Loyola University Chicago
Willem C. Vis Moot Newsletter

Loyola Wins 2013-2014 Hong Kong Vis Moot!

By Amanda Mueller

The Loyola Hong Kong team triumphed over 98 other law school teams to win the Fourteenth Hong Kong Moot! Although Loyola had been in the finals during the first Hong Kong Vis Moot in 2003, this is the first time Loyola Chicago has actually been the champion. See more about the victory in articles written by team members Jennifer Fair (General Rounds) on page four of this newsletter, and Erin Wenger (The Finals), on page 6.

Both Loyola teams had very strong performances this year. The Hong-Kong team participated in a pre-moot in Shanghai, where they advanced to the quarterfinals. Kelsey Leingang won an award for 2nd runner-up best oralist, and Jan Greszta received an honorable mention for best oralist. See article by Kelsey Leingang on page 3.

The Vienna team also performed well. They participated in pre-moots in Belgrade and Zagreb, and also participated in a pre-moot in Vienna held at the Austrian Supreme Court. See articles by Amanda Mueller, Diana Chen and Michael Brandenburg on pages 7, 8, and 9. They also wrote an excellent Claimant’s Memorandum. Only three American teams won an Honorable Mention for Best Claimant’s Memorandum this year in Vienna: Loyola Chicago, Harvard and Columbia.

The Vienna Team: Alex Moe, Amanda Mueller, Diana Chen, and Mike Brandenberg

The Hong Kong Team: Jan Greszta, Erin Wenger, Jennifer Fair, and Kelsey Leingang
Foreign Legal Traditions and the Vis Moot
By Alex Moe

It is one thing to learn of foreign legal traditions in a classroom setting, and another to study them in preparation for the Vis Moot. But it is another thing entirely to learn through observation, to see how differing traditions are implemented, and how they can shape teams’ and arbitrators’ expectations.

Every Vis Moot problem can be boiled down to a fairly simple fact pattern: parties sign a contract, and then they breach it in new and interesting ways. Most of the evidence available to us tends to be parol evidence, a fact that came up on a somewhat regular basis during our practices against American guest judges. We soon developed a stock answer, deployed it where appropriate, and took it with us to Europe — where the issue never came up again, because the parol evidence rule, as a creature of the common law, plays no part in the considerations of civil arbitrators. It simply was not at issue. At least not for us: in an odd turn of events, one civil law team tried to use the parol evidence rule offensively, and their tribunal promptly skewered them for their trouble.

This is not a particularly onerous formality, because most of the time a sale will involve some transfer of property — the most notable exception being a sale of software, which is not a physical good. We did our research and prepared our authority on the issue, and were absolutely prepared to argue that yes, software could be a good, and it could be both sold and subjected to the CISG.

What we were not prepared to argue was that even though software was a good and could be sold, the mere fact that nothing physically changed hands, not even a CD, nullified the sale. We thought this proposition absurd — until we ran into respectable German authority that said otherwise.

We recovered quickly enough, and that little surprise did not cost us in the long run. It did, however, explain why the German teams we talked to and faced placed such emphasis on sale of software: for them, the issue could well be dispositive. Given our background, we could understand the issue well enough, but we would never have thought of it, much less given it serious consideration, on our own; it was, quite literally, a foreign concept.

And that, more or less, is the point of the Vis: not only do we work out how domestic authority would answer a novel question of international law, but we can learn, sometimes the hard way, how foreign systems and traditions would answer questions we would never think to ask.

The 2014 Loyola Pre-Moot
By Melissa Bocker

The 2014 Loyola Vis Pre-Moot, co-sponsored by The Chartered Institute of Arbitrators and the Chicago International Dispute Resolution Association, once again provided a forum for law students from around the world to prepare themselves for the international competitions in Hong Kong and Vienna. This year the competition welcomed teams from Osgoode Hall (Canada), University of Muenster (Germany) as well as seven other schools from the midwest region. Each team of two students argued twice and received valuable feedback from seasoned attorneys, arbitrators and dispute resolution professionals. Students were able to hone their skills and learn from the strategies and arguments of the other students. The next Pre-Moot will be held February 14, 2015.
Loyola’s Vis East team participated in the 4th Annual Moot Shanghai the week preceding the 11th Annual Willem C. Vis (East) International Commercial Arbitration Moot in Hong Kong. The pre-moot consisted of 28 participating teams from 11 different jurisdictions and 108 individual oralists. East China University of Political Science and Law hosted the competition, along with well-known legal institutes. Loyola’s Vis East team presented arguments to practitioners at Hogan-Lovells and Jun He Law Offices.

