

Arbitration Law in Ireland

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Who am I?

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Where is Ireland?



King Solomon's Biblical Arbitration Award

In the biblical story recorded in the **Book of Kings** King Solomon's award came in two stages. First he said: *"This one saith, this is my son that liveth, and thy son is the dead and the other saith, Nay; but thy son is the dead, and my son is the living. And the King said, Bring me a sword."* The sword having being produced, he said: *"Divide the living child in two, and give half to the one, and half to the other..."*

The second stage followed the declarations of the two mothers, on relinquishing her claim to the child, *"for her bowels yearned upon her son,"* and the other demanding that the child be divided. The King ruled finally: *"Give her the living child, and in no wise slay it she is the mother thereof."*

*Keenan v Shield
Insurance Company*
[1988] I.R. at p 96.

- Justice McCarthy in the Irish High Court stated:
- *“Arbitration is a significant feature of modern commercial life; there is an International Institute of Arbitration, and the field of international arbitration is an ever expanding one. It ill becomes the courts to show any readiness to interfere in such a process; if policy considerations are appropriate as I believe they are in a matter of this kind, then every such consideration points to the desirability of making an arbitration award final in every sense of the term.”*



Newgrange – Stone Age Monument



Brehon Law - The native Irish legal system.

- Brehon law was the native, customary legal system of Ireland, evolving long before the arrival of Christianity and persisting well into the late medieval period. Named after the "brehons"—professional jurists who acted as judges, arbitrators, and legal scholars—this body of law was oral in its earliest forms, eventually being codified in manuscripts by the 7th century and later.
- Brehon law emerged from the customs and social norms of Gaelic Ireland. **Dispute resolution under Brehon law often took the form of arbitration, with neutral third parties—brehons—presiding over disagreements within clans and communities.**

Key Features of Brehon Law

Restitution over retribution: The Brehon system emphasized compensation (known as “eric-fine” or “honour price”) for wrongs rather than punishment. The aim was to restore social harmony rather than exact vengeance.

Status-based justice: Rights and responsibilities were largely determined by social rank within the tuath (clan or petty kingdom), and legal entitlements were meticulously graded.

Land and property: Land was typically held collectively by the derbfine (four-generation kin-group), with rules on inheritance and succession reflecting communal priorities but allowing for private property.

Women’s rights: Although not equal by modern standards, Brehon law afforded women certain legal protections in marriage, divorce, and property.

No central enforcement: Legal judgments were enforced within the community by fostering and clientship networks rather than a centralized authority.

Arrival of Christianity in Ireland – Saint Patrick





Brehon Law v English Law

Christian Influence and Codification

With the spread of Christianity, **Brehon law absorbed certain Christian values**, especially regarding marriage and morality, but retained much of its distinct character. Monasteries became centres of legal scholarship, preserving and adapting the laws in illuminated manuscripts.

Norman Invasion and the Hybrid Period

The late 12th century marked a dramatic turning point with the Anglo-Norman invasion of Ireland (1169 onwards). The invaders brought with them the **feudal system** and the beginnings of English law, fundamentally altering the legal landscape.

British Law Arrives in Ireland



The Triumph of the Common Law

By the early 17th century, the process of anglicisation of Irish law was largely complete. The Flight of the Earls in 1607 and the subsequent plantation policies extinguished the remaining Gaelic lordships, and with them, the Brehon legal tradition.

Features of the Common Law in Ireland

- **Centralised authority:** Law and order became the prerogative of the Crown and its representatives. Courts sat in the king's name, with sheriffs and juries administering justice.
- **Written precedent:** Common law relied on the doctrine of precedent and written records, in contrast to the oral and customary nature of Brehon law.
- **Criminal justice:** Victim compensation gave way to punitive sanctions, with the state controlling prosecution and punishment.
- **Uniformity:** English statutes and royal proclamations increasingly applied throughout Ireland, culminating in the suppression of alternative legal tradition.

