

Table of Contents

Preface	ix
List of Abbreviations	xiii
Table of Cases	xv
Table of National Legislation, International Agreements, Conventions and Treaties	xxiii
1. Introduction	1
1.1 The Topic	1
1.2 Approach—International Law as ‘Process’	4
1.3 Arbitral Practice as a Source of Law	6
1.4 Interpretation—Applied and Constructed Ratio	8
1.5 Materials	9
2. History and Development—A Hybrid Genealogy	12
2.1 Introduction	12
2.2 Investment Protection under Classical International Law— The Doctrine of Diplomatic Protection	13
2.3 Mixed Claims Commissions	19
2.4 Internationalised Commercial Arbitration	24
2.5 Convergence of Practices—Showing the Way to Contemporary ‘Investment Treaty Arbitration’	41
3. A Theoretical Discourse—Conceptualising the Applicability of International Law to State Contracts	45
3.1 International Law and State Contracts—Challenging Traditional Doctrine	45
3.2 The Concept of Internationalisation	47
3.3 Conflicting Perspectives of International Law	58
3.4 The Applicability of International Law to State Contracts— A Reconceptualisation	69
3.5 The Authority of Arbitral Tribunals to Apply International Law	85
4. Procedural Aspects—Jurisdiction and Enforceability	97
4.1 Introduction	97
4.2 International Commercial Arbitration—Detaching Arbitral Authority from Municipal Law	97

4.3	Jurisdiction and Enforcement under the ICSID Convention	119
4.4	Investment Treaty Jurisdiction over Contract Claims	126
4.5	Overlapping Jurisdictions—Contractual Jurisdiction Clauses and Investment Treaty Jurisdiction	144
5.	Substantive Principles Applicable to Contract Claims— The Concept of ‘Legitimate Expectations’	159
5.1	Introduction	159
5.2	Contract Claims and the ‘Expropriation Standard’	161
5.3	Umbrella Clauses—Elevating Contract Claims into Treaty Claims	177
5.4	Protection of Legitimate Expectations under the Fair and Equitable Treatment Standard	192
5.5	Customary International Law—The Internationalised Contract and Protection of Acquired Rights	205
5.6	The Compensation Standard	221
6.	Contractual Restriction of Public Powers	238
6.1	Sovereignty and Commitment	238
6.2	The Notion of Sovereignty	240
6.3	Permanent Sovereignty and the Right to Expropriate Foreign Investment	245
6.4	‘Police Powers’ and Protection of Legitimate Expectations	261
6.5	Reserved Powers as a Principle of Interpretation	273
7.	Summary and Final Comments	283
7.1	Introduction	283
7.2	The International Legal Process of Contract Claims— Summary of Chapters 2, 3 and 4	283
7.3	Substantive Law and Teleology—Summary of Chapters 5 and 6	286
7.4	A Concluding Comment	290
	<i>Bibliography</i>	295
	<i>Index</i>	311