2011-2012 Willem C. Vis Moot Competitions

By Elizabeth Maddock

This year, Loyola’s Vis Moot Teams continued to build on Loyola’s reputation in the 2011-2012 competitions. Both competitions have continued to grow, with approximately 90 teams in Hong Kong, and nearly 270 teams in Vienna.

After competing in two pre-moots competitions in Belgrade and Budapest, the Vienna team made a strong showing in the Vienna Vis Moot Competition.

The Hong Kong team gave a strong performance as well. In the Shanghai Moot, the team made it to the quarter finals and Brian Fahrenbach won best oralist. In the Hong Kong Moot, the team received honorable mentions on both their Claimant and Respondent Briefs, and Brian Fahrenbach received an honorable mention for his oralist skills. Although the team did not advance to the quarter finals, it finished in the top half of all schools.

Congratulations to both teams on a job well done!

Carey Honored at Vis Moot Reception

On October 12, 2012, Vis Moot Alumni from all years gathered for a reception together. The Alumni enjoyed seeing each other, sharing memories, and meeting the new students. An important purpose of the reception was to announce that in honor and recognition of the contributions of our alumnus, Peter Carey, who has actively supported the program since its beginning in 2000, Loyola has dedicated a seminar room to him and his wife. Room 1404, which is where the Vis Moot class is taught, is now called the Mary and Peter B. Carey Seminar Room. Vis Moot students are the beneficiaries of his strong and generous support.

The Vienna Team:
- Jim Cummings
- Rae Kyritsi
- Marcel Wright
- Brandon Wurzinger

The Hong Kong Team:
- Brian Fahrenbach
- Kevin Kearney
- Lisa Li Peterson
- Elizabeth Maddock

The Hong Kong Team with Coach John Calhoun
The Problem
By Elizabeth Maddock

Since October 2011, Jim Cummings, Rae Kyritsi, Marcel Wright, Brandon Wurzinger, Brian Fahrenbach, Kevin Kearney, Lisa Li Peterson, and I have been arguing whether delivery of a master control system was “merely difficult” or “truly impossible.”

The problem went as follows: Elite contracted with Control Systems for a master control system for its yacht, the M/S Vis. The delivery deadline was November 12, 2010, so the system could be successfully installed for a conference for Elite’s customer, Corporate Executives. A dispute arose between Elite and Control Systems when Control Systems failed to deliver the master control system on time.

If the problem contained simply a breach of contract issue, the article would stop here. However, the drafters threw in more than a few wrenches.

First, Control Systems asserted that, although the late delivery constituted a breach of the contract, it was exempt from liability under Article 79 of the Contracts for the International Sale of Goods (CISG). Article 79 allows exemption for a failure to perform if the failure was due to an impediment beyond its control and was unforeseeable at the time the contract was concluded or if the failure could not have been overcome or avoided. Control Systems faced a heavy burden in proving that it should be exempt. Even mistakes at the supplier level, a fire at the supplier’s plant, and a competitor’s monopoly over a necessary component to the master control system might not save Control Systems from liability.

Second, in the event that Control Systems could not escape liability, then it contended that surely it should not have to pay damages for Elite’s substitute yacht and the ex gratia payment Elite made to Corporate Executives. These two issues centered around whether Elite’s broker bribed the substitute yacht owner’s assistant and whether a “free” payment to Elite’s customers could be recovered as damages under the CISG.

Third, in addition to substantive issues, there were also procedural issues. Elite’s legal team came into question when, on the same day the tribunal was formed, Elite added Dr. Mercado to its team. Conveniently, she was the godmother of the presiding arbitrator’s youngest child. Argument ensued as to whether the tribunal could and should remove Dr. Mercado because of the conflict of interest.

The Vienna and Hong Kong teams mulled over and argued these issues for six months. At the end of March, I thought we would never discuss godmothers, bribes, and luxury yachts again. It turns out I was wrong: Lisa Li became Lisa Li Peterson aboard a luxury yacht in the beginning of June, 2012. Congratulations, Lisa!
In February 2012, Loyola University Chicago School of Law hosted its 7th Annual Pre-Moot Competition for the 2011-2012 Willem C. Vis International Commercial Arbitration Moot. The purpose of Loyola’s pre-moot to promote international arbitration education and provide teams with the opportunity to practice and hone their oral pleadings prior to the Vis International Commercial Arbitration Moots in Vienna and Hong Kong. Loyola welcomed student teams to participate, and legal practitioners and academics attended as moot arbitrators.

