

2024 DURHAM SUMMER PROGRAM ON INTERNATIONAL ARBITRATION

MONDAY

FUNDAMENTALS OF COMMERCIAL ARBITRATION

9:30am – 10:00am: Introduction to The Program

Instructor(s): John Fellas

10.15am - 11:30am: Why Parties Select International Arbitration

This session will focus explaining what international arbitration is and explaining 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 governs international arbitration: the New York Convention, domestic law, arbitration rules, and soft law instruments governing the arbitral process

Instructor(s): Dr 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 – 5.00 pm: How to Draft an Arbitration Clause

Instructor(s): John Fellas; Christian Leathley

Assigned Reading: Model Arbitration Clauses

TUESDAY

FUNDAMENTALS OF COMMERCIAL ARBITRATION

9:30am – 10.30 am: Enforcement of Arbitration Agreements

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

Instructor(s): John Fellas; Dr Ronán Feehily

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); Ronán Feehily, *Separability in International Commercial Arbitration: Confluence, Conflict and the Appropriate Limitations in the Development and Application of the Doctrine*, Arbitration International (Volume 34, Issue 3, 2018, 355-383); Ronán Feehily, *International Commercial Mediation: Law and Regulation in Comparative Context*, Cambridge University Press, Cambridge, United Kingdom (2022), chapters 3 & 8.

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 – 4:30pm: 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; Christian Leathley, Wendy Miles KC

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.

WEDNESDAY

FUNDAMENTALS OF TREATY-BASED ARBITRATION

9:30am - 11:30pm: 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.; Todd Weiler

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 - 4:30pm: 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., Todd Weiler

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

THURSDAY
TREATY-BASED ARBITRATION AND DAMAGES

9:30am - 11:30pm: 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., Manish Aggarwal

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 - 3:45pm: 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)

4:00pm-5:15pm: Third-Party Funding in Commercial and Investment Arbitration

Instructor(s): Christiane Deniger, Ayse Yazir

FRIDAY
PRACTICAL ARBITRATION SKILLS

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; John Fellas, Wendy Miles KC, Charles Kotuby, Penny Madden KC.

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

11:15am – 12:45pm: A Fireside Chat with Professor Sir Bernard Rix and Dame Liz Gloster

2:30pm – 4:00pm: Best Practices in Oral Advocacy: Opening and Closing Statements, Cross-Examination

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

Instructor(s): Wendy Miles KC (Moderator); Penny Madden KC, Professor Sir Bernard Rix, John Fellas, Christian Leathley, Dame Liz Gloster.

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