

Oklahoma Bar Association

From the Selected Works of Darla W. Jackson

February, 2006

Due Process in International Commercial Arbitration (Book Review)

Darla W. Jackson, *Oklahoma City University School of Law*



Available at: https://works.bepress.com/darla_jackson/8/

New Sources

Written by attorneys who specialize in intellectual property or computer law, chapters are well organized and clearly written. Important items, such as elements of proof and factors analyzed by courts, are clearly spelled out in checklists. Also, boxed text containing "Practice Pointers" are consistently present throughout the book. These pointers, many of which are very basic, are intended to provide advice on issues such as procedural matters and client contact, as well as to serve as reminders on legal and ethical issues.

Experienced intellectual property attorneys may find this handbook useful as an occasional refresher, but those who will find it most helpful are attorneys

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who do not normally practice intellectual property law and intellectual property attorneys new to the practice of law. This is because some chapters serve as introductions to an area of law, while others begin with introductory information but in general assume familiarity with general legal terminology and procedure. The basic nature of some "Practice Pointers" also contributes to its usefulness for novice or infrequent practitioners.

While the content of the handbook is valuable, you must go through some inconvenience to use it. The handbook had to be assembled from a package containing the ring binder and one packet each of the content pages and the chapter tabs. This was time-consuming, with 20 chapters, a table, and an index to separate and insert.

On the other hand, an accompanying CD is very useful as it contains the content of the handbook in Adobe Acrobat format. The first page of the file is the main menu, which has links to instructions on using the book on CD, searching the handbook, a list of forms, and form installation instructions. Forms can also be accessed within the chapters by clicking on the "Editable Form" buttons, which open the forms as Word documents. Also useful are the links to web sites mentioned in the chapters.

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– Colleen Williams, Reference Librarian,
Georgia State University
College of Law Library, Atlanta

INTERNATIONAL & FOREIGN LAW

Due Process in International Commercial Arbitration.

Matti S. Kurkela. 2005. Oceana Publications, Inc.
Hardcover. 485p. ISBN: 0-379-21504-7. \$150.

Due Process in International Commercial Arbitration was written by Matti S. Kurkela, a partner in the Finnish firm of Hannes Snellman. Kurkela has previously published several articles on Finnish arbitration and a book titled *Letters of Credit Under International Trade Law: UCC, UCP, and Law Merchant*.

Given the author's current affiliation with a law firm, readers might expect a practical approach or one that promotes the services of the firm. However, Kurkela has an extensive academic background, including a doctorate of law from the University of Helsinki, an LL.M. from Harvard Law School, and Diplôme Supérieur d'Université from the University of Paris as well as his service as a lecturer at the University of Helsinki. The result is a scholarly approach to the material; Kurkela includes extensive footnotes and a list of resources to further additional research. In a 2004 article in the *Journal of International Arbitration*, Kurkela recognizes and succinctly summarizes both the practical and theoretical concerns stating, "[a]rbitral proceedings, as flexible and as tailor-made for an individual case as they may be, are legal proceedings both blessed and sanctioned with relatively easy enforceability ...". However, he further acknowledges that "the business community and its advocates should not expect the courts to recognize and acknowledge the enforceability of awards or decisions given in proceedings which disregard the most fundamental notions of justice..."

While the focus of this work appears narrow, a need for elaboration on this topic exists. Leading U.S. texts on commercial arbitration, including Tom Carbonneau's *Cases and Materials on Commercial Arbitration* and West Group's *American Casebook International Commercial Arbitration* have very limited coverage of the due process issue, and *Due Process in WTO Dispute Settlement, 3d. World Trade Law Associations Yearbook*, as indicated by the title, concentrates on disputes involving WTO settlements.

While Kurkela provides some elaboration, the main body of the book is relatively short. Although the book has approximately 485 pages, the discussion in the main body of the book consists of only 193 pages. The remainder of the book contains tools for its users and appendixes. Additionally, because the footnotes consume more than one-half of many pages, the main text is further limited. As a result, some comments appear abbreviated and the relationship to due process is not fully developed.

