# 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  

**2ND SCENARIO**

**The Dispute** 7  
Table of Contents

3RD SCENARIO
Developing Strategies
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

4TH SCENARIO
The Negotiations in The Hague: Morning Session

5TH SCENARIO
The Negotiations in The Hague: Afternoon Session

PART TWO
International Business Mediation

6TH SCENARIO
The Proposal to Mediate (‘Getting to the Table’)

7TH SCENARIO
The Mediation – Phase 1: The Mediator’s Opening Statement and Conclusion of the Negotiation Agreement
<table>
<thead>
<tr>
<th>Scenario</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>8th Scenario</td>
<td>37</td>
</tr>
<tr>
<td>The Mediation – Phase 2: The Parties’ Opening Statements</td>
<td>37</td>
</tr>
<tr>
<td>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</td>
<td></td>
</tr>
<tr>
<td>9th Scenario</td>
<td>41</td>
</tr>
<tr>
<td>The Mediation – Phase 2: Identifying Issues and Interests</td>
<td>41</td>
</tr>
<tr>
<td>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</td>
<td></td>
</tr>
<tr>
<td>10th Scenario</td>
<td>47</td>
</tr>
<tr>
<td>The Mediation – Phase 3: Fixing the Agenda and Gathering Information</td>
<td>47</td>
</tr>
<tr>
<td>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</td>
<td></td>
</tr>
<tr>
<td>11th Scenario</td>
<td>57</td>
</tr>
<tr>
<td>The Mediation – Phase 4: Generating Options for Settlement of the AX-100 Special Dispute ('Group I’ Issues) and Bargaining</td>
<td>57</td>
</tr>
<tr>
<td>12th Scenario</td>
<td>65</td>
</tr>
<tr>
<td>The Mediation – Phase 4: Restructuring the Future Business Relationship between NedTrans and ALT (‘Group II’ Issues)</td>
<td>65</td>
</tr>
<tr>
<td>13th Scenario</td>
<td>71</td>
</tr>
<tr>
<td>The Mediation – Phase 4: Mr Jaeggi’s Limits of Authority</td>
<td>71</td>
</tr>
</tbody>
</table>
# Table of Contents

### 14th Scenario

*The Mediation – Phase 5: Signing of the Settlement Agreement and Termination of the Mediation*

The Parties' Commitment to the Settlement Terms – Symbolic Conflict Termination Activities – Identification of Parties with 'Their' Settlement Terms – Signing Ceremony

### 15th Scenario

*Revocation of the Settlement Agreement ('From Interests to Positions')*

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

### Part Three

International Commercial Arbitration

### 16th Scenario

*The Commencement of the Arbitration*


### 17th Scenario

*The Administration of the Statement of Claim by the German Institution of Arbitration (DIS)*

18TH SCENARIO
The Respondent’s Reaction
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’

19TH SCENARIO
Constitution of the Tribunal
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

20TH SCENARIO
Case Management and Challenge of the Tribunal’s Jurisdiction
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

21ST SCENARIO
Interim Measures of Protection
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

22ND SCENARIO
Settlement in Arbitration; Request for Postponement; Change of
Ownership in one of the Parties
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
23rd Scenario
Challenge of Arbitrator

24th Scenario
The First Day of the Hearing: The Legal Issues (I)

25th Scenario
The First Day of the Hearing: The Legal Issues (II)

26th Scenario
The Second Day of the Hearing: Taking of Evidence
27TH SCENARIO
Deliberation of the Tribunal and Rendering of the Award
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

28TH SCENARIO
Correction, Interpretation and Setting Aside of the Award
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 Révision au Fond – Effect of Setting Aside – Exclusion Agreements

29TH SCENARIO
Enforcement of the Award
Meaning of Recognition and Enforcement – New York Convention – Formal
and Substantive Requirements – Grounds for Refusal of Recognition and
Prohibition of Révision au Fond

Glossary of Terms