University of Miami School of Law
Fall 2019 Semester

Seminar

International Commercial Arbitration Law and Practice:
A United States Perspective

Course No. LAW 603A
Room F408

Tuesdays, 7:30 p.m. to 9:20 p.m.
Instructor: John Rooney

Syllabus, Course Outline and Required Readings

In this course, we will survey the law and practice of international commercial arbitration, with special reference to the treatment of the subject under the laws of the United States. Using the knowledge that you will obtain through class attendance, reading the assigned materials, and your independent research, you will write a paper that makes an original contribution to the law of international commercial arbitration. Those of you who are taking this seminar to satisfy the law school’s writing requirement will write a paper of 35 to 40 pages. It is your responsibility to know and satisfy the requirements of the law school. For those who are not taking this seminar to satisfy the writing requirement, you will have to write a paper of between 10 and 15 pages.

As you will learn during the course of the semester, international commercial arbitration touches on many legal disciplines. You will notice elements of constitutional law, public international law, conflicts of law, procedural law and contract law, and other areas unique to the subject matter. You will also learn of the growing importance of arbitration in the resolution of international commercial disputes, and of the subtleties always present in the conduct of an arbitration of this type and inherent in the legal environment in which such arbitrations take place.

It is likely that during the course of the semester, recognized experts in the field will be visiting our area. Consequently, it is possible that we will have guest lecturers or distinguished visitors to our class during the course of the semester. I will try to advise you in advance of guest lecturers, but this will not always be possible.

1 My contact information is as follows: Business address: The Miami Tower, 100 SE 2nd Street, Suite 3105, Miami, Florida 33131; Cell: 305-804-4084; e-mail: rooneyjh@gmail.com.
For written materials, I will emphasize primary sources, particularly the Convention on The Recognition and Enforcement of Foreign Arbitral Awards (The New York Convention) and the Inter-American Convention on International Commercial Arbitration (The Panama or Inter-American Convention), the UNCITRAL Model Law on International Commercial Arbitration, the Federal Arbitration Act, and judicial opinions. We will also study rules of arbitral procedure, such as the UNCITRAL International Arbitration Rules; the International Chamber of Commerce International Arbitration Rules, and the International Center for Dispute Resolution (American Arbitration Association) Rules. In addition, we will also consider texts such as the International Bar Association Rules on the Taking of Evidence in International Arbitrations. The primary sources will occasionally be supplemented by articles and other secondary sources. Also, during the course of the semester, I will assign new significant laws, texts and opinions as they are issued.

Since the course is structured as a seminar, there will be no examination. Your grade will be determined by a combination of the following factors:

**Attendance, Quality of Participation, and Class Presentations** (I will assign students to be responsible for presenting summaries of readings)

Class presentations

An Original Research Paper

While the paper is given the most weight in determining your grade, I will also take into account your attendance and quality of participation, as well as the quality of your class presentations.

**Attendance and Quality of Participation**

You will be expected to attend class, and to be prepared to discuss the topics assigned for each class. Both attendance and quality of participation will be taken into account in the derivation of your grade for the course. In addition, during the semester I will ask individual students to make presentations on the reading material.

**Class Presentations**

Each student will be expected to prepare and deliver a short presentation on the content of the paper that he or she will write. You will be expected to present your hypothesis and describe your methodology for proving it. Your presentation must also demonstrate familiarity with the sources that you will be using. We will develop a schedule for the delivery of the presentations during the first class period. You may also be asked to present summaries of the readings.
The Paper

For those not satisfying the writing requirement with this paper, your paper must be 10 to 15 pages in length (including footnotes but excluding bibliography). The body of the paper should be double-spaced and in 12 point font. Footnotes can be single-spaced. The page length should be strictly observed both as to minimum and maximum lengths. The paper should involve substantive legal research and analysis and be of publishable quality.

Since international commercial arbitration touches many disciplines and practice areas, the range of appropriate paper topics is quite broad. In picking your topic, you should strive to make a unique contribution to the presently-existing body of academic literature for you topic. It is important that you determine that your topic is one that the library and other resources available to you will support. In your paper, you will be expected to defend a thesis through descriptions and analysis of relevant primary and secondary sources. You will be judged on the originality of your thought, the development of your thesis through the use of classic rhetorical devices and a demonstration of your familiarity with and mastery of appropriate sources. On the cover page of your paper, you will have to set forth your thesis in no more than one succinct sentence.

Grades will be assigned in accordance with the law school policy in effect for distribution of grades. A copy of the policy can be obtained from the Dean of Students.

Reading Assignments

Most of the reading assigned for class will be from primary sources. Those sources are generally available on the internet. I will provide addresses as appropriate, but you will be responsible for locating the materials. If you are unable to locate one or more of the readings, it is also your responsibility to let me know. Supplemental Assignments will be provided during the course of the semester.

It is important to keep up with the readings, because references to prior readings will be made in subsequent classes.

Books that might help you with the writing of your paper:


NOTE

If you have a disability, or suspect that you may have a disability, the Law School encourages you to contact Jessie Howell with the Office of Student Accessibility and Inclusion for information about available opportunities, resources, and services. Her phone number is 305-284-9907, and her email address is jhowell@law.miami.edu. You may also visit the Office of Disability Services website at www.law.miami.edu/disability-services.
UNIT 1
INTRODUCTION AND BACKGROUND

August 13, 2019 (to be rescheduled)

Introduction to topic: Definition of Terms: (1) Arbitration, (2) Commercial, (3) International; Historical Antecedents; Meeting of the civil and common law systems; Lex Mercatoria; Globalization; Overview of The Legal Infrastructure: International, National and Foreign.

Background

The ability to resolve international commercial disputes in a neutral forum using persons selected by the parties and applying the rules of decision that they choose has proven an attractive alternative to the use of national judicial systems. Often, in the international business transaction, the parties are reluctant to submit to the jurisdiction of the courts of the other for resolution of disputes. Consequently, the possibility of a forum related to, often dependent upon, but nevertheless independent of a national judicial system is attractive. Indeed, some courts have held that in determining the scope of an arbitration clause, a court or an arbitrator should interpret and construe the clause broadly, because the resolution of international business disputes through arbitration is considered to be customary in international business.

The consent or will of the parties is not enough. The resolution of disputes through arbitration would not be effective without the support of national and international law. If national law did not recognize the end-product of arbitration to be binding or did not oblige a party to submit to arbitration after doing so, the institution would be of limited utility. Likewise, assuming that the parties are from different countries and assets may be located in different jurisdictions, an international framework for the recognition and enforcement of the result of the arbitral process—the award is also necessary.