This two-day event began with a reception at Rock Bottom Brewery on Friday, February 17, at which the students and coaches socialized and networked. Indeed, the popular topic of discussion was “how much does it really cost to rent a yacht?” – one of the subject matters of this year’s Vis Moot problem. Then on Saturday, February 18, the competition commenced. The pre-moot hosted more than 100 participants including 12 teams and approximately 40 arbitrators and coaches. The pre-moot gave the Loyola Vis Moot participants an opportunity to compete with students from a number of Midwestern schools, as well as a team from Zurich. The pre-moot culminated with a luncheon where the winning teams and best oralists were announced and celebrated. Loyola performed well.

The luncheon also provided students with the opportunity to meet many of Loyola’s alumni who participated as arbitrators, as well as a number of arbitrators who are members of the Chicago International Dispute Resolution Association (“CIDRA”), headed by Peter Baughner, and the Chartered Institute of Arbitrators (“CIarb”), headed by Larry Schaner. Special thanks to the co-sponsorship of CIDRA and CIarb in helping make this year’s pre-moot a success.

Loyola’s next pre-moot will take place February 16, 2013.
Shanghai Arbitration Moot
By Brian Fahrenbach

Shanghai historically has been considered a cosmopolitan city. While Shanghai’s colonial past is long-gone, Shanghai’s vibrant growth and economy has once again made it an international city. Lisa Li, Elizabeth Maddock, Kevin Kearney, and I had the opportunity to visit Shanghai for a separate mooting competition before the Vis (East) Moot in Hong Kong, and it was a fantastic experience both culturally and professionally.

Shanghai is a remarkable city. While I could go on and on about the food in Shanghai, the city’s growth in the past few years makes it truly noteworthy. I had the opportunity to visit Shanghai six years ago, and back then it was already greatly developed. However, over the past six years, Shanghai’s skyline has undergone a fundamental transformation. Now, there is a beautiful marriage between old and new in Shanghai: the city’s historic district sits next to modern buildings while museums dedicated to China’s past are built in areas teeming with skyscrapers. But what made our experience so special was our opportunity to meet and compete with students from across the globe in the Shanghai competition.

Our team did extremely well at the Shanghai Arbitration Moot and came in fifth place overall. We took the lessons we learned in Shanghai to prepare ourselves for the competition in Hong Kong. It was enormously helpful to have a competition so close to the Vis Moot because it gave us the opportunity to have a focused period of time to concentrate on arbitration without distractions before the Hong Kong competition. The experience gave us an opportunity to hone our skills as advocates and it exposed us to the world of international arbitration.

The Shanghai Arbitration Moot gave us our first hint of what a career in international commercial arbitration would be like. I was sitting with my teammates practicing in a hotel lobby when I realized how much I loved arbitration. Experiencing Shanghai’s vibrant economy and combining that with the experience in our competition made me realize how important international arbitration is in the practice of law. As business becomes more and more globalized, more disputes will be resolved through arbitration.

The competitions in Shanghai and Hong Kong are the capstone experiences of my law school career. They gave my teammates and me the opportunity to fundamentally transform as advocates. The Vis Moot programs give students an opportunity to take a case from the beginning and develop that case all the way through briefs all the way up to final oral arguments in what is becoming one of the most prestigious law school competition in the world. No other program at Loyola gives students that opportunity, and few other law schools give students the opportunity that Loyola gave us. I feel extremely fortunate to have been a part of this program, and I look forward to helping next year’s team prepare for their competitions.

Brian Fahrenbach, Lisa Li Peterson, Kevin Kearney, and Elizabeth Maddock in Shanghai.
The Vertical City
By Lisa Li Peterson

A wise man told the Hong Kong team that if you want to experience the past, you go to Vienna; if you want to immerse yourself with visions of the future, you head to Hong Kong. While the city may not have floating cars (yet), it has glass elevators that go up 80 stories in less than a minute, 7,650 skyscrapers (hence, the vertical city nickname), and a nightly neon light show.

The Vis Moot East competition not only afforded students the opportunity to learn a new style of conflict resolution in the legal field, but it allowed students to interact with teams from around the world. Although the trip was only two weeks, the time spent in Hong Kong provided the team with an insight on how to communicate with people from other countries.

