

Durham Summer Course on International Arbitration



10-15 July
2023

Durham Summer Course on International Arbitration

The expansion of cross-border investment and trade has led to increased and ever more complex relationships between businesses, investors, and States. Inevitably, those relationships sometimes break down, and parties need to consider the best means of resolving the disputes which may arise.

Over the last half-century, multinational parties and the international community has increasingly embraced arbitration as the primary means of resolving complex, transnational, disputes.

This course focuses on the theory and practice of international arbitration as a distinct field of legal practice. It will cover international commercial arbitration, investment treaty arbitration and some of the practical skills and strategic considerations that specialist counsel in these fields need to understand.

In addition to offering basic instruction on the theoretical foundation and principles behind arbitration, the course will also provide practical instruction, such as best practices in written and oral advocacy, the recognition and enforcement of arbitral awards and institutional rules.

The course is targeted towards practitioners who want to expand their skill set or discover a new field of practice; scholars seeking to gain expertise in the application of concepts and norms within the field of international arbitration; and students seeking exposure to the world of international dispute resolution.

The faculty at Durham Law School is drawn from the very top echelon of scholars and practitioners around the world, and is purposefully chosen to provide a diverse array of experience and perspectives to course participants. Enrollment is limited to 30 so as to provide a 3:1 teacher-to-student ratio and thus ensure personal and hands-on instruction for every participant.

The location of the summer course at Durham University, located in the North East of England, offers participants a global experience in a unique and intimate setting.

Situated in the historic setting of the UNESCO World Heritage Site, which includes Durham Cathedral, Durham Castle, and the surrounding area, Durham Law School is in the QS World Rankings top 50 law schools, and its graduates include some of law's leading figures, including current members of the UK Supreme Court, the Court of Appeal, Members of Parliament and various global law firms, international organisations and governments around the world.



On the evening of Friday 14 July you're invited to a formal dinner at Hatfield College. Founded in 1846, Hatfield College is the second oldest College in Durham University. It is located between the World Heritage site of the Norman Cathedral and the banks of the River Wear, on one of the oldest streets in Durham. The event will start at 6:00pm with a drinks reception followed by dinner in the Great Hall. A number of Durham academics will be in attendance as well as guest speakers and other colleagues who've supported the introduction of this Summer School.

Course Requirements and Fees



The Durham summer course is open to lawyers barred in any jurisdiction as well as students enrolled in any university's LLM, JD or SJD course (or its equivalent).

All participants will be eligible for a Diploma or Certificate of Attendance, including CLE or continuing competence credit where applicable.

For students, the course will equal 2 ECTS credits, and we can work with your home institution on the award of those credits. Certain U.S. institutions may award academic credit as well.

For non-students, the fee is GBP 1,650, which includes all materials and attendance at all sessions and events.

For students, the fee is GBP 850 (Durham students) or GBP 950 (non-Durham students), which includes all materials and attendance at all sessions and events.

Group rates on local accommodation are available. Information will be provided upon registration.

A non-refundable deposit of GBP 100 is required to confirm registration. The deposit will be applied towards the tuition. Written cancellation received 14 business days prior to the course will be fully refunded. Cancellations after that time will not be refunded, however, reading materials will be sent and access to webcasts will be provided if available.

For any further information, including details about group discounts, please contact clara.martins-pereira@durham.ac.uk



Top 10

in The Times and Sunday Times Good University Guide 2023

100%

of research impact and environment was ranked 3* or 4* (REF 2021)

8th

in the Complete University Guide 2023

Top 50

QS World University Rankings by Subject 2023



Course Schedule

The course offers five modules, lasting six days, covering (1) the fundamentals of commercial arbitration, (2) the fundamentals of treaty-based arbitration, (3) treaty-based arbitration and damages, (4) practical arbitration skills, and (5) topics and perspectives. Each core module will begin with the theoretical foundation of arbitration, will cover the various laws and rules that govern international arbitration, discuss strategic considerations that commonly arise in transnational disputes, and provide participants with hands-on and practical guidance on effective advocacy and how to manage the arbitral process. The course will offer around 30 hours of total classroom time. Daily networking activities such as coffee hours, luncheons, dinners and visits to local Durham attractions provide participants opportunities to meet with faculty experts and practitioners.

