

Table of Contents

Preface to the Third Edition	xiii
Preface to the First Edition	xv
Acknowledgements	xix
User's Guide	xxiii
PART ONE	
International Business Negotiations	1
1ST SCENARIO	
International Business Contracts	3
<i>Contract Conclusion in International Business – Offer and Acceptance – Invitation to Offer – Confirmation of Order – Standard Terms – ‘Battle of Forms’ – Involvement of Lawyers in Contract Negotiations – Pro-Active Conflict Management</i>	
2ND SCENARIO	
The Dispute	7
<i>Conflict Theory – Types of Disputes – Language and Culture – The ‘Human Factor’ – Difference between ‘Dispute’ and ‘Conflict’ – Legal Disputes – International Business Disputes – Zero-Sum Thinking – Escalation of Disputes – Dispute Resolution Processes – ADR – Conflict Manager – DIS Conflict Management Rules – Dispute Avoidance – Renegotiation Clauses – Hardship and Renegotiation of Contracts – Dispute Review Boards</i>	

3RD SCENARIO	
Developing Strategies	11
<i>Control of Negotiation Venue – Schedule and Agenda – Negotiation as Information Game – ‘Best Alternative to a Negotiated Agreement’ (BATNA) – Reservation Price – ‘Zone of Possible Agreement’ (ZOPA) – Negotiator’s Dilemma – Bargaining Tactics – Bargaining Power – Telephone Negotiations – Significance of Face-to-Face Meetings</i>	
4TH SCENARIO	
The Negotiations in The Hague: Morning Session	15
<i>Meaning of ‘Negotiations’ – Strategy and Tactics – Skills and Stiles – Negotiation Theory – Distributive Negotiations – Integrative Negotiations – Principled Negotiations – Lawyers’ Perspective of Disputes – No-Negotiation Style – Use of Bluffs and Threats – ‘Take-it-or-Leave-it Offers’ – Use of Apologies – Lawyers’ Adversarial Approach to Negotiations – Negotiation Table as ‘Quasi-Courtroom’</i>	
5TH SCENARIO	
The Negotiations in The Hague: Afternoon Session	19
<i>Positional Bargaining – ‘Arab Bazaar’ – Mutt and Jeff Tactics – The Six Phases of a Negotiation – Deal-Making Negotiations – Dispute Settlement Negotiations – Emotions in Negotiations – Change from Competitive to Integrative Bargaining Style</i>	
PART TWO	
International Business Mediation	25
6TH SCENARIO	
The Proposal to Mediate (‘Getting to the Table’)	27
<i>Pro-Active Dispute Resolution Planning – Corporate ADR-Pledge – Definition of Mediation – Origins and Characteristics of Mediation – The Parties’ Decision-Making Power and Self-Responsibility – The Mediator’s Role – Significance of Involvement of Top-Management – Enforceability of ADR Agreements – Role of Lawyers in Mediation – Qualifications of Mediators – Institution and ‘Ad Hoc’ Mediation – Appointment of Mediators – Neutrality of the Mediator – Pre-Mediation Communication between Mediator and Parties – Legal Significance of Choice of Venue – Significance of ‘Contextual Factors’</i>	
7TH SCENARIO	
The Mediation – Phase 1: The Mediator’s Opening Statement and Conclusion of the Negotiation Agreement	33
<i>Fairness of the Mediation – Rapport between Mediator and Parties – Role of Lawyers in Mediation – The Five Phases of a Mediation – Negotiation Agreement – Mediator’s Contract – Mediation Privilege (Confidentiality) – The Parties’ Self-Responsibility</i>	

8TH SCENARIO	
The Mediation – Phase 2: The Parties’ Opening Statements	37
<i>Opening Statements by the Parties – Non-Adversarial Nature of Mediation – Mediator as Guardian of the Principle of Self-Determination – Application of Neutral Decision-Making Principles</i>	
9TH SCENARIO	
The Mediation – Phase 2: Identifying Issues and Interests	41
<i>Drafting an Agenda for the Negotiations – Unveiling Issues and Discussion Topics by the Mediator – Emotions in Mediation – The Mediator’s Intervention Strategies – Active Listening – Interest-Oriented Bargaining Techniques – Reframing and Visualizing Issues and Interests – Equal Treatment of the Parties</i>	
10TH SCENARIO	
The Mediation – Phase 3: Fixing the Agenda and Gathering Information	47
<i>Building Negotiation Packages – Ensuring the Openness of the Negotiation Process – Making Parties Change their Perspective of the Dispute – Legal Analysis as Basis for the Parties’ BATNA – Use of Decision-Tree Analysis – Legal Analysis as Reality Testing – The Mediator as ‘Devil’s Advocate’ – Making the Parties Step into the Shoes of the Other Side – Change of Bargaining Approach – Changing Atmosphere at the Negotiation Table – Lawyers’ Role</i>	
11TH SCENARIO	
The Mediation – Phase 4: Generating Options for Settlement of the AX-100 Special Dispute (‘Group I’ Issues) and Bargaining	57
<i>Psychological Closure – Emotional Satisfaction – Agreement-in-Principle Approach to Fixing Common Vision – Mediator as ‘Catalyst of Creativity’ – ‘Enlarging the Cake’ – Logrolling – ‘Facilitative’, ‘Evaluative’ and ‘Transformative’ Mediation – The Mediator’s Right to Propose a Settlement – Envelope Procedure – Use of Games of Chance – Zone of Possible Agreement – The Parties’ Self-Determination and Self-Responsibility – Communication in Mediation – Characteristics of Negotiation and Mediation Compared</i>	
12TH SCENARIO	
The Mediation – Phase 4: Restructuring the Future Business Relationship between NedTrans and ALT (‘Group II’ Issues)	65
<i>Business Secrets in Mediation – Caucus Sessions – ‘Shuttle’ Mediation – Brainstorming Sessions – SWOT-Analysis – ‘SMART’ Settlement Agreements – The Mediator’s Right to Warn the Parties</i>	
13TH SCENARIO	
The Mediation – Phase 4: Mr Jaeggi’s Limits of Authority	71
<i>Limits of Authority – Informal Business Memorandum – Formal Settlement Agreement – Right to Revoke the Settlement – Weakness of Package Deal Concept – Meaning of ‘Success’ of Mediation</i>	

