

**INTERNATIONAL COMMERCIAL ARBITRATION – LAW 2875**  
**SPRING 2018 SYLLABUS**  
16 January – 22 April 2018

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**CLASS MEETINGS**

Class meetings are held on Tuesday evenings from 6:10 to :00 beginning on January 16, 2018 and ending on April 22, 2018. Classes will be held in Roosevelt Hall, Room 010

**FORMAL DESCRIPTION**

**LAW 2875 - International Commercial Arbitration (3 Credits)**

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), 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). \*\*\* Please note that this class has no component focused on the William C. Vis International Commercial Moot.

Credits: 2

**OBJECTIVES**

This course will provide broad coverage of the topic of international arbitration. The course will begin by reviewing the process of creating an international arbitration agreement and potential defences to the establishment of the same. Then the course will focus on the actual international arbitration proceedings. I will endeavour to highlight the specific procedural rules that govern such proceedings and which international arbitrators and practitioners must abide by. Given the abundance of such rules, the course will focusing mainly on the ICC Arbitration Rules (which are available at no cost online) and any arbitral awards in the required text derived from the same. Finally, we will cover the arbitral award and the available bases to attack and enforce the same. While this is not a clinical course, my hope is to give students a flavour of the true issues they will deal with if they find themselves working in an international arbitration while not spending too much time of theory.

## READING MATERIALS

1. G. Born, *International Arbitration: Cases and Materials* (2d ed., Aspen 2015) (“BORN”)

### Reference Materials

1. New York Convention on the Enforcement of Foreign Arbitration Awards (1958) (the “New York Convention”)
2. ICC Rules of Arbitration (2017)
3. IBA Rules on the Taking of Evidence in International Arbitration (2010)
4. IBA Guidelines on Conflicts of Interest in International Arbitration (2014)
5. IBA Guidelines on Party Representation in International Arbitration (2013)

You can access all of the foregoing online at no cost. You may print them or simply download them onto a laptop computer you bring to class, but please endeavor to have access to them in class.

## 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 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. Class presentations will be *informal* and will require you to lead the discussion on a particular case, rule, or authority.

Very short written assignments will be provided at the end of some but not all classes. Written assignments must be submitted to me by email by no later than the close of business on the following Monday. Please submit your work product as in an MS Word attachment, carbon copy my assistant Karen Day ([kday@goldbergsegalla.com](mailto:kday@goldbergsegalla.com)) and indicate clearly in the subject line the Assignment Number and your last name (e.g., “Intl Arb – Assignment #1, Russo”).

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

<b>PART I: INTERNATIONAL ARBITRATION AGREEMENTS</b>	
<p><b><u>Session 1:</u></b> January 16 6:10 - 8PM</p>	<p><b>Chapter 1 - Introduction to International Arbitration</b> 1. BORN 27-87</p> <p style="text-align: center;"><i>skim 1-27</i></p>
<p><b><u>Session 2:</u></b> January 23 6:10 - 8PM</p>	<p><b>Chapter 2: Framework for International Arbitration Agreements:</b></p> <ol style="list-style-type: none"> <li>1. Presumptive Validity - BORN 177-183</li> <li>2. Separability - BORN 190-211</li> <li>3. Choice of Law - BORN 287-315</li> </ol> <p style="text-align: center;"><i>Skim UNCITRAL, ICC, SIAC, HKIAC, CIETAC, BAC, ICSID Model Arbitration Clauses</i></p>
<p><b><u>Sessions 3:</u></b> January 30 6:10 - 8PM</p>	<p><b>Chapter 3: International Arbitration Agreements:</b></p> <ol style="list-style-type: none"> <li>1. Competence-Competence – BORN 218-221, 233-247</li> </ol> <p><b>Chapter 4: Formation and Validity</b></p> <ol style="list-style-type: none"> <li>2. Essential Terms – BORN 335-348</li> <li>3. Formation – BORN 355-360</li> </ol>
<p><b><u>Sessions 4</u></b> February 6 6:10 - 8PM</p>	<p><b>Chapter 4 (cont'd): Formation and Validity</b></p> <ol style="list-style-type: none"> <li>1. Formal Validity – BORN 322-331</li> <li>2. Unconscionability – BORN 341-350</li> <li>3. Non-Arbitrability – BORN 475-478</li> </ol> <p><i>Skim</i></p> <p style="padding-left: 20px;"><i>Fraud – BORN 412 – 415</i></p> <p style="padding-left: 20px;"><i>Impossibility – BORN 421-425</i></p> <p style="padding-left: 20px;"><i>Illegality – BORN 440 - ICC Awards</i></p> <p style="padding-left: 20px;"><i>Capacity – BORN 461- 465</i></p> <p><b>Chapter 5: Interpretation</b></p> <ol style="list-style-type: none"> <li>4. Scope - BORN 517-526</li> <li>5. Interpretation – BORN 541 - 543</li> </ol>
<b>PART II: INTERNATIONAL ARBITRATION PROCEEDINGS</b>	
<p><b><u>Session 5</u></b> February 13 6:10 - 8PM</p>	<p><b>Chapter 7: Selection of Arbitral Seat</b></p> <ol style="list-style-type: none"> <li>1. Seat – BORN 599-625</li> <li>2. Procedural Law – BORN 625-633</li> <li>3. Selection by parties – BORN 640-652</li> <li>4. Selection by National Courts – 658-660</li> </ol>

