

MULTI-TIER APPROACHES  
TO THE RESOLUTION OF  
INTERNATIONAL DISPUTES

Multi-tier dispute resolution (MDR) entails an early attempt at mediation followed by arbitration or litigation if mediation is unsuccessful. Seemingly, everyone acknowledges MDR's attractiveness as a means of resolving disputes due to its combination of the flexibility and informality of mediation with the rigour and formality of arbitration or litigation. Yet, except in China and some Asian jurisdictions, MDR is not resorted to around the world and MDR clauses in commercial contracts remain relatively uncommon; why is that? This book responds to that question by (1) surveying global regulatory frameworks for MDR, (2) comparing MDR trends in Asia and the wider world, (3) identifying MDR's strengths and weaknesses and (4) prescribing ways to address MDR's challenges (the enforceability of MDR clauses, the difficulties arising when the same person acts as both mediator and decision-maker in the same dispute, and enforcement of mediated settlement agreements resulting from MDR).

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INTERNATIONAL  
DISPUTES

A Global and Comparative Study

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## TABLE OF CASES

- 3-J Hospitality LLC v Big Time Design Inc* 09–61077–CIV–MARRA/JOHNSON, 2009  
 US Dist LEXIS 100601 (SD Fl, 27 October 2009)
- 3289444 Nova Scotia Ltd v RW Armstrong & Associates Inc* 2016 NSSC 330
- 407 ETR Concession Co v Day* 2016 ONCA 709
- Adjustrite Systems Inc v GAB Business Services Inc* 145 F 3d 543 (2d Cir 1998)
- Advanced Bodycare Solutions LLC v Thione International Inc* 524 F 3d 1235 (11th Cir 2008)
- Advanced Construction Techniques Ltd v OHL Construction Canada* 2013 ONSC 7505
- Aiton Australia Pty Ltd v Transfield Pty Ltd* [1999] NSWSC 996, (1999) 153 FLR 236
- Alberici Western Constructors Ltd v Saskatchewan Power Corp* 2015 SKQB 74
- Alliation Property Inc v Sirpi Alustel Construction et Société Elf Serepca* [1998] TPI  
 Douala, Ordonnance de référé no 40, (1999) 4 Revue Camerounaise de l'Arbitrage 13
- Anderson Group Co Inc v MC Hotels LLC* 0:17-cv-1564-TLW, 2017 WL 7513223 (DSC,  
 16 October 2017)
- Aradia Fitness Canada Inc v Dawn M Hinze Consulting* 2008 BCSC 839
- Arctic Glacier USA Inc v Principal Life Insurance Co* PX 16–3555, 2017 US Dist LEXIS  
 93822 (D Md, 19 June 2017)
- B&O Manufacturing Inc v Home Depot USA Inc* C 07–02864 JSW, 2007 US Dist LEXIS  
 83998 (ND Cal, 1 November 2007)
- Bank of America NA v SFR Investments Pool 1 LLC* No 2:15-cv-0693-GMN-VCF, 2016  
 US Dist LEXIS 11526 (D Nev, 31 January 2016)
- Benner & Associates Ltd v Northern Lights Distribution Inc* [1995] OJ No 626
- BG Group plc v Republic of Argentina* 572 US 25 (2014)
- Bombardier Corp v National Railroad Passenger Corp* 298 F Supp 2d 1 (DDC 2002)
- Brandao v Jan-Pro Franchising International Inc* 17-P-636, 2018 Mass App Unpub  
 LEXIS 263 (22 March 2018)
- Brosnan v Dry Cleaning Station Inc* C-08–02028 EDL, 2008 US Dist LEXIS 44678 (ND  
 Cal, 6 June 2008)
- Buffalo Point First Nation v Cottage Owners Association* 2020 MBQB 20  
*Bundesgericht*, 6 June 2007 (4A\_18/2007) (Switzerland)
- Bundesgericht*, 16 May 2011 (4A\_46/2011) (Switzerland)
- Bundesgerichtshof*, 4 July 1977, NJW 1977, 2263 (Germany)
- Bundesgerichtshof*, 23 November 1983, NJW 1984, 669 (Germany)
- Bundesgerichtshof*, 18 November 1998, NJW 1999, 647 (Germany)
- C v D* [2021] HKCFI 1474

