

Advanced Level Training Programme

Learning Objectives: Participants in this course will:

- Have advanced knowledge of international arbitration;
- Understand presentation and evaluation of evidence in international arbitration;
- Be able to deal competently with arbitral proceedings and resulting awards;
- Understand allocation of arbitrator's fees and expenses.

Hypothetical Case:



Copy and paste the link below on your browser to access the hypo and supporting exhibits.















<https://vismoot.pace.edu/media/site/previous-moots/22nd-vis-moot/10NovCorrected22VisMootProblem.pdf>

Recommended Texts:

- Gary Born, International Commercial Arbitration, Wolters Kluwer, (2014), Vols. II & III
- R. Doak Bishop and Edward G. Kehoe, The Art of Advocacy in International Arbitration, Second Edition, Juris (2010)
- Alan Redfern and Martin Hunter, Law and Practice of International Commercial Arbitration, Third Edition, Sweet & Maxwell (2009)
- Fouchard, Gaillard, Goldman, On International Commercial Arbitration, Kluwer, (1999)
- Christoph H. Schreuer, The ICSID Convention. A Commentary, Second Edition, Cambridge University Press (2009)

Lesson/Date	SUBJECT	READING ASSIGNMENT AND SUB-TOPICS
October 29: Lesson 1	Commencing Arbitration and Preliminary Steps in International Arbitration	<p>Topics:</p> <ul style="list-style-type: none"> ✚ Overview of International Arbitration: <ul style="list-style-type: none"> ○ The Life-cycle of an Arbitration Case ✚ Request for arbitration, Answer (and) Counterclaims, Reply to Counterclaims ✚ Constitution of Arbitral Tribunal ✚ First Procedural Conference and Procedural Directions ✚ Jurisdictional Objections ✚ Advance on Costs ✚ Emergency Arbitration and Interim Measures <p><u>Small Group Practical Exercise: Application for Joinder/Application for Emergency Measures Pursuant Art. 29 ICC Arbitration Rules</u></p> <p>READING:</p> <ul style="list-style-type: none"> • Gary Born, International Commercial Arbitration, Wolters Kluwer, (2014), Vol. II, Chapter 15 §15.08, pgs 2213 - 2248; Chapter 17 Volume II • Emmanuel Gaillard and Philippe Pinsolle, The ICG Pre-Arbitral Referee: First Practical Experiences, available at http://www.shearman.com/~media/Files/NewsInsights/Publications/2004/01/The-ICC-PreArbitral-Referee--First-Practical-Exp_/Files/IA_ICC-PreArbitral-Referee_040308_07/FileAttachment/IA_ICC-PreArbitral-Referee_040308_07.pdf last visited on 21st September 2016

<p>November 5: Lesson 2</p>	<p>Written Submissions in International Arbitration</p>	<ul style="list-style-type: none">  Statement of Case/Opening Memorial, Statement of Defense/Reply, Rejoinder Memorial, Surrebuttal Memorial  Witness Statements and Expert Reports <p><u>Small Group Practical Exercise: Drafting Witness Statement</u></p> <p>READING:</p> <ul style="list-style-type: none"> • Gary Born, International Commercial Arbitration, Wolters Kluwer, (2014), Vol. II, Chapter 15 (selected materials) • Fouchard, Gaillard, Goldman, On International Commercial Arbitration, Kluwer, (1999), Part IV, Chapter II, Section III. • Alan Redfern and Martin Hunter, Law and Practice of International Commercial Arbitration, Third Edition, Sweet & Maxwell (2009), Chapter 6 – Evidence, pp. 6-76 et seq. • Pierre Bienvenu and Martin Valasek, “Witness statements and experts reports”, in R. Doak Bishop and Edward G. Kehoe, The Art of Advocacy in International Arbitration, Second Edition, Juris (2010), Chapter 10. Online PDF Amazon • Nigel Blackaby, “Direct and redirect examination of the witnesses”, in R. Doak Bishop and Edward G. Kehoe, The Art of Advocacy in International Arbitration, Second Edition, Juris (2010), Chapter 15. Juris Google books (pdf) • Edward Kehoe, “Cross-examination and re-cross in international arbitration”, in R. Doak Bishop and Edward G. Kehoe, The Art of Advocacy in International Arbitration, Second Edition, Juris (2010), Chapter 16. Juris • Guido S. Tawil, “Attacking the credibility of witnesses and experts”, in R. Doak Bishop and Edward G. Kehoe, The Art of Advocacy in International Arbitration, Second Edition, Juris (2010), Chapter 18. Juris
---------------------------------	---	--

