

## GEORGE MASON UNIVERSITY SCHOOL OF LAW

### INTRODUCTION TO INTERNATIONAL COMMERCIAL ARBITRATION – LAW 391 FALL 2024 LECTURE SYLLABUS (Part 1 – Lecture)

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#### **Class Meetings**

Class meetings are held on Thursday evenings from 6:05p-8:05p beginning on August 22, 2024 and ending on October 3, 2024. Location TBD.

#### **Course Description**

This course is designed to give students an understanding of the law of international commercial arbitration. This 7-week course contains a series of lectures, individual and group assignments, and class discussions, which will provide students an opportunity to learn the law as well as practical aspects of domestic and international commercial arbitration. This course is taught typically as a prerequisite to Law 127 – the Vis International Commercial Arbitration Moot course. However, this lecture course stands alone, and students are not required to participate in the Willem C. Vis International Commercial Arbitration Moot.

#### **Reading materials**

All reading materials will be available online. The textbook readings are available through Kluwer Arbitration, which can be found through the GMU Law Library's Law-Related Databases website [HERE](#). Week 1 readings will be available for download on the course TWEN page. \*STUDENTS MUST SIGN UP FOR THE COURSE TWEN PAGE\*

Readings for the rest of the semester are being updated and a revised syllabus will be provided.

#### **Course Objectives**

- Students will learn the history of jurisprudence surrounding arbitration in the US and the judicial policy of furthering arbitration, including preemption of state law.
- Students will study the coverage, structure, and implementation of the Federal Arbitration Act and New York Convention on Enforcement of Foreign Arbitral Awards
- Students will learn the requirements of an enforceable arbitration clause and the challenges of arbitration clauses.
- Students will appreciate the processes for arbitrator appointments, challenges to arbitrator appointments, and challenges to the jurisdiction of the arbitrators.
- Students will become familiar with the arbitral hearing process in US and international settings.

- Students will become familiar with the process and policy of arbitral award and enforcement proceedings, including grounds for annulment under the FAA and the New York Convention.

### Attendance

Students must meet the GMU attendance policy requirements. Further, your grade is based upon informed participation, so attendance will impact your grade. Please notify professors if you will miss any class periods.

### Grading

Grades are based on your written individual and small group work product, your performance on assigned class presentations, and your informed participation in class. The grading breaks down as follows: 60% - Assignments and Presentations; 40% - Informed Participation.

### Schedule

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| <p>Class 1<br/>August 22</p>   | <p>Introduction to Course; Arbitration in the Context of Overall Dispute Resolution; The Development of Arbitration from “<i>Lex Mercatoria</i>” to the Present; Forms of Arbitration</p> <p>Readings</p> <ul style="list-style-type: none"> <li>- Lew, Mistellis, &amp; Kroll, Ch. 1-3</li> <li>- <i>Wilko v. Swan</i>, 346 U.S. 427 (1953)</li> </ul>  |
| <p>Class 2<br/>August 29</p>   | <p>Statutory Framework of Arbitration; Essentials of an Arbitration Agreement</p> <p>Readings</p> <ul style="list-style-type: none"> <li>- TBD</li> <li>- <i>Southland Corp. v. Keating</i>, 465 U.S. 1 (1984) on preemption</li> </ul> <p>Primary Sources</p> <ul style="list-style-type: none"> <li>- Federal Arbitration Act (“FAA”)</li> <li>- UNCITRAL Model Law on International Commercial Arbitration</li> <li>- The Convention on the Recognition and Enforcement of Foreign (“UML”)</li> <li>- Arbitral Awards (“New York Convention”)</li> </ul> <p>Assignment</p> <ul style="list-style-type: none"> <li>- Draft an arbitration clause based on mock fact pattern</li> <li>- Group presentation based on the week’s reading</li> </ul> |
| <p>Class 3<br/>September 5</p> | <p>Enforcing Agreement to Arbitrate; Formation; Validity; Arbitrability; Interpretation</p>  |

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|                         | <p>Readings</p> <ul style="list-style-type: none"> <li>- TBD</li> <li>- <i>Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.</i>, 473 U.S. 614 (1985) on arbitrability</li> <li>- <i>Henry Schein, Inc. v. Archer &amp; White Sales, Inc.</i>, 586 U.S. 63 (2019)</li> <li>- <i>Buckeye Check Cashing, Inc. v. Cardegna</i>, 546 U.S. 440 (2006)</li> </ul> <p>Assignment</p> <ul style="list-style-type: none"> <li>- Present and discuss draft arbitration clauses</li> <li>- Group presentation based on the week’s reading</li> </ul> |
| Class 4<br>September 12 | <p>Seat of Arbitration; Substantive Law; Arbitration Rules</p> <p>Readings</p> <ul style="list-style-type: none"> <li>- TBD</li> </ul> <p>Primary Sources</p> <ul style="list-style-type: none"> <li>- American Arbitration Association (“AAA”) Rules</li> <li>- International Chamber of Commerce (“ICC”) Rules</li> <li>- The Finland Arbitration Institute (“FAI”) Rules</li> </ul> <p>Assignment</p> <ul style="list-style-type: none"> <li>- Group presentation based on the week’s reading</li> </ul>                                      |
| Class 5<br>September 19 | <p>Qualifications of the Arbitrator(s), Selection of Arbitrator(s) and Jurisdiction of the Arbitrator; Ethics and Professional Responsibility</p> <p>Readings</p> <ul style="list-style-type: none"> <li>- TBD</li> </ul> <p>Assignment</p> <ul style="list-style-type: none"> <li>- Group presentation based on the week’s reading</li> </ul>   |
| Class 6<br>September 26 | <p>Challenges to the Award – Annulment and Set Aside</p> <p>Readings</p> <ul style="list-style-type: none"> <li>- TBD</li> </ul> <p>Assignment</p> <ul style="list-style-type: none"> <li>- Group presentation based on the week’s reading</li> </ul>  |
| Class 7<br>October 3    | <p>Overview of the Convention on the International Sale of Goods (“CISG”) and Recent Developments in International Arbitration</p> <p>Readings</p> <ul style="list-style-type: none"> <li>- TBD</li> </ul>   |

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|  | <p>Assignments</p> <ul style="list-style-type: none"><li>- Split into groups. Each group will review the Vis Moot Problem when it is released and prepare a Draft Timeline and Draft Headings for next class</li></ul> |
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The Willem C. Vis Commercial Arbitration Moot Problem will be released on Friday, October 4. Students who wish to continue with the second part of the course **MUST** sign up for Law 127. If you continue with use you can choose between two tracks:

- **Vis Moot Track** – work with the entire class to draft the Claimant’s Memorandum for the Vis Moot Competition. The class work as if we are a small law firm representing the Claimant in the mock dispute.
- **Paper Writing Track** – You will initially work with a small group to analyze the moot problem and provide some legal insight to the firm. You’ll then be able to draft an individual paper. The paper will focus on an international commercial arbitration topic of your choosing. The professors will work with you to draft the paper including assisting in publication if you are interested.