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(CLOUT)

Contents

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Introduction

This compilation of abstracts forms part of the system for collecting and disseminating information on court decisions and arbitral awards relating to Conventions and Model Laws that emanate from the work of the United Nations Commission on International Trade Law (UNCITRAL). Information about the features of that system and about its use is provided in the User Guide (A/CN.9/SER.C/GUIDE/1/REV.1). CLOUT documents are available on the UNCITRAL website (http://www.uncitral.org).

Issues 37 and 38 of CLOUT introduced several new features. First, the table of contents on the first page lists the full citations to each case contained in this set of abstracts, along with the individual articles of each text which are interpreted by the court or arbitral tribunal. Second, the Internet address (URL) of the full text of the decisions in their original language are included, along with Internet addresses of translations in official United Nations language(s), where available in the heading to each case (please note that references to websites other than official United Nations websites do not constitute an endorsement by the United Nations or by UNCITRAL of that website; furthermore, websites change frequently; all Internet addresses contained in this document are functional as of the date of submission of this document). Third, abstracts on cases interpreting the UNCITRAL Model Arbitration Law now include keyword references which are consistent with those contained in the Thesaurus on the UNCITRAL Model Law on International Commercial Arbitration, prepared by the UNCITRAL Secretariat in consultation with National Correspondents, and in the forthcoming UNCITRAL Digest on the UNCITRAL Model Law on International Commercial Arbitration. Finally, comprehensive indices are included at the end, to facilitate research by CLOUT citation, jurisdiction, article number, and (in the case of the Model Arbitration Law) keyword.

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I. Cases relating to the UNCITRAL Model Arbitration Law (MAL)

Case 451: MAL 34(3)
Germany: Bundesgerichtshof; III ZB 572/00
20 September 2001
Original in German
Published in German: [2001] Neue Juristische Wochenschrift, NJW 2001, 3787
DIS – Online Database on Arbitration Law – http://www.dis-arb.de
Abstract prepared by Stefan Kröll and Marc-Oliver Heidkamp

[**keywords**: *arbitral awards; award; courts; procedure*]

The decision concerns the starting of the three-month time limit under § 1059 (3) German Civil Procedural Code (ZPO) (MAL 34(3)) for an action to set aside an award.

The award was sent to counsel for the claimant via registered mail return receipt and was received on 11 November 1999. Since the receipt was not returned, the chairman of the tribunal inquired whether the award had been received. With a letter dated 1 December 1999 counsel for the claimant informed the chairman that the award had been delivered on 11 November 1999 without, however, returning the receipt. On 16 February 2000, the claimant applied to have the award set aside.

In dealing only with the question of the admissibility of the action the Supreme Court held that it was not time barred since the three-month period set out in § 1059 (3) ZPO (MAL 34(3)) had not expired when the action was filed. The Court found that while the question of the time limit was governed by the new law (enacting the MAL), since the court proceedings for annulment were initiated after 1 January 1998, the question of when an award was "received" in the sense of § 1059 (3) ZPO (MAL 34(3)) was governed by the old law, as the arbitration proceedings started before 1 January 1998. According to the parties' agreement, the award therefore had to be served on claimant and received by it. Pursuant to §§ 198, 208, 212a ZPO, service requires from the tribunal actual conveyance of the award and the will to deliver it. From the position of the recipient, it required a will to accept the received document as being served, which is generally expressed by returning the receipt slip with date and signature. The Court found that this requirement of acceptance as being served was not fulfilled, as counsel did not sign the postal form indicating receipt of the document and did not send this form back to the sender, but kept it in his records. The letter of 1 December just indicated that the award arrived but did not constitute a clear acceptance as service. Thus, the three-month period did not start to run on 11 November.

Case 452: MAL 31; 34
Germany: Bayerisches Oberstes Landesgericht; 4Z Sch 31/99
27 June 1999
Original in German
Published in German: [1999] Betriebsberater, BB, 1999, 1948
DIS – Online Database on Arbitration Law – http://www.dis-arb.de
Abstract prepared by Stefan Kröll

[**keywords**: *arbitral awards; award; award - recognition and enforcement; award - setting aside; courts; enforcement; formal requirements; procedure; recognition - of award; validity*]

The decision, arising out of an action to have a national award declared enforceable, concerns the requirements as to the specificity of an award.

