

INTERNATIONAL LITIGATION

FROM THE U.S. PERSPECTIVE

PROF. CRAIG CHARLES BELES
Seattle, Washington, USA

ENFORCING THE ARBITRAL AWARD

TERM	LOCATION	APPLICABLE LAW
" <i>VACATUR</i> "	IN ARBITRAL FORUM	LAW OF ARBITRAL FORUM FAA § 10 and STATE LAW
" <i>CONFIRMATION</i> "	IN ARBITRAL FORUM	LAW OF ARBITRAL FORUM FAA § 9 and STATE LAW
" <i>RECOGNITION</i> "	PARALLEL LITIGATION IN FOREIGN STATE	TREATY and LOCAL LAW
" <i>ENFORCEMENT</i> "	LITIGATION IN FOREIGN STATE WHERE LOSER HAS ASSETS	TREATY and LOCAL LAW

NEW YORK CONVENTION IS VERY PRO-ARBITRATION

- PRESUMPTION OF VALIDITY OF AWARD
- AWARD NEED NOT BE CONFIRMED IN FORUM STATE
- AWARD MUST BE TREATED NO WORSE THAN DOMESTIC
- EXHAUSTIVE & LIMITED GROUNDS FOR NON-RECOGNITION

EIGHT GROUNDS FOR NON-RECOGNITION OF ARBITRAL AWARD

1. INVALID ARB AGREEMENT: Art V (1)(a)
2. PARTY UNABLE TO PRESENT THEIR CASE: Art V (1)(b)
3. AWARD OUTSIDE SCOPE OF ARB AGREEMENT: Art V (1)(c)
4. IMPROPER PANEL OR PROCEDURES: Art V (1)(d)
5. AWARD IS NOT BINDING: Art V (1)(e)
6. NON-ARBITRABLE SUBJECT MATTER: Art V (2)(a)
7. CONTRARY TO PUBLIC POLICY/ORDER: Art V (2)(b)
8. ENFORC/CONFIRM MAY BE DELAYED: Art VI

ALTERNATE CHOICE OF LAW

EX AEQUO ET BONO – CASE IS TO BE DECIDED ON BASIS OF WHAT IS “JUST & FAIR” RATHER THAN MANDATORY RULES OF LAW

LEX MERCATORIA (LAW MERCHANT) – INDEPENDENT BODY OF CUSTOMARY TRADE LAW UNIQUE TO PARTICULAR INDUSTRIES

ETHICAL ISSUES OF MULTI-JURISDICTIONAL PRACTICE

1. UNAUTHORIZED PRACTICE OF LAW
2. ATTORNEY FEES & FEE ARRANGEMENTS
3. DEFINITION OF MALPRACTICE
4. CLIENT CONFIDENTIALITY
5. ADVERTISING
6. ZEALOUS REPRESENTATION
7. CONFLICTS OF INTEREST

RPC 5.5 - UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE OF LAW

A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(c) A lawyer admitted in another United States jurisdiction . . . may provide legal services on a temporary basis in this jurisdiction that: (1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter; (2) are in or reasonable related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding . . . (3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution . . . if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice

ADMISSION TO PRACTICE RULE 14 “FOREIGN LEGAL CONSULTANT”

- Admitted and In Good Standing in a Foreign Jurisdiction
- 5 of Last 7 Years “Active Legal Experience” in a Foreign Jurisdiction
- No “Residency” Requirement
- May ID Self as “Foreign Law Consultant” + Home Title, Firm & Country
- No Requirement of Association with Local Lawyers
- FLC Status May be Revoked by Supreme Ct With/Without Cause
- No Court Appearances, Pleading Prep or Subpoena Issuance
- No Real Estate Practice, Estate, Trust or Family Law
- No Advice on Local Law
- May Advice on Any Familiar International or Foreign Law
- No Requirement of Malpractice Insurance
- Subject to State Rules of Professional Conduct

ADMISSION TO PRACTICE RULE 8 (f) “IN-HOUSE COUNSEL”

Rule 8(f) of the Admission to Practice Rules (APR) allows a lawyer admitted to the practice of law in a jurisdiction other than a United States jurisdiction to receive a limited license to practice law in Washington as in-house counsel. A lawyer admitted under this rule shall be limited to practice exclusively for the employer, including its subsidiaries and affiliates, and shall not include: - appearing before a court or tribunal as a person admitted to practice law in this state; - offering legal services or advice to the public; or - holding oneself out to be so engaged or authorized.