaldi SpA v. Honduras, ICSID Case No. ARB/07/32, 17 September 2010, IIC 454 (2010)	3.77
Autopista Concesionada de Venezuela, C.A. ('Aucoven') v. Bolivarian Republic of Venezuela, ICSID Case No. ARB/00/5, Award, 23 September 2003, IIC 20 (2003)	3.77, 5.29, 5.32–5.33, 5.57–5.59, 5.85, 5.138–5.142, 7.36
Bechtel Enterprises International Ltd v. Overseas Private Investment Corporation, Case No. 50 T 195 00509 02 (American Arbitration Association)	3.78
Biloune v. Ghana, Award, 30 June 1990, 95 ILR 211	7.43
Bridas S.A.P.I.C. v. Turkmenistan, ICC Case No. 9058/FMS/KGA, Interim Award, 26 January 2001	3.78
Capital India Power Mauritius I v. Maharashtra Power Development Corporation Ltd, ICC Case No. 12913/MS	3.78
Caso arbitraje 144 (CANACO), Laudo I, 2 de septiembre de 2004, Laudo II, 6 de mayo de 2005 (National Chamber of Commerce of the City of Mexico)	4.422, 4.426
CDC Group plc v. Seychelles, ICSID Case No. ARB/02/14, Award, 29 June 2005, IIC 47 (2003)	3.77
Ceskoslovenska Obchodni Banka, a s (CSOB) v. Slovak Republic, ICSID Case No. ARB/97/4, Award, 29 December 2004, IIC 51 (2004)	3.77, 7.36
Channel Tunnel Group Limited and France-Manche v. The Secretary of State for Transport of the Government of the United Kingdom of Great Britain and Northern Ireland and Le Ministre de l'Équipement, des Transports, de l'Aménagement du Territoire, du Tourisme et de la Mer du Gouvernement de la République Française, Partial Award, 30 January 2007 (Permanent Court of Arbitration)	3.74

Table of Cases

CME Czech Republic BV v. Czech Republic, Final Award on Damages, 14 March 2003, (2005) 8 ICSID Reports 246	7.36
CMS Gas Transmission Company v. The Argentine Republic, ICSID Case No. ARB/01/8, Award, 12 May 2005	6.34, 6.109, 6.150, 6.161, 7.40
COMISA v. PEMEX, ICC Case No. 13613/CCO/JRF, Final Award, 16 December 2009	3.78, 3.185, 3.191, 3.193–3.195, 3.197, 3.199
Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic, ICSID Case No. ARB/97/3, Decision on Annulment, 3 July 2002 (Vivendi I Decision on Annulment), (2001) 41 ILM 1135	5.165
Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic, ICSID Case No. ARB/97/3, Award, 20 August 2007.....	6.08–6.09, 6.108, 6.114, 6.119, 7.15
Compañía del Desarrollo de Santa Elena SA v. Republic of Costa Rica, ICSID Case No. ARB/96/1, 17 February 2000	6.108
Duke Energy International Peru Investments No. 1 v. Peru, ICSID Case No. ARB/03/28, Award, 18 August 2008, IIC 334 (2008)	3.77
EDF International S.A., SAUR International S.A. and Leon Participaciones Argentinas S.A. v. Argentine Republic, ICSID Case No. ARB/03/23, Award, 11 June 2012	5.21–5.22, 5.173, 5.191, 6.01, 6.191, 6.196, 7.26
El Paso Energy International Company v. The Argentine Republic, ICSID Case No. ARB/03/15, Award, 31 October 2011	6.01, 6.31, 6.60
Enron Corporation and Ponderosa Assets L.P. v. The Argentine Republic, ICSID Case No. ARB/01/13, Award, 22 May 2007.....	5.159, 6.01, 6.52, 6.103, 6.131, 6.135, 6.191, 6.193–6.194, 6.200
Factory at Chorzów, 1928 PCIJ Series A, No. 17	1.02, 1.20, 1.28, 2.04, 2.06, 4.338, 4.461, 5.163, 5.175–5.176, 5.178–5.181, 5.183–5.184, 5.187–5.189, 5.196–5.199, 5.202, 5.204–5.205, 6.03, 6.23–6.26, 6.53, 6.58, 6.60, 6.65, 6.67–6.69, 6.71, 6.74–6.82, 6.84, 6.92, 6.97, 6.121, 6.131, 7.29–7.30, 7.39, 7.47, 8.12, 8.30, 8.32–8.35
Fedax N.V. v. Venezuela, Award, 9 March 1998 (1998) 37 ILM 1391	7.36
Himpurna California Energy Ltd (Bermuda) v. PT (Persero) Perusahaan Listrik Negara (Indonesia), UNCITRAL Final Award, 4 May 1999, (1999) 14 Mealey's International Arbitration Report A-1, A-57.....	3.78, 5.13–5.14, 5.91, 6.46, 6.85–6.87, 6.89, 6.121
ICC Case No. 15909/JRF.	3.58
In Desert Line Projects v. Yemen	6.108
Joint Venture Yashlar (Turkmenistan), Bidas S.A.P.I.C. (Argentina) v. The Government of Turkemensitan (or Turkmenistan, or the State of Turkmenistan and/or The Ministry of Oil and Gas of Turkmenistan), ICC Case No. 9151/FMS/KGA, Interim Award, 8 June 1999	3.201–3.202, 3.204, 3.206, 5.25–5.27
Joint Venture Yashlar (Turkmenistan), Bidas S.A.P.I.C. (Argentina) v. The Government of Turkemenistan (or Turkmenistan, or the State of Turkmenistan and/or The Ministry of Oil and Gas of Turkmenistan), ICC Case No. 9151/FMS/KGA, Final Award, 18 May 2000	3.78, 3.201, 3.207–3.213, 5.27, 5.47–5.48, 5.50–5.56, 5.80–5.82, 5.123, 5.132, 5.135–5.136
Karaha Bodas Company LLC v. Reusahaan Pertambangan Minyak Dan Gas Bumi Negara and PT PLN (Persero)	5.13, 5.79, 5.91
LG&E v. Argentina, Decision on Liability, 3 October 2006	5.19–5.20
LG&E Energy Corp., LG&E Capital Corp., LG&E International Inc. v. Argentine Republic, ICSID Case No. ARB/02/1, Award, 3 October 2006.	5.15, 5.19