- C Y Foundation Group Ltd v Leonara Yung* [2012] 2 HKC 448  
*Cable & Wireless plc v IBM United Kingdom Ltd* [2002] EWHC 2059 (Comm), [2002] 2 All ER (Comm) 1041  
*Cafarelli v Colon-Collazo* CV055000279S, 2006 Conn Super LEXIS 1833 (20 June 2006)  
*Calyniuk Restaurants Inc v DC Holdings Ltd* 2012 SKQB 160  
*Canada (Attorney General) v Marineserve MG Inc* 2002 NSSC 147  
*Canada (Minister of Citizenship and Immigration) v Vavilov* 2019 SCC 65  
*Canadian Ground Water Association v Canadian Geoexchange Coalition* 2010 QCCS 2597  
*Cecrop Co v Kinetics Sciences Inc* 2001 BCSC 532  
*Centaur Corp v ON Semiconductor Components Industries LLC* 09 CV 2041 JM (BLM), 2010 US Dist LEXIS 8495 (SD Cal, 2 February 2010)  
*Chase v Great Lakes Altus Motor Yacht Sales* 2010 ONSC 6365  
*Chorley Enters v Dickey's Barbecue Restaurants Inc* 807 F 3d 553 (4th Cir 2015)  
*Chorley Enters v Dickey's Barbecue Restaurants Inc* 136 S Ct 1656 (2016)  
*Cioffi v Modelevich et al* 2018 ONSC 7084  
*Cityscape Richmond Corp v Vanbots Construction Corp* [2001] OJ No 638, 8 CLR (3d) 196  
*Clinique du Golfe v Le Gall, Cour de cassation*, 6 May 2003, Semaine Juridique, G, 11 February 2004, II 10021, no 01–01291  
*Collins & Aikman Products Co v Building Systems Inc* 58 F 3d 16 (2d Cir 1995)  
*Colt Industries Operating Corporation v Republic of Korea* (ICSID Case No ARB/84/2)  
*Commercial Bank of Cameroon (CBC) v Kenmogne* [2006] Tribunal de Grande Instance of Mifi, Judgment no 79/civ, Ohadata J-07–70  
*Compass Group UK v Mid Essex Hospital Services NHS Trust* [2013] EWCA Civ 200, [2013] BLR 265  
*Computershare Ltd v Perpetual Registrars Ltd (No 2)* [2000] VSC 233  
*Conmac Enterprises Ltd v 0928818 BC Ltd* 2018 BCSC 360  
*Consolidated Contractors Group SAL (Offshore) v Ambatovy Minerals SA* 2017 ONCA 939  
*Construction Co v UXB International Inc* No 7:13-CV-340, 2015 WL 926036 (WD Va, 4 March 2015)  
*Contec Corp v Remote Solution Co* 398 F 3d 205 (2d Cir 2005)  
*Contrast Constructions Pty Ltd v Allen* [2020] QCAT 194  
*County of Rockland v Primiano Construction Co* 51 NY 2d 1, 8–9 (1980)  
*Cour de cassation*, 14 February 2003, no 00–19.423, 00–19.424  
*Cour de cassation*, 28 April 2011, comments by M Billiau, Semaine Juridique, G, 26 September 2011, doct 1030  
*Courtney & Fairbairn Ltd v Tolaini Brothers (Hotels) Ltd* [1975] 1 WLR 297  
*Cove Contracting Ltd v Condominium Corp No 012 5598 (Ravine Park)* 2020 ABQB 106  
*CPC Group Ltd v Qatari Diar Real Estate Investment Co* [2010] EWHC 1535 (Ch)  
*Cricket Canada v Syed* 2017 ONSC 3301  
*Cumberland & York Distributors v Coors Brewing Co* 01–244-P-H, 2002 US Dist LEXIS 1962 (D Me, 7 February 2002)

