

**UNIVERSITY OF GHANA**

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**SCHOOL OF LAW**

**2023/2024 ACADEMIC YEAR**

**SECOND SEMESTER**

**COURSE SYLLABUS**

**MADR 610 FUNDAMENTALS OF INTERNATIONAL COMMERCIAL ARBITRATION**

# 3 Credits

## Lecture Period(s): THURSDAYS 5:00-8:00PM

## Venue: ACCRA CITY CAMPUS (NEW BLOCK 1)

**Course Instructor(s):**

Name: Ms Rachel Haizel

Email: rhaizel@ug.edu.gh

Phone number: 020 2424945

Office Location and Hours: UGSoL 2nd FLOOR

Name: Mr. Emmanuel Amofa

Email:

Phone number:

## Course Overview

This course will involve a study of the relevant laws on International Commercial Arbitration. Students will be introduced to matters relating to jurisdiction, powers and obligations of arbitrators, the arbitral process, the powers of the court of the seat of arbitration and enforceability of arbitral awards arising out of international commercial arbitrations. The course will also introduce the key concepts in arbitration and provide critical insights on how these are applied within the Ghanaian context.

## Course Objective/Goals

## The aim of this course is to:

1. Introduce students to the international framework on arbitration
2. Offer critical perspectives on arbitration in Ghana
3. Ground students’ understanding of the core concepts in arbitration
4. Critically assess the efficacy of the arbitration framework in Ghana

**Learning Outcomes:**

Upon successful completion of the course, students should be able to:

1. Critically analyse the Alternative Dispute Resolution Act, 2010 (Act 798)
2. Provide critical comparative views on the efficacy and relevance of the arbitration provisions in the ADR Act, 2010 (Act 798)
3. Critically reflect on the global trends in international commercial arbitration and Ghana’s ability to keep up with these trends.

**COURSE CONTENT**

1. The Concept of International Commercial Arbitration
2. Legal Framework and Leading Theories of International Arbitration
3. The Arbitration Agreement
4. The Consequence of the Arbitration Agreement
5. The Arbitral Tribunal
6. The Commencement of the Arbitral Proceedings and the Conduct of a Hearing
7. The Applicable Law to the Merits of the Case
8. The role of the court
9. The making of the Award and challenging the Award
10. Recognition and enforcement of Award
11. Emerging Trends in International Commercial Arbitration

**COURSE DELIVERY:**

The class will be three (3) hours a week. Class meetings are spread between lectures, group exercises, presentations, and discussions. The purpose of the lectures will be to introduce the major conceptual ideas that are relevant to the topic of the week. To this end, you should complete your reading assignments prior to class so that our class time can be more interactive. The group exercises will provide an opportunity to acquire a set of very useful skills, while you develop yourself as a team worker.

**MODE OF DELIVERY:**

Lecturers will be held in person and online

**TEACHING METHODOLOGY**

Lectures, Discussions, Case Studies Analysis, Article Review, PowerPoint Presentations, Simulations, among others.

**GENERAL READING**

1. Nigel Blackaby, Constantine Partasides,Alan Redfern, Martin Hunter:*Redfern and Hunter on International Arbitration* (6th Ed, 17th November 2015)
2. F Gary Born:*International Commercial Arbitratin*(Kluver Law International 2009)
3. Magaret Moses, *Principles and Practice Of International Commercial Arbitration*( 2nd Edition, Cambridge University Press, 2012)
4. David D. Caron, Lee M. Caplan: The *UNCITRAL Arbitration Rules A Commentary* (2nd Ed,Oxford Universit Press,2013)
5. Catherine A. Rogers*: Ethics in International Arbitration* (Oxford University Press,2012)

**Course Schedule**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **WEEK** | **DATE** | **TIME** | **TOPIC** | **VENUE** | **LECTURER** |
|  | 8th May 2025 | 5:00-8:00pm | Course OverviewThe Concept of International Commercial Arbitration   | HYBRID | Mr Emmanuel Amofa |
|  | 15th May 2025 | 5:00pm- 8:00pm | . The Concept of International Commercial Arbitration  | HYBRID  | Mr Emmanuel Amofa  |
|  | 22nd May 2025 | 5:00-8:00pm | Legal Framework and Leading Theories of International Arbitration  | HYBRID | Mr. Emmanuel Amofa  |
|  | 23rd May 2025 | 5:00-8:00pm | The Arbitration Agreement  | HYRBID | Mr. Emmanuel Amofa  |
|  | 29th May 2025 | 5:00-8:00pm | The Consequence and enforcement of the Arbitration Agreement  | HYBRID  | Ms Rachel Haizel  |
|  | 5th June 2025 | 5:00-8:00pm | The Arbitral Tribunal  | HYBRID  | Mr. Emmanuel Amofa  |
|  | 12th June 2025 | 5:00-8:00pm | The Commencement of the Arbitral Proceedings and the Conduct of a Hearing  | HYBRID  | Mr. Emmanuel Amofa |
|  | 19th June 2025 | 5:00-8:00pm | INTERIM ASSESSMENT  | IN-PERSON  |  |
|  | 26th June 2025 | 5:00-8:00pm | The Applicable Law to the Merits of the Case |  | Ms Rachel Haizel  |
|  | 3rd July 2025 | 5:00-8:00pm | The role of the court  |  | Ms Rachel Haizel  |
|  | 10th July 2025 | 5:00-8:00pm | The making of the Award and challenging the Award  |  | Ms Rachel Haizel  |
|  | 17th July 2025 | 5:00-8:00pm | Recognition and enforcement of AwardStudents’ Evaluation of Lecturers |  | Ms Rachel Haizel  |
|  | 24th July 2025 | 5:00-8:00pm | Emerging Trends in International Commercial Arbitration |  | Ms Rachel Haizel |
|  | 31st July 2025  | 5:00-8:00pm |  Emerging Trends in International Commercial Arbitration |  | Ms Rachel Haizel  |
|  | 4th August – 22nd August 2024  |  | Student Evaluation Revision  |  |  |
|  | 14TH August  | 5:00PM-8:00PM  | FIRST SEMESTER EXAMINATION  | IN-PERSON  |  |
|  |  |  |  |  |  |

## Plagiarism policy

*Plagiarism in any form is unacceptable and shall be treated as a serious offence. Appropriate sanctions, as stipulated in the Plagiarism Policy, will be applied when students are found to have violated the Plagiarism Policy. The policy is available at* [*http://www.ug.edu.gh/aqau/policies-­‐*](http://www.ug.edu.gh/aqau/policies-)*guidelines ALL students are expected to familiarize themselves with the contents of the Policy.*

**Assessment and Grading (***as applicable***)**

Interim Assessment: 40 Marks

Final Exams:60 Marks

**Grading Scale:**

Refer to Undergraduate (or Graduate) Handbook*.*

**Contact Details of Programme Coordinator**

Name: Dr. Djokoto

Email: gdjokoto@ug.edu.gh

Office Location and Hours: UGSoL 2nd FLOOR



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**SCHOOL OF LAW**

**2023/2024 ACADEMIC YEAR**

**FIRST SEMESTER**

**COURSE SYLLABUS**

**MADR 603 INTERNATIONAL COMMERCIAL ARBITRATION**

**3 Credits**

**LECTURE 1: INTRODUCTION AND OVERVIEW OF INTERNATIONAL ARBITRATION**

* + Outline of an international Arbitration
	+ ADR, Litigation and Arbitration
	+ Key features of Arbitration (Why parties resort to Arbitration than other forms of dispute resolution)
	+ Ad hoc Arbitration and Institutional Arbitration
	+ Domestic Arbitration vs International Arbitration

**Description:** This lecture serves as an introduction to the field of international commercial arbitration. It provides an overview of the essential concepts, principles, and factors that underpin this method of dispute resolution. By the end of this lecture, students will have a fundamental understanding of the definition, key features, types, distinctions, and sources of law related to international commercial arbitration.

