THE ARBITRATOR'S FEES

by A.A. de FINA

In every commercial arbitration there lies a latent problem.

Under the provisions of the Commercial Arbitration Acts[1] an arbitrator is in a quasijudicial position[2] and must avoid both the reality[3] and generally the appearance of bias[4].

In a curial environment it is fundamentally unacceptable for a judge to receive money or other benefits from one or both of the parties as it raises the possibility of bias[5].

Yet an arbitrator is paid by the parties and, in some circumstances, may be paid by only one party.

RELATIONSHIP WITH PARTIES

The obligations for an arbitrator to the parties might be regarded as involving three principal duties—

1. to proceed diligently.
2. to act impartially, and
3. to take care.

The relationship between the parties and the arbitrator is not clearly settled, and is suggested as being explained in terms of restitutory or quasicontractual rights, as a matter of status, or as a matter of contract[6].

However, in Australia, the relationship may be simply considered as involving only two of these elements—that of the quasijudicial status of the arbitrator and the other a contractual relationship. To the extent that there exists a contractual relationship that aspect is of an unusual nature within the context of common law concepts of contract and relies significantly upon an assumption of implied terms.

The rights and duties of an arbitrator flow from a conjunction of these two elements.

An arbitration agreement, whether forming part of a main contract or created ad hoc, is a bilateral contract between the parties.

A person may be nominated (named) to act as arbitrator in a number of different ways including

(a) Specific inclusion in a dispute resolution clause incorporated in a contract or agreement when no dispute exists at that time, i.e. a clause contemplating future disputes.

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(b) Specific inclusion in an agreement to arbitrate a particular dispute or disputes.
(c) By a person or persons named in an agreement to resolve future or present disputes to arbitration, i.e. (a) and (b) above having by virtue of the agreement the power and authority to nominate such as the President of The Institute of Arbitrators Australia.
(d) By persons so empowered under Statute or Regulation other than the Arbitration Act, i.e. Minister for Planning under Planning Acts.
(e) By the Courts under Arbitration Acts[7] or Court Rules[8].
(f) By other than the Courts but under the provision of the Arbitration Acts[9].
(g) By one party to a dispute where an agreement to arbitrate provides for each party to nominate one or more arbitrators to comprise or partially comprise an arbitral tribunal consisting of more than one person.
(h) By party nominated or appointed arbitrators (see (g) above) to act as a chairman of an arbitral tribunal or as an umpire in the event that the arbitrators do not agree[10].

Occasionally the process, although described above as nomination, may in fact be an appointment.

The difference between nomination and appointment is of fundamental importance although often not appreciated.

Nomination is merely the naming of a person to fill the role of arbitrator. The person so named does not become arbitrator until formal procedures are concluded and the reference has been entered and the arbitrator is seized of the dispute[11].

Appointment establishes immediately and without further requirement that the person appointed is the arbitrator. There are conditions of knowledge of appointment and consent to act to be satisfied to give validity to an appointment[12].

On appointment or upon formally entering the reference the arbitrator becomes a third party to the arbitration agreement which then becomes a trilateral contract[13].

Under the terms of that trilateral contract the arbitrator undertakes his quasijudicial functions in consideration of the parties agreeing to pay him remuneration.

In establishing this contract the parties should desirably jointly and severally agree with the person nominated the express terms and conditions of remuneration forming part of the contract.

This is possible if the process is one of nomination, but if the arbitrator is appointed immediately, there is a request to a third party pursuant to a dispute resolution clause, or the parties or a court or other authority appoint the arbitrator without prior agreement as to terms and conditions of remuneration an objection may be taken by one or both parties as to those terms and conditions.

The arbitrator assumes the quasijudicial status together with all the duties and disabilities inherent in that status.

Those disabilities include an inability to deal unilaterally with only one of

the parties to the arbitration or to bargain with one party alone for personal benefit.

Conversely, the parties have obligations under the trilateral contract which include the liability to pay remuneration for the services of the arbitrator.

The amount of remuneration and the person liable to pay it can be fixed either by agreement[14] or under the Commercial Arbitration Acts by the arbitrator under s.34, by taxation under s.35 or by the court under s.36.