Table of Cases

LG&E Energy Corp., LG&E Capital Corp., LG&E International Inc. v. Argentine Republic, ICSID Case No. ARB/02/1, Award, 25 July 2007	6.52, 6.131–6.132, 6.196
Lusitania (German–American Claims Commission)	2.05
Maffezini v. Spain, ICSID Case No. ARB/97/7, Award, 13 November 2000.	7.40
Metalclad Corporation v. The United Mexican States, ICSID Case No. ARB(AF)/97/1, 30 August 2000.	6.108, 7.40
Mobil Cerro Negro, Ltd v. Petróleos de Venezuela, S.A. and PDVSA Cerro Negro, S.A., ICC Case No. 15416/JRF/CA, Final Award, 23 December 2011.	6.104, 6.106
MTD Equity et al. v. Chile, 24 May 2004 (2005) 44 ILM 91	7.36
National Grid v. Argentina, UNCITRAL Award, 3 November 2008	5.159, 5.192, 7.25
Patuha Power Ltd (Bermuda) v. PT (Persero) Perusahaan Listrik Negara (1999) 14 Mealey's International Arbitration Report B-1, B-23–24.	3.78
Occidental Petroleum Corporation and Occidental Exploration and Production Company v. The Republic of Ecuador, ICSID Case No. ARB/06/11, Award, 5 October 2012.	3.68, 5.16–5.17, 5.113–5.114, 6.127, 6.161, 6.184, 6.191, 6.195, 6.200, 7.29, 7.37, 7.40, 8.31
Phillips Petroleum Company Venezuela Limited, ConocoPhillips Petrozuata B.V. v. Petroleos de Venezuela, S.A., ICC Case 16848/JRF/CA (C-1649/IRF) Final Award, 17 September 2012	5.36–5.37, 6.49, 6.104, 6.118–6.119, 7.38
PSEG Global Inc. and Konya Ilgin Elektrik Üretim ve Ticaret Limited Sirketi v. Republic of Turkey, ICSID Case No. ARB/02/5, 19 January 2007.	6.108
Railroad Development Corporation v. Republic of Guatemala, ICSID Case No. ARB/07/23, Award, 29 June 2012	6.01, 6.90–6.91
Rompetrol Group N.V. v. Romania, ICSID Case No. ARB/06/03, Award, 6 May 2013.	6.210–6.211, 6.213
Sapphire International Petroleum Ltd v. National Iranian Oil Company, Award, 15 March 1963, (1967) 35 ILR 136.	3.78, 5.124
S.D. Myers v. Canada, Second Partial Award, 21 October 2002	7.36
Sempra Energy International v. Argentine Republic, ICSID Case No. ARB/02/16, Award, 28 September 2007, IIC 34 (2007).	3.77, 5.159, 6.01, 6.43, 6.50–6.52, 6.108, 6.131, 6.135, 6.141–6.142, 6.144, 7.24, 7.38
Siemens AG v. The Argentine Republic, ICSID Case No. ARB/02/8, Award, 17 January 2007	5.92, 7.27, 7.48
Starrett Housing Corporation v. Government of the Islamic Republic of Iran (1987) 16 U.S.C.T.R.	5.185, 6.150–6.161, 8.33
Técnicas Medioambientales SA v. Mexico, Award, 29 May 2003 (2004) 19 ICSID Review 158	7.36
Waguih Elie George Siag and Clorinda Vecchi v. The Arab Republic of Egypt, ICSID Case No. ARB/05/15, 1 June 2009	6.01, 6.121, 6.123–6.126, 6.156, 6.191–6.192

