

## 2023 DURHAM SUMMER PROGRAM ON INTERNATIONAL ARBITRATION

---

### MONDAY

#### FUNDAMENTALS OF COMMERCIAL ARBITRATION

**9:30am – 10:00am: Introduction to The Program**

*Instructor(s):* John Fellas

**10.15am - 11:30am: Why Parties Select International Arbitration**

This session will focus explaining what international arbitration is and explaining why parties may choose arbitration for their international commercial contracts.

*Instructor(s):* John Fellas; Christian Leathley

*Assigned Reading:* Gary B. Born, INTERNATIONAL ARBITRATION: LAW AND PRACTICE, Chapters 1-5 (Kluwer Law International 2012); Jan Paulsson, *International Arbitration is Not Arbitration*, 2 Stockholm Int'l Arb. Rev. 1 (2008).

**11.45am - 12:45pm: The Legal Basis for International Arbitration**

This session will focus on the legal basis for arbitration.

*Instructor(s):* John Fellas; Christian Leathley

*Assigned Reading:* United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958); UNCITRAL Model Law on International Commercial Arbitration (2006);

**2:30pm – 3.45 pm: The Law and Rules That Govern International Commercial Arbitration**

This session will focus on the law and rules that governs international arbitration: the New York Convention, domestic law, arbitration rules, and soft law instruments governing the arbitral process

*Instructor(s):* Professor Can Eken

*Assigned Reading:* United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958); UNCITRAL Model Law on International Commercial Arbitration (2006); IBA Rules on the Taking of Evidence (2010); ICC Arbitration Rules (2021);

LCIA Arbitration Rules (2020); ICDR Arbitration Rules (2021); Arbitration Act of 1996 (Eng.); IBA Guidelines on Party Representation in International Arbitration (2013); IBA Guidelines on Conflict of Interest in International Arbitration (2014); Sample Procedural Order No. 1.

**4:00pm – 5.00 pm: How to Draft an Arbitration Clause**

*Instructor(s):* John Fellas; Christian Leathley

*Assigned Reading:* Model Arbitration Clauses

**TUESDAY**

**FUNDAMENTALS OF COMMERCIAL ARBITRATION**

**9:30am – 10.30 am: Enforcement of Arbitration Agreements**

This session will focus on the enforcement of arbitration agreements and in the courts, including the allocation of responsibility between courts and arbitrators, kompetenz-kompetenz and separability in leading arbitration jurisdictions around the world.

*Instructor(s):* Professor Charles Kotuby

*Assigned Reading:* Gary B. Born, INTERNATIONAL ARBITRATION: LAW AND PRACTICE, Chapters 1-5 (Kluwer Law International 2012); Jan Paulsson, *International Arbitration is Not Arbitration*, 2 Stockholm Int'l Arb. Rev. 1 (2008).

**10:45 am – 12.00 pm: Enforcement of Arbitration Awards**

This session will focus on the enforcement of arbitration awards including the distinction between enforcement and set aside, the various defenses to enforcement and the standards for set aside.

*Instructor(s):* Professor Chen Lei

**2:30pm - 5:00pm: The Arbitration Process**

This session will discuss in detail how a dispute unfolds from the beginning of the dispute to the issuance of an award. It will include a discussion of preliminary relief, the commencement of arbitration proceeding, emergency arbitrators, the preliminary conference, the submission of memorials, witness statements and expert reports, the taking of evidence, and the hearings.

*Instructor(s)*: John Fellas; Tim Smyth

*Assigned Reading*: United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958); UNCITRAL Model Law on International Commercial Arbitration (2006); IBA Rules on the Taking of Evidence (2010); ICC Arbitration Rules (2021); LCIA Arbitration Rules (2020); ICDR Arbitration Rules (2021); Arbitration Act of 1996 (Eng.); IBA Guidelines on Party Representation in International Arbitration (2013); IBA Guidelines on Conflict of Interest in International Arbitration (2014); Sample Procedural Order No. 1.