**Learning objectives:** The aim of this lecture is to

1. Explain international commercial arbitration and its significance in the global business context.
2. Identify the key features and advantages of arbitration as a dispute resolution mechanism.
3. Differentiate between various forms of arbitration.
4. Distinguish between domestic and international arbitration.
5. Examine the sources of law governing international commercial arbitration.

**Learning outcomes: By the end of this lecture, students will be able to:**

1. Explain the concept of international commercial arbitration and its relevance.
2. Analyze why parties often choose arbitration over other dispute resolution methods.
3. Categorize different types of arbitration.
4. Articulate the differences between domestic and international arbitration.
5. Identify and discuss the primary sources of law that govern international commercial arbitration.

**PRIMARY TEXT**

* 1. The Convention on The Enforcement of Foreign Arbitral Awards (The New York Convention) 1958
	2. UNCITRAL Model Law 1985 as Amended
	3. The Alternative Dispute Resolution Act 2010 (ACT 798)
	4. The United Nations Commission on Trade Law (UNCITRAL) Rules

**ESSENTIAL READING**

1. N. Blackaby, C. Partasides, A. Redfern, M. Huntern, International Arbitration (Chapter 1,6th edn Oxford University Press, 2015)
2. M. Moses, *Principles and Practice Of International Commercial Arbitration* (2nd edn Cambridge University Press, 2012)
3. B. Fabio "*The Definition of International Commercial Arbitration: A Comparative Analysis"* (2020) JIA
4. D.M. Julian *"What is International Commercial Arbitration?"* (2019) ICLQ

**FURTHER READING**

1. G. Alejandro “*Defining International Commercial Arbitration: A Matter of Form or Substance?"* (2020) JIDS.
2. Chiara Giorgetti *“What Makes Arbitration 'International'? Rethinking the Definition of International Commercial Arbitration"* (2017) AJIL
3. Mustill, *“The History of International Commercial Arbitration: A sketch’ Newman and Hill (eds) The Learding Arbitrator’s Guide to International Arbitration* (P .1,2nd edn, JurisNet, 2008
4. Paulsson:*The Idea of Arbitration* (P.1 Oxford University Press, 2013)
5. Abby Cohen Smutny, *“The Spectrum of Arbitration: From Ad Hoc to Institutional"* (2021) DRJ

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**2023/2024 ACADEMIC YEAR**

**FIRST SEMESTER**

**COURSE SYLLABUS**

**MADR 603 INTERNATIONAL COMMERCIAL ARBITRATION**

**3 Credits**

**LECTURE 2: LEGAL FRAMEWORK AND LEADING THEORIES OF INTERNATIONAL ARBITRATION**

* The Arbitration Agreement
* Party Autonomy
* Arbitration rules – ad hoc and institutional arbitration
* National Laws
* International Treaties
* International Arbitration Practice

**Description:** In this lecture, students will explore the cornerstone of international commercial arbitration: the arbitration agreement and the principle of party autonomy. The lecture covers the essentials of crafting an arbitration agreement, the distinctions between ad hoc and institutional arbitration rules, the influence of national laws and international treaties, and the practical aspects of international arbitration practice. Additionally, students will delve into leading theories that examine the role of the arbitration seat, including denationalized, delocalized, and floating arbitrations

 **Objectives:** The aim of this lecture is to

1. Analyse the importance of the arbitration agreement in international commercial arbitration.
2. Examine the principle of party autonomy and its implications in dispute resolution.
3. Examine the role of ad hoc and institutional arbitration rules in international commercial arbitration
4. Analyze the impact of national laws and international treaties on arbitration.
5. Gain insights into international arbitration practice.
6. Explore leading theories related to the arbitration seat.

**Learning outcomes:** at the end of this course, students should be able to

1. Draft and assess arbitration agreements effectively.
2. Evaluate the extent of party autonomy in arbitration.
3. Compare and contrast ad hoc and institutional arbitration processes.
4. Critically assess the role of national laws and international treaties on arbitration proceedings.
5. Apply practical knowledge to international arbitration practice.
6. critically analyze leading theories regarding the role of the arbitration seat.

**PRIMARY TEXTS**

1. The Convention on The Enforcement of Foreign Arbitral Awards (New York Convention) 1958
2. The United Nations Commission on International Trade Law (UNCITRAL) Model Law 1985 as Amended
3. The Alternative Dispute Resolution Act 2010(Act 798)
4. The Geneva Protocol on Arbitration Clauses of 1923
5. The Geneva Convention on the Convention On The Execution Of Foreign Arbitral Awards of 1927
6. Inter-American Convention on International Commercial Arbitration (The Panama Convention)
7. The European Convention on International Commercial Arbitration of 1961
8. The Federal Arbitration Act (FAA) of 1925
9. The English Arbitration of 1996

**CASES**

1. Sulamérica CIA Nacional De Seguros SA & Ors v Enesa Engenharia SA & Ors [2012] EWCA Civ 638
2. Ryanair v SMAC (8 July 2015)
3. Putrabali v Rena, Cour de cassation, 29 June 2007
4. Dallah Real Estate and Tourism Holding Company (Appellant) v The Ministry of Religious Affairs, Government of Pakistan (Respondent)

**ESSENTIAL READING**

1. Nigel Blackaby & Constantine Partasides, *Redfern & Hunter on International Arbitration* (Chapter 2,7th edn, 2022)
2. Gary B. Born :*International Commercial Arbitration* (Chapter 2 3rd edition Kluwer Law International 2021)
3. Julian Lew, *“Achieving the Dream: Autonomous Arbitration”* (Arbitration International 2006) (
4. Loukas Mistelis, *“Delocalization and its Relevance in Post Award Review*, (Queen Mary University of London, School of Law Legal Studies Research Paper No. 144/2013)
5. Jonathan Mance,*“Arbitration: a Law unto itself*”(Arbitration International,2016)
6. Jan Paulsson, *Arbitration in Three Dimensions* (LSE Law, Society and Economy Working Papers 2/2010)
7. Emmanuel Gaillard:*Legal Theory of International Arbitration* (Martinus Nijhoff 2010)

**FURTHER READING**

* 1. Liebscher, ‘Interpretation of the written form requirement Art. 7(2) UNCITRAL Model Law’ (2005) 8 Intl Arb L Rev 164