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- David L Threlkeld & Co v Metallgesellschaft Ltd* 923 F 2d 245 (2d Cir 1991)  
*Davidson v Richman* 2003 CarswellOnt 509, [2003] OJ No 519  
*Delameter v Anytime Fitness Inc* 722 F Supp 2d 1168 (ED Cal 2010)  
*Dell Computer Corp v Union des consommateurs* 2007 SCC 34  
*Desouza v Secom Australia Pty Ltd* [2013] FCCA 659  
*DeValk Lincoln Mercury Inc v Ford Motor Co* 811 F 2d 326 (7th Cir 1987)  
*Dialysis Access Center LLC v RMS Lifeline Inc* 638 F 3d 367 (1st Cir 2011)  
*Dimattina Holdings LLC v Steri-Clean Inc* 195 F Supp 3d 1285 (SD Fla 2016)  
*Director of Proceedings v Brooks (Application for Final Non-Publication Orders)* [2019] NZHRRT 33  
*Downer EDI Mining Pty Ltd v Wambo Coal Pty Ltd* [2012] QSC 290  
*Dustex Corp v Board of Trustees of the Municipal Electric Utility of Cedar Falls* 13-CV-2087-LRR, 2014 US Dist LEXIS 82842 (ND Iowa, 18 June 2014)  
*El Dorado School of District No 15 v Continental Casualty Co* 247 F 3d 843 (8th Cir 2001)  
*Elizabeth Bay Developments Pty Ltd v Boral Building Services Pty Ltd* (1995) 36 NSWLR 709  
*Elizabeth Chong Pty Ltd v Brown* [2011] FMCA 565  
*Emerald Green Grp LLC v Norco Construction Inc* 155336/2014, 2014 WL 3107904 (NY Sup Ct, 1 July 2014)  
*Emirates Trading Agency LLC v Prime Mineral Exports Private Ltd* [2014] EWHC 2104 (Comm), [2015] 1 WLR 1145  
*Empress Towers Ltd v Bank of Nova Scotia* 1990 CanLII 2207 (BCCA)  
*Enka Insaat Ve Sanayi AS v OOO Insurance Company Chubb* [2020] UKSC 38, [2020] 1 WLR 4117  
*Erceg v Erceg* [2016] NZSC 135, [2017] 1 NZLR 310  
*Ervin v Nashville Peace & Justice Center* 673 F Supp 2d 592 (MD Tenn 2009)  
*Estrada v CleanNet USA Inc* No C 14-01785 JSW, 2015 WL 833701 (ND Cal, 24 February 2015)  
*Ex parte Industrial Technologies* 707 So 2d 234 (Ala 1997)  
*Fiona Trust & Holding Corp v Privalov* [2007] UKHL 40, [2007] 4 All ER 951  
*Fisher v GE Medical Systems* 276 F Supp 2d 891 (MD Tenn 2003)  
*FKA v HAM* [2006] CCJA, 1st chamber, Decision no 9, Ohadata J-07-23  
*Fluor Enterprises Inc v Solutia Inc* 147 F Supp 2d 648 (SD Tex 2001)  
*Foley v Classique Coaches Ltd* [1934] 2 KB 1 (CA)  
*Footprint Power Salem Harbor Development LP v Iberdrola Energy Products Inc* 651963/2018, 2018 NY Slip Op 30794(U) 3 (NY Sup Ct, 1 May 2018)  
*Frei v Davey* 124 Cal App 4th 1506 (2004)  
*Gao Haiyan v Keeneye Holdings Ltd* [2011] 3 HKC 157  
*Gao Haiyan v Keeneye Holdings Ltd* [2012] 1 HKLRD 627  
*Gate Precast Co v Kenwood Towne Place LLC* No 1:09-CV-00113, 2009 WL 3614931 (SD Ohio, 28 October 2009)  
*Getchell v Suntrust Bank* No 6:15-cv-1702-Orl-TBS, 2016 US Dist LEXIS 23238 (MD Fla 25 February 2016)