The wide facility provided in the Acts for the fixing of fees establishes that an arbitrator cannot be guilty of misconduct in otherwise seeking agreement of the parties as to those fees.

In circumstances where the arbitration clause provides for the parties each to nominate or appoint an arbitrator or arbitrators and for the nominating or appointing party to be responsible for the payment of its appointee's fees, agreements on remuneration between the appointing or nominating party and their appointee before acceptance of an appointment can be properly made.

However, once a person has assumed the status of arbitrator then this gives rise to a disability to deal with one party only unless there is an agreement between the parties to the contrary[15].

Such agreement is necessary where an appointing party is independently responsible for their appointee's fees and expenses as arbitrator and the fees and expenses of the party appointed arbitrators are not to be awarded as a cost of the arbitration.

In such circumstances a party need not and, in most instances, will not be made aware of the nature of specific terms of the agreement as to fees or like matters entered into between the opposing party and that parties' appointee.

Such an arbitrator may thus, after appointment and during the course of the arbitration, communicate with his appointing party by submitting accounts for fees and expenses, negotiating or renegotiating fees and expenses without being guilty of misconduct provided such communications are by correspondence or through a third person and not by any direct contact with the appointor.

However, where fees and expenses of party appointed arbitrators are to be awarded as a cost in the action, then all parties to an arbitration must be at all times aware of all of the terms, conditions and quantum of fees of all members of the arbitral tribunal and, if appropriate, agree with them.

In these circumstances there can be no unilateral or undisclosed communication between a party and their appointee arbitrator.

A chairman or umpire, whether appointed by party appointed arbitrators, (thus removed from a direct appointing function of the parties) or by the parties themselves, or by a third party as nominating or appointing authority, is nevertheless ordinarily paid fees and expenses by equal contribution by the parties, particularly if paid in advance of award.

Whilst the general obligation of reasonable remuneration of such an umpire or chairman will apply, it is desirable that the parties be made aware of and agree to the fees, terms and conditions of engagement particularly if negotiation on these matters is being carried out by other than the parties responsible for payment.

Even after entering upon a reference, there can be no objection to a single arbitrator, chairman or umpire dealing openly with both parties in the presence of each other and reaching an agreement with both parties as to fees and terms and conditions[16].

Such an agreement could raise no suggestion of bias or impropriety as both parties are involved in the negotiations and agree.

TERMS AND CONDITIONS OF ENGAGEMENT

The parties and an arbitrator may and desirably should expressly agree upon terms and conditions of engagement, in particular relating to remuneration.

Where an express agreement is not made an arbitrator is entitled to a reasonable fee[17].

The terms of an arbitration agreement may be such as to imply a promise by the parties to remunerate an arbitrator absent any express agreement.

The facility for agreement on fees extends to other aspects related to requirements and application of fees as distinct from the actual quantum.

Such matters as the particular costs or expenses arising from from transcript, room hire, clerks, secretarial, insurance, travelling and accommodation, and the responsibility for payment or reimbursement should be addressed.

The resulting agreement on these and other relevant matters should be set forth or established and agreed by way of a written document or documents executed or acknowledged by the parties and which are in effect the express statement of the terms and conditions of engagement of the arbitrator[18].

Arbitral practice in Australia and other common law jurisdictions has traditionally required the establishment of security for an arbitrator's fees and expenses.

A demand by an arbitral tribunal for security for fees and expenses does not constitute misconduct[19].

A security may be in the form of a bank guarantee, an advance payment to the arbitrator or other suitable form.

Ordinarily an arbitrator will require, and the parties will agree, to the establishment of a fund contributed to in equal parts by the parties and which anticipates the amount of money required to secure the arbitrator's fees and expenses in the conduct of the reference and the publishing of an award.

In a multiparty dispute where there are a number of respondents or claimants a differing formula of contribution may be established by agreement of the parties.

