THE CONSTITUTION OF ARBITRATION

This work is the first systematic discussion of arbitration from a constitutional perspective, covering the most important types of arbitration, including domestic arbitration in private law, international commercial arbitration, investment treaty arbitration, and state-to-state arbitration. Victor Ferreres Comella argues for the recognition of a constitutional right to arbitration in the private sphere and discusses the constraints that the state is entitled to place on this right. He also explores the conditions under which investment treaty arbitration is constitutionally legitimate, and highlights the shortcomings of international adjudication from a constitutional perspective. The rich landscape of arbitration is explained in clear language, avoiding unnecessary technical jargon. Using examples drawn from a wide variety of domains, Ferreres Comella bridges the gap between constitutional and arbitral theory.

Victor Ferreres Comella is Professor of Constitutional Law at Pompeu Fabra University School of Law. He is widely known for his scholarship on constitutional theory and comparative constitutional law and works as counsel at the law firm Uria-Meneñez. He has taught at both New York University and the University of Texas at Austin and has lectured at many institutions across Europe and the Americas. He is the author of many books and articles, including Constitutional Courts and Democratic Values: A European Perspective, and The Constitution of Spain: A Contextual Analysis. In 1996, he was awarded the “Francisco Tomás y Valiente” Prize, instituted by the Spanish Constitutional Court and the Centro de Estudios Políticos y Constitucionales. He obtained his JSD at the Yale Law School.
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The Constitution of Arbitration

VICTOR FERRERES COMELLA

Universitat Pompeu Fabra
For Carla
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In the course of writing this book, I have incurred many intellectual debts. I am deeply grateful to several colleagues at the University of Texas at Austin School of Law, who made it possible for me to start a research project on arbitration. About a decade ago, in the spring of 2010, I had an interesting conversation with Larry Sager – at that time the Dean of the Law School – on the practical importance of arbitration and the need to study it from a constitutional perspective. He convinced me to offer a course on that subject and suggested that I should coteach it with Robert Bone, a distinguished expert on civil procedure. And so we did. We started in the spring of 2011 and have repeated the experience almost every year. It has been a great honor to coteach with Bob, whose intellectual rigor and pedagogical skills are superb. I have learned a lot. Many of the ideas I advance in the book are the upshot of long conversations with him. I am also in great debt to Alan Rau, one of the leading arbitration scholars in the world, who offered all kinds of help as soon as he learned that I was interested in this field. We have spent lots of hours talking about arbitration, which is our common passion. His knowledge of the theory and practice of arbitration is so vast that he never ceases to impress me every time we talk about any issue that is related to arbitration – which means almost every time we talk. I have already mentioned Larry Sager, but I need to add that Larry and I have cotaught a seminar on globalization for several years, and we have discussed extensively the constitutional issues surrounding investment treaty arbitration when running that seminar, which has been a source of great insights for me. Larry has an enormous capacity to imagine new ways of thinking about problems and to find the right institutional and doctrinal solutions to them. I am very thankful to him for sharing so much intellectually rewarding time. Another person whose help I must acknowledge is Andrés Jana. It has been a pleasure to interact with him during his visits to the University of Texas. Students have always loved his participation in the courses and seminars. They have appreciated his professional stature as a prominent international lawyer, as well as his academic sensitivity. Andrés has been...
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