

Law in a Global Context
Section 3
Syllabus for the Week

Overview of the Week:

The week is designed to use a problem-based approach to introduce you to some of the issues that arise in transnational disputes. The first part of the week will be spent analyzing the problem from the perspective of the role you have been assigned (counsel for Lacenaire, counsel for FNN, counsel for Thoughtgeyser, or a neutral decision-maker) and preparing you for (a) an argument in an arbitration hearing regarding what law will govern the dispute and (b) a mediation session in which you will attempt to obtain a mediated settlement of the dispute in light of the arbitrators' decision on the applicable law. The arbitration hearing and mediation session will be conducted on Thursday, and the week will end with a group session that analyzes the various outcomes reached by each group of students and the theoretical and practical implications of those outcomes for attorneys engaged in transnational dispute resolution.

Note that you all have partners with whom you will be working throughout the week to prepare for the arbitration hearing and mediation session. Your partners are those students who are assigned to the same role and the same Thursday breakout group that you have been assigned. You are encouraged to meet with your partners outside of scheduled class time to plan for the arguments and settlement discussions.

As indicated in the cover letter to the materials that were distributed in December, you should have read the entire packet of materials over the break, before the week begins. The classes during the week will build from the materials, and thus you may want to review the relevant portions of the materials the night before so that you can highlight any questions that you may want to raise in class. Below is a summary of what the week will look like, with suggestions for portions of the materials to review before each day of class.

Assignment for First Class:

- Review Case Problem Introduction
- Review Part 1 of the Materials, covering introduction to international and foreign law and laws favoring arbitration

Monday: Introduction to Problem and Jurisdiction Issues

- Registration and Introduction
- 1-hour role-group session; students will interview either clients or tribunal members to discover relevant information
- plenary session: 2 hour class discussion on sources of international law and introduction to international arbitration

Assignment for Tuesday: Review Part 2 of Materials, covering French Legal System, Substantive Law of Defamation and Enforcement of Judgments

Tuesday: Substantive Law of Defamation and Enforcement of Judgments/Arbitration Awards

- 1-hour class discussion on enforcement of judgments – US cases refusing to enforce judgments inconsistent with First Amendment principles (e.g. *Yahoo!* case), principle of comity and policies underlying it, discussion of whether arbitration awards should be treated differently from judgments in light of international convention and strong policies favoring arbitration in US
- 1 hour plenary session re substantive law of defamation – Elements of claim, burden of proof, constitutional limitations in US and French law, limitations on liability of Internet Service Providers, relevant EC law and international conventions
- 90-minute Breakout Session: Meet in four sections based on client assignments - Lacenaire, FNN, Thoughtgeyser, neutrals; discuss whether French or US (or some other?) law would be preferable for the client or from a neutral perspective

Assignment for Wednesday:

- Read Parts 3 and 4 of Materials, covering Conflict of Laws and preparation for arbitration and mediation sessions;
- Outline possible factors that arbitrator might consider in deciding choice of law issue to prepare for afternoon breakout session (outlines will not be collected but will facilitate discussion and help you to prepare for Thursday's hearing)

Wednesday: Conflict of Laws and Planning the Arbitration Hearing

- 1-hour class discussion on Conflict of Laws, covering basic principles, standards used in U.S. courts, French courts, ICDR tribunal
- 1-hour session on arbitration hearings and mediations – view sample hearings, deal with questions re procedure, what to expect, how to prepare
- 90-minute Breakout Sessions: students divide up into small groups, by role, with faculty facilitators, to plan and prepare for arbitration hearing at which students will argue choice of law issue to the ICDR arbitrators and to consider strategies for mediation proceeding

Assignment for Thursday:

- Students who will be advocates should prepare arguments for Thursday arbitration hearing, working with their partners to the extent necessary to adequately prepare;
- Review and consider confidential materials re settlement. All students representing one of the parties should work with partners to plan strategy for mediation: what will your approach be to settling the case if you do not succeed in the choice of law hearing? What will your approach be if you do succeed in the choice of law hearing?
- Students who will be arbitrators should outline questions that they will ask the parties, working with assigned partners to the extent necessary to adequately prepare; in addition, work with partners to develop approach for conducting mediation.

Thursday: Mock Arbitration Hearings and Mediation Session

- Simulated arbitration hearings on choice of law issue.

Groups of 12-14 students with one faculty member and one GTF facilitator: 3 students argue for each party (Lacenaire, FNN, Thoughtgeyser) and 3-5 students serve as arbitrators; each advocate will have 5 minutes to argue, with arbitrators and facilitators asking questions; arbitrators will consult and then issue ruling, with each arbitrator giving oral statement of his/her decision and reasons for it. **Note: arbitrators must post a one-page written ruling today (see assignment below).**

- Simulated mediation sessions on merits, applying law selected by arbitrators during arbitration hearing

Same groups of 12-14 students with same GTF facilitator: 3 students represent each party and 3-5 students serve as mediators. Students will make good faith effort to resolve the dispute within the allotted time. GTFs will post results of mediation on Courseware by 9 p.m. (either a brief summary of the terms of settlement, if a

settlement was reached, or, if no settlement was reached, then a brief summary of the mediation proceeding and apparent reason for the failure to reach a settlement).

- Panel discussion followed by reception for Section 3 students, Week One faculty, and GTFs to follow mediation sessions (attendance at reception not required, but all are welcome)

Assignment for Thursday afternoon and Friday morning:

-- Students on the neutral “team” for each 12-14 person group must post their rulings on courseware by 9:00 p.m. on Thursday evening. If all 3 or 5 arbitrators have agreed on the ruling, they may do a joint posting. Dissenting panelists should do a separate posting but make clear that their view was the minority for the panel. Rulings should be brief and should not exceed one page in length.

-- GTFs will post results of mediation proceedings by 9 p.m. Thursday evening.

-- **All students must review all of the postings for all groups (both arbitration rulings and mediation results) before class Friday** and should come to class on Friday prepared to discuss the proceedings in their arbitration and mediation sessions and the results across the class.

-- On Thursday night, after 9 pm, the confidential information given to students will be posted on Courseware and students should read them before Friday’s class.

Friday: Debrief of Arbitration and Mediation Sessions

- Plenary session to debrief on arbitrations and mediations

Discuss process, results, implications of results. What options do the advocates have if they are not happy with the results? Discuss strategies for avoiding this problem in the future and effect of choice of law rulings on ultimate outcomes in the case.

Also discuss the confidential materials and the impact that they had on the advocates’ strategies in arguing for a particular choice of law and in attempting to resolve the dispute on the merits. How might the other parties have learned this information? Would discovery have been helpful prior to the hearing in order for the advocates and neutrals to have access to more information?