

**AMERICAN UNIVERSITY
WASHINGTON COLLEGE OF LAW**

INTERNATIONAL COMMERCIAL ARBITRATION •LAW-789-001•

FACULTY EXPERTS:

**Horacio A. Grigera Naón, Director, Center on International Commercial Arbitration, and
Claudia Frutos-Peterson, Partner, Curtis, Mallet-Prevost, Colt & Mosle LLP.**

International Commercial Arbitration

COURSE INFORMATION

INSTRUCTORS

Dr. Horacio Grigera Naón

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CREDITS

3-credit course

COURSE DESCRIPTION

This three credit course will concentrate on the theoretical and practical knowledge needed to handle arbitral cases either as counsel or arbitrator, both from the substantive and procedural law standpoint. The course will explore different issues arising in the conduct of international arbitrations and the making and enforcement of arbitral awards by focusing on arbitration awards, court decisions in the area of arbitration, the interaction between national courts and international arbitral tribunals, national arbitration statutes, international arbitration treaties and the arbitral rules of leading international arbitration institutions.

PREREQUISITES

There are no prerequisites for this course.

COURSE REQUIREMENTS

Students will be required to:

- Make an individual or joint class presentation
- Read class materials
- Participate fully in class discussions

TEXTBOOK

A four volume course packet is available at the 4th floor copy center. The course packet contains all required readings. No additional textbook is required.

EVALUATION

A final examination consisting of a 48-hour take home exam.

GRADING

The final grade in this course will be based on the following:

- Participation in class discussion based upon careful preparation of assignments (30%)
- Final examination (70%)

COURSE STRUCTURE

For each class, several of the readings will be required and others will be assigned as supplementary reading.

The course will consist of an initial general lecture followed by general class discussion. There will also be a number of short lectures and discussions on relevant issues throughout the course. Participants will be expected to do some preparatory reading from the recommended readings.

COURSE OUTLINE

Classes take place on Monday mornings for 2 hours and 40 minutes per week for 14 weeks.

Students should expect additional reading assignments. Students must have the following materials, located in Volume IV of the course packet, available for class at all times:

- 1. ICC Arbitration Rules (in force as of January 1, 2012) (the “ICC Rules”).**
- 2. Provisions on arbitration at the French Code of Civil Procedure (Articles 1442-1527) Translated by Emmanuel Gaillard, Nanou Leleu-Knobil and Daniela Pellarini of Shearman & Sterling LLP. (2011) (the “French Statute”).**
- 3. Swiss International Arbitration Law (Articles 176-194 of the Swiss Private International Law Statute) (the “Swiss Statute”).**
- 4. UNCITRAL Model Law on International Commercial Arbitration (the “Model Law”).**
- 5. 1958 United Nations New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “NY Convention”).**

ASSIGNMENTS

Class 1

What Is Arbitration?: Other Dispute Resolution Options; History and Evolution of International Commercial Arbitration; Meaning of “Commercial”; Meaning of “International”

Required Readings

1. Lew, Mistelis Kröll, Chapter 1 (¶¶ 1-1 – 1-54), Chapter 2 (¶¶ 2-4 – 2-49), Chapter 4 (¶¶ 4-1 – 4-59).
2. Article 1 Model Law
3. Article 1504 French Statute
4. All Union Export-Import Assoc. Sojuznefteexport v. JOC Oil Ltd.
5. Prima Paint Corp. v. Flood & Conklin Manufacturing Co.

