



## ICC Arbitration Clauses: Stable Foundations in an Increasingly Unstable World (Workshop) \*

### Summary

**\* Please note that this summary of the panel was AI-generated and therefore has not been fully vetted for accuracy.**

The session at Washington Arbitration Week focused on ICC arbitration clauses and was designed to foster collaboration among legal professionals in Washington, D.C. Key participants included Mary-Kate Wagner from Baker Hostetler and representatives from ICC, who emphasized the importance of building a community among arbitration practitioners.

The discussion began with an exploration of the essentials of effective arbitration clauses, highlighting the significance of clarity in drafting to avoid disputes. Participants engaged in an interactive workshop, contemplating the minimum wording necessary for an arbitration agreement to be effective, with suggestions that even a single word could suffice if it clearly indicates the parties' intent to arbitrate.

Panelists discussed the essential components of arbitration clauses, such as specifying the seat of arbitration and the number of arbitrators, while also cautioning against overly complex or multi-tiered clauses that could impede timely dispute resolution. The discussion underscored the importance of tailoring arbitration agreements to the specific context of the parties involved and the nature of the disputes anticipated.

Confidentiality was another critical topic, with panelists noting that while many assume arbitration is inherently confidential, this is not universally true. They urged practitioners to explicitly include confidentiality provisions in their arbitration agreements, detailing what aspects should remain confidential and considering the implications of any applicable national laws.

The session concluded with a discussion on the publication of arbitration awards, emphasizing the evolving landscape where transparency and confidentiality must be balanced. Panelists encouraged practitioners to consider the strategic implications of confidentiality and publication when drafting arbitration clauses, and to remain aware of the institutional frameworks that can aid in resolving potential issues. Overall, the session



aimed to equip both seasoned and emerging practitioners with practical insights into drafting effective arbitration agreements.

### **Authors**

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### **Topics**

ICC, international chamber of commerce, workshop, practical session

### **Category**

WAW

### **Full Transcript**

00:00:02

Welcome everyone to Washington arbitration

00:00:06

week at Third Edition and

00:00:08

this is the how to

00:00:10

do how to do is

00:00:12

on ICC arbitration clauses and

00:00:17

this particular session is actually

00:00:21

was designed especially by ICP.

00:00:26

Yes. So everyone here, especially

00:00:28

Mary-Kate, and you'll go and



00:00:30

Mariah can dance, the team

00:00:32

of ICC in New York.

00:00:34

So we're really glad that

00:00:36

we are collaborating with ICF

00:00:40

at Worlds, were very grateful

00:00:41

to Mark's, emerald and Ken

00:00:44

Mary Kate's and an older

00:00:47

partnership and attorneys. Here at

00:00:49

the bakery. I had a

00:00:52

chance of all so you're

00:00:54

working meeting at Mark and,

00:00:56

you know, their endeavours. So

00:00:59

it was a really positive



00:01:01

encounter. So we're real. Grateful

00:01:03

that you're supporting Washington are

00:01:05

fishing weekend to create a

00:01:07

community of of lawyers that

00:01:10

meet not only in Miami

00:01:14

or blind or or or

00:01:15

in New York, but actually

00:01:17

of lawyers of Washington DC

00:01:19

in Washington DC and the

00:01:27

Mike my, my function here

00:01:31

is to welcome the panel

00:01:35

and the introduce the moderator.

00:01:37

I would also like to



00:01:38

introduce the representative of ice

00:01:42

tea off in Washington, d.c.

00:01:43

Manuel. He is an international

00:01:47

lawyer, specializing in international public,

00:01:51

international law, and investigations relating

00:01:54

to corruption money laundering sanctions

00:01:57

and terrorist financing. And he's

00:01:59

also nice to your representative

00:02:01

as, as I said. One

00:02:04

thing that I miss saying,

00:02:05

for those of you who

00:02:06

might not know me and

00:02:08

I had a boutique law



00:02:13  
firm called P & 2

00:02:15  
years ago together with Ian

00:02:17  
Laird at, we thought that

00:02:18  
it might be a good

00:02:19  
idea to have a Washington

00:02:21  
appreciation week and we were

00:02:22  
actually lucky. We didn't think

00:02:24  
that we were lucky at

00:02:25  
the time but we're lucky

00:02:26  
as epidemic. Hit on that

00:02:29  
enabled, us to have everything

00:02:31  
online and we're able to

00:02:33  
serve build the name for



00:02:36

2 years. And this is

00:02:37

the first time that we're

00:02:38

doing this up in person

00:02:40

as I was telling you,

00:02:41

in other panels, when we

00:02:44

reach out to when we

00:02:46

were programming everything, we thought

00:02:48

perhaps we might have five

00:02:50

or four panels in person

00:02:52

and that would be a

00:02:53

good goal and then people

00:02:56

start to raise their hands.

00:02:57

Now we want one or



00:02:59

two or three or four

00:03:00

panels out of the results

00:03:01

were having about and 90

00:03:03

or 95%, I would say

00:03:05

in for some panels, this

00:03:07

being very rich one, I

00:03:15

would also like to introduce

00:03:17

Mary, Kate Wagner. She is,

00:03:20

of course, together with jaegwon

00:03:22

and others, reckon. He seemed

00:03:24

the designer of this panel,

00:03:26

she is at Baker Hostetler,

00:03:29

where we are in the



00:03:31

international dispute group lending, assistance

00:03:34

on International commercial arbitration investment,

00:03:37

arbitration and litigation Mary-Kate spent

00:03:40

five years as Deputy counsel

00:03:42

with the Secretariat of the

00:03:44

ICC. In New York, at

00:03:46

where she oversaw and managed

00:03:47

hundreds of international and domestic

00:03:49

operations, including emergency, an expedited

00:03:52

procedure arbitration has received the

00:03:55

JD from Villanova French in

00:04:01

the French and the international

00:04:02

business law from the store



00:04:04

in Paris. And she speaks

00:04:07

fluent French at which you

00:04:09

might need to do this

00:04:09

to you today. Anyway, it's

00:04:14

great to be here. Lovely

00:04:16

to have this evening hosted

00:04:19

by bakerhostetler and with you

00:04:21

y'all go first and then

00:04:23

Mary-Kate I hope that you

00:04:25

can hear me take it

00:04:26

away please. And can you

00:04:28

all hear me? What was

00:04:31

the thank you very much



00:04:32

for San Antonio for the

00:04:34

kind introduction. And also it

00:04:35

has delighted to be coordinated

00:04:40

with the Bank, Washington arbitration

00:04:42

week and we certainly hope

00:04:43

it's a collaboration. They can

00:04:44

continue to the Future after

00:04:46

those who don't know. I

00:04:47

c c a p. I

00:04:48

c c, young arbitration, ATR,

00:04:50

40 under 40 from across

00:04:55

the world. In basically said,

00:04:56

we set up different events



00:04:57

and opportunities for a young

00:04:59

practitioners to gain skills Builder

00:05:02

networks. And also to become

00:05:03

more familiar with ICC picture

00:05:05

resolution Services, across the network,

00:05:08

30,000 young practitioners. And if

00:05:10

anyone here is interested in

00:05:12

joining I would encourage you

00:05:13

all to to visit ICC

00:05:14

at website. There you'll find

00:05:16

information on how to become

00:05:17

a member and also you

00:05:21

have my contact information. Should



00:05:23

I be able to be

00:05:23

of any service to you

00:05:24

all in that? Today's event

00:05:28

is, I think really typifies

00:05:29

what iccs is all about,

00:05:31

discussing arbitration clauses, Taylor to

00:05:38

law students dresses as as

00:05:40

a camper season practitioners. It's

00:05:42

relevant for everybody. So we

00:05:43

have the opportunity to bring

00:05:45

practitioners and end in Stevenson

00:05:47

die in season practitioners, all

00:05:49

together under the icpf umbrella.



00:05:54

I'd also like to know

00:05:57

that he's interested in helping.

00:05:59

I just read it again.

00:06:07

With the company said I

00:06:09

we are very grateful for

00:06:11

Gracious and generous posting of

00:06:14

tonight's event, and, and we

00:06:15

really do rely on, on

00:06:16

Law, Firm Partners. I'd be

00:06:18

able to host events like

00:06:19

this. So I'll just want

00:06:22

to provide a very, very

00:06:23

brief introduction to to some



00:06:25  
of our remaining. Until I

00:06:35  
won't be going to be

00:06:36  
experienced today and also an

00:06:57  
extensive experience in in commercial

00:06:59  
arbitration. She also has been

00:07:10  
a great amount of experience

00:07:11  
in a lesser known fact,

00:07:12  
for you all. He's also

00:07:13  
a soccer player. So if

00:07:15  
you have any questions without

00:07:19  
further Ado, I'd like to

00:07:20  
pass the the check in

00:07:21  
the floor back to Mary-Kate



00:07:22

and okay, thank you deal.

00:07:28

Go. We wish you were

00:07:30

here but we are glad

00:07:31

that you were able to

00:07:31

join us for chili. So

00:07:34

thank you to everyone who

00:07:35

showed up today. Thank you

00:07:36

to ICC. Yes, and thank

00:07:38

you to my firm Baker

00:07:40

Hostetler for supporting not just

00:07:42

myself but I see see.

00:07:44

Yeah, I think it's very

00:07:45

important for young practitioners. Be



00:07:46

able to get together and

00:07:48

to create a new generation

00:07:49

of well-trained. Arbitration lawyers said

00:07:54

not to say that the

00:07:55

older generation wasn't but we'll

00:07:57

discuss drafting arbitration agreements. We

00:08:05

all know that arbitration is

00:08:06

based on content, but you

00:08:08

have to know to what

00:08:09

you are consenting. So what

00:08:12

we are trying to do

00:08:14

is to make sure that

00:08:15

when you go before your



00:08:16

client, you will produce a

00:08:19

clause that will avoid any

00:08:21

dispute. Once you have your

00:08:23

dispute, none of us one

00:08:25

disputes, but sometimes Do a

00:08:27

rise in life, but you

00:08:29

do not want to be

00:08:30

in a situation where you

00:08:31

cannot accept your invitation agreement.

00:08:33

So before I pass the

00:08:37

floor to Liz, I would

00:08:39

like to reiterate that this

00:08:41

is an interactive program. It's



00:08:43

a workshop. So I have

00:08:44

a question for you and

00:08:47

actually So, how many words

00:08:56

do you think the shortest

00:08:59

arbitration agreement can be to

00:09:01

be effective? 2. + 3.

00:09:13

How many to would you

00:09:15

like to tell us the?

00:09:15

Why you think that? Basin

00:09:25

consent. And hopefully you have

00:09:27

the two parties to go

00:09:28

to consent to arbitration. The

00:09:30

which two words would you



00:09:31  
put in arbitration agreement? I

00:09:35  
do, I do. Just like

00:09:40  
marriage one, in which you

00:09:50  
promised sing the practice of

00:09:54  
the courts to watch blind

00:09:55  
closes and will be different.

00:09:57  
And I do, for my

00:09:58  
case, I've let it go

00:10:00  
to the case where we

00:10:00  
enforce an arbitration process, but

00:10:02  
it was written authorization. They

00:10:14  
get the case and got

00:10:15  
to convince a judge that



00:10:17

we needed three all betrays

00:10:18

annoying, but yeah. One. What

00:10:20

is efficient at ease in

00:10:20

France? Thank you both see

00:10:26

what our analysts think. This

00:10:31

is way too high. So

00:10:34

so I agree that one

00:10:36

word is adequate. If you've

00:10:38

got the support of one

00:10:43

word is adequate. If it

00:10:44

if it in context, expresses,

00:10:46

the parties consent to have

00:10:47

their disputes resolved by arbitration



00:10:48

is even better. If that

00:10:50

word is in a section

00:10:52

of your contract with the

00:10:52

heading dispute, resolution arbitration. Because

00:10:55

then, the parties intention is

00:10:56

clear. And I would submit

00:10:58

that, it's even better to

00:11:00

have two words, which would

00:11:02

be something like you see

00:11:04

on the screen, arbitration specifying,

00:11:08

a seat or arbitration specifying

00:11:11

some rules. And that's because

00:11:12

if you have sufficient words,



00:11:15

whether it's one or two

00:11:16

more than one to indicate

00:11:18

a clear intention, and you

00:11:23

have some indication of, if

00:11:27

you have a clear indication

00:11:28

of the party, is that

00:11:32

in, and of itself is

00:11:33

enough to divest a quart

00:11:35

of jurisdiction to hear this,

00:11:37

right? It may not be

00:11:39

enough to get you answers

00:11:40

to all of the questions

00:11:41

that you immediately have about



00:11:43

how the arbitration will proceed,

00:11:44

but it should be enough

00:11:46

if it's interpreted correctly as

00:11:48

the party's intention to arbitrate

00:11:50

to divest a quart of

00:11:51

jurisdictional Eve parties with no

00:11:53

alternative other than arbitration. I

00:11:57

think the second word that

00:11:59

second word seat, or or

00:12:00

a choice of it is

00:12:03

important because that those at

00:12:08

even that short hand reference

00:12:09

enables you to plug into



00:12:11

a legal framework or a,

00:12:13

or a contractual framework effectively

00:12:15

when you're incorporating a feeling

00:12:19

that you might otherwise see,

00:12:21

a more typical arbitration agreements,

00:12:24

which are typically much longer

00:12:25

than one or two or

00:12:27

even 10 or 25 or

00:12:29

50 work. That's important for

00:12:33

us to just stay right

00:12:34

at the outset of in

00:12:35

case anybody is misled. No

00:12:37

one here is advising that



00:12:38  
anybody. Advise their clients just

00:12:40  
signed an arbitration agreement, one

00:12:42  
word or two words but

00:12:44  
the point we're making is

00:12:45  
that given the existence of

00:12:47  
a well-developed framework of national

00:12:50  
nutrition law and arbitration rules

00:12:52  
that you can buy shorthand

00:12:54  
into. You can't effectively get

00:12:58  
an arbitration off the ground,

00:12:59  
probably be a little bit

00:13:00  
of litigation about it. I

00:13:02  
miss one party is resisting.



00:13:03

You can effectively get an

00:13:04

arbitration agreement off the ground,

00:13:07

the highly economical approach to

00:13:09

drafting. So I was asked

00:13:11

to, in addition, to starting

00:13:13

with that, but the actual

00:13:15

call framing to address the

00:13:18

question of precision and drafting,

00:13:20

right. How much more should

00:13:22

you stay in your arbitration

00:13:24

agreement? How much should you

00:13:25

try to legislate for the

00:13:26

future now? I think almost



00:13:30

all of the Opera I've

00:13:31

seen in an arbitrator by

00:13:33

reference to an embarrassingly long

00:13:36

number of years of practice,

00:13:37

typically say much more than

00:13:40

simply the parties have been

00:13:42

there to see a patient

00:13:43

that is the essential requirement,

00:13:45

right? The very first thing

00:13:47

that I must have, is

00:13:49

an unequivocal Express that? That's

00:13:56

what that's the essential minimum.