As an example, the Loyola team went up against a team from India. Before the arguments began, the members of the two teams quickly discussed the order of the arguments. Both teams thought they had agreed on an order; however, there was a miscommunication, and the arbitrators took away points from both teams for not properly responding to each side’s issues. The situation served as an example in how important communication between parties is and how easily people miscommunicate, especially when dealing with parties from other countries and cultures.

Outside of the competition, we also immersed ourselves into Hong Kong’s culture. We ate at both tourist-populated restaurants and local “hole-in-the-walls.” We explored the city, noticing the abundance of bakeries, jewelry stores, and shopping malls. Overall, this trip was amazing; the team not only got to explore Hong Kong, but also it met students and arbitrators from around the world. We collected enough business cards to last us a lifetime, and hopefully we will maintain those friendships and relationships we created.
When I tell my classmates and friends that I was able to compete in an international moot court competition halfway around the world, I usually elicit two reactions: shock and jealousy. They are shocked at the thought of a law student having the opportunity to travel across the world and compete in front of arbitrators and against teams from across the geographic spectrum. Not only did my teammates and I enjoy an exhilarating and difficult competition, we were fortunate enough to experience all that Hong Kong had to offer. Naturally, upon realizing this, the shock my story first elicited rapidly turned to jealousy.

I completely understand this reaction. As a law student, it is easy to get wrapped up in the rhythms of academic life, and to forget that all of what we learn is not confined to casebook and exams, but subject to the vagaries of the real world. The Vis Moot was an opportunity for us to apply what we had learned, both in Professor Moses’ class and others, and apply it to an actual problem. While the countries and the facts may have been fabricated, the laws and analysis that we applied were not. More importantly, the arbitrators that judged us and the students who opposed us were all very real. In Hong Kong, we competed against Liebniz Universität Hannover and Universität Osnabrück, both from Germany; Osgoode Hall from Canada; and Nirma University from India. Our arbitrators were from England, France, Germany, the Czech Republic, China, Hong Kong, and the United States. Each team and arbitrator brought their own unique background and outlook, and we had to adjust our submissions based on that context. In certain instances our presentation had to be very formal, while in others, it was conversational. These practical considerations are not taught in a classroom, but are essential in the Vis Moot and in practice.

While the competition itself is rigorous and informative, it is not the only compelling feature of the Vis Moot. In addition, the opportunity to interact with the arbitrators and students from around the world was a very significant experience. Although the saying is a cliche, the world is indeed getting smaller, and in our future careers, my teammates and I are likely to work with clients and attorneys from outside the United States. The Vis Moot provided us with an excellent opportunity to interact with people from around the world in a professional and social setting. Not only did we compete against those foreign teams, we got to know them in a dynamic city. In doing so, we made friends across a variety of cultures in a forward-looking part of the world. Our coach, John Calhoun, summed it up the best: “The Vis East is the way the world will be.” After this experience, I could not agree more.
Belgrade and Budapest: Our Trip into Eastern Europe
By Brandon Wurzinger

Preliminary competitions to Vienna’s Vis Moot were held in Belgrade, Serbia and Budapest, Hungary. Both cities offer an array of culture and cuisine, but the contrast between the two cities, which lie a mere 230 miles apart, is obvious. Belgrade is like the grandfather who has been hardened by a lifetime of experiences that he does not care to discuss. Budapest, however, is like the grandmother who has been softened by everything she has witnessed and demonstrates her wisdom. Nonetheless, both hold a unique majesty, layered with the rich history of generations.

Our trip started in Belgrade, regionally known as Beograd. We were unsure about what to expect. None of us had ever been to the former Yugoslavia. Neither the city nor the competition disappointed us. The competition events were grand: it was expertly organized and the rounds were centrally located.

We first competed against a team of women from Switzerland. They cruelly dismantled our arguments during the round and sweetly gave us chocolates afterward. That night was dedicated to reevaluating our strategies.

The Budapest competition provided an educational experience but did not meet the splendor of Belgrade’s. To be fair, that would have been nearly impossible. It was actually a welcome change. The Budapest competition and experience was relaxing, an ideal setting before an overwhelming Vienna competition. The comfort and relaxation inspired the team to think more clearly about case issues. Budapest allowed a level of focus that proved pivotal for the team to gel and work efficiently. The team had matured and become a single unit. It felt good.