- Glencot Development & Design Co Ltd v Ben Barrett & Son (Contractors) Ltd* [2001] All ER (D) 384
- Goel v Dhaliwal* 2015 BCSC 2305
- Government of Saskatchewan v Capitol Steel Corp* 2017 SKQB 302
- Green Tree Financial Corp v Bazzle* 539 US 444 (2003)
- Greenclose Ltd v National Westminster Bank plc* [2014] EWHC 1156 (Ch), [2014] WLR (D) 173
- Grigor-Scott v Jones* (2008) 168 FCR 450
- Grossner Jens v Raffles Holdings Ltd* [2004] 1 SLR(R) 202
- Hak Tung Alfred Tang v Bloomberg LP* (unreported, HCA 198/2010, 16 July 2010)
- Halsey v Milton Keynes General NHS Trust* [2004] EWCA Civ 576
- Halter Marine Inc v OK Shipping Ltd* No Civ A 98–3184, 1998 US Dist LEXIS 18771 (ED La, 25 November 1998)
- Hanocal Holding BV and IPIC International BV v Republic of Korea* (ICSID Case No ARB/15/17)
- Harrison v Nissan Motor Corp* 111 F 3d 343 (3d Cir 1997)
- Heartonics Corporation v EPI Life Pte Ltd* [2017] SGHCR 17
- Hebei Import & Export Corp v Polytek Engineering Co Ltd* [1998] 1 HKLRD 287
- Henry Schein Inc v Archer and White Sales Inc* 139 S Ct 524, 526 (2019)
- Heston v GB Capital LLC* No 16cv912-WQH-RBB, 2016 US Dist LEXIS 113355 (SD Cal, 23 August 2016)
- Heston v GB Capital LLC* No 16cv912-WQH-AGS, 2018 US Dist LEXIS 3210 (SD Cal, 5 January 2018)
- HIM Portland LLC v DeVito Builders Inc* 317 F 3d 41 (1st Cir 2003)
- Hobbs Padgett & Co (Reinsurance) Ltd v JC Kirkland Ltd* [1969] 2 Lloyd's Rep 547
- Holloway v Chancery Mead Ltd* [2007] EWHC 2495 (TCC), [2008] 1 All ER (Comm) 653
- Hooper Bailie Associated Ltd v Natcon Group Pty Ltd* (1992) 28 NSWLR 194
- Howsam v Dean Witter Reynolds Inc* 537 US 79 (2002)
- Hryniak v Mauldin* 2014 SCC 7
- HSBC Institutional Trust Services (Singapore) Ltd v Toshin Development Singapore Pte Ltd* [2012] 4 SLR 738
- Hubbard Construction Co v Jacobs Civil Inc* 969 So 2d 1069 (Fla Dist Ct App 2007)
- Hui v Esposito Holdings Pty Ltd* [2017] FCA 648
- Hyundai Engineering & Construction Co Ltd v Vigour Ltd* [2004] 3 HKLRD 1
- Hyundai Engineering & Construction Co Ltd v Vigour Ltd* [2005] 3 HKLRD 723
- ICC Case No 4230
- ICC Case No 9984
- ICC Case No 10256
- In re Lakeland Fire District v East Area General Contractors Inc* 16 AD 3d 417 (NY App Div 2005)
- In re Pisces Foods LLC* 228 SW 3d 349 (Tex App 2007)
- In re R & R Personal Specialists of Tyler Inc* 146 SW 3d 699 (Tex App 2004)
- Inghams Enterprises Pty Ltd v Hannigan* [2020] NSWCA 82