14TH SCENARIO	
The Mediation – Phase 5: Signing of the Settlement Agreement and Termination of the Mediation	75
<i>The Parties' Commitment to the Settlement Terms – Symbolic Conflict</i>	
<i>Termination Activities – Identification of Parties with 'Their' Settlement Terms – Signing Ceremony</i>	
15TH SCENARIO	
Revocation of the Settlement Agreement ('From Interests to Positions')	77
<i>Frequency of Successful Mediations – Strategic Mistakes of the Parties – Disputes Not Apt for Mediation – Mediation as Basis for Settlement Outside the Court Room – Mediation as Learning Experience for Lawyers – Mediation/Arbitration – Use of Mediation Window – Reasons to Arbitrate – Arbitration and Business Relationship – Settlement in the Shadow of the Arbitration</i>	
PART THREE	
International Commercial Arbitration	81
16TH SCENARIO	
The Commencement of the Arbitration	83
<i>Definition of Arbitration – Nature of Arbitration – Advantages of Arbitration – Best Practices – 'Pro-Active' Arbitrator – Hierarchy of Rules – The Role of Party Autonomy – Transnationalization of Arbitration – Place ('Seat') of Arbitration – UNCITRAL Model Law on International Commercial Arbitration – Ad Hoc/Institutional Arbitration – German Institution of Arbitration (DIS) – Fast Track Arbitration – Effects of Arbitration Agreement – Anti-Suit Injunctions in Aid of Arbitration – Confidentiality – Objective and Subjective Arbitrability – Law Applicable to Parties' Representation – Request for Arbitration/Statement of Claim – Interruption of Period of Limitation – Written Advocacy in International Arbitration – Qualifications and Skills of Party-Appointed Arbitrator – The Arbitrator's Duty to Disclose – Nomination of Arbitrator – Filing of Request for Arbitration</i>	
17TH SCENARIO	
The Administration of the Statement of Claim by the German Institution of Arbitration (DIS)	87
<i>Task and Role of Arbitral Institution – Prima Facie Examination of Arbitration Agreement – New Version of Institutional Arbitration Rules – Legal Consequence of Incomplete Statement of Claim – Calculation of Administration Fee and Advance on Costs</i>	

18TH SCENARIO	
The Respondent's Reaction	89
<i>Consequences of Respondent's Failure to Participate in the Arbitration – Tacit Conclusion of Arbitration Agreement through Exchange of Legal Briefs – Court Control of Arbitral Jurisdiction – Ex Parte Contacts between Party and Nominee for Party-Appointed Arbitrator – 'Beauty Contests'</i>	
19TH SCENARIO	
Constitution of the Tribunal	93
<i>Nomination and Appointment of Arbitrator – Constitution of Arbitral Tribunal – Arbitrator's Contract – Qualities and Skills Required from Chairman – Nationality of Arbitrators – Ex Parte Contacts between Parties and Party-Appointed Arbitrators – Party-Agreements on Qualifications of Arbitrators – Non-Lawyers as Arbitrators</i>	
20TH SCENARIO	
Case Management and Challenge of the Tribunal's Jurisdiction	97
<i>Seat of Arbitration – Language of the Proceedings – Documents-Only Arbitration – Case Management Conference – Pro-active Case Management Techniques – ICC Terms of Reference – Bifurcation of Proceedings – Procedural Order No. 1 ('PO 1') – Procedural Order v Party Agreement – 'Kompetenz-Kompetenz' – Separability of Arbitration Agreement – Tribunal's Positive and Negative Decision on Jurisdiction – Conflict of Laws Issues – Law Applicable to Arbitration Agreement – Formal and Substantive Validity of Arbitration Agreement – Arbitration Clause in Standard Forms – Construction of Arbitration Agreements – Principle of Presumptive Validity of Arbitration Agreements</i>	
21ST SCENARIO	
Interim Measures of Protection	103
<i>Tribunal's Competence for Interim Relief – 'Mareva-Type' Injunctions – Types of Arbitral Interim Relief – Security for Costs – Prerequisites for Arbitral Interim Relief – Pre-Arbitral Referee – Types of Arbitral Interim Relief – Ex-Parte Orders – Enforceability of Arbitral Interim Relief Orders – Relationship between Court Ordered and Arbitral Interim Relief</i>	
22ND SCENARIO	
Settlement in Arbitration; Request for Postponement; Change of Ownership in one of the Parties	107
<i>Settlement and Arbitration – Settlement Inside and Outside the Hearing Room – The Arbitrator's Role in Settlement Talks of the Parties – Settlement Privilege – Integration of Mediation Techniques – Award on Agreed Terms – Transfer of Ownership in One of the Parties during Arbitration</i>	

