

# **INTERNATIONAL COMMERCIAL DISPUTE RESOLUTION**

**Prof. F. Peter Phillips**

**[F.Peter.Phillips@nyls.edu](mailto:F.Peter.Phillips@nyls.edu)**

**Spring Term 2013**

**Room SW 930**

**Tuesdays 9:00 – 10:40 a.m.**

## **COURSE DESCRIPTION**

The objectives of this course are:

- (i) To introduce students to fundamental concepts in the field of cross-border commercial dispute resolution (including cross-cultural negotiation and mediation, and international arbitration);
- (ii) To ensure that students are cognizant of the principles underlying the currently prevalent dispute resolution mechanisms and how they operate;
- (iii) To encourage in-depth original scholarship in a single topic of the student's choosing; and
- (iv) To prepare students to be intelligent participants in assessing and allocating risk when advising a client who is considering a cross-border commercial transaction.

The course is divided into four main units:

- (i) Cross-border Negotiation
- (ii) Cross-border Mediation
- (iii) International Arbitration
- (iv) Ethical, Political, Technological, Social and Other Considerations in Cross-Border Dispute Resolution

The course will consist of lectures and class participation that will be based upon the material that will be assigned in preparation for each class. The value of the class lectures and discussions will be a function of student preparation prior to the class. In some classes, case studies will be used, and in other cases senior representatives of prominent international dispute resolution bodies will be guest lecturers. Those classes will be helpful to students only insofar as the students have prepared for them and come to class ready to participate meaningfully.

I emphasize the importance of class preparation by distinguishing this seminar from larger classes that study other areas of the law. An individual can often get some limited value from attending a larger class without preparation, if other students carry the discussion and the subjects at issue are amenable to being broadly presented. By contrast, enrollment in this course is purposely limited so that the students, the guest lecturers and the professor can engage in interpersonal intellectual discourse, leading to a practical skill-set in a relatively esoteric field of practice. Each of the 14 classes is devoted to a particular topic, and that particular class will be the only opportunity that the group will have to investigate that topic and gain that skill. Failure of any member of the group to prepare for that session will constitute a failure of the group itself to conduct the investigation that is intended, and the loss of a unique opportunity.

Students are asked not to use their computers in class.

Three books will be relied upon for the course:

- ✚ *International Arbitration and Mediation: A Practical Guide* (M. McIlwrath and J. Savage)
- ✚ *Getting to Yes* (R. Fisher, W. Ury, B. Patton)
- ✚ *International Commercial Arbitration: A Transnational Perspective* (Supp. 5<sup>th</sup> ed.) (T. Varady, J.J. Barcelo)

The third volume is a compilation of the fundamental Rules, Guides, Treaties and Codes that govern formal international dispute resolution. Each of the other two volumes is definitive in its field. They were selected not only because they support the substance of the course, but also because they are likely to claim a place in an international business attorney's library.

There will be no examinations. In addition to class preparation and participation, students will be responsible for conducting original research and authoring a paper of publishable quality on a topic of their choosing. By way of illustration, a list of sample topics will be distributed at the first class. The actual topic selected will be subject to approval. Each student will be required to present the topic orally to the class at some point during the course, to facilitate discussion and answer questions with respect to the work-in-progress.

In addition, students will be required to submit 3-4 sentence definitions of "Essential Terms" in order to demonstrate basic literacy in the field. That submission may be completed at the student's convenience, using any resources the student wishes (except for fellow students' work).

Grades will be determined as follows:

- ✚ Final Paper: 50%
- ✚ In-Class Presentation and Discussion of Selected Topic: 20%
- ✚ Class Preparation and Participation: 15%
- ✚ “Essential Terms” Submission: 15%

## SYLLABUS

### Class I, 1/15

Topics: Introductions and Course Structure; Context of Cross-Border Commercial Dispute Resolution; Overview of Dispute Resolution Landscape

Reading Assignment:

Text pp. 1-10

Sample Topics for Student Presentations/Papers

“Essential Terms” to be Distributed in Class

### Class II, 1/22

#### **Topics and Presentation Dates Due**

Topics: Varieties of Dispute Resolution Methods; Principles of Interest-Based Negotiation; Some Ethical Implications. Negotiation Exercise: “Get As Much As You Can”; Prisoner’s Dilemma; Collaborative Law

Reading Assignments:

Ury, *Getting to Yes* pp. 1-94

### Class III, 1/29

Topics: Further Inquiries on International Negotiation; Cross-Cultural Issues; When a Dispute Arises; Early Case Assessment; Obstacles to Efficient Negotiation Outcomes; Introduction to Facilitated Negotiation

Reading Assignment:

Text pp. 117-71, 417-18

### Class IV, 2/5

Topics: International Mediation: When Advisable; Techniques of Client Advocacy; Principles of Effective Client Guidance

Reading Assignment:

Text pp. 174-208, 457-62

### Class V, 2/12

Topics: Introduction to Commercial Arbitration: Details of Processes

Reading Assignment:

Text pp. 11-36, 419-30

Supp. 1-11 (New York Convention)

### Class VI, 2/19

(Guest Speaker: Suzanne Ulicny, Deputy Director of Arbitration and ADR, Americas, ICC)

Topics: ICC Practice

Reading Assignment:

Text: pp. 432-36 (Model Terms of Reference)

Supp. 273-308 (ICC Rules)

Class VII, 2/26

Topics: Comparing ICC, ICDR and UNCITRAL; Taking of Evidence in International Arbitration; Options for Contract Drafters; **Student Presentation # 1**

Reading Assignment:

Text: pp. 36-62

Supp. 44-82 (UNCITRAL Rules and Notes), 83-96 (IBA Rules on Taking of Evidence), 314-30 (ICDR Rules), 331-54 (LCIA Rules)

Class VIII, 3/5 (Guest Lecturer: Mark Appel, Sr. V.P. ICDR)

Topics: Dispute Resolution in Europe and Africa; **Student Presentation # 2**

Reading Assignment:

EU Directive

Class IX, 3/12 (Guest Lecturer: Michael McIlwrath, Assoc. General Counsel – Litigation. G.E. Oil & Gas)

Topics: Enforcement of International Arbitration and the Concerns of End-Users; **Student Presentation #3**

Reading Assignment:

Text: pp. 327-66

Class X, 3/19

Topic: More Issues in International Dispute Resolution; **Student Presentation #4**

Reading Assignment:

Supp. 469-88 (IBA Ethics and Conflicts Rules for Arbitrators)

CIARB Guide for Interviewing Prospective Arbitrators

<http://www.ciarb.org/information-and-resources/Practice%20Guideline%2016%20April2011.pdf>

3/26: NO CLASS

Class XI, 4/2

Topic: Selected Issues in Enforcement of Arbitral Awards; The Specific Challenge of China; **Student Presentation #5**

Reading Assignment:

Supp. 264-72 (Civil Procedure Laws on Arbitration), 355-78 (CIETAC Rules)

Class XII, 4/9

Topic: BITS, ICSID, and Other Issues; **Student Presentation #6**

Reading Assignment:

Text: pp. 367-94, 471-506

Class XIII, 4/16 (Guest Lecturer: Colin Rule)

Topic: Hybrid Processes; Online Processes; Consumer Dispute Resolution

Reading Assignment:

[www.modria.com](http://www.modria.com)

Class XIV, 4/23 **Papers and “Essential Terms” Submissions Due**

Topic: Overview of Current Topics; International Business Dispute Resolution in Non-Commercial Settings; Preventive Practices; Summary