

International Commercial Arbitration
University of Missouri School of Law
Fall 2015

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Office hours: By appointment
“At homes”¹: As noted on the at-home schedule

Course Goals and Objectives

This course covers a wide variety of topics involved in international commercial arbitration and underscores how this particular form of dispute resolution differs from both litigation and domestic arbitration. The course is intended to help students understand: (1) the importance of international arbitration in a transnational commercial context; (2) drafting issues relating to international arbitration agreements; (3) the intersection between litigation and arbitration; (4) procedural elements concerning the formation of the arbitral tribunal and the conduct of the proceedings; and (5) enforcement issues in an international context. Furthermore, students learn about the different sources of authority used in international commercial arbitration and improve both their analytical and communication skills.

This course focuses primarily on arbitration seated or awards enforced in either the United States or the United Kingdom, but reference will be made to other jurisdictions. No special language skills are needed for this course.

Course Quirks

This course will feature two unusual elements.

1. Wednesdays are laptop-free days, which is a means of preparing you for life after law school, when you won't always be able to use a laptop (shocking, but true). Laptop-free days have also been found to affect the type and quality of class discussion in a positive manner. The no-laptop rule only applies to regularly scheduled Wednesday classes, not to make-ups.

¹ British term for time set aside for receiving guests. See any novel by Jane Austen for illustrations of at-homes in traditional settings, and see my TWEN page for more on what I mean. My “at-homes” are actually “at-offices,” so you just need to come up to the second floor of the law school rather than drive off-campus. Very convenient, if I do say so myself. Dates are posted on my door and on TWEN.

2. I will aim to circulate a list of questions and hypotheticals that will form the basis of our class discussion in advance of each session. These will be posted on TWEN (The West Educational Network) at least 24 hours in advance of each class (possibly more) and will help raise the level of analysis in class. I reserve the right to ask questions that are not on the posted list and, occasionally, to post the list late or not at all.

Requirements and Grading

Grades will be based on the following criteria:

70% - Take-home exam. You may consult your notes, the textbooks and any written materials. You may not consult any person or receive any other type of assistance. In particular, you may not consult the internet or any online database during the course of the examination.

30% - Independent research project on a topic relating to international commercial (not investment) arbitration to be approved by the professor. There will be both a written and oral element, and you will be responsible for material presented by other students (i.e., you may be tested on any and all material presented during the presentations). More details on the research project is provided separately.

Grades may be increased or decreased by up to three points based on the quality of class participation about issues in the readings, class discussion or other relevant matters. Asking insightful questions can be a good form of participation. Quality of participation is more important than quantity. Providing relevant information on current events in international commercial arbitration for the TWEN site also constitutes a form of class participation.

Following instructions – particularly those regarding the timing and formatting of submissions – is incredibly important, particularly on graded assignments. This reflects the realities of legal practice (see “Late Filing” on TWEN). You can expect to be penalized for any submission that is late, no matter how small the time period, barring a very good reason (i.e., one that would convince a judge). Similarly, you can expect to be penalized for not adhering to page limits, formatting requirements or content requirements. This is analogous to what you would expect in actual litigation or arbitration practice.

American Bar Association rules require “regular and punctual class attendance” of students. Attendance is very important because much of the learning happens in class. You may miss three classes without penalty. **Upon the fourth absence, you will be subject to a penalty of three points. Upon the fifth absence, you will be subject to being dropped from the class.** Grades may be reduced for repeated tardiness.

It is possible that I will have to cancel a class and schedule a make-up. Though attendance at make-up sessions is expected and the material covered is considered “testable,” an absence at a make-up session will not count toward your total absences if for a good reason and with written notice at least 24 hours in advance of the make-up session.

Attendance is taken visually at the beginning of each class. If you are not in your seat when discussion begins, you may be marked absent. If you plan to come in late, you are advised to give advance notice. If you are inadvertently late, you are advised to come up directly after class to let me know that you are present. **Emails after class indicating that you were present, but late, will not be accepted.**

Intellectual Pluralism

The Law School community welcomes intellectual diversity and respects student rights. Students who have questions concerning the quality of instruction in this class may address concerns to either the Dean or Director of the Office of Student Rights and Responsibilities (<http://osrr.missouri.edu>). All students will have the opportunity to submit an anonymous evaluation of the instructor at the end of this course.