Consequently, the support of legal systems is needed for the execution of the arbitration agreement (because the right and duty to submit claims to arbitration is born of the will of the parties), the administration and protection of the arbitral process, and the recognition, enforcement or set aside of the product of the arbitration: the arbitral award.

Likewise, countries must be willing to assume obligations in connection with the recognition and enforcement of the arbitral award issued in another country.

The structure of this class follows the course of the typical arbitration, with time set aside at the beginning to study the legal sources and principles that define the juridical
environment in which arbitrations take place. We will look at international commercial arbitration through the optic of United States law and practice in the area. However, this point of reference will permit you to draw conclusions applicable generally to the regulation of the institutions in other jurisdictions. We will also consider some of the sources of substantive principles, such as the Convention on Contracts for the International Sale of Goods and the UNIDROIT General Principles of Contract Law, and address the different ways that the common law and the civil law interpret contracts.

In this first class, we begin with consideration of the meaning of the terms “arbitration,” “commercial,” and “international,” and proceed to an introduction to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (also known as the New York Convention) and finish with a general discussion of the *Termorio* opinion, a recent decision of a panel of the United States Court of Appeals of the District of Columbia, and the *COMMISA* opinion, a more recent decision of the United States Court of Appeals for the Second Circuit. Both address the question of whether an award set aside in the jurisdiction in which it was made can nevertheless be enforced by a competent authority in another jurisdiction. We will return to those opinions in the last class of the seminar.

Some considerations as to the meaning of the terms:

**Arbitration:** What is the objective of arbitration? From what source or sources does it draw its legitimacy? Can we compare and contrast arbitration to other concepts? How does it differ from litigation? How does it differ from mediation and conciliation? Are there similarities?

**Commercial:** Should any relationship that affects commerce be considered commercial? If not, which types of relationships that affect commerce should not be considered to be commercial? To which law should one look to determine whether a relationship is commercial?

**International:** How do we determine if a relationship is international? Do we look to the nationality of the parties? Do we look to the place or places in which execution or performance of a contract is required or in fact takes place? In the case of arbitration, does the place where the arbitration is located or sitused make a difference? Does the place where or from which the award is issued determine whether the arbitration or the award is international?

We will also consider briefly the differences between international commercial arbitration and investor-state arbitration. Thirty years ago, the field of investor-state arbitration was virtually non-existent. An international convention called the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (Washington Convention or the ICSID Convention) was offered to the international
community for ratification and adhesion in 1965. The Convention provides an institutional framework administered by the International Centre for the Settlement of Investment Disputes (ICSID) for the resolution of disputes between a state and a foreign person or entity that made an investment in the state that received the investment. Although the Washington Convention provided a framework for the administration of those disputes, by ratifying or adhering to the Convention a state did not consent to the arbitration of any specific dispute or to the arbitration of future disputes. Generally, a state manifests its consent to arbitration by entering into or becoming a contracting state of a Bilateral Investment Treaty (BIT) or a multilateral trade agreements (such as NAFTA and the Energy Charter Treaty), although it may also do so through other acts, such as legislation or agreement.

In the years following the entry in force of the Washington Convention, many BITs and multilateral trade agreements were entered into that provided for the resolution of investor-state disputes through arbitration. There are many pending cases before ICSID and an indeterminate number of investor-state arbitrations being conducted under the other rules such as the UNCITRAL Arbitration Rules and the ICC International Arbitration Rules.

Although distinguishable from international commercial arbitration on many levels, investor-state arbitration and the reaction of the international community to it has both directly and indirectly affected international commercial arbitration. We will discuss some of those differences in this first class.

I have also included in Suggested Readings the recent opinions of the United States Supreme Court in the area of arbitration.

During the semester, we will continue to refer to refer to both opinions.

Required Readings:

Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention)


Corporación Mexicana De Mantenimiento Integral, S. De R.L. De C.V. v. Pemex-Exploración Y Producción, No. 13-4022 (2nd Cir. – August 2, 2016)
Suggested Readings:

Convention on the Settlement of Investment Disputes between States and Nationals of Other States (Washington Convention)

2012 United States Model Bilateral Investment Treaty

American Express Co. v. Italian Colors Restaurant, No. 12-133 (United States Supreme Court – June 20, 2013).

Oxford Health Plans LLC v. Sutter, No. 12-135 (United States Supreme Court - June 10, 2013)

Nitro-Lift Technologies, L.L.C. v. Howard, No. 11-1377 (United States Supreme Court – November 26, 2012)

Marmet Health Care Center, Inc. v. Brown, No. 11-391 (United States Supreme Court – February 21, 2012)

Compucredit Corp. v. Greenwood, No. 10-948 (United States Supreme Court - January 10, 2012)

KPMG LLP v. Cocchi, No. 10-1521 (United States Supreme Court – November 7, 2011)

ATT Mobility LLC v. Concepción, No. 09-893 (United States Supreme Court – April 27, 2011)

Rent-A-Center, West, Inc. v. Jackson, No. 09-497 (United States Supreme Court - June 21, 2010)

Granite Rock Co. v. International Brotherhood of Teamsters, No. 08-1241 (United States Supreme Court – June 24, 2010)

August 20, 2019 (to be rescheduled)

Public International Sources of International Arbitration Law; Convention on Recognition and Enforcement of Foreign Arbitral Awards; Inter-American Convention on International Commercial Arbitration

Background

For the purposes of United States international commercial arbitration practice, there are two instruments of public international law of primary importance: The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (commonly known as the New York Convention) and the Inter-American Convention on International Commercial Arbitration (commonly known as the Panama Convention or the Inter-American Convention). Each regulate the same subject matter, but there are subtle differences between the two. (Other instruments of public international law regulate international commercial arbitration, but by region. The European Convention on International Commercial Arbitration is one of those instruments. In this course, we will not discuss in detail any of those other instruments, but you should generally be aware of their existence.)

The law of the United States requires that in order for the rights and obligations set forth in a treaty to be available to a judge as a rule of decision the express expression of the right or obligation must be self-executing or incorporated into the domestic legal order through legislation. Congress adopted Chapter 2 of Title 9 of the United States Code in order to incorporate the New York Convention, and Chapter 3 of Title 9 in order to incorporate the Panama Convention.