The amounts to be deposited are based upon considerations which include

(a) The amount agreed upon between the parties and the arbitrator for the arbitrator's services in conducting the reference if a lump sum.
(b) The per diem or hourly rate agreed upon between the arbitrator and the parties if remuneration is to be on a daily or hourly basis.
(c) The estimate of the time for the conduct of the reference as agreed between the parties and the arbitrator together with such additional time as might be considered appropriate and agreed in respect of drawing, settling and publishing of the award.

(d) Whether, as might be the case in a long arbitration, it is appropriate or commercially desirable that the full amount securing the arbitrator's costs, fees and expenses is not to be paid as a single payment prior to commencement of the arbitration or hearing but to be paid progressively as the reference proceeds.

(e) Whether the agreement with the parties includes cancellation or commitment fees.

(f) Whether the arbitrator is authorised by the parties to draw progressively against security funds.

Where such a security fund is to be established it is desirable that the trustee for such a fund be totally independent of the arbitrator. For example, the fund should not be a trust fund set up by the arbitrator or a firm or company for whom the arbitrator otherwise works or by an agent for the arbitrator, such as where the arbitrator is a lawyer the lawyer's firm or if a barrister the barrister's clerk.

Until the arbitrator has an entitlement to monies held by way of security those monies are and remain the property of the parties who lodge them.

It is essential that an arbitrator receive from the parties an express authority to draw upon such monies and, as well, that the trustee of the security fund have an authority both for the acceptance of monies paid by the parties as security and for the disbursement of such monies, particularly if, by agreement with the parties, such disbursement is to be ordered from time to time by the arbitrator without further authority from the parties.

It is highly doubtful that the provisions of either s.14, s.18(1)(c), s.34(1)(a) or s.37 of the Uniform Acts empower an arbitrator to order either progressive payments into a security fund, or progressive or instalment payments from such a security fund.

In the absence of the express agreement by the parties an arbitrator cannot seek to impose upon the parties after entering a reference a cancellation or commitment fee[20]. However, the commitment given by an arbitrator to conduct a reference which may require the setting aside of considerable time and at some period into the future (thus cutting out or potentially cutting out other or like forms of commercial activity) can justify the application of a cancellation fee if for any reason other than failure of availability of the arbitrator the matter does not proceed.

The terms and conditions of such cancellation fees should be fair and equitable and not allow a duplication of income[21].

QUANTUM OF FEES AND EXPENSES

The parties may agree with the arbitrator any level of fees.

Whilst the fee scale will ordinarily, from purely commercial considerations of the parties, normally bear some relationship to the quantum in dispute, there are circumstances where the real issues may not be apparent strictly by considerations of quantum. For example, the result of an award for what might

otherwise be considered in the context a small quantum in dispute may have significant commercial effects by way of precedent, third party interest, or ongoing commercial relationships.

As a matter of practise and professional application it is accepted that persons practising in arbitration who have significant standing, experience and acceptance as an arbitrator and the capacity to deal with large and complex matters involving difficult issues of fact or law would expect to command fees significantly greater than, for example, a relatively inexperienced person conducting a simple quality/quantity arbitration.

Although there is some tradition supporting the view that to be appointed an arbitrator is an honour and accordingly the matter of remuneration of an arbitrator is secondary even to the extent of there being no remuneration at all, this principle has virtually been extinguished at least insofar as commercial arbitrations are concerned.

Appointment as an arbitrator is a purely personal appointment. It is for that person and that person alone to conduct the arbitration.

By the very nature of arbitration an arbitrator cannot divest himself of the duty as an arbitrator as might a judge or a barrister in like circumstances.

The commitment as an arbitrator extends not only to the task of publishing an award but a firm commitment of time in satisfying all of the duties and obligations of dealing with the reference.

Whilst there is no general rule as to the quantum of reimbursement it is, in these circumstances, reasonable for an arbitrator to expect remuneration at least the equivalent of the remuneration that would otherwise be earned in conducting alternate activities such as in a professional practice or a commercial operation and, given the duties and obligations, considerable justification for levels significantly more than that.