Course Faculty

The course is taught by leading practitioners and arbitrators from around the world, with the goal of providing students a diverse perspective of international arbitration from various legal cultures and national backgrounds.

The four course co-directors (below) include current arbitrators, practitioners and academics with a combined 100 years of experience in international, commercial and investment treaty arbitration with leading global law firms.

John Fellas



Full-time international arbitrator. Adjunct Professor of Law, New York University School of Law.

Over 30 years' dispute resolution experience at a major law firm in New York City.

Recognised by Best Lawyers as the Lawyer of Year for Commercial International in New York in 2019 and Lawyer of Year for Governmental International Arbitration in New York in 2022.

Dunelm, B.A. Law (Hons.) 1983.

Wendy Miles KC



International arbitrator and arbitration counsel.

Over 25 years' arbitration experience, both commercial and investment.

Member of the ICC Court of Arbitration for over a decade. Appointed by the United Kingdom to the ICSID Panel of Arbitrators and ICSID Panel of Conciliators.

Canterbury, B.A. LL.B. 1994; LL.M. 1998.

Christian Leathley



Partner, Herbert Smith Freehills LLP (New York).

Former Adjunct Professor at New York University School of Law and University of Pennsylvania Law School.

30 years' experience in international arbitration; practiced in New York, London, Madrid and Amsterdam.

Chambers/Legal 500 ranked for the U.S. and Latin America. Dunelm, B.A. Law (Hons.) 1995.

Charles T. Kotuby Jr.



Professor at the University of Pittsburgh School of Law and Durham Law School. Former partner at Jones Day in Washington DC.

15 years of international arbitration and public international law experience.

Ranked Band 1 for International Arbitration in Chambers USA.

Dunelm, LL.M. (Hons.) 2001.



We look forward to welcoming:

- Professor Can Eken** Assistant Professor in Commercial Law at Durham Law School.
- Tim Smyth** Senior Associate at Arnold & Porter.
- Professor Lei Chen** Chair in Chinese Law, Co-Director of the Centre for Chinese Law and Policy.
- Mahnaz Malik** Barrister and arbitrator at Twenty Essex.
- Sylvia Tonova** Partner and co-head of ISDS and Public International Law at Pinsent Masons.
- Dr Min Shi, CFA** Partner at Oxera.
- Professor Sir Bernard Rix** Previously a Lord Justice of Appeal with 20 years' experience in the Commercial Court and the Court of Appeal. International Judge of the Singapore International Commercial Court and a member of the Cayman Islands Court of Appeal. Professor of International Commercial Law at The Centre of Commercial Law Studies at Queen Mary, University of London.
- Karyl Nairn, KC** Arbitrator at Arbitration Chambers.
- Constantine Partasides, KC** Founding Partner at Three Crowns.

Thank you

to:

Herbert Smith Freehills

and

**University of Pittsburgh -
Center for International Legal
Education | School of Law**



HERBERT
SMITH
FREEHILLS



University of
Pittsburgh

Center for International
Legal Education
School of Law

2023 Durham Summer Programme on International Arbitration

All sessions take place at Hogan Lovells Lecture Theatre, Palatine Centre (DH1 3LE)

Coffee/tea and pastries will be available each day from 9am

Refreshments will be available during selected breaks

10-07 Monday

Fundamentals of Commercial Arbitration

9:00am – 9:30am: Coffee/tea and pastries

9:30am – 10:00am: Introduction to the programme

Instructor(s): John Fellas

10:15am – 11:30am: Why Parties Select International Arbitration

This session will focus on explaining what international arbitration is and why parties may choose arbitration for their international commercial contracts.

Instructor(s): John Fellas, Christian Leathley

Assigned Reading: Gary B. Born, *International Arbitration: Law and Practice*, Chapters 1-5 (Kluwer Law International 2012); Jan Paulsson, *International Arbitration is Not Arbitration*, 2 *Stockholm Int'l Arb. Rev.* 1 (2008).

