

Hong Kong Bar Association & the Peking University

International Commercial Arbitration Course 2017 LLM Students

Course Outline

Course Objectives

- To study international commercial arbitration within its international and national legal frameworks from the substantive and procedural law point of view
- To explore the advantages of international commercial arbitration in a world of increasing global trade and commerce

The syllabus will be provided to students in their first week of attendance.

The course will draw on decisions by the courts in major common law jurisdictions, including Hong Kong, Singapore and the UK. Students will be given a selection of materials and selected cases to read.

All lectures and seminars will be conducted in English and/or Putonghua.

Expected Learning Outcomes

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

	Intended Learning Outcomes
1.	Understand the practice and procedure of international commercial arbitration
2.	Identify and analyse key issues in arbitration such as the determination of law governing procedure and the law governing the merits of an arbitration case, and the recognition and enforcement of arbitral awards

Course Structure

The course consists of four 6-hour sessions and each will take place on a Sunday.

	Format	Hours/week
1	Lecture/seminars	4 hrs/week
2	Presentation/Group Discussion	2 hrs/week
3	Mooting on 20 May 2017 (Sat)	6 hrs

Assessment and Completion Requirements

	Type of Assessment/Activities	Weighting	Remarks
1	Coursework/Essay	30%	Less than 5,000 words (in Chinese, to be submitted by 30 May 2017)
2	Presentation / Group Discussion	20%	Participation* & Class Discussion#
3	Moot Assessment: Mock Court / Arbitration	50%	The moot case will be given around 30 days before the moot assessment date.

Notes:

*Students will get 2.5 marks for attending each lecture. A maximum of 10 marks will be given to students who attended all four lectures.

A maximum of 10 marks will be given to students who raised meaningful questions or answered questions wisely.

Students are required to attend at least 85% of the classes (lectures, seminars and/or presentations). If a student does not meet this requirement, he/she may be disqualified from assessment.

Students must obtain a minimum mark of 60% in both presentation and moot court. The overall result will be awarded on a grading basis (Grades ranging from A+ to D- and F for fail).

A scholarship of RMB10,000/person will be granted to students who demonstrate an outstanding performance, on condition that the awarded scholars shall complete mini-pupillage in Hong Kong between 17 July and 30 July 2017. A maximum of 5 scholarships will be awarded.

Students shall indicate their availability of participating mini-pupillage in Barristers' Chambers in Hong Kong between 17 July and 29 July 2017 (via email to pekinguhkbaadr@sina.com) before 30 May 2017. Failing to do so may result a 10% deduction of the total score of the course.

Course Timetable

	Date/Time	Presenters	Hours
Lecture 1	4 March 2017 (Sat) 9 am-12pm; 2-5 pm	Winnie Tam SC, Kim Rooney, Vincent Chiu	6
Lecture 2	11 March 2017 (Sat) 9 am-12pm; 2-5 pm	Anson Wong SC, Julian Cohen, Cherry Xu	6
Lecture 3	18 March 2017 (Sat) 9 am-12pm; 2-5 pm	William Wong SC, Edward Alder, Harp Singh	6
Lecture 4	25 March 2017 (Sat) 9 am-12pm; 2-5 pm	Timothy Harry, Richard Leung, Thomas Lee, Ellen Pang	6
Moot Assessment	20 May 2017 (Sat)		6
Mini Pupillage in HK	17 July to 29 July 2017		2 weeks

Course Outline

Session One

1. Overview

Introduction

Difference between arbitration and other forms of dispute resolution

Arbitration vs litigation

Arbitration vs mediation

Med-arb

Advantages of arbitration

Neutrality

Enforcement

Flexibility

Confidentiality

Key features of international arbitration

Growth of international arbitration in the Asia-Pacific

2. Arbitration Agreement

Validity of arbitration agreement

Doctrine of separability

Drafting arbitration agreements

Identity of parties

Obligation to arbitrate

Subject matter and scope of arbitration

Choice of Seat

Ad hoc vs institution arbitration

Multi-tier arbitration clauses

Split clauses

Enforcement of arbitration agreement

Anti-suit injunctions

Stay of proceedings

Session Two

3. Applicable laws

Conflict of laws issues in arbitration

Law governing the arbitration agreement

Law of the contract vs law of the seat

Law governing the arbitral proceedings

Lex arbitri

Arbitration rules

Law governing the substance of the dispute

4. Arbitral tribunal

Constitution of arbitral tribunal

- Number of arbitrators
- Choosing an arbitrator
- Independence and impartiality of arbitrators
- Challenge and replacement of arbitrators
 - Grounds for challenge
 - Procedure
 - Waiver
- Jurisdictional challenge
 - Competence-competence
 - Recourse against an arbitral tribunal's decision on jurisdiction

Session Three

5. Arbitral proceeding

Overview

- Commencement of arbitration
- Appointment of arbitrators
- Procedural meetings
- Exchange of written submissions
- Disclosure of documentary evidence/ requests to produce
- Hearing
- Post-hearing submissions
- Issuance of award

Evidence

- IBA Rules of evidence
- Factual witness evidence
- Expert evidence

6. Interlocutory applications

Power of arbitral tribunal and competent court to order interim measures

- Application to tribunal vs application to court
- Emergency arbitrator procedure

Interlocutory applications

- Security for costs
- Interlocutory injunctions
- Mareva injunctions

Enforcement

Session Four

7. Challenge and Enforcement of arbitral awards

Challenging awards

- Grounds for challenge

Enforcement under New York Convention

- Application of the New York Convention
- Grounds for refusal to enforce: Article V(1)

Enforcement of PRC awards in Hong Kong

Mainland-HK Arrangement and its limitations
Enforcement under common law
Other enforcement issues: state immunity

8. Advocacy

Preparation

Performance skills

Handling of questions