### 3. ARBITRATOR'S RIGHT TO IMMUNITY

An arbitrator is entitled to various immunities from civil claims by the parties arising out of his or her conduct of the arbitration.\(^{333}\) The nature and scope of these immunities varies depending upon the parties' agreement, any applicable institutional rules and applicable national law.\(^{334}\) As noted above, these immunities are only available to "arbitrators" engaged in "arbitration," and not too others (such as mediators or experts in an expert determination).\(^{335}\) In some instances, immunity extends to arbitral institutions (as well as to arbitrators.)\(^{336}\)


\(^{334}\) Most international arbitration conventions are silent regarding the subject of arbitrator immunity. The ICSID Convention, Art. 21 (a) (arbitrators possess "immunity from legal process with respect to acts performed by them in the exercise of their functions"). If the parties' arbitration agreement, including any incorporated institutional rules, provides the arbitrators with a contractual grant of immunity (*see infra* pp. 1660-1661), then there is a substantial argument that this provision is given mandatory effect, as a material term of an international arbitration agreement, by Article II of the New York Convention. *See supra* pp. 94-97, 202-205, 567-568 and *infra* pp. 1749-1751.

\(^{335}\) *See supra* pp. 223-234 & 235-241

\(^{336}\) *See infra* p. 1660 nn. 384 & 386.

### Referring Principles:

XIII.2.7 - Immunity of arbitrator