

ICAM
Willem C. Vis Commercial Arbitration Moot
Fall 2018
Law # 6930/ Class # 21416

Joan Stearns Johnsen

1:00 pm – 2:50pm, Mondays, and Tuesdays 2:00 pm – 2:50pm
Classroom 355D

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Class Syllabus and Policies

Required Course Materials:

INTERNATIONAL SALES LAW AND ARBITRATION: PROBLEMS, CASES AND COMMENTARY, Second Edition, by Joseph Morrissey (Aspen/Kluwer 2018) (“Text”) This is a new text and used copies will be difficult to find. There is, however, a rental option available.

I also recommend, although I do not require that you obtain a copy of Jack Grave’s Text’ *ABC’s of the CISG* (ABA Publishing 2013) or *Convention for the International Sale of Goods in a Nutshell* by Franco Ferrari and Marco Torsello (West Academic Publishing 2014).

In addition to our Text the three most important *statutory texts* we will use are the United Nations Convention on Contracts for the International Sale of Goods (1980) (the “CISG”), the UNCITRAL Model Law (1985, as revised 2006) (the “Model Law”), and the New York Convention on the Enforcement of Foreign Arbitration Awards (1958) (the “New York Convention”). You will also need a number of statutory texts and other materials; however, you will not be required to purchase statutory texts. These are easily available online. I have posted a copy of each under Supplemental Course Materials on Canvas, and you should ***obtain copies of each before the first class***. You may print them or simply download them onto a laptop computer you bring to class, but you should ***always have them with you in class***. These statutes address the primary subject matter of this course.

Additionally, this year the Arbitration Rules for the Vis Competition in Vienna in April will be the CIEAC Arbitration Rules. (This is different from the UNCITRAL Model Arbitration Law which will also apply as the law of the “Seat.”)

Additional Course Materials: We will also, from time to time, reference other sources of international commercial law (e.g., the UNIDROIT Principles of International Commercial Contracts), terms often used in international trade (e.g., INCOTERMS), and various institutional and other rules often used in arbitration (e.g., the ICC Rules, or the UNCITRAL Arbitration Rules). As well as the UNCITRAL Model Arbitration Law. These are available online. On Canvas, you will find a page of links to various online resources, and you will find a bibliography of potentially useful print resources. I also refer you to the Pace Law School Website, <http://cisgw3.law.pace.edu/> and the Wolters Kluwer International Arbitration website to

which our library subscribes. Please make use of these extensive databases and resources available at no cost online.

Description of the Course: In this course, you will learn the law governing international sales of goods and will be introduced to international commercial arbitration. We will begin with an introduction of international trade, private international law, and dispute resolution, including an overview of the general nature of an international sales transaction. We will then review and discuss the principles, scope, and substance of the CISG, as applied to basic contract issues of formation, performance, and remedies. Following our discussion of substantive commercial law, we will also introduce arbitration as a contractual means of largely private dispute resolution. Our coverage of arbitration will also be addressed throughout this course in an integrated manner along with the coverage of the substantive law. We will also touch on issues related to international arbitration advocacy as compared to trial tactics.

Student Learning Outcomes:

At the conclusion of this course students should be able to:

- demonstrate a thorough understanding of the statutory framework of international commercial arbitration as well as of the various treaties, laws, conventions, and other sources applicable to international commercial arbitration;
- demonstrate a thorough understanding of the process of international arbitration including how it contrasts with litigation and domestic arbitration;
- demonstrate an appreciation of the pros and cons of international commercial arbitration as compared to other forms of international and domestic dispute resolution;
- demonstrate an understanding of the principles, scope, and substance of the CISG as applied to basic contract issues of formation, performance, and remedies in international trade;
- demonstrate a facility with the application of the CISG to an international commercial trade and the nature of the disputes arising in that area of practice;
- demonstrate a facility with the research skills associated with the resolution of an international trade dispute including both the procedural issues of international arbitration and substantive issues of the CISG;
- demonstrate proficiency with the legal analysis, persuasive skills, drafting, and editing of an international arbitration submission and oral presentation including the requirements as to form.