Some professional organisations, recognising that the duties and obligations of acting as an arbitrator are significantly more onerous and demanding than might otherwise exist in the conduct of a professional practice, have published recommended fee scales to be applied when sitting as an arbitrator[22]. These recommended fee scales are ordinarily many times greater than the recommended fee scales for normal professional activities.

Where a nomination or appointment is made or an arbitration is held under the auspices of a professional body or trade organisation which maintains or recommends a scale of fees then the empowering of such organisation to nominate, appoint or direct probably implies that the fee scale is to apply.

A guide as to the basis for establishing the quantum of fees can be found in s.35 of the Acts which provides, at s.35(4), that in taxation the fees and expenses to be paid are those which are ". . . found reasonable on taxation". To determine what constitutes "reasonable" is a question of fact established by considering all of the circumstances.

It does not necessarily follow that remuneration of an amount that might otherwise be earned by the arbitrator in practising a commercial or professional calling or consistent with a scale of fees published by a trade or professional

organisation might necessarily be "reasonable", nor does the quantum in dispute necessarily establish what might be reasonable. This might result in an arbitrator being paid less for a long, complex and difficult hearing than for a short and straight forward hearing where a larger sum is involved. The application of factors considered under the Supreme Court Taxing Rules[23], whilst going in part to establishing some basis for consideration of reasonableness, are considered not to be totally appropriate in arbitration but, nevertheless, provide a guide in some circumstances.

Factors considered relevant in establishing a fee structure include

(1) The particular skill, training or specialized knowledge required of the arbitrator.
(2) The place where the reference is conducted.
(3) The circumstances in which the reference takes place.
(4) The professional standing and reputation of the arbitrator.
(5) Comparison of fee structure of other arbitrators of similar standing and repute in conducting like references.
(6) Fee structure of other arbitrators acting in the same reference (where more than one arbitrator).
(7) Differences in duties and responsibilities compared with other arbitrators constituting the same panel (i.e. a chairman required to manage and administer as well as determine).
(8) Disruption to the arbitrator's other commercial activities, both directly and indirectly.
(9) Amount in issue, or importance, complexity, difficulty or novelty of the dispute.
(10) The declared capacity or preparedness of the parties to meet a certain level of fees.

Such considerations do not preclude an arbitrator from agreeing to act for no fee, or for a fee significantly less than might otherwise apply in the context of the above considerations.

Where there is no express agreement as between the parties and the arbitrator as to fees, a "reasonable" fee is, in some circumstances, required to be determined[24], or should be determined by the arbitrator by application of the above principles. An arbitrator is entitled to reasonable remuneration[25].

Although s.34(1)(b) of the Uniform Acts empowers an arbitrator to tax or settle the amount of costs of the arbitration "(including the fees and expenses of the arbitrator or umpire)" this provision must be applied with great care when there has been no agreement on fees as the arbitrator is acting as a judge in his own cause[26].

A fee so established must be fair and equitable to both the arbitrator and the parties and establishment by the arbitrator himself in such circumstances "is as difficult as it is invidious"[27].

An arbitral tribunal that fixes an excessive charge for its services may be guilty of misconduct[28].

By s.35(2) of the Uniform Acts, even though an arbitrator's fees and expenses may have been fixed by the award, a party to the arbitration agreement or the arbitrator may apply to have the fees and expenses taxed in the court.

Where there is prior agreement between the arbitrator and the parties on fees it is unlikely that the provisions of s.35(2) would give jurisdiction to a court to review the fees in totality if a lump sum, or the agreed rate if on an hourly or daily rate, but would extend to considerations of the number of hours or days upon which such hourly or daily rate should be applied.

FAILURE TO AGREE

S.7 of the Uniform Acts presumes joint appointment of the arbitrator. The parties may in writing agree otherwise.

Joint appointment probably implies joint liability of all parties to a reference for the arbitrator's fees and expenses[29].

This proposition is supported by *Lyders v Residential College Committee*[30] where an award was set aside after one party paid the whole costs of the award that party was able to recover half the costs so paid from the other party.

Mustill & Boyd *Commercial Arbitration* p235 suggest that the parties are jointly and severally liable rather than jointly liable. Many standard terms and conditions proposed by arbitrators include an express provision that the parties will be jointly and severally liable[31].