Irish Rebellion 1916



Irish War of Independence 1919-21 – General Michael Collins



Irish Civil War – 1922-23

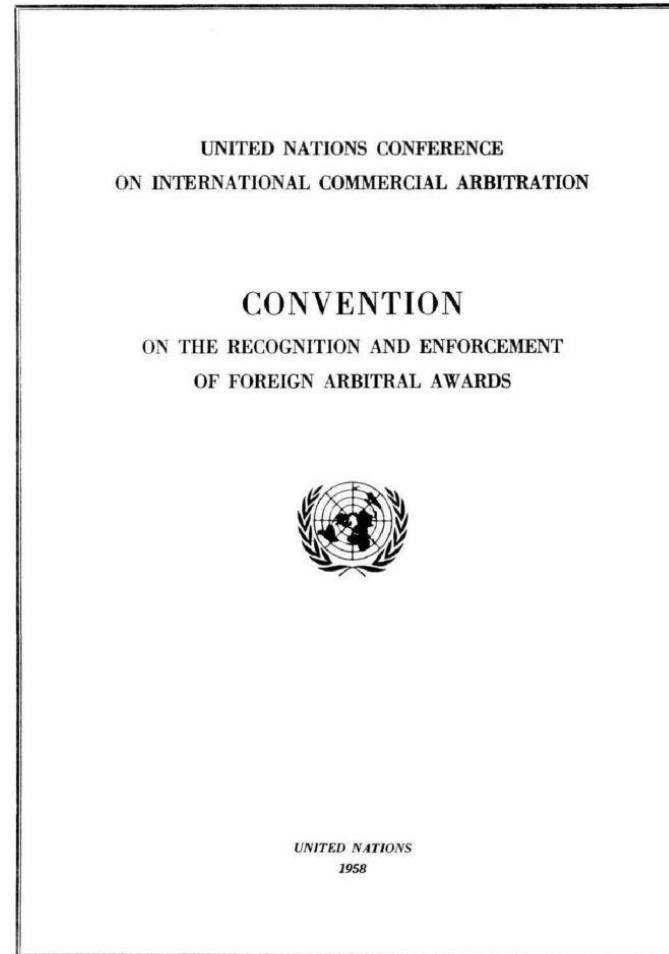




Early Statutory Recognition of Arbitration

- **Arbitration was formally recognised in Ireland under the Arbitration Act, 1954,** which largely mirrored its British counterpart. This Act provided a statutory framework for arbitration, allowing parties to refer disputes to arbitrators and setting out procedures for the enforcement of awards. Features of the 1954 Act:
- **Permitted written agreements to refer disputes to arbitration.**
- **Enabled courts to stay proceedings in favour of arbitration.**
- **Provided for limited judicial intervention in the process.**
- Despite its limitations, the statutory recognition of arbitration laid the foundation for its gradual expansion in Ireland, particularly in commercial contexts.

The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958.



UNICTRAL Model Law



Arbitration Act 2010

The Arbitration Act 2010 and International Standards

A major milestone in the development of Irish arbitration was the Arbitration Act 2010, which transformed the legal landscape and brought Irish arbitration law into alignment with international best practices. **The 2010 Act adopted the UNCITRAL Model Law** on International Commercial Arbitration as the foundation for both domestic and international arbitrations conducted in Ireland.

Arbitration Act 2010

Main features of the Arbitration Act 2010:

- Applies the Model Law to all arbitrations, regardless of whether they are domestic or international.
- Limits judicial intervention in arbitral proceedings, supporting the autonomy and finality of the process.
- Recognises and enforces arbitration agreements and awards, implementing Ireland's obligations under the New York Convention.
- Facilitates party autonomy, allowing customised procedures, selection of arbitrators, and choice of applicable law.
- Streamlines procedures for appointment, challenge, and removal of arbitrators.
- Provides for confidentiality and protection of sensitive information.