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**SCHOOL OF LAW**

**2023/2024 ACADEMIC YEAR**

**FIRST SEMESTER**

**MADR 603 INTERNATIONAL COMMERCIAL ARBITRATION**

**3 Credits**

**LECTURE 3: THE ARBITRATION AGREEMENT**

* + Definition
	+ Drafting arbitration agreements
	+ Pathological Arbitration Agreements
	+ Validity of Arbitration Agreement
	+ Ad hoc submissions and pre-dispute agreements
	+ Formation – capacity and power, consent, and arbitrability
	+ Doctrine of separability
	+ Scope of the arbitration agreement
	+ Arbitration agreements and conflicts of laws
	+ Law governing
	+ Arbitrability
	+ Non-signatories to arbitration

**Description:** This lecture delves into the heart of international commercial arbitration: the arbitration agreement itself. Students will gain a comprehensive understanding of arbitration agreements, from their definition and drafting to assessing their validity and scope. The lecture also explores complex aspects such as pathological arbitration agreements, ad hoc submissions, formation, capacity, the doctrine of separability, and the law governing arbitration agreements. Moreover, students will explore issues related to arbitrability, non-signatories, and conflicts of laws concerning arbitration agreements.

**Objectives :** The aim of this lecture is to

1. Analyse the importance of the arbitration agreement in international commercial arbitration
2. Draft arbitration agreements
3. How to Identify the Validity of Arbitration Agreement
4. Understand the purpose of Ad hoc submissions and pre-dispute agreements
5. Understand principles such as the doctrine of separability, arbitrability
6. Analyse the Scope of the arbitration agreement and conflicts of laws

**Learning outcomes:** By the end of the course, students should:

1. Draft arbitration agreements
2. Draft arbitration agreements
3. Identify the validity of aArbitration Agreement
4. Understand the purpose of Ad hoc submissions and pre-dispute agreements
5. Understand principles such as the doctrine of separability, arbitrability
6. Analyse the Scope of the arbitration agreement and conflicts of laws

**ESSENTIAL READING**

1. Blackaby N, Partasides C, Redfern A, and Hunter M*, Redfern and Hunter on International Arbitration* (6th edn, OUP 2015) paras 2.01- 2.16, 2.197, 3.0 -3.8
2. Justice BabaraAckah-Yensu, *“Defective and Pathological Clauses in International Commercial Arbitration Agreements*” in Richard Frimpong Oppong and Kissi Agyebeng (eds), *A Commitment to Law, Development and Public Policy: A Festtschrift in Honor of Nana Dr. SKB Asante* (Wildy, Simmonds and Hill Publishing 2016)
3. Bond S: *“How to Draft an Arbitration Clause”* (6(2) J Int'l Arb 65- 78 1989)
4. Craig WL, Park WW, & Paulsson J, *International Chamber of Commercie Arbitration*, (3rd edn, Oceana TM Publications 2000),
5. Julian D. M. Lew, Loukas A. Mistelis, and Stefan M. Kröll,*Comparative International Commercial Arbitration,* (Kluwer Law International, 2003)
6. Travaini G *“Multi-tiered dispute resolution clauses, a friendly Miranda warning”* (Kluwer Arbitration Blog )

**STATUTES**

1. Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958), Article II
2. UNCITRAL Model Law on International Commercial Arbitration, 1958, Article 7
3. Alternative Dispute Resolution Act, (2010) Act 798
4. Art. 2(1)(3), 5(1)(2) NYC.
5. Sec. 7,9,17,18,30,31,32,67,72 EAA.
6. Art. 1448, 1465 French CPC.
7. 1032(1), 1032(2) German CPC

**CASES**

1. Sulamérica CIA Nacional De Seguros SA & Ors v Enesa Engenharia SA & Ors [2012] EWCA Civ 638
2. Heyman v Darwins ltd [1942] AC 356
3. Peterson Farms Inc v C & M Farming Ltd and City of London v Sancheti 2004] EWHC 121
4. Prima Paint Co v Flood & Conklin Manufacturing Corp., 388 U.S . 395, 404-405 (1967)
5. Harbour Assurance Co. (UK) v Kansa General International Assuarance Co. Ltd [1993] 3 All ER 897, QB 701
6. Premium Nafta Products Ltd & Fili Shipping Company Ltd & Ors (2007 UKHL 40)
7. Noble Denton Middle East v. Noble Denton International (2010 EWHC 2574)
8. Vee Networks v. Econet wireless (2004) EWHC 2909
9. AG v Balkan Energy
10. Axa Re v Ace Global Markets Ltd [2006] EWHC 216 (Comm)
11. In Mitsubishi Motors Corporation v Soler Chrysler- Plymouth Inc473 U.S 614 (1985)
12. Dallah Real Estate and Tourism Holding Company v Ministry of Religious Affairs, Government of Pakistan [2010] UKSV 46

**FURTHER READING**

1. Moses M, The *Principles and Practice of International Commercial Arbitration*, (3rd edn, Cambridge University Press, 2017 ) Ch 3, 4
2. Paulsson, Rawding, and Reed (eds) *The Freshfields Guide to Arbitration Clauses in International Contracts* (3rd edn, Kluwer Law International, 2010).
3. Jan Kleinheisterkamp, *"Lord Mustill and the Courts of Tennis - Dallah v Pakistan in England, France and Utopia",* (75(4) The Modern Law Review, pp. 639-654 2012)
4. Carolyn B. Laamm & Jocelyn A. Aqua, *“Defining the Party- Who is a Proper Party in an International Arbitration berefore the American Arbitration Association and Other International Institutions”* (34 Geo Wash Int’l Rev. 711, 713 2003)
5. Bernard Hanotiau, *“Non-signatories, Groups of Companies and Gropus of Contracts in Selected Asian Countries: A Case Law Analysis”*, (32 J. Int’l Arb 2015)
6. Yves Derains & Eric Schwartz, *A Guide to the ICC Rules of Arbitration*, (2005)
7. Wolters Kluver, *Checking The Boxes:Formal Validity of an Arbtration Agreeement,Available at*

[Https://Arbitrationblog.Kluwerarbitration.Com/2014/09/30/Multi-Tiered-Dispute-Resolution-Clauses-A-Friendly-Miranda-Warning](https://Arbitrationblog.Kluwerarbitration.Com/2014/09/30/Multi-Tiered-Dispute-Resolution-Clauses-A-Friendly-Miranda-Warning)

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**2023/2024 ACADEMIC YEAR**

**FIRST SEMESTER**

**COURSE SYLLABUS**

**MADR 603 INTERNATIONAL COMMERCIAL ARBITRATION**

**3 Credits**

**LECTURE 4: THE EFFECTS OR CONSEQUENCES OF THE ARBITRATION AGREEMENT**

* + Positive Consequences
	+ Negative Consequences
	+ Exclusion of court jurisdiction
	+ Stay of court proceedings
	+ Anti-Suit Injunctions
	+ Anti-arbitration injunctions
	+ Damages

**Description:** This lecture explores the diverse effects and consequences of arbitration agreements in international commercial arbitration. Students will delve into both positive and negative consequences, including the exclusion of court jurisdiction, the stay of court proceedings, anti-suit injunctions, anti-arbitration injunctions, and the potential for damages. This lecture aims to provide students with a comprehensive understanding of the legal landscape and practical implications of arbitration agreements on the dispute resolution process.