The claimant and the respondent were parties to a lease, the termination of which led to arbitral proceedings. In the award rendered after a partial acknowledgement, the respondent was ordered to offer to sell the claimant "these objects, which were originally purchased by hospital A—either in replacement or as additional equipment—and were at present located in Applicant's house". When the claimant applied to have the award declared enforceable, the respondent alleged that the award did not constitute a valid award in the sense of § 1054 of the German Civil Procedural Code (ZPO) (MAL 31), since it did not preclude a further action on the issue.

In its order, the court recognized the award and declared it enforceable. It concluded that the form and scope of the arbitral award did not hinder the declaration of enforceability.

The court agreed with the view of the respondent that the objects to be offered to the claimant for acquisition of ownership might not have been sufficiently identified/specified in the award. The award did not state which objects had been purchased for replacement and which as additional equipment, and the contract contained different provisions for either case. The court noted, however, that while this lack of concrete identification/specification might later hinder enforcement, it did not hinder the declaration of enforceability. Even though the declaration of enforceability was a prerequisite for enforcement, the possibility of enforcement was not a prerequisite for the declaration of enforceability. The court reasoned that the purpose of a declaration of enforceability was, inter alia, the extinction of the possibility to demand the setting aside of the award once the award had been declared enforceable by a German court (cf. § 1059 para. 3, 4th sentence ZPO) (compare MAL 34(3)). Furthermore, the court pointed out that an identification/specification of the objects was still possible.

Finally, the court concluded that the fact that the contract provided for different treatment of the objects, depending on the reason for which they had been purchased, did not mean the issue in controversy had not been completely decided on in the award. Under German Civil Procedural Law, an issue can be brought before the court again if the decision had not dealt with all relevant issues in controversy (§ 322 ZPO). However, in this case the arbitral award had clearly avoided distinguishing between the objects and had ordered the respondent to offer them to the claimant, regardless of what the reason for their sales contract had been.

This had been in line with the contract, which provided that in either case the claimant had a right to demand an offer for acquisition of ownership.

Case 453: MAL 36
Germany: Bayerisches Oberstes Landesgericht; 4Z Sch 2/00
12 April 2000
Original in German
DIS – Online Database on Arbitration Law – http://www.dis-arb.de
Abstract prepared by Stefan Kröll and Marc-Oliver Heidkamp

[**keywords**: *arbitral awards; arbitral proceedings; arbitration agreement; award; award - recognition and enforcement; courts; enforcement; procedure*]

The decision of the Bavarian Highest Regional Court deals with the attempt of a party to raise the defence of set-off in proceedings to declare a domestic ICC award enforceable in Germany pursuant to § 1060 of the German Civil Procedural Code (ZPO).

The case arose out of a construction contract providing for ICC arbitration in Germany. During the arbitration proceedings, the respondent declared a set-off with claims resulting from the claimant's allegedly defective performance of another contract. Since there was no arbitration agreement, for this contract, the tribunal refused to deal with the set-off and rendered an award in favour of the claimant. In the ensuing proceedings to have the award declared enforceable, the respondent raised the set-off again as a defence.

The court rejected the respondent's request for set-off and declared the award enforceable. It stated that under the new German Arbitration Law it was no longer possible to declare a set-off in the proceedings for the declaration of enforceability. It contended that the goal of the new Arbitration Law was to simplify actions to have awards declared enforceable in order to achieve a swift ending to arbitral proceedings and to relieve the state courts. For this reason, the "ponderous" proceedings to have an award declared enforceable were eased into a court order with limited remedies. Furthermore, the action to have awards declared enforceable does not fall into the jurisdiction of the lower trial courts anymore, but according to § 1062 ZPO into that of the Higher Regional Courts, which generally have appellate review. This decision, the court concluded, was to be honoured and should not be undermined by allowing substantive defences to be raised before the Higher Regional Courts. The respondent was instead referred to the ensuing enforcement proceedings, which are held again in front of a trial court, to invoke the set-off. The trial courts were found to be more capable of dealing with this matter by conducting the necessary comprehensive hearing of evidence to come to a decision, which would furthermore be subject to judicial review by a trial court of second instance. The action to declare an award enforceable is not a part of the actual enforcement nor of the enforcement proceedings, but rather a precondition for the initiation of the latter, as it gives the award the same status as a court judgement.