Statement on Workload This is a three credit course. As such, students are expected to spend on average approximately two hours preparing for every hour of class. Because of the nature of this class, reading assignments are front loaded towards the beginning of the semester. Later in the semester, attendance will not be taken and classes will be optional. For this reason some weeks towards the beginning of the semester, you may find yourself spending a bit more time reading. Later in the semester you will no longer have weekly reading assignments. At that point, time that would have been spent in class and preparing for class should be directed towards researching and drafting the final brief and preparing for your oral argument. Following the oral argument, your only assignment will be to prepare for the final exam which will take place during exam period.

Grading—Your grade will be comprised of three assignments. You will be graded primarily on your brief. You also will be graded on your oral arguments. You will also be graded on a one hour multiple choice exam.

At the conclusion of the class sessions and for the two weeks until the problem drops, you will complete the following pass/fail assignments.

You are asked to read last year’s winning Claimant’s brief and write a 2-5 page annotation. You should also watch last year’s winning oral argument and write a 2-5 page reflection. assignments should be submitted on Canvas per the posted due dates. These assignments will be pass/fail.

First, on the Pace CISG site you will find winning briefs from the 2017-2018 Willem C. Vis Moot (25th Vis). Please read the First Place Claimant’s brief from the University of Geneva <https://vismoot.pace.edu/media/site/previous-moots/25th-vis-moot/geneva-claimant.pdf> and annotate.

As you read identify:

- 1) What makes the brief strong;
- 2) What do you think might be improved;
- 3) How do the authors support their arguments, ie what sources are relied upon, what observations can you make?
- 4) How does the organization of the brief differ from what you have been taught about the way a US brief is organized?
- 5) What are the primary legal sources cited?
- 6) How are they cited?

Draft a 2-5 page paper, double spaced with specificity as to the strength of the arguments and the support. Identify ways in which this brief differs from a common law US style brief. How are authorities used? What sorts of authorities are used? How is this brief organized?

Second, watch the following video of the final winning round.

<https://www.youtube.com/watch?v=IJRpuAoyHgk>

As you watch this video identify the ways in which this argument before a panel of Arbitrators is different from a US Oral Argument before a Judge or panel of Judges. How is the process different? How many differences can you identify? How does the style of the presentations differ? How is it the same? How is the tone different? What conventions you would expect to see in an oral argument are missing? What different conventions can you observe? Write a 2-5 page double spaced paper with your impressions of what you learned about this arbitration process from watching this video

Please make reference to the substance of Arbitration Law and the CISG covered in your text and in class. We will discuss this in greater detail in class.

You will begin work on these two assignments following the conclusion of our class time, September 14. Both assignments will be due to be submitted on Canvas by 7:00 pm on Friday, September, 28.

The Willem C. Moot Problem should drop the first week of October. At that point you will have approximately one month to work in teams to draft a Claimant's brief. Your final briefs will be due to be submitted on Canvas by Friday, November 2, at 7:00 pm.

Oral arguments will take place on November 5, 6, and 7th

The brief will count for 40% of your grade, and the oral argument will count for 40% of your grade. The two assignments will be graded pass/fail. **There will also be a one hour multiple choice final examination during the normal December exam period.** The exam will count for 20% of your grade.

Academic misconduct: Academic honesty and integrity are fundamental values of the University community. Students should be sure that they understand the UF Student Honor Code at <http://www.dso.ufl.edu/students.php>.

Grading Scale: The Levin College of Law's mean and mandatory distributions are posted on the College's website and this class adheres to that posted grading policy. The following chart describes the specific letter grade/grade point equivalent in place:

Letter Grade	Point Equivalent
A (Excellent)	4.0
A-	3.67
B+	3.33
B	3.0
B-	2.67
C+	2.33
C (Satisfactory)	2.0
C-	1.67
D+	1.33
D (Poor)	1.0
D-	0.67
E (Failure)	0.0

The law school grading policy is available at: <http://www.law.ufl.edu/student-affairs/current-students/academic-policies#9>.

Class Schedule: We will fully complete this 3-credit class prior to the commencement of reading week. Class will be held on Mondays from 1 until 2:50 and Tuesdays from 2 until 2:50 in Room 355D.

