INTERNATIONAL COMMERCIAL ARBITRATION: THEORY AND PRACTICE

Ania Farren, Partner, Berwin Leighton Paisner
Professor H. Allen Blair
2 credit hours – Mitchell Hamline Program in London at Queen Mary
July 5-6; 10-12; 17-20

Text: JULIAN LEW, LOUKAS MISTELIS AND STEFAN KROLL, COMPARATIVE INTERNATIONAL COMMERCIAL ARBITRATION, 2003

ADDITIONAL MATERIALS ON JUMP DRIVE

Description and Objectives

The aim of this course is two-fold: (1) to provide groundwork theory in relation to arbitration; and (2) to work with you to assist you in developing effective written and oral advocacy skills. The course uses an interactive workshop format and focuses on the practical application of arbitration theory to two specific factual scenarios (case studies). The first factual scenario refers to the Arbitration Rules of the International Chambers of Commerce and the English Arbitration Act 1996, whereas the second refers to the UNCITRAL Arbitration Rules and the Swiss Private International Law Act.

The main focus is of the course is on three topics often arising in practice: (1) how to deal in practice with a pathological arbitration clause and accordingly how to challenge the jurisdiction of an arbitral tribunal on the basis of an invalid or inoperative arbitration agreement; (2) what are the circumstances and conditions upon which counsel may request an arbitral tribunal to grant interim relief; (3) in which cases a non-signatory party to an arbitration clause may be joined to pending arbitration proceedings.

In addition, two further topics are also discussed, albeit to a lesser extent: the laws applicable to the arbitration proceedings and the 1958 New York Convention on Recognition and Enforcement of Foreign Arbitral Awards. Discussion of these topics is important so that you can
develop the necessary theoretical understanding of international arbitration and deal more efficiently with the case studies.

The format of the classes in the first six sessions of the course will be as follows: First, you will be provided with the necessary doctrinal background. Subsequently, attention is shifted from theory to practice, and you will have to work on the two case studies. Here, you will split into counsel for claimant and counsel for respondent and work in team and break-out sessions to build your case, which will be submitted in written briefs.

In the final four sessions of the course, attention is focused on the oral advocacy. Here topics include the art of the opening statement, effective presentation of documentary evidence, the use of experts, cross examination, and overall interaction with the tribunal and opposing counsel. At the end, you will have to take part in two “Mock Arbitrations” where you have to apply the arbitration and advocacy theory of the previous sessions before a panel of experienced arbitrators.

Course Policies

Your grade for this course will be based on your participation throughout the course, your written briefs and your oral presentations at the end of the course during the “mock arbitrations.” This is a simulation course where diligence, effort and professionalism matter a great deal.

Assignments

**Wednesday, July 5 (9:00 a.m. – 10:15 a.m.)**

*Note students also will attend Int’l Investment from 10:30 am – 1:30 pm*

**Class Topics:** Laws Applicable to Arbitration Proceedings Part I and Arbitration Agreements

**Part I:** Legal theory on arbitration clauses: issues on validity, effective and interpretation. A comparative analysis under various national and transnational laws of arbitration.

**Reading Assignment:**


**Thursday, July 6 (9:00 a.m. – 10:15 a.m.)**

*Note students also will attend Int’l Investment from 10:30 am – 1:30 pm*

**Class Topics:** Laws Applicable to Arbitration Proceedings Part II and Arbitration Agreements Part II: Theory applied: discussion on facts and legal issues concerning arbitration
agreements in the context of the two factual scenarios (Case A and B) Students here will be split and work into four groups:

- Group 1 will be working as counsel for claimant for Case A
- Group 2 will be working as counsel for respondent for Case A
- Group 3 will be working as counsel for claimant for Case B
- Group 4 will be working as counsel for respondent for Case B

**Reading Assignment:**
Lew Mistelis and Kröll, Chapters 8 (the whole chapter pp.165-185)

**Monday, July 10 (9:00 a.m. – 11:00 a.m.)**
Note students also will attend Int’l Investment from 11:15 am – 1:30 pm

**Class Topics: Practical Introduction to Writing Submissions and Preparing for Hearings**

**Tuesday, July 11 (9:00 a.m. – 11:00 a.m.)**
Note students also will attend Int’l Investment from 11:15 am – 1:45 pm

**Class Topics: Interim Measures Part I**
Legal theory on interim measures

**Reading Assignment:**
Lew Mistelis and Kröll, Chapter 23 (the whole chapter pp. 585-625)

**Interim Measures Part II:** Theory applied: discussion on facts and legal issues concerning Interim Measures in the context of the two factual scenarios (Case A and B) Students here will be work into groups as split originally

**Reading assignment:**

**Introduction to Advocacy Techniques:** Presentation on Advocacy techniques in International Arbitration: comparative overview of the civil and common law approach. Workshop on advanced advocacy techniques in arbitration.

**Reading and/or Advocacy Assignment: TBA**
Wednesday, July 12 (9:00 am – 11:00 a.m.)

Note students also will attend Int’l Investment from 11:15 am – 12:30 pm and may participate in the optional lunch and tour of the Middle Temple from 1:00 – 3:00

Class Topics: Multiparty Arbitration and Non-signatories Part I: Legal Theory on Multiparty Arbitration and Non-Signatory parties

Reading Assignment:
Lew Mistelis and Kröll, Chapter 16 (the whole chapter pp. 377-409); Stavros Brekoulakis “The Relevance Of The Interests Of the Non-Signatories In Arbitration: Taking A Closer Look At The Elephant In The Room”, 113 Penn. St. L. Rev, (Summer 2009) pp. 1165-1187. [DOC 36 on the USB Stick]

Monday, July 17 (9:00 a.m. – 1:30 p.m.)

Class Topics: Multiparty Arbitration and Non-signatories Part II: Theory applied: discussion on facts and legal issues concerning Non-Signatory Parties in the context of the two factual scenarios (Case A and B). Students will be working in groups as split originally.

1958 New York Convention on Recognition and Enforcement of Foreign Arbitral Awards: overview and discussion of grounds available to a party to resist enforcement of arbitral awards

Reading Assignment:

Advocacy Techniques: Presentation on Advocacy techniques in International Arbitration: comparative overview of the civil and common law approach. Workshop on advanced advocacy techniques in arbitration.

Reading and/or Advocacy Assignment:
TBA

Course assignment:
Students will have to produce written briefs to submit by Monday night, July 17, at 8.00 pm

Tuesday, July 18 (9:00 a.m. – 1:30 p.m., includes two 15 minute breaks)

Presentations – Schedule TBA
Wednesday, July 19 (9:00 a.m. – 1:30 p.m., includes two 15 minute breaks)
Presentations – Schedule TBA

Thursday, July 20 (9:00 a.m. – 1:30 p.m., includes two 15 minute breaks)
Presentations – Schedule TBA