Case 454: MAL 11(4); 12
Germany: Oberlandesgericht Dresden; 11 Sch 2/00
20 February 2001
Original in German
DIS – Online Database on Arbitration Law – http://www.dis-arb.de
Abstract prepared by Stefan Kröll

[**keywords**: *appointment procedures; arbitrators; arbitrators - appointment of; arbitrators - challenge of; arbitrators - qualifications; challenge; courts; judicial intervention; procedure*]

This decision concerns the challenge of an arbitrator for lack of agreed qualifications.

The case arose out of a lease agreement, the arbitration agreement for which provided that the arbitrators had to be members of the Industrie- und Handelskammer, IHK (German Chamber of Industry and Trade). The lessor initiated arbitration proceedings and named as his arbitrator the vice chairman of the IHK, who himself was not a member of the IHK. The respondent asserted that no arbitration proceedings were necessary since allegedly an agreement had been reached, but announced that if the proceedings were continued, they would nominate a well-known professor as an arbitrator. The claimant replied that the professor should be nominated and both arbitrators should try to agree on a chairman. The arbitrator nominated by the claimant rejected the appointment and the claimant appointed as its new arbitrator a businessperson who was not a member of the IHK. Furthermore, the claimant challenged the arbitrator of the respondent for a lack of agreed qualifications.

The arbitrator refused to step down since in the arbitrator's view, counsel for the claimant had accepted him as an arbitrator before in a written statement and thereby revised the arbitration agreement. He added that the arbitrator chosen by the claimant was not a member of the IHK either. The claimant applied to the Higher Regional Court in Dresden to have the arbitrator removed for lack of agreed qualifications and partiality, evidenced by the arbitrator's statement concerning a revision of the arbitration agreement.

The court found that the arbitration agreement had been revised by the parties as far as it concerned the IHK-membership of the arbitrators since both parties named arbitrators without such membership and accepted them reciprocally (the applicant explicitly in his written statement, the respondent tacitly by not claiming the missing membership). Moreover, it stated that the purpose of the membership clause was to ensure that the arbitrators were experienced enough, and both chosen arbitrators complied with this object in respect of their profession. The Court further stated that the arbitrator chosen by the respondent was not to be challenged. The statement on the revision of the arbitration agreement proposed a possible interpretation concerning the appointment of the two arbitrators without IHK-membership. Since this interpretation is consistent with the one given by the Court, it cannot be characterized as biased. Therefore, the lessor's challenge of an arbitrator was dismissed.

Case 455: MAL 34
Germany: Hanseatisches Oberlandesgericht Hamburg; 14 Sch 1/98
4 September 1998
Original in German
Published in German: *OLG Report* 7/1999; 76; NJW-RR 2000, 806
DIS – Online Database on Arbitration Law – http://www.dis-arb.de
Abstract prepared by Stefan Kröll

[**keywords**: *arbitral awards; arbitral proceedings; arbitral tribunal; award; award - setting aside; courts; due process; procedure; validity*]

The decision, rendered in an action to set aside an award, dealt with the question of whether the rejection of an appeal against an award by an appeal board because of late payment of fees was in accordance with the procedure agreed upon by the parties.

The case arose out of a claim for commission which was rejected by an arbitral tribunal acting under the rules of the Waren-Verein der Hamburger Börse e.V. The claimant appealed to the appellate board which dismissed the appeal as inadmissible on the basis of § 30 of the arbitration rules, which provides that any appeal shall be considered to be withdrawn if the fees for such an appeal are not paid within thirty days. The claimant then applied to the Higher Regional Court in Hamburg to have this dismissal annulled under § 1059 (2) (1d) German Code of Civil Procedure (adapted from article 34(2) MAL). He claimed that § 30 of the arbitration rules was invalid and should therefore not have been relied upon.

The court considered the action for annulment to be admissible, but unfounded. The dismissal of the appeal constituted an award in the sense of § 1059 (1) German Code of Civil Procedure (article 34(1) MAL). The effect of the decision, which was not drafted as an award, was to declare the decision by the tribunal final which meant that the claim was rejected. Consequently, it had the same effect as a decision on the merits and can be considered as an award.

