Striking a Balance: Confronting Tensions In International Arbitration

Friday, March 3, 2017

Columbia Law School, New York

New York State Areas of Professional Practice
7.0 total New York State CLE credits are expected for this event:
5.5 Areas of Professional Practice credits expected &
1.5 Ethics and Professionalism credits expected

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Columbia Arbitration Day 2017
Welcome from the Dean

Dear Conference Participant,

It is my pleasure to invite you to Columbia Arbitration Day on March 3rd, 2017. We are very pleased to host a number of leading practitioners in the field of international arbitration, outstanding faculty, as well as students and alumni, for a day-long conference. This effort arises from our recognition of the common interests of practitioners, academics, and students in this field, and our belief that we can offer a valuable and unique service by bringing these diverse groups together. We hope to provide a platform for the mutually beneficial exchange of ideas and solutions to some of the most topical and difficult issues in this field today.

We hope that you will take advantage of this opportunity, and we look forward to welcoming you to Columbia Law School.

Best,
Gillian Lester
Dean and the Lucy G. Moses Professor of Law
Welcome from Professor George Bermann

Now in its eighth year, Columbia Arbitration Day (“CAD”) has become a fixture on the international arbitration community’s annual calendar—and for good reason. The event has a sterling reputation, even alongside the many fine programs that populate the field. Attainment of this status is all the more impressive due to the fact that the Columbia International Arbitration Association (CIAA) has made this possible with minimal reliance on the faculty and administration of the Law School. It is a tribute to the initiative, resourcefulness and energy of the student organizers.

The theme this year—“Striking a Balance: Confronting Tensions in International Arbitration”—is a reminder that constructing and operating a fair and efficient international arbitral process entails a tradeoff among competing objectives. Cognizance of that is all the more important in a time when arbitration—whether commercial or investment—is coming in for concerted criticism. This year’s program reflects the CIAA’s attunement to acknowledging and addressing the challenges that the international arbitration regime currently faces and is likely to in the years ahead.

The roster of speakers is also as magnificent as ever. That too is a product of CIAA’s energy and ambition in attracting the best and brightest to address us on this occasion. It is not surprising that our many LLM students from abroad have succeeded, as they always do, in bringing their most outstanding mentors from home to our program. It remains a genuine tribute to the program that invitees accept with alacrity invitations to speak at CAD.

The level commitment at Columbia to the international arbitration field is unparalleled in this country, and CAD is its embodiment. I wish to thank our student leaders for their ingenuity and dedication in assembling this program and for all else they do to make Columbia the vibrant setting for international arbitration study that it has become.

And now, along with the Dean and CIAA, I want to welcome all who have taken the time out of busy schedules to attend this year. I have every confidence that you will find the day as instructive as it is enjoyable. Thank you for being part of it.

Professor George A. Bermann
Director, Center for International Commercial and Investment Arbitration
Columbia Law School
Information

Date
Friday, March 3, 2017

Conference Venue
Columbia Law School
Jerome L. Greene Hall
435 West 116th Street, at the intersection of Amsterdam Avenue

Travel
Participants are responsible for making their own travel arrangements. It is recommended that you check your visa requirements with your local embassy or consulate. For further information on hotel accommodations please visit www.columbia.edu/newcuhome/content/visitors-center.html.

Registration
Pre-register online at https://web.ovationtix.com/trs/pe/10127152. Students buying tickets before February 15th may use the promo code EARLYARB to purchase tickets using the early bird discount. Online pre-registration is necessary to secure attendance. Please note that conference rates are flat and fees cannot be prorated according to attendance. Space is limited. Confirmed reservations are transferable. In order for your name to appear on the list of participants, which will be distributed at the conference, your registration information must have been received before March 1, 2017.
Columbia Law School Map
Information Regarding New York CLE Credits

Columbia Law School has been certified by the New York State Continuing Legal Education (CLE) Board as an Accredited Provider of CLE programs. Under New York State CLE regulations, this live non-transitional CLE Program will provide 4.5 credit hours that can be applied toward the Areas of Professional Practice requirement and 1.5 credit hours toward the Ethics and Professionalism requirement. CLE credit is awarded only to experienced New York attorneys for full attendance at the Program in its entirety. Attorneys attending only part of a Program are not eligible for partial credit, although they are most welcome to attend it. Attendance is determined by an attorney’s sign-in and sign-out as shown in the Conference registers. On sign-out, attorneys should also submit their completed Evaluation Form, provided at the Conference. Please note the NYS Certificates of Attendance will be sent to the email address as it appears in the register unless otherwise noted there. Attorneys seeking credit for a jurisdiction other than New York should consult the relevant jurisdiction’s guidelines for the reporting of such credit.

Columbia Law School’s CLE Financial Aid Policy

Persons seeking a hardship scholarship should register using the form below and then separately complete their registration by submitting a scholarship request, no later than 23:30 (EST) February 24, 2017 to Logan Wright (CIAA@law.columbia.edu). Requests, which will be answered, should detail in a few sentences the basis of the applicant’s need and the background to his or her interest. Please understand that without a complete scholarship request, the applicant may be notified that the scholarship registration has been cancelled.