11:45am – 12:45pm: The Legal Basis for International Arbitration

This session will focus on the legal basis for arbitration.

Instructor(s): John Fellas, Christian Leathley

Assigned Reading: United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958); UNCITRAL Model Law on International Commercial Arbitration (2006).

2:30pm – 3:45 pm: The Law and Rules That Govern International Commercial Arbitration

This session will focus on the law and rules that govern international arbitration: the New York Convention, domestic law, arbitration rules, and soft law instruments governing the arbitral process.

Instructor(s): Professor Can Eken

Assigned Reading: United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958); UNCITRAL Model Law on International Commercial Arbitration (2006); IBA Rules on the Taking of Evidence (2010); ICC Arbitration Rules (2021); LCIA Arbitration Rules (2020); ICDR Arbitration Rules (2021); Arbitration Act of 1996 (Eng.); IBA Guidelines on Party Representation in International Arbitration (2013); IBA Guidelines on Conflict of Interest in International Arbitration (2014); Sample Procedural Order No. 1.

4:00pm – 5:00pm: How to Draft an Arbitration Clause

Instructor(s): John Fellas, Christian Leathley

Assigned Reading: Model arbitration clauses

11-07 Tuesday

Fundamentals of Commercial Arbitration

9:00am – 9:30am: Coffee/tea and pastries

9:30am – 10:30am: Enforcement of Arbitration Agreements

This session will focus on the enforcement of arbitration agreements, including the allocation of responsibility between courts and arbitrators, kompetenz-kompetenz and separability in leading arbitration jurisdictions around the world.

Instructor(s): Professor Charles Kotuby Jr.

Assigned Reading: Gary B. Born, *International Arbitration: Law and Practice*, Chapters 1-5 (Kluwer Law International 2012); Jan Paulsson, *International Arbitration is Not Arbitration*, 2 *Stockholm Int'l Arb. Rev.* 1 (2008).

10:45 am – 12:00 pm: Enforcement of Arbitration Awards

This session will focus on the enforcement of arbitration awards including the distinction between enforcement and set aside, the various defenses to enforcement and the standards for set aside.

Instructor(s): Professor Lei Chen

2:30pm – 5:00pm: The Arbitration Process

This session will discuss in detail how a dispute unfolds from the beginning of the dispute to the issuance of an award. It will include a discussion of preliminary relief, the commencement of arbitration proceeding, emergency arbitrators, the preliminary conference, the submission of memorials, witness statements and expert reports, the taking of evidence, and the hearings.

Instructor(s): John Fellas, Tim Smyth

Assigned Reading: United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958); UNCITRAL Model Law on International Commercial Arbitration (2006); IBA Rules on the Taking of Evidence (2010); ICC Arbitration Rules (2021); LCIA Arbitration Rules (2020); ICDR Arbitration Rules (2021); Arbitration Act of 1996 (Eng.); IBA Guidelines on Party Representation in International Arbitration (2013); IBA Guidelines on Conflict of Interest in International Arbitration (2014); Sample Procedural Order No. 1.

12-07 Wednesday

Fundamentals of Treaty-Based Arbitration

9:00am – 9:30am: Coffee/tea and pastries

9:30am – 12:00pm: Introduction to Treaty-Based Arbitration

This session will introduce the theoretical basis of treaty-based arbitration, the various institutions, and mechanisms for dispute settlement.

Instructor(s): Charles T. Kotuby Jr., Christian Leathley

Assigned Reading: Jan Paulsson, *The Power of States to Make Meaningful Promises to Foreigners*, 1 *J. Int'l Disp. Settlement.* 341 (2010); Kenneth J. Vandeveld, *A Brief History of International Investment Agreements*, 12 *U.C. Davis J. Int'l L. & Pol'y* 157 (2005); U.S. Model BIT.



2:30pm – 5:00pm: Issues of Jurisdiction in Treaty-Based Arbitration

This session will cover the definition of “investment”, issues of temporal jurisdiction, treaty structuring and issues of corruption as a matter of jurisdiction and admissibility.