Where all parties to a dispute referred to arbitration object to the arbitrator's fees and expenses, whether before entering the arbitration or not, the arbitrator should withdraw.

Such action is as much related to the fundamental philosophy of arbitration being a process of resolution of disputes by reference to a tribunal of the parties' own choice, as it is to the arbitrator's protection and security of his commercial interest in remuneration and indemnity of costs and expenses.

One party only might object to the arbitrator's fees and expenses. The objection may be bona fide or for the purposes of frustrating or aborting the arbitration.

Such objection of itself is not necessarily sufficient to require withdrawal of the arbitrator.

The law does not allow default of agreement of one party to either the level of fees and expenses or other reasonable or appropriate terms and conditions such as security for the arbitrator's fees and expenses to prevent an arbitration proceeding[32].

The duty of an arbitrator to disqualify himself and withdraw for a proper reason is counterbalanced by an equal and just as important duty not to do so if no valid reason exists[33].

The arbitrator's costs, fees and expenses may be secured by one party without prejudice to the proceedings or misconduct on the part of the arbitrator in allowing one party to do so against the objection of the other party[34].

FEES RELATED TO QUANTUM IN DISPUTE OR AMOUNT OF AWARD

The amount in issue is previously suggested as one of a number of factors that might be considered in establishing a fee structure.

Ordinarily it would not be this factor alone which establishes the fees to be paid to an arbitrator.

However some arbitral institutions by their rules set as a lump sum the arbitrator's fee by the application of a scale based solely on the amount in issue and the number of arbitrators forming the arbitral tribunal[35].

There is significant advantage to the parties in such a procedure as the total amount payable to the tribunal is set and known in advance.

The arbitrator may, as a consequence, be commercially advantaged or disadvantaged, as the quantum in dispute may not reflect in any way the demands of determining the matter.

An agreement between the parties and the arbitrator setting the arbitrator's fee as a proportion or percentage of the amount awarded and payment accordingly would of itself be unlikely to amount to misconduct. Such a payment or request or order for payment in these terms absent agreement would amount to misconduct[36] with consequent possibility of dismissal of arbitrator, voiding of award, indemnity of parties' costs and other sanctions against the arbitrator.

ENTITLEMENT TO PAYMENT

An arbitrator's entitlement to payment is governed by the agreed terms and conditions of engagement or, in the absence of agreement on all or relevant aspects, by terms to be implied or by the provisions of the Uniform Acts.

An arbitration reference may terminate before an award is published, the reference is completed and an award published, or a published award may be invalid or set aside.

Where an agreement between the arbitrator and the parties expressly provides for remuneration only upon publication of an award, whether or not on a lump sum or other basis, there is no entitlement if an award is not published. Conversely, the arbitrator is entitled, upon publication of the award, to the agreed amount of remuneration and may bring an action for recovery[37].

An arbitrator has a lien over the award[38] but the extent of such lien is limited by s.35(1) of the Uniform Acts.

By directing in an award that the costs of an arbitration (including the fees and expenses of the arbitrator) are to be paid by one party an arbitrator does not waive his right to claim remuneration from both parties jointly[39].

Where a reference terminates before an award is published and the arbitrator is not responsible for such termination, either the provisions of the agreed terms and conditions of engagement shall apply or if such occurance is not provided in the agreement then under the provisions of s.36(1) of the Uniform Acts an arbitrator may apply to the court for an order as to costs.

Similarly if an award is set aside under the provisions of s.36(2)(b).

The extent to which a court may order costs in such circumstances will depend, inter alia, upon the reasons for invalidity or setting aside and the culpable contribution, if any, of the arbitrator.

If an arbitration comes to an end, or an award is invalid or set aside as a result of the arbitrator's own fault, then it is likely that the arbitrator forfeits

all rights to remuneration[40].

Sanctions which may apply to an arbitrator in default or removed may extend to an indemnity of the parties' thrown away expenses[41].

An arbitrator may seek remuneration in rectifying or reconsidering an award remitted by a court.

