Fall 2018


Hugh Meighen

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INTERNATIONAL DISPUTE RESOLUTION: INTERNATIONAL COMMERCIAL ARBITRATION

1. COURSE INSTRUCTOR

Hugh Meighen
Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, Ontario
M5H 4E3

T: (416) 367.6614
E: hmeighen@blg.com

Availability by appointment

2. COURSE INFORMATION

a. Class Times

Thursday, 6:30-8:20pm.

b. Learning Objectives

This seminar will introduce participants to the resolution of international disputes through arbitration, and in particular, the key stages of an international arbitration, including the drafting of arbitration clauses, constitution of the tribunal, managing the arbitral procedure, evidentiary hearings, and finally, the set aside and enforcement of awards. In addition, the seminar will provide particular instruction on key features of international commercial arbitration, including arbitral institutions, investor-state arbitration, and various procedural rules. Special emphasis is placed on the practical management of complex international arbitral proceedings by counsel. In this regard, the seminar will include particular instruction on client management, maximizing costs and efficiency, arbitrator selection, key advocacy skills, and ethical challenges that can arise in the context of international commercial arbitration. By the end of the seminar, students should be comfortable with the key legal concepts underpinning the arbitral process and considerations structuring and managing an effective arbitral process.

c. Evaluation

Take Home Assignment 1 (30%): Take-home assignment dealing with issues arising from first half of course (i.e. all seminars until reading week). Take Home Assignment 1 will be assigned on 1 November 2018 and will be a maximum of 3,000 words. Grading to be completed shortly after the submission of the assignment.

Take Home Assignment 2 (40%): Take-home assignment dealing with issues arising from the full course. Take Home Assignment 2 will be assigned on 22 November 2018 and will be a maximum of 4,000 words. Grading to be performed at end of semester.
Participation (30%): Participation grade will be based on a combination of class attendance and participation in one designated in-class presentation. Grading to take place on the day of the presentation, but will not be available until end of the semester.

Lateness policy: late Take Home Assignments will be penalized by 1/3 letter grade per week. Non-attendance without a valid reason during designated in-class presentation will result in a zero for that element of the grading.

Grading Questions: students who wish to discuss their grades may contact the instructor at the above contact information.

d. Content information

Reading Schedule

<table>
<thead>
<tr>
<th>Week</th>
<th>Date</th>
<th>Topic</th>
<th>Detailed List of Issues</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Sept 6</td>
<td>Introduction</td>
<td>What is arbitration?</td>
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<td>What law governs an arbitration?</td>
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<td>Commercial vs. investment arbitration</td>
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<td>Outline of the course</td>
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<tr>
<td>2</td>
<td>Sept 13</td>
<td>The Arbitration Agreement</td>
<td>Validity and applicability Elements of an agreement</td>
</tr>
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</table>

Week 1 Readings:

- N/A.

Recommended:


Week 2 Readings:


- M. Ball, “Just Do It – Drafting the Arbitration Clause in an International Agreement”, *Journal of International Arbitration*, vol. 10(4), December 1993.
<table>
<thead>
<tr>
<th>Week</th>
<th>Date</th>
<th>Topic</th>
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<tr>
<td></td>
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<td>3</td>
<td>Effects of the Arbitration Agreement</td>
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<td>Negative effect of arbitration agreement</td>
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<td>Positive effect of arbitration agreement</td>
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<td>4</td>
<td>Arbitrators</td>
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<td></td>
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<td>Procedure Practical considerations</td>
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<td></td>
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<td>Role of arbitrators</td>
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</tbody>
</table>

**Week 3 Readings:**


- *BWV Investments Ltd. v. Saskferco Products Inc.*, 1994 CanLII 4557 (SK CA)


**Week 4 Readings:**


- Arbitration Rules of the London Court of International Arbitration (LCIA), Article 5 [available online].

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<tr>
<th>Week</th>
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<th>Topic</th>
<th>Detailed List of Issues</th>
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<tr>
<td><strong>Recommended:</strong></td>
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<tr>
<td>5</td>
<td>October 4</td>
<td>Arbitrators</td>
<td>Duties of arbitrators&lt;br&gt;Grounds on which to challenge arbitrators&lt;br&gt;Process of a challenge</td>
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<tr>
<td><strong>Week 5 Readings:</strong></td>
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<td>-</td>
<td></td>
<td><em>IBA Guidelines on Conflicts of Interest in International Arbitration</em>, International Bar Association, 23 October 2014 [available online].</td>
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<tr>
<td><strong>Recommended:</strong></td>
<td></td>
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<tr>
<td>6</td>
<td>October 11</td>
<td>Jurisdiction</td>
<td>Principle of competence-competence&lt;br&gt;Timing of the question of jurisdiction&lt;br&gt;Ultimate power over jurisdiction&lt;br&gt;Typical grounds for contesting jurisdiction</td>
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<td><strong>Week 6 Readings:</strong></td>
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### Week 7

**Date:** October 18  
**Topic:** Procedure  
**Detailed List of Issues:** Emergency Arbitrators / interlocutory injunctions  
Interim measures  
Judicial review

#### Week 7 Readings:
- *Arbitration Rules of the ICC*, Appendix V, [available online]; *Arbitration Rules of the London Court of International Arbitration (LCIA)*, Article 9 [available online].
*UNCITRAL Model Law*, Articles 9, 17, and 27.
- *Arbitration Act, 1991*, SO 1991, c 17, s. 45(1) and (2).