Convention on Recognition and Enforcement of Foreign Arbitral Awards (“Convention”)

The Convention went into force on July 7, 1959, when its ratification by three countries took effect. Today, the Convention has been ratified or adhered to by more than 150 countries, and is the most significant single instrument of public international law to regulate the subject of international commercial arbitration. (The Convention can also apply to arbitrations that are not commercial, but each contracting state can by declaration restrict its application to legal relationships considered to be commercial under the law of the country making the declaration. The United States has made such a declaration.)

The ratification of the United States of the Convention took effect in 1970, at which time legislation adding a new second chapter to Title 9 of the United States Code was promulgated.
Although the Convention was drafted and approved by the United Nations prior to the establishment of the United Nations Commission on International Trade Law (UNCITRAL), UNCITRAL has been an important continuing rule with to the Convention. For example, UNCITRAL drafted a recommendation, adopted by the General Assembly of the United Nations in 2006, for the interpretation of the writing requirement of the arbitral agreement and the possibility of application of more favorable national law. UNCITRAL has also drafted a Model Law on International Commercial Arbitration that has been adopted by more than 50 countries. We will study the Model Law in detail during the course as an the prototype of modern arbitration legislation.

The Convention addresses the following important issues (among others): (1) formal obstacles to the execution of the arbitration agreement; (2) the enforceability of an arbitration clause contained in a contract for the resolution by arbitration of disputes not existent at the time that the contract became effective; (3) the execution of the arbitration agreement by a judge when faced with a litigation involving causes of action covered by an arbitration agreement; (4) elimination of the requirement of double homologation or confirmation of the award; and (5) unification of the exclusive grounds for non-recognition or non-enforcement of an arbitral award that falls within the scope of the Convention.

During the sixty years that the Convention has been in effect, it has been the subject of many judicial decisions from around the world, as well as scholarly commentary. An understanding of its purposes and structure is essential to anyone working in the area of international commercial arbitration.

The Convention permits a contracting state to declare that the Convention will only be applicable for commercial disputes, as defined under the law of the country making the declaration. Likewise, a contracting state can declare that the Convention will only be applicable on a reciprocal basis. The United States made both declarations up on ratification.

Inter-American Convention on International Commercial Arbitration (“Inter-American Convention,” also known as the Panama Convention)

The Inter-American Convention was drafted under the supervision of the Juridical Committee of the Organization of American States. The text of the Inter-American Convention was finalized in 1975 during a meeting of the committee in Panama, for this reason the Inter-American Convention is also referred to as the Panama Convention. The adhesion of the United States to the Inter-American Convention took effect in 1990, the same year in which Congress added a new third chapter to Title 9 of the United States Code, making the Inter-American Convention applicable by courts in the United States.
The Inter-American Convention was proposed in order to address perceived reticence of states in Latin America to adopt the New York Convention. Now, however, more states in Latin America have adopted the New York Convention than the Inter-American Convention.

Although similar, the two conventions are different in potentially significant aspects. For example, the Inter-American Convention is limited to international commercial arbitration. The New York Convention is not, but a state is permitted upon ratification or accession to limit its application to commercial matters. The Inter-American Convention provides for default application of the arbitration rules of the Inter-American Commercial Arbitration Commission, if the arbitration agreement does not stipulate the application of a particular set of rules. The New York Convention obligates a judge to refer disputes to arbitration that are covered by an arbitration agreement protected by the Convention. The Inter-American Convention does not have a similar provision. The New York Convention specifically permits the application of national rules that are more favorable to recognition and enforcement of an award. The Inter-American Convention does not contain an equivalent provision. The two conventions employ different terminology to accomplish the same or similar goals. For example, the New York Convention refers to the “enforcement” of arbitral awards, while the Inter-American Convention refers to the “execution” of arbitral awards. The New York Convention permits a contracting state to require reciprocity in the application of the Convention. The Panama Convention does not.

Since almost every country in the Hemisphere has adopted both of the conventions, care must be taken in determining which will be applicable in a particular situation. Also keep in mind that both are instruments of public international law, and may call into play special rules of interpretation (such as those found in the Vienna Convention on the Law of Treaties). In the United States, Congress has established a rule for determining which convention applies in the event that the conditions for the application of both are satisfied.

In addition to the Convention and the Inter-American Convention, other instruments of public international law can be relevant. For example, the European Convention on International Commercial Arbitration could apply if the relation or the transaction relating to an arbitration agreement were to have connection to one or more of its contracting states. The same would be true for the Mercosur international commercial arbitration treaty. Likewise, public international law instruments may collaterally affect arbitration (e.g., the North American Free Trade Agreement “NAFTA”).

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2 Also, the Inter-American Convention does not refer a court or competent authority to national law in order to determine the meaning of “commercial.” Likely, public international law would supply the meaning or the test to determine the meaning of “commercial” in the context of the Inter-American Convention.
Required Readings:

Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards (18 I.L.M. 1224 (1979))
General Assembly Recommendation of 2006 regarding the interpretation of Article II and VII of the Convention

Bring 3 to 5 proposed topics to class
August 27, 2019

**National law and international commercial arbitration; Relevance of National Law; Role of the United Nations Commission on International Trade Law (UNCITRAL); UNCITRAL Model Law on International Commercial Arbitration; Characteristics of national legal systems**

**Background**

National law is relevant to many aspects of international commercial arbitration. Some situations that could call foreign law into play are the following: The agreement to arbitrate may be governed by national law; the agreement that contains the arbitration clause may be governed by national law; the situs of the arbitration in a foreign country may call foreign law into play; and foreign law may be relevant in the process to confirm, vacate, recognize or execute the arbitral award.

Of course, it will be impossible to cover substantive foreign law comprehensively in this course. Nevertheless, the UNCITRAL Model Law on International Commercial Arbitration and the UNIDROIT Principles of International Commercial Contracts suggest in a general sense the possible content of foreign law. For this reason the Model Law and the UNIDROIT Principles serve as place holders or surrogates for analysis of the national law of any country other than the United States.

UNIDROIT is the acronym for the International Institute for Law Unification. The League of Nations established UNIDROIT in 1926, and since its founding the institution has been seated in Rome, Italy. With the demise of the League of Nations, in 1940 the Institute was re-established under the UNIDROIT Statute. While UNIDROIT is has proposed and supervised the writing of many texts and documents, for our purposes, the most significant UNIDROIT text is a document called the Principles of International Commercial Agreements. The latest version was approved in 2016, and can be found along with other UNIDROIT texts at [www.unidroit.org](http://www.unidroit.org).

