

Contents

FOREWORD BY STEPHEN M. SCHWEBEL	ix
PREFACE	xi
ACKNOWLEDGMENTS	xv
GLOSSARY OF LATIN TERMS	xvii

CHAPTER 1: AN INTRODUCTION TO THE GENERAL PRINCIPLES OF LAW AND INTERNATIONAL DUE PROCESS

1

A. The Origin and Evolution of the General Principles of Law	3
1. Identifying General Principles	17
a) Principles That Are General	19
b) Principles That Are Universal	21
c) Principles That Are International	27
2. Typical Usage of General Principles	29
3. Invocations of General Principles	35
a) Arbitral Tribunals	36
b) National Courts	49
B. The Origin and Evolution of International Due Process	54
1. A Process Grounded in General Principles	55
2. The Concept of International Due Process	69
3. Specific Invocations of International Due Process	74
a) Arbitral Tribunals	74
b) National Courts	79

CHAPTER 2: MODERN APPLICATIONS OF THE GENERAL PRINCIPLES OF LAW

87

A. Good Faith in Contractual Relations	88
1. Pacta Sunt Servanda: Agreements Must Be Honored	89
2. Good Faith in Excusing Contractual Performance	101
3. Good Faith as a Factor in Remediating Nonperformance	105
B. Abuse of Rights and the Principle of Proportionality	107
1. The General Prohibition on the Abuse of Rights	108
2. The Principle of Proportionality	114

CONTENTS

C. Estoppel	119
D. The Prohibition on Advantageous Wrongs and Unjust Enrichment	130
E. Corporate Separateness and Limited Liability	140
F. The Principles of Causation and Reparation	143
G. The Principles of Responsibility and Fault	151
CHAPTER 3: MODERN APPLICATIONS OF THE PRINCIPLES OF INTERNATIONAL DUE PROCESS	157
A. Notice and Jurisdiction	158
B. Judicial Impartiality and Judicial Independence	165
C. Procedural Equality and the Right to Be Heard	176
D. Condemnation of Fraud and Corruption	183
E. Evidence and Burdens of Proof	190
F. The Principle of Res Judicata	197
EPILOGUE	203
ANNEX OF CASES	211
NAME INDEX.....	273
SUBJECT INDEX	275