With four general rounds before the elimination rounds, Moot Shanghai was a wonderful opportunity to refine our arguments and gain experience presenting in front of foreign arbitrations. Personally, I realized how important it was to slow my argument down in order to effectively communicate with a non-native English-speaking tribunal.

The team advanced to the quarterfinals, but was narrowly defeated by National Law University, Delhi. I received an award for 2nd runner-up best oralist, and Jan Greszta received an honorable mention for best oralist.

None of the team members had ever traveled to Asia before, so in between mooting, we toured Shanghai. We visited the Jade Buddha Temple, Ya Yuan Gardens, The Bund, the M50 Art District, and took in the stunning city views on the 32th floor at the Hyatt on the Bund.

Moot Shanghai provided us a great opportunity to compete against a variety of teams and prepared us to take home the title at the Vis Moot in Hong Kong.
The Hong Kong General Rounds
By Jennifer Fair

We had a wonderful time in Shanghai but after the Moot Shanghai, we were ready to see Hong Kong. We started off the week by going to Macau, an island that was settled by the Portuguese and remained a colony until the 1990s. Macau is now more known for the impressive development of Vegas-type casinos and shopping, however, the old city is a beautiful juxtaposition of European architecture and Chinese culture and history. We walked around and had lunch at an amazing restaurant featuring Portuguese-Chinese fusion seafood.

After our great day out in Macau, we were ready to get down to work in the general rounds. Erin and Jan started off arguing against a team from Indonesia. It was a spirited round, and the Indonesian team presented us with a traditional Indonesian puppet as a gift. The next day, Kelsey, my partner, and I argued against Leibniz University of Hanover. They had very good arguments and a very nice presenting style. It was fun to argue against a team that was so well-prepared.

While talking to the other participants, Kelsey and I heard about the Kabul team, which was comprised of all women. Impressed with the substantial obstacles they had overcome to attend, we watched one of their rounds. It was interesting to see how other teams argued the problem and how the arbitrators differed. I was impressed by the Kabul team’s composure under intense pressure by their panel. After hearing the questions posed by the arbitrators, I felt more prepared for our upcoming arguments.

Although we spent every night preparing, we still found time to attend the Happy Valley event, which took place at the horse racing track in the middle of the city. The lights were so bright it looked like daytime and the excitement was electric. We met up with the Munster team whom we had met in Chicago at the Loyola Pre-Moot. It was great to see some friendly faces and take a break from the competition.

The next day, Jan and Erin were ready to argue against the Chinese University of Hong Kong. We all felt that argument was one of the best of the competition so far. The tribunal was very interested in the issues and asked thought-provoking questions, and of course Erin and Jan were prepared at every turn.

On the final day of arguments, Kelsey and I argued against Hidayatullah National Law University. Their English was excellent and they presented good arguments. The arguments that we heard during the competition were generally pretty similar. The fact pattern was dense and complicated and the way we presented the arguments was key. Our Chair was a member of the ICC and I was nervous about getting difficult questions about my argument on consolidation of the claims. It turned out that he liked my argument about efficiency and interpretation of the language of the rules. Our panel was, in usual fashion, impressed with Kelsey’s presentation and responses to questions. We felt great about how our arguments went all week, so we were cautiously hopeful about advancing to the next round. Little did we know how many more arguments were still in store for us.
In addition to the competition, The Vis Moot East provided an excellent curriculum of breakout sessions and guest lectures throughout the week that covered new trends in international arbitration. While those were optional, one mandatory lecture discussed the fascinating story of the CSS Alabama, which spurred the first ever International Arbitration claim.

