

UNIVERSITY OF HOUSTON LAW CENTER

Advocacy in International Arbitration

Fall Term 2023

INSTRUCTORS

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Locke Lord LLP
600 Travis, Suite 2800
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CLASS TIMES

Thursdays, 24 August 2023 through 30 November 2023, 9:00 AM – 12:00 PM.

Although class will be Face-to-Face, there may be limited instances in which class will be taught remotely over Zoom.

FINAL PROJECT

Note that in lieu of a final examination, students have two major assignments.

1. Students will submit a pre-hearing memorial on the day that the final is scheduled by the Law Center. The pre-hearing memorial is to be sent by email to Mary Smith at msmith@lockelord.com by 5:00 PM. The length of the pre-hearing memorial is expected to be around 20 pages. The pre-hearing memorial will be judged on persuasiveness, organization, use of facts and authorities, including secondary sources, grammar and overall appearance.
2. Students will participate in a final merits hearing to be held on 30 November 2023 at which time they will cross-examine a witness.

REQUIRED READING

The Principles and Practices of International Commercial Arbitration by Margaret Moses (any edition) [available on Amazon]

“Legal Writing and the Lone Ranger: Every Lawyer Has a Silver Bullet” by Daniel J. Kornstein (2020) [available on Amazon]

The United Nations Convention on Contracts for the International Sale of Goods (CISG) [available on Internet]

UNCITRAL Model Law on International Commercial Arbitration [available on Internet] UNCITRAL Arbitration Rules [available on Internet]

International Bar Association Rules on the Taking of Evidence in International Arbitration [available on Internet]

International Bar Association Guidelines on Conflicts of Interest in International Arbitration [available on Internet]

The New York Convention [available on Internet]

CLASS SYNOPSIS

This course examines an international commercial arbitration from inception to conclusion.

This class requires active class participation. Activities include the presentation of an opening statement, cross-examination of a witness, preparation of a witness statement and preparation of a pre-hearing memorandum. Class attendance will be rigorously enforced and class participation is a component of the final grade.

LEARNING OUTCOMES

During your time in this course, you will develop competence in understanding and applying your understanding of the following: the legal structure of international arbitration (national arbitration statutes, treaties, and institutional rules); the arbitration agreement; the arbitral process; *kompetenz-kompetenz*; the importance of the seat of arbitration; arbitrator selection; ethical conflicts involving arbitrators; dealing with pathological arbitration clauses; procedural timetables; procedural orders; arbitral jurisdiction; choice-of-law; document-exchange issues; the CISG; pre-hearing submissions; preparation of witness statements; hearing strategy; technique and theory of cross-examination; and the differences between the common law and civil law.

CLASS SCHEDULE

Class 1 (24 August 2023)

Introduction and Overview of Course

- Lecture and in-class discussion: Legal structure of international arbitration (national arbitration statutes, treaties, and institutional rules); the arbitration agreement and the arbitral process; *kompetenz-kompetenz*; and the importance of the seat of arbitration.
- Reading Assignment for Next Class: Chapters 3 and 6 of The Principles and Practices of International Commercial Arbitration; IBA Guidelines on Conflict of Interest in International Commercial Arbitration

Class 2 (31 August 2023)

Lecture and in-class discussion: Preliminary issues in international arbitration (e.g., selection of the Tribunal and ethical conflicts involving arbitrators; dealing with pathological arbitration clauses).

- Introduction to hypothetical case.
- Reading Assignment for Next Class: Chapter 7 of The Principles and Practices of International Commercial Arbitration.

Class 3 (7 September 2023)

- Lecture and in-class discussion: Lecture on issues relating to the procedural timetable and procedural order; arbitral jurisdiction and choice-of-law.
- Beginning discussion of pre-hearing memorials.
- Reading Assignment for Next Class: Chapter 4 of The Principles and Practices of International Commercial Arbitration.

Class 4 (14 September 2023)

- Lecture and in-class discussion: Introduction to document-exchange issues and IBA Rules on the Taking of Evidence in International Arbitration
- Assignment: Negotiate Procedural Order and discuss negotiations and strategy in class
- Preparation of Redfern Schedules due on 21 September 2023 at beginning of class.
- Reading Assignment for Next Class: The International Convention on Contracts for the International Sale of Goods (CISG)

Class 5 (21 September 2023)

- Lecture and in-class discussion: CISG and preparing pre-hearing memorials.

Class 6 (28 September 2023)

- Exchange Redfern Schedules and discuss advocacy concepts involved in seeking disclosure of documents.
- Lecture and in class discussion: Preparing witness statements, how to find experts, etc.
- Further discussion on pre-hearing memorials.

Class 7 (5 October 2023)

- Lecture and in-class discussion: Pre-hearing submissions, preparation of witness statements, hearing strategy.
- Assignment: Preparation of witness statements.
- Assignment: Preparation of mock opening statements.

Class 8 (12 October 2023)

- Presentation: Present mock opening statements for critique.

Class 9 (19 October 2023)

- Lecture and in-class discussion: Technique and theory of cross-examination.

Class 10 (26 October 2023)

- Present Opening Statement for Grade

Class 11 (2 November 2023)

- Present Cross-Examination for critique

Class 12 (9 November 2023)

- General Q/A on Advocacy Techniques

Class 13 (16 November 2023)

- Lecture and in-class discussion: The difference between the common law and the civil law.
- Lecture and in class discussion: Challenging and enforcing the arbitral award and considerations in drafting the award.

Class 14 (30 November 2023)

- Final Presentations

GRADING BASIS

Your final grade will be based as follows:

Class participation (general discussion, advocacy choices for Redfern Schedule and Procedural Order) – 10%

Witness statement – 20%

Opening statement – 15%

Cross-examination – 30%

Pre-hearing memorial – 25%

STUDENT SERVICES

Counseling and Psychological Services (CAPS) can help students who are having difficulties managing stress, adjusting to the demands of a professional program, or feeling sad and hopeless. You can reach CAPS (www.uh.edu/caps) by calling 713-743-5454 during and after business hours for routine appointments or if you or someone you know is in crisis. No appointment is necessary for the “Let's Talk” program, a drop-in consultation service at convenient locations and hours around campus. http://www.uh.edu/caps/outreach/lets_talk.html