NATIONAL COURT CASES

France

Cass. Civ., 31.3.1965, Gaz Pal. 1965, p. 2.	4.223
Cass. Com., 4 décembre 1990 pourvoi n° 89-16338.	5.122
Civ, 7 July 1924, Sirey 1925.1, 321	4.213, 5.98
Civ (2) 4 February 1982, JCP 1982.II.19894	4.179
Civ (3) 9 January 1991, Bull civ III no. 12	4.207, 4.223

Table of Cases

Cour de cassation, Cass. Req. 24 mars 1942, D.A. 1942	4.216, 5.119
Cour de cassation, Deuxième chambre civile, 9 July 1981, Bull civ II, p. 1561	7.07
Cour de cassation, Civ (3) 5 Dec. 1979, JCP 1981.II.19605	4.204
Cour de cassation, Civ (3) 6 May 1981, Juris-Data no. 1981-001783	4.204

Germany

BGH, 06.04.1976 – VI ZR 246/74, BGHZ, 66, 182 (192)	4.322
BGH, NJW 76, 1144	4.316
BGH, NJW 86, 1331	4.316
BGH, NJW-88, 1373	4.314
BGHZ 2, 138	4.316
BGHZ 7, 204	4.316
German Imperial Court, RGZ 141 (1933) 365	4.298, 5.198
German Imperial Court, RGZ 169 (1951) 117	4.298, 5.198
German Imperial Court, BGHZ 78, 209	4.298, 5.198

Mexico

Novena Época, Tribunales Colegiados de Circuito, Semanario Judicial de la Federación y su Gaceta, XV, Mayo de 2002, tesis I.80.C.J/14, jurisprudencia, 951 ...	4.231
Octava Época, Semanario Judicial de la Federación 79, tesis jurisprudencial, I.40.C.J/60, materias penal y civil, julio de 1994, registro no. 210939, 35	4.250
Octava Época, Semanario Judicial de la Federación 85, tesis jurisprudencial, I.40.C.J/61, materia civil, enero de 1995, registro no. 209385, 61	4.250
Primera Sala de la Suprema Corte de la Nación, Semanario Judicial de la Federación LXXII, Quinta Época, tesis aislada, materia civil registro no. 352591, 5877 ...	4.241, 4.247
Tercera Sala de la Suprema Corte de la Nación, Semanario Judicial de la Federación XXXII, tesis aislada, material común, registro no. 363686, 1222	4.248
Tercera Sala de la Suprema Corte de la Nación, Sexta Época, informe 1958, tesis aislada, material civil, registro no. 813305, 28	4.242
Tribunales Colegiados de Circuito, Semanario Judicial de la Federación LXXXV, Quinta Época, tesis aislada, materia civil, 1804, registro no. 348727	4.245
Tribunales Colegiados de Circuito, Semanario Judicial de la Federación 34 Sexta Parte, Séptima Época, amparo directo 532/68, 30 October 1971, registro no. 256654, 27	4.240
Tribunales Colegiados de Circuito, Semanario Judicial de la Federación 157-162, Sexta Parte, Séptima Época, tesis aislada, materia civil, registro no. 250270, 57	4.243
Tribunales Colegiados de Circuito, Semanario Judicial de la Federación y su Gaceta XXXI, Novena Época, febrero de 2010, amparo directo 236/2009, unanimidad de votos, tesis aislada I.40.C.226 C, materia civil, 2819, registro no. 165295	4.239