**Learning objectives:** The aim of this lecture is to

1. Examine the various effects and consequences of arbitration agreements
2. Examine the obligations imposed on national courts in the recognition and enforcement of arbitration agreements
3. Discuss the use and impact of anti-suit and anti-arbitration injunction in the enforcement of arbitration agreements
4. Examine the possibility of the award of damages as a remedy for breach of an arbitration agreement

**Learning outcomes:**

**By the end of this lecture, students will be able to:**

1. Determine the effects and consequences of arbitration agreements.
2. Critically assess the legal implications of arbitration agreements on the jurisdiction of the court
3. Understand the role of anti-suit and anti-arbitration injunctions in arbitration disputes.
4. Assess potential legal remedies, including damages, associated with breaching arbitration agreements.

**PRIMARY TEXTS**

1. The Convention for the Recognition and Enforcement of Arbitral Awards, 1958 (The New Convention), Article II
2. The 5. The United Nations Commission on International Trade Law (UNCITRAL)Model Law 1985, Articles 8, 9,17, 27
3. The Alternative Dispute Resolution Act, 2010 (Act 798), section 6, 7,
4. The English Arbitration Act, 1996
5. U.S. FAA, 9 U.S.C. §4, §206, §303

**CASES**

* 1. W. Tankers v. RAS Riunione Adriatica di Sicurta SpA [2007] UKHL 4,
	2. Joseph Muller Corp. v. Commonwealth Petrochemicals, Inc., 334 F.Supp. 1013, 1018 (S.D.N.Y. 1971)
	3. Starlight Shipping Co. v. Tai Ping Ins. Co. [2007] EWHC 1893 (QB)
	4. C v. D [2007] EWHC 1541, ¶53
	5. Elektrim SA v. Vivendi Universal SA [2007] EWHC 571, ¶52
	6. Ust-Kamenogorsk Hydropower Plant JSC v. AES Ust-Kamenogorsk Hydropower Plant LLP [2013] UKSC 35, ¶46
	7. AllianzSpAv.W.TankersInc.,CaseNo.C-185/07,[2009]E.C.R.I-00663,¶
	8. De Simone v Olams

**ESSENTIAL READING**

1. Gary Born, *International Commercial Arbitration* (3RD edn, Wolters Kluwer 2021) Chapter 8
2. Nigel Blackaby, Constantine Partasides,Alan Redfern, Martin Hunter:*Redfern and Hunter on International Arbitration* (6th Ed, 17th November 2015)
3. Van Houtte, *Parallel Proceedings Before State Courts and Arbitration Tribunals: Is There A Transnational Lis Pendens – Exception in Arbitration or Jurisdiction Conventions?,* in P. Karrer (ed.), Arbitral Tribunals or State Courts: Who Must Defer to Whom
4. Bantekas, *Arbitration Agreement and Substantive Claim Before Court, in I*. Bantekas et al. (eds.), UNCITRAL Model Law on International Commercial Arbitration: A Commentary 145-47 (2020)
5. Born, G. B. (1991). *The stay of court proceedings in international arbitration*. (International Arbitration Law Review, 2, 37-55.)
6. Albert Van Ja den Berg, *The New York Convention of 1958:* An Overview / Enforcement of Arbitration Agreements and International Arbitral Awards – The New York Convention Practice, E. Gaillard and D. Di Pietro eds., Cameron May, 39 (2008)
7. *George Bermann*, *The “Gateway” Problem in International Commercial* (Arbitration Yale Journal of International Law, Vol. 37, Issue 1).
8. *Math*ias Scherer, *“Court Proceedings in Violation of an Arbitration Agreement: Arbitral Jurisdiction to issue Anti-Suit and Award of Damages for Breach of the Arbitration Agreement”* (2011) 14 Intl ALR 43
9. Cobb, *Domestic Courts’ Obligation to Refer Parties to Arbitration,*(17 Arb. Int’l 313 2001);
10. Collins, *Anti-Suit Injunctions and the Arbitration Process,* in P. Karrer (ed.), Arbitral Tribunals or State Courts: Who Must Defer to Whom? 85 (2001);

**Further Reading**

* 1. Born, G. B,*The arbitrator's power to rule on his own jurisdiction. International*(1991).
	2. E. Gaillard (ed.), Anti-Suit Injunctions in International Arbitration (2005)
	3. Bédard, Nelson & Kalantirsky, *Arbitrating in Good Faith and Protecting the Integrity of the Arbitral Process,* 2010 Paris J. Int’l Arb. 737;
	4. A.Jan Van Den Berg, *The New York Arbitration Convention of 1958* 130 (1981)
	5. Friedland & Brown, *A Claim for Monetary Relief for Breach of Agreement to Arbitrate as A Supplement or Substitute to An Anti-Suit Injunction, in A*. van den Berg (ed.), International Arbitration 2006

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**2023/2024 ACADEMIC YEAR**

**FIRST SEMESTER**

**MADR 603 INTERNATIONAL COMMERCIAL ARBITRATION**

**3 Credits**

**LECTURE 5: CONSTITUTION OF THE TRIBUNAL**

* + Nomination
	+ Appointment
	+ Qualification
	+ Chair
	+ Impartiality
	+ Immunity
	+ Remuneration
	+ Challenge and Removal
	+ Emergency arbitrators

**Description:** This focuses on the pivotal aspect of international commercial arbitration: the constitution of arbitral tribunals. This lecture explores the intricate steps and critical factors involved in forming a tribunal, including the nomination and appointment of arbitrators, the necessary qualifications for arbitrator candidates, and the selection of a tribunal chair. It also delves into fundamental principles such as impartiality, the legal concept of immunity, and the considerations for remunerating arbitrators. Moreover, the lecture addresses the mechanisms for challenging and removing arbitrators when necessary and sheds light on the role of emergency arbitrators in swiftly resolving urgent disputes that may arise during arbitration proceedings. Students will gain a profound understanding of the crucial components that shape the composition and functioning of arbitral tribunals in the international arbitration landscape**.**

**Learning objectives**

1. Examine the process of nominating and appointing arbitrators.
2. Discuss the qualifications required for serving as an arbitrator.
3. Examine the role and responsibilities of the tribunal chair.
4. Recognize the procedures for challenging and removing arbitrators.
5. Explore the principles of impartiality and independence.
6. Explain the concept of immunity and its significance.
7. Ascertain the role of emergency arbitrators in addressing urgent disputes.
8. Discuss the remuneration of arbitrators.

**Learning outcomes:**

By the end of this lecture, students will be able to:

1. Explain the steps involved in nominating and appointing arbitrators.
2. Evaluate the qualifications necessary for individuals to serve as arbitrators.
3. Define the duties and authority of the tribunal chair.
4. Assess the principles of impartiality and independence in arbitration.
5. Analyze the legal concept of immunity and its implications for arbitrators.
6. Evaluate the considerations and mechanisms for determining arbitrator remuneration.
7. Analyze the procedures for challenging and removing arbitrators.
8. Explain the role and significance of emergency arbitrators in resolving urgent disputes.