	<p><b>Chapter 12: Choice of Substantive Law</b></p> <p>5. Absence of Agreement of Applicable Law – BORN 962-969</p> <p>6. Parties Choice of Law Agreement – BORN 983 – 1013 (but only read the Awards in ICC Cases, ignoring everything else)</p>
<p><b>Session 6</b></p> <p>February 20 6:10 - 8PM</p>	<p><b>Chapter 8: Selection, Challenge and Replacement of Arbitrators in International Arbitration</b></p> <p>1. Selection of arbitrators – BORN 671-683, IBA Rules BORN 690</p> <p>2. Restrictions on Arbitrators’ Identities – BORN 709-712</p> <p>3. Independence and Impartiality – BORN 716-732 (do not read <i>Sphere Drake</i>)</p> <p>4. Challenges of Arbitrators – BORN 768-767</p> <p><i>Skim IBA Guidelines on Conflicts of Interest in International Arbitration (2014), IBA Guidelines on Party Representation in International Arbitration (2013)</i></p>
<p><b>Session 7</b></p> <p>March 6 6:10 - 8PM</p>	<p><b>Chapter 9: Procedural Issues</b></p> <p>1. Procedural Rules BORN 777-785 (do not read <i>Corporacion</i>)</p> <p>2. Judicial Review - BORN 797-800</p> <p>3. Arbitral Authority – BORN 810-815</p> <p>4. Disclosure – BORN 830-831</p> <p>5. ICC Rules relating to cost allocation. <i>Skim IBA Rules on the Taking of Evidence in International Arbitration (2010)</i></p>
<p><b>Session 8</b></p> <p>March 13 6:10 - 8PM</p>	<p><b>Chapter 9 (cont’d): Procedural Issues</b></p> <p>6. Court Assisted Discovery – BORN 839-846</p> <p>7. Confidentiality – BORN 851-861</p> <p><i>Skim IBA Rules on the Taking of Evidence in International Arbitration (2010)</i></p> <p><b>Chapter 10: Provisional Measures</b></p> <p>1. Arbitrators Authority to Order Provisional measures – BORN 877-888, 896- 900, 904-910, 925-30</p>
<p><b>Session 9</b></p> <p>March 20 6:10 - 8PM</p>	<p><b>Chapter 13: Legal Representation and Professional Responsibility</b></p> <p>1. BORN 1023-1046</p> <p>2. IBA Guidelines on Conflicts of Interest in International Arbitration (2014),</p> <p>3. IBA Guidelines on Party Representation in International Arbitration (2013)</p>

**PART III: INTERNATIONAL ARBITRAL AWARDS**

<b><u>Session 10</u></b>  April 3 6:10 - 8PM	<b>Chapter 14: Legal Framework</b> 1. Definition – BORN 1059 – 1062 2. Reciprocity – 1093-1099 3. Read New York Convention Articles V and VI, UNCITRAL Model Law Article 34
<b><u>Session 11</u></b>  April 10 6:10 - 8PM	<b>Chapter 15: Annulment and Revision</b> 1. Limits on Forums for Annulling Awards - BORN 1099-1106 2. Presumptive validity of awards – BORN 1113-1116 3. Grounds for Annulment of Awards – BORN 1134-1148
<b><u>Session 12</u></b>  April 17 6:10 - 8PM	<b>Chapter 16: Recognition &amp; Enforcement</b> 1. Presumptive Validity – BORN 1189-1194 2. No valid arbitration agreement – BORN 1199-1211 3. Denial of opportunity to present case – BORN 1218-1231
<b><u>Session 13</u></b>  April 24 6:10 - 8PM	<b>Chapter 16 (cont'd): Recognition &amp; Enforcement</b> 4. Bias – Lack of Independence – BORN 1242-1246 5. Public Policy – BORN 1250-1254 6. Non-arbitrability – BORN 1260-1264 7. <b>Chapter 15:</b> Consequences of Annulment – BORN 1174-1182