Instructor(s): Charles T. Kotuby Jr., Mahnaz Malik

Assigned Reading: *Empresas Lucchetti, SA and Lucchetti Peru, SA v. Peru*, ICSID Case No. ARB/03/4, Award, 7 Feb. 2005; *World Duty Free v. Kenya*, ICSID Case No. Arb/00/7.

13-07 Thursday

Treaty-Based Arbitration and Damages

9:00am – 9:30am: Coffee/tea and pastries

9:30am – 12:00pm: Expropriation and the Fair and Equitable Treatment Standard

This session will address the primary substantive protections of investment treaties and their jurisprudential development over the past few years.

Instructor(s): Charles T. Kotuby Jr., Sylvia Tordova

Assigned Reading: Kenneth J. Vandeveld, *A Unified Theory of Fair and Equitable Treatment*, 43 N.Y.U. J. Int'l L. & Politics 43 (2010); *Técnicas Medioambientales Tecmed, S.A. v. United Mexican States*, ICSID Case No. ARB(AF)/00/2; Kotuby & Sobota, *Practical Suggestions to Improve the Legitimacy and Vitality of Investment Arbitration*, ICSID Review, Vol. 28, No. 2 (2013).

2:30pm – 5:00pm: Damages in Commercial and Investment Arbitration

With the assistance of leading forensic economists, this session will address issues of reparation and compensation, strategic considerations of valuation dates and how various breaches and businesses implicate different quantum models.

Instructor(s): Dr. Min Shi CFA

Assigned Reading: Mark W. Friedman and Floriane Lavaud, *Damages Principles in Investment Arbitration*, in *The Guide to Damages in Investment Arbitration* (Global Arbitration Review 2018).

14-07 Friday

Practical Arbitration Skills

9:00am – 9:30am: Coffee/tea and pastries

9:30am – 11:00am: Best Practices in Written Advocacy: Pleadings, Witness Statements and Expert Reports

This session will highlight best practice in written advocacy, seeking to bridge the divide between different legal traditions.

Instructor(s): Christian Leathley (Moderator), Professor Sir Bernard Rix, Karyl Nairn KC, Constantine Partasides KC, (John Fellas, Wendy Miles KC)

Assigned Reading: John Fellas, *Cross-Examination in International Arbitration*, NYLJ (2015); John Fellas, *Preparing Witness Statements in International Arbitration*, NYLJ (2017).

11:15am – 12:30pm: Best Practices in Oral Advocacy: Opening and Closing Statements

This session will address best practices in delivering opening and closing statements and include participant discussion and hands-on workshops.

Instructor(s): John Fellas (Moderator), Professor Sir Bernard Rix, Karyl Nairn KC, Constantine Partasides KC, Christian Leathley, Wendy Miles KC

Assigned Reading: John Fellas, *Cross-Examination in International Arbitration*, NYLJ (2015); John Fellas, *Preparing Witness Statements in International Arbitration*, NYLJ (2017).

2:30pm – 4:30pm: Best Practices in Oral Advocacy: Cross-Examination Q&A on all aspects of advocacy

This session will address best practices in cross-examination statements and include participant discussion and hands-on workshops.

Christian Leathley introductory demonstration.

Instructor(s): Wendy Miles KC (Moderator), Professor Sir Bernard Rix, Karyl Nairn KC, Constantine Partasides KC, Christian Leathley, John Fellas

Assigned Reading: John Fellas, *Cross-Examination in International Arbitration*, NYLJ (2015); John Fellas, *Preparing Witness Statements in International Arbitration*, NYLJ (2017).

4:30pm – 5:30pm: Informal mingle

15-07 Saturday

Topics and Perspectives

9:00am – 9:30am: Coffee/tea and pastries

9:30am – 11:30pm: Arbitrator Perspectives Q&A

This interactive session will feature arbitrators discussing the most effective features of a global arbitral practice and advocacy before arbitral tribunals and how they approach decision-making.

Instructor(s): Wendy Miles KC (Moderator), Professor Sir Bernard Rix, Karyl Nairn KC, John Fellas

1:00 pm – 3:30pm: In-house and other experts' perspective – TBC

Contact details

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