Justice David Barniville



The Irish High Court



Exclusions

- The Arbitration Act does not apply to an arbitration relating to terms and conditions of employment; or
- Remuneration of employees or to arbitrations under the Industrial Relations Act, 1964

Competence

Unless agreed, the default number of arbitrators is one. The principle of competence-competence is recognised in Ireland.

The Model Law deals with the competence of an arbitral tribunal to rule on its own jurisdiction. In circumstances where the existence of an arbitration clause is not in dispute, the Irish courts will be very slow to interfere with the arbitrator's ruling on his/her own jurisdiction having regard to the competence-competence principle.

Security for costs

Without prejudice to the Model Law, unless otherwise agreed by the parties, an arbitral tribunal may make an order relating to security for costs of the arbitration.

Such an order may not be based solely on the ground that the party is an individual who is domiciled, habitually resident, or carrying on business outside the State, or is a body corporate established under a law of a place other than the State or whose central management and control is situated outside the State.

Immunity from Liability

The Arbitration Act provides that arbitrators are not liable for anything done or omitted in the discharge or purported discharge of their functions.

This immunity extends to any employee, agent or advisor of an arbitrator and to an expert appointed by an arbitrator under the Arbitration Act and it also extends to cover arbitral or other institutions by whom an arbitrator is appointed and their employees and agents.

Independence

The Model Law requires an arbitrator both at the outset of an arbitration and throughout its conduct, to disclose any circumstances likely to give rise to a justifiable doubt as to his impartiality or independence.

The Model Law principles of 'ex aequo et bono' (arbitrator may dispense with application of law and decide what is fair and equitable) and 'amiable compositeur' (arbitrator is empowered to decide a dispute based on principles of general justice and fairness) apply to arbitrations in Ireland. There are no specific statutory ethical codes but the ethical rules of any relevant institution agreed to by the parties would apply.

Fairness

Parties must be treated equally and must be given a full opportunity to present their respective cases.

Where a party is in default and fails to show sufficient cause, or fails to appear at a hearing, an arbitral tribunal may continue the proceedings and determine the matter.

Consolidated arbitrations

Under the 2010 Act, where the parties agree, arbitral proceedings must be consolidated with other arbitral proceedings, including arbitral proceedings involving a different party or parties with the agreement of that party or parties and concurrent hearings must be held on such terms as may be agreed between the parties.



Oral Evidence

Unless otherwise agreed by the parties, an arbitral tribunal may direct that a party to an arbitration agreement or a witness who gives evidence in proceedings before the arbitral tribunal, be examined on oath or on affirmation, and may administer oaths or affirmations for the purposes of the examination.

Limits of Court oversight on Arbitration

Unless otherwise agreed by the parties, **the High Court cannot make an order relating to security for costs of the arbitration or for discovery of documents.** A decision of the High Court in respect of an application to stay proceedings, to set aside an award or to recognise or enforce an award is final and there is no appeal to a higher court.

Under the Model Law an arbitral tribunal, including one conducting arbitral proceedings outside Ireland, may seek assistance from the courts in taking evidence. The courts do not have the power to compel parties to arbitrate, in the sense of having to actively engage in the arbitration.

Third parties cannot be forced to participate in arbitral proceedings in any circumstances.

Third Party Funding

- **Third-party funding** refers to investment by a third party in dispute resolution proceedings in respect of which it has no direct interest. Funding of this nature is **generally prohibited in Ireland**, save for limited circumstances, on account of the rules against **maintenance and champerty**.
- However, the *Courts and Civil Law (Miscellaneous Provisions) Act 2023* inserts a new section into the Arbitration Act, which provides that the torts and offences of maintenance and champerty **do not apply to international commercial arbitration** and related proceedings. However, the provision is not yet operational, and a commencement order is awaited.

Interest

Under the Arbitration Act, the parties may agree on the arbitral tribunal's powers regarding the award of interest and unless otherwise agreed, an **arbitral tribunal may award simple or compound interest** from the dates and at the rates it considers fair and reasonable on any outstanding amount of any award and any award of costs.