00:13:57

Much more. Typically you'll see



00:13:59

arbitration agreements addressing other two

00:14:02

key elements, the specified, any

00:14:04

arbitration to resolve by the

00:14:09

seat or legal home of

00:14:11

the arbitration. And usually, They're

00:14:23

not always usually, I think,

00:14:25

actually always in my own

00:14:26

experience. You'll see a specification

00:14:28

of the number of arbitrators,

00:14:30

whether a sole arbitrator or

00:14:32

a panel of three arbitrators,

00:14:33

he's really only. The first

00:14:36

is essential, everything else



00:14:39

can be filled in by

00:14:41

implication. So for example, if

00:14:43

you omit, just as if

00:14:45

I a seat for your

00:14:46

arbitration, but you do specify

00:14:48

that the ICC rules apply

00:14:49

article 18, one of the

00:14:51

ICC rules tells you what

00:14:52

to do and tells you

00:14:53

that the place of the

00:14:54

arbitration shall be fixed by

00:14:56

the court. If you are

00:14:57

meant to specify. The language



00:14:58

that is to be used

00:15:00

in the arbitration article, 20

00:15:03

of the ICC rules provides

00:15:05

that the arbitral tribunal shall

00:15:07

determine the language, taking into

00:15:08

account relevant factors. If you

00:15:12

want me to specify the

00:15:12

number of arbitrators article, twelve

00:15:15

two of the ICC rules

00:15:16

provides that the court will

00:15:18

appoint a sole arbitrator. Save

00:15:20

where it appears to the

00:15:21

court that the dispute is



00:15:23

such as to Warrant the

00:15:24

appointment of three arbitrators. So

00:15:26

when it comes to the

00:15:27

issue of precision or specificity

00:15:29

and drafting arbitration clauses, the

00:15:32

reality is that you can

00:15:33

actually get away with specifying

00:15:34

very little, I'm still end

00:15:36

up with an effective and

00:15:38

workable. Arbitration, much more commonly

00:15:41

than the two word example.

00:15:42

We've been talking about to

00:15:44

make a point parties, really



00:15:47

often do right pages and

00:15:49

pages and Pages more of

00:15:51

language, in arbitration clauses. But

00:15:54

my sort of starting point

00:15:55

for this discussion, is that

00:15:56

you really could do a

00:15:57

lot worse than to start

00:16:00

with one of the model.

00:16:00

Claus has provided by arbitration

00:16:02

institutions. And I think we

00:16:05

have an example of the,

00:16:06

the ICC standard claus are

00:16:09

different versions of the ICC



00:16:10

Center close on the slide,

00:16:11

start with that, and then

00:16:16

be judicious about what else

00:16:18

you might address in the

00:16:19

cross. Question about this. Yes.

00:16:23

Thank you, Liz. So can

00:16:25

everyone just take a second

00:16:26

and read both of these

00:16:27

Clauses? And then I would

00:16:29

like to know what is

00:16:30

different about them. First person

00:16:37

to raise their hand against

00:16:38

answer. Could you? But the



00:16:54

first one is an arbitration

00:16:56

clause in in totality. And

00:16:58

the second one Cymbalta Tiger

00:16:59

Claws with a mediation as

00:17:01

one of the prerequisites. You

00:17:06

should we add mediation and

00:17:08

arbitration? Agreements Jose, what do

00:17:10

you think? I'm going to

00:17:16

agree with my colleague. That

00:17:17

is a weird microphone. First.

00:17:22

Second, I would start with

00:17:24

bad news everything. We're going

00:17:25

to discuss here typically applies



00:17:28

but then corporate people come

00:17:30

don't talk to you and

00:17:32

you end up with whatever

00:17:32

arbitration agreement, they copy basement

00:17:34

from somewhere else. And yes,

00:17:37

I agree with you sir.

00:17:39

It will get your clothes

00:17:41

and do we use them

00:17:43

warm with, your classes are

00:17:46

basically closes at faces or

00:17:50

requisites, previews to it into

00:17:52

arbitration and They love their

00:17:55

names, you can call them



00:17:56

and you can't call them

00:17:58

what city are Escalade. There

00:18:02

are several words for the

00:18:04

same concept and sometimes I

00:18:09

remember what one student told

00:18:11

me when I was teaching

00:18:11

a class, and will deter

00:18:12

process, they are basically like

00:18:14

Warren Braveheart. First, you go

00:18:17

with your horses to the

00:18:19

middle of the battlefield. You

00:18:21

talk. Can we reach an

00:18:23

agreement? Answer is, no, you



00:18:25

go back, you fight, but

00:18:27

he's basically the same thing.

00:18:29

You said, certain parameters preview,

00:18:31

spawn arbitration and there are

00:18:33

multiple types of examples. Here,

00:18:35

we have medication expert, determination

00:18:38

boards, you have Do you

00:18:43

have a Senior Management on

00:18:45

negotiations? Cooling-off periods, multiple Concepts.

00:18:50

That refer to the same

00:18:51

thing. Do something before going

00:18:52

to arbitration and do we

00:18:55

always need multi-tier? Closet answer



00:18:58

is no. It depends on

00:19:00

your contract, and depends on

00:19:01

your dispute. It depends on

00:19:03

what do you foresee? May

00:19:04

have. But they tend to

00:19:07

be quite efficient because you

00:19:09

said, you said a stage

00:19:12

previous arbitration in which the

00:19:14

parties can try to reach

00:19:16

agreements or at least minimize,

00:19:18

they should at least you.

00:19:19

And for instance, in construction

00:19:22

contracts, it has proven to



00:19:24

be very useful. The ICC

00:19:26

has an extensive documents regarding

00:19:30

they have their own rules

00:19:33

on these boards and friends.

00:19:35

That case the statistics tell

00:19:37

you that 90% of disputes

00:19:40

are narrowed or settled, previous

00:19:43

arbitration a very cost-effective way

00:19:46

of settling disputes. What is

00:19:51

the problem with that? In

00:19:54

my experience? You see with

00:19:55

multi-tiered arbitration agreement and with

00:19:57

arbitration agreements, as my colleague



00:20:00

was mentioning drafting unclear, drafting

00:20:04

on finding terms. And that

00:20:08

jeopardizes, something very fundamental which

00:20:11

is a \$70 worth. And

00:20:14

I've seen you expect is

00:20:17

not to happen in sophisticated

00:20:19

parties of his contract, like

00:20:21

happens all the time. for

00:20:27

multiple reasons first, because I

00:20:28

will blame always a corporate

00:20:31

Play we get serious. If

00:20:33

you don't think about. If

00:20:35

you think about the contract,



00:20:36

you think about the price?

00:20:36

You think about the indemnity?

00:20:39

Do you think about everything

00:20:41

related to the, to the

00:20:42

contract? But the dispute resolution

00:20:45

provision, they win with, you're

00:20:46

going to solve any problem

00:20:48

with regards to interpretation or

00:20:49

enforceability of. That agreement is

00:20:51

not well. Thought you end

00:20:53

up with problems. Like we

00:20:54

had a contract in which

00:20:55

the parties for saw that



00:20:57  
they were going to be

00:20:58  
a large instead of setting

00:21:00  
something, easy like an expert,

00:21:02  
determination someone who would say,

00:21:05  
this is what we're going

00:21:06  
to do and then you

00:21:07  
can go to arbitration. They

00:21:08  
said, negotiation. For every 6

00:21:12  
months, a contract that was

00:21:14  
intended to be executed in

00:21:15  
two years to 10 years.

00:21:16  
That is not what I

00:21:18  
want. But it was a



00:21:20  
problem of drafting Other problems

00:21:23  
we've seen, how do you

00:21:25  
avoid this problem? When drafting

00:21:28  
remember, we are lawyers talked

00:21:30  
to the people for going

00:21:31  
to execute the contract. Where

00:21:34  
do they, where do they

00:21:35  
foresee? The problems are going

00:21:37  
to come. What are they

00:21:38  
seem do? They have experience

00:21:40  
executing this contract and where

00:21:42  
have they found trouble down

00:21:43  
the road? There, you will



00:21:45

be able to backtrack and

00:21:47

be more accurate choosing your

00:21:50

movie theater close. Ask yourself

00:21:53

a very simple question. Do

00:21:55

I need? Do we need

00:21:56

a multi-tiered sometimes? We just

00:22:06

The third thing that I

00:22:07

think is key besides proper

00:22:10

dressing is established realistic. Requirements

00:22:15

in. I was telling them,

00:22:19

one of my clients, we

00:22:21

did not draft a contract

00:22:22

dispute, it was a dispute



00:22:24

board and we have to

00:22:28

find three people who had

00:22:31

15 years of experience in

00:22:34

physics, 15 years of experience

00:22:36

in chemical and PhD in

00:22:39

chemistry and Paige Steamboat. We

00:22:42

couldn't find people around the

00:22:43

world that had those requirements.

00:22:46

Brought us back to the

00:22:49

question of who agreed to

00:22:51

this. And then that the

00:22:54

worst thing was okay. But

00:22:55

what are these guys going



00:22:57  
to say? Yes. It's, it's

00:22:59  
a nuclear plant. But did

00:23:02  
you measure so what do

00:23:05  
people with phds in physics

00:23:07  
and chemistry know about that?

00:23:09  
So be realistic and try

00:23:12  
to like bring things to

00:23:12  
the ground, think about it

00:23:14  
and avoid what is called

00:23:17  
Midnight callers. Give give the

00:23:20  
same time. You tell your

00:23:22  
clients to give the same

00:23:23  
time is about to discussing



00:23:25

price and images to negotiating

00:23:28

the MultiCare. Thank you. I

00:23:33

just want to add really

00:23:34

quickly. We're taught since we're

00:23:35

analogizing this to marriage. When

00:23:38

you start your agreement, your

00:23:40

friends, you're going to get

00:23:41

married, you're in love. If

00:23:42

you get a divorce, be

00:23:43

careful. Because sometimes these Clauses

00:23:47

can be used against you

00:23:48

and can be raised as

00:23:49

jurisdictional directions which can delay



00:23:51  
your proceedings. So that could

00:23:54  
be good for you or

00:23:55  
bad for you, but be

00:23:56  
careful soul is going back

00:24:00  
to the standard ICC. Arbitration

00:24:02  
Clause. Is there anything else

00:24:03  
that you would want to

00:24:05  
specify? Yeah. So in practice,

00:24:09  
you know, most of the

00:24:10  
contracts that I advise on

00:24:12  
her that I have arbitrated

00:24:13  
under depart from, or I

00:24:16  
should say elaborate on the



00:24:18

standard form in one way

00:24:19

or another. So in addition

00:24:20

to specifying seat and language

00:24:23

is commonly add various bells

00:24:27

and whistles to the claws

00:24:28

and I would group those

00:24:29

bells and whistles. And there

00:24:32

are those that any, well,

00:24:33

advised party should always consider

00:24:35

adding there are those that,

00:24:38

well, advised party should always

00:24:40

resist the temptation to add.

00:24:41

And then there are some



00:24:42

that might be appropriate in

00:24:44

certain cases that require some

00:24:45

careful thought and then just

00:24:49

run into those three. Buckets

00:24:50

quickly should always consider adding

00:24:55

to their arbitration Clause. First

00:24:57

of all, if the contract

00:24:59

does not somewhere else, that's

00:25:00

the part that the law,

00:25:01

the arbitrator's are going to

00:25:02

apply the arbitration place is

00:25:04

a handy place there, a

00:25:05

closet, a handy place to



00:25:07

It's not somewhere else in

00:25:10

the contract issue, s, you

00:25:15

should give thought to. Once

00:25:17

you've identified the arbitration rules

00:25:20

in the framework that you

00:25:21

are submitting your application to.

00:25:22

You should consider whether it's

00:25:26

appropriate in your circumstances to

00:25:28

opt-in or opt-out of any

00:25:30

special procedures that are provided

00:25:31

under those rules. For example,

00:25:34

the ICC arbitration rules provide,

00:25:37

a mechanism for the appointment



00:25:39

of an emergency arbitrator to

00:25:41

hear urgent applications before is

00:25:45

constituted, and that can be

00:25:47

an absolutely essential protection. When

00:25:49

it's taking a few weeks

00:25:50

or months to get it

00:25:52

up and running. Now, when

00:25:54

this picture was first added

00:25:56

to arbitration rules, there was

00:25:58

initially some concern that the

00:26:01

fact that there was an

00:26:02

emergency arbitrator available to hear

00:26:04

urgent stations would somehow impede



00:26:06

parties. Access to going to

00:26:08

court that might otherwise be

00:26:10

available to Heritage applications adamant

00:26:19

to parties accessing accessing Court

00:26:23

remedies in in Urgent situation.

00:26:25

But that's the kind of

00:26:27

thing that you would understand.

00:26:29

If there's an extra come

00:26:32

around to settle down on

00:26:34

that issue that you want

00:26:35

to just double-check, any court

00:26:37

that I have jurisdiction or

00:26:38

you might need to access



00:26:40  
jurisdiction for interim relief, whether

00:26:42  
that's an issue. And so

00:26:43  
you were knocked out of

00:26:44  
the emergency arbitrator mechanism. The

00:26:47  
other set of Provisions that

00:26:50  
are commonly in arbitration rules

00:26:52  
and are in the ICC

00:26:53  
rules are our Provisions for

00:26:54  
expedited proceedings. Have the ICC

00:26:57  
rules provide for expedited proceedings

00:27:00  
and cases have a special,

00:27:01  
a certain low. Low to

00:27:04  
me personally but low in



00:27:05

the grand scheme of Mountain

00:27:08

dispute currently either two or

00:27:10

three million dollars. Now, if

00:27:12

your dispute is threshold than

00:27:14

you do, not think about

00:27:19

whether that is appropriate for,

00:27:21

you is what you want.

00:27:22

Similarly, you may decide that

00:27:24

you want to tap into

00:27:25

the expedited proceedings, even if

00:27:28

your dispute is of greater

00:27:29

value than the ice in

00:27:30

the trail. So you may



00:27:32

send a different threshold for

00:27:33

accessing the extra cheese or

00:27:35

simply submit all just starting

00:27:44

to draft. You should think

00:27:44

about is whether the combination

00:27:46

of the claws and the

00:27:47

law of The Siege and

00:27:48

everything else in the contract

00:27:49

provides insufficient protection for a

00:27:52

company sheety or on the

00:27:54

contrary actually allows them to

00:27:57

satisfy and transparency obligation sister.

00:28:07

For confidentiality or transparency, given



00:28:09  
the nature of the relationship.

00:28:10  
And finally, on the must

00:28:13  
consider list would be any

00:28:16  
sort of idiosyncratic or particular

00:28:18  
language says, sorry to make

00:28:20  
a clause enforceable in view

00:28:22  
of the height of the

00:28:23  
place. We are going to

00:28:24  
arbitrate or relevant jurisdictions for

00:28:27  
the parties come from. So

00:28:28  
if you look at the

00:28:29  
website for example tell you

00:28:31  
there's some specific language that



00:28:33

you want to make sure

00:28:33

you use to make an

00:28:35

arbitration Clause providing for arbitration

00:28:37

in mainland. China local you

00:28:43

want to consider but that's

00:28:44

what I think people should

00:28:46

always be. Considering I'm turning

00:28:49

now to proceed with caution

00:28:50

category. I would put multi-tiered

00:28:54

proceed with caution buckets. Really

00:28:57

for the reason that Mary

00:28:58

Kate was mentioning which is

00:28:59

that depending on how they're



00:29:01

drafted and depending on what

00:29:03

chord is addressing the situation

00:29:05

started. In reality, they can

00:29:08

be an impediment to get

00:29:09

into arbitration quickly and you

00:29:14

need to get two more

00:29:15

quickly. So not a never

00:29:17

but I think about it.

00:29:18

Think about what the relationship

00:29:20

is one that is likely

00:29:22

to result in an early

00:29:24

mediator. Negotiated settlement, most commonly

00:29:29

least half the time, I'm



00:29:31  
dealing with contracts that have

00:29:33  
on one side of state

00:29:34  
or state entity and on

00:29:35  
the other side has a

00:29:36  
large multinational company and it

00:29:39  
almost invariably have all teachers

00:29:41  
classes and do not settle

00:29:44  
until either after hearing or

00:29:47  
right before hearing. So it's

00:29:48  
that's my, you know, one

00:29:50  
person's experience. But it seems

00:29:52  
like a situation in which

00:29:53  
my client in those relationships



00:29:57

are never really rushing to

00:29:59

arbitration if they're going to

00:30:00

arbitration since they absolutely have

00:30:02

to. And so the idea

00:30:04

that they would need to

00:30:05

be forced to do every

00:30:07

Make it to avoid a

00:30:08

dispute with the state doesn't

00:30:10

really match the reality of

00:30:12

the underlying relationships. Second proceed

00:30:20

with caution technique is split

00:30:21

Clauses where the contract actually

00:30:23

provides for multiple types of



00:30:26

dispute resolution and that's candy.