In Budapest, we also had an opportunity to observe the two top scoring teams, which competed against each other in the final round of the Vienna competition. Our team had been able to compete against one of those teams in an earlier round, and we had an inescapable feeling afterward that our team could have been on the stage in the final round, and maybe even should have been. It was both encouraging and discouraging. We were confronted with the subjective nature of the competition, but also realized that opinion could easily swing in our favor. We left Budapest feeling prepared to tackle anything Vienna could throw at us.

Overall, both the Belgrade and Budapest competitions provided an invaluable learning experience. The team learned about the opposition we would be facing in Vienna. We learned how to adapt our strategies and arguments. We also learned how to work well together. There would not have been enough time to have sorted that all out in Vienna. We appreciated the opportunity to participate in both the Belgrade and Budapest competitions.

Teammates Jim Cummings and Rae Kyritsi with three arbitrators and a team from Yonsei University in South Korea.
As it has for nineteen years, the Vis Moot in Vienna resulted in the meeting of students engaged in the study of law from all over the world. This international commercial arbitration competition brings civil and common law students together in a rare educational experience. As a member of Loyola’s team, I had the privilege of meeting and competing against students and arguing before arbitrators from different civil law countries. It was this interaction with practitioners from other legal cultures that offered the most substantive lessons in legal perspective.

As is generally the case, there were four main issues in the problem: removal of an attorney, bribery’s effect on damages in a contract, exemption from liability under the CISG, and foreseeability and mitigation under the CISG. Loyola’s Vis teams spent months working with these four issues and determined that the arguments should be divided equally, with one student arguing the issues under the CISG and another student arguing the other “procedural” issues.

After our first day of arguments at the pre-moot in Belgrade, we discovered a stark contrast between the civil and common law schools. We kept meeting schools that had divided the work differently, with one student arguing about removal of an attorney and the other student arguing the remaining three issues. While we did meet a few American teams that had structured arguments similarly, it was primarily a difference between civil and common-law students.

As a result, we found ourselves analyzing more than the substance of our arguments. This difference in approach forced us to review our legal approach to each of the issues. In the end, with our coaches’ support, we kept the work divided equally, but it was not without some consequences. My partner, Jim Cummings and I, faced an arbitration panel that did not approve of our division of the subjects, and we were forced to spend a portion of our allotted argument time justifying our structure. Similarly, our teammates, Brandon Wurzinger and Marcel Wright, met opposing teams who were reticent to agree to the argument order that we proposed. We discussed the issue with every team we met during the competitions and, without fail, every team was sure that its way of arguing was the right way to argue. I think each team’s stance is a testament to the amount of work all of the students put into the problem. People were deeply invested not only in what was argued, but also in the way it was presented to the arbitrators.

Although we had prepared to present the nuance and substance of our arguments to a civil law audience, I do not think any of us were prepared for the difference in basic approach to the legal issues. I learned about many things competing in the Vis Moot – how to support co-counsel in an argument, the effect personal relationships have on arbitral practice, the current international perspective on bribery – but the most interesting aspect was the comparison of common and civil law approaches to the legal issues.

We will likely never know what the drafters intended when they prepared the problem; and it is not clear that there was a right way to present the argument. This question of approach made for robust legal discussion throughout the competition. In the end, I was pleased to see the first place team at the Vienna Vis Moot divided the issues evenly – just as we had done.
It takes crews of contractors, sub-contractors, engineers, and artisans to refurbish a luxury yacht, and takes nearly as many people to fashion an argument debating how it was done. This year’s Vis Moot problem stemmed from a botched refurbishment of a luxury yacht; however, my Vis Moot team enjoyed a successful voyage to Vienna primarily due to the people we met along the way.

Captaining our ship was the ever-present, supportive, and kind Professor Margaret Moses. Our journey with the M/S Vis, the ill-fated yacht in question, began way back in August 2011, long before most of us ever concerned ourselves with master control systems, godchildren, or suspicious success fees, at least simultaneously. In the fall course, International Commercial Arbitration and the CISG, there were originally sixteen hands on deck, and Professor Moses patiently and carefully guided us through the varied rules and nuances of arbitration. Soon, the problem arrived, and we began our plunder in drafting our initial Claimant and Respondent briefs and presenting oral arguments. As the sun set on the semester, we learned who was chosen to commandeer the Hong Kong and Vienna teams. As fate had it, I and my three hearty teammates were chosen for the Vienna team.

