International Commercial Arbitration (LAW 2875)

Hofstra University School of Law
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CLASS MEETINGS

Class meetings are held on Tuesday evenings from 6:10 to 9:00 beginning on August 26, 2014 and ending on November 25, 2014. No class will be held on December 2, 2014, despite the fact that classes are still in session, as Hofstra has declared a Thursday class schedule should be followed on that date. Classes are to be held in Roosevelt 010.

DESCRIPTION

LAW 2875 - International Commercial Arbitration

This course intends to comprehensively examine the law and practice of contemporary international commercial arbitration by thoroughly explicating relevant international conventions, national arbitration statutes, and institutional arbitration rules. It focuses on both international instruments (particularly the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards) and national law provisions (such as the U.S. Federal Arbitration Act (9 U.S.C. § 1 et seq.), and international accepted model laws (such as the UNCITRAL Model Law on International Commercial Arbitration). Coverage includes provisional remedies and the form, content, and enforceability of awards. (No prerequisite)

Credits: 3

*** Please note that this class does not have any component focused on the William C. Vis International Commercial Moot.

¹ Please note that, as an adjunct professor, I do not maintain an office on campus. However, I am happy to make myself available for phone calls, e-mails, or personal meetings at your request. Please do not hesitate to contact me with any questions or concerns.
LEARNING OBJECTIVES

This class will focus on a variety of topics relating to international trade and provide students with a working knowledge of the fundamentals of the field of international commercial arbitration. First, we look to generalities of international law to acquire a feel for its culture. We will examine the theory behind the international private law community, its institutions, and the statutes and agreements which codify portions of law. Second, we will examine the law surrounding the procedural aspects of international commercial arbitration. This area of law will provide students a broad survey of how numerous international treaties, domestic substantive laws, domestic procedural laws, and the private procedural rules of various arbitration institutions impact the legitimacy, recognition, and enforceability of an arbitration panel’s exercise of jurisdiction, its attempt to impose provisional remedies, and its awards. By the conclusion of the course, students should have acquired an understanding of contemporary international arbitration and have a general awareness of current events and developments affecting its use and practice.

TEXTS

Required Course Materials: The only book you are required to purchase is the course casebook: INTERNATIONAL ARBITRATION: CASES & MATERIALS, by Gary Born (Aspen Casebook Series / Wolters Kluwer 2011). You will also need a number of statutory texts and other materials. You can obtain these by purchasing the documentary supplement to the text book; however, most of these materials are available on public websites.

The most important statutory texts we will likely be addressing are the UNCITRAL Model Law (1985, as revised 2006) (the “Model Law”), and the New York Convention on the Enforcement of Foreign Arbitration Awards (1958) (the “New York Convention”). You can obtain copies of each online and should do so before the first class. You may print them or simply download them onto a laptop computer you bring to class, but you should always have them with you in class.

Additional Course Materials: We will also, from time to time, reference other sources of international commercial law (e.g., the UNIDROIT Principles of International Commercial Contracts 2004), terms often used in international trade (e.g., INCOTERMS 2000), and various institutional and other rules often used in arbitration (e.g., the ICC Rules, or the UNCITRAL Rules).

ATTENDANCE

You are, of course, expected to arrive on time and prepared for each class. As you are no doubt aware, the rules of the New York State Court of Appeals and the American Bar Association require law students to be in good and regular attendance in the courses for which they are registered. To comply with these rules, you must attend at least 85% of the regularly-scheduled classes in this course.

I will provide dated sign-in sheets for each regularly-scheduled class. Your signature (or lack thereof) on these sheets shall presumptively determine your attendance at (or absence from) any given class. Each student is individually responsible for signing the attendance sheet. Falsification
of sign-in sheets (by, for example, signing another student’s name) is a violation of the Code of Academic Conduct.

If you exceed the permitted absences by not attending class, or by failing to sign in, you will be administratively withdrawn from the course. Any such withdrawal may have serious ramifications for your financial aid, academic standing, and date of graduation. If you are excessively absent from several classes, you may face additional sanctions, including but not limited to denial of certification of good and regular attendance to the New York State Board of Law Examiners, or other state bar examiners.

The Office of Student Affairs has authority to excuse class absences for religious reasons and in cases of truly compelling hardship. If you wish to claim a particular absence as excused, and thus not counted against your maximum number of allowable absences, you must take that issue up with the Office of Student Affairs, rather than with me or my secretary. I am not permitted to mark an absence as excused unless I have received a note or email from the Office of Student Affairs to that effect.

Lastly, late arrivals are disruptive to the class. For this and other reasons, please make every effort to arrive on time to class.

**GRADING**

Your final grade will be based upon your performance on the final exam (graded anonymously), your written work product throughout the semester, the quality of your performance with assigned class presentations, and the quality of your general contributions to the class through oral class participation. The exam will be closed book. Your grade for the course may be increased for consistently high-quality class participation. Your grade for the course may be decreased for consistently poor class participation. I will call on students at random and will also take volunteers.
SCHEDULE

1. Introduction and Overview
   Introduction - BORN: 1-87

2. International Arbitration Agreements – Presumptive Validity of Arbitration Agreements, Separability Presumption and Choice of Law
   Presumptive Validity - BORN 159-169;
   Separability - BORN 173-194
   Choice of Law - BORN 234-248

3. Arbitration Agreements – Competence-Competence and Formation
   Competence-Competence – BORN 201-218
   Essential Terms – BORN 282-294
   Formation – BORN 301-307

4. Arbitration Agreements – Validity, Non-Arbitrability, and Interpretation
   Formal Validity – BORN 322-331
   Unconscionability – BORN 341-350
   Non-Arbitrability – BORN 421-426; 430-441
   Interpretation - BORN 464-472

5. Arbitral Procedures – Overview and Arbitral Seat
   Seat – BORN 536-556
   Procedural Law – BORN 562-70

6. Arbitral Procedures – Selection and Challenge of Arbitrators
   Selection of Arbitrators – BORN 609-618
   Restrictions on Arbitrators' Identities – BORN 647-49
   Independence and Impartiality – BORN 653-70
   Challenges of Arbitrators – BORN 695-705
7. Arbitral Procedures – Procedural Rules and Judicial Non-Intervention
   
   Procedural Rule BORN 717-724
   Judicial Non-Intervention BORN 735-44

8. Arbitral Procedures – Provisional Measures
   
   Arbitrators Authority to Order Provisional measures – BORN 813-16; 820-23; 826-31; 847-54.

9. Arbitral Procedures – Professional Responsibility and Ethics
   
   Ethics – BORN 965-972; 977-989

10. Awards - Annulment of Arbitral Awards
    
    Limits on Forums for Annulling Awards - BORN 1032-1039
    Presumptive Validity of Awards – BORN 1047-1051
    Grounds for Annulment of Awards – BORN 1069-91

11. Awards – Recognition of Foreign Awards
    
    Presumptive Validity – BORN 1125-1131
    No valid arbitration agreement – BORN 1138-1149
    Denial of opportunity to present case – BORN 1155-1168
    Public Policy – BORN 1188-1193
    Non-arbitrability – BORN 1199-1203

12. Awards – Recognition of Annulled Awards
    
    Consequences of annulling awards 1110-1118

13. To Be Determined

14. To Be Determined