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 25, 2015 and ending on December 1, 2015. The law school has canceled evening classes on September 22, 2015, and rescheduled our class session on Friday, September 25, 2015 from 2:10 - 5:00. Classes are to be held in Koppl 0014.

FORMAL 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 has no component focused on the William C. Vis International Commercial Moot.

OBJECTIVES

This class will focus on a variety of topics relating to international trade. 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, its awards.

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 addressing use 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

As you are aware, the Law School has a very specific attendance policy based on ABA requirements. More importantly this class is based on student participation, interaction, and debate. Attendance and participation will be factors in your grade. Excessive absences or failure to participate will cause a reduction in your final grades.

GRADING

Grades will be based upon assessment of your final exam, 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
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