Inquiries

Please direct your inquiries regarding CLE to Logan Wright (mlw2163@columbia.edu) and all other registration or conference inquiries to the Columbia International Arbitration Association (ciaa@law.columbia.edu).
Conference Program

Friday, March 3, 2017 at Columbia University School of Law, Jerome Greene Hall

8:30 a.m. – 8:55 a.m.  
Jerome Greene Hall Lobby  
Registration & Breakfast

8:55 a.m. – 9:00 a.m.  
Jerome Greene Hall 106  
Conference Introduction by CAD Co-Chair

9:00 a.m. – 10:20 a.m.  
Jerome Greene Hall 106  
Panel 1 – The One Thousand Faces of Double Recovery (1.5 CLE credits)  
MODERATOR: Oliver Thomas Johnson, Columbia Law School and Iran-U.S. Claims Tribunal  
Elliot Friedman, Freshfields Bruckhaus Deringer  
Jennifer McCandless, Sidley Austin  
Dietmar Prager, Debevoise & Plimpton  
Mohamed Shelbaya, Shearman & Sterling

10:20 a.m. – 10:40 a.m.  
Jerome Greene Hall Lobby  
Coffee Break

10:40 a.m. – 12:00 p.m.  
Jerome Greene Hall 106  
Panel 2 – The Admissibility of Illegally Obtained Evidence in International Arbitration (1.5 CLE credits)  
MODERATOR: Kabir Duggal, Columbia Law School and Baker & McKenzie  
Ian Binnie C.C., Q.C., Former Justice of the Supreme Court of Canada and Current Arbitrator  
Paula Hodges Q.C., Herbert Smith Freehills  
Jim Pastore, Debevoise & Plimpton  
Howard Zelbo, Cleary Gottlieb

12:00 p.m. – 1:10 p.m.  
Faculty House, 2nd Floor  
Lunch

1:10 p.m. – 2:00 p.m.  
Faculty House 2nd Floor  
Keynote Address: Third Party Funding and International Arbitration  
Carolyn Lamm, White & Case

2:00 p.m. – 3:20 p.m.  
Jerome Greene Hall 106  
Panel 3 – Conflicting Supranational Obligations: The Complex Web of State Liability (1.5 CLE credits)  
MODERATOR: George Bermann, Columbia Law School  
Mark Beckett, Cooley  
Coralie Darrigade, Shearman & Sterling  
Sophie Nappert, Arbitrator  
Aníbal Sabater, Chaffetz Lindsey

3:20 p.m. – 3:40 p.m.  
Jerome Greene Hall Lobby  
Coffee Break

3:40 p.m. – 5:00 p.m.  
Jerome Greene Hall 106  
Panel 4 – Ethical Rules: Reconciling Conflicting Sources and Tradition (1.5 CLE credits)  
MODERATOR: Alejandro Garro, Columbia Law School  
Charles Adeyemi Candide-Johnson, Lagos Court of Arbitration President  
Diane Desierto, University of Hawaii at Mānoa  
Catherine Rogers, Penn State University

5:00 p.m. – 5:05 p.m.  
Jerome Greene Hall, 106  
Concluding Remarks by CAD Co-Chair

5:05 p.m. – 7:00 p.m.  
TBD  
Cocktail Reception and Raffle
Panels

Panel 1: The One Thousand Faces of Double Recovery

Double recovery is widely viewed as impermissible. In practice, however, this principle has proven difficult to apply. The same material facts often give rise to multiple claims—be they under different treaties, under different contracts, or under both treaties and contracts. Similarly, the very same facts can affect multiple parties—be it because there is a chain of contracts which bind different parties, or because various actors intervened at different levels of the investment chain. Furthermore, the very same facts can establish multiple jurisdictions—different commercial and/or investment tribunals and national courts. In all these cases, awarding damages might result in double recovery. While principles of lis pendens and res judicata partially redress this issue, subtler situations pass through the sieve. How should arbitrators handle the latter cases and what tools are currently available to them? In particular, to what extent should multi-layer protection (that is, concurrent treaty and contractual protection) be upheld? To what extent is the risk of double recovery tolerable? How far up in the investment chain are actors entitled to relief? How should relief be apportioned among stakeholders? How should arbitrators coordinate with other tribunals?

Panel 2: The Admissibility of Illegally Obtained Evidence in Arbitration

The admissibility of illegally obtained evidence has been a prominent issue in international arbitration. How have tribunals traditionally approached this issue? What are the issues lawyers face when seeking to either rely on or resist the admission of such evidence? Will these considerations change as technology advances and with the advent of organizations such as Wikileaks? How have cybersecurity concerns (as they apply to governments, law firms, individuals that control sensitive data, and even tribunals themselves) impacted this issue?

Panel 3: Conflicting Supranational Obligations: The Complex Web of State Liability

The proliferation of investment treaties and the increasingly integrated system of state interactions, in the form of both regional organizations (such as the European Union) and international agreements (such as environmental protection treaties), have resulted in states undertaking a number of supranational obligations. Given the disparity of goals pursued by these instruments (investor protection on the one hand, fair competition or environmental sustainability on the other), how do these obligations coexist? When these obligations conflict, how should arbitrators determine which prevail?

Panel 4: Ethical Rules: Reconciling Conflicting Sources and Traditions

Counsel and arbitrators can be subject to ethical rules from a variety of sources, such as the laws and regulations of their home jurisdictions, or the applicable rules in the arbitration, such as lex arbitri, institutional rules, and lex fori. How does one know which rules apply? Is it possible to establish international standards of practice and, if so, should they govern? How should arbitrators and counsel reconcile potentially inconsistent ethical obligations to ensure a fair and just adjudication?
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Thanks
The conference chairs would like to send a special thanks to George Bermann, Nikolaus Pitkowitz, Matthias Pitkowitz, Joel Kosman, and all of the board members of the Columbia International Arbitration Association for their support.
http://web.law.columbia.edu/columbia-arbitration-day
Friday, March 3, 2017

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