**Relevance of Foreign Law**

Foreign law plays an important role in every international commercial arbitration. The international nature of the institution calls into play the laws of more than one jurisdiction. As noted above, in this course, we look to the Model Law as representative of the regulation of international arbitration by the international community. The Model Law has garnered considerable support among the member states of the United Nations. Many countries have enacted the model law without significant changes (e.g., Chile and Costa Rica). In other cases, the Model Law has been an important source or influence on national arbitration legislation (e.g., Brazil). The UNCITRAL webpage ( 
www.uncitral.org) contains a wealth of information on the Model Law and other UNCITRAL texts.

Role of The United Nations Commission on International Trade Law (UNCITRAL)

The United Nations Commission on International Trade Law (UNCITRAL) has had an important role in the unification of international law and practice. The best known ad hoc arbitration rules were drafted under UNCITRAL supervision and finalized in 1976. Those rules were modified in 2010 and in 2017. In addition, UNCITRAL sponsored the drafting of the Model International Commercial Arbitration Law that was finalized in 1985, and has been adopted either in its entirety or in large part by more than 40 countries. Seven states of the United States have adopted the Model Law, Florida being the most recent to do so (2010). (The Model Law was amended by UNICTRAL in 2006.)

UNCITRAL also sponsors a working group on dispute resolution that studies existing model texts and suggests improvements, and that drafts new model texts (such as the new model law on international commercial conciliation, and the Vienna Convention on Contracts for the International Sale of Goods (CISG).


In 1985, UNCITRAL published a Model Law on International Commercial Arbitration. Since the United Nations General Assembly approved the Model Law in 1985, the Model Law has been the single most important influence on the modernization of national arbitration laws around the world.

One important characteristic of the Model Law is the synchronization of the grounds to set aside an award issued in the country with the grounds for recognizing and enforcing a foreign arbitral award under the New York Convention. In particular, apart from the ground set forth in Article V(1)(e), the grounds for set aside are virtually identical to the grounds for recognition and enforcement of the foreign arbitral award found in Article V of the New York Convention.

In 2006, the General Assembly of the United Nations approved amendments to the Model Law. In large part, the amendments were motivated by a perceived need to address issues involving the arbitration agreement (issues also reflected in the New York Convention) and interim relief.

The Model Law will be the subject of discussion throughout the semester.

Characteristics of National Legal Systems
National arbitration laws will generally regulate the formal requirements of an enforceable agreement to arbitrate, the types of dispute that can be resolved through arbitration, the interaction of the arbitral tribunal and the national judiciary, the grounds to set aside an award issued in that country or under an arbitration governed by the national law, and the grounds for the recognition and enforcement of the foreign arbitral award.

The modern arbitration law does not impose onerous formal requirements on the arbitral agreement (e.g., the requirement that the agreement be executed before a notary, or review of the substance of the award), limits review of the arbitration award, and permits the execution of the agreement to arbitration.

Required Reading:


Suggested Readings:

Motorola Credit Corporation v. Uzan, 388 F.3d 39 (2nd Cir. 2004)


All students should submit a two paragraph description of the paper topic; and a one page list of library resources
September 3, 2019

The law of International Commercial Arbitration in the United States; Federal law aspects (Federal Arbitration Act); State law aspects (Florida International Commercial Arbitration Act); Supremacy clause and federalism questions

Background

In this class, we cover the regulation of international commercial arbitration under the federal and state laws of the United States. The federal nature of legislation and regulation in the United States injects a new level of complexity into determining whether federal or state law might be applicable.

The current tradition of arbitration law in the United States extends back to the passage of the United States Arbitration Act in 1925 (effective January 1, 1926), which is found in Chapter One of Title Nine of the United States Code. Title 9 of the United States Code is called “Arbitration,” and is divided into three chapters. Chapter Two contains the implementing legislation of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards and Chapter Three contains the implementing legislation for the Inter-American Convention on International Commercial Arbitration.

Many states also have enacted international arbitration laws. For example, California, Connecticut, Florida, Georgia, Illinois, Louisiana, Oregon and Texas have enacted the Model Law. Since Florida’s international arbitration law is the Model Law, we concentrate on federal arbitration law in this class.

In the federal system of the United States, powers not ceded by the states to the federal government in the United States Constitution are reserved to the states. Likewise, where there has been a cession of authority but the federal government has not acted or exercised that authority, the states may have retained competency to act and to legislate.

Although the states have ceded to the federal government the authority to regulate commerce between the states and with foreign nations (United States Constitution, Art. I, Sec. 6, the “Commerce Clause” of the federal constitution), apart from the ratification of the Convention on Contracts for the International Sale of Goods and some contracts entered into by the federal government or regulated under federal law, the states have continued to legislate in the area of contract law and to apply common law principles in that area that have developed on a state-by-state basis. Consequently, state contract law continues to be relevant to the formation, interpretation and construction of the arbitration agreement. (See the Arthur Andersen LLP opinion issued by the United States Supreme Court, citation below.)
Required Readings:

Federal Arbitration Act, as amended (9 U.S.C. § 1 et seq. (2000))

Lamps Plus, Inc. v. Varela, No. 17-988 (United States Supreme Court – April 24, 2019)


Arthur Andersen LLP v. Carlisle, No. 08–146 (United States Supreme Court - May 4, 2009)

Epic Systems Corp. v. Lewis, No. 16-285 (United States Supreme Court – May 21, 2018).

Suggested Readings:

Florida Arbitration Code - F.S. Chapter 682 secs. 628.01 through 628.22
Rent-A-Center, West, Inc. v. Jackson, No. 09-497 (United States Supreme Court – June 21, 2010)
Granite Rock Co. v. International Brotherhood of Teamsters, No. 08-1214 (United States Supreme Court - June 24, 2010)
Stolt-Nielsen, S.A. v, AnimalFeed International Corp., 08-1198 (United States Supreme Court – April 27, 2010)
ATT Mobility LLC v. Concepcion, No. 09-893 (United States Supreme Court – April 27, 2011)

UNIT 2
THE AGREEMENT TO ARBITRATE

September 10, 2019

The Agreement to Arbitrate

Parties, Formalities, Consent, Typical Characteristics, Choice and Conflict of Law

Background

The obligation to arbitrate normally originates in an agreement of two or more persons or companies to submit certain types of disputes to resolution by arbitration. Consequently, establishment of the existence of an enforceable agreement to arbitrate that would include within its scope the dispute that is allegedly subject to resolution by arbitration is a sine qua non of the resolution of a dispute by arbitration.

When a challenge to the existence, enforceability or scope of the agreement to arbitrate arises, the first question is whether the challenge will be addressed and resolved by the arbitrator or the court. Also important is the question of the law that will be applied in order to resolve the challenge. As judicial decisions show, the rights of a non-signatory to an agreement to arbitrate must be defined as well.