However, as a general principle an arbitrator should not be entitled to remuneration for rectifying a mistake of his own making in an award. Where remittance arises out of reconsideration of particular issues directed by the court which are not reasonably the result of any direct shortcomings in proceedings or determination (other than arising out of misconduct) the agreed rate of remuneration or a reasonable fee should apply.

CONCLUSION

The changing nature of arbitration arising in part from the wider use of standard form contracts which incorporate arbitration clauses, the expansion of arbitration as a dispute resolution process into the broadest range of commercial activity, the development of the law on arbitrability to arbitration of some public law issues, and the delays and costs associated with proceedings in superior courts, have all contributed to a distinct change of emphasis in the required capacity and ability of potential arbitrators.

Highly skilled, readily available trained and knowledgeable persons able to deal with the complex and difficult issues of fact and law now being referred to arbitration are being demanded by the commercial and legal communities in Australia.

A class of what might be regarded as professional arbitrators has started to develop.

Even if not absolutely dedicated to arbitration practice, the required criteria of arbitral competence and suitability ordinarily identify persons who can and should demand fees which are commensurate with their standing and the nature of the duties and demands as arbitrator.

An arbitrator's fees must be fair and equitable to the arbitrator as well as to the parties.

A general degree of commonality in terms and conditions and fee ranges by arbitrators of similar standing enables parties to contemplate arbitration with a reasonable expectation of the likely costs and the conditions which will apply.

An arbitration is a creature of the agreement of the parties and subject to statutory limitations[42]. Such agreement may include matters relating to the arbitrator's fees.

Such agreement may extend to an agreement between the parties and the arbitrator as to the fees, terms and conditions of engagement of the arbitrator although, in some limited circumstances, agreement may not be possible or appropriate.

Recognition by the parties and the arbitrator of all the necessary requirements

for the proper conduct of a particular arbitration should establish what the appropriate fees for a particular arbitrator and arbitration should be.

A.A. de FINA

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[1] Commercial Arbitration Act 1984 (Victoria)
Commercial Arbitration Act 1985 As amended 1990 (New South Wales)
Commercial Arbitration Act 1985 As amended 1991 (Northern Territory)
Commercial Arbitration Act 1985 (Western Australia)
Commercial Arbitration Act 1986 (South Australia)
Commercial Arbitration Act 1986 (Tasmania)
Commercial Arbitration Ordinance 1986 (ACT)
Commercial Arbitration Act 1990 (Queensland)
The recently introduced Queensland Act and the New South Wales and Northern Territory amendments incorporate changes to the "Uniform Acts" agreed by SCAG. It is expected that the Arbitration Acts in other States and Territories will shortly be amended to return uniformity and consistency throughout Australia.

[2] See generally provisions of Acts—Footnote 1 above.

[3] Section 4(1) Misconduct.

[4] *Gas & Fuel Corporation of Victoria v Wood Hall Ltd. & Leonard Pipeline Contractors Ltd.* [1978] VR385 at 413.
R v The Commonwealth Conciliation and Arbitration Commission; Ex parte The Anglis Group (1969) 122 CLR 546 at 553, 554
Ex Parte Qantas Airways Ltd; Re Horsington (1969) 71 SR (NSW) 291 at 296
Livesy v New South Wales Bar Association (1983) 151 CLR 288 at 294.

[5] *R v Bath Licensing Justices; Ex Parte Cooper* [1989] 2 All ER 897 at 902

[6] *The Law and Practise Commercial Arbitration in England,* Mustill & Boyd Butterworths 2nd Edition 1982 at pp 222, 223

[7] Section 10 "Uniform Acts" see Footnote 1

[8] Rules of Supreme Courts of States and Territories of the Commonwealth.

[9] See Footnote 1 supra.

[10] See S.12 Uniform Acts.

