

LL4309V/LL5309V/LLJ5309V/LL6309V STRATEGIES FOR ASIAN DISPUTES - A COMPARATIVE ANALYSIS

SESSION 1: AN OVERVIEW OF DISPUTE RESOLUTION – 18/1/24

This session will discuss legal systems and legal cultures in Asia (a trend that will continue through the course, with a focus on the common law systems of Singapore, England & Wales, India and Hong Kong, as well as certain civil law systems in Southeast Asia and also the PRC), to enable students to understand the diversities of the judicial systems in the region and the role that these legal systems play to the resolution of commercial disputes. The session will briefly introduce the three forms of dispute resolution – litigation, arbitration and mediation. It will introduce the students into the effective initiation of proceedings, including insights into the issues that arise during the preliminary stages of a dispute. Finally, there will be a brief run through of the practical overview of the procedure of an arbitration.

SESSION 2: INVESTMENT TREATY ARBITRATION AND DEALING WITH A STATE – 25/1/24

This session will introduce basic principles of investment treaty arbitration, and also the practicalities of being in litigation with a State, whether for or against. It will compare the remedies available as between commercial and investment arbitration routes, and discuss the approach different jurisdictions have taken when enforcing State-related awards. There will be some practical scenarios to discuss and consider the balance between enforcing treaty rights and underlying commercial rights.

SESSION 3: THE NEW YORK CONVENTION AND THE DELOCALIZATION DEBATE – 1/2/24

The New York Convention can be credited with having transformed the landscape of international commercial arbitration. This session will revolve around the Convention and deal with the different aspects imperative to understand its working, in the commercial and investment contexts. The session will also go a step further and discuss the ensuing debate on localisation v. delocalisation, i.e. the approach followed by the Convention countries when recognizing arbitral awards seated in foreign jurisdictions.

SESSION 4: PRE-ARBITRAL RECOURSE – 8/2/24

Session 2 will deal with issues that arise during the preliminary stages of a dispute, with a focus on recourse to interim relief prior to or at the start of proceedings, and address issues related to local procedural laws, jurisdictional issues and the choice of fora to secure such interim relief. A comparative analysis of jurisdictions around the region will be undertaken to examine the extent of the impact of a particular choice of forum, and the interplay between parallel proceedings. There will be some discussion around the implications on seat and procedure in an investment arbitration proceeding.

SESSION 5: INTERIM RELIEF DURING OR ALONGSIDE PROCEEDINGS – 15/2/24

This session will analyse the various kinds of interim relief, and reconsider the different fora available to pursue interim relief remedies mid-way through the underlying proceedings. It will cover the types of interim relief commonly sought at this juncture (including security for costs, protection of evidence, specific disclosure applications), and contain an insight into the approach to interim relief, the legal test deployed in key common law jurisdictions when considering the grant of interim relief, and importantly the enforcement of interim relief across the Asian region. An insight will be given into the acceptance of interim relief by civil jurisdictions and the question of forum for interim relief in investment treaty arbitration.

SESSION 6: DEFENCES AND GUERRILLA TACTICS – 22/2/24

These sessions will deal with defences, including in particular Guerrilla tactics which are often times deployed to serve only one purpose, i.e. effectively scuttling any dispute resolution. The session will deal with the kind of tactics and address the ways in which these are tackled. The topic will essentially be based on practical examples – both commercial and investment based – which would be considered in light of statutory norms.

SESSION 7: CLASSROOM EXERCISE – 7/3/24

A classroom exercise will be conducted by dividing the class into groups. During this exercise, each group would be handed over a factual case and be required to make a presentation on how they would present their case, including a demonstration of their advocacy and team work skills. The precise topic of the exercise will be revealed in due course!

SESSION 8: PREPARATION FOR HEARING AND PROCEDURAL COMPLEXITIES – 14/3/24

In this session we will look at prevalent as well as complex procedural issues that arise in the preparation of the substantive hearing, covering issues such as the giving and taking of evidence, deciding upon the hearing format and record, and also the hearing timetable and advocacy style to be adopted. There will be an in-depth overview of the format of proceedings, including the benefit of bifurcation, the role of witnesses and experts vs the documentary record and procedural rules on the taking of evidence, an overview of the different formats of pleadings and submissions, including pre- and post-hearing submissions and their purpose, the need for and style of cross-examination, and assisting a tribunal through to the preparation of its award (including legal principles such as proving one's case or discharging the burden of proof).

SESSION 9: ISSUE ESTOPPEL AND CHOICE OF REMEDIES – 21/3/24

The session will address the last chronological stage of a dispute, enforcement and challenge to an award. It will tackle the issues faced at the stage of enforcement of a Court decision or an arbitral award and will focus on the concepts of issue estoppel and the choice of remedies. In the context of international arbitration, the students will be made to analyze, through judicial precedent from key common law jurisdictions, the award debtor's option of having a "second bite at the cherry" while resisting an award at the stage of enforcement subject to the limitations imposed by issue estoppel.