Recognition and Enforcement of Arbitral Awards

An arbitral award must be recognised as binding in Ireland and must be enforced unless set aside on one of the limited grounds set out in the Model Law. **Any application to set aside must be made within three months of the applicant receiving the award.**

The general rule is that an arbitral award, irrespective of the country in which it was made, must be recognised and enforced in Ireland unless one of the grounds set out in the Model Law exists. In the event of a claim that an award offends against Ireland's public policy, the application must be brought within **56 days** of the applicant becoming aware of the circumstances giving rise to that claim. Any application to court to recognise or enforce an arbitral award is made to the High Court.

Arbitration Institutions and Professional Development in Ireland

- Ireland is home to several respected arbitration institutions and professional organizations. The **Chartered Institute of Arbitrators (Irish Branch)** offers training, accreditation, and resources for arbitrators. The **Irish International Arbitration Centre (IIAC)** provides facilities and support for arbitral proceedings. Additionally, the **Law Society of Ireland** and the **Bar of Ireland** promote continuing education and advocacy in the field.
- Arbitration clauses are now a standard feature of many commercial contracts, and Irish courts consistently uphold the validity of arbitration agreements and arbitral awards. The judiciary's supportive stance has further enhanced arbitration's credibility and popularity as a dispute resolution mechanism.



The Role of the Irish High Court in Arbitration Proceedings:

- Staying Legal Proceedings
- Assistance during the process
- Removing an arbitrator
- Enforcement of an award
- Hearing challenges to an award