Switzerland

Sammlung der Entscheidungen des Schweizerischen Bundesgerichts, BGE 118 IB 562	3.75
---	------

United Kingdom

Addax v. Arcadia [2000] 1 Lloyd's Rep 493	4.27
Albacruz (Cargo Owners) v. Albazero (The 'Albazero') [1977] AC 774 (HL)	4.49
Alfred McAlpine Construction Ltd v. Panatown Ltd [2001] 1 AC 518 (HL)	4.11
Amalgamated Building Contractors v. Holy Cross, UDC [1952] 2 All ER 453	4.79
ASM Shipping Ltd of India v. TTM1 Ltd of England (The Amer Energy) [2009] 1 Lloyd's Rep 293	4.59
Attorney General v. Blake [2001] 1 AC 268 (HL)	4.50
Beswick v. Beswick [1968] AC 58 (HL)	4.49
British Sugar v. NEI Power Projects (1998) 87 BLR 42 (CA)	4.28

Table of Cases

Clydebank Engineering and Shipbuilding Co. Ltd v. Don Jose Ramos Yzquierdo y Castaneda [1905] AC 6	4.77
Crehan v. Intntrepreneur Pub Co. (CPC) [2004] EWCA Civ 637	4.42
Croudace Construction Ltd v. Cawoods Concrete Products [1978] 2 Lloyd's Rep 55	4.26
Despinas R. (The) & The Falias [1979] 685 (HL).	7.44
Ease Faith Ltd v. Leonis Marine Management Ltd [2006] 1 Lloyd's Rep 673	4.29
Golden Victory (The) [2007] UKHL 12 (HL)	5.119
Hadley v. Baxendale (1854) 9 Ex 341	1.16, 4.23, 4.29, 4.54–4.55, 4.60, 4.152, 5.98
Hoechst v. De la Tour, 118 Eng Rep 922 (QB 1853)	4.19
Johnson v. Agnew [1979] 2 WLR 487 (HL)	5.119
Koufos v. C. Czarnikow Ltd (The Heron II) [1969] 1 AC 350 (HL)	4.56
Miliangos v. George Frank (Textiles) Ltd [1976] AC 433 (HL)	5.117
Photo Production Ltd v. Securicor Ltd [1980] AC 827 (HL)	4.08
Robinson v. Harman (1848) 1 Exch 850 (Exch), (1848) 13 P.D. 191 (CA)	2.03, 4.05, 5.07
Ruxley Electronics & Construction v. Forsyth [1996] 1 AC 344	4.45
Southampton Container Terminals Ltd v. Schiffahrtsgesellschaft 'Hansa Australia' mbH and Co. [2001] 2 Lloyd's LR 275	4.82
Supershield Ltd v. Technologies FE Ltd [2010] EWCA Civ 7, [2010] 1 Lloyd's Rep 387	4.58
Transfield Shipping Inc. v. Mercator Shipping Inc. (The Achilleas) [2008] UKHL 48, [2008] 3 WLR 345	4.58, 4.61
Victoria Laundry (Windsor) Ltd v. Newman [1949] 2 KB 528 (CA)	4.10, 4.55

