

International Academy for Arbitration Law

2013 Session

Arbitration and Consumer Law: Comparing Europe and North America

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Syllabus

Introduction

A- Collaboration and Contribution of Arbitration to Consumer Law

- 1- Global Relation between Arbitration and Consumer Law.
- 2- The problem of access to an effective dispute resolution for consumers in Courts.
Small claims courts and Class Actions.
- 3- Arbitration as an answer to the needs of consumers:
Some examples" [CAMVAP](#), [ABTA](#)
Small claims in arbitration (New York)
ODR: EU Proposal, UNCITRAL Project.

B- Class Arbitration

- 1- Class action in Arbitration. Development in USA

[AAA Supplementary Rules](#)

[Green Tree v. Bazzle 2003](#)

[Stolt-Nielsen 2010](#)

[Concepcion 2011](#)

[Oxford Health 2013](#)

[Italian Colors 2013](#)

- 2- Class arbitration in Canada

[Dell](#)
[Seidel](#)

- 3- Class arbitration in Europe
- 4- International class arbitration?
A case of International Mass Claims: [ICSID Abaclat](#).

C- Conflict about pre-dispute agreement

Post and Pre dispute agreement in [New York Convention](#), [UNCITRAL Model Law](#) and national legislations.

Opposability of pre-dispute agreement to consumers in a contract of adhesion.

1- The enforceability of consumers' pre-dispute agreements to arbitrate

a- In favor?

- 1- USA.
[The Federal Arbitration Act](#). Unconscionability.
The Supreme Court case law: [Green Tree 2000](#), [Concepcion](#).

- 2- Canada
[UNCITRAL Model Law](#)
The Supreme Court case law: [Dell](#), [Seidel](#)

b- Against?

- 1- Canada
Provincial Acts (Ontario, Québec)
Supreme Court case law: [Dell](#), [Seidel](#)

- 2- European Union
[Directive 93/13/EEC on unfair terms in consumer contract](#)
ECJ Court Case Law: [Mostaza Claro](#); [Asturcom](#).

2- When may the issue arise in an international arbitration?

a- before a judge

- 1- A judge before the arbitrator:

Judge of the consumer's domicile ([NY Convention, art. II](#), PIL on jurisdiction EU, *Brussels Regulation*; USA *FAA*; Canada, [UNCITRAL Model Law](#))

Another judge

Referral to arbitrator? USA ([Green Tree](#), [Stolt Nielsen](#), [Oxford Health](#)), Canada ([Dell Seidel](#)) EU

- 2- A judge during the arbitration
Judge of the seat of the arbitral tribunal (PIL on jurisdiction EU, USA, Canada)
- 3- A judge after the arbitration:
Judge of the seat of the arbitral tribunal ([NY Convention art. V](#), EU [Mostaza Claro](#); [Asturcom](#), USA, Canada)
Judge of the consumer's domicile (*idem*)
Another judge

b- before the arbitrator

- 1- An arbitral tribunal before any court: *Kompetenz/Kompetenz*, ([UNCITRAL Model Law](#))
- 2- An arbitral tribunal after a court (links with preceding section)

3- Applying law to this issue in an international arbitration

a- PIL of the courts and the arbitration tribunal

- 1- PIL and the courts in EU, USA, Canada.
- 2- PIL and the arbitral tribunal in International Law

b- Characterization

- 1- Procedure or contract: PIL EU, USA, Canada
- 2- Connecting factors: *for and will* of the parties; other connecting factors.

c- The will of the parties

- 1- Choice of the parties in contracts. EU *Rome I 7 II Regulation*, USA *Restatement of conflict of laws (second)*, Canada, Comparative private international law.
- 2- Limits to the choice: international public order and international mandatory law *Rome*. Relation with NY Convention.

- 3 Characterization of an international mandatory law in PIL?
 - a) by a judge
 - b) by an arbitrator

Conclusion

Role of the international arbitrator

- 1- if there is a consumer defaulting party
whose domicile is in USA, Canada, EU or elsewhere
- 2- If there is a consumer participating to the proceedings
whose domicile is in USA, Canada, EU or elsewhere
- 3- In a international class action