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- Interfoto Picture Library Ltd v Stiletto Visual Programmes Ltd* [1989] QB 433  
*International Research Corp plc v Lufthansa Systems Asia Pacific Pte Ltd* [2013] 1 SLR 973  
*International Research Corp plc v Lufthansa Systems Asia Pacific Pte Ltd* [2014] 1 SLR 130  
*IWK Health Center Northfield Glass Group Ltd* 2016 NSSC 281  
*Jakobsen v Wear Vision Capital Inc* 2005 BCCA 147  
*Jesuit Fathers of Upper Canada v Guardian Insurance Co of Canada* [2006] 1 SCR 744  
*John Wiley & Sons Inc v Livingston* 376 US 543 (1964)  
*JPD Inc v Chronimed Holdings Inc* 539 F 3d 388 (6th Cir 2008)  
*Kabou Henriette (BTM) v Société Sahel Compagnie (SOSACO)* [2008] Court of Appeal of Ouagadougou, civil and commercial chamber, Judgment no 116 of 19 May 2006, Ohadata-J-09-25  
*Kemiron Atlantic Inc v Aguakem International Inc* 290 F 3d 1287 (11th Cir 2002)  
*Kernahan v Home Warranty Administrator of Florida Inc* 199 A 3d 766 (2019)  
*Knappe Composites v Art Métal*, 3rd civil section of the *Cour de cassation*, 29 January 2014, no 13-10833  
*Kneider v Benson Percival Brown* 2000 CarswellOnt 990, 95 ACWS (3d) 1049  
*Ku-ring-gai Council v Ichor Constructions Pty Ltd* [2018] NSWSC 610  
*Ku-ring-gai Council v Ichor Constructions Pty Ltd* [2019] NSWCA 2  
*L-3 Communications SPAR Aerospace Ltd v CAE Inc* 2010 ONSC 7133  
*Lang v Schilling* 163 Cal App 4th 1412 (2008)  
*Latstiwka v Bray* 2006 ABQB 935  
*Lawton v Lawson* [2002] FMCA 68  
*Leamon v Krajewicz* 107 Cal App 4th 424 (2003)  
*Leeds Standard Condominium Corp No 41 v Fuller* 2019 ONSC 3900  
*Ling Kong Henry v Tanglin Club* [2018] SGHC 153  
*Lumbermens Mutual Casualty Co v Broadspire Management Services* 623 F 3d 476 (7th Cir 2010)  
*Maiocchi v Royal Australian and New Zealand College of Psychiatrists* [2014] FCA 301  
*Maldives Airports Co Ltd v GMR Malé International Airport Pte Ltd* [2013] 2 SLR 449  
*Mann v Elphick* 2015 BCSC 1853  
*Matsqui First Nation v Canada (Attorney General)* 2015 BCSC 1409  
*May & Butcher Ltd v The King* [1934] 2 KB 17 (HL)  
*MB America Inc v Alaska Pac Leasing Co* 367 P 3d 1286 (Nev 2016)  
*MCC Development Corp v Perla* 81 AD 3d 474, 916 NYS 2d 102 (NY App Div 2011)  
*McParland & Partners Ltd v Whitehead* [2020] EWHC 298 (Ch), [2020] Bus LR 699  
*Medissimo v Logica*, decision no 12-27.004, 20 April 2014 (France)  
*Metzler Contracting Co LLC v Stephens* 774 F Supp 2d 1073 (D Haw 2011)  
*Mortimer v First Mount Vernon Industrial Loan Association* No Civ AMD 03-1051, 2003 US Dist LEXIS 24698 (D Md, 19 May 2003)  
*Moses H Cone Memorial Hospital v Mercury Construction Corp* 460 US 1 (1983)  
*N-Tron Corp v Rockwell Automation Inc* No 09-0733-WS-C, 2010 US Dist LEXIS 14130 (SD Ala, 18 February 2010)

- NetSys Technology Group AB v Open Text Corp* [1999] CanLII 14937 (ONSC)  
*Noble China Inc v Lei* (1998) 42 OR (3d) 69  
*Nordion Inc v Life Technologies Inc* 2015 ONSC 99  
*Northland Utilities (NWT) Ltd v Hay River (Town of)* 2021 NWTCA 1  
*Ohpen Operations UK Ltd v Invesco Fund Managers Ltd* [2019] EWHC 2246 (TCC),  
 [2020] 1 All ER (Comm) 786  
*Ontario First Nations (2008) Limited Partnership v Ontario Lottery and Gaming Corporation* 2020 ONSC 1516  
*Onslow Salt Pty Ltd v Buurabalayji Thalanyji Aboriginal Corp* [2018] FCAFC 118  
*Passlow v Butmac Pty Ltd* [2012] NSWSC 225  
*Petromec Inc v Petroleo Brasileiro SA Petrobras* [2005] EWCA Civ 891, [2006] 1 Lloyd's Rep 121  
*Philips v Australian Girls' Choir Pty Ltd* [2001] FMCA 109  
*Placoplâtre v SA Efficage TP*, 1st civil session of the *Cour de cassation*, 6 February 2007, comments by J Béguin, *Semaine Juridique*, E&A, 30 August 2007, no 05-17573  
*PMT Partners Pty Ltd (in liq) v Australian National Parks and Wildlife Service* (1995) 184 CLR 301  
*PQ Licensing SA v LPQ Central Canada Inc* 2018 ONCA 331  
*Primov v Serco Inc* 296 Va 59, 817 SE 2d 811 (Va 2018)  
*PT Selecta Bestama v Sin Huat Huat Marine Transportation Pte Ltd* [2015] SGHCR 16  
*Resource Development Ltd v Swanbridge Ltd* (unreported, HCA 1873/2009, 31 May 2010)  
*Roberts v Morphett Constructions Pty Ltd* [2018] NSWCATAP 33  
*Rogacki v Belz* 2003 CarswellOnt 3717, [2003] OJ No 3809  
*Rudd v Trossacs Investments Inc* 2006 CarswellOnt 1417, [2006] OJ No 922  
 Ruling of 10th *arbitrazh* Court of Appeal, 27 March 2018, Ruling No 10AII-2025/2018, Case No A41-87102/17 (Russia)  
 Ruling of *arbitrazh* court of Central district, 25 December 2015, Case No A35-11066/2014 (Russia)  
 Ruling of *arbitrazh* court of Far Eastern district, 22 January 2016, Case No A73-6268/2015 (Russia)  
 Ruling of *arbitrazh* court of Northwest district, 14 December 2006, Case No A56-17842/2006 (Russia)  
 Ruling of *arbitrazh* court of Penzinskaya region, 16 November 2016, Case No A49-9323/2016 (Russia)  
 Ruling of *arbitrazh* court of Penzinskaya region, 26 January 2017, Case No A49-15015/2016 (Russia)  
 Ruling of *arbitrazh* court of Udmurtskaya region, 3 May 2017, Case No A71-1815/2017 (Russia)  
 Ruling of *arbitrazh* court of Volgo-Vyatka district, 27 October 2016, Case No A43-15711/2016 (Russia)  
 Ruling of International Commercial Arbitration Court of the Chamber of Commerce and Industry of the Russian Federation (ICAC), 30 September 2013, Case No 108/2011 (Russia)

