

**8TH GARY B. BORN ESSAY COMPETITION
ON INTERNATIONAL ARBITRATION, 2023**

The Centre for Advanced Research and Training in Arbitration Law [“CARTAL”], National Law University, Jodhpur, is organising the 8th Gary B. Born Essay Competition on International Arbitration [“**Competition**”] to encourage research and literature in international arbitration. The Competition has the gracious support and patronage of Prof. Gary B. Born, who is the chair of the International Arbitration Practice Group of Wilmer Cutler Pickering Hale and Dorr LLP. Prof. Born has participated as counsel in more than 675 international arbitrations, including four of the largest ICC arbitrations and several of the most significant *ad hoc* arbitrations in recent history. He is widely regarded as the world’s preeminent authority on international arbitration, having been ranked for more than 20 years as one of the world’s leading international arbitration advocates and the leading arbitration practitioner in London.

The themes of the eighth edition of the competition aim to foster research on some of the contemporary developments in international arbitration, and are listed below:

1. Role of Arbitration in International Tax Treaties

The growing intricacy of international tax matters, particularly in the context of investment treaty disputes, brings to the forefront the critical role of arbitration. The recent landmark decision in the *Lone Star v. Korea award* marks a significant development in this realm. This case, a first of its kind, delves into the complexities of applying the anti-tax avoidance substance over form doctrine [“**SOFD**”] within the framework of a double taxation treaty [“**DTT**”]. The ruling highlights the evolving nature of arbitration as a tool not only for resolving traditional commercial disputes but also for addressing intricate tax-related issues under international treaties. Participants are invited to explore the multifaceted implications of this ruling and similar cases. The discussion could encompass how arbitration tribunals interpret and apply principles like SOFD in the context of DTTs, and the potential impact of such interpretations on the stability and fairness of the international tax system. Furthermore, participants may examine the interplay between national tax laws and international treaty obligations, focusing on how arbitration can serve as a bridge between these sometimes-conflicting legal systems. The role of arbitration in providing a neutral, efficient, and effective forum for resolving tax-related treaty disputes also warrants exploration. Participants might consider the advantages and challenges of arbitration in this context, including issues of jurisdiction, the applicability of international law principles, and the enforcement of arbitral awards in different jurisdictions. Additionally, the essay could delve into the broader implications of such arbitral decisions on global tax governance, the fight against tax avoidance, and the promotion of international investment. This topic invites a comprehensive analysis of the current state and future potential of arbitration in shaping the landscape of international tax treaties and resolving complex disputes arising therein.

2. Emerging Trends in Arbitrating Competition Law Disputes

In the dynamic arena of competition law, the period from 1990 to 2016 witnessed a significant surge in transnational collusive practices, with private international cartels impacting global sales to the tune of over \$51 trillion. This phenomenon underscores the criticality and complexities of handling transnational violations, such as international cartels, within the legal framework. The concept of ‘trickle-down enforcement’ emerges as a pivotal aspect, relying on the enforcement efforts of developed regimes to address these global challenges. Participants in this essay competition are invited to explore the evolving role of arbitration in resolving these intricate competition law disputes. Central to this discussion is the dilemma of how nations, particularly those with less developed legal systems, handle anticompetitive behaviour that transcends borders. These countries often confront the daunting task of addressing market harms inflicted by foreign entities engaging in offshore activities, highlighting the limitations of extraterritorial application of competition laws. Essays could analyse the historical reluctance of courts to deem competition law disputes as arbitrable, a stance that is now evolving due to globalization and increased economic integration. A critical examination of landmark cases, such as the U.S. Supreme Court’s decision in *Mitsubishi v. Soler Chrysler-Plymouth*, might be relevant. This case represents a watershed moment, signalling a shift from traditional views on the arbitrability of competition law disputes. Participants are encouraged to examine the implications of this shift, assessing how arbitration can offer an effective, neutral, and globally recognized forum for resolving such complex disputes. This topic invites a comprehensive analysis of arbitration’s potential to reshape the approach towards competition law disputes in an increasingly interconnected global economy. The essays should consider whether arbitration can bridge the gap between national jurisdictions and provide a coherent, fair, and efficient mechanism for resolving disputes that impact the global market.