Commissioned by James Dunwoody Bulloch, President Theodore Roosevelt’s uncle, the CSS Alabama was built in 1862 by John Laird Sons and Co. in Birkenhead, England. Bulloch was the Confederate’s chief spy and foreign agent and played an instrumental role in selling Confederate cotton to Britain and commissioning Confederate raider ships, such as the CSS Alabama to prey upon the Union’s merchant ships to provide the Confederacy with its only source of hard currency.

The CSS Alabama was engineered in a revolutionary way at the time because it was powered by both sail and by two 300 horsepower horizontal steam engines allowing it to travel at an unprecedented 13 knots when the sail and steam power were used simultaneously. This technology made it impossible for Union merchant ships to escape.

Over the course of her two-year life, the CSS Alabama wreaked havoc on the seas without ever visiting a single Confederate port. The CSS Alabama completed seven expeditionary raids on 65 Union merchant ships, capturing 2,000 prisoners and stealing nearly $6 million in prizes.

The CSS Alabama was eventually sunk in battle by the USS Kearsarge in June 1864 at the Battle of Cherbourg. After the Civil War, the United States and the United Kingdom settled various disputes after signing the Treaty of Washington. Pursuant to the treaty, an international arbitration tribunal met in Geneva, Switzerland and initiated the arbitration process for the CSS Alabama Claims.

Charles Sumner, Chairman of the Senate Foreign Relations Committee, argued that British aid to the Confederacy had prolonged the Civil War by two years and violated neutrality laws between the two countries. Sumner reasoned that Britain’s aid in creating the Confederate Navy indirectly cost the United States over $2 billion.

In the end, the arbitral tribunal rejected The United States’ claims for indirect damages, but did order Britain to pay the United States $15.5 million as compensation for the Alabama claims. The claims as well as the final and binding award played an important development in international law and arbitration.

Sources:

Department of State: Office of the Historian, available at https://history.state.gov/milestones/1861-1865/alabama

Hong Kong – The Finals

By Erin Wenger

Did they just say Loyola?! We made it to the final round?! Congratulations! This is unreal! Wait…which side are we arguing? These were just some of the many thoughts racing through the minds of my teammates and me when we heard that we would advance to the final round of the Vis (East) Moot competition in Hong Kong. Our team had a long Saturday of four different elimination round arguments that culminated in moving on to the final round to compete against the University of Amsterdam the following morning.

Typically, a coin toss decided which team would argue on the behalf of the claimant or respondent. For the final round, the Director let the teams state our preferred sides, and because Amsterdam and Loyola chose opposing sides, the stage was set for Loyola to represent Claimant and Amsterdam to represent Respondent. We then made a mad-dash to the ferry that was being held for us to attend the annual seafood dinner on Lama Island, where we relaxed a bit after our long day of arguments. The dinner is held each year as part of the farewell celebration for all the teams, coaches, and arbitrators. It’s a great event where we get to wind down a bit, eat great food, and socialize with other teams and practicing professionals.

After the dinner, our team returned to hotel that evening and got back to work. We were in this to win it! The team decided jointly that Jan Greszta and I would argue in the final round, but it wasn’t just the two of us preparing. Just as we had done for all the previous rounds, we worked with our teammates, Jennifer Fair and Kelsey Leingang, to refine our arguments and add stronger authority where it was needed. No matter which two of us were at the table for that particular round, it was a constant team effort throughout the competition. We cheered each other on, did coffee and food runs, even played music to get each other pumped up for the argument.

The final round was held Sunday morning in the ballroom of the Mira Hotel in Hong Kong. It was by far the largest venue I’ve ever been in where I was on stage as a public speaker. And, of course, the entire event was video recorded! Surprisingly, I didn’t feel nervous in that venue, and I think that correlated directly with one of the strengths of our team’s argument style. Our team repeatedly received positive feedback about our ability to be conversational and really respond to the arbitrators’ questions. We came across as composed and confident in our arguments, and were able to easily stray from our “roadmaps” to address what our tribunal wanted to hear.