Parties, Formalities, Typical Characteristics

Parties

An agreement binds persons and creates rights and obligations as between and among them. Identification of the parties bound by an agreement is often more difficult than might first appear. In addition to the straightforward situation where a party that signed an agreement seeks to enforce the agreement against the other signatory, parties that have not signed an agreement may enjoy rights created under it, or be obligated by it. For example, an agent can bind its principal to an agreement. A company can assume an obligation of another through merger. A person may be prevented from denying being bound by an obligation under a contract if it asserts a right under the contract.

The question of the law applicable to determine who is bound to arbitrate under an arbitration agreement is not easy to answer, and may differ from jurisdiction to jurisdiction. Note the approach below of the English appellate court in Peterson Farms. Do you agree with the reasoning of the court?
Formalities

One objective of the New York Convention is the elimination of formal barriers to the enforcement of arbitration agreements. For an arbitration agreement to be enforceable under the Convention, the agreement must be in writing and signed by the parties (the scope of disputes that can be resolved by arbitration is left to national law), or be evidenced by an exchange of letters or telegrams. When presented with an agreement that meets those requirements, a court is required to refer to arbitration any disputes before it that fall within the scope of the arbitration agreement, unless the agreement is either (1) null and void, (2) inoperative, or (3) incapable of being performed.

Nevertheless, national laws sometimes impose either more or less formal barriers to enforcement that does the Convention. For example, in the United States, an arbitration agreement in writing but not signed by the parties can nevertheless be enforceable. In Brazil, an arbitration clause in a contract of adhesion can only be enforced if set forth in bold typeface and separately initialed by the parties. (In the event of a conflict between the Convention and national or foreign law, the conflict will be resolved either by a competent authority or by the arbitrator.)

Typical Characteristics

There are many variations in arbitration agreements. However, certain characteristics are important in order to draft a clause that will reflect and implement the intent of the parties. The parties should be clearly identified, the types of disputes subject to arbitration should be clearly delineated, the applicable rules should be identified, as well as the situs of the arbitration and the language in which the arbitration will be conducted. The institution whose rules are used will often have a suggested clause, which should be considered in the drafting of rules.

The Conventions establish requirements for arbitration agreements that fall within their scope. The same is generally true for national arbitration laws. Here, we will review recent amendments to Article 7 of the UNCITRAL Model International Commercial Arbitration law, and also compare the amendment to the original text and to the similar requirements found in the United States federal arbitration statute. We will also consider the vexing issue of whether and if so under which theories non-signatories can be bound to arbitrate or can use an arbitration agreement to avoid litigation.

Required Readings:

Internaves de Mexico S.A. de C.V. v. Andromeda Steamship Corp., No. 17-12164 (Eleventh Circuit – August 1, 2018)


Arthur Andersen LLP v. Carlisle, No. 08-146 (United States Supreme Court, May 4, 2009)

Intergen N.V. v. Grina, 344 F.3d 134 (1st Cir. 2003)

International Bar Association Guidelines for Drafting International Arbitration Clauses (2010)

Suggested Readings:

Asia Pacific Industrial Corp. v. Rainforest Café, Inc., 380 F.3d 383 (8th Cir. 2004)


September 17, 2019

The Agreement to Arbitrate (con’t)

Grounds for not enforcing the Agreement to Arbitrate

Background

In this class, we study the development of international, statutory and judicial norms that determine the validity of agreements to arbitrate.

Since the agreement to arbitrate is a contract or agreement between parties, the existence, enforceability and scope of the agreement to arbitrate can be subject to question (as would be the case for any agreement). The development of a judicial methodology for determining how and under what basis the existence, enforceability and scope of the agreement to arbitrate can be questioned has been the subject of much study and many judicial opinions. Complicating the analysis is the existence in each of the Conventions of language providing a test or rule for the making of such determinations. The United States perspective will be considered through analysis of the Buckeye and Prima Paint opinions of the United States Supreme Court.

Under the United States federal law of arbitration, only defenses to enforceability applicable generally to any contract are opposable to the enforceability of an arbitration agreement, unless otherwise provided by federal law. State or foreign law, therefore retains an important role in determining the enforceability of an arbitration agreement.

Let us take an example. If an arbitration agreement is subject to the substantive law of the state of Florida, defenses such as fraud in the inducement and unconscionability are available defenses to the enforceability of an arbitration agreement (since they are defenses to the enforcement of any contract under Florida law). If Florida were to enact legislation that singled out arbitration agreements for special defenses to enforceability (for example, a requirement that an arbitration clause in a consumer contract be in bold typeface and specifically accepted by the consumer), failure to comply with the requirement would not be a defense to enforceability. Why not?

Is or should the same rule be applicable to Brazil’s similar requirement for a contract of adhesion that contains an arbitration clause?

How would the analysis differ under the UNCITRAL Model Law?

Required Readings:

Arthur Andersen LLP v. Carlisle, No. 08-146 (United States Supreme Court, May 4, 2009)

Jivraj v. Hashwani, 2011 UKSC 712 (United Kingdom Supreme Court – 27 July 2011)

Suggested Readings:

Doctor's Assocs., Inc. v. Casarotto, 517 U.S. 681 (1996)
UNIT 3
THE ARBITRAL PROCESS

September 24, 2019

The Conduct of The Arbitration

Background

Arbitrations are conducted by arbitrators, and the procedure for the arbitration is generally provided by agreement of parties. The number of arbitrators and their qualifications are also usually established by agreement of the parties. Generally, an arbitration is either administered by a third party (institutional arbitration), or administered by the arbitrators themselves (ad hoc arbitration). Knowledge of ad hoc and institutional options is important in both advising clients on the characteristics of the arbitration arrangement, and with respect to the administration of the arbitral process. Although many options exist for the administration of arbitrations, in this class we will concentrate on four: International Chamber of Commerce; International Centre for Dispute Resolution of the American Arbitration Association; The Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL); and The Rules of the Inter-American Commission on International Commercial Arbitration. Two important institutions that administer arbitrations under their own sets of rules (the London Court of International Arbitration and the Arbitration Institute of the Stockholm Chamber of Commerce) are not reviewed in depth due to time limitations.

In addition to rules for the conduct of the arbitration, rules and standards exist regarding the conduct of the arbitrator and for the taking of proof as part of the conduct of the arbitration. (For example, the International Bar Association Rules for the Taking of Evidence in International Arbitrations, which are considered later in the semester.)