On the merits, the court found that the dismissal did not constitute a violation of the applicable procedural rules under § 1059 (2) (1d) German Code of Civil Procedure since it was explicitly authorized by § 30 of the arbitration rules chosen by the parties. The court rejected the claimant's view that § 30 was invalid on the basis of a decision of the Supreme Court holding that a tribunal cannot sanction the non-payment of costs by not taking into account evidence submitted by a party. That case was distinguishable since here the parties had explicitly authorized such a sanction by submitting to the arbitration rules. Since the applicant further claimed that he had remitted the money through his bank within the set period of two weeks, the court found that in contrast to usual credit transfers it was not the day of the payment but the day of the receipt of the money that decides whether a set period is observed or not because only this date is certain enough to be taken as a basis for the calculation by the arbitration tribunal (so-called *Rechtzeitigkeitsklausel*).

Case 456: MAL 36(1)(b)(ii) [New York Convention V(2)(b)]
Germany: Hanseatisches Oberlandesgericht Hamburg; 6 Sch 11/98
4 November 1998
Original in Germany
Published in German: BB, Beilage 4 zu Heft 11/1999 (RPS), 16
DIS – Online Database on Arbitration Law – http://www.dis-arb.de
Abstract prepared by Stefan Kröll and Marc-Oliver Heidkamp

[**keywords**: *arbitral awards; award; award - setting aside; courts; due process; ordre public; public policy*]

The decision arising out of an action to have a foreign award declared enforceable in Germany concerns the defence of a violation of procedural public policy under article V(2)(b) of the New York Convention (*compare* MAL 36(1)(b)(ii)).

According to § 1061 (1), first sentence, ZPO, the recognition and enforcement of foreign arbitral awards in Germany is governed by the New York Convention. In the case at hand, the respondent tried to resist the application by the claimant to have the award declared enforceable, by alleging that it would violate public policy since the award allegedly did not deal with the set-off declared by the respondent during the arbitration proceedings and thereby infringed its right to due process of law. In the respondent's view, the reason for the arbitrator's non-consideration of the request for set-off was the respondent's failure to provide the security for costs of arbitration demanded by the arbitrator.

The court, however, found the German *ordre public* not to be infringed and declared the award enforceable. An award would be contrary to the German *ordre public* if it disclosed errors that affected the basic principles of public and economical life. It was emphasized by the court that the arbitrator did not grant the respondent a set-off, as the arbitrator was, after a thorough consideration, convinced that the counterclaims were factually unfounded. A comprehensive reasoning for this finding was given in the award. Alternatively the arbitrator referred to equity law, according to which a set-off was not possible under the circumstances of this case. The respondent's failure to provide the required security for the costs of arbitration was indeed another reason for the arbitrator to deny the respondent's alleged right to pursue counterclaims, but it was made clear that the respondent was in any case precluded from relying on these counterclaims for the reasons mentioned above. The court concluded that the respondent's right to be heard was observed and no infringement of the German *ordre public* was evident.

Case 457: MAL 34, 35
Germany: Hanseatisches Oberlandesgericht Hamburg; 1 Sch 2/99
14 May 1999
Original in German
DIS – Online Database on Arbitration Law – http://www.dis-arb.de
Abstract prepared by Stefan Kröll

[**keywords**: *arbitral awards; arbitral proceedings; arbitral tribunal; arbitration agreement; arbitration clause; award; courts; due process; enforcement; form of arbitration agreement; ordre public; procedure; public policy*]

The decision, arising out of an action to have an award declared enforceable, deals with questions of the right to be heard.

The parties had entered into an agreement for the sale of tomato-puree. The claimant's confirmation letter provides, inter alia, that disputes are to be resolved at the claimant's choice either by arbitration or by court proceedings in Hamburg. In arbitral proceedings initiated on the basis of this clause, the respondent was ordered to pay DM 70,350 plus interest. When the claimant applied to have the award declared enforceable, the respondent applied, inter alia, to have the award set aside for the non-existence of a valid arbitration agreement and an alleged violation of the right to be heard.

The Higher Regional Court rejected these objections and declared the award enforceable. It found that the parties had entered into a valid arbitration agreement. Since the respondent did not object to the dispute resolution clause contained in the confirmation letter but performed its obligations, the arbitration clause became part of the contract between the parties. The arbitration clause was not found to be void for uncertainty and the court observed that the choice between arbitration and court proceedings granted to the claimant did not constitute an unjustifiable disadvantage to the respondent.