Attendance: Your attendance is essential to your understanding of the material and to your success in this course. For this reason, regular and punctual attendance at classes is mandatory. I do take attendance Please e-mail me to request an excused absence. Anything in excess of 15% unexcused absences may render a student ineligible to receive credit for the course. Excused absences will be handled consistent with University policies (<https://catalog.ufl.edu/ugrad/current/regulations/info/attendance.aspx>) and require appropriate documentation.

Office Hours: I am generally available in my office at any time. Please feel free to stop by anytime. I will have regular office hours Mondays from 3 until 4:30 . Additionally, I can always arrange to be available by appointment. I encourage you to come by and talk with me if you are having difficulties with, or simply want to clarify your understanding of, any of the materials covered in the reading or in class.

Canvas: Please check Canvas regularly for new postings. If you have difficulty accessing or working with Canvas, please let me know as soon as possible.

Statement Related to Accommodations for Students with Disabilities: Students requesting classroom accommodation must first register with the Office of Disability Resources. (352-392-8565, www.dso.ufl.edu/drc/) The UF Office of Disability Resources will provide documentation to the student who must then provide this documentation to the Law School Office of Student Affairs when requesting accommodation.

The Competition: Willem C. Vis International Commercial Arbitration Moot, Vienna, Austria

On the first day of class I will explain in detail how this all fits with the Willem C. Vis International Commercial Arbitration Moot which takes place in Vienna, Austria and where students comprising approximately 350 teams from law schools throughout the world gather with international arbitration practitioners and arbitrators. It is presently anticipated that the trip will be April 6 – 13, 2017. The Law School will pay your travel and lodging expenses and provide you with a per diem to cover food.

After the oral arguments and my review of your briefs, four people will be selected from among those seeking places on team to travel to Vienna You will also travel to Miami for a pre-moot in February. Those selected will prepare throughout the spring term. This entails a serious time commitment. Those interested in participating must agree to attend all practices and to devote the time required. (Participation on the team will have no impact on your receiving the 3 credits allocated to this course.)

N.B. To be on the team you must demonstrate strong research, oral advocacy, and collaborative skills. Your classwork should reflect a thorough understanding of the material and a serious work ethic. This means you may earn an A in the course, perhaps even the highest A, and not be selected for the team.

Assignments and Important Dates and Events:

Week One: Monday, August 13 and Tuesday, August 14

Class 1 – Gary Born Video, <https://www.youtube.com/watch?v=A31M9ImBaiA> and Read through the CISG, Text, Chapter 1: **The Study of International Commercial Law**

Class 2 – Text, Chapter 2– CISG: **Application and General Provisions.**

Week Two: Monday, August 20 and Tuesday, August 21

Class 3 – Text, Chapter 3– CISG: **Forming a Contract Under the CISG.**

Class 4 – Text, Chapter 4– CISG: **Obligations of the Parties.**

Week Three: Monday, August 27 and Tuesday, August 28

Class 5 – Chapter 5, Parts I and II pp. 199-239- CISG: **Remedies for Breach: Buyer’s Remedies**

Class 6 – Chapter 5, Part III pp. 239-255– CISG: **Seller’s Remedies, Anticipatory Breach, and Installment Contracts.**

Week Four: *No Class Monday, September 3 (Labor Day)* –Tuesday, September 4

Class 7 – Chapter 6 – CISG: **Damages.**

Week Five: Monday, September 10, Tuesday, September 11

Class 8 – Chapter 7 – **Arbitration as an Alternative to National Courts.**

Class 9 – Chapter 8 – **Arbitration of the Jurisdictional Issues**

Week Six: Monday, September 17, Tuesday, September 18

Class 10 – **Research Class,**

Please Read Chapters 9 and 10 by October 2

Week Seven: Monday, September 25, Tuesday, September 26

Presentation from Last Year’s Vis Participants; Research Class

Week Eight: Monday October 2, Tuesday, October 3

Review Vis Moot Problem

Annotation Papers Due: Friday, September 29, 7:00 pm

Final Briefs Due: Friday, November 2, 7:00 p.m., Final Briefs Submitted on Canvas.

Oral Arguments: November 5 and 6.