00:30:29

Absolutely appropriate in a given

00:30:31

transaction or contract, but you

00:30:34

need to be very careful

00:30:35

and draftees Clauses that you're

00:30:37

very clear about directing traffic,

00:30:39

these types of his bees.

00:30:40

Go to one mechanism, other

00:30:42

types of another, how did

00:30:44

the to interrelate can one

00:30:46

leads to the other all

00:30:47

that just requires careful. 1/3

00:30:50

potentially dangerous Bell and whistle



00:30:52

in one that I might

00:30:52

just put on the never

00:30:53

ever list is to impose

00:30:55

a long, stop time, limit

00:30:57

on the arbitration, proceedings. It

00:31:02

always sounds reasonable when you

00:31:03

write it down, when everybody's

00:31:04

happy and hasn't slept for

00:31:06

three weeks cuz they're finalizing

00:31:08

the deal and it's always

00:31:10

unreasonable and potentially prejudicial to

00:31:12

the parties and practice when

00:31:14

you're up against a really



00:31:15

aggressive longstop date from completing

00:31:18

the arbitration final proceed with

00:31:22

caution is really trying to

00:31:24

get to prescribe in my

00:31:26

opinion about disclosure or Discovery

00:31:28

and that's just for the

00:31:30

simple reason that you don't

00:31:32

know what you're going to

00:31:35

want and you might find

00:31:36

yourself really wishing you had

00:31:37

somebody 10 years ago. Had

00:31:40

it for close to Discovery

00:31:41

technique. That would really be



00:31:42

very important if you want

00:31:46

to have a little bit

00:31:47

more, predictability about the procedure.

00:31:49

Flavor of your case you

00:31:51

can make reference to bodies

00:31:53

of the collective practice, like

00:31:55

the IBA rules on The

00:31:56

Taking of evidence or the

00:31:57

Prague rules on the efficient

00:31:58

set of procedural expectations about

00:32:05

how to spell Discovery will

00:32:06

happen. But they aren't quite

00:32:08

as descriptive as not to



00:32:10

say there will, there will

00:32:12

not be a process. So,

00:32:16

two things that I would

00:32:17

say, too particular, about ideas,

00:32:19

and additions time limits. That

00:32:20

party should really probably never

00:32:21

include and that is Making

00:32:26

a Acer fudge compromise between

00:32:29

either choice-of-law choice of law

00:32:35

or a mixed arbitration agreement.

00:32:38

I drop Christian agreement. That

00:32:39

mixes administering institution and rules.

00:32:43

So what am I talking



00:32:43

about classic? Example of a

00:32:46

of a bad idea or

00:32:47

so it seemed like a

00:32:48

good idea but turned out

00:32:49

to be a nightmare, was

00:32:50

the governing law clause in

00:32:51

the suite of contracts, that

00:32:53

governed, the construction of the

00:32:55

channel tunnel between England and

00:32:56

France, and the governing law

00:32:57

clause in that set of

00:32:59

contract, provided the arbitrator's where

00:33:01

to apply principles of law,



00:33:04

into the law of England

00:33:05

and a lot of France.

00:33:06

Well, of course, by the

00:33:08

time lawyers, get done with

00:33:08

it. There aren't any better,

00:33:11

what is the law here?

00:33:19

I'm just trying American, F-16

00:33:21

perfectly appropriate in that quintessential,

00:33:34

you know, trans cross-border transactions

00:33:36

to just overall, you know,

00:33:38

we're all transnational here, but

00:33:41

it proved to be quite

00:33:41

problematic in practice. And then



00:33:44

hybrid causes submitting him to

00:33:48

be administered by the rules

00:33:50

and ways in which arbitration

00:33:56

procedure under those different sets.

00:33:57

The rules are different and

00:33:58

it could be confined and

00:33:59

is unable to administer according

00:34:03

to a different set of

00:34:03

rules. And then the final

00:34:06

Do is Jose's Horror Story,

00:34:10

witches, to have highly elaborated

00:34:12

and mandatory requirements as for

00:34:14

who should be a rabbit



00:34:16

Raider. Yes. Right in. His

00:34:20

example was it was the

00:34:21

dispute had actually had nothing

00:34:22

to do with the expertise

00:34:23

that was specified. Or you

00:34:26

may not be able to

00:34:27

find the Unicorn that you

00:34:28

described in your beautifully-crafted, arbitration

00:34:31

agreement, the bottom line where

00:34:33

I come from and is

00:34:36

probably more you want to

00:34:37

be thoughtful about the ways

00:34:38

in which you need to



00:34:39

accommodate the realities of the

00:34:41

transaction, are the parties that

00:34:43

you're dealing with. But either

00:34:46

you could really do a

00:34:47

lot worse than to start

00:34:49

with the ICC model Claus

00:34:50

and think about a relatively

00:34:52

short list of key things.

00:34:54

Each language, you know, anything,

00:35:06

I think there's a good

00:35:08

argument for that approach although

00:35:10

I will say and practice,

00:35:11

I'm not sure I've advised



00:35:14

on or seen an arbitration

00:35:16

agreement that doesn't actually specify

00:35:18

the number of arbitrators and

00:35:19

maybe just too much of

00:35:21

a control freak tendency by

00:35:22

Rafters or, or just did

00:35:24

in my experience is pretty

00:35:28

Universal. Instinct to actually pick

00:35:30

one person has three for

00:35:34

traitors Oh, thank you. I

00:35:38

think we'll have nightmares tonight

00:35:39

thinking about some of those

00:35:41

things before we turned a



00:35:46  
confidentiality, which Emery is going

00:35:48  
to discuss. We actually have

00:35:49  
the most controversial topic that

00:35:52  
the panel found while discussing.

00:35:56  
And so, I'm going to

00:35:57  
take an audience, pull on

00:35:59  
this. And I want everyone

00:36:01  
who thinks that the parties

00:36:03  
should specify the number of

00:36:04  
arbitrators in me agreement, to

00:36:06  
raise their hand. Okay. Now,

00:36:19  
who thinks you should leave

00:36:20  
at 1 or 3? Okay,



00:36:30

so now can someone from

00:36:31

either side? Tell us why,

00:36:33

why, why would you specify

00:36:35

one or three at the

00:36:36

outside of the contract? And

00:36:37

why would you maybe want

00:36:38

to leave it open? Someone

00:36:41

has to have an answer

00:36:42

predictability anybody on the opposite

00:36:55

side of the debate, want

00:36:57

to tell us why. And

00:37:00

are you would you like

00:37:01

to tell us why? Parties



00:37:09

with her entering into this

00:37:11

arbitration Clause have no idea

00:37:12

what type of dispute is

00:37:14

going to be. Usually, again,

00:37:15

you can, of course have

00:37:17

stayed parties and their you're

00:37:18

going to always be a

00:37:19

clause with three arbitrators, but

00:37:22

normal, General, commercial contract. Again,

00:37:26

you could have a very

00:37:28

large contract with a very

00:37:30

small dispute. And you could

00:37:31

have a small contract where



00:37:36  
the dispute becomes very important

00:37:37  
for the type of party

00:37:38  
that's involved in it. And

00:37:40  
I think again, having seen

00:37:41  
myself several contracts where the

00:37:45  
number is not specified the

00:37:47  
parties, especially if they're in

00:37:49  
an institution like the ICC,

00:37:50  
trust the institution to determine

00:37:54  
the correct number based on

00:37:55  
the type of dispute that

00:37:56  
actually happens to the Isis

00:37:58  
cord. If the parties can't



00:38:00

agree on the number, will

00:38:01

decide the number and the

00:38:03

ICC Court will get it

00:38:04

right? It will know whether

00:38:06

there should be one or

00:38:07

three. Arbitrators the other real

00:38:10

reason is, I've personally seen

00:38:12

those Clauses where parties will

00:38:14

take free arbitrators and then

00:38:16

when the dispute occurs one

00:38:19

side default, one side doesn't

00:38:21

show up and the party

00:38:23

who wants to go through



00:38:25

with the dispute? Has to

00:38:27

pay all the costs because

00:38:28

there's a non-participating party has

00:38:31

a huge burden. On them

00:38:33

has three arbitrators for a

00:38:35

dispute that again, could be

00:38:36

handled much more efficiently with

00:38:38

a sole arbitrator and no

00:38:40

one on the other side.

00:38:40

So again, I think it

00:38:44

really has to be decided

00:38:45

on a case-by-case basis, but

00:38:48

I would never say that



00:38:49

you should always determine the

00:38:51

number and the cars are

00:38:52

cases where you should do

00:38:53

it there cases, where we

00:38:54

know it's going to be

00:38:55

done because of the type

00:38:56

of parties that are involved.

00:38:58

But it for many General

00:39:01

commercial contracts, you may want

00:39:02

to keep your options open.

00:39:04

Imagine having a case for

00:39:06

it. Unpaid invoices \$100,000 in

00:39:10

dispute and you have to



00:39:10

pay for three arbitrators, it's

00:39:12

a nightmare. Simon and Ruiz

00:39:16

died and with the minority

00:39:19

of the group. Oh, okay.

00:39:21

Before we go about confidentiality,

00:39:25

thanks arbitration is inherently. Confidential,

00:39:31

crazy pants. I won't make

00:39:34

you say why. Okay, so

00:39:37

everybody that thinks it's not

00:39:38

inherently confidential. Great job now

00:39:44

Andrews. I think those are.

00:39:50

Students, who got the itis?

00:39:54

Again, yes, maybe some people



00:39:58

do have that assumption that

00:39:59

all arbitration is confidential. And

00:40:02

first again, we have to

00:40:03

distinguish what type of arbitration

00:40:05

are we talking about? Because

00:40:06

there's a big difference between

00:40:08

that's when arbitration in and

00:40:10

Commercial arbitration. We want to

00:40:12

talk about this topic, but

00:40:15

if we look at commercial

00:40:17

arbitration, now the situation is

00:40:20

that, it truly depends. Most

00:40:23

national laws. Do not have



00:40:25  
specific Provisions dealing with content

00:40:27  
that there are some. And

00:40:29  
I know right now that

00:40:29  
are the patient Act is

00:40:31  
under revision. And there is

00:40:33  
a discussion of having those

00:40:34  
confidentiality Provisions, put into the

00:40:37  
law. But there are and

00:40:40  
Hong Kong is another example.

00:40:42  
Whether there is a confidentiality

00:40:44  
provision actually in the law,

00:40:46  
but most laws do not

00:40:47  
have Pacific provisions and so



00:40:51

again, it becomes very important

00:40:53

for Parties to know what

00:40:55

they want for some parties.

00:40:57

They don't really care whether

00:40:58

the arbitration remains confidential and

00:41:04

they believe it should be

00:41:07

in the public domain. Other

00:41:09

parties. Honestly think that confidentiality

00:41:11

is one of the reasons

00:41:12

they're going to go to

00:41:13

arbitration. And if you look

00:41:15

at many of this surveys

00:41:17

and studies that are done



00:41:18

such as Queen Mary etcetera,

00:41:19

confidentiality always comes in as

00:41:22

one of the reasons parties

00:41:23

want at least commercial arbitration.

00:41:25

So confidentiality is important to

00:41:29

you, you need to take

00:41:31

care of it. Now, you

00:41:32

can do that in your

00:41:33

arbitration Clause by having some

00:41:35

reference to confidentiality. I'd say,

00:41:37

it's probably more common to

00:41:39

have a full confidentiality clause

00:41:42

in the contract that will



00:41:43

also cover the arbitration. And

00:41:47

if you don't have it

00:41:49

in your contract, then at

00:41:50

the time of the dispute

00:41:52

to ask your betrayal. Order

00:41:54

or for the parties themselves

00:41:55

to agree have a confidentiality

00:41:58

agreement that they enter into,

00:42:00

but when you're drafting your

00:42:02

arbitration Clause, you definitely need

00:42:04

to think, do I want

00:42:06

to have confidentiality or not?

00:42:09

And on the other side,



00:42:10  
if I don't on confidentiality

00:42:12  
because in some places, it

00:42:13  
may be assumed or may

00:42:15  
be required by the law,

00:42:16  
then you need to specify

00:42:18  
that as well. The other

00:42:21  
thing I want to say

00:42:22  
about this is it's not

00:42:24  
enough to just say confidentiality

00:42:26  
you have to be very

00:42:28  
specific about what will be

00:42:30  
covered by those confidentiality requirements

00:42:32  
to be very existence of



00:42:36  
the dispute should be confidential,

00:42:38  
the documents that will be

00:42:40  
produced, that will be obtained

00:42:42  
from the other side, not

00:42:44  
just a document. That will

00:42:45  
be introduced into the arbitration,

00:42:47  
any procedural decisions. The awards

00:42:50  
that will be rendered by

00:42:51  
the arbitrators and not limit

00:42:54  
yourself to the arbitration. But

00:42:56  
think about what about the

00:42:57  
court proceedings that may be

00:42:59  
required for the forcing or



00:43:01  
setting aside the award you

00:43:03  
want to think about the

00:43:04  
people that are going to

00:43:05  
be involved. And again it

00:43:08  
will be more than just

00:43:09  
the party. So the party's

00:43:11  
the council, the arbitrator's expert

00:43:14  
Witnesses, all of these people

00:43:16  
that make institutions that they

00:43:18  
have access to information You

00:43:21  
want to be very specific

00:43:22  
about how confidentiality is going

00:43:25  
to affect them, and then



00:43:27

you have to take into

00:43:28

account the limits that may

00:43:30

exist, because we can all

00:43:32

say we want confidential, but

00:43:33

they're going to be mandatory

00:43:36

requirements under National laws for

00:43:39

some information that may have

00:43:41

to be disclosed or for

00:43:43

the parties to be able

00:43:44

to pursue their legal rights.

00:43:45

Or for example, if information

00:43:47

is already in the public

00:43:49

domain. So you have to



00:43:50

think again about what will

00:43:52

be confidential, who's covered by

00:43:54

this and what are the

00:43:55

limits on that confidentiality? And

00:44:00

I know confidentiality was something.

00:44:01

We talked a lot about

00:44:02

at the ICC a couple

00:44:04

of years ago because I

00:44:06

think Andre wasn't there and

00:44:08

there's something at the ICC

00:44:09

started doing. May be back

00:44:12

in 20, 15, 16 17,

00:44:14

because again, mostly commercial arbitration



00:44:21

cases. When we saw a

00:44:23

commercial that could still involve

00:44:25

State parties in a large

00:44:26

number of ICC cases to

00:44:27

have stayed parties were confidential

00:44:33

or treated as confidential, a

00:44:36

definite by the institution. And

00:44:38

so the question became what

00:44:39

happens to be and whether

00:44:41

the awards should be published

00:44:43

and there has been a

00:44:45

huge evolution in this area.

00:44:47

We are now the ICC,



00:44:50

at least the process. Is

00:44:53

that Awards will be published

00:44:56

information unless the party opt

00:45:00

out. So this is Miss

00:45:01

mention this idea of opting

00:45:03

out, what is institutional Provisions?