Required readings:

UNCITRAL Arbitration Rules (2010 Version)

International Chamber of Commerce Arbitration Rules

International Centre for Dispute Resolution Rules

Inter-American Commission on Commercial Arbitration Rules
Suggested readings:


LCIA Arbitration Rules, www.lcia.org
October 1, 2019

**Legal Effects of The Characteristics of The Arbitration Situs; Language; Applicable Law; Equity or Ex aequo et bono.**

**Background**

Since the parties have considerable discretion in determining the characteristics of the arbitration, items such as the location of the arbitration and the language in which the arbitration will be conducted, can be established in the agreement to arbitrate.

Sometimes, questions of situs, language and other ancillary characteristics of the arbitration are not dealt with expressly in the portion of the arbitration agreement written by the parties, and the arbitrator will often be called upon to confirm the agreement of the parties with respect to such characteristics.

On the other hand, where rules are selected for the administration of the arbitration, the rules may (and usually will) contain default provisions for determining such questions.

In addition, applicable law may fill in gaps, as is the case for the Model Law (see Arts. 20 through 27).

Determining the law applicable to the arbitration agreement and to the arbitration itself can be vexatious. At least one court has held that the relationship of the location of the seat and the choice of substantive law can affect the enforceability of the arbitration agreement. Others look to the substantive law applicable to the contract containing the arbitration clause in order, for example, to determine the conditions under which a non-signatory can be bound to or benefit from an arbitration agreement.

If we look to the United States federal law of arbitration, we see that that federal law establishes parameters for applying state law in order to interpret the arbitration agreement. (The same would appear to be true for applying foreign law, but the United States Supreme Court has not yet directly addressed this question.) Remember that the only defenses to enforceability applicable generally to all types of contracts (unless established under federal law) can be employed to defeat the enforceability of an arbitration agreement. In addition, the pro-arbitration policy embodied in federal arbitration law requires that the scope of agreements to arbitrate be interpreted broadly, so as in cases of doubt to include rather than exclude disputes form within their scope.
The arbitrator applies the substantive law selected by the parties, or in the absence of selection, employs private international law rules to select the substantive law. Many national arbitration laws also permit the parties to instruct the arbitrators to resolve disputes by application of equitable principles. Presumably, such an election would be possible under United States law. In such a case, what would be the law applicable to the arbitration clause contained in a contract governed by equitable rather than legal principles?

Also, the location in which the arbitration is conducted can have significant administrative consequences, because the law of the seat may regulate some characteristics of the arbitration. The role of the courts of the jurisdiction in which arbitration takes place will also vary in accordance with the law of that jurisdiction. These and other factors will be discussed in this class.

Required readings:

UNCITRAL Model Law of International Commercial Arbitration


Review arbitration rules

Student presentations
October 8, 2019

Fall Break

October 15, 2019

The Arbitral Tribunal

Composition; Powers; Responsibilities; Liabilities; Neutrality; Kompetenz-Kompetenz, Separability

Background

Although similar to a judge in that the arbitrator resolves definitively the dispute submitted, the arbitrator is not a judge. The differences between the powers of a judge and those of an arbitrator have provoked considerable debate in the literature and jurisprudence of arbitral law. Questions often arise as to the powers of the arbitrator to impose interim measures (such as attachments and injunctions), and as to whether the arbitrator can independently compel non-parties to appear before the panel or produce documents or other proof. Another important issue is the question of whether, and if so, to what extent, the arbitrator can determine his or her own competence or jurisdiction. Often the independence and impartiality of the arbitrator is placed at issue by one of the parties.

The ability of the arbitrator to determine his or her jurisdiction or competence is often referred to as kompetenz-kompetenz. From which source does this authority spring and what are its limits? The answer may turn on the law applicable to the arbitration. For example, the Model Law at Article 16 grants that authority to the arbitrator. The authority extends even to questions as to the existence of the arbitration agreement. United States federal arbitration law contains no such grant of authority. Does this mean that the arbitrator under United States federal arbitration law possesses no such authority? Perhaps. Under United States federal arbitration law, the parties in their arbitration agreement must delegate that authority to the arbitrator. In addition to express delegation in the principal agreement, delegation may come through the arbitration rules selected by the parties. In order to insulate the exercise of the delegate power from independent de novo judicial review, the manifestation of the delegation must be clear and unmistakable.
But how does a determination by the arbitrator that a contract containing the arbitration agreement is not enforceable affect the arbitrator’s jurisdiction? If the invalidity of the contract renders the arbitration agreement invalid, might on that not in turn render null the arbitrator’s decision on the contract’s validity itself? In most national systems, this potentially vicious cycle is broken by applying the principle of separability or the autonomy of the arbitration clause (or agreement). In the Model Law, this is resolved in Article 16. In United States federal arbitration law, in Section 2 of Title 9, and the interpretations of that section given by the courts.

To distinguish between kompetenz-kompetenz and separability, some have referred to the former as procedural in nature and the latter as substantive in nature. (In order to find the contract invalid, the arbitrator must have jurisdiction to do so and the determination of invalidity of the contract resolves a substantive issue in the dispute but does not affect the jurisdiction of the arbitrator.) Do you agree that this is an appropriate or useful construct to understand the difference between the two?

Required readings:


Review arbitration rules

Suggested readings:


Student presentations

Bring written outline of paper to class.
October 22, 2109

The Relationship between the Arbitral Tribunal and The Judiciary

Background

Often, one or more of the parties to an arbitration recurs to the judiciary for assistance or intervention in connection with the arbitration. This intersection of arbitration and the judiciary may have consequences for the arbitration, which differ depending upon when during the arbitral process judicial intervention is requested or imposed upon the arbitration. Some of the possible scenarios are noted below:

1. A lawsuit is filed, and the defendant counters by alleging that the plaintiff has agreed to arbitrate rather than litigate the claims before the court. (Motion to Compel Arbitration or Motion to Stay Pending Arbitration, lis pendens)

2. An arbitration is progressing in a jurisdiction, and a party to the arbitration asks the judiciary of that jurisdiction to prevent the other from litigating in another jurisdiction claims allegedly relating to the arbitration. (Anti-suit Injunction; lis pendens)

3. A party to an arbitration requests that a court stop an ongoing arbitration, normally alleging the non-existence or unenforceability of the arbitration. (Anti-Arbitration Injunction)

4. During an arbitration, an arbitrator requests that subpoenas be issued, or an arbitrator in a foreign jurisdiction requests that a judge assist in the taking of evidence for use in the arbitration.