#### Recommended:
- *Corporacion Transnacional de Inversiones v. Stet International*, 2000 CanLII 16840 (ON CA)
- *SMART Technologies ULC v Electroboard Solutions Pty Ltd*, 2017 ABQB 559 (CanLII)
- *The Russian Federation v. Luxtona Limited*, 2018 ONSC 2419 (CanLII)

### Week 8

**Date:** October 25  
**Topic:** Managing Evidence  
**Detailed List of Issues:** Pleadings  
Document production

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**Table:**

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<th>Topic</th>
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| 7    | October 18 | Procedure | Emergency Arbitrators / interlocutory injunctions  
Interim measures  
Judicial review |
| 8    | October 25 | Managing Evidence | Pleadings  
Document production |
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<th>Week</th>
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<th>Topic</th>
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<td>Witness evidence</td>
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<td></td>
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<td>Tribunal orders</td>
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</table>

**Week 8 Readings:**


- Daly, Goriatcheva, and Meighen, *Guide to the PCA Arbitration Rules*, (Oxford University Press: 2014), paras. 5.107-5.120.


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<thead>
<tr>
<th>9</th>
<th>November 1</th>
<th>Costs and Arbitration</th>
<th>Paper 1 Assigned Managing Costs in International Arbitration</th>
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<td>Security for Costs</td>
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<td>Costs awards</td>
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**Week 9 Readings:**


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<th>10</th>
<th>November 8</th>
<th>Reading Week</th>
<th>Paper 1</th>
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**Week 10 Readings**

- Reading Week. Paper 1.

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<tr>
<th>11</th>
<th>November 15</th>
<th>Enforcement / Set Aside</th>
<th>Paper 1 Due New York Convention Model Law</th>
</tr>
</thead>
</table>
**Week 11 Readings**

- Blackaby and Partasides, *Redfern and Hunter on International Arbitration*, 5th ed. (Oxford University Press: 2009), paras. 11.01-11.120.

- *International Commercial Arbitration Act*, R.S.O., c. 1.9, UNCITRAL Model Law, Articles 34 and 35.


- *Smart Systems Technologies Inc. c. Domotique Secant inc.* 2008 QCCA 444


**Recommended**

- *SMART Technologies ULC v Electroboard Solutions Pty Ltd*, 2017 ABQB 559 (CanLII)

**Week 12 Readings**


**Week 13 Readings**


**Recommended:**
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<th>Date</th>
<th>Topic</th>
<th>Detailed List of Issues</th>
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4. OSGOODE and YORK ACADEMIC POLICIES

a. Academic Honesty and Integrity

Osgoode students are required to maintain high standards of academic integrity and are subject to the York Senate Policy on Academic Honesty and the relevant Osgoode Academic Rules. The Senate Policy can be found at http://www.yorku.ca/secretariat/policies/document.php?document=69 The York University academic integrity website can be found at http://www.yorku.ca/academicintegrity

The Senate Policy and Osgoode Academic Rules are also found in the Student Handbook, which is available on the MyOsgoode website, under the Documents and Publications tab.

b. Religious Observance

York University is committed to respecting the religious beliefs and practices of all members of the community, and making accommodations for observances of special significance to adherents. Should any of the dates relating to examinations or assignments for this course pose such a conflict for you, please let Assistant Dean, Students, Mya Rimon, know within the first three weeks of class.

c. Students with Disabilities and Accommodation Needs

York University has a range of resources to assist students with physical, mental, and learning disabilities/challenges in achieving their educational objectives. Students with disabilities requiring accommodation in the classroom or in the examination or evaluation process are encouraged to identify themselves to York’s Counselling & Disability Services office (N110, Bennett Centre for Student Services or 416-736-5297) or Osgoode’s Office of Admissions & Student Services as soon as possible. Students seeking accommodation in experiential education settings are encouraged to read the Accommodation Information for Clinical & Intensive Program handout provided to them with their enrolment offer. All requests for accommodation will be kept confidential.

Requests for accommodation for in-term work must be made, in writing, to either the instructor or to the Assistant Dean, Students, Mya Rimon. Such requests must be made as soon as the need for accommodation arises and, barring exceptional circumstances, in advance of the deadline for the work.

Requests for accommodation for final examinations and final papers may only be made to and approved by the Assistant Dean, Students, Mya Rimon and must be made in advance of the examination date or final paper due date.

d. Other York University Policies, including Ethics Review Process

Further information concerning relevant York University academic policies, such as the Ethics Review Process for research involving human participants is available on the Senate Committee on Academic Standards, Curriculum and Pedagogy webpage (see Reports, Initiatives, Documents) – http://www.yorku.ca/secretariat/senate/committees/ascp/index-ascp.html