00:45:05

Do you need to think

00:45:06

about that? You might want

00:45:07

to opt out of so

00:45:09

if you do not want

00:45:10

your Award to be published,

00:45:12

you need to opt out

00:45:15

because those normal process will



00:45:17  
be for it to be

00:45:18  
published so you can do

00:45:20  
that now in your closet

00:45:22  
in your reality provision. But

00:45:25  
you should also know the

00:45:27  
way the ICC works is

00:45:29  
that they're still going to

00:45:30  
ask the parties. This is

00:45:32  
The Insider story. They're still

00:45:35  
going to ask the parties

00:45:36  
in the arbitration. Is there

00:45:39  
any objection to the Art

00:45:41  
Award being published? And so,



00:45:43

you're going to have that

00:45:44

asked you up front. When

00:45:45

the proceedings started you're going

00:45:47

to have asked you when

00:45:49

you get to the end

00:45:49

of the case. And as

00:45:51

I can confirm, you're going

00:45:54

to have a two-year period

00:45:56

after the case where they're

00:45:58

still not going to publish.

00:45:59

So you can still raise

00:46:01

your objection during that time.

00:46:03

So something to think about



00:46:05  
for your claws publication. But

00:46:08  
still, you've got a little

00:46:09  
bit of time after Where

00:46:11  
did you still want to

00:46:12  
opt out. Some people may

00:46:13  
think it's great, that there's

00:46:15  
all this publishing. Other people

00:46:17  
is very important for them

00:46:18  
that the war does remain

00:46:20  
confidential until then, you need

00:46:22  
to think about that for

00:46:23  
your car. Yes. And I

00:46:25  
will mention that there is



00:46:26

a new model Claus on

00:46:27

the ICC website, which does

00:46:29

address the publication boards. And

00:46:31

you will be asked in

00:46:32

a thousand ICC letters from

00:46:34

the Secretary of whether you

00:46:35

agree or not. So, yes,

00:46:37

you have plenty of occasions

00:46:38

to eject, or gree, or

00:46:40

next, poll is who thinks

00:46:42

your words should be published.

00:46:48

Who thinks they should not.

00:46:53

Okay, that's not 50-50. But



00:46:55  
can you tell us how

00:46:58  
do you candle your client?

00:47:00  
How would you discuss this

00:47:01  
issue with your client if

00:47:02  
you're joshing arbitration agreement? And

00:47:04  
it's no fun. You know,

00:47:06  
any award that may come

00:47:08  
out in any, just you

00:47:09  
that may happen, maybe published

00:47:10  
multiple things, as least was

00:47:20  
explaining today. I don't think

00:47:25  
I have ever actually discussed

00:47:27  
confidentiality including a confidentiality provision



00:47:29  
having to included ice provision

00:47:32  
and I know they will

00:47:33  
ask me and I will

00:47:34  
tell you they were they

00:47:36  
need for you to consent

00:47:37  
and yes, we can send

00:47:41  
one another practical if one

00:47:43  
party disagrees. They won't publish.

00:47:45  
Which that gives you leverage

00:47:48  
on the road and flexibility

00:47:50  
in the sense that you

00:47:51  
don't have to decide this

00:47:52  
up front. But I think



00:47:55

there is, I think, I

00:47:57

think it was Lee's who

00:47:59

draw an important difference is

00:48:02

the actress investor-state, arbitration under

00:48:04

commercial and I think Fight

00:48:09

for transparency. And the more

00:48:11

the need for more information.

00:48:18

Is being pushed in more

00:48:19

in the mesosphere arbitration than

00:48:21

in the commercial arbitration. There

00:48:23

has been a push on

00:48:24

the ICC has done it

00:48:24

for commercial arbitration. Another centers,



00:48:27

but I think I'm going

00:48:29

to use a word that

00:48:30

people don't like this paranoia

00:48:32

of transparency. Is more focused

00:48:35

on investor State and It's

00:48:38

more, you too complex. And

00:48:40

today, the guy that you

00:48:42

want to know, you want

00:48:43

to have credit everything. So

00:48:47

Wife talking to the client.

00:48:48

These are not things are

00:48:49

going to tell him what.

00:48:50

Let's agree to accompany. Well



00:48:53

maybe in ten years, there

00:48:54

will be four cases of

00:48:55

the arbitrator realistic when you

00:49:00

discuss confidential you do with

00:49:01

your kind, you discuss it

00:49:03

based on reputation who the

00:49:06

other parties and how you

00:49:08

may think that things will

00:49:10

unfold if you're going to

00:49:11

lose your client, is not

00:49:13

going to want this Republic,

00:49:15

would want to hide it

00:49:17

under a rock and the



00:49:18

only way to become public.

00:49:20

If there were these enforced,

00:49:21

know that there is there

00:49:23

a strategic decision to be

00:49:25

made, but EBT at least

00:49:27

in my view. This is

00:49:29

not something you you discuss.

00:49:31

And again, there are you

00:49:32

meant for Would I want

00:49:34

that works to be more

00:49:35

Publix? What is there would

00:49:36

be more foreseeability? I would

00:49:37

know. There would be more



00:49:39

predictability of outcomes. I would

00:49:41

know better. How to choose

00:49:42

an arbitrator more than in

00:49:43

like what? We called the

00:49:46

telephone strategies color, your friends

00:49:48

and ask them? What do

00:49:49

they know about this arbitrator?

00:49:51

And how has he resolved

00:49:53

in other cases? Would it

00:49:54

be better not to have

00:49:55

to do this? Yes, but

00:49:59

Anne-Marie side of the story

00:50:01

of Queen Mary, if I



00:50:03

recall correctly, that study said,

00:50:05

that the second thing that

00:50:07

parties buy used, most of

00:50:08

arbitration. What's on the inside.

00:50:09

So, daddy still in the

00:50:13

brain of people, when a

00:50:15

green to arbitration, a very

00:50:18

relevant this drug ring and

00:50:19

I can definitely tell you,

00:50:20

most of my clients, get

00:50:23

this question wrong. Dating arbitration

00:50:25

is confidential percent, even investor-state

00:50:27

arbitration when you go to



00:50:30

free trade agreements, when you

00:50:32

go to Certain mechanisms those

00:50:37

mechanisms include transparency. Requirements they

00:50:40

are surprised because that's not

00:50:47

the difference between a between

00:50:48

China and Russian but the

00:50:52

rules like everything, our amended

00:50:54

by the agreement of the

00:50:55

parties. And if you don't

00:50:57

agree that something confidential, unless

00:50:59

the rules of you, our

00:51:00

flight arrives for confidentiality it

00:51:02

won't be. So tell your



00:51:03

time, How do you recognize?

00:51:11

Agreements and your preference of

00:51:14

the parents. With the deputy

00:51:16

that you might have, especially

00:51:18

if you are, if you

00:51:19

are lawyers from Europe and

00:51:22

has lawyers Euros are Gatekeepers

00:51:24

in, you have to comply

00:51:25

with Emily Rose and there's

00:51:27

a global prohibition order against

00:51:31

MLA translate Alex or attraction

00:51:36

or interaction. So what is

00:51:42

produced by fraud cannot produce



00:51:43

any result. And that means

00:51:46

that we should have studied

00:51:49

this discussion. Not with what,

00:51:50

how many, what you need

00:51:52

to enforce an arbitration Clause.

00:51:54

With how many parties do

00:51:55

you need to produce enough

00:51:57

to have an arbitration hearing?

00:51:58

Because in terms of beneficial

00:52:01

ownership, you can have two

00:52:03

parties. Let's say one participation

00:52:05

in a country and a

00:52:07

one-party state, or which is



00:52:10  
an affiliate of Are you

00:52:12  
are and at the Regal

00:52:13  
of the same party so

00:52:15  
they can establish that the

00:52:17  
same one. If you're not

00:52:22  
to contract and you record

00:52:24  
this garbage rhaetian and their

00:52:26  
desired laundromat. Their Machinery, to

00:52:29  
launder money that we have

00:52:31  
seen it a lot in

00:52:33  
the last years in the

00:52:34  
engine. Some of you may

00:52:38  
be here in America, the



00:52:39

carpet guy sprays yet, yet

00:52:42

lawyers, you know what the

00:52:47

global racing against Germany language

00:52:49

lawyers or they should at

00:52:53

least designate arbitrators the subject

00:52:58

to be a report, the

00:53:01

red flags of money laundering.

00:53:03

When you are dealing with

00:53:04

this 5 million 5 million

00:53:07

dollars, I'm not sure. You

00:53:11

should be able to comply

00:53:13

because this is a public

00:53:15

order Reggie. So you should



00:53:16

be able to to comply

00:53:17

with your obligations under the

00:53:23

I'm not an expert on

00:53:27

money laundering regulations, although I

00:53:30

have operated in jurisdictions where

00:53:31

lawyers are required for Porter's

00:53:34

the arbitral regime, tries to

00:53:37

deal with that problem is

00:53:38

by imposing an obligation on

00:53:41

arbitrators essentially themselves on their

00:53:44

own initiative. If they become

00:53:46

aware of circumstances that suggests

00:53:47

there's fraud or illegality to



00:53:49

raise the issue, right? So,

00:53:51

so that it's not so

00:53:52

much on an arbitrator's to

00:54:03

have an eye to public

00:54:05

policy considerations as a principle

00:54:12

applies, to other kinds of

00:54:14

illegality or or fraud, that's

00:54:18

it becomes And whether or

00:54:24

not they're subject to the

00:54:25

regulatory regime is something, I'm

00:54:27

not an expert on others

00:54:29

in this room will know

00:54:29

better, whether that's because there's



00:54:31

a sanction in terms of

00:54:33

of AML regulations, but from

00:54:35

the perspective of an arbitration

00:54:37

practitioner watch those issues and

00:54:48

not to participate again. The

00:54:57

first one is, don't undervalue

00:55:00

the reputation of arbitrators City,

00:55:02

arbitrators are not there to

00:55:04

pay to play the reputation

00:55:06

of one case. There's no

00:55:11

more appointments. She's reputation in

00:55:14

the market Eastern. I respect

00:55:25

your reputation, but I'm afraid



00:55:27

that there are no apologies

00:55:29

of money, laundering of money

00:55:31

laundering and there's not there's

00:55:34

no specific training or education.

00:55:37

What is my there you

00:55:40

have then you may be

00:55:41

chose the wrong arbitrator. Oh

00:55:45

I'm sorry. I was just

00:55:46

going to say I think

00:55:47

from my experience when there

00:55:48

has been fraud that award

00:55:51

usually becomes public because somebody

00:55:53

is going to take it



00:55:54  
to a court. And so

00:55:56  
the issue of confidentiality becomes

00:55:59  
known because it's in front

00:56:00  
of a court. But Merrick

00:56:03  
take note, good ICC training

00:56:05  
on fraud coming up next

00:56:07  
year. So, thank you for

00:56:11  
your question. Before we move

00:56:12  
on, does anybody else want

00:56:14  
to talk about why Ward's

00:56:16  
should or should not be

00:56:16  
published by? Don't think they

00:56:18  
should be published? Can I



00:56:22

just throw in one factor

00:56:25

on the on the pile

00:56:26

for consideration? I will say

00:56:28

most common of my clients

00:56:30

will expect that their arbitration

00:56:31

will be called the survey

00:56:34

report but just to put

00:56:37

that put another pointer, put

00:56:38

the quite a different way.

00:56:39

There is a case to

00:56:42

be made that there are

00:56:44

areas of law where the

00:56:46

streets are. So uniformly submitted



00:56:49

to arbitration for resolution that

00:56:51

there is essentially a vacuum

00:56:53

of publicly available information about

00:56:55

how the law in that

00:56:56

area is developing and I'm

00:56:58

going to get the name

00:56:59

wrong. I'm going to forget

00:57:00

the name of the English

00:57:00

judge, who we don't have

00:57:10

any judicial decisions, construing standard

00:57:13

form contracts or chewing, you

00:57:16

know, other other Organize ourselves

00:57:22

by reference. To what is



00:57:24  
this language actually mean? And

00:57:26  
you can have a vacuum

00:57:27  
of information that that's one

00:57:28  
of the significant arguments in

00:57:31  
favor of finding a way

00:57:32  
to make available in a

00:57:34  
way that is consistent with

00:57:35  
our expectations. I think that

00:57:39  
that is I remember that

00:57:40  
it was the English Lord

00:57:42  
who said that arbitration was

00:57:43  
killing me development of Law

00:57:45  
and I think we have



00:57:47

to come back to. What

00:57:48

is the purpose of specially

00:57:49

if commercial arbitration and is,

00:57:51

and should be there between

00:57:58

two parties. And I'm very

00:58:00

sorry that parties want to

00:58:02

go to arbitration to have

00:58:03

their dispute between them resolved.

00:58:07

Not a common law system

00:58:10

where we're creating precedents that

00:58:11

we should be seeing applied

00:58:13

in future cases, but no

00:58:15

stopping this dispute in the



00:58:17

most economic way. Got it

00:58:22

all Touch by the poor

00:58:23

judges concerns that English lies

00:58:26

dying because of arbitration. Were

00:58:40

Europeans who know the difference

00:58:47

between. Rescue Toccata and non

00:58:53

Western Dakota very quickly. Non-publication,

00:59:02

I'm through a it's not

00:59:04

one or the other, is

00:59:05

there going to be publication

00:59:06

with anonymization, right? So it's

00:59:09

not really one or the

00:59:10

other know, as a choice



00:59:12  
there is a way of

00:59:14  
protecting that cost information that

00:59:16  
you don't want to be

00:59:18  
out there a while to

00:59:20  
seem. So I think a

00:59:21  
lot of these goals can

00:59:22  
be accomplished through the process.

00:59:23  
And hopefully, as time goes

00:59:25  
by, as these awards are

00:59:27  
online, people can see them.

00:59:29  
See how they look and

00:59:31  
from there, maybe, we'll see

00:59:33  
is even more towards being



00:59:34  
published because they will feel

00:59:35  
comfortable with that. Has a,

00:59:37  
she has a process that

00:59:40  
everything that we've been debating

00:59:42  
can actually be accomplished CC,

00:59:44  
time will tell, but we're

00:59:46  
seeing a slow March. Or

00:59:50  
we, you know whether this

00:59:51  
is actually at going right

00:59:53  
there. Thank you marrick. I'm

00:59:57  
so just too before we

00:59:59  
get to our last and

01:00:03  
most fun topic. I just



01:00:09

want to remind everyone that

01:00:10

there is a difference between

01:00:11

institutional and ad hoc arbitration.

01:00:13

And this is important when

01:00:15

you're dealing with your arbitration

01:00:17

agreement because those institutions, and

01:00:20

as someone who still has

01:00:22

my little ICC flag with

01:00:24

me at all times institutions

01:00:27

are there to help you

01:00:28

in the event. That there

01:00:29

is something wrong with your

01:00:31

claws. So, as was mentioned,



01:00:33  
earlier, the institution can determine

01:00:36  
the number of arbitrators the

01:00:38  
institution can appoint an arbitrator

01:00:40  
on behalf of the non-participating

01:00:42  
party. They can fix the

01:00:43  
place. Arbitration may take care

01:00:45  
of the finances. And so

01:00:48  
that's also something to consider

01:00:50  
when your dashing arbitration agreement

01:00:52  
is do you want an

01:00:53  
ad hoc arbitration or do

01:00:55  
you want an institution arbitration?

01:00:57  
And I think that the



01:00:58

ICC rules provide a lot

01:01:00

of safeguards and And having

01:01:03

what we are about to

01:01:04

talk about which is pathological

01:01:05

arbitration agreements. So For the

01:01:10

next 2 minutes. If everyone

01:01:14

can kind of, you know,

01:01:15

just talked to your neighbors,

01:01:17

you have the little notepad

01:01:18

and a pen. And look

01:01:20

at these Clauses and come

01:01:22

up with what's wrong with

01:01:23

them, or how you would



01:01:24

fix them, or some type

01:01:26

of advice. That would be

01:01:28

great though. Thank you. Is

01:03:20

everybody ready? Was anybody like

01:03:22

more time raising hands? All

01:03:26

right. So who is brave

01:03:28

enough to talk about? Claus

01:03:30

number one. Actually. I think

01:03:43

with the fullest when it

01:03:44

gives the provisions for both,

01:03:45

but it doesn't say when

01:03:47

would be good for arbitration?

