

# Alternative Dispute Resolution Arbitration Primer



## The Substantive and Procedural Law of Arbitration

Second Edition 2006

Edited by

Corbett Haselgrove-Spurin

**NATIONWIDE ACADEMY OF DISPUTE RESOLUTION**

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Continuing Professional  
Development Training Program**

Published by Nationwide Mediation Academy & Nationwide Academy of Dispute Resolution UK Ltd  
Company No 4734831

Registered Office : Stockland Cottage, 11 James St, Treforest, Pontypridd, RCT CF37 1BU

*This book is dedicated to the pursuit of  
excellence in the global practice of  
arbitration,  
and  
The timely settlement of disputes*

*And*

*To the memory of  
Professor John F Cadwallader,  
one time professor of Maritime Law at the  
University of Wales, College Cardiff.*



# The Substantive and Procedural Law of Arbitration

SECOND EDITION 2006

By

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*“If the search for a universal international construction contract is a quest of truly Don Quixote proportions, given the problems of satisfying domestic law and local customs and practices around the globe, none the less it must be said that the FIDIC Rainbow Suite of Construction contracts represent a serious tilt at the windmill.”*

C.H.Spurin 2006.

LONDON

NATIONWIDE ACADEMY OF DISPUTE RESOLUTION

2006

Electronically published at [www.nadr.co.uk/publications](http://www.nadr.co.uk/publications) by  
The E-Book Division  
NADR UK Ltd and Nationwide Mediation Academy  
Stockland Cottage  
11 James Street  
Treforest  
Pontypridd  
CF37 1BU

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**“The Substantive and Procedural Law of Arbitration”**

First published 2000

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Second Edition 2006.

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Printed and bound in Great Britain by and available from :

Nationwide Mediation Academy Press  
Stockland Cottage,, 10 James Street, Treforest, Pontypridd. CF37 1BU, United Kingdom  
Tel : ++ 44 (0) 1443 486122.  
Fax : ++44 (0) 1443 404171.  
E-mail : [Publications@nadr.co.uk](mailto:Publications@nadr.co.uk)

Website : <http://www.nadr.co.uk>

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## PREFACE

The primary focus of this book is the substantive and procedural law of arbitration in England and Wales for domestic arbitration and the enforcement of international arbitral awards within the jurisdiction. Northern Ireland and Scotland, whilst part of the United Kingdom, are treated for the purposes of this book as foreign jurisdictions, since there are certain distinct and separate legislative measures for both, and Scotland operates a distinct and separate legal system. There is no uniform world wide substantive law of arbitration.

The substantive and procedural law of arbitration differs from country to country for domestic arbitrations. Indeed in federal states such as the USA, arbitration law may differ from state to state in respect of areas of arbitration law not mandated by Federal Legislation.

In respect of international arbitrations, the focus of attention remains with the substantive law of England and Wales but highlights the concessions made by English Law to international dispute settlement through the incorporation of International Conventions into English Law. The international arbitrator should at all times bear in mind that the interpretation of and application of such conventions by the courts of England and Wales will not necessarily be mirrored by domestic courts in foreign jurisdictions. In the absence of an overarching court of private international law this will remain the case.

There is no international equivalent of the European Court of Justice or of the Public International Court at The Hague. Nonetheless, international conventions have achieved a fair degree of international harmonisation and this trend is likely to continue, particularly since international traders frequently contract on terms that embrace international conventions.

A practical approach is adopted which embraces both practice and procedure. Since arbitration practice is heavily reliant upon the support of the courts for both enforcement of awards and the orders and directions of arbitrators, reference will be made to the Civil Procedure Rules (of England and Wales.) 1998, as amended from time to time. This is necessary both because recourse to the courts in support of the arbitral process will be required on times and secondly because what is deemed acceptable to the courts may well provide an indicator of best or at least acceptable practice for the tribunal.

A colour coding system operates in respect of legislation, so that provisions of the Arbitration Act have a light yellow background, DAC reports have a light green back-ground and international provisions from the Model Law, the New York Convention and the UNCITRAL Arbitral rules have a light grey background, for ease of recognition and ready comparison.

Commercial arbitration centres upon two principal sectors, namely "*the construction industry*", and "*international commerce, finance and transportation* " The substantive law applicable to these areas, mainly specialist aspects of contract law, feature strongly in arbitration law reports but will not be developed in this text beyond that which is necessary for an understanding of the area of arbitration law under consideration. Again, as with the law of arbitration, so with substantive law, there is no universal private international law of commerce, though there are a growing range of international conventions and a wide range of standardised contractual forms in use, that have gone some way towards harmonising international commercial practice. However, no attempt is made herein to deal with the complexities of conflicts of law, beyond examining the mechanisms for challenging an arbitral award on the basis that there is an error of law. For the substantive aspects of the law that is challenged as being in error, the reader must look elsewhere beyond the confines of this book.

The effective arbitrator needs to be a master of his own area of practical expertise, with a firm grasp of the rules of arbitration practice and procedure coupled with a working knowledge of how to find and apply relevant substantive law and finally an able process manager, possessed with a healthy dollop of common sense and interpersonal facility.

The law is presented as of the 31<sup>st</sup> December 2006. All errors and omissions are mine alone.

C.H.Spurin

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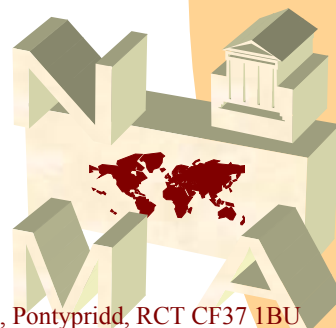
This is the second revision of a text initially developed by Professor Geoffrey M Beresford Hartwell and Corbett Haselgrove-Spurin in 1999 as a primer for students studying arbitration law for a Masters Degree in Commercial Dispute Resolution. The primary aim of the first edition, which has not changed in any way, is to provide a work book with background information on and the sources of law, both under the common law and statute, in relation to arbitration as practiced in England and Wales pursuant to the Arbitration Act 1996. This embraces both domestic disputes between parties to disputes located in England and Wales and disputes between parties elsewhere, where subject to the law of England and Wales. Professor Hartwell retired in the fall of 2006, but much of his original text is retained in this revision.

The success of the arbitration process is both long standing and enduring, due to a very great extent to the fact that the process has developed and evolved in the ever changing legal and commercial environment over the last 400 years, with the help and assistance of both the courts and the legislature, the Arbitration Act 1996 being the prime example of a major over haul of the UK legislation to ensure that the law was fit to meet the challenges of the 21<sup>st</sup> century and fight off competition from new comers who had adopted the Model Law.

Arbitration is the natural choice of the construction industry and those involved in international commerce for the resolution of disputes, with its emphasis on peer decision making and effective mechanisms for global enforcement of awards. This book ranges across the entire range of substantive and procedural law that underpins arbitration practice. Every section of the Arbitration Act 1996 is set out and discussed, with emphasis given to those that have given rise to discussion and have benefited from judicial consideration. The law is stated as of December 2006.

The Editor, a contributing author, Corbett Haselgrove-Spurin is a Construction Adjudicator, Arbitrator, Educator, Mediator, Scheme Leader, LLM Dispute Resolution, Senior lecturer, Commercial & Construction Law at Glamorgan University. He is a Construction Law Consultant and Director Nationwide Academy of Dispute Resolution UK Ltd and current (2006-2008) chairman of the Wales Branch, Chartered Institute of Arbitrators.

Published by  
Nationwide Mediation Academy &  
Nationwide Academy of Dispute Resolution UK Ltd  
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