And our arbitrators wanted to hear a lot! While some of our previous tribunals were sticklers for abiding by the time limits, the final round tribunal was quite liberal with how much time we could use. We were supposed to be limited to fifteen minutes per person total (including rebuttal or sur-rebuttal), but each person spoke for about twenty-five minutes in this final round. It was quite a marathon of an argument! To our tribunal’s credit, each arbitrator was very engaged and knowledgeable about the problem, and they didn’t hesitate to push us on issues. One arbitrator even told Jan afterwards that she didn’t mean to harp on one issue as much as she did, but she could tell he was handling the questions well, and wanted to test how far she could push him. It really was a testament to how much we researched our issues from all angles and how well we prepared - which we couldn’t have done without the support of our coaches and all of the volunteer arbitrators who helped us in practices along the way.

When the winner of the final round was announced (several hours later!), it was an indescribable moment. It was the culmination of two semesters of hard work resulting in the ultimate prize. It became a wonderful blur of congratulatory hugs, handshakes, and non-stop smiling; it was trying to figure out what time it was back in Chicago so we could share the news with our coach who didn’t travel with us, Joshua Heffernan, and Professor Moses, and our Vienna teammates, and our families who knew how hard we had worked for this; it was pure joy and satisfaction.

On our walk back to the hotel, it started raining, which, at that point, had become quite typical of our week in Hong Kong. But, in that moment, it didn’t bother us at all. We were beyond happy, and we weren’t going to let a little rain get in the way of our excitement! Later that evening, we met up with some of the other teams, including the team from Amsterdam, and we all had a great time celebrating during our last evening in Hong Kong. It was very representative of the Chinese saying we heard during our stay in Shanghai - friendship before competition. All of the teams we had faced between both cities, and those we didn’t, were extremely friendly, supportive, and congratulatory. We made so many great connections during the competition, and the friendships truly were put first. Professor Moses told us once during our first semester class that winning wasn’t the overriding goal of the Vis Moot program. Although winning would be nice, it was about the experience and the educational value that the program gives to the students. Having been through the program, I can see the truth in that statement. But, I think our team would have to say that winning was certainly a whole lot of fun, too!
Beginning in Belgrade
By Amanda Mueller

The first stop abroad for the Vienna team was the pre-moot in Belgrade, Serbia. Everyone was anxious, because this was our first real experience competing against non-American teams with non-American arbitrators. We were unsure how we would compare to the other teams, but we were excited for the new experience. The Belgrade Open Pre-Moot took place at the University of Belgrade Faculty of Law. The competition spanned two days, with two oral arguments per day. There were 56 teams competing in the Pre-Moot, representing 26 countries from around the world. The first day, Mike and Diana faced a team from Mexico City and Alex and I competed against a team from Montevideo. Both rounds went well, and we all received helpful feedback. We were excited to apply the arbitrators’ advice and compete again the next day. The second day, Alex and I competed against a team from Saarland, and Mike and Diana faced a team from Bonn. We later found out that we each won these rounds, so our hard work seemed like it was paying off.

Having never been to Serbia before, we all took advantage of some sightseeing and eating typical Serbian dishes in between mooting. The sponsors of the Pre-Moot also put on some events, so it was a great opportunity to meet the other teams and compare arguments and research. We also became friends with some of the other participants, so there were some familiar faces by the time we got to Vienna. Our time in Belgrade was short, but it was just the beginning of the trip. We were excited to keep improving upon and practicing our arguments and get to Vienna for the main event.

Above: The Vienna Team at the Belgrade Pre-Moot; Right: Mike Brandenberg and Diana Chen preparing to moot on the first day.
After completing our first overseas pre-moot in Belgrade, we had to make one more stop before heading to Vienna. On April 7, we traveled from Belgrade to Zagreb, the beautiful capital city of the Republic of Croatia, for an informal pre-moot at the University of Zagreb Faculty of Law.

