

Kluwer Arbitration Blog

Answers to the Summer Quiz 2014

Michael McIlwrath (MDisputes) · Tuesday, September 9th, 2014



With hopes that those in the northern hemisphere had a fun summer packed with arbitration-related events for themselves and their families, below are the answers to [this year's summer quiz](#). The answer keys to the [crossword](#) and the [word hunt](#) were published in August.

While a Ph.d is not required to read the Kluwer arbitration blog, the winner of the dinner in Florence (for speed and accuracy of answers) went to Barbara Warwas, who is based in the UK and recently obtained her doctorate in international arbitration. Coming in at a close second was Phil Ray, a dispute resolution specialist (and retired Siemens in-house counsel) in Germany.

Congratulations to both Barbara and Phil!

Summer 2014 Quiz Answers

1. Which one of the following institutions did NOT introduce revised arbitration rules in 2014?

- A. LCIA
- B. ICC
- C. ICDR
- D. WIPO

Answer: B, the ICC, which last updated its rules in 2012.

2. Which of the following arbitration institutions introduced revised mediation rules in 2014?

- A. LCIA
- B. ICC
- C. ICDR
- D. SIAC

Answer: B and C, the ICC and ICDR. (SIAC does not provide a mediation service, and instead relies on mediation by the Singapore Mediation Centre.)

3. The International Bar Association (IBA) has published rules or guidelines for all but which of

the following areas of international arbitration practice?

- A. Costs
- B. The conduct of party representatives
- C. Evidence
- D. Conflicts of interest
- E. How to draft an arbitration clause

Answer: A, Costs, an area where there remains wide variability in international arbitration practice.

4. Which of these institutions was sued in a national court for allegedly promoting the unlawful practice of law by foreign lawyers, and by whom?

- A. The American Arbitration Association (AAA), by the National Trial Lawyers Association
- B. The Court of Arbitration of the Milan Chamber of Commerce, by the Italian National Bar Association
- C. The Russian Association of Arbitration (RAA), by the Federal DUMA (parliament)
- D. The LCIA India, by the Association of Indian Lawyers

Answer: D, the LCIA India. Helping to further discourage foreign parties from considering India as a place of dispute resolution, the Association of Indian Lawyers filed suit against the LCIA India in India for promoting the practice of international arbitration. Since it can be conducted by foreign counsel, allegedly this would violate India's restriction against the practice of foreign lawyers.

5. True or False: the English Arbitration Act of 1996 has been interpreted by the English courts to require any arbitrator appointed in an arbitration seated in London to be from the caste of Queens Counsel or higher.

- A. True
- B. False
- C. They wish
- D. "Higher"?

Answer: B, False. But you got full credit if you answered C or D. For parties from countries that do not have a tiered bar (eg, most of the world), the domestic practice of appointing barristers (often QC's) to conduct arbitration advocacy can be confusing.

New Horizons

6. In 2014, UNCITRAL Working Group II decided to explore the possibility of a new multi-lateral convention on which of the following topics?

- A. Recognition and enforcement of foreign court judgments
- B. Recognition and enforcement of foreign arbitral awards
- C. Recognition of famous arbitrators
- D. International standards of conduct for arbitrators
- E. Enforcement of foreign settlement agreements reached in mediation

Answer: E, recognition of settlement agreements reached in mediation. (A, of course, is a frequent topic of discussion but the lack of such a convention is one reason that arbitration is often more attractive for cross-border contracts than court litigation. B, of course, already

exists. C happens naturally. D would be good to have, although the IBA has partially occupied this space well with different guidelines.)

7. Which of the following locations announced plans in 2014 to introduce new mediation procedures, quality control, and certification requirements to become a more attractive international forum for business disputes?

- Singapore
- London
- New York
- Switzerland
- Berlin

Answer: Singapore, which is taking the lead to develop international mediation just as it previously did with international arbitration.

8. The procedural device known in the USA as “depositions”, oral testimony taken in advance of a hearing, is routinely used in the domestic arbitration of which other countries?

- A. England and Wales
- B. Germany
- C. Australia
- D. Singapore
- E. Brazil
- F. None of the above

Answer: F, none of the above. The almost complete absence of deposition practice from legal systems outside of North America often comes as a surprise to domestic US litigators, who may fail to appreciate that cases can be concluded without the need (or cost) of witness testimony taken well in advance of any hearing in front of the arbitrators (or judges).