Academic Integrity

Academic integrity is fundamental to the activities and principles of the Law School. All members of the Law School community must be confident that each person's work has been responsibly and honorably acquired, developed, and presented. Any effort to gain an advantage not given to all students is dishonest, whether or not the effort is successful. The Law School community regards breaches of its Honor Code as extremely serious matters. In the event that you violate our Academic Integrity rules on any portion of the work required for this class, you may expect a failing grade in this course as well as possible disciplinary sanctions ranging from probation to expulsion. When in doubt about plagiarism, paraphrasing, quoting, collaboration, or any other form of cheating, consult the course instructor.

Disabilities

If you anticipate barriers related to the format or requirements of this course, if you have emergency medical information, or if you need to make arrangements in case the building must be evacuated, please let the Associate Dean for Academic Affairs know as soon as possible. If disability related accommodations are necessary (for example, a note taker, extended time on exams, captioning), please register with the Office of Disability Services (<http://disabilityservices.missouri.edu>), S5 Memorial Union, 882-4696, and then notify me of your eligibility for reasonable accommodations. For other MU resources for students with disabilities, click on "Disability Resources" on the MU homepage.

Requirement of Consent for Redistribution of Recordings of Classes

University of Missouri System Executive Order No. 38 lays out principles regarding the sanctity of classroom discussions at the university. The policy is described fully in Section 200.015 of the Collected Rules and Regulations. In this class, students may make audio or video recordings of course activity unless specifically prohibited by the faculty member. However, the redistribution of audio or video recordings of statements or comments from the course to individuals who are not students in the course is prohibited without the express permission of the faculty member and of any students who are recorded. Students found to have violated this policy are subject to discipline in accordance with provisions of Section 200.020 of the Collected Rules and Regulations of the University of Missouri pertaining to student conduct matters. In addition, a violation may affect a student's grade.

LinkedIn

I am on the LinkedIn network and occasionally get requests from students to connect with them on that network. I have adopted a practice of declining all such invitations from students who are currently enrolled in the Law School. After a student graduates or otherwise leaves the Law School, I am happy to consider LinkedIn requests.

Course Web Site

This course will make use of a course web page through TWEN (The West Education Network). The syllabus and other required course materials will be posted on this website. I occasionally send email messages to the email account that you designate when you register with TWEN. It is your responsibility to check this account regularly (at least every other day or so) and to make sure that the account remains functional and is not too full to accept emails.

Required Readings

The required text is Tibor Várady et al., *International Commercial Arbitration: A Transnational Perspective* (5th ed. 2012). There is a 6th edition that is coming out shortly (or that has just come out), but the 5th edition should still be available and should be less expensive.

Additional readings are posted in the syllabus below and on the "supplemental readings" page in TWEN.

Suggested Readings

One potentially useful resource is S.I. Strong, *Research and Practice in International Commercial Arbitration: Sources and Strategies* (2009). A copy is on file in the library, or you can purchase a copy online at amazon.com. This book may be particularly

helpful to you during your research for the symposium event.

Another helpful text is S.I. Strong, *International Commercial Arbitration: A Guide for U.S. Judges* (2012) [hereinafter FJC Guide], which is available for free on <http://www.fjc.gov>.

You may also wish to review S.I. Strong, *How to Write Law Exams and Essays* (3d ed. 2010). This book may be useful as you prepare for the final exam. A copy is on file in the library, or you can purchase a copy online at amazon.co.uk. Although the text was written for English law students, the principles apply to American law students as well. NB: What is called CLEO in the text is the same as IRAC (issue, rule, application, conclusion) in the U.S. West will be publishing a U.S. version of the book later this year.

You may also wish to purchase the 2012 Documents Supplement to the Várady text, although many of the documents included in the Supplement are also available online.

Class Schedule and Assignments

The readings are from the Várady text unless otherwise indicated. Additional readings may be assigned.

