

Piercing the Veil of State Enterprises in International Arbitration (International Arbitration Law Library)



Questions of admissibility surrounding expert evidence have always bedeviled the judiciary. However, statutory language and rules of procedure, conscientiously interpreted and applied to the use of expert evidence, can go a long way towards achieving rectitude of decision where judgement requires knowledge not necessarily possessed by the jurists responsible for trying the case. In this remarkable work of analysis and commentary, George Cumming takes the position that the prominent international courts of Europe fail to follow their own rules of procedure in the use of expert opinion, thus potentially breaching the express right to a fair trial embodied within Article 6 (1) ECHR. In the process of developing his core thesis that statutory interpretation often requires the use of expert evidence in order to achieve a semantically accurate meaning, the author focuses on such crucially important topics as the following: the necessity for expert interpretation of technical language; how the non-expert use of technical words unjustifiably enlarges their scope of application; social scientific methods of statutory interpretation and proof of meaning; relevance of the courts duty to properly examine the merits; use and admissibility of so-called Brandeis Brief materials; contexts involving competing social or political philosophies; and how use of experts may serve to confer an element of social legitimacy upon a statutory interpretation. The centerpiece of the analysis is a comparative examination of the use of expert evidence (or lack thereof) in controversial cases in five tribunals: the European Court of Human Rights, the Court of Justice of the European Union, the Supreme Court of the United States, the Supreme Court of Canada, and the Supreme Court of British Columbia, Canada. In great detail the author shows how the three US and

Canadian courts have demonstrated a degree of credibility which is very much related to the quality of the expert evidence they consider--credibility he finds lacking in the European judgements. Given the limited ability of procedure to achieve rectitude of decision, this extraordinary work has far-reaching implications for recognition of the rule of law. The author shows how the expert evidence deficiency found in the European courts undermines empirical analysis of their application of the TFEU and ECHR, thus adding another obstacle to an already problematic search for legal truth. Dealing as this book does with the use of vital evidence in the context of a procedural deficit, it cannot be ignored by European jurists or legal academics.

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