5. Either an arbitrator or a party to an arbitration asks a court to enforce or issue an interim measure of protection. (Interim Measures of Protection)

6. At the conclusion of an arbitration, the prevailing party requests that a court confirm or homologate the arbitral award, or the losing party asks a court to set aside or vacate the award.

7. A prevailing party in a foreign arbitration requests the recognition or enforcement of the award.

In the United States, if the arbitration agreement arises under either of the Conventions, special procedural dispositions may govern. For example, 9 U.S.C. § 205
contains special removal provisions that make it easier to transfer an action involving either Convention from state to federal court.

**Required readings:**


Allianz SpA v. West Tankers, Inc., Case No. 185/07 (Judgment of the European Court of Justice, 10 February 2009).

Mobil Cerro Negro Ltd. v. Petroleos de Venezuela, Commercial Court – Appeals 18 March 2008

Paramedics Electromedicina Comercial Ltda v. GE Medical Systems Information Technologies, Inc., 369 F.3d 645 (2d Cir. 2004)

**Suggested Readings:**


**Review arbitration rules**

**Student presentations**
October 29, 2019

The Development and Presentation of Proof in The Arbitration

Background

The United States procedures for the development of proof in a judicial proceeding differ diametrically from their counterparts in the English and civilian legal systems. Typical tools for the development of proof in a United States litigation are depositions, requests for production of documents and interrogatories. One of the most contentious points in any arbitration is whether, and if so, the extent to which the parties would be able to engage in U.S.-style discovery. In fact, most arbitral rules grant considerable discretion to the arbitrators with respect to the timeframes and methods for the proof of the claims and responses of the parties. However, many tribunals—especially when made up of persons who are not attorneys trained in the United States—are resistant to the introduction of the instruments of discovery into an international arbitration.

The International Bar Association has developed optional rules for the taking of evidence in international arbitrations. In this class, we concentrate principally on the evidence guidelines prepared by the International Bar Association and discuss the ways in which the procedures and methods differ from the typical procedures and methods utilized in the United States judicial system.

Required readings:

Review arbitration rules for provisions on the taking of evidence.

Review Model Law for provisions on taking of evidence.

IBA Rules on the Taking of Evidence in International Arbitration (2010 Version)


Suggested Reading:

Hay Group, Inc. v. E.B.S. Acquisition Corp., 360 F.3d 404 (3d Cir 2003)

Student presentations
UNIT 4
THE ARBITRAL AWARD

November 5, 2019

Election Day (No Class)

November 12, 2019

The Arbitral Award - Effects; Form; Content

Background

The objective of the arbitral process is the issuance of a document that has the effect of ending the dispute or disputes submitted to the arbitrators and that will permit the direct or indirect execution of the decision of the arbitrators. This document called an award ideally should have or be able to produce effects similar to those of a judgment issued by a court. In some countries, an award issued in that country has the immediate effect of a judgment. This is not the case in the United States, where the domestic award must be confirmed by a court in order to produce the effect of a civil judgment (and it is the order of confirmation rather than the award itself that produces those effects). But what of the award not considered to be domestic under United States law, yet not issued in a foreign country that is a party to the New York Convention?

It is likely that the prevailing party will try to enforce the award in a jurisdiction other than in the jurisdiction in which the award was made. Considerations of execution should also be taken into account in the drafting of the agreement to arbitrate. For example, in some jurisdictions, only a reasoned award can be enforced, and in others, the award need not be reasoned. The Convention generally regulates the recognition and enforcement of the foreign award and of the award not considered to be domestic. National law also plays an important role. In many countries, the foreign award must go through a procedure called exequatur, normally in the highest court of the judicial system before execution on the award in a court of first instance. In the United States, the foreign award must be confirmed by a court of first instance before execution, and the order of confirmation subject to possible appeal.

Once the arbitrator issues his or her award, the doctrine of *functus officio* is applicable. *Functus officio* is Latin for “task performed.” Often the arbitrator is said to be *functus officio*, but what the doctrine really means is that once the award becomes final the arbitrator’s power to act is extinguished. See *Michaels v. Mariforum Shipping*, 624 F.2d 411, 414 (2nd Cir. 1980).
In this class, we will consider the effects of the award, as well as the effect that the form and content of the award may have on enforceability. Both the New York Convention and Title 9 impose documentary requirements for the confirmation or recognition/enforcement process. Article IV of the New York Convention establishes procedures (or at the least procedural requirements) for requesting a competent authority to recognize and enforce an arbitral award. In addition, 9 U.S.C. sec.13 lists the documents that a successful movant or petitioner for confirmation or modification of an award must file at the time that the corresponding order is docketed.

Language in *Czarina, LLC. v. W.F. Poe Syndicate*, 358 F.3d 1286 (11th Cir. 2004)(required reading for this class) suggests that the requirements of Article II are jurisdictional. In particular, if an agreement to meet the requirements of Article II of the New York Convention cannot be supplied, a federal court might be without jurisdiction to hear the action or proceeding to recognize or enforce the award resulting from the execution of the agreement.

**Required readings:**

- Review arbitration rules
- Student presentations
- All students bring rough draft to class
UNIT 4
THE ARBITRAL AWARD

November 19, 2019

Enforcement and Recognition of the International Commercial Arbitration Award

Confirmation of The Award
Vacating or Setting Aside The Award
Recognizing and Enforcing The Award

Background

Once the award has been issued, normally the involvement of the arbitrators in the process ends, and the relevance of national law becomes more important. Since the Conventions devote considerable attention to the question of the effect that the award will have, the Conventions may play an important role the identification of the applicable legal norms for recognizing and enforcing arbitral awards. An arbitrator should keep in mind the grounds for the non-recognition and non-enforcement found in Article V of the New York Convention and Article 5 of the Panama Convention during the arbitral process.

Also relevant are national legal norms. The law of the place of the arbitration will supply its own norms in order to determine whether the award should be set aside. In this class, we focus on the legal framework in the United States for confirmation, vacatur, and enforcement of awards.