01:03:48

And when will we go



01:03:49  
for? Litigation is just giving

01:03:50  
both options but Ben has

01:03:52  
which applicable, it doesn't say

01:03:53  
that. Dessa what it results

01:03:59  
in is not an unequivocal

01:04:00  
submission of deceased arbitration, right?

01:04:02  
It's like well, we could

01:04:04  
do either. And if I'm

01:04:08  
a list, you would be

01:04:10  
surprised how many closes like

01:04:12  
that? You see, particularly, when

01:04:14  
people start getting Santa Claus's,

01:04:17  
you have huge problems because



01:04:20

I trust them, but you

01:04:26

will like that in separate

01:04:29

cuz of the contract. So,

01:04:30

you need to reconcile the

01:04:31

contract, which are absolutely incompetent.

01:04:34

These really exist in the

01:04:43

courts are going to find.

01:04:44

This is not an arbitration

01:04:45

Clause arbitration has lost the

01:04:49

right to put arbitration. So

01:04:55

so they're going to Messing

01:04:58

with the Delaware. Okay? Number

01:05:00

to the second one, who



01:05:02

wants to talk about that

01:05:02

one? Mentioned. If I can,

01:05:18

you say that again in

01:05:18

the microphone for our listeners

01:05:20

at home, he is something

01:05:30

that is not necessary for

01:05:32

the intention to be designated

01:05:34

to the arbitration clause. And

01:05:38

you also said that it

01:05:39

seems like a l c,

01:05:41

i a however, who knows

01:05:45

where the name of the

01:06:05

institution doesn't get translated properly.



01:06:07

You want to tell us

01:06:12

what you do since we

01:06:13

have and what would you

01:06:15

do with this class? Would

01:06:16

you go to court? VDOT

01:06:18

Bridget but probably the parties

01:06:21

can renegotiate on the institution

01:06:23

or submit the dispute to

01:06:25

court to decide on the

01:06:26

institution. But I'm not sure

01:06:38

and I would like to

01:06:39

hear the part about the

01:06:41

day, there is a clear



01:06:43  
intention of arbitration because the

01:06:45  
first is the worst there,

01:06:47  
don't say all these pews

01:06:49  
are to be arbitrated. They

01:06:52  
say all disputes to be

01:06:55  
resolved, through arbitration will be

01:06:58  
held, or we would be

01:06:59  
before the CIA. So, if

01:07:02  
you consider that with the

01:07:03  
first line is, is not

01:07:06  
saying is not to me.

01:07:07  
At least at first glance

01:07:08  
is not conveying a clear



01:07:11  
indication driving Theory. I don't

01:07:14  
know what was, but do

01:07:15  
you guys think? Now, I

01:07:16  
can see that in context

01:07:26  
all disputes to be resolved

01:07:27  
through arbitration, by the caa's

01:07:29  
read more naturally as all

01:07:32  
disputes. Comprehensively are to be

01:07:36  
resolved in arbitration by the

01:07:37  
CIA rather than any disputes

01:07:40  
or disputes that are resolved

01:07:41  
by arbitration should be resolved

01:07:43  
by the way I think



01:07:43

you have to do more

01:07:44

blue pencil work get to

01:07:46

the second interpretation then to

01:07:48

the first but you know

01:07:50

this is not where you

01:07:51

want to be. But thank

01:07:59

you. That's very interesting because

01:08:00

that is what happens in

01:08:01

practice. Okay, the third one's

01:08:04

a little long and I

01:08:05

believe that this was an

01:08:07

arbitration agreement that may have

01:08:09

been submitted to an institution



01:08:12

So, what's wrong with it?

01:08:21

Hi Liz. Would you like

01:08:22

to tell us what's wrong

01:08:23

with it? Since we are

01:08:24

running on the first sentence?

01:08:31

Okay? The second sentence, any

01:08:34

matter of dispute and which

01:08:36

is not provided for presumably.

01:08:38

In this agreement shall be

01:08:41

submitted to arbitration cuz you

01:08:46

have no idea what that

01:08:46

even means. It's not clear

01:08:48

that they're submitting all disputes



01:08:50  
but only disputes that are

01:08:51  
not Provided for in the

01:08:54  
agreement. So it's it's it's

01:08:55  
frankly I actually meant to

01:09:02  
say and then I don't

01:09:03  
know whether Knoxville Tennessee has

01:09:05  
enacted statutes a relationship. Maybe

01:09:08  
it has in which case

01:09:09  
ye Knoxville but again, not

01:09:13  
really what you want. And

01:09:16  
it just didn't work out

01:09:18  
with this in. This is

01:09:18  
like a real Clause that



01:09:19  
and I believe this is

01:09:20  
a real called and it's

01:09:22  
the last one. The last

01:09:37  
one is actually from something

01:09:39  
I had to deal with.

01:09:40  
So what's wrong with the

01:09:41  
last one? I guess, it

01:09:50  
says, she'll be finally settled

01:09:52  
through. Arbitration southern district of

01:09:54  
New York, but doesn't specify,

01:09:56  
you know, which institution southern

01:09:58  
district of New York is

01:09:59  
just a venue. So there's



01:10:02  
no real explanation of how,

01:10:04  
you know, what would be

01:10:06  
the arbitration mechanism. I guess

01:10:08  
there's a clear intention to

01:10:09  
arbitrate, but really nothing beyond

01:10:11  
that. We have another opinion.

01:10:22  
Burmese not very clear. They

01:10:24  
want arbitration because when I

01:10:26  
saw southern district of New

01:10:27  
York, I was thinking about

01:10:28  
the court. So I'm puzzled

01:10:31  
are the last five words

01:10:34  
sentence. I, I don't know



01:10:36  
what they want, arbitration oak

01:10:37  
or not. Yes, thank you.

01:10:40  
I can tell you that

01:10:41  
when you saw this clause

01:10:43  
in the contract, it was

01:10:44  
a clear, copy paste. And

01:10:45  
someone forgot to delete a

01:10:46  
word or phrase. So, I'm

01:10:49  
clear with a forgot to

01:10:50  
delete arbitration or the reference

01:10:52  
to the southern district of

01:10:53  
New York, which would have

01:10:55  
been, you know, that exclusive



01:10:57  
jurisdiction Clause. So, does anybody

01:11:02  
have any questions in general?

01:11:04  
I believe we have reached

01:11:05  
the end of our time

01:11:06  
but Like the sister, I

01:11:25  
think her measure something. Some

01:11:27  
of that stuff and I

01:11:35  
don't think southern district of

01:11:36  
New York is seen as

01:11:38  
a geographic location. I mean,

01:11:40  
it's when lawyers here in

01:11:41  
at least it's the federal

01:11:43  
court, but yeah. I did



01:11:46  
change the name of the

01:11:47  
court so you can figure

01:11:48  
out who this came from,

01:11:49  
just in case, My questions

01:12:02  
with regards to confidentiality when

01:12:03  
it's not mentioned in the

01:12:04  
agreement and the parties are

01:12:06  
not able to come to

01:12:07  
a consensus, they want to

01:12:08  
publish your not. So do

01:12:10  
they actually have to present

01:12:11  
Arguments for and against or

01:12:13  
how is it decided in



01:12:15  
that scenario? You just send

01:12:17  
an email to the Secretariat

01:12:18  
and say we do not

01:12:19  
want this published. The fever

01:12:24  
is given to it not

01:12:26  
being published and there will

01:12:28  
be many, many, many paragraphs,

01:12:30  
many letters that will explain

01:12:31  
to you how to do

01:12:32  
that. What if the parties

01:12:38  
did not of out on

01:12:39  
the roll? Is it is

01:12:41  
not going to be serious,



01:12:42  
is going to is not

01:12:44  
going out. And then, so

01:12:47  
why does it look see

01:12:49  
if I did? The what,

01:12:54  
what is the rule for?

01:13:00  
Probably what I would tell

01:13:01  
you is I like she's

01:13:01  
more would love your comment

01:13:02  
but unfortunately that's how it

01:13:06  
is. There's no rule in

01:13:07  
the rules that I see.

01:13:08  
Seaweed always ask you if

01:13:10  
one party has no, it's



01:13:11

no. There's a big push

01:13:14

for publication and I think

01:13:16

that she's doing the right

01:13:17

thing that she always does

01:13:18

the right thing, but there's

01:13:23

an argument to be made

01:13:25

that if you didn't opt

01:13:27

out there was are cleared.

01:13:28

Don't say nothing about that.

01:13:29

So it's not, I think

01:13:33

you could also get in

01:13:33

a lot of situations and

01:13:35

the preference of the ICC.



01:13:38

I would think speculating would

01:13:42

be that they want Awards

01:13:43

to be published and with

01:13:45

a lot of non-participating responding

01:13:47

if you had just an

01:13:49

opt-in system, you would probably

01:13:51

not get a lot of

01:13:53

awards published. And so that

01:13:55

is why I think it's

01:13:56

it's very important to underscore

01:13:58

the fact that you can

01:13:58

now put it in your

01:13:59

arm. Agreement, that you do



01:14:02  
not want your award published.

01:14:04  
The other point making this

01:14:06  
is instead, of course, like

01:14:09  
all of us in this

01:14:10  
room probably, or maybe not

01:14:11  
the students at the ICC

01:14:13  
is an institution that's offering

01:14:15  
a service and they need

01:14:17  
to stay sufficiently attuned to

01:14:22  
the Expo. We aren't we?

01:14:23  
All put our hands up.

01:14:24  
Staying with your clients with

01:14:25  
one competition, he would have



01:14:26  
posted, okay Shania. I imagine

01:14:28  
the reason there's not been

01:14:29  
an instant Draconian and position

01:14:32  
of a of a black

01:14:34  
leather interpretation of the rules

01:14:35  
because they realize their mindsets

01:14:38  
are changing. And and and

01:14:39  
it requires a little bit

01:14:42  
of time for people to

01:14:43  
become attuned to that and

01:14:46  
of testing the waters to

01:14:48  
see whether this is, or

01:14:51  
is something that is a



01:14:52  
problematic utterly uninformed about why

01:14:55  
the practice is not as,

01:14:57  
you know, Guillotine. Like I

01:15:00  
said, I think Okay. Last

01:15:15  
question. I'm just a short

01:15:19  
question. Do you think that

01:15:20  
the decision about the costs

01:15:22  
of the arbitration should be

01:15:23  
included in every tration? Clause,

01:15:25  
it depends what you say

01:15:29  
because I'm Again, people don't

01:15:33  
listen to enough to lease.

01:15:35  
And the problem you see



01:15:36

all the time is they

01:15:38

include concepts are called shall

01:15:40

be paid by the prevailing

01:15:41

party. What does that mean?

01:15:43

If there are 10 games

01:15:45

and you win, five are

01:15:46

you the prevailing party? Are

01:15:47

you not the prevailing party?

01:15:48

The ICC rules already deal

01:15:52

with that and give discretion

01:15:54

to the arbitrator's. My opinion

01:15:57

is, it's better for the

01:15:58

arbitrator's to deal with that.



01:16:00

When you negotiate a contract

01:16:02

to decide Workout cost should

01:16:04

be allocated. I agree. I

01:16:08

agree that again to the

01:16:11

fall back under. The rules

01:16:12

has the discretion of the

01:16:13

arbitrators and cost can be

01:16:15

an important power for the

01:16:17

arbitrator's to actually sanction party

01:16:19

behavior. And I don't think

01:16:21

that should be taken away

01:16:22

from the arbitrator's. They should

01:16:23

have that power to put



01:16:26

the cost on parties that

01:16:27

have made, the preceding heavier

01:16:30

that have not complied with

01:16:31

orders. From the arbitral tribunal

01:16:32

is important power of the

01:16:35

arbitrator's to use cause okay,

01:16:39

can you get the actual

01:16:40

last question because he's a

01:16:41

partner him. So I just

01:16:46

want to comment on the

01:16:47

cost ratio. I think that's

01:16:48

a good question. It's not

01:16:50

often addressed unfortunately, but given



01:16:54  
that place following result used

01:16:58  
to only be a UK

01:16:59  
concert and the US has

01:17:02  
a Quite Contrary presumption. But

01:17:05  
now with investment arbitration it's

01:17:08  
becoming almost the universal rule

01:17:10  
in investment arbitration. And so

01:17:13  
I think in commercial agreements

01:17:15  
there often could be some

01:17:17  
misunderstanding as to which ruled

01:17:22  
which general was going to

01:17:24  
apply is it going to

01:17:25  
be the prevailing party is



01:17:27

going to get cost allocation

01:17:29

of the end or not?

01:17:30

And I think it's important

01:17:32

because it also affects who

01:17:33

brings clients because if you

01:17:36

if you only bring claims

01:17:38

if you think you're going

01:17:39

to win then maybe some

01:17:41

of the spurious claims would

01:17:42

not be brought. so, I

01:17:45

do think it has a

01:17:46

benefit in adding it to

01:17:48

your cause Thank you. And



01:17:52

thank you everyone for being

01:17:54

here. Still drinks. I think

01:17:59

there's still food. I don't

01:18:01

think we're kicking anyone out.

01:18:03

Thank you. And I hope

01:18:09

everyone learned something and you

01:18:12

have all of our names.

01:18:13

So if anybody has any

01:18:15

questions and we don't get

01:18:16

a chance to chat, send

01:18:17

us an email. I am

01:18:18

speaking on behalf of everyone

01:18:19

and I was great to



01:18:21

see all you do. Thank

01:18:23

you. Welcome everyone to Washington

00:00:05

arbitration week at Third Edition

00:00:07

and this is the how

00:00:10

to do how to do

00:00:12

is on ICC arbitration clauses

00:00:16

and this particular session is

00:00:20

actually was designed especially by

00:00:25

ICP. Yes. So everyone here,

00:00:28

especially Mary-Kate, and you'll go

00:00:30

and Mariah can dance, the

00:00:31

team of ICC in New

00:00:34

York. So we're really glad



00:00:36

that we are collaborating with

00:00:39

ICF at Worlds, were very

00:00:41

grateful to Mark's, emerald and

00:00:43

Ken Mary Kate's and an

00:00:46

older partnership and attorneys. Here

00:00:49

at the bakery. I had

00:00:52

a chance of all so

00:00:53

you're working meeting at Mark

00:00:56

and, you know, their endeavours.

00:00:58

So it was a really

00:01:00

positive encounter. So we're real.

00:01:02

Grateful that you're supporting Washington

00:01:05

are fishing weekend to create



00:01:06

a community of of lawyers

00:01:09

that meet not only in

00:01:13

Miami or blind or or

00:01:15

or in New York, but

00:01:17

actually of lawyers of Washington

00:01:19

DC in Washington DC and

00:01:21

the Mike my, my function

00:01:31

here is to welcome the

00:01:34

panel and the introduce the

00:01:37

moderator. I would also like

00:01:38

to introduce the representative of

00:01:41

ice tea off in Washington,

00:01:43

d.c. Manuel. He is an



00:01:47  
international lawyer, specializing in international

00:01:49  
public, international law, and investigations

00:01:54  
relating to corruption money laundering

00:01:56  
sanctions and terrorist financing. And

00:01:58  
he's also nice to your

00:02:00  
representative as, as I said.