<p>November 12: Lesson 3</p>	<p>Introduction to Evidence in International Arbitration</p>	<ul style="list-style-type: none">  Burden of Proof in International Arbitration  The Relevance of Cultural Differences in Evidentiary Matters  Do Local Regulations have any Relevance in Evidentiary Matters?  Evidence in the Arbitration Rules (ICSID, ICC, LCA and UNCITRAL)  The 2010 IBA Rules on the Taking of Evidence in International Arbitration  Document Disclosure. U.S.-style Discovery vs. International Arbitration Disclosure <ul style="list-style-type: none"> ○ Specificity, Relevance, Materiality and Proportionality  Interrogatories and Requests for Further Information  Request for Document Production  Document Production Techniques  Redfern Schedules  Depositions  Local Courts Assistance in Evidence-taking  The Role of Arbitral Tribunals  Sanctions for Party's Failure to Produce Evidence and Adverse Inferences <p><u>Small Group Practical Exercise: Argument About Admitting Certain Documents Requests</u></p> <p>READING:</p> <ul style="list-style-type: none"> • Gary Born, International Commercial Arbitration, Wolters Kluwer, (2014), Vol. II, Chapter 15 §15.09, pgs 2306 – 2315 • Alan Redfern and Martin Hunter, Law and Practice of International Commercial Arbitration, Third Edition, Sweet & Maxwell (2009), Chapter 6.(5) – Evidence, pp. 6- 61/68. Amazon Google
----------------------------------	--	---

		<p>books (pdf)</p> <ul style="list-style-type: none"> • Jan Paulsson, “Cultural differences in advocacy in international arbitration”, in R. Doak Bishop and Edward G. Kehoe, <i>The Art of Advocacy in International Arbitration</i>, Second Edition, Juris (2010), Chapter 1. Juris Google books (pdf) • Guido S. Tawil <i>Evidence in International Arbitration</i> • Anthony Sinclair, “Differences in the approach to witness evidence between civil and common law traditions”, in R. Doak Bishop and Edward G. Kehoe, <i>The Art of Advocacy in International Arbitration</i>, Second Edition, Juris (2010), Chapter 2. Google books (pdf) • Alexander J. Belohlávek, “Rights and duties of parties in connection with taking of evidence in Investor-State Arbitration”, <i>CYArb</i>, 2016, 6. Academia • Christoph H. Schreuer, <i>The ICSID Convention. A Commentary</i>, Second Edition, Cambridge University Press (2009) pp. 640-671. Amazon CUP • Judith Gill – Guido S. Tawil – Richard Kreindler, “The 2010 revisions to the IBA Rules on the Taking of Evidence in International Arbitration”, in Charles Kaplan – Alexis Mourre, <i>Les Cahiers de l’Arbitrage – The Paris Journal of International Arbitration</i>, 2011-1, L.G.D.J., p. 23/32. Lextenso • IBA Arbitration Committee, “Commentary on the revised text of the 2010 IBA Rules on the Taking of Evidence in International Arbitration”. IBAnet CUP • ICSID Convention (Article 43), ICSID Arbitration Rules (Articles 33 to 37), ICC Arbitration Rules (Articles 25 and 26), UNCITRAL Arbitration Rules (Articles 27 to 32) • Gary Born, <i>International Commercial Arbitration</i>, Wolters Kluwer, (2014), Vol. II, Chapter 16. (see above) • Alan Redfern and Martin Hunter, <i>Law and Practice of International Commercial Arbitration</i>, Third Edition, Sweet & Maxwell (2009), Chapter 6 – Evidence, pp. 6-91 et seq. (see above) • Vera van Houtte, “Adverse inferences in international arbitration”, in Teresa Giovannini and Alexis Mourre, <i>Written Evidence and Discovery in International Arbitration</i>, ICC Dossiers 698 (2009). ICC Store • Julian D. M. Lew, “Document disclosure, evidentiary value of documents and burden of evidence”, in Teresa Giovannini and Alexis Mourre, <i>Written Evidence and Discovery in International Arbitration</i>, ICC Dossiers 698 (2009). ICC Store
--	--	--