Of course, none of us had our sea legs yet. In order to keep from being cast adrift, a crew needs a dependable anchor, and our team was lucky enough to have Professor Bill Davis to keep us from losing our way. Professor Davis had the monumental task of sitting through all of our practices. In what must have been a true test of repetition and boredom, Professor Davis never failed to offer new, humorous, and particular insights into our arguments and delivery.

On adventures such as the Vis Moot, it also helps to know those who have navigated those waters before. Our tutors, Matt Levitt and Brad Lorden, were immensely helpful. Matt was the tutor for the fall course, and assisted us through the initial stages of brief-writing and argument-delivering, as well as providing a helpful glimpse of what was yet to come. The Vienna team was especially lucky to have the assistance of Brad throughout our spring practices, which was no small task coupled with organizing the pre-moot event that took place at Loyola’s Water Tower Campus in February. Preparing for the Vis Moot is quite an undertaking, and the Vienna team is grateful for the time and effort Matt and Brad gave to ensure that another year of Loyola teams succeeded.

Despite the monumental efforts of those named above, neither team would have left the shores of Chicago without the generous support of our sponsors. Led by Mr. Peter Carey, the airfare and lodging of both Vis teams was covered as the result of selfless contributions by sponsors of the program. As can be gleaned from this newsletter, each member of the Hong Kong and Vienna teams has been forever transformed and benefitted by this experience.

And then there is the journey itself. The law is a field built upon relationships, and no other legal education experience can foster the kind of relationships made through the Vis Moot. Through pre-moots in Chicago, Belgrade, and Budapest, and then the competition in Vienna, my team had the privilege of competing against, practicing with, and befriending teams from Toledo, St. Paul, Zurich, the John Marshall Law School, DePaul University College of Law, Northwestern University Law School, Freiburg, Moscow, Belgrade, Hong Kong, Sao Paulo, Seattle, Melbourne, Finland, the Cayman Islands, New York City, Kyoto, Seoul, Kosovo, and Wuhan. Never, ever, in any other program would this have been possible. And through meeting these teams from down the street and across the world, we gained new perspectives of how to better tackle the problem and how to be better advocates.
A Special Thanks to Our Donors...

The opportunity to compete in Hong Kong and Vienna was made possible by generous contributions from the Chicago legal community. We thank you and hope that together we will continue to ensure future success for the Loyola Vis teams.

Peter B. Carey, Esq. is an alumnus of Loyola Chicago School of Law and has provided consistent support over the years. He has been an insightful arbitrator and generous donor. He also visited Vienna many times to arbitrate and to assist the team. His daughter, Ellie, participated on the first Loyola Vis Moot Team. He specializes in commercial litigation.

The CME Group Foundation and Craig S. Donohue, Chief Executive Officer of the CME Group, gave generously to support Loyola’s 13th annual participation in the Vis Moot. This contribution helped our students become excellent arbitration advocates. As this newsletter describes, it was a never-to-be-forgotten experience.

Terry Moritz, Esq., an alumnus of Loyola Chicago School of Law, made generous contributions to the Vis Moot program. Mr. Moritz has more than 35 years of experience in the ADR setting, and is currently teaching an arbitration course at Loyola.

Silvia Rota, an alumna of the Loyola Chicago School of Law graduate program, supports the Vis teams through contribution and through an endowed fund she and her brother have created in honor of their father, Dr. Aminta Rota.

The Loyola Vis Moot teams would also like to thank the following friends and alumni of Loyola, a number of whom are past participants in the Vis Moot program, for their financial support:


Thank you again to all of the donors. We are very grateful for your support.

The PepsiCo Foundation made a matching contribution to the donation by John H. Calhoun.

John H. Calhoun, Esq., whose son Michael is an alumnus of Loyola, is also the coach of the Hong Kong team. His continued support, dedication, and guidance to the Hong Kong team throughout the competition have been invaluable to the team. This year, his excellence was recognized at Loyola’s Advocacy Banquet where he won the award for Alternative Dispute Resolution Coach of the year. Thank you and congratulations, John!

The PepsiCo Foundation made a matching contribution to the donation by John H. Calhoun.

Loyola University
Chicago School of Law

25 E. Pearson Street
Chicago, Illinois 60611
Telephone: 312-915-7120

Professor Margaret L. Moses
Director of Loyola University Chicago Vis Moot Program
Loyola University Chicago School of Law