[11] *Baker v Stephens* (1987) L.R. 2 Q.B.523 and
Iossifoglu v Coumantaros (1941) 1 K.B.396

[12] *The Law and Practise Commercial Arbitration in England*—Mustill & Boyd Butterworths 2nd Edition at p173

[13] *Cie Europeene v Tradex [1986]* 2 Lloyds Rep 301

[14] Note that s.34(3) Uniform Acts voids any provision in an agreement for reference of *future* disputes to arbitration to the effect that the parties shall pay their own costs or part thereof or a particular party shall pay its own costs or part thereof (emphasis added). By s.34(1) such costs include the arbitrator's fees and expenses.

[15] S.7 Uniform Acts.

[16] *K/s Norjarl A/s v Hyundai Heavy Industries Company Ltd.* Int. Arb. Rep. Vol 6 #4 April 1991

[17] S.34 Uniform Acts

[18] See 'Commencing an Arbitration' A.A. de Fina—Doyles Dispute Resolution Practice ¶85-010

[19] *Schneier & London Ltd v Gluckmann* 1925 WLD 42 (South Africa)

[20] *K/s Norjarl A/s v Hyundai Heavy Industries Company Ltd.*

[21] *Cancellation Fees* A.A. de Fina "The Arbitrator Vol. 9 No. 2 August 1990

[22] The Institution of Engineers Australia/The Association of Consulting Engineers Australia—Guideline Fee Scales for Consulting Engineering Services July 1990.

[23] Supreme Court Taxing Rules (Victoria) and like rules in other States and Territories of the Commonwealth.

[24] S.35 Uniform Acts

[25] *K/s Norjarl A/s v Hyundai Heavy Industries Company Ltd.*

[26] Nemo Judex in suo causa.
[27] *Rolimplex Centrala Handlu Zagranicznego v Hajji E. Dossa & Sons Ltd.* (1971) 1 Lloyds Rep 380 at 384
[28] Re *Prebble & Robinson* [1892] 2 QB 602;
Appleton v Norwich Union Fire Insurance Society Ltd. (1922) 12 Ll L Rep 345
[29] *Brown v Llandovery Terra Cotta Etc. Co. Ltd.* (1909) 25TLR625
[30] (1911) 30 NZLR 72
[31] See precedent form agreements 'Commencing an Arbitration' A.A. de Fina—Doyles Dispute Resolution Practice ¶85-010
[32] *K/s Norjarl A/s v Hyundai Heavy Industries Company Ltd.* cf. International Chamber of Commerce Rules of Conciliation and Arbitration Jan 1, 1988—Rule 9.2 allowing one party to pay the whole of the advance on costs in respect of the claim or the counterclaim should the other party fail to pay its share.
[33] *Raybos Australia Pty. Ltd. v Tectran Corp. Ltd.* (1986) 6 NSWLR 272 at 275-277.
Harris and Hilton (1987) 9 NSWLR 527
[34] *K/s Norjarl A/s v Hyundai Heavy Industries Company Ltd.*
[35] For example—International Chamber of Commerce "Rules of Conciliation and Arbitration Jan 1988 Appendix III Schedule of Conciliation and Arbitration Costs" at s.5.
[36] *Aetna Casualty & Surety Co v Grabbert* R.I.Sup.Ct. No 89-253-A April 1991 USA (unreported)
[37] *Roberts v Eberhardt* (1857) 3 CBNS 482
Re *Coombs and Freshfield and Fernley* (1850) 4 Exch. 839.
[38] ibid.
[39] Re an arbitration between *Lyders and Fyfe & Cuming* (1909) 28 NZLR 1000
[40] *Traynor v Panan Constructions Pty. Ltd.* (1988) 7 ACLR 47
[41] *Road Rejuvenating and Repair Services v Mitchell Water Board* (unreported, Supreme Court of Victoria, 15 June 1990)
[42] See footnote (16)

LEGISLATION UPDATE

Uniform Commercial Arbitration Legislation

Australian Capital Territory

The Commercial Arbitration Act 1986 of the A.C.T. has been amended to bring it into line with amendments previously passed in New South Wales and the Northern Territory and with the 1990 Queensland Commercial Arbitration Act.

For identification purposes the amending A.C.T. legislation is included in the Commercial Arbitration (Amendment) Act 1991 No. 36 of 1991.