As stated, a significant portion of the book is made up of finding tools and appendices. A Summary Table of Contents offers a quick overview of the chapters and is followed by a detailed table of contents, which sets forth a basic outline of the contents of each chapter. There is a short, five-page index as well. In addition 273 pages of the book are dedicated to the 13 appendixes that contain primarily rules of various arbitration organizations such as the American Arbitration Association, the Helsinki Chamber of Commerce, and the World Intellectual Property Organization's (WIPO) Arbitration Rules.

The reason for inclusion of these lengthy appendixes is unclear. If the intended audience is indeed "arbitration counsel and arbitrators," as stated in the description of the book contained in the publisher's catalogue, the lawyers would, no doubt, be familiar with the rules. Additionally, many of the organizational rules are available on the Internet – a fact that has not escaped the author as he cites to the URL where the WIPO rules can be located. Inclusion of the current version of the rules will likely result in the argument that this portion of the book will quickly become outdated. Similarly, the book includes several pages of abbreviations that would also likely be familiar to practitioners.

The publisher's catalogue description states that the book will provide assistance to "arbitration counsel and arbitrators alike by identifying a uniform universal procedural code for international commercial arbitration." In his succinct foreword, Kurkela proposes that an "acid test," similar in elements to the one he developed in his book on letters of credit, could be applied to international arbitration. He suggests the element of the test would include "international character; reasonable expectation of an arbitration 'usage' to be applicable; reasonableness and equitability." Due, in part, to the concerns discussed above, the work does not fully reach the ambitious goal set forth in either the author's or the publisher's promotion.

Nonetheless, Kurkela's contribution is not insignificant. In the first chapter, Kurkela provides some understanding of the difficulties and in the last chapter offers an excellent summary of due-process principles discussed. Further, as stated above, the work focuses on a topic that appears to have only limited coverage in other publications. While the narrow focus of the work might not be appealing to practitioners, particularly those with budgetary concerns, if using this work can help assure that the arbitration process results in a fair process and an enforceable award, a \$150 investment would be a small price to pay.

– Darla W. Jackson, Reference Librarian, Oklahoma City University Law Library, Oklahoma City

LEGAL HISTORY

The Public Debate Over Controversial Supreme Court Decisions. Melvin I. Urofsky, ed. 2006. CQ Press. Hardcover. 432p. ISBN: 1-56802-937-3. \$120.

Though it may seem that outrage and inflamed rhetoric over the "activist," "out of touch," or "super legislative" U.S. Supreme Court are at an all-time high, *The Public Debate Over Controversial Supreme Court Decisions* reminds us that we should be happy we are not on the brink of civil war or calling out the National Guard to enforce the Court's desegregation orders.

Editor Urofsky has collected 47 essays by 34 professors, historians, and other writers (including himself) about the nation's most controversial Supreme Court decisions from *McCulloch v.*

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Maryland (1819) (establishing federal banks) to *McConnell v. Federal Election Commission* (2003) (campaign reform). In each essay, the contributor briefly sets the historical stage for the controversy and explains the resulting court decision. Then, using primary historical sources, he or she shows us the initial public reactions.

Contributors utilize a variety of sources including newspaper articles, editorials, letters to the editor, letters to Supreme Court justices, and comments, writings, and speeches made by politicians, law professors, historians, litigants, and other public figures. Then, as now, outrage and widespread condemnation were common reactions. Many decisions were accompanied by dire predictions of the demise of the U.S., demands for impeachment of the justices, and calls for Constitutional amendments to subvert the effects of the rulings.

Even those who have previously studied these decisions will be interested and entertained by the numerous quotations from primary sources. Perhaps the greatest public outcry in American history was provoked by *Dred Scott v. Sanford* (1857) (stating that Americans of African descent were non-citizens). Later, critics of *Ex Parte Milligan* (1866) (military trials in peacetime) and *Roe v. Wade* (1973) (abortion rights) decried these decisions as the new *Dred Scotts*. In reaction to *Engel v. Vitale* (1962) (school prayer), South Carolina Representative Mendel Rivers held forth in the Congressional