

# Kluwer Arbitration Blog

## Anti-Arbitration: The Summer Quiz!

Michael McIlwrath (MDisputes) · Friday, July 15th, 2011

If you live or work somewhere in the northern half of the planet, odds are that at some point this summer you'll find yourself on a beach, cityscape, mountain, or other scenic destination surrounded with children relaxedly drawing on their coloring pads, and grandparents working attentively at their crossword.

What about those of us who are dedicated dispute resolution professionals? Of course, there is something to be said for reading that Fifth Post-Hearing Submission while at the beach. But until Gary Born's treatise on International Commercial Arbitration is set to music and performed in Salzburg in some future year, shouldn't we have some brain candy, too?

Welcome to the Summer International Arbitration and Mediation Quiz!

Answers will be published next week. The first to send a perfect score or the closest to it before answers are posted will win a lunch or dinner in Florence. (For travel costs, though, you're on your own.) If interested in international dispute resolution *and* good food, please send your answers by e-mail to one of our summer interns who helped prepare this quiz: Kate Kelso at [kate.kelso@ge.com](mailto:kate.kelso@ge.com), or Randy Nahle at [randy.nahle@ge.com](mailto:randy.nahle@ge.com)

(1) **Applicable Law.** A contract for the sale of aircraft propellers between companies based in the US and Italy provides for the application of French law in the event of a dispute between the parties. The contract's choice of law provision does not mention the United Nations Convention on the International Sale of Goods (the CISG). In a dispute over an allegation of latent defects, what would be the correct order for an arbitral tribunal to determine the parties' contractual rights and obligations?

- a. Contract language as to defects and warranties comes first, then CISG as French law of international sales, then French law as to domestic transactions if the provisions of the contract and CISG do not speak to the issues
- b. CISG provisions on defects and warranties, followed by French law where the CISG is silent, and the contract language only if the CISG and French law do not provide a clear answer
- c. French law on latent defects as the primary rule, followed by the contract's express provisions for defects or warranties; the CISG does not apply because the parties did not mention it in the contract's governing law clause
- d. Only French law because that is what the parties chose in their contract.

(2) **Arbitration Law.** Which country has *not* substantially revised its arbitration law in the last 20 years?

- a. France
- b. Spain
- c. United States
- d. All of the above
- e. None of the above

(3) **Arbitration Costs.** Which institution(s) do not use an *ad valorem* method of calculating arbitrator fees and administrative costs?

- a. ICC
- b. SIAC
- c. Court of Arbitration of the Milan Chamber of Commerce (CAM)
- d. AAA/ICDR
- e. DIS (German Institute of Arbitration)
- f. All of the above use an *ad valorem* method

(4) **Procedural efficiency.** At the earliest stage of the proceedings (and before an initial procedural order is issued), arbitral tribunals should request the following from the parties: “Can either party identify one or more issues which, if decided a particular way, could dispense with all, or a substantial element of, the dispute?”

From which authoritative source does the above encouragement towards early issue disposition come?

- a. Article 4 of the LCIA’s 2011 Guide to Arbitrators for the Efficient Management of Proceedings, developed in response to user requests for more efficient proceedings.
- b. Section III of the 2010 Statement of Principles for the Efficient Conduct of Proceedings published by the Corporate Counsel International Arbitration Group (CCIAG)
- c. The Preamble to the draft Protocol for Early Disposition of Issues published by the Union of International Commercial Arbitrators, currently undergoing public comment (scheduled for issue in 2012)
- d. A 1997 treatise by English arbitrator Mark Cato, reproducing his Typical Agenda for Preliminary Meetings for use in arbitrator training programs

(5) **Ethics.** Which of the following institutions has issued an ethical code for arbitrators?

- a. ICC
- b. AAA/ICDR
- c. LCIA
- d. All of the above
- e. None of the above

(6) **Jurisdiction.** What ECJ judgment ruled that in proceedings where Council Regulation (EC) No. 44/2001 applies to the parties, an anti-suit injunction is no longer available to assist arbitration?

- a. Nordsee Deutsche Hochseefischerei GmbH v Reederei Mond Hochseefischerei Nordstern AG & Co KG [1982]
- b. Allianz SpA (formerly Riunione Adriatica di Sicurta SpA) v. West Tankers, Inc. [2009]
- c. Turner v. Grovit [2005]
- d. Union Royale Belge des Sociétés de Football Association ASBL v. Jean-Marc Bosman [1995]
- e. None of the above

(7) **International Mediators.** Which of the following international arbitration institutions offers

mediation services with a closed list of mediators, i.e., where the institution relies on a finite number of mediators who must actively maintain their registration and qualifications with the institution (as opposed to an open list where any mediator would be available for a particular dispute if sufficiently qualified)?

- a. AAA/ICDR
- b. LCIA
- c. ICC
- d. All of the above
- e. None of the above

(8) **Defenders of Slow Justice.** In which country did attorneys go on a two-day national strike in 2011, refusing to go to court for their clients, in order to protest a new mandatory mediation law? (Hint: This country was also rated in the bottom 20% of all countries in terms of enforcing contractual obligations.)

- a. Nigeria
- b. India
- c. Italy
- d. Mexico
- e. Botswana

(9) **Fast Track, Who Needs Fast Track?** Which of the following arbitration institutions does not currently have rules for expedited, accelerated, or fast track arbitration (even for small claims)?

- a. AAA/ICDR
- b. ICC
- c. WIPO
- d. SCC
- e. DIS

(10) **Joinder of Unrelated Parties.** Which of the following arbitration institutions currently has rules providing for joinder of unrelated parties in arbitration (as opposed to the consolidation of different disputes between the same parties)?

- a. LCIA
- b. ICC
- c. AAA

(11) **Satisfied (or not) with Arbitration.** Which of the following statements are true?

- a. A 2009 survey of corporate counsel conducted by Corporate Counsel International Arbitration Group (CCIAG) indicated that 100% of respondents stated that international arbitration “takes too long” and “costs too much”
- b. A 2008 survey conducted by Queen Mary University and PriceWaterhouseCoopers reported that 86% of corporate counsel are “satisfied” with international arbitration.
- c. Both of the above

(12) **Cost of Dispute Resolution.** The average cost for international mediations conducted in recent years by the ICC’s ADR team was approximately \$20 million in dispute. For the same period, the average amount the ICC charged to parties, inclusive of all ICC administrative and mediator costs, was approximately:

- a. \$20,000
- b. \$67,000

- c. \$128,000
- d. \$385,000
- e. \$453,000

(13) **Transparency.** According to the published statistics of this arbitration institution, 8% of arbitrators were removed from the institution's database in 2011 based on either the institution's assessment of the quality of their performance or verified party complaints, for proceedings that were either completed or abandoned in 2010.

- a. ICC
- b. LCIA
- c. AAA/ICDR
- d. The above institutions do not make available information about the quality of arbitrator performance or how quality is managed

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