3. Cross-Border Insolvency and Arbitration: Coordination, Conflicts, and Cooperation

Arbitration and Cross-Border Insolvency are two distinct yet interconnected realms, and the interplay between the legal mechanisms involved and the aspect of financial distress gives rise to a host of challenges, opportunities, and ethical considerations. As businesses go global, insolvency proceedings would naturally involve multiple jurisdictions and stakeholders. While arbitration can provide a neutral, flexible, and confidential platform to resolve the issues of asset distribution and restructuring arising out of insolvency proceedings, a harmonious relationship between the two is a must in the face of multiple complexities, in order to attain the objectives of both processes. This involves navigating varied issues from ensuring coordination and synchronisation of processes and communications, to dealing with conflicts of laws and jurisdictions while maintaining a standard of fairness, and fostering collaboration to ultimately leverage the strengths of both processes. The essential element in the amalgam of both these processes must be safeguarding the rights and interests of and guaranteeing equitable treatment to all the stakeholders involved, ranging from creditors to employees. Thus, arbitrators must strive to strike the right balance between awards that maximise stakeholder value, while at the same time maintaining the integrity of insolvency proceedings. In this dynamic process, ethical arbitrators and insolvency practitioners would be playing a key role in harmonising the divergences and facilitating effective resolutions that uphold ethical standards and stakeholder rights, and ultimately maintaining the cross-border relationships that underpin today’s interconnected economy.

RULES OF THE COMPETITION

- There is no registration fee for the competition.
- The competition is open to all students enrolled in an undergraduate or post graduate programme in law (B.C.L., J.D., LL.B., LL.M., or their local equivalent) in any recognised university across the world. Students who have completed an above-mentioned programme or their equivalent in 2023, and post graduate students who are selected for and will be enrolled in any such programme for 2023-2024 are also eligible to participate.
- To participate in the competition, interested students must e-mail a copy of their completed essays to editors@ijal.in by **March 31, 2024, 23:59 hours** (Indian Standard Time, GMT +5:30). Late submissions shall not be accepted under any circumstances.
- No part of the essay should contain any form of identification of the participant

SUBMISSION GUIDELINES

- The essay must be submitted in Microsoft Word document format (.doc/.docx).
- The essay must contain an abstract, not exceeding 250 words. It must indicate the theme.
- The participants can submit an entry for one theme only.
- Co-authorship is allowed up to 2 co-authors.
- The word limit is 3000-5000 words including footnotes.
- The essay must be accompanied by a separate document containing the following information about the participant: (i) full name of the participant, (ii) theme chosen, (iii) participant's current year of study and name of the degree pursued, (iv) name and full address of the participant's university, (v) name and full postal address of the participant, (vi) phone number of the participant, and (vii) e-mail id of the participant.
- The essay must be original and bona fide work of the participant.
- The essay must be written in English.
- The participants are allowed to adopt a uniform style of citation throughout the document.
- The essay should not be submitted for any other competition and/or for any other purposes.

PRIZES

First Prize	<ul style="list-style-type: none"> • Cash prize of USD 400, • Letter of Appreciation from Prof. Gary B. Born, • Signed copy of a book authored by Prof. Born, and • Publication in the next issue of IJAL.
Second Prize	<ul style="list-style-type: none"> • Cash prize of USD 250, • Letter of Appreciation from Prof. Gary B. Born, • 6-month subscription to Born's International Arbitration Lectures, and • An opportunity to be considered for publication in the next issue of IJAL.
Third Prize	<ul style="list-style-type: none"> • Cash prize of USD 125,

	<ul style="list-style-type: none">• Letter of Appreciation from Mr. Gary B. Born, and• An opportunity to be considered for publication in the next issue of IJAL.
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