Our pre-moot in Zagreb was a big change of pace from the pre-moot in Belgrade. While almost 60 schools competed in the Belgrade pre-moot, there were only three schools present at the pre-moot in Zagreb: Loyola University Chicago, University of Zagreb, and University of Pittsburgh. We spent two days practicing our pleadings with each other in front of professors from each of the schools as well as local attorneys from Zagreb. Many of the arguments we heard from the other teams were similar to the ones we had developed during our months of practice at home, but there were a few cases and authorities we heard for the first time in Zagreb. The general attitude among all of the students was an amicable and collaborative one, and we were able to share our research and help each other improve our arguments for the Vienna Moot.

In addition to improving our arguments and presentation skills in Zagreb, we also had an opportunity to get to know the students and professors from the University of Zagreb and University of Pittsburgh. Since there were only three schools present at this pre-moot, we ended up spending more time with each other and consequently got to know each other better. Our hosts from the University of Zagreb were extremely generous, both with organizing the pre-moot as well as taking us out to dinner and spending time with us at local spots around the city.

After only a few days in Zagreb, we felt like we had known our new friends for months. Although we were sad to leave, we looked forward to seeing everyone again in less than a week in Vienna. To this day, we have kept in touch with our friends in Zagreb and hope to remain in touch in the years to come.
The city of Vienna, Austria is abundant with splendor and hospitality, and both were on full display during the opening day of the 21st Willem C. Vis International Commercial Arbitration Moot. On April 11th, 2014, before the main event began, the Loyola team participated in a pre-moot competition at the Austrian Supreme Court of Justice, hosted by the law firm Graf & Pitkowitz. The firm’s logo appropriately stated: “Challenge Accepted,” and this was truly a challenge and a great way to prepare for the rest of the week. We first faced a team from the University of Basel in Switzerland. It was a well-argued round, and both sides received positive feedback from the arbitral panel. The next matchup was against a team from the University of Hamburg in Germany, which went equally well. Both rounds gave us a chance to practice against quality competition and gain further insight into the problem from the arbitrators.

However, the pre-moot was not all about competition. We were also given a guided tour of the Austrian Supreme Court building by Justice Dr. Erich Schwarzenbacher. As shown in the photograph of our team, the building itself was a work of art. Throughout the day we were able to take in giant statues and columns, vast balconies, historical documents, Austrian crests, and a rooftop café that included a breathtaking view of the city. It was a privilege to be given such access, as was it a privilege to hear the event’s closing remarks given by Prof. Dr. Ingeborg Schwenzer. The renowned scholar spoke about the merits of the CISG and what we could expect during the course of the Vis Moot. Our team left the Austrian Supreme Court with increased confidence in our arguments and increased anticipation for the competition that lay ahead.

But the day’s events were far from over. Our team proceeded straight from the courthouse to the opening ceremony of the Vis Moot. The ceremony was located in the Great Hall of another beautiful building, the Vienna Concert House, which was packed with the participants and coaches for this year’s competition. The speakers included Prof. Eric Bergsten (the organizer of the first Vis Moot competitions), as well as Prof. Dr. Stefan Kroell and Mag. Patrizia Netal (two of the organizers of the 2014 Moot). Their remarks were also accompanied by some arbitration-themed singing from Prof. Harry Flechtner, from the University of Pittsburgh. This was followed by wine, hors d’oeuvres, networking, strategy discussions, and friend-making. The ceremony set the tone for the rest of the week. This was to be a competition and an educational endeavor, but also a friendly and enjoyable way to see wonderful sights and meet international students and lawyers. It was clear from the start that the hospitality of the Vis Moot competition goes hand in hand with the wonders of a city like Vienna.
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.

**Freddi L. Greenberg, Esq.**, an alumna of Loyola Chicago School of Law, made a generous donation to the Vis Moot program. Ms. Greenberg is an Evanston attorney who specializes in Energy Law, Public Utility Law, and Business Law.

**Terry Moritz, Esq.**, an alumnus of Loyola Chicago School of Law, has been very supportive of the Vis Moot program. Mr. Moritz has more than 35 years of experience in the ADR setting, and he is currently teaching an arbitration course at Loyola. Mr. Moritz has also recently formed a new law firm, Terry F. Moritz, LLC.

**Silvia Rota**, an alumna of the Loyola Chicago School of Law graduate program, supports the Vis teams through contributions 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.

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