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- Ruling of Moscow city court, 14 August 2017, Case No 33–30776/2017 (Russia)  
 Ruling of Moscow city court, 30 May 2017, Case No 33–14571/2017 (Russia)  
 Ruling of Russian Supreme Court, 23 July 2015, Case No A55-12366/2012 (Russia)  
 Ruling of Russian Supreme Court, 26 April 2017, Case No A56-7889/2016 (Russia)  
 Ruling of Supreme Arbitration Court, 13 November 2009, Ruling No SAC-14616/09 (Russia)  
*Santos Ltd v Fluor Australia Pty Ltd* [2016] QSC 129  
*Sattva Capital Corp v Creston Moly Corp* [2014] 2 SCR 633  
*Secala v Moore* 982 F Supp 609 (ND Illinois 1997)  
*Seidel v Telus Communications Inc* 2011 SCC 15  
*Skills Tiling v Trio Construct (Civil)* [2014] VMC 4  
*Skvaridlo v Cross Country Saskatchewan Assn Inc* 2015 SKQB 356  
*Slater v Amendola* 1999 CarswellOnt 3049, [1999] OJ No 3787  
*Société de Manufacture de Côte d'Ivoire dit MACABI v May Jean-Pierre* [2005] CCJA, 1st chamber, Ohadata J-05–357  
*Société Wanson v Société d'Etudes et de réalisation pour l'industrie caféière et cacaoyère (SERIC)* [1997] Court of Appeal of Abidjan, civil and commercial chamber, Decision no 484, (1998) 1 Revue Camerounaise de l'Arbitrage 10  
*SOR Technology LLC v MWR Life LLC* No 3:18-CV-2358 JLS (NLS), 2019 US Dist LEXIS 146817 (SD Cal, 28 August 2019)  
*Space Tech Development Corp v Boeing Co* 209 F App'x 236 (4th Cir 2006)  
*Stone & Webster Inc v Georgia Power Co* 968 F Supp 2d 1 (DDC 2013)  
*Sulamerica CIA Nacional de Seguros SA v Enesa Engenharia SA* [2012] EWCA Civ 638, [2013] 1 WLR 102  
*Suncor Energy Products Inc v Howe-Baker Engineers Ltd* 2010 ABQB 310  
*Sundercan Ltd v Salzman Anthony David* [2010] SGHC 92  
 Supreme Court Civil Judgment Tai-shang-tzu 671 (2003) (Taiwan)  
 Supreme Court Civil Judgment Tai-shang-tzu 992 (2004) (Taiwan)  
 Supreme Court Civil Judgment Tai-shang-tzu 1183 (2012) (Taiwan)  
 Supreme Court Civil Ruling Tai-kang-tzu 1080 (2014) (Taiwan)  
 Supreme Court Civil Ruling Tai-shang-tzu 1634 (2012) (Taiwan)  
*Swartz v Westminster Services Inc* No 8:10-cv-1722-T-30AEP, 2010 US Dist LEXIS 93107 (MD Fla, 8 September 2010)  
*Tattoo Art Inc v TAT International LLC* 711 F Supp 2d 645 (ED Va 2010)  
*Teal Cedar Products Ltd v British Columbia* 2017 SCC 32  
*Tekmen & Co v S Builders Inc* 04C-03–007 RFS, 2005 Del Super LEXIS 181 (25 May 2005)  
*Templeton Development Corp v Superior Court* 144 Cal App 4th 1073 (2006)  
*Termguard Pty Ltd v Statewide Pest Control Pty Ltd* [2016] WASC 359  
*The Hua Tian Long (No 2)* [2010] 3 HKLRD 611  
*The United Mexican States v Burr* 2020 ONSC 2376  
*The United Mexican States v Cargill Inc* 2011 ONCA 622  
*Tillman Park LLC v Dabbs-Williams General Contractors LLC* 679 SE 2d 67 (Ga Ct App 2009)