There is an important distinction to be drawn between the action to set aside the award (generally in the place where the award is issued) and an action to either recognize or enforce a non-domestic or foreign award governed by the Convention. If the award is issued in a country that has adopted the UNCITRAL Model Law, the national standard for set aside will be similar if not identical to the standard established in Article V of the New York Convention. Where the jurisdiction of set aside is not a UNCITRAL Model Law jurisdiction, the national standard will likely be unique to that jurisdiction (as is the case for the United States, a jurisdiction that has not enacted the UNCITRAL Model Law or adopted the standards of Article V for the set aside action (identified in United States law as the Motion to Vacate, regulated at 9 U.S.C. § 10 of the United States Code and by jurisprudentially established principles that vary among the federal circuits)). (But consider the decision of the United States Court of Appeals for the Eleventh Circuit in Industrial Risk Insurers, assigned as a reading for this class.)
Article V of the New York Convention establishes standards for recognition and enforcement of the foreign (or non-domestic) arbitral award. The article is divided into two general sections, one of which contains grounds that must be raised by a party resisting recognition or enforcement, and the other that can be raised by competent authority sua sponte. The question of whether some, all or none of the grounds if established would mandate non-recognition or non-enforcement in another country, has generated considerable discussion in the arbitration community. In class, we will discuss many of those positions.

Confirming the Award

In United States federal arbitration law, the award must be confirmed by a federal district court in order for its properties to acquire the effect of a judgment in civil action. In fact, the award does not itself acquire that quality, but instead the order of confirmation. Normally, the court will transcribe the operative part of the award in the order, which then can be the subject of execution. On occasion, the district court will diverge from the text of the award, which can raise issues on confirmation.

The regulation of the confirmation of the award is found at 9 USC sec. 9.

Vacating or Setting Aside the Award

The motion to vacate is the procedural vehicle used to request that a court set aside or vacate an arbitral award. In the United States, the motion to vacate is regulated in 9 USC secs. 10 and 12. Section 10 is not long, and establishes four categories of grounds for vacating an arbitration award. (9 U.S.C. Sec. 11 establishes the legal standard for modification of the award.) Section 12 requires that a motion to vacate be served upon the opposing party within 3 months of issuance or delivery of the award.

Modifying or Correcting the Award

9 U.S.C. sec. 11 authorizes a federal court to modify or correct certain aspects of an arbitration award. In addition, under certain conditions, the award can be sent back to the arbitrator by the Court for correction of defects that might otherwise lead to its vacatur (i.e., set aside).

Recognizing and Enforcing the Award

The process of recognizing and enforcing the award generally refers to legal actions taken in order for the award to acquire the characteristics of a judgment or other instrument capable of execution. Under United States law, the object of the recognition and enforcement of a foreign award is the confirmation of the award under federal law.
The order of confirmation acquires the characteristics of a judgment issued by a United States federal court in a civil matter.

**Other Means of Enforcement**

It is possible that in some countries, the award may be submitted to a process similar to confirmation in the United States that culminates in the issuance of an instrument susceptible of execution like a judgment or in fact the issuance of a judgment. In such situations, United States courts have held that the procedural mechanism for the recognition and enforcement of a foreign judgment may be utilized, in place of a convention mechanism focused on the award itself.

**Required Reading:**

- Termorio S.A. E.S.P. v. Electranta S.P., No. 06-7068 (D.C.Cir Mat 25, 2007)
- Dallah Real Estate and Tourism Holding Co. v. The Ministry of Religious Affairs, Government of Pakistan, [2010] UKSC 46 (United Kingdom Supreme Court - 3 November 2010)
- Baker Marine (Nig.) Ltd. v. Chevron (Nig.) Ltd, 191 F.3d 194 (2d Cir. 1999)

**Suggested Readings:**

- Compagnie Noga D'Importation et D'Exportation, S.A. v. The Russian Federation, 361 F.3d 676 (2nd Cir. 2004)
- Four Seasons Hotels and Resorts, B.V. v. Consorcio Barr, C.A., 377 F.3d 1164 (11th Cir. 2004)
- Bridas Sapic v. Government of Turkmenistan, 345 F.3d 347 (5th Cir. 2003)
Société Hilmarton Ltd v Société OTV
Maximov v. NLMK

Student presentations

UNIT 5
CONCLUSION

November 19, 2019 (Continued)

Summary of Course and of Recent Developments

Required Readings:

Stolt-Nielsen S.A. v. AnimalFeeds International Corp., No. 08-1198 (United States Supreme Court - April 27, 2010).
Rent-A-Center, West, Inc. v. Jackson, No. 09-497 (United States Supreme Court - June 21, 2010)
Granite Rock Co. v. International Brotherhood of Teamsters, No. 08-1214 (United States Supreme Court – June 24, 2010)

Presentation of Student Papers

Final Draft of Paper Due on The Last Day of Scheduled Classes of The Semester
International Commercial Arbitration Bibliography


Redfern & Hunter on International Arbitration (Oxford Univ. Press 2009)


Tweedale & Tweedale, Arbitration of Commercial Disputes: International and English Law and Practice (Oxford 2007)


Gearing, Gill & Sutton, Russell on Arbitration (23nd ed., Sweet & Maxwell 2009)


LIST OF ACCEPTABLE TOPICS AND GENERAL SUBJECTS FOR A PAPER
(This list is not exhaustive, merely suggestive of topics and subjects)

Confidentiality in International Arbitration

Ethical Considerations in International Arbitration

Choice of Law Questions Presented in the New York Convention

Interaction of the Arbitrator and the Judge

*Iura Novit Curia* – To what extent does it have a place in international arbitration?

Arbitration in the Opinions of The United States Supreme Court

Arbitration in the United States Court of Appeals for the [take your pick] Circuit

When is an Award “Binding” for Effects of the New York Convention

International Arbitration in the United States prior to the New York Convention

Arbitration in the United States prior to the United States Arbitration Act

Taking of Evidence in International Arbitration

The Place of the UNIDRIOT Principles of International Commercial Contracts in International Arbitration

The Influence of the UNCITRAL Model Law of International Commercial Arbitration

Does the United States Need a separate law to regulate international [commercial] arbitration?

Survey of Approaches to the Applicable Arbitral Law

Survey of Approaches to the law applicable to the arbitration agreement

Comparison of one or more aspects of one or more international arbitration rules

Comparison of one current version of international arbitration rules with the predecessor rules
The significance of the selection of the situs of the arbitration

The “agreement in writing” of the New York Convention

Interpretation of the New York Convention as An Instrument of Public International Law

The Incorporation of the New York Convention into the Domestic Legal Order of the United States

Parallel Enforcement of Arbitration Awards

Effects of Annulment of Award in the Seat of The Arbitration after the Award has been Paid in Full

Can a competent authority enforce an award that has been set aside in the place where the award was made.

Drafting history of the New York Convention, focusing on a particular article

Status of instruments of public international law in the domestic legal order of the United States

Giving form to the concept of “public policy” in international arbitration

The intersection of United States federal procedural law and international arbitrations