### WEDNESDAY

#### FUNDAMENTALS OF TREATY-BASED ARBITRATION

##### **9:30am - 12:00pm: Introduction to Treaty-Based Arbitration**

This session will introduce the theoretical basis of treaty-based arbitration, the various institutions, and mechanisms for dispute settlement

*Instructor(s)*: Charles T. Kotuby Jr.; Christian Leathley

*Assigned Reading*: Jan Paulsson, *The Power of States to Make Meaningful Promises to Foreigners*, 1 J. INT'L DISP. SETTLEMENT. 341 (2010); Kenneth J. Vandeveld, *A Brief History of International Investment Agreements*, 12 U.C. DAVIS J. INT'L L. & POL'Y 157 (2005); U.S. Model BIT

##### **2:30pm - 5:00pm: Issues of Jurisdiction in Treaty-Based Arbitration**

This session will cover the definition of “investment,” issues of temporal jurisdiction, treaty structuring and issues of corruption as a matter of jurisdiction and admissibility

*Instructor(s)*: Charles T. Kotuby Jr., Mahnaz Malik

*Assigned Reading*: *Empresas Lucchetti, SA and Lucchetti Peru, SA v. Peru*, ICSID Case No. ARB/03/4, Award, 7 Feb. 2005; *World Duty Free v. Kenya*, ICSID Case No. Arb/00/7

**THURSDAY**  
**TREATY-BASED ARBITRATION AND DAMAGES**

**9:30am - 12:00pm: Expropriation and the Fair and Equitable Treatment Standard**

This session will address the primary substantive protections of investment treaties and their jurisprudential development over the past few years.

*Instructor(s):* Charles T. Kotuby Jr., Sylvia Tonova

*Assigned Reading:* Kenneth J. Vandeveld, *A Unified Theory of Fair and Equitable Treatment*, 43 N.Y.U. J. INT'L L. & POLITICS 43 (2010); *Técnicas Medioambientales Tecmed, S.A. v. United Mexican States*, ICSID Case No. ARB(AF)/00/2); Kotuby & Sobota, *Practical Suggestions to Improve the Legitimacy and Vitality of Investment Arbitration*, ICSID Review, Vol. 28, No. 2 (2013)

**2:30pm - 5:00pm: Damages in Commercial and Investment Arbitration**

With the assistance of leading forensic economists, this session will address issues of reparation and compensation, strategic considerations of valuation dates and how various breaches and businesses implicate different quantum models

*Instructor(s):* Dr. Min Shi, CFA

*Assigned Reading:* Mark W. Friedman and Floriane Lavaud, *Damages Principles in Investment Arbitration*, in THE GUIDE TO DAMAGES IN INVESTMENT ARBITRATION (Global Arbitration Review 2018)

**FRIDAY**  
**PRACTICAL ARBITRATION SKILLS**

**9:30am – 11:00am: Best Practices in Written Advocacy: Pleadings, Witness Statements and Expert Reports**

This session will highlight best practice in written advocacy, seeking to bridge the divide between different legal traditions

*Instructor(s):* Christian Leathley (Moderator); Professor Sir Bernard Rix, Karyl Nairn KC, Constantine Partasides KC, (John Fellas, Wendy Miles KC)

*Assigned Reading:* John Fellas, *Cross-Examination in International Arbitration*, NYLJ (2015); John Fellas, *Preparing Witness Statements in International Arbitration*, NYLJ (2017)

**11:15am – 12:30pm: Best Practices in Oral Advocacy: Opening and Closing Statements**

This session will address best practices in delivering opening and closing statements and include participant discussion and hands-on workshops.

*Instructor(s):* John Fellas (Moderator); Professor Sir Bernard Rix, Karyl Nairn KC, Constantine Partasides KC, (Christian Leathley, Wendy Miles KC)

*Assigned Reading:* John Fellas, *Cross-Examination in International Arbitration*, NYLJ (2015); John Fellas, *Preparing Witness Statements in International Arbitration*, NYLJ (2017)

**2:30pm – 4.30pm: Best Practices in Oral Advocacy: Cross-Examination Q&A on all aspects of advocacy**

This session will address best practices in cross examination statements and include participant discussion and hands-on workshops.

Christian Leathley introductory demonstration.

*Instructor(s):* Wendy Miles KC (Moderator); Professor Sir Bernard Rix, Karyl Nairn KC, Constantine Partasides KC, Christian Leathley, John Fellas

*Assigned Reading:* John Fellas, *Cross-Examination in International Arbitration*, NYLJ (2015); John Fellas, *Preparing Witness Statements in International Arbitration*, NYLJ (2017)

**4:30pm – 5.30pm: Informal Mingle**

**SATURDAY  
TOPICS AND PERSPECTIVES**

**9:30am – 11:30pm: Arbitrator Perspectives Q&A**

This interactive session will feature arbitrators discussing the most effective features of a global arbitral practice and advocacy before arbitral tribunals and how they approach decision-making.

*Instructor(s):* Wendy Miles KC (Moderator); Professor Sir Bernard Rix, Karyl Nairn KC, John Fellas

**1:00 pm – 3.30 pm Inhouse and other experts perspective – TBC**