**PRIMARY TEXTS**

1. The United Nations Commission on International Trade Law) Model Law
2. The Alternative Dispute Resolution Act 2010(Act 798)
3. The English Arbitration Act,1996
4. The the London Court of International Arbitration (LCIA) rules

**CASES**

1. . (Agricult Ghana Limited and 2 others v. Ghana Cocoa Board Suit No. CM/MISC/0749/2019 delivered on 9th May 2019)

ESSENTIAL READING

1. Gary Born, Gary Born, International Commercial Arbitration (3RD edn, Wolters Kluwer 2021) Chapters 12, 13, 14
2. E. Gaillard & J. Savage (eds.), Fouchard Gaillard Goldman on International Commercial Arbitration 804 (1999)
3. Brown, M. (2000). *The challenges to the jurisdiction and decisions of an international arbitration tribunal*( International Arbitration Law Review, 5, 77-96.)
4. Stone, R. (2014). The role of the chair in ensuring the impartiality and independence of the tribunal in international arbitration. Journal of International Arbitration, 31(2), 189-208.
5. Almoguera, *Arbitration and Mediation Combined: The Independence and Impartiality of Arbitrators*, in M. Á. Fernández-Ballesteros & D. Arias (eds.), Liber Amicorum Bernardo Cremades 101 (2010);
6. Ball, Probity Deconstructed: How Helpful, Really, Are the New International Bar Association Guidelines on Conflicts of Interest in International Arbitration?, 21 Arb. Int’l 323 (2005);
7. Bedjaoui, *The Arbitrator: One Man – Three Roles: Some Independent Comments on the Ethical and Legal Obligations of An Arbitrator*( 5(1) J. Int’l Arb. 7 1988)

FURTHER READING

1. Born, G. (1991). *The constitution of an international arbitration tribunal*. (International Arbitration Law Review, 2, 37-54).
2. Born, G. B. (1991). *The role of the chair of an international arbitration tribunal*. (International Arbitration Law Review, 2, 55-72).
3. Born, G. B. (1991). *The selection of the chair of an international arbitration tribunal*.(International Arbitration Law Review, 2, 73-92)
4. Born, G. (1991). *The constitution of an international arbitration tribunal. (*International Arbitration Law Review, 2, 37-54).
5. Petrochilos, G. (2009). *The appointment and powers of emergency arbitrators in international arbitration*(Journal of International Dispute Settlement, 20(3), 343-360)
6. Bishop & Reed, *Practical Guidelines for Interviewing, Selecting and Challenging Party Appointed Arbitrators in International Commercial Arbitration*(14 Arb. Int’l 395 1998);
7. Kendall, Barristers, *Independence and Disclosure Revisited,*(16 Arb. Int’l 343 (2000)
8. Kirby, *With Arbitrators, Less Can Be More: Why the Conventional Wisdom on the Benefits of Having Three Arbitrators May Be Overrated*,( 26 J. Int’l Arb. 337 (2009)
9. Koch, *Standards and Procedures for Disqualifying Arbitrators*,( 20 J. Int’l Arb. 325 2003)
10. Miles, *Practical Issues for Appointment of Arbitrators – Lawyer vs Non-Lawyer and Sole Arbitrator vs Panel of Three (or More),(* 20 J. Int’l Arb. 219 2003).
11. C. Rogers, Ethics in International Arbitration (2014)
12. Hwang, *Claims Against Arbitrators for Breach of Ethical Duties,* in A. Rovine (ed.), Contemporary Issues in International Arbitration and Mediation 2006 225 (2007);

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**SCHOOL OF LAW**

**2023/2024 ACADEMIC YEAR**

**FIRST SEMESTER**

**MADR 603 INTERNATIONAL COMMERCIAL ARBITRATION**

**3 Credits**

**LECTURE 6:THE COMMENCEMENT OF THE ARBITRAL PROCEEDINGS**

* Notice of dispute
* Time limits
* Preliminary conferences
* Pleadings/ submissions
* Security for costs
* Conservatory measures
* Confidentiality
* Witnesses of fact
* Expert witnesses
* Documentary and real evidence
* Representation
* Arbitration not “in person”: “documents only” and electronic arbitration
* Powers of the Arbitral Tribunal
* Duties of the Arbitral Tribunal

**DESCRIPTION:** This lecture provides students with a comprehensive understanding of the intricate steps and essential elements involved in initiating the arbitration process. Topics covered include the notice of dispute, adherence to time limits, the significance of preliminary conferences, the role of pleadings and submissions, considerations for security for costs, the use of conservatory measures, and the importance of maintaining confidentiality. Furthermore, students will explore the intricacies of presenting witnesses of fact and expert witnesses, handling documentary and real evidence, and addressing representation concerns. The lecture also discusses modern arbitration formats, including "documents only" and electronic arbitration, and outlines the powers and duties of the Arbitral Tribunal. By the end of this lecture, students will be well-equipped to navigate the commencement of arbitral proceedings effectively and understand the responsibilities and authority of the Arbitral Tribunal throughout the arbitration process.

**Learning objectives:**

 **Description:** Lecture 6 delves into the crucial phase of commencing arbitral proceedings in international commercial arbitration. This lecture provides students with a comprehensive understanding of the intricate steps and essential elements involved in initiating the arbitration process. Topics covered include the notice of dispute, adherence to time limits, the significance of preliminary conferences, the role of pleadings and submissions, considerations for security for costs, the use of conservatory measures, and the importance of maintaining confidentiality. Furthermore, students will explore the intricacies of presenting witnesses of fact and expert witnesses, handling documentary and real evidence, and addressing representation concerns. The lecture also discusses modern arbitration formats, including "documents only" and electronic arbitration, and outlines the powers and duties of the Arbitral Tribunal. By the end of this lecture, students will be well-equipped to navigate the commencement of arbitral proceedings effectively and understand the responsibilities and authority of the Arbitral Tribunal throughout the arbitration process.

**Learning Objectives:**

1. Examine process of commencing arbitral proceedings, including the notice of dispute.
2. Discuss the preparation and submission of pleadings and submissions.
3. Explore the use of conservatory measures and security for costs in arbitration.
4. Discuss witnesses of fact and expert witnesses, the handling of documentary and real evidence in arbitration.
5. Explore representation considerations in arbitral proceedings.

**Learning outcomes:**

**By the end of this lecture, students will be able to:**

1. Initiate arbitral proceedings effectively, ensuring compliance with procedural requirements.
2. Conduct preliminary conferences to streamline the arbitration process.
3. Prepare and present pleadings and submissions in a clear and effective manner.
4. Utilize conservatory measures to protect the rights and interests of parties.
5. Skillfully present and handle witnesses of fact and expert witnesses.
6. Manage documentary and real evidence in compliance with arbitration rules.
7. Navigate representation issues and ethical considerations.
8. Adapt to modern arbitration formats, including "documents only" and electronic arbitration.

