University of Cincinnati
College of Law

INTERNATIONAL COMMERCIAL
ARBITRATION

Introduction to the Practice and Procedure
For Resolution of Cross-Border Business Disputes

Adjunct Professor
John B. Pinney
Graydon Head
1900 Fifth Third Center
511 Walnut Street
Cincinnati, OH 45202
513-629-2730
jpinney@graydon.com

Fall Term – 2015
Course Description:

The course is designed to introduce the student to international commercial arbitration. The course will focus on preparing the student both for advising companies on negotiating effective dispute resolution provisions in cross-border commercial contracts and representing clients having a dispute before an international commercial arbitration tribunal.

The course will begin by emphasizing the importance of a well-crafted dispute resolution provision in cross-border agreements and the inadequacies of leaving dispute resolution to national courts. The course will then address the differences in customs and legal traditions in Europe, Asia and Latin America and the influence of such differences on the manner in which disputes are resolved and arbitrations are conducted.

The student will be introduced to the principal international arbitral institutions administering international arbitrations and their procedural rules, and also to the UNCITRAL Arbitration Rules (for ad hoc non-administered arbitrations) and investor/state arbitrations under bilateral investment treaties.

The remainder of the course will demonstrate, using a hypothetical international business dispute based on the Convention for Contracts for International Sale of Goods, the procedures step-by-step typically used in an international commercial arbitration, including: commencement and issuance of the statements of claims and defense, the selection of arbitrators, the disclosure process, the pleadings and submissions of pre-hearing briefs and memorials, the presentation of written and oral evidence at the hearing, the issuance of the award, the role of courts in enforcing arbitral agreements and ultimately enforcement or vacatur of the award under the New York Convention and a variety of specific arbitration laws, including those in the United States, England, France, Hong Kong and China.

Required Text:

Required Reading:
The Problem for the 2015 William C. Vis International Commercial Arbitration Moot for the 22nd Annual Competition (Vienna) and 12th Annual Competition (Hong Kong) (https://vismoot.pace.edu/media/site/previous-moots/22nd-vis-moot/10NovCorrected22VisMootProblem.pdf).

Grading:
Student grades will be based on class preparation and participation, a mid-term paper (either a claimant’s or respondent’s legal memorandum) based on the 2015 Vis Moot problem (see above), and a final exam. If we obtain funding, for those students chosen for the possible 2016 Vis Moot team, the final exam will be waived in order to allow the team members to complete the initial “Claimant’s Memorandum” due around December 10, 2015.
INTRODUCTION TO
INTERNATIONAL COMMERCIAL ARBITRATION
COURSE SYLLABUS
AND TENTATIVE ASSIGNMENT SCHEDULE (1st Four Classes)

First Class Meeting on August 25, 2015
Discussion Topics
Cross-border business disputes; International arbitration versus national courts; New York Convention; Comparing common law/adversarial and civil law/inquisitional legal systems; Differences from domestic arbitrations; International arbitral institutions.
Assigned Reading
Chapter 1 – Introduction to International Commercial Arbitration (pp.1 – 17)

Second Class Meeting on September 1, 2015
Discussion Topics
Arbitration agreements; Writing requirement; Separability of arbitration clause from remainder of contract; UNCITRAL Model Law; Effect of New York Convention; Binding non-signatories – agency, equitable estoppel, implied consent, group of companies and alter ego; Objections to jurisdiction.
Assigned Reading
Chapter 2 – The Arbitration Agreement (pp. 18 – 42)

Third Class Meeting on September 8, 2015
Discussion Topics
The “pathological” arbitration clause; Effect of defective/ambiguous arbitration clause; Benefits of the “simple” standard arbitration clause; Negotiations regarding dispute resolution; Choosing arbitrators; Arbitrator technical expertise; Costs, legal fees and award of costs; Choosing arbitration seat, language and procedural law; Multi-step provisions; Other issues – confidentiality, multi-party arbitrations, evidence rules, state immunity, expedited arbitration, electronic discovery, appeal procedures and judicial review.
Assigned Reading and Pre-Class Preparation
Chapter 3 – Drafting the Arbitration Agreement (pp. 43 – 58)

Fourth Class Meeting on September 15, 2015
Discussion Topics
What is the role of law?; Substantive law and procedural law – law of the contract vs. law of the arbitration; Territoriality vs. delocalization; Specialized arbitrations – sports, online and internet domain names; Lex Mercatoria; Parties’ choice of law; Lex Arbitri; Ex Aequo et Bono; Amiable Compositeur; Effect of parties’ failure to choose seat or governing law; Arbitrator’s duties regarding law.
Assigned Reading
Chapter 4 – Applicable Laws and Rules (pp. 59 – 86)