United States

Ambassador Hotel Co. v. Wei-Chuan Investment, 189 F. 3d	4.119
Ashland Management Inc. v. Janien, 82 N.Y. 2d, 395	4.157
Bigelow v. RKO Radio Pictures, 327 U.S. 251 (1946)	4.111
Fiberlok, Inc. v. LMS Enterprises, Inc., 976 F. 2d 958 (5th Cir. 1992).	4.149
Griffin v. Colver, 16 N.Y. 489 (1858)	4.109
Hardwick v. Dravo Equip. Co., 569 P. 2d 588	4.164
Locke v. United States, 283 F. 2d 521 (Ct. Cl. 1960)	4.112, 4.114
McDermott v. Middle East Carpet Co. Assoc., 811 F. 2d 1422 (11th Cir. 1987)	4.113
Moritz v. First National Bank of Chicago, 148 F. 3d	4.118
Patton v. Mid-Continent Systems, Inc., 841 F. 2d 742 (7th Cir. 1988)	6.05
Texas Power & Light Co. v. Barnhill, 639 S.W. 2d 331 (Tex. App. 1982)	4.146
Tractebel Energy Marketing, Inc. v. AEP Power Marketing, Inc., 487 F. 3d 89 (2nd Cir. 2007)	4.106–4.107, 4.136, 4.140, 4.142, 5.102, 5.106–5.108
United States v. Cartwright, 411 U.S. 546 (1973), (CL-068)	6.37

TABLE OF LEGISLATION

INTERNATIONAL TREATIES, CONVENTIONS, AND INSTRUMENTS	4,443–4,447, 4,453, 4,459, 4,460–4,461, 5,86, 8,12
Abs-Shawcross draft Convention on Foreign Investment 1959.....	5,170
Geneva Convention	5,204–5,205
IBA Rules on the Taking of Evidence in International Arbitration, 2010	
Art. 9(5), (6)	5,151
International Law Commission (I.L.C.) Draft Articles on Responsibility of States for Internationally Wrongful Acts	5,178
Arts. 31–39	5,178
Art. 31	2,05
(1)	5,178
Comment (1)	5,178
Comments (7), (9)–(11)	5,178
Art. 36	
(1), (2)	5,178
Comments (21), (22)	5,186
Comment (27)	5,182, 5,178
Comments (28)–(31)	5,182
Comment (30)	5,178
Art. 38	7,07
Comment (7)	7,07
Ch. II	5,178
OECD draft Conventions on the Protection of Foreign Property	
1962 and 1976	5,170
Principles of European Contract Law... ..	4,255
Treaty between France and the United Kingdom concerning the Construction and Operation by Private Concessionaires of a Channel Fixed Link, 1986 ("The Canterbury Treaty")	3,73
Preamble, para. 3	3,73
UNGA Res. 799 56/83,	5,178
12 December 2001	5,178
UNIDROIT Principles of International Commercial Contracts 2004	4,378
UNIDROIT Principles of International Commercial Contracts 2010	1,11, 1,13, 1,22, 4,373–4,375, 4,377–4,382, 4,387, 4,393, 4,419–4,421, 4,426, 4,436,
	4,443–4,447, 4,453, 4,459, 4,460–4,461, 5,86, 8,12
Art. 1.3	4,380
Art. 1.7	4,404
Art. 5.1.3.	4,399, 4,403
Art. 5.1.4(2)	4,387
Art. 6.2.2	4,399
(d)	4,407
Art. 7.1.1	4,386, 4,405
Art. 7.1.2.	4,399, 4,401, 4,408
Art. 7.1.6.	3,222, 4,399, 4,406, 4,409
Art. 7.1.7.	4,399
(1)	4,406
Art. 7.2.2.	4,381, 4,397
Art. 7.3.5(1), (2)	4,398
Art. 7.4	4,384
Art. 7.4.2.	4,383, 4,385, 4,394, 4,389, 4,396, 4,413–4,414, 5,119
(1)	2,03, 5,07
Official Comment 2	4,390–4,391, 4,394–4,395
Art. 7.4.3.	1,22, 4,392–4,393, 4,416
(2), (3)	4,395
Art. 7.4.4.	4,399, 4,407, 4,410–4,411, 5,98
Art. 7.4.5.	4,398
Art. 7.4.7.	4,339, 4,408
Art. 7.4.8.	4,339, 4,408, 4,412
Art. 7.4.9.	4,431
(3)	7,07
Official Comment 3	7,07
Art. 7.4.10	4,431, 7,07
Art. 7.4.12	4,431
Art. 7.4.13	4,417
Official Comment 2	4,418
United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) (CISG)	1,13, 1,21, 4,255, 4,341–4,344, 4,356, 4,368, 4,370, 4,372–4,374, 4,437, 4,443–4,447, 4,460–4,461, 8,12
Preamble, paras. 5, 6.	4,373
Art. 3	4,344
Art. 7(1)	4,343, 4,373
Art. 25	4,347
Art. 28	4,346