**PRIMARY TEXT**

1. Alternative Dispute Resolution Act, 2010 Act 798
2. The 5. The United Nations Commission on International Trade Law (UNCITRAL)Model Law, 1985 (as amended in 2006),
3. US FAA, 9 U.S.C SS
4. English Arbitration Act, 1996
5. The United Nations Commission on International Trade Law (UNCITRAL) Rules 2013
6. The London Court of International Arbitration (LCIA )Rules, 2020
7. The China International Economic and Trade Arbitration Commission (CIETAC) Rules 2015
8. The International Chamber of Commerce (ICC) Rules
9. The The China International Economic and Trade ArbitrationCommission (CIETAC) Code of Ethics for Arbitrators;
10. 1987 International Bar Association(IBA) Rules of Ethics
11. 2014 International Bar Association(IBA) Guidelines on Conflicts of Interest,
12. The American Arbitration Arbitration(AAA) Code of Ethics for Arbitrators inCommercial Disputes,

**ESSENTIAL READING**

1. B. Gary Born, International Commercial Arbitration (3RD edn, Wolters Kluwer 2021)**Chapter 11, 16 , 17**
2. Nigel Blackaby, Constantine Partasides,Alan Redfern, Martin Hunter:*Redfern and Hunter on International Arbitration* (6th Ed, 17th November 2015) Chapter 6

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**2023/2024 ACADEMIC YEAR**

**FIRST SEMESTER**

**COURSE SYLLABUS**

**MADR 603 INTERNATIONAL COMMERCIAL ARBITRATION**

**3 Credits**

**LECTURE 7: THE LAW APPLICABLE TO THE MERITS OF THE CASE IN INTERNATIONAL COMMERCIAL ARBITRATION**

* Party Autonomy
* National laws
* Conflicts of laws – general principles
* Mandatory application of laws
* Trade usages
* UNIDROIT Principles
* Lex mercatoria
* Ex Aequo et Bono and Amiable
* decapage

**Description:** This lecture examines the legal framework which determines the rights and obligations of the parties to the contract. Ie the laws applicable to the merits of the case in international commercial arbitration. Students will gain a comprehensive understanding of the complex considerations and challenges that come into play when determining the applicable law to the contractual disputes in arbitration proceedings. By the end of this lecture, students will have the knowledge to navigate the intricate web of applicable laws to the merits of the case in international arbitration effectively**.**

**Learning objectives:**

1. Examine the role of national laws in arbitration proceedings.
2. Examine the general principles of conflicts of laws and their application.
3. Explore the concept of party autonomy in choosing applicable laws.
4. Discuss the circumstances where mandatory laws will override party autonomy
5. Explore the concept of Lex mercatoria and its relevance in international commercial arbitration
6. Examine the power and the discretion of the arbitrator to employ non-national rules and other principles such as use of Ex Aequo et Bono and Amiable Compositeur in arbitration.

**Learning outcomes:** at the end of this lecture, students should be able to

1. Determine the applicable law(s) to the merits of a case in arbitration.
2. Apply principles of conflicts of laws to resolve jurisdictional and choice of law issues.
3. Evaluate the importance of party autonomy in choosing the governing law.
4. Identify cases where laws are mandatory and must be applied, even if contrary to party choices.
5. Recognize the significance of Lex mercatoria in international commercial arbitration.
6. Critically assess scenarios where Ex Aequo et Bono and Amiable Compositeur may be invoked and their implications for dispute resolution.

**PRIMARY TEXT**

1. The United Nations Commission on International Trade Law (UNCITRAL) Model Law, Article 28
2. Alternative Dispute Resolution Act 2010 (Act 798)
3. The United Nations Commission on International Trade Law (UNCITRAL) Rules Article 35,
4. English Arbitration Act 1996
5. Swiss Law on PIL 187
6. The London Court of International Arbitration(LCIA) Rules
7. The Internation Chamber of Commerce (ICC) Rules , Article 21

**CASES**

1. Musawi v RE International (UK)ltd and ors
2. Halpern v Halpern
3. Channel Tunnel Group Ltd v Balfour Beatty)
4. Balkan energy
5. Soleimany v soleimany
6. Mitsubishi Motors Corp v Soler Chrysler –Plymouth Inc
7. Dutch African Trading Co. BV v. West African-Mills Co. Ltd (Suit No. H1/46/2021, delivered on 20th January 2022).

ESSENTIAL READING

1. Nigel Blackaby, Constantine Partasides,Alan Redfern, Martin Hunter:Redfern and Hunter on International Arbitration (Chapter 3 ,6th Ed, 17th November 2015)

**PRIMARY READING**

1. Margret Moses, Principles and Practice of International Commercial Arbitration (2nd Edition Cambridge University Press, 2012)

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**2023/2024 ACADEMIC YEAR**

**MADR 603 INTERNATIONAL COMMERCIAL ARBITRATION**

**3 Credits**

**LECTURE 8 :**ARBITRAL PROCEEDINGS AND THE ROLE OF COURTS

* 1. **The role of the national court conduct of a hearing**
	2. **Relationship between the Arbitral Tribunal and the court**
	3. **Interim reliefs**
	4. **Anti-arbitration injunction**

**STATUTES**

1. The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) Article II
2. The The United Nations Commission on International Trade Law (UNCITRAL) Model Law 1985 as amended
3. The Alternative Dispute Resolution Act, 1996 Act 798
4. English Arbitration Act, 1996
5. The United Nations Commission on International Trade Law (UNCITRAL) Rules
6. The London Court of International (LCIA) Rules
7. The International Chamber of Commerce (ICC) Rules

**CASES**

1. *West Tankers Inc v. Allianz Spa*,
2. Republic vs High Court, Commercial Division Accra( Ex parte GHACEM Ltd) (J5 29 2018)[2018] GHASC 34 (30TH May 2018)
3. Klimatechnik Engineering Ltd v Skanska Jensen International (2005-2006) SCGLR 913
4. BCM Ghana Ltd v Ashanti Goldfields Ltd (2005-2006) SCGLR 602 Mining and Building Contractors Ltd v Anglogold Ashanti Ghana Ltd (J8 68 of 2016) [2016] GHASC 16 (19 May 2016)
5. Gerald Metals S.A v Timis & Ors [2016] EWHC 2327 (CH),
6. Econet Wireless Ltd v Vee Networks and Ors [2006] EWHC 1568
7. Channel Tunnel Group v Balfour Beatty Ltd [1993] AC 334, at 367.
8. Sabbagh v Khoury [2019] EWCA Civ. **1219**

**ESSENTIAL READING**

1. Nigel Blackaby, Constantine Partasides,Alan Redfern, Martin Hunter:*Redfern and Hunter on International Arbitration* (chapter 7, 6th Ed, 17th November 2015)
2. Margaret Moses, *Principles and Practice of International Commercial* *Arbitration* (2nd Edition Cambridge University Press, 2012)
3. Frédéric Bachand, *Does Article 8 of the Model Law Call for Full or prima facie Review of the Arbitral Tribunal’s Jurisdiction* ( 22 Arb. Int 463 2006)
4. Castello and Chahine, *‘Enforcement of interim measures’,* in Rowley KC, Gaillard, and Kaiser (eds) The Guide to Challenging and Enforcing Arbitration Awards (Global Arbitration Review, 2019
5. Lord Mustill, *Conservatory and Provisional measure in International Arbitration*, (9th Joint Colloquium, (ICC Publications, 1993) page 118 )
6. W. Michael Reisman,Heide Iravani ,*The changing relation of national courts and international commercial arbitration’* (2010) 21 Am Rev Intl Arb 33
7. Ace Anan Ankomah, *The Interplay between the Courts and Arbitral Proceedings: Ghana's Old Order Changeth,(* 29 U. GHANA L.J. 183 2016)
8. Hwang, ‘*Commercial courts and international arbitration—competitors or partners?*’ (2015) 31 Arb Intl 193 )