00:02:02  
One thing that I miss

00:02:05  
saying, for those of you

00:02:06  
who might not know me

00:02:08  
and I had a boutique

00:02:13  
law firm called P &

00:02:15  
2 years ago together with

00:02:17  
Ian Laird at, we thought



00:02:18  
that it might be a

00:02:19  
good idea to have a

00:02:20  
Washington appreciation week and we

00:02:22  
were actually lucky. We didn't

00:02:24  
think that we were lucky

00:02:25  
at the time but we're

00:02:26  
lucky as epidemic. Hit on

00:02:29  
that enabled, us to have

00:02:30  
everything online and we're able

00:02:33  
to serve build the name

00:02:35  
for 2 years. And this

00:02:37  
is the first time that

00:02:38  
we're doing this up in



00:02:40

person as I was telling

00:02:41

you, in other panels, when

00:02:44

we reach out to when

00:02:45

we were programming everything, we

00:02:48

thought perhaps we might have

00:02:49

five or four panels in

00:02:51

person and that would be

00:02:52

a good goal and then

00:02:54

people start to raise their

00:02:57

hands. Now we want one

00:02:58

or two or three or

00:03:00

four panels out of the

00:03:01

results were having about and



00:03:03

90 or 95%, I would

00:03:04

say in for some panels,

00:03:06

this being very rich one,

00:03:15

I would also like to

00:03:16

introduce Mary, Kate Wagner. She

00:03:19

is, of course, together with

00:03:21

jaegwon and others, reckon. He

00:03:24

seemed the designer of this

00:03:25

panel, she is at Baker

00:03:29

Hostetler, where we are in

00:03:31

the international dispute group lending,

00:03:34

assistance on International commercial arbitration

00:03:35

investment, arbitration and litigation Mary-Kate



00:03:39

spent five years as Deputy

00:03:41

counsel with the Secretariat of

00:03:44

the ICC. In New York,

00:03:45

at where she oversaw and

00:03:47

managed hundreds of international and

00:03:49

domestic operations, including emergency, an

00:03:52

expedited procedure arbitration has received

00:03:55

the JD from Villanova French

00:04:00

in the French and the

00:04:02

international business law from the

00:04:04

store in Paris. And she

00:04:07

speaks fluent French at which

00:04:08

you might need to do



00:04:09

this to you today. Anyway,

00:04:13

it's great to be here.

00:04:15

Lovely to have this evening

00:04:17

hosted by bakerhostetler and with

00:04:21

you y'all go first and

00:04:23

then Mary-Kate I hope that

00:04:25

you can hear me take

00:04:26

it away please. And can

00:04:27

you all hear me? What

00:04:31

was the thank you very

00:04:32

much for San Antonio for

00:04:34

the kind introduction. And also

00:04:35

it has delighted to be



00:04:39  
coordinated with the Bank, Washington

00:04:41  
arbitration week and we certainly

00:04:43  
hope it's a collaboration. They

00:04:44  
can continue to the Future

00:04:45  
after those who don't know.

00:04:47  
I c c a p.

00:04:48  
I c c, young arbitration,

00:04:50  
ATR, 40 under 40 from

00:04:55  
across the world. In basically

00:04:56  
said, we set up different

00:04:57  
events and opportunities for a

00:04:59  
young practitioners to gain skills

00:05:01  
Builder networks. And also to



00:05:03

become more familiar with ICC

00:05:04

picture resolution Services, across the

00:05:07

network, 30,000 young practitioners. And

00:05:10

if anyone here is interested

00:05:11

in joining I would encourage

00:05:12

you all to to visit

00:05:14

ICC at website. There you'll

00:05:16

find information on how to

00:05:17

become a member and also

00:05:20

you have my contact information.

00:05:21

Should I be able to

00:05:23

be of any service to

00:05:24

you all in that? Today's



00:05:27

event is, I think really

00:05:29

typifies what iccs is all

00:05:30

about, discussing arbitration clauses, Taylor

00:05:38

to law students dresses as

00:05:40

as a camper season practitioners.

00:05:42

It's relevant for everybody. So

00:05:43

we have the opportunity to

00:05:44

bring practitioners and end in

00:05:47

Stevenson die in season practitioners,

00:05:49

all together under the icpf

00:05:51

umbrella. I'd also like to

00:05:56

know that he's interested in

00:05:59

helping. I just read it



00:06:07  
again. With the company said

00:06:08  
I we are very grateful

00:06:09  
for Gracious and generous posting

00:06:14  
of tonight's event, and, and

00:06:15  
we really do rely on,

00:06:16  
on Law, Firm Partners. I'd

00:06:18  
be able to host events

00:06:18  
like this. So I'll just

00:06:22  
want to provide a very,

00:06:23  
very brief introduction to to

00:06:25  
some of our remaining. Until

00:06:35  
I won't be going to

00:06:36  
be experienced today and also



00:06:56

an extensive experience in in

00:06:59

commercial arbitration. She also has

00:07:09

been a great amount of

00:07:11

experience in a lesser known

00:07:12

fact, for you all. He's

00:07:13

also a soccer player. So

00:07:15

if you have any questions

00:07:18

without further ado, I'd like

00:07:20

to pass the the check

00:07:21

in the floor back to

00:07:21

Mary-Kate and okay, thank you

00:07:28

deal. Go. We wish you

00:07:30

were here but we are



00:07:31

glad that you were able

00:07:31

to join us for chili.

00:07:32

So thank you to everyone

00:07:35

who showed up today. Thank

00:07:36

you to ICC. Yes, and

00:07:38

thank you to my firm

00:07:39

Baker Hostetler for supporting not

00:07:42

just myself but I see

00:07:44

see. Yeah, I think it's

00:07:45

very important for young practitioners.

00:07:46

Be able to get together

00:07:47

and to create a new

00:07:49

generation of well-trained. Arbitration lawyers



00:07:54  
said not to say that

00:07:55  
the older generation wasn't but

00:07:56  
we'll discuss drafting arbitration agreements.

00:08:05  
We all know that arbitration

00:08:06  
is based on content, but

00:08:08  
you have to know to

00:08:09  
what you are consenting. So

00:08:12  
what we are trying to

00:08:13  
do is to make sure

00:08:15  
that when you go before

00:08:16  
your client, you will produce

00:08:18  
a clause that will avoid

00:08:20  
any dispute. Once you have



00:08:23

your dispute, none of us

00:08:25

one disputes, but sometimes Do

00:08:27

a rise in life, but

00:08:28

you do not want to

00:08:30

be in a situation where

00:08:31

you cannot accept your invitation

00:08:32

agreement. So before I pass

00:08:37

the floor to Liz, I

00:08:39

would like to reiterate that

00:08:41

this is an interactive program.

00:08:43

It's a workshop. So I

00:08:44

have a question for you

00:08:46

and actually So, how many



00:08:55

words do you think the

00:08:58

shortest arbitration agreement can be

00:09:00

to be effective? 2. +

00:09:12

3. How many to would

00:09:14

you like to tell us

00:09:15

the? Why you think that?

00:09:23

Basin consent. And hopefully you

00:09:26

have the two parties to

00:09:28

go to consent to arbitration.

00:09:29

The which two words would

00:09:31

you put in arbitration agreement?

00:09:35

I do, I do. Just

00:09:40

like marriage one, in which



00:09:50

you promised sing the practice

00:09:53

of the courts to watch

00:09:54

blind closes and will be

00:09:56

different. And I do, for

00:09:58

my case, I've let it

00:10:00

go to the case where

00:10:00

we enforce an arbitration process,

00:10:02

but it was written authorization.

00:10:04

They get the case and

00:10:15

got to convince a judge

00:10:16

that we needed three all

00:10:17

betrays annoying, but yeah. One.

00:10:19

What is efficient at ease



00:10:20  
in France? Thank you both

00:10:24  
see what our analysts think.

00:10:31  
This is way too high.

00:10:32  
So so I agree that

00:10:36  
one word is adequate. If

00:10:37  
you've got the support of

00:10:38  
one word is adequate. If

00:10:44  
it if it in context,

00:10:45  
expresses, the parties consent to

00:10:47  
have their disputes resolved by

00:10:48  
arbitration is even better. If

00:10:50  
that word is in a

00:10:51  
section of your contract with



00:10:52  
the heading dispute, resolution arbitration.

00:10:55  
Because then, the parties intention

00:10:56  
is clear. And I would

00:10:58  
submit that, it's even better

00:11:00  
to have two words, which

00:11:02  
would be something like you

00:11:04  
see on the screen, arbitration

00:11:07  
specifying, a seat or arbitration

00:11:10  
specifying some rules. And that's

00:11:12  
because if you have sufficient

00:11:15  
words, whether it's one or

00:11:16  
two more than one to

00:11:18  
indicate a clear intention, and



00:11:19

you have some indication of,

00:11:25

if you have a clear

00:11:27

indication of the party, Is

00:11:31

that in, and of itself

00:11:32

is enough to divest a

00:11:35

quart of jurisdiction to hear

00:11:37

this, right? It may not

00:11:39

be enough to get you

00:11:40

answers to all of the

00:11:41

questions that you immediately have

00:11:42

about how the arbitration will

00:11:44

proceed, but it should be

00:11:46

enough if it's interpreted correctly



00:11:48

as the party's intention to

00:11:49

arbitrate to divest a quart

00:11:51

of jurisdictional Eve parties with

00:11:53

no alternative other than arbitration.

00:11:56

I think the second word

00:11:58

that second word seat, or

00:12:00

or a choice of it

00:12:01

is important because that those

00:12:07

at even that short hand

00:12:08

reference enables you to plug

00:12:11

into a legal framework or

00:12:13

a, or a contractual framework

00:12:15

effectively when you're incorporating a



00:12:16

feeling that you might otherwise

00:12:21

see, a more typical arbitration

00:12:24

agreements, which are typically much

00:12:25

longer than one or two

00:12:26

or even 10 or 25

00:12:28

or 50 work. That's important

00:12:33

for us to just stay

00:12:33

right at the outset of

00:12:34

in case anybody is misled.

00:12:36

No one here is advising

00:12:38

that anybody. Advise their clients

00:12:39

just signed an arbitration agreement,

00:12:41

one word or two words



00:12:43

but the point we're making

00:12:45

is that given the existence

00:12:47

of a well-developed framework of

00:12:49

national nutrition law and arbitration

00:12:52

rules that you can buy

00:12:54

shorthand into. You can't effectively

00:12:57

get an arbitration off the

00:12:59

ground, probably be a little

00:13:00

bit of litigation about it.

00:13:01

I miss one party is

00:13:03

resisting. You can effectively get

00:13:04

an arbitration agreement off the

00:13:06

ground, the highly economical approach



00:13:09

to drafting. So I was

00:13:11

asked to, in addition, to

00:13:12

starting with that, but the

00:13:14

actual call framing to address

00:13:18

the question of precision and

00:13:19

drafting, right. How much more

00:13:21

should you stay in your

00:13:23

arbitration agreement? How much should

00:13:24

you try to legislate for

00:13:26

the future now? I think

00:13:29

almost all of the Opera

00:13:31

I've seen in an arbitrator

00:13:33

by reference to an embarrassingly



00:13:36

long number of years of

00:13:37

practice, typically say much more

00:13:40

than simply the parties have

00:13:42

been there to see a

00:13:43

patient that is the essential

00:13:45

requirement, right? The very first

00:13:46

thing that I must have,

00:13:49

is an unequivocal Express that?

00:13:55

That's what that's the essential

00:13:57

minimum. Much more. Typically you'll

00:13:59

see arbitration agreements addressing other

00:14:01

two key elements, the specified,

00:14:04

any arbitration to resolve by



00:14:09

the seat or legal home

00:14:11

of the arbitration. And usually,

00:14:23

They're not always usually, I

00:14:24

think, actually always in my

00:14:26

own experience. You'll see a

00:14:27

specification of the number of

00:14:29

arbitrators, whether a sole arbitrator

00:14:31

or a panel of three

00:14:33

arbitrators, he's really only. The

00:14:35

first is is essential, everything

00:14:39

else can be filled in

00:14:40

by implication. So for example,

00:14:43

if you omit, just as



00:14:44  
if I a seat for

00:14:45  
your arbitration, but you do

00:14:48  
specify that the ICC rules

00:14:49  
apply article 18, one of

00:14:51  
the ICC rules tells you

00:14:52  
what to do and tells

00:14:53  
you that the place of

00:14:54  
the arbitration shall be fixed

00:14:55  
by the court. If you

00:14:57  
are meant to specify. The

00:14:58  
language that is to be

00:15:00  
used in the arbitration article,

00:15:03  
20 of the ICC rules



00:15:04

provides that the arbitral tribunal

00:15:06

shall determine the language, taking

00:15:08

into account relevant factors. If

00:15:11

you want me to specify

00:15:12

the number of arbitrators article,

00:15:14

twelve two of the ICC

00:15:16

rules provides that the court

00:15:18

will appoint a sole arbitrator.

00:15:20

Save where it appears to

00:15:21

the court that the dispute

00:15:22

is such as to Warrant

00:15:24

the appointment of three arbitrators.

00:15:25

So when it comes to



00:15:27

the issue of precision or

00:15:29

specificity and drafting arbitration clauses,

00:15:31

the reality is that you

00:15:33

can actually get away with

00:15:34

specifying very little, I'm still

00:15:36

end up with an effective

00:15:37

and workable. Arbitration, much more

00:15:41

commonly than the two word

00:15:42

example. We've been talking about

00:15:43

to make a point parties,

00:15:46

really often do right pages

00:15:48

and pages and Pages more

00:15:50

of language, in arbitration clauses.



00:15:53

But my sort of starting

00:15:55

point for this discussion, is

00:15:56

that you really could do

00:15:57

a lot worse than to

00:15:59

start with one of the

00:16:00

model. Claus has provided by

00:16:01

arbitration institutions. And I think

00:16:05

we have an example of

00:16:06

the, the ICC standard clauses

00:16:08

are different versions of the

00:16:09

ICC Center close on the

00:16:11

slide, start with that, and

00:16:15

then be judicious about what



00:16:17

else you might address in

00:16:19

the cross. Question about this.

00:16:22

Yes. Thank you, Liz. So

00:16:25

can everyone just take a

00:16:26

second and read both of

00:16:27

these Clauses? And then I

00:16:29

would like to know what

00:16:30

is different about them. First

00:16:37

person to raise their hand

00:16:37

against answer. Could you? But

00:16:54

the first one is an

00:16:55

arbitration clause in in totality.

00:16:57

And the second one Cymbalta



00:16:59

Tiger Claws with a mediation

00:17:00

as one of the prerequisites.

00:17:02

You should we add mediation

00:17:08

and arbitration? Agreements Jose, what

00:17:10

do you think? I'm going

00:17:16

to agree with my colleague.

00:17:17

That is a weird microphone.

00:17:20

First. Second, I would start

00:17:24

with bad news everything. We're

00:17:25

going to discuss here typically

00:17:27

applies but then corporate people

00:17:29

come don't talk to you

00:17:31

and you end up with



00:17:32

whatever arbitration agreement, they copy

00:17:34

basement from somewhere else. And

00:17:37

yes, I agree with you

00:17:38

sir. It will get your

00:17:40

clothes and do we use

00:17:43

them warm with, your classes

00:17:45

are basically closes at faces

00:17:49

or prerequisites, previews to it

00:17:51

into arbitration and They love

00:17:55

their names, you can call

00:17:56

them and you can't call

00:17:58

them what city are Escalade.

00:18:01

There are several words for



00:18:04  
the same concept and sometimes

00:18:07  
I remember what one student

00:18:11  
told me when I was

00:18:11  
teaching a class, and will

00:18:12  
deter process, they are basically

00:18:14  
like Warren Braveheart. First, you

00:18:17  
go with your horses to

00:18:19  
the middle of the battlefield.

00:18:20  
You talk. Can we reach

00:18:23  
an agreement? Answer is, no,

00:18:25  
you go back, you fight,

00:18:26  
but he's basically the same

00:18:28  
thing. You said, certain parameters



00:18:31  
preview, spawn arbitration and there

00:18:32  
are multiple types of examples.

