

INTERNATIONAL COMMERCIAL ARBITRATION

Professor Andrew Guzman
Fall 2013

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NA 443

Office Hours: Tues. 2:30-4:30pm

guzman@law.berkeley.edu

Course Assistant

Don Johnson

dejohnson@law.berkeley.edu

Course Description

In today's global economy, parties to cross-border commercial transactions increasingly choose to resolve their disputes through arbitration. This course introduces students to the law and practice of international commercial arbitration. Among other things, the course will consider the formation and enforcement of arbitration agreements, the conduct of arbitral proceedings, and the recognition and enforcement of arbitral awards. It will also examine the international conventions, national laws, and institutional arbitration rules that govern the arbitral process and the enforcement of arbitration agreements and awards. Students will become acquainted with some of the strategic problems that arise in the course of international arbitration proceedings and will gain an understanding of both the benefits and drawbacks of arbitration as a mechanism for the settlement of transnational commercial disputes.

Grading and Attendance:

Ninety percent (90%) of final grades will be based on an in class final exam. The remaining ten percent (10%) will be based on class attendance and participation. Class attendance and participation in discussion are required. The instructors reserve the right to deny course credit or drop from the class any student who fails to attend regularly.

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Required Books:

- Born, International Arbitration: Cases and Materials (2011)

- Born, International Arbitration: Documentary Supplement – *All of the material in this volume is available for free online. You are not required to purchase a book, but you are responsible for finding the material and printing it out as necessary to have available when it is necessary.*

Readings:

Students should read the assigned readings along with any material from the Documentary Supplement indicated in those readings. Readings indicated by “B:” refer to pages from the Born casebook.

Introduction and Overview

1. B: 27-47, 75-80, 87-96, 104-112
2. Documentary Supplement: 1-15 (New York Convention – skim), 93-112 (UNCITRAL Model Law – skim)
3. Optional:
 - a. B: 48-62 (national arbitration legislation), 64-73 (institutional arbitration rules)
 - b. Documentary Supplement: 167-186 (2010 UNCITRAL Rules)

International Arbitration Agreements – Validity of Arbitration Agreements, Separability

1. B: 159-169 (presumptive validity)
2. B: 173-194 (separability)
3. Optional: B: 169-173, 194-201, 248-260

International Arbitration Agreements – Choice of Law

1. B: 234-248 (choice of law)
2. Optional: B: 248-260

International Arbitration Agreements – Competence-Competence and Formation

1. B: 201-218 (competence-competence)
2. B: 282-294 (essential terms)
3. B: 301-307 (Formation)
4. Optional: B: 218-234, 294-301, 307-322

International Arbitration Agreements – Validity and Non-Arbitrability

1. B: 322-332 (formal validity)
2. B: 341-350 (unconscionability)
3. B: 368-381 (impossibility and frustration)
4. B: 421-426, 430-441 (non-arbitrability)
5. Optional: B: 331-340, 351-359, 359-368, 381-383, 472-480

International Arbitration Agreements – Interpretation

1. B: 464-472 (interpretation)

In-class exercise #1: drafting an arbitration clause

1. IBA Guidelines for Drafting International Arbitration Clauses (2010)
2. Strategic Drafting of an International Arbitration Provision
3. Client assignments and negotiating instructions (to be distributed in class)

International Arbitration Agreements – Non-Signatory Issues

1. B: 495-514
2. Optional: B: 514-526, 526-533

International Arbitral Procedures – Overview and Arbitral Seat

1. B: 536-556 (arbitral seat)
2. B: 562-570 (arbitral procedural law)
3. B: 577-589 (party selection of seat)
4. Optional: B: 556-562, 570-577, 589-595

International Arbitral Procedures – Selection & Challenge of Arbitrators

1. B: 609-618 (selection)
2. B: 647-649 (restrictions on arbitrators' identities)
3. B: 653-670 (independence and impartiality)
4. B: 695-705 (challenges)
5. Optional: B: 595-608, 619-624, 649-653, 670-695, 705-713

International Arbitral Procedures – Procedural Rules & Judicial Non-Intervention

1. B: 717-724 (procedural rules)
2. B: 735-744 (judicial non-intervention)
3. Optional: 724-735, 744-749, 768-778

International Arbitral Procedures – Procedures & Disclosure

1. B: 749-754 (procedural authority)
2. B: 768-771 (evidence-taking)
3. Optional: B: 754-768, 771-778, 787-791

International Arbitral Procedures – Provisional Measures

1. B: 813-816 (provisional measures ordered by tribunal)
2. B: 820-823 (institutional rules)
3. B: 826-831 (arbitrator authority)
4. B: 847-854 (provisional measures ordered by national court)
5. Optional: B: 816-820, 823-826, 831-839, 854-869

International Arbitral Procedures – Intervention, Consolidation, Joinder

1. B: 877-886
2. B: 893-896
3. Optional: B: 886-892

International Arbitral Procedures

1. B: 901-910 (choice of substantive law in absence of choice of law agreement)
2. B: 924-929 (choice of substantive law under choice of law agreement)
3. B: 934-941 (public policy)
4. Optional: B: 910-924, 929-934, 941-946, 947-963

International Arbitral Procedures – Professional Responsibility and Ethics

1. B: 965-972
2. B: 977-989
3. Optional: B: 972-977, 989-997

International Arbitral Procedures – Confidentiality & Transparency

1. B: 791-808
2. Optional: B: 808-812

International Arbitral Awards – Annulment

1. B: 1032-1039 (limits on forums annulling awards)
2. B: 1047-1051 (presumptive validity)
3. B: 1069-1091 (grounds for annulment)
4. Optional: B: 1039-1046, 1051-1060, 1091-1109

International Arbitral Awards – Recognition of Foreign Awards

1. B: 1125-1128
2. B: 1138-1149 (no valid arbitration agreement, excess of authority)
3. B: 1155-1168 (denial of opport. to present case, procedural irregularities)
4. Optional: B: 1131-1138, 1149-1155, 1168-1179

International Arbitral Awards – Recognition of Foreign Awards (con't)

1. 1188-1193 (public policy)
2. 1199-1203 (non-arbitrability)
3. Optional: B: 1193-1206

International Arbitral Awards – Recognition of Annulled Awards

1. B: 1110-1118 (consequences of annulment)
2. Optional: B: 1118-1124

In-class exercise #2: mock arbitration

1. Teresa Giovannini, *The Continental European Perspective and Practice of Advocacy*, in Edward G. Kehoe & R. Doak Bishop, eds, *The Art of Advocacy in International Arbitration* (Juris Pub. 2010), ch. 21
2. Doak Bishop & James Carter, *The United States Perspective and Practice of Advocacy*, in Edward G. Kehoe & R. Doak Bishop, eds, *The Art of Advocacy in International Arbitration* (Juris Pub. 2010), ch. 22
3. Client assignments and argument instructions (to be distributed in class)