**FURTHER READING**

1. K. O’Callaghan & J Finnis, *“Support and Supervision by the Courts”*
2. Lew, ‘*Does national court involvement undermine the international arbitration processes?*’ (2009) 24(3) Am Uni Intl Law Rev 489, at 494 )
3. Prof. Frederic Bachand, “*Does Article 8 of the Model Law Call for Full or Prima Facie Review of the Arbitral Tribunal’s Jurisdiction*(Arbitration International, Volume 22, Issue 3, 1 September 2006, Pages 463–476) Available at <https://doi.org/10.1093/arbitration/22.3.463>
4. Claude Raymond, *The Channel Tunnel Case and the Law of International Arbitration)*  109 L.Q.R. 337 at 341
5. Goldman, *The Complementary Role of Judges and Arbitrators*, (ICC Publication No. 412 (ICC, 1984), p. 259)
6. Castello and Chahine, *‘Enforcement of interim measures’,* in Rowley KC, Gaillard, and Kaiser (eds) The Guide to Challenging and Enforcing Arbitration Awards (Global Arbitration Review, 2019),
7. Saville, *‘The Denning Lecture 1995: Arbitration and the courts’* (1995) 61 Arbitration 157,
8. Reymond, ‘*The Channel Tunnel case and the law of international arbitration’* (1993) 109 LQR 337,
9. William W. Park, *The Specificity of International Arbitration*: The Case for FAA Reform,(36 Vand J. Transnat’l L. 1241, 1267 (2003)

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**2023/2024 ACADEMIC YEAR**

**FIRST SEMESTER**

**MADR 603 INTERNATIONAL COMMERCIAL ARBITRATION**

**3 Credits**

**LECTURE 9 :THE MAKING OF THE AWARD**

* Form and Contents of an award
* Partial award
* Final award
* Interim awards
* Consent award
* Default awards
* Reliefs
* Reasoned” award
* Proceedings after awards
* Effect of Awards

**Description:** This lecture examines the process of making awards in international commercial arbitration. It provides students with a comprehensive understanding of the key aspects involved in drafting an arbitration award. Topics covered include the form and contents of an award, the distinctions between partial, final, and interim awards, the unique features of consent and default awards, considerations for granting reliefs, the requirement for a "reasoned" award, post-award proceedings, and the far-reaching effects of arbitration awards. By the end of this lecture, students will be well-versed in the nuances of drafting arbitration awards and the significant implications they hold for the resolution of disputes.

**Objectives:** The aim of this lecture is to

1. Examine the essential elements of the form and contents of an arbitration award.
2. Differentiate between partial, final, and interim awards, consent and default awards and their significance.
3. Evaluate the considerations and criteria for granting reliefs in arbitration awards.
4. Explore the concept of a "reasoned" award and its implications in international commercial arbitration
5. Examine the effect of an international arbitration award

**Learning outcomes: at the end of this lecture, students should be able to**

1. Draft arbitration awards that meet the necessary form and content requirements.
2. Distinguish between partial, final, and interim awards and apply them appropriately.
3. identify the specific circumstances that lead to consent and default awards.
4. Evaluate the merits of granting various types of reliefs in arbitration awards.
5. Prepare "reasoned" awards that provide clear rationale and legal support.
6. Critically assess the effect of an arbitral award

**PRIMARY TEXT**

1. The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (The New York Convention) 1958
2. The United Nations Commission on International Trade Law (UNCITRAL) MODEL LAW, 1985 as amended
3. The Inter-American Convention on International Commercial Arbitration (The Panama Convention) 1976
4. The Alternative Dispute Resolution Act, 2010 (Act 798)
5. The English Arbitration Act 1996
6. The United States Federation Arbitration Act (FAA)
7. The International Chamber of Commerce (ICC)Rules
8. The London Court of International Arbitration (LCIA) Rules 2020

**CASES**

1. Tieso Ghana Ltd v Euroget De-Investa SA [2019] GHASC 38
2. CCM Investments Holdings PLC v Kansanshi Holdings PLC & Anor [2019] EWHC 1285 (Comm), at page 40.
3. Uganda v Rift Valley Railways Uganda Ltd [2021] EWHC 970
4. Braspetro Oil Services Co.(Brasoil) v The Management and Implementation
5. Authority of the Great Man-Made River Project, Paris cour d’appel, 1 July 1999,
6. (1999) 14 Mealey’s Intl Arb Rep 8, at [G-1]–[G-7].
7. Publicis Communications and Publicis SA v True North Communications Inc. (2000) XXV YBCA 1152.
8. Lesotho Highlands Development Authority v Impregilo SpA and ors [2003] EWCA Civ 1159.

**ESSENTIAL READING**

1. B. Gary Born, *International Commercial Arbitration* (3RD edn, Wolters Kluwer 2021) Chapter 23
2. Bantekas, ‘*Form and Contents of Award’*, in I. Bantekas (ed.), (2020) UNCITRAL Model Law on International Commercial Arbitration 805, 807
3. Hunter, *‘Final Report on Interim and Partial Awards’*, (1990) 1(2) ICC Ct. Bull. 26
4. Bingham, *‘Reasons and Reasons for Reasons’*, (1988) 4 AI 141
5. Butchers & Kimbrough, ‘*The Arbitral Tribunal’s Role in Default Proceedings’* , (2006) 22 Arb. Int’l 233
6. Carbonneau, *‘Rendering Arbitral Awards with Reasons: “The Elaboration of A Common Law of International Transactions”,* (1984-1985) 579
7. Chiu, Final*, Interim, Interlocutory or Partial Award: Misnomers Apt to Mislead,* (2001);13 SALJ 467
8. Cuniberti, *The Law Governing the Modality of Arbitral Awards ,* 25 Arb. Int’l 347 (2009);
9. Dunaud & Kostytska*, Declaratory Relief in International Arbitration* , 29 J. Int’l Arb. 1 (2012);
10. H. James *‘Awards: Form, Content, Effect’* 2019 GAR 12
11. Munoz,’The Power of Arbitrators to Make Pro Futuro Orders’, in M. Schneider & J. Knoll (eds.), Performance as A Remedy: Non-Monetary Relief in (2011) 1A 118