The court further concluded that the rejection of the respondent's last submission by the arbitral tribunal did not violate the respondent's right to be heard. The court stated that such a right only requires that a tribunal take into account arguments brought forward by the parties but does not limit the right of the tribunal to evaluate the evidence presented. The tribunal is not forced to consider arguments that were immaterial to the reasoning behind the award issued by the tribunal. The court noted that it should not substitute its own evaluation of evidence for that of the tribunal since that would constitute an impermissible *revision au fond*.

Case 458 MAL 8(1); 9
Hong Kong: High Court of the Hong Kong Special Administrative Region, Court of First Instance (Waung J.)
10 January 2000
Consolidated Projects Ltd. v. The Owners of the Tug "De Ping"
(Original in English)
Unreported
Abstract prepared by Ben Beaumont

[**keywords**: *courts; injunctions; interim measures; judicial assistance; procedure; protective orders*]

The plaintiff sought an order permitting inspection of a vessel. The plaintiff submitted that the inspection would be of assistance either before the China Maritime Court or Lloyds in London Salvage arbitration proceedings. The court could not identify any evidence of any special circumstance to justify the order for inspection.

The plaintiff submitted it wished for the order to equalize the evidentiary position between the parties. The court stated that the situation of equality of parties was not the norm. In situations as in the current case where there was damage, or allegation of damage, the defendant will have the primary evidence. The court held

that it was not the function of the court to achieve equality of positions for the parties. The court found that any litigation in Hong Kong was likely to be stayed in favour of arbitration (MAL 8(1)) or other alternative outside the jurisdiction of Hong Kong.

Finally, the court accepted that an inspection order of this nature should not be made where there is a binding arbitration agreement unless the applicant were to suffer serious and irreparable damage were the order not to be granted (MAL 9). The court refused the application of the plaintiff for an order for inspection.

Case 459: MAL 34(2)(b)(ii); 35(1); 35(2); 36(1)(b)(ii)
Hong Kong: High Court of the Hong Kong Special Administrative Region, Court of First Instance (Burrell J.)
8 April 2000
Medson Co. Ltd. v. Viktor (Far East) Ltd.
(Original in English)
[2000] 2 HKC 502
Abstract prepared by Ben Beaumont

[**keywords**: *arbitral awards; arbitration agreement; award; award - recognition and enforcement; award - setting aside; courts; documents; enforcement; formal requirements; language; ordre public; procedure; public policy; translations*]

The plaintiff applied to enforce a foreign award as a judgement (MAL 35(1)). Leave was granted. The defendant sought leave to resist enforcement and to set aside the leave to enforce the judgement.

The defendant argued that for effective enforcement the plaintiff must produce the duly authenticated original award or a duly certificated copy thereof, together with, in like format, the arbitration agreement and where applicable certified translations of both documents. The plaintiff produced the missing documents, set the hearing and, where appropriate, made undertakings to produce subsequently. The court, while agreeing that the defendant was correct, concluded that the plaintiff had made good the procedural defects (MAL 35(2)).

The defendant argued that the plaintiff had failed to make full and frank disclosure of the agreement, which was the key issue between the parties. The court noted that the defendant did attend the foreign arbitration. The court stated that it was not for the plaintiff to put forward what might never been the defence of the defendant. Had the award been set aside or settled in full then those matters required full disclosure. The court found that the plaintiff had made sufficiently full disclosure.

The defendant submitted that the entire operation was a sham and thus contrary to the public policy of Hong Kong (MAL 34(2)(b)(ii); 36(1)(b)(ii)). The court found little support from the evidence before it for such a submission. The court also noted that the defendant did not raise that, or any defence, in the arbitral proceedings. The court rejected the submission of the defendant as to a violation of public policy (MAL 34(2)(b)(ii); 36(1)(b)(ii)) and dismissed the application of the defendant to set aside the leave granted to enforce the award as a judgement (MAL 35(1)).

Case 460: MAL 2; 7(1); 7(2); 8(1)
Hong Kong: High Court of the Hong Kong Special Administrative Region, Court of First Instance (Burrell J.)
23 October 2000
Hercules Data Comm Co. Ltd. v. Koywa Communications Ltd. (Original in English)
[2001] 2 HKC 75
Abstract prepared by Ben Beaumont

[**keywords**: *arbitration agreement; contracts; courts; definitions; form of arbitration agreement; incorporation by reference; judicial assistance; validity*]

The plaintiff sought summary judgement by relying upon a Rule of Supreme Court Order 14 Summons. The defendant applied for a stay of those proceedings in favour of arbitration (MAL 8(1)).