Class 2

The Arbitration Agreement I: Autonomy; Separability

Required Readings

1. Bermann, George A., The “Gateway” Problem in International Commercial Arbitration, *The Yale Journal of International Law*, Vol. 37, 2012.
2. Article 6 ICC Rules
3. Article 16 Model Law
4. Articles 1448, 1465 French Statute
5. Articles 178, 186 Swiss Statute (after the 1 March 2007 reform introducing Article 186 1 bis)

Relevant Cases

Volume II:

1. First Options of Chicago, Inc. v. Kaplan
2. Buckeye Check Cashing, Inc., v. John Cardegna *et al*
3. Rent-a-Center, West, Inc v. Jackson
4. Stolt-Nielsen SA v. Animalfeeds International Corp.
5. Cour de Cassation (1re Ch. civ.) 20 décembre 1993. Municipalité de Khoms El Mergeb c/ société Dalico
6. Granite Rock Co. v. International Broth of Teamsters

Class 3

The Arbitration Agreement II: Formation; Validity; Consent; Form and Proof; Choice of Law Related Issues

Required Readings

1. Article II NY Convention
2. Article 7, Option I and II Model Law
3. Article 178 Swiss Statute

Relevant Cases

Volume II:

1. Ledee v. Ceramiche Ragno
2. Rhone Mediterranee v. Archille Lauro
3. Interim Award ICC Case No.6149 of 1990
4. Republic of the Philippines v. Westinghouse
5. China Minmetals Materials v. Chi Mei Corp.
6. Brower v. Gateway
7. Centroamericanos S.A. v. Refinadora Costarricense de Petroleos S.A.

Class 4

The Arbitration Agreement II: Formation; Validity; Consent; Form and Proof; Choice of Law Related Issues (Continuation)

Relevant Cases

Volume II:

1. B.V. Burean Wijsmuller v. USA
2. Wilko v. Swan
3. Bremen v. Zapata
4. Scherk v. Alberto Culver Co.
5. Mitsubishi v. Soler
6. ICC Interim Arbitral Award 4695 of November 1984.

Class 5

The Arbitration Agreement III: Interpretation; Arbitrability and Effects; Drafting the Arbitration Clause

Required Readings

1. Stephen Bond: How to Draft an Arbitration Clause, *Journal of International Arbitration*, Vol. 6, No. 2 (1989).
2. Anne Marie Whitesell & Eduardo Silva Romero, *Multiparty and Multicontract: Recent ICC Experience in Complex Arbitrations*, Special Supplement of the ICC's *International Court of Arbitration Bulletin* 7-18 (2003).
3. Simon Greenberg, José Ricardo Feris, Christian Albanesi, *Consolidation, Joinder, Cross-Claims, Multiparty and Multicontract Arbitrations: Recent ICC Experience*, (June 2008) (Unpublished) (On file with the Conference paper Simon Greenberg and Loretta Malintoppi "The practice of the ICC International Court of Arbitration Concerning Multi-party Contracts and Scrutiny of Awards" prepared and distributed to participants at the ICC Young Arbitrators' Forum in Barcelona).
4. Articles 6, 7-9 ICC Rules
5. Article 178 Swiss Statute
6. Article V NY Convention

Relevant Cases

Volume II:

1. *Apollo v. Berg*
2. *Mitsubishi v. Soler* (*see* Class 4)
3. *Mediterranean Enterprises v. Ssangyong*
4. *Hoogovens v. MV Sea Cattleya*
5. Final Award in ICC Case No. 5294 of 22 February 1988
6. ICC Interim Arbitral Award No. 4131 of 23 September 1982
7. *Thomson-CSF, S.A., v. American Arbitration Association*
8. *Contec Corporation v. Remote Solutions Co. Ltd*

Class 6

The Arbitration Agreement III: Interpretation; Arbitrability and Effects; Drafting the Arbitration Clause (Continuation)

Relevant Cases

Volume II:

1. CA Paris, May 5, 1989, *B.K.M.I. Industrieanlagen GmbH v. Dutco Construction Co. Ltd.*
2. Cass. 1e civ., Jan 7, 1992, *B.K.M.I. v. Dutco*
3. *Karaha Bodas v. Perusahaan* (2003)
4. *Karaha Bodas v. Perusahaan* (2004)
5. *Bridas Sapic v. Govt. of Turkmenistan* (2003)

6. Bidas Sapic v. Govt. of Turkmenistan (2006)

Class 7

The Arbitral Tribunal

Required Readings

1. Articles 11-15 ICC Rules
2. Articles 10-15 Model Law
3. Articles 179-180 Swiss Statute

Relevant Cases

Volume III:

1. Astra Footwear Industry v. Harwyn International
2. AAOT Foreign Economic Association (Techno) v. International Development and Trade Services
3. Veritas Shipping Ltd. v. Anglo-Canadian Cement, Ltd.
4. Marc Rich & Co. v. Transmarine Seaways Corp. of Monrovia
5. Suez and others v. Argentine Republic
6. Commonwealth Coatings Corp. v. Continental Casualty Co.
7. Hrvatska Elektroprivreda, d.d. v. The Republic of Slovenia (ICSID Case No. Arb/05/24)
8. The Rompetrol Group N.V. v. Romania (ICSID Case No. ARB/06/3)

Class 8

The Arbitral Proceedings I: Applicable Law; Commencement; Organization

Required Readings

1. Fouchard Gaillard Goldman on International Commercial Arbitration (Gaillard/Savage Eds. 1999), pages 662-684.
2. Gary Born, International Commercial Arbitration, Second Ed. (2001), pages 449-461.
3. Articles 19, 21 ICC Rules
4. Article V NY Convention

Relevant Cases

Volume III:

1. Sapphire v. National Iranian Oil Company
2. Interim ICC Award 5029
3. Union of India v. McDonnell Douglas Corp.
4. Final ICC Award 7626 of 1995

Class 9

The Arbitral Proceedings II: Comparative Review of Leading Institutional and *Ad-Hoc* International Arbitration Rules; Special Focus on Pleadings and Evidence

Required Readings

1. Louis B. Kimmelman and Dana MacGrath: “Document Production in the United States,” pages 43-56.
2. Virginia Hamilton: “Document Production in ICC Arbitration,” pages 63-81.
3. 2010 International Bar Association Rules on the Taking of Evidence in International Arbitration
4. Articles 25-26 ICC Rules
5. Article 7, US Federal Arbitration Act
6. Article 184 Swiss Statute
7. Rules of Arbitration of the International Chamber of Commerce
8. ICDR International Arbitration Rules
9. UNCITRAL Arbitration Rules

Relevant Cases

Volume III:

1. Glamis Gold Ltd., v. The United States of America (2 procedural orders)
2. Biwater Gauff (Tanzania) Ltd v. United Republic of Tanzania

Class 10

The Arbitral Proceedings III: Provisional and Conservatory Measures

Required Readings

1. Eric Schwartz: “The Practices and Experiences of the ICC Court-Conservatory and Provisional Measures in International Arbitration” (ICC Publishing 1993), page 45 *et. seq.*
2. Articles 28-29 ICC Rules
3. Article 183 Swiss Statute

Relevant Cases

Volume III:

1. Carolina Power & Light Company v. Uranex
2. Rogers Burgun Shahine & Deschler, Inc. v. Dongsan Construction Co.
3. Channel Tunnel Group v. Balvour
4. Borden, Inc. v. Mieji Milk
5. Sperry International Trade v. Israel

Class 11

Law Applicable to the Merits

Required Readings

1. H. A. Grigera Naón, “Choice-of-law Problems in International Commercial Arbitration” 289 *Recueil des Cours* (2001), pages 23-38.
2. Fouchard Gaillard Goldman on International Commercial Arbitration (Gaillard-Savage Eds. 1999), pages 787-882.
3. Article 21 ICC Rules
4. Article 28 Model Law
5. Article 187 Swiss Statute

Relevant Cases

Volume III:

1. ICC Arbitration No. 6320 (1992), Final Award

Class 12

The Arbitral Award I: Court Review and Enforcement

Required Readings

1. Articles 30-35 ICC Rules
2. Articles 9-11 U.S. Federal Arbitration Act
3. Articles 29-34 Model Law
4. Articles 189-190 Swiss Statute
5. Articles 1518-1520, 1522, 1524, 1526 French Statute

Relevant Cases

Volume III:

1. Bergesen v. Muller
2. Yusuf v. Toys R US
3. BG Group PLC v. Republic of Argentina v. (Decision of the US Supreme Court)
4. Schneider AG v. Kingdom of Thailand (Appeals decision)
5. X and Y v. V and W, 4A_348/2009, Judgment of January 6, 2010
6. Fertilizer Corp. v. IDI Management
7. International Standard v. Bidas
8. National Thermal Power v. The Singer Company

Class 13

The Arbitral Award II: Court Review and Enforcement

Required Readings

1. Article V NY Convention
2. Articles 34-36 Model Law
3. Articles 1514-1517 French Statute

Relevant Cases

Volume III:

1. Parsons v. Société Générale
2. I/S Stavborg v. National Metal
3. Granite Worsted Mills, Inc. v. Aronson
4. Laminoirs v. Trefileries
5. Hall Street Associates, L.L.C. v. Mattel Inc., 128 S.Ct. 1396 (2008)

Class 14

The Arbitral Award III: Court Review and Enforcement (Continuation)

Relevant Cases

Volume III:

1. Parsons v. Société Générale (*see* Class 13)
2. Chromalloy Gas v. Arab Republic of Egypt
3. Baker Marine v. Chevron
4. TermoRio v. Electranta
5. Cass. 1e civ., June 29, 2007, Putrabali Adyamulia v. Rena Holding
6. Dallah Real Estate and Tourism Holding Company v. The Ministry of Religious Affairs, Government of Pakistan
7. Corporación Mexicana de Mantenimiento Integral v. Pemex-Exploración y Producción (PEP)

GENERAL BIBLIOGRAPHY

Bermann, George A. The “Gateway” Problem in International Commercial Arbitration, *The Yale Journal of International Law*, Vol. 37, 2012.

Bond, Stephen, *How to draft an arbitration clause*, ICC International Court of Arbitration Bulletin Vol. 1, No. 2 (1990).

Born, Gary, *International Commercial Arbitration*, 2nd. Ed. (2001).

Derains, Yves and Schwartz, Eric, *A Guide to the ICC Rules of Arbitration*, 2nd. Ed. (2005).

Fouchard, Gaillard, Goldman on *International Commercial Arbitration* (Gaillard/Savage Eds. 1999).

Greenberg, Feris and Albanesi, *Consolidation, Joinder, Cross-Claims, Multiparty and Multicontract Arbitrations: Recent ICC Experience*, (June 2008) (Unpublished) (On file with the Conference paper *Simon Greenberg and Loretta Malintoppi “The practice of the ICC International Court of Arbitration Concerning Multi-party Contracts and Scrutiny of Awards”* prepared and distributed to participants at the ICC Young Arbitrators’ Forum in Barcelona).

Grigera Naón, H. A., *Choice-of-law Problems in International Commercial Arbitration*, 289 *Recueil des Cours* (2001).

Hamilton, Virginia, “Document Production in ICC Arbitration,” pages 63-81. *Drafting Awards in ICC Arbitrations*, ICC International Court of Arbitration Bulletin, Vol.16, No. 2 (2005).

Kimmelman, Louis B. and MacGrath, Dana, “Document Production in the United States,” pages 43-56. *Drafting Awards in ICC Arbitrations*, ICC International Court of Arbitration Bulletin, Vol.16, No. 2 (2005).

Lew, Julian D.M., Mistelis, Loukas A. and Kröll, Stefan M., *Comparative International Commercial Arbitration*, Kluwer Law International (2003).

Schwartz, Eric, *The Practices and Experiences of the ICC Court-Conservatory and Provisional Measures in International Arbitration*, ICC Publishing (1993).

van den Berg, Albert J., *The New York Arbitration Convention of 1958* (1981).

Whitesell, Anne-Marie and Silva Romero, Eduardo, *Multi-Party and Multi-Contract: Recent ICC Experience in Complex Arbitrations*, Special Supplement of the ICC’s International Court of Arbitration Bulletin 7-18 (2003).