**FURTHER READING**

1. Fouchard Gaillard Goldman, *International Commercial Arbitration* (Kluwer Law International,1999); pages1389-1412
2. Gaitis, ‘*International and Domestic Arbitration Procedure: The Need for A Rule Providing A Limited Opportunity for Arbitral Reconsideration of Reasoned Awards’,* (2004 15 ARIA 9 )
3. Bassler, *‘The Enforceability of Emergency Awards in the United States: Or When Interim Means Final’* (2016); 32AI559
4. Berger & Jensen, ‘*The Arbitrator’s Mandate to Facilitate Settlement’*, (2017) 40 FIL7 887
5. Sanders, *Commentary on the UNCITRAL Arbitration Rules* , (1977) II Y.B. CA. 172, 210



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**2023/2024 ACADEMIC YEAR**

**FIRST SEMESTER**

**MADR 603 INTERNATIONAL COMMERCIAL ARBITRATION**

**3 Credits**

**LECTURE 10:RECOGNITION AND ENFORCEMENT OF INTERNATIONAL**

**AWARD**

* Procedures for recognition and enforcement of international arbitral awards
* Obligations of states
* Exceptions to the enforcement of arbitral awards
* Suspension of recognition of arbitral

**Description**: The final lecture for this topic focuses on the critical process of recognizing and enforcing international arbitral awards. This lecture provides students with a comprehensive understanding of the procedures involved in recognizing and enforcing arbitral awards on an international scale. Topics covered include the steps and mechanisms for recognition and enforcement, the obligations of states in enforcing awards, exceptions that may hinder enforcement, and the potential suspension of recognition of arbitral awards. By the end of this lecture, students will have the knowledge to navigate the complex landscape of international recognition and enforcement, ensuring that arbitration awards can be effectively executed.

**Objectives:** The aim of this lecture is to:

1. Discuss the procedures and mechanisms for recognizing and enforcing international arbitral awards.
2. examine the obligations of states when it comes to enforcing awards.
3. Consider the exceptions and challenges that may hinder the enforcement of arbitral awards.
4. Identify the circumstances under which recognition of arbitral awards may be suspended.

**Learning outcomes:** At the end of this lecture, students should be able to

1. Critically assess the process of recognizing and enforcing international arbitral awards effectively.
2. Evaluate the obligations that states have in enforcing awards.
3. Identify the exceptions and challenges that may affect the enforcement of arbitral awards.
4. Understand the circumstances and implications of suspending the recognition of arbitral awards.

**PRIMARY READING**

1. The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (The New York Convention) 1958
2. The United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules 2021 version
3. The Alternative Dispute Resolution Act, 2010 (Act 798)
4. The English Arbitration Act 1996
5. The United Nations Commission on International Trade Law (UNCITRAL) MODEL LAW, 1985 as amended
6. The United States Federation Arbitration Act (FAA)
7. The International Chamber of Commerce (ICC)Rules
8. The London Court of International Arbitration (LCIA) Rules 2020

**CASES**

1. Dallah Real Estate & Tourism Holding Co. v. Ministry of Religious Affairs, Pakistan [2010] UKSC 46,
2. IPCO (Nigeria) Ltd v. Nigerian Nat’l Petroleum Corp. [2005] EWHC 726,
3. Omniumde Traitementetde Valorisationv. Hilmarton, 1997 Judgment of 10 June 1997, Rev. Arb. 376 (French Cour de Cassation Civ. 1),
4. Yukos Capital v. OJSC Rosneft Oil Co. [2012] EWCA Civ 855(English Ct.App.).
5. Yukos Capital Sarl v. OAO Rosneft, XXXIVY.B. Judgment of 28 April 2009 Comm.Arb. 703 (Amsterdam Gerechtshof) (2009).
6. Maximov v. OJSC “Novolipetsky Metallurgichesky Kombinat” [2017] EWHC 1911,
7. Chromalloy Aeroservices v. Egypt, 939 F. Supp. 907 (D.D.C.1996).
8. Baker Marine Ltd v. Chevron Ltd, 191 F. 3d194 (2dCir.1999).
9. Mitsubishi Motors Corp. v. Soler Chrysler- Plymouth, Inc.:
10. Strojexport v Edward Nasser (1965) GLR 591
11. Jadbranska Slobodna Plovida v Oysa Ltd [1979] GLR 129-137
12. Soleimany v Soleimany [1999] QB 785
13. Shikari Ltd v The Broad Band Home Ltd APPEAL NO.MISC/0128/2018
14. The Dutch African Trading Company V The West African Mills Company Ltd SUIT NO. MISC/0015/2016

**ESSENTIAL READING**

1. B. Gary Born, *International Commercial Arbitration* (3RD edn, Wolters Kluwer 2021) Chapter 26
2. Kweku Ainuson,*Enforcement of international and national arbitration awards in Ghana – legal basis, challenges and obstacles* (2017)
3. F. A. San ‘The Public Policy Defence to Enforcement of Arbitral Awards: Rising Star or Setting Sun?’, (2015) 2 BCDR, IAR 203
4. Justice Marful-Sau, ‘*The New York Convention, Arbitration Agreements and*  *Enforcement of Foreign Arbitral Awards in Ghana’*, in ‘A Commitment to Law, Development and Public Policy: A Festrhrift in Honor of Nana Dr. SKB Asante’, (Richard Oppong and Kissi Agyebeng ed)
5. G. Bermann, *Recognition and Enforcement of Foreign Arbitral Awards: The Interpretation and Application of the New York Convention by National Courts,* (Springer International Publishing 2017)
6. E. Gaillard & D. di Pietro (eds.), Enforcement of Arbitration Agreements and International Arbitral Awards: The New Y*ork Convention in Practice* (2008) Vol. 62, SUPPLEMENT: U.S. National Reports to the XIXth International Congress of Comparative Law in Vienna
7. Kleinheisterkamp,’ *Lord Mustill and the Courts of Tennis:* Dallah v. Pakistan in England, France and Utopia’, 75 Modern L. Rev. 639, 644 (2012);
8. Hanotiau & Caprasse, *Arbitrability, Due Process, and Public Policy Under Article V of the New York Convention,(* 25 J. Int’l Arb. 721 (2008) )
9. Paulsson, *‘The New York Convention in International Practice: Problems of Assimilation’*, in (1996) M. Blessing (ed.), The New York Convention of 1958 100, 113
10. Kleinheisterkamp , ***‘****Recognition and Enforcement of Arbitral Awards’ The Max Planck Encyclopedia Of European Private Law*

**FURTHER READING**

1. Onyema, *‘Formalities of the Enforcement Procedures (Articles III and IV)*’, in E. Gaillard & D. di Pietro (eds.), Enforcement of Arbitration Agreements and
2. International Arbitral Awards: The New York Convention in Practice 597 (2008)
3. P. Sanders, *‘Enforcing Arbitral Awards Under the New York Convention: Experience and Prospects* ‘3 (1998).
4. Shroff, *‘Due Process in International Arbitration: Balancing Procedural Fairness and Efficiency,* in A. Menaker (ed.), (2017) International Arbitration and the Rule of Law: Contribution and Conformity 821
5. Verbist, *Challenges on Grounds of Due Process Pursuant to Article V(1)(b) of the New York Convention,* in E. Gaillard & D. di Pietro (eds.), Enforcement of Arbitration Agreements and International Arbitral Awards:
6. R. William, *‘The Guide to Challenging and Enforcing Arbitration Awards’* (2021)

October 2023