The parties entered into two agreements. The first contained an arbitration agreement. The second agreement signed on the same day was stated to be "totally back to back" with the main agreement. The court ruled that the explicit phrase described was sufficient to constitute an act of incorporation by reference of the arbitration clause in the main contract into the second contract. The court found that the requirements of article 7(2) MAL as to the definition of an arbitration agreement had been complied with.

The court found that there was a dispute. The court noted that the definition of dispute was deliberately wide (MAL 2; 7(1)), and that the disputes alleged could not be realistically separated from the subject matter of the contract. The disputes therefore fell within the jurisdiction of the arbitration agreement (MAL 7(1)).

The plaintiff had argued that the arbitration agreement was null and void, inoperative or incapable of being performed (MAL 8(1)). The court determined that any submissions to that effect were of no assistance to the plaintiff by reason of the findings as to the dispute and the incorporation of the arbitration agreement. The court granted the application of the defendant for a stay of proceedings (MAL 8(1)).

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Case 453: MAL 36 - *Germany: Bayerisches Oberstes Landesgericht; 4Z Sch 2/00* (*12 April 2000*)

Case 454: MAL 11(4); 12 - *Germany: Oberlandesgericht Dresden; 11 Sch 2/00* (*20 February 2001*)

Case 455: MAL 34 - *Germany: Hanseatisches Oberlandesgericht Hamburg; 14 Sch 1/98* (*4 September 1998*)

Case 457: MAL 34; 35 - *Germany: Hanseatisches Oberlandesgericht Hamburg; 1 Sch 2/99* (*14 May 1999*)

Case 458: MAL 8(1); 9 - *Hong Kong: High Court of the Hong Kong Special Administrative Region, Court of First Instance, Consolidated Projects Ltd. v. The Owners of the Tug "De Ping"* (*10 January 2000*)

Case 459: MAL 34(2)(b)(ii); 35(1); 35(2); 36(1)(b)(ii) - *Hong Kong: High Court of the Hong Kong Special Administrative Region, Court of First Instance, Medson Co. Ltd. v. Viktor (Far East) Ltd.* (*8 April 2000*)

protective orders

Case 458: MAL 8(1); 9 - *Hong Kong: High Court of the Hong Kong Special Administrative Region, Court of First Instance, Consolidated Projects Ltd. v. The Owners of the Tug "De Ping"* (*10 January 2000*)

public policy

Case 456: MAL 36(1)(b)(ii) [New York Convention V(2)(b)] - *Germany: Hanseatisches Oberlandesgericht Hamburg; 6 Sch 11/98* (*4 November 1998*)

Case 457: MAL 34; 35 - *Germany: Hanseatisches Oberlandesgericht Hamburg; 1 Sch 2/99* (*14 May 1999*)

Case 459: MAL 34(2)(b)(ii); 35(1); 35(2); 36(1)(b)(ii) - *Hong Kong: High Court of the Hong Kong Special Administrative Region, Court of First Instance, Medson Co. Ltd. v. Viktor (Far East) Ltd.* (*8 April 2000*)

recognition - of award

Case 452: MAL 31; 34 - *Germany: Bayerisches Oberstes Landesgericht; 4Z Sch 31/99* (*27 June 1999*)

translations

Case 459: MAL 34(2)(b)(ii); 35(1); 35(2); 36(1)(b)(ii) - *Hong Kong: High Court of the Hong Kong Special Administrative Region, Court of First Instance, Medson Co. Ltd. v. Viktor (Far East) Ltd.* (*8 April 2000*)

validity

Case 452: MAL 31; 34 - *Germany: Bayerisches Oberstes Landesgericht; 4Z Sch 31/99* (*27 June 1999*)

Case 455: MAL 34 - *Germany: Hanseatisches Oberlandesgericht Hamburg; 14 Sch 1/98* (*4 September 1998*)

Case 460: MAL 2; 7(1); 7(2); 8(1) - *Hong Kong: High Court of the Hong Kong Special Administrative Region, Court of First Instance, Hercules Data Comm Co. Ltd. v. Koywa Communications Ltd.* (*23 October 2000*)