- Timmins Nickel Inc v Marshall Minerals Corp* 2001 CarswellOnt 1762, [2001] OTC 369  
*TNB Fuel Services Sdn Bhd v China National Coal Group Corp* [2017] 3 HKC 588  
 Tokyo District Court, 8 December 2010, 2116 Hanrei Jiho, 68, Westlaw Japan No  
 2010WLJPCA12088010 (Japan)  
 Tokyo High Court, 22 June 2011, 2116 Hanrei Jiho 64 (Japan)  
*Trujillo v Gomez* No 14cv2483 BTM (BGS), 2015 US Dist LEXIS 51068 (SD Cal, 17  
 April 2015)  
*Ts’Kw’Aylaxw First Nation v Graymont Western Canada Inc* 2018 BCSC 2101  
*TSA v Promoto* [1997] Supreme Court of Ivory Coast, Decision no 317/197, (1999) 5  
 Revue Camerounaise de l’Arbitrage 16  
*Uber Technologies v Heller* 2020 SCC 16  
*Ungava Techs v Innerspec Techs* 6:17-cv-6, 2017 US Dist LEXIS 83392 (WD Va, 31 May  
 2017)  
*United Artists Singapore Theatre Pte Ltd v Parkway Properties Pte Ltd* [2003] 1 SLR  
 (R) 202  
*United Group Rail Services Ltd v Rail Corp of New South Wales* [2009] NSWCA 177;  
 (2009) 74 NSWLR 618  
*Upplan Co Ltd v Li Ho Ming* [2010] 6 HKC 457  
*Vigour Ltd v Hyundai Engineering and Construction Co Ltd* (unreported, FAMV 4/  
 2006, 22 May 2006)  
*Vinmar Overseas (Singapore) Pte Ltd v PTT International Trading Pte Ltd* [2018] 2 SLR  
 1271  
*Wah (aka Alan Tang) v Grant Thornton International Ltd* [2012] EWHC 3198 (Ch),  
 [2013] 1 All ER (Comm) 1226  
*Wales (t/a Selective Investment Services) v CBRE Managed Services Ltd* [2020] EWHC  
 1050 (Comm), [2020] Costs LR 603  
*Walford v Miles* [1992] 1 AC 128  
*Wastech Services Ltd v Greater Vancouver Sewerage and Drainage District* 2021 SCC 7  
*Waxman v Pal (Application for Non-Publication Orders)* [2017] NZHRRT 4  
*Welborn Clinic v Medquist Inc* 301 F 3d 634 (7th Cir 2002)  
*Welldone Plumbing, Heating & Air Conditioning (1990) v Total Comfort Systems* 2002  
 SKQB 475  
*Willis Corroon Corp of Utah v United Capital Insurance Co* 97–2208 MHP, 1998 US Dist  
 LEXIS 23226 (ND Cal, 5 January 1998)  
*WN Hillas & Co Ltd v Arcos Ltd* (1932) 147 LT 503 (HL) (UK)  
*WTE Co-Generation v RCR Energy Pty Ltd* [2013] VSC 314  
*Yam Seng Pte Ltd v International Trade Corporation Ltd* [2013] EWHC 111 (QB),  
 [2013] 1 All ER (Comm) 1321  
*Yashwant Bajaj v Toru Ueda* [2018] SGHC 229 (Singapore)  
*Yukon Energy Corp v Chant Construction Co* 2007 YKSC 22  
*Zoological Board of Victoria v Australian Liquor, Hospitality and Miscellaneous Workers  
 Union* (1993) 49 IR 41