23RD SCENARIO	
Challenge of Arbitrator	109
<i>Grounds for Challenge – IBA Guidelines on Conflicts of Interest – Independence and Impartiality – Objective, Reasonable Third Person-Test – Remoteness of Arbitrator’s Business Contacts with Parties – Duty to Disclose during proceedings (Subjective Test) – Failure to Disclose as Independent Ground for Challenge – Timing of Challenge – Participation of Challenged Arbitrator in Tribunal’s Decision on Challenge – Court Control – Misuse of Right to Challenge (‘Torpedo Challenges’) – Continuation of Arbitration after Challenge – Continuation of Arbitration after Challenge – Resignation of Arbitrator</i>	
24TH SCENARIO	
The First Day of the Hearing: The Legal Issues (I)	113
<i>Applicable Law – Conflict-of-Laws Rules for Arbitrators – Choice of Law by Parties – Closest Connection Test by Arbitrators – Significance of Conflict Rules of Lex Fori – Rome I and II Regulations – Arbitrators’ Role in Determining Contents of Applicable Law – UN Sales Convention (CISG) – Claim for Damages under CISG – Claim for Repayment of Down Payment under CISG – Art. 79 CISG – Force Majeure – Hardship – ‘Sacrifice Threshold’ under the CISG – Distribution of Supply Risk – Transfer of Supply Risk – Foreseeability of Macro-Economic Crisis</i>	
25TH SCENARIO	
The First Day of the Hearing: The Legal Issues (II)	121
<i>Penalty Clause – Application of Art. 79 CISG to Liability under Penalty Clause – Set-Off in Arbitration – Interest Claim – Arbitrators’ Duty to Decide on Costs of Arbitration – Guidelines for Cost Decisions – Costs for In-House Counsel</i>	
26TH SCENARIO	
The Second Day of the Hearing: Taking of Evidence	127
<i>Means of Evidence – ‘Hybrid’ Evidence Procedures – IBA Rules on the Taking of Evidence – Witness, Party Witness and Expert Witness – Examination-in-Chief, Cross-Examination and Re-Direct Examination – Soft Skills Required – Written Witness Statements – Document Production in Arbitration – ‘Request to Produce’ – Internal Documents – Electronic Disclosure – Use of ‘Redfern Schedule’ – Process of Document Production – Confidentiality Issues – Lawyers’ Ethics in Document Production – Attorney-Client Privilege – Guidelines for Evaluation of Evidence by the Tribunal – Court Assistance – Comparison of Negotiation, Mediation and Arbitration</i>	

27TH SCENARIO	
Deliberation of the Tribunal and Rendering of the Award	135
<i>Costs for Translation of Documentary Evidence – Closure of Proceedings – Guidelines for Tribunal’s Deliberations – Drafting of Award by Chairman – The Role of the Secretary to the Tribunal in the Drafting of the Award – Dissenting Opinion – Truncated Tribunal – Refusal of Arbitrator to Sign Award – Structure and Contents of Arbitral Award – Award without Reasons – Award with Signatures of Only Two Arbitrators – Types of Arbitral Awards – Difference between Award and Procedural Order</i>	
28TH SCENARIO	
Correction, Interpretation and Setting Aside of the Award	139
<i>Correction and Interpretation of Award – Additional Award on Costs – Purpose of Setting Aside – Principle of Finality of Awards – Court Competence for Action to Set Aside Awards – Grounds for Setting Aside – Meaning of Public Policy – Prohibition of Revision au Fond – Effect of Setting Aside – Exclusion Agreements</i>	
29TH SCENARIO	
Enforcement of the Award	143
<i>Meaning of Recognition and Enforcement – New York Convention – Formal and Substantive Requirements – Grounds for Refusal of Recognition and Enforcement under Art. V New York Convention – ‘Second Look’ Doctrine – Prohibition of Révision au Fond</i>	
Glossary of Terms	147