<p>November 19: Lesson 4</p>	<p>Arbitration Hearings/ Examination of Witnesses and Experts</p>	<p>  Evidentiary Hearing <ul style="list-style-type: none"> ○ Appearance of Witnesses and Experts/Oral Testimony at Evidentiary Hearing ○ Conduct of Witness and Expert Examination ○ Direct, Cross and Redirect Examination ○ Presence of Witnesses and Experts Before and After Testimony ○ Party Communication with Witnesses and Experts ○ Sequence of Witness and Expert Examinations ○ Witness-conferencing <p><u>Small Group Practical Exercise: Direct, Cross and Redirect Examination Questions</u></p> <p>READING:</p> <ul style="list-style-type: none"> • Gary Born, International Commercial Arbitration, Wolters Kluwer, (2014), Vol. II, Chapter 15 (selected materials) • Fouchard, Gaillard, Goldman, On International Commercial Arbitration, Kluwer, (1999), Part IV, Chapter II, Section III. • Alan Redfern and Martin Hunter, Law and Practice of International Commercial Arbitration, Third Edition, Sweet & Maxwell (2009), Chapter 6 – Evidence, pp. 6-76 et seq. • Pierre Bienvenu and Martin Valasek, “Witness statements and experts reports”, in R. Doak Bishop and Edward G. Kehoe, The Art of Advocacy in International Arbitration, Second Edition, Juris (2010), Chapter 10. Online PDF Amazon • Nigel Blackaby, “Direct and redirect examination of the witnesses”, in R. Doak Bishop and Edward G. Kehoe, The Art of Advocacy in International Arbitration, Second Edition, Juris (2010), Chapter 15. Juris Google books (pdf) • Edward Kehoe, “Cross-examination and re-cross in international arbitration”, in R. Doak Bishop and Edward G. Kehoe, The Art of Advocacy in International Arbitration, Second Edition, Juris (2010), Chapter 16. Juris </p>
----------------------------------	---	--

		<ul style="list-style-type: none"> Guido S. Tawil, “Attacking the credibility of witnesses and experts”, in R. Doak Bishop and Edward G. Kehoe, <i>The Art of Advocacy in International Arbitration</i>, Second Edition, Juris (2010), Chapter 18. Juris
<p>November 26: Lesson 5</p>	<p>Post Hearing Issues</p>	<ul style="list-style-type: none"> ✚ Post Hearing Briefs ✚ Cost Submissions ✚ Close of Proceedings ✚ Tribunal Deliberations ✚ The <i>Functus Officio</i> Doctrine ✚ Correction of International Arbitral Awards ✚ Review of Draft Awards under ICC Rules ✚ Awards <p><u>Small Group Practical Exercise: Cost Submission</u></p> <p>READING:</p> <ul style="list-style-type: none"> Gary Born, <i>International Commercial Arbitration</i>, Wolters Kluwer, (2014), Vol. II, Chapter 15, pgs. 2296 - 2306; Vol. III, Chapter 22 (B), pgs 2901-2909; Chapter 23, pgs. 3053-3102, §23.05-23.09; Chapter 24, pgs. 3113-24. (see above)