00:18:34  
Here, we have medication expert,

00:18:37  
determination boards, you have Do

00:18:43  
you have a Senior Management

00:18:45  
on negotiations? Cooling-off periods, multiple

00:18:49  
Concepts. That refer to the

00:18:51  
same thing. Do something before

00:18:52  
going to arbitration and do

00:18:55  
we always need multi-tier? Closet

00:18:57  
answer is no. It depends

00:19:00  
on your contract, and depends

00:19:01  
on your dispute. It depends



00:19:02

on what do you foresee?

00:19:03

May have. But they tend

00:19:06

to be quite efficient because

00:19:08

you said, you said a

00:19:11

stage previous arbitration in which

00:19:14

the parties can try to

00:19:15

reach agreements or at least

00:19:17

minimize, they should at least

00:19:19

you. And for instance, in

00:19:21

construction contracts, it has proven

00:19:24

to be very useful. The

00:19:26

ICC has an extensive documents

00:19:30

regarding they have their own



00:19:33

rules on these boards and

00:19:35

friends. That case the statistics

00:19:37

tell you that 90% of

00:19:39

disputes are narrowed or settled,

00:19:43

previous arbitration a very cost-effective

00:19:46

way of settling disputes. What

00:19:51

is the problem with that?

00:19:53

In my experience? You see

00:19:55

with multi-tiered arbitration agreement and

00:19:57

with arbitration agreements, as my

00:20:00

colleague was mentioning drafting unclear,

00:20:03

drafting on finding terms. And

00:20:08

that jeopardizes, something very fundamental



00:20:11

which is a \$70 worth.

00:20:14

And I've seen you expect

00:20:17

is not to happen in

00:20:18

sophisticated parties of his contract,

00:20:20

like happens all the time.

00:20:26

for multiple reasons first, because

00:20:28

I will blame always a

00:20:30

corporate Play we get serious.

00:20:32

If you don't think about.

00:20:34

If you think about the

00:20:35

contract, you think about the

00:20:36

price? You think about the

00:20:38

indemnity? Do you think about



00:20:39

everything related to the, to

00:20:42

the contract? But the dispute

00:20:44

resolution provision, they win with,

00:20:46

you're going to solve any

00:20:47

problem with regards to interpretation

00:20:49

or enforceability of. That agreement

00:20:50

is not well. Thought you

00:20:53

end up with problems. Like

00:20:54

we had a contract in

00:20:55

which the parties for saw

00:20:57

that they were going to

00:20:58

be a large instead of

00:21:00

setting something, easy like an



00:21:02  
expert, determination someone who would

00:21:04  
say, this is what we're

00:21:06  
going to do and then

00:21:07  
you can go to arbitration.

00:21:08  
They said, negotiation. For every

00:21:11  
6 months, a contract that

00:21:14  
was intended to be executed

00:21:15  
in two years to 10

00:21:16  
years. That is not what

00:21:18  
I want. But it was

00:21:20  
a problem of drafting Other

00:21:23  
problems we've seen, how do

00:21:25  
you avoid this problem? When



00:21:27

drafting remember, we are lawyers

00:21:29

talked to the people for

00:21:31

going to execute the contract.

00:21:33

Where do they, where do

00:21:35

they foresee? The problems are

00:21:36

going to come. What are

00:21:38

they seem do? They have

00:21:39

experience executing this contract and

00:21:42

where have they found trouble

00:21:43

down the road? There, you

00:21:45

will be able to backtrack

00:21:46

and be more accurate choosing

00:21:50

your movie theater close. Ask



00:21:52

yourself a very simple question.

00:21:54

Do I need? Do we

00:21:56

need a multi-tiered sometimes? We

00:21:59

just The third thing that

00:22:07

I think is key besides

00:22:09

proper dressing is established realistic.

00:22:13

Requirements in. I was telling

00:22:18

them, one of my clients,

00:22:20

we did not draft a

00:22:22

contract dispute, it was a

00:22:24

dispute board and we have

00:22:28

to find three people who

00:22:31

had 15 years of experience



00:22:33  
in physics, 15 years of

00:22:35  
experience in chemical and PhD

00:22:38  
in chemistry and Paige Steamboat.

00:22:41  
We couldn't find people around

00:22:43  
the world that had those

00:22:45  
requirements. Brought us back to

00:22:49  
the question of who agreed

00:22:51  
to this. And then that

00:22:53  
the worst thing was okay.

00:22:55  
But what are these guys

00:22:57  
going to say? Yes. It's,

00:22:59  
it's a nuclear plant. But

00:23:02  
did you measure so what



00:23:04

do people with phds in

00:23:06

physics and chemistry know about

00:23:08

that? So be realistic and

00:23:11

try to like bring things

00:23:12

to the ground, think about

00:23:14

it and avoid what is

00:23:17

called Midnight callers. Give give

00:23:20

the same time. You tell

00:23:22

your clients to give the

00:23:23

same time is about to

00:23:24

discussing price and images to

00:23:27

negotiating the MultiCare. Thank you.

00:23:32

I just want to add



00:23:33  
really quickly. We're taught since

00:23:35  
we're analogizing this to marriage.

00:23:37  
When you start your agreement,

00:23:40  
your friends, you're going to

00:23:41  
get married, you're in love.

00:23:42  
If you get a divorce,

00:23:43  
be careful. Because sometimes these

00:23:46  
Clauses can be used against

00:23:48  
you and can be raised

00:23:49  
as jurisdictional directions which can

00:23:51  
delay your proceedings. So that

00:23:53  
could be good for you

00:23:54  
or bad for you, but



00:23:56

be careful soul is going

00:23:59

back to the standard ICC.

00:24:01

Arbitration Clause. Is there anything

00:24:03

else that you would want

00:24:04

to specify? Yeah. So in

00:24:09

practice, you know, most of

00:24:10

the contracts that I advise

00:24:12

on her that I have

00:24:13

arbitrated under depart from, or

00:24:16

I should say elaborate on

00:24:17

the standard form in one

00:24:19

way or another. So in

00:24:20

addition to specifying seat and



00:24:23  
language is commonly add various

00:24:26  
bells and whistles to the

00:24:28  
claws and I would group

00:24:29  
those bells and whistles. And

00:24:30  
there are those that any,

00:24:33  
well, advised party should always

00:24:35  
consider adding there are those

00:24:38  
that, well, advised party should

00:24:39  
always resist the temptation to

00:24:41  
add. And then there are

00:24:42  
some that might be appropriate

00:24:43  
in certain cases that require

00:24:45  
some careful thought and then



00:24:47

just run into those three.

00:24:50

Buckets quickly should always consider

00:24:55

adding to their arbitration Clause.

00:24:56

First of all, if the

00:24:58

contract does not somewhere else,

00:25:00

that's the part that the

00:25:01

law, the arbitrator's are going

00:25:02

to apply the arbitration place

00:25:04

is a handy place there,

00:25:05

a closet, a handy place

00:25:06

to It's not somewhere else

00:25:10

in the contract issue, s,

00:25:14

you should give thought to.



00:25:16

Once you've identified the arbitration

00:25:19

rules in the framework that

00:25:21

you are submitting your application

00:25:22

to. You should consider whether

00:25:25

it's appropriate in your circumstances

00:25:27

to opt-in or opt-out of

00:25:30

any special procedures that are

00:25:31

provided under those rules. For

00:25:33

example, the ICC arbitration rules

00:25:36

provide, a mechanism for the

00:25:39

appointment of an emergency arbitrator

00:25:40

to hear urgent applications before

00:25:43

is constituted, and that can



00:25:47

be an absolutely essential protection.

00:25:49

When it's taking a few

00:25:50

weeks or months to get

00:25:52

it up and running. Now,

00:25:54

when this picture was first

00:25:55

added to arbitration rules, there

00:25:58

was initially some concern that

00:26:00

the fact that there was

00:26:02

an emergency arbitrator available to

00:26:03

hear urgent stations would somehow

00:26:06

impede parties. Access to going

00:26:08

to court that might otherwise

00:26:09

be available to Heritage applications



00:26:11  
adamant to parties accessing accessing

00:26:22  
Court remedies in in Urgent

00:26:25  
situation. But that's the kind

00:26:27  
of thing that you would

00:26:28  
understand. If there's an extra

00:26:31  
come around to settle down

00:26:33  
on that issue that you

00:26:34  
want to just double-check, any

00:26:37  
court that I have jurisdiction

00:26:38  
or you might need to

00:26:39  
access jurisdiction for interim relief,

00:26:42  
whether that's an issue. And

00:26:43  
so you were knocked out



00:26:44  
of the emergency arbitrator mechanism.

00:26:47  
The other set of Provisions

00:26:49  
that are commonly in arbitration

00:26:52  
rules and are in the

00:26:53  
ICC rules are our Provisions

00:26:54  
for expedited proceedings. Have the

00:26:57  
ICC rules provide for expedited

00:26:59  
proceedings and cases have a

00:27:00  
special, a certain low. Low

00:27:04  
to me personally but low

00:27:05  
in the grand scheme of

00:27:07  
Mountain dispute currently either two

00:27:10  
or three million dollars. Now,



00:27:11

if your dispute is threshold

00:27:14

than you do, not think

00:27:19

about whether that is appropriate

00:27:20

for, you is what you

00:27:22

want. Similarly, you may decide

00:27:24

that you want to tap

00:27:25

into the expedited proceedings, even

00:27:28

if your dispute is of

00:27:29

greater value than the ice

00:27:30

in the trail. So you

00:27:32

may send a different threshold

00:27:33

for accessing the extra cheese

00:27:35

or simply submit all just



00:27:36

starting to draft. You should

00:27:44

think about is whether the

00:27:46

combination of the laws and

00:27:47

the law of The Siege

00:27:48

and everything else in the

00:27:49

contract provides insufficient protection for

00:27:52

a company sheety or on

00:27:54

the contrary actually allows them

00:27:57

to satisfy and transparency obligation

00:27:59

sister. For confidentiality or transparency,

00:28:09

given the nature of the

00:28:10

relationship. And finally, on the

00:28:13

must consider list would be



00:28:15

any sort of idiosyncratic or

00:28:18

particular language says, sorry to

00:28:20

make a clause enforceable in

00:28:22

view of the height of

00:28:23

the place. We are going

00:28:24

to arbitrate or relevant jurisdictions

00:28:27

for the parties come from.

00:28:28

So if you look at

00:28:29

the website for example tell

00:28:31

you there's some specific language

00:28:32

that you want to make

00:28:33

sure you use to make

00:28:35

an arbitration Clause providing for



00:28:36  
arbitration in mainland. China local

00:28:42  
you want to consider but

00:28:44  
that's what I think people

00:28:46  
should always be. Considering I'm

00:28:48  
turning now to proceed with

00:28:50  
caution category. I would put

00:28:53  
multi-tiered proceed with caution buckets.

00:28:56  
Really for the reason that

00:28:58  
Mary Kate was mentioning which

00:28:59  
is that depending on how

00:29:01  
they're drafted and depending on

00:29:02  
what chord is addressing the

00:29:05  
situation started. In reality, they



00:29:08

can be an impediment to

00:29:09

get into arbitration quickly and

00:29:14

you need to get two

00:29:15

more quickly. So not a

00:29:17

never but I think about

00:29:18

it. Think about what the

00:29:20

relationship is one that is

00:29:22

likely to result in an

00:29:24

early mediator. Negotiated settlement, most

00:29:29

commonly least half the time,

00:29:31

I'm dealing with contracts that

00:29:33

have on one side of

00:29:34

state or state entity and



00:29:35

on the other side has

00:29:36

a large multinational company and

00:29:39

it almost invariably have all

00:29:41

teachers classes and do not

00:29:44

settle until either after hearing

00:29:46

or right before hearing. So

00:29:48

it's that's my, you know,

00:29:50

one person's experience. But it

00:29:52

seems like a situation in

00:29:53

which my client in those

00:29:56

relationships are never really rushing

00:29:59

to arbitration if they're going

00:30:00

to arbitration since they absolutely



00:30:02  
have to. And so the

00:30:04  
idea that they would need

00:30:05  
to be forced to do

00:30:06  
every Make it to avoid

00:30:08  
a dispute with the state

00:30:09  
doesn't really match the reality

00:30:11  
of the underlying relationships. Second

00:30:19  
proceed with caution technique is

00:30:21  
split Clauses where the contract

00:30:23  
actually provides for multiple types

00:30:26  
of dispute resolution and that's

00:30:29  
candy. Absolutely appropriate in a

00:30:31  
given transaction or contract, but



00:30:34

you need to be very

00:30:34

careful and drafter Clauses that

00:30:36

you're very clear about directing

00:30:38

traffic, these types of his

00:30:40

bees. Go to one mechanism,

00:30:41

other types of another, how

00:30:44

did the to interrelate can

00:30:46

one leads to the other

00:30:46

all that just requires careful.

00:30:49

1/3 potentially dangerous Bell and

00:30:51

whistle in one that I

00:30:52

might just put on the

00:30:53

never ever list is to



00:30:55

impose a long, stop time,

00:30:57

limit on the arbitration, proceedings.

00:31:00

It always sounds reasonable when

00:31:03

you write it down, when

00:31:04

everybody's happy and hasn't slept

00:31:06

for three weeks cuz they're

00:31:08

finalizing the deal and it's

00:31:10

always unreasonable and potentially prejudicial

00:31:12

to the parties and practice

00:31:14

when you're up against a

00:31:15

really aggressive longstop date from

00:31:18

completing the arbitration final proceed

00:31:21

with caution is really trying



00:31:23

to get to prescribe in

00:31:26

my opinion about disclosure or

00:31:28

Discovery and that's just for

00:31:30

the simple reason that you

00:31:31

don't know what you're going

00:31:34

to want and you might

00:31:36

find yourself really wishing you

00:31:37

had somebody 10 years ago.

00:31:39

Had it for close to

00:31:41

Discovery technique. That would really

00:31:42

be very important if you

00:31:46

want to have a little

00:31:47

bit more, predictability about the



00:31:49

procedure. Flavor of your case

00:31:50

you can make reference to

00:31:52

bodies of the collective practice,

00:31:55

like the IBA rules on

00:31:56

The Taking of evidence or

00:31:57

the Prague rules on the

00:31:58

efficient set of procedural expectations

00:32:04

about how to spell Discovery

00:32:06

will happen. But they aren't

00:32:08

quite as descriptive as not

00:32:10

to say there will, there

00:32:12

will not be a process.

00:32:15

So, two things that I



00:32:17

would say, too particular, about

00:32:18

ideas, and additions time limits.

00:32:20

That party should really probably

00:32:21

never include and that is

00:32:26

Making a Acer fudge compromise

00:32:29

between either choice-of-law choice of

00:32:35

law or a mixed arbitration

00:32:37

agreement. I drop Christian agreement.

00:32:39

That mixes administering institution and

00:32:42

rules. So what am I

00:32:43

talking about classic? Example of

00:32:46

a of a bad idea

00:32:47

or so it seemed like



00:32:48

a good idea but turned

00:32:49

out to be a nightmare,

00:32:49

was the governing law clause

00:32:51

in the suite of contracts,

00:32:53

that governed, the construction of

00:32:55

the channel tunnel between England

00:32:56

and France, and the governing

00:32:57

law clause in that set

00:32:59

of contract, provided the arbitrator's

00:33:01

where to apply principles of

00:33:03

law, into the law of

00:33:04

England and a lot of

00:33:05

France. Well, of course, by



00:33:07

the time lawyers, get done

00:33:08

with it. There aren't any

00:33:10

better, what is the law

00:33:19

here? I'm just trying American,

00:33:21

F-16 perfectly appropriate in that

00:33:32

quintessential, you know, trans cross-border

00:33:36

transactions to just overall, you

00:33:37

know, we're all transnational here,

00:33:40

but it proved to be

00:33:41

quite problematic in practice. And

00:33:44

then hybrid causes submitting him

00:33:48

to be administered by the

00:33:48

rules and ways in which



00:33:55  
arbitration procedure under those different

00:33:57  
sets. The rules are different

00:33:58  
and it could be confined

00:33:59  
and is unable to administer

00:34:02  
according to a different set

00:34:03  
of rules. And then the

00:34:05  
final Do is Jose's Horror

00:34:10  
Story, witches, to have highly

00:34:11  
elaborated and mandatory requirements as

00:34:14  
for who should be a

00:34:16  
rabbit Raider. Yes. Right in.