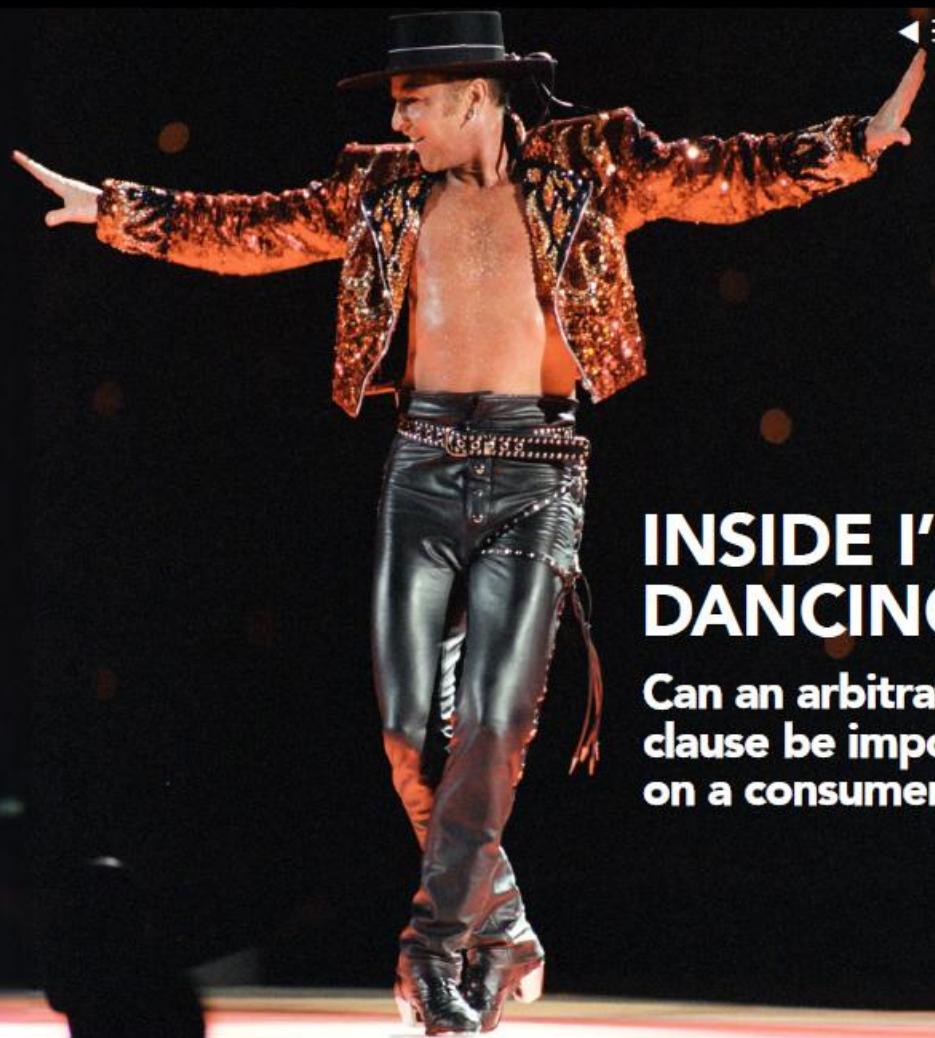
RECENT CASE LAW

*Flatley v Austin Newport Group
Limited & Ors [2024] IEHC 359*

Riverdance

THE NEW GENERATION 30





INSIDE I'M DANCING

Can an arbitration
clause be imposed
on a consumer?



STREETS OF LONDON
Armagh-born Caroline
Carberry is one of Britain's
leading criminal barristers



OVERNIGHT OATHS
Change in requirements
for applications to become
a commissioner for oaths



IN THE JUNGLE
New civil court orders
to protect victims of
stalking behaviours



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BETWEEN THE JIGS AND THE REELS

The first judgment delivered under the new
Consumer Rights Act dealt with the high-profile
case of *Michael Flatley v Austin Group Limited*
and whether an arbitration clause could be
imposed upon a 'consumer'. Graham Kenny does
the soft-shoe shuffle



Article 8(1) of the Model Law (Section 6 of the Arbitration Act 2010).

“A court before which an action is brought in a matter which is the subject of an arbitration agreement, shall, if a party so requests not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.”

Arbitration & Consumers

Section 132(1) of the Consumer Rights Act 2022 defines the meaning of ‘unfair’ as follows:

“a term of a consumer contract shall always be unfair if its object or effect is ... (d) to exclude or hinder a consumer’s right to take legal action or exercise a legal remedy, including by requiring the consumer to take a dispute to an arbitration procedure that is not governed by law, (e) to require a consumer to pay his or her own costs in respect of any arbitration.”

Current Trends and the Future of Arbitration in Ireland

In recent years, Ireland's arbitration landscape has continued to evolve, reflecting global trends and the demands of an increasingly interconnected world. Key developments include:

- **Growth of International Arbitration:** Ireland is emerging as a preferred seat for international arbitration, benefiting from its strong legal framework, English-speaking environment, and favourable business climate.
- **Arbitration in Technology and Intellectual Property:** As Ireland becomes a hub for technology and innovation, arbitration is increasingly used to resolve disputes in these complex fields.

Ireland for Law Initiative

- Ireland is the only English-speaking common-law jurisdiction in the European Union. Ireland boasts an experienced and highly specialised legal profession, consisting of approximately 12,000 solicitors and 2,200 barristers. Irish lawyers have been at the heart of the common law world for centuries and now support Ireland's world-leading enterprise economy.
- With its highly developed legal services sector, it is a jurisdiction of choice for contracts and international dispute resolution.

Ireland for Law Initiative (Continued)

- Ireland is recognised internationally as a leading global centre for international financial services. At the end of 2019, over 430 financial institutions employing over 52,000 people provide financial services to every major economy in the world from Ireland. We are home to 9 of the world's top 10 software companies and 15 of the world's top 25 financial services companies.
- Ireland is a global leader in aviation leasing, a global tech hub, and a world leader in funds, insurance, pharma and life sciences. Ireland is now becoming a primary centre for the provision of legal advice, and transactional services in these sectors