As you do the readings, consider what makes sense to you and what does not. Do not assume that everything in the readings is the only or necessarily correct perspective. For most issues in this course and in the law generally, there are multiple valid perspectives.

Discussion in class will inevitably cover some but not all of the material in the readings. If you have questions about the readings, please ask them, preferably in class. Feel free to email me with questions, though I may defer answering them until class time.

The following class schedule is subject to change. Always read for the full day's class, even if we did not finish discussion of the previous day's topic. If I need to make specific deletions of or changes to any reading assignments, I will advise you in writing via TWEN.

8/24 Introduction to International Commercial Arbitration
pp. 1-17, 23-38 and Timeline of an Arbitration (TWEN)

8/26 Sources of Norms & Conflicts Between Norms
pp. 70-89

S.I. Strong, "Research in International Commercial Arbitration: Special Skills, Special Sources," 20 *The American Review of International Arbitration* 119 (2009) (TWEN)

8/31 **Research in International Commercial Arbitration and Drafting Issues**
Reading from 8/26 (continued)

Dr. Iur. Oliver Dillenz, "Drafting International Commercial Arbitration Clauses," 21
Suffolk Transnational Law Review 221 (1998) (TWEN)

Recommended: Stephen R. Bond, "How to Draft an Arbitration Clause," 6
Journal of International Arbitration 65 (1989) (TWEN)

9/2 **Arbitral Authority**
pp. 99-122

9/7 **NO CLASS**

9/9 Special video class 11:00-12:00
Participating in the Work of the U.S. State Department

9/14 **Kompetenz/Kompetenz**
pp. 128-46

9/16 **Form of Arbitration Agreements**
pp. 165-80

Be aware of differences in the following provisions:
Arbitration Act 1996 (United Kingdom), ss. 5, 6, 100
Federal Arbitration Act (United States), ss. 1, 2, 201, 202, 208, 301, 302, 307
New York Convention, art. II
UNCITRAL Recommendation (July 2006) regarding art. II

Recommended:
ICC Arbitration Rules, art. 4
AAA International Rules, art. 2
LCIA Rules, art. 1

9/21 **Non-signatories to an Arbitration Agreement**
pp. 212-36

9/23 **Limits on Arbitrability**
pp. 253-66

9/28 **U.S. Decisions on Arbitrability**
pp. 266-79
pp. 288-99

- 9/30 **The Arbitrators**
pp. 304-07
pp. 309-20
- 10/5 **Appointing Arbitrators**
pp. 429-43
ICC Arbitration Rules, arts. 1, 11-15, 36-37
LCIA Rules, arts. 5-11, 28
AAA International Rules, introduction and arts. 1, 5-11, 31-33
- 10/7 **Appointing Arbitrators – continued**
pp. 459-64
pp. 469-79
NB: Although this symposium is not on international commercial arbitration, it will show you how a professional-quality symposium is run, which will help you in the symposium assignment.
- 10/12 **Ethical Issues**
IBA Guidelines on Conflicts of Interest in International Arbitration
IBA Rules of Ethics for International Arbitrators
AAA Code of Ethics for Arbitrators in Commercial Disputes
- 10/14 **Challenges to Arbitrators**
pp. 483-96
- 10/19 **Challenges to Arbitrators – continued**
pp. 496-517
- 10/21 **Arbitral Procedure & Choice of Law**
pp. 532-46
- 10/26 **Confidentiality**
pp. 644-69
- 10/28 **NO CLASS**
- 11/2 **The Award**
pp. 737-56
- 11/4 **Awards**
pp. 778-81
pp. 787-99
- 11/9 **Recognizing Awards**
pp. 911-18

pp. 927-36

11/11 Procedural Grounds for Objection – New York Convention

pp. 936-46

William W. Park, "The International Currency of Arbitral Awards," 770 PLI/Lit. 359 (2008) (TWEN) – only read p. 359-399

11/16 Research presentations

11/18 Research presentations

11/23-27 NO CLASS – Thanksgiving Break

11/30 NO CLASS

12/2 NO CLASS

FINAL EXAMINATION – Wednesday, Dec 16, 8:30 a.m. (6 hour take home)