9. For the purpose of calculating arbitrator fees, in which country are hearings broken into “sittings” typically of 2 to 4 hour duration, with anything over considered a second sitting entitling the tribunal to additional fees?

- A. India
- B. Hong Kong
- C. Finland
- D. Russia
- E. England

Answer: A, India

10. In July 2014, the largest arbitration award in history, USD 51 billion, was rendered in the Yukos cases against Russia. With respect to the possibility of collecting such an award, comparisons might be made with Franz Sedelmayer, who once successfully collected a different arbitration award for expropriation against Russia. Sedelmayer says this took over 10 years and required some 60 enforcement cases and litigation in 80 countries.

How large was Sedelmayer’s award compared with Yukos?

- A. 16%
- B. 6%
- C. 0.6%

- D. 0.06%
- D. 0.00006%

Answer: D. Sedelmayer's award was for less than \$3 million.

11. For the price of \$30, you can still buy which of the following in support of an international arbitration?

- an hour of document review by a qualified lawyer at a legal process outsourcing company in India
- coffee for an arbitration hearing held at the Intercontinental Hotel in Geneva (three arbitrators, tribunal secretary, and a counsel and party for each side)
- a new copy of the Kluwer book, *International Arbitration and Mediation: A Practical Guide*, by Messrs. McIlwrath and Savage
- Discounted tickets to a new Broadway musical for an arbitral tribunal holding evidentiary hearings in New York

Answer: A, an hour of document review by a qualified LPO lawyer. Costs may vary, and some sources on the internet claim hourly rates ranging from \$20 to \$60 per hour (presumably all negotiable depending on the case). As for the coffee service for a hearing, we found various options at well-regarded hotels in Geneva and none would have been for less than \$100 (and most considerably more). As for the list price of the Kluwer book that John and I co-authored, it lists for Euro 150, which is actually on the low end for international arbitration texts. A good argument could be made that arbitration would be more accessible if the prices of specialized texts were lower. Discounted tickets to a new Broadway musical? Good luck finding them at any price.

Efficient and Effective Methods

12. Which one of the following is advice contained in the ICC Guide for Inhouse Counsel and other Party Representatives:

- A. Because ICC Rule 30 requires an arbitral tribunal to render its award within six months, parties should refuse to pay the advance on fees unless the tribunal commits to comply with this requirement
- B. Parties should ask themselves whether it would be better not to hear any witnesses in the arbitration
- C. In order to encourage efficient handling of the case, parties should inform the tribunal at the case management conference that they intend to publish the arbitration award and all information about how the case was conducted
- D. Parties should always appear at the case management conference in person rather than remote participation via video or teleconferencing

Answer: B. The Guide advises parties against just assuming that an expensive hearing must be scheduled at some point in the future to hear witnesses, and asks them to reflect on whether the dispute is one that really requires witness testimony to be decided. It is sensible advice that may be counter-intuitive to some lawyers.

13. Which of the following is NOT a recommendation of the IBA Guidelines on Party Conduct in International Arbitration?

- A. Parties may communicate with an appointed arbitrator they nominated in order to discuss

potential candidates for presiding arbitrator

B. Parties may compensate witnesses for the loss of their time in preparing to testify (and for testifying)

C. Where there is a finding of severe misconduct by a Party Representative, arbitral tribunals may take the remedial step of an order prohibiting their further participation in the proceedings

D. If a Party Representative believes false evidence may be presented, she or he should promptly take steps to prevent this, including by resigning from the case

Answer: C. The Guidelines do not take the step of advising the tribunal to remove counsel from the case, and it is doubtful that a tribunal would have such a power even if it were inclined to do so.

14. Which of the following arbitration institutions once had the practice of publishing on the stock exchange the name of any party that failed to comply with an arbitral award?

A. The American Arbitration Association in New York (AAA)

B. The Hong Kong International Arbitration Centre (HKIAC)

C. The Court of Arbitration of the Finnish Chamber of Commerce in Helsinki (FCC)

D. Arbitration Centre of Lisbon (ACL) of the Portuguese Chamber of Commerce and Industry

Answer: C, The Finnish Chamber of Commerce. This “name and shame” was usual practice in Helsinki in the early party of the 20th century, and was said to be effective in encouraging compliance.

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