00:34:20  
His example was it was

00:34:21  
the dispute had actually had



00:34:22

nothing to do with the

00:34:23

expertise that was specified. Or

00:34:26

you may not be able

00:34:26

to find the Unicorn that

00:34:28

you described in your beautifully-crafted,

00:34:30

arbitration agreement, the bottom line

00:34:33

where I come from and

00:34:34

is probably more you want

00:34:37

to be thoughtful about the

00:34:38

ways in which you need

00:34:39

to accommodate the realities of

00:34:41

the transaction, are the parties

00:34:43

that you're dealing with. But



00:34:45

either you could really do

00:34:47

a lot worse than to

00:34:49

start with the ICC model

00:34:50

Claus and think about a

00:34:52

relatively short list of key

00:34:53

things. Each language, you know,

00:34:57

anything, I think there's a

00:35:07

good argument for that approach

00:35:09

although I will say and

00:35:10

practice, I'm not sure I've

00:35:13

advised on or seen an

00:35:16

arbitration agreement that doesn't actually

00:35:17

specify the number of arbitrators



00:35:19

and maybe just too much

00:35:21

of a control freak tendency

00:35:22

by Rafters or, or just

00:35:24

did in my experience is

00:35:28

pretty Universal. Instinct to actually

00:35:30

pick one person has three

00:35:33

for traitors Oh, thank you.

00:35:38

I think we'll have nightmares

00:35:39

tonight thinking about some of

00:35:40

those things before we turned

00:35:46

a confidentiality, which Emery is

00:35:48

going to discuss. We actually

00:35:49

have the most controversial topic



00:35:52

that the panel found while

00:35:55

discussing. And so, I'm going

00:35:57

to take an audience, pull

00:35:58

on this. And I want

00:36:00

everyone who thinks that the

00:36:02

parties should specify the number

00:36:04

of arbitrators in me agreement,

00:36:06

to raise their hand. Okay.

00:36:18

Now, who thinks you should

00:36:20

leave at 1 or 3?

00:36:29

Okay, so now can someone

00:36:31

from either side? Tell us

00:36:33

why, why, why would you



00:36:35  
specify one or three at

00:36:36  
the outside of the contract?

00:36:37  
And why would you maybe

00:36:38  
want to leave it open?

00:36:41  
Someone has to have an

00:36:42  
answer predictability anybody on the

00:36:55  
opposite side of the debate,

00:36:57  
want to tell us why.

00:37:00  
And are you would you

00:37:01  
like to tell us why?

00:37:07  
Parties with her entering into

00:37:10  
this arbitration Clause have no

00:37:12  
idea what type of dispute



00:37:13

is going to be. Usually,

00:37:15

again, you can, of course

00:37:16

have stayed parties and their

00:37:18

you're going to always be

00:37:19

a clause with three arbitrators,

00:37:21

but normal, General, commercial contract.

00:37:26

Again, you could have a

00:37:27

very large contract with a

00:37:29

very small dispute. And you

00:37:31

could have a small contract

00:37:35

where the dispute becomes very

00:37:37

important for the type of

00:37:38

party that's involved in it.



00:37:39

And I think again, having

00:37:41

seen myself several contracts where

00:37:45

the number is not specified

00:37:47

the parties, especially if they're

00:37:48

in an institution like the

00:37:50

ICC, trust the institution to

00:37:53

determine the correct number based

00:37:55

on the type of dispute

00:37:56

that actually happens to the

00:37:58

Isis cord. If the parties

00:38:00

can't agree on the number,

00:38:01

will decide the number and

00:38:02

the ICC Court will get



00:38:04

it right? It will know

00:38:05

whether there should be one

00:38:07

or three. Arbitrators the other

00:38:09

real reason is, I've personally

00:38:11

seen those Clauses where parties

00:38:14

will take free arbitrators and

00:38:16

then when the dispute occurs

00:38:18

one side default, one side

00:38:20

doesn't show up and the

00:38:23

party who wants to go

00:38:24

through with the dispute? Has

00:38:27

to pay all the costs

00:38:28

because there's a non-participating party



00:38:30

has a huge burden. On

00:38:32

them has three arbitrators for

00:38:35

a dispute that again, could

00:38:36

be handled much more efficiently

00:38:37

with a sole arbitrator and

00:38:39

no one on the other

00:38:40

side. So again, I think

00:38:44

it really has to be

00:38:45

decided on a case-by-case basis,

00:38:48

but I would never say

00:38:49

that you should always determine

00:38:51

the number and the cars

00:38:52

are cases where you should



00:38:53

do it there cases, where

00:38:54

we know it's going to

00:38:55

be done because of the

00:38:56

type of parties that are

00:38:57

involved. But it for many

00:39:00

General commercial contracts, you may

00:39:02

want to keep your options

00:39:03

open. Imagine having a case

00:39:06

for it. Unpaid invoices \$100,000

00:39:09

in dispute and you have

00:39:10

to pay for three arbitrators,

00:39:12

it's a nightmare. Simon and

00:39:16

Ruiz died and with the



00:39:18

minority of the group. Oh,

00:39:21

okay. Before we go about

00:39:24

confidentiality, thanks arbitration is inherently.

00:39:30

Confidential, crazy pants. I won't

00:39:34

make you say why. Okay,

00:39:37

so everybody that thinks it's

00:39:38

not inherently confidential. Great job

00:39:44

now Andrews. I think those

00:39:48

are. Students, who got the

00:39:51

itis? Again, yes, maybe some

00:39:57

people do have that assumption

00:39:59

that all arbitration is confidential.

00:40:02

And first again, we have



00:40:03

to distinguish what type of

00:40:05

arbitration are we talking about?

00:40:06

Because there's a big difference

00:40:07

between that's when arbitration in

00:40:10

and Commercial arbitration. We want

00:40:12

to talk about this topic,

00:40:13

but if we look at

00:40:16

commercial arbitration, now the situation

00:40:19

is that, it truly depends.

00:40:22

Most national laws. Do not

00:40:24

have specific Provisions dealing with

00:40:26

content that there are some.

00:40:28

And I know right now



00:40:29

that are the patient Act

00:40:31

is under revision. And there

00:40:33

is a discussion of having

00:40:34

those confidentiality Provisions, put into

00:40:37

the law. But there are

00:40:40

and Hong Kong is another

00:40:41

example. Whether there is a

00:40:43

confidentiality provision actually in the

00:40:45

law, but most laws do

00:40:47

not have Pacific provisions and

00:40:50

so again, it becomes very

00:40:52

important for Parties to know

00:40:54

what they want for some



00:40:56

parties. They don't really care

00:40:58

whether the arbitration remains confidential

00:41:00

and they believe it should

00:41:07

be in the public domain.

00:41:08

Other parties. Honestly think that

00:41:10

confidentiality is one of the

00:41:12

reasons they're going to go

00:41:13

to arbitration. And if you

00:41:15

look at many of this

00:41:16

surveys and studies that are

00:41:18

done such as Queen Mary

00:41:19

etcetera, confidentiality always comes in

00:41:22

as one of the reasons



00:41:23

parties want at least commercial

00:41:25

arbitration. So confidentiality is important

00:41:29

to you, you need to

00:41:31

take care of it. Now,

00:41:32

you can do that in

00:41:33

your arbitration Clause by having

00:41:35

some reference to confidentiality. I'd

00:41:37

say, it's probably more common

00:41:39

to have a full confidentiality

00:41:41

clause in the contract that

00:41:43

will also cover the arbitration.

00:41:45

And if you don't have

00:41:48

it in your contract, then



00:41:50

at the time of the

00:41:51

dispute to ask your betrayal.

00:41:54

Order or for the parties

00:41:55

themselves to agree have a

00:41:57

confidentiality agreement that they enter

00:41:59

into, but when you're drafting

00:42:01

your arbitration Clause, you definitely

00:42:04

need to think, do I

00:42:05

want to have confidentiality or

00:42:08

not? And on the other

00:42:10

side, if I don't on

00:42:11

confidentiality because in some places,

00:42:13

it may be assumed or



00:42:15

may be required by the

00:42:16

law, then you need to

00:42:18

specify that as well. The

00:42:21

other thing I want to

00:42:22

say about this is it's

00:42:24

not enough to just say

00:42:25

confidentiality you have to be

00:42:28

very specific about what will

00:42:30

be covered by those confidentiality

00:42:32

requirements to be very existence

00:42:35

of the dispute should be

00:42:38

confidential, the documents that will

00:42:40

be produced, that will be



00:42:42  
obtained from the other side,

00:42:43  
not just a document. That

00:42:44  
will be introduced into the

00:42:46  
arbitration, any procedural decisions. The

00:42:50  
awards that will be rendered

00:42:51  
by the arbitrators and not

00:42:53  
limit yourself to the arbitration.

00:42:56  
But think about what about

00:42:57  
the court proceedings that may

00:42:59  
be required for the forcing

00:43:01  
or setting aside the award

00:43:03  
you want to think about

00:43:04  
the people that are going



00:43:05

to be involved. And again

00:43:07

it will be more than

00:43:09

just the party. So the

00:43:10

party's the council, the arbitrator's

00:43:13

expert Witnesses, all of these

00:43:16

people that make institutions that

00:43:18

they have access to information

00:43:20

You want to be very

00:43:22

specific about how confidentiality is

00:43:25

going to affect them, and

00:43:26

then you have to take

00:43:27

into account the limits that

00:43:29

may exist, because we can



00:43:32

all say we want confidential,

00:43:33

but they're going to be

00:43:34

mandatory requirements under National laws

00:43:39

for some information that may

00:43:40

have to be disclosed or

00:43:43

for the parties to be

00:43:44

able to pursue their legal

00:43:45

rights. Or for example, if

00:43:47

information is already in the

00:43:48

public domain. So you have

00:43:50

to think again about what

00:43:52

will be confidential, who's covered

00:43:54

by this and what are



00:43:55  
the limits on that confidentiality?

00:43:59  
And I know confidentiality was

00:44:01  
something. We talked a lot

00:44:02  
about at the ICC a

00:44:04  
couple of years ago because

00:44:05  
I think Andre wasn't there

00:44:07  
and there's something at the

00:44:09  
ICC started doing. May be

00:44:12  
back in 20, 15, 16

00:44:14  
17, because again, mostly commercial

00:44:21  
arbitration cases. When we saw

00:44:23  
a commercial that could still

00:44:24  
involve State parties in a



00:44:26

large number of ICC cases

00:44:27

to have stayed parties were

00:44:32

confidential or treated as confidential,

00:44:35

a definite by the institution.

00:44:37

And so the question became

00:44:38

what happens to be and

00:44:41

whether the awards should be

00:44:42

published and there has been

00:44:44

a huge evolution in this

00:44:47

area. We are now the

00:44:49

ICC, at least the process.

00:44:52

Is that Awards will be

00:44:55

published information unless the party



00:44:59

opt out. So this is

00:45:01

Miss mention this idea of

00:45:03

opting out, what is institutional

00:45:05

Provisions? Do you need to

00:45:06

think about that? You might

00:45:07

want to opt out of

00:45:08

so if you do not

00:45:10

want your Ward to be

00:45:12

published, you need to opt

00:45:15

out because those normal process

00:45:17

will be for it to

00:45:18

be published so you can

00:45:20

do that now in your



00:45:22

closet in your reality provision.

00:45:24

But you should also know

00:45:26

the way the ICC works

00:45:28

is that they're still going

00:45:30

to ask the parties. This

00:45:32

is The Insider story. They're

00:45:35

still going to ask the

00:45:36

parties in the arbitration. Is

00:45:39

there any objection to the

00:45:41

Art Award being published? And

00:45:43

so, you're going to have

00:45:44

that asked you up front.

00:45:45

When the proceedings started you're



00:45:47

going to have asked you

00:45:48

when you get to the

00:45:49

end of the case. And

00:45:50

as I can confirm, you're

00:45:54

going to have a two-year

00:45:55

period after the case where

00:45:57

they're still not going to

00:45:58

publish. So you can still

00:46:00

raise your objection during that

00:46:02

time. So something to think

00:46:04

about for your claws publication.

00:46:07

But still, you've got a

00:46:09

little bit of time after



00:46:11

Where did you still want

00:46:12

to opt out. Some people

00:46:13

may think it's great, that

00:46:14

there's all this publishing. Other

00:46:16

people is very important for

00:46:18

them that the war does

00:46:19

remain confidential until then, you

00:46:21

need to think about that

00:46:22

for your car. Yes. And

00:46:25

I will mention that there

00:46:25

is a new model Claus

00:46:27

on the ICC website, which

00:46:28

does address the publication boards.



00:46:30

And you will be asked

00:46:32

in a thousand ICC letters

00:46:34

from the Secretary of whether

00:46:35

you agree or not. So,

00:46:37

yes, you have plenty of

00:46:38

occasions to eject, or gree,

00:46:39

or next, poll is who

00:46:42

thinks your words should be

00:46:43

published. Who thinks they should

00:46:49

not. Okay, that's not 50-50.

00:46:55

But can you tell us

00:46:57

how do you candle your

00:46:59

client? How would you discuss



00:47:01

this issue with your client

00:47:02

if you're joshing arbitration agreement?

00:47:04

And it's no fun. You

00:47:06

know, any award that may

00:47:07

come out in any, just

00:47:08

you that may happen, maybe

00:47:10

published multiple things, as least

00:47:20

was explaining today. I don't

00:47:25

think I have ever actually

00:47:26

discussed confidentiality including a confidentiality

00:47:29

provision having to included ice

00:47:31

provision and I know they

00:47:32

will ask me and I



00:47:34

will tell you they were

00:47:35

they need for you to

00:47:37

consent and yes, we can

00:47:40

send one another practical if

00:47:43

one party disagrees. They won't

00:47:45

publish. Which that gives you

00:47:48

leverage on the road and

00:47:49

flexibility in the sense that

00:47:50

you don't have to decide

00:47:51

this up front. But I

00:47:54

think there is, I think,

00:47:57

I think it was Lee's

00:47:58

who draw an important difference



00:48:01  
is the actress investor-state, arbitration

00:48:04  
under commercial and I think

00:48:07  
Fight for transparency. And the

00:48:11  
more the need for more

00:48:14  
information. Is being pushed in

00:48:19  
more in the mesosphere arbitration

00:48:21  
than in the commercial arbitration.

00:48:22  
There has been a push

00:48:24  
on the ICC has done

00:48:24  
it for commercial arbitration. Another

00:48:26  
centers, but I think I'm

00:48:29  
going to use a word

00:48:29  
that people don't like this



00:48:31  
paranoia of transparency. Is more

00:48:34  
focused on investor State and

00:48:38  
It's more, you too complex.

00:48:39  
And today, the guy that

00:48:41  
you want to know, you

00:48:43  
want to have credit everything.

00:48:44  
So Wife talking to the

00:48:48  
client. These are not things

00:48:49  
are going to tell him

00:48:50  
what. Let's agree to accompany.

00:48:51  
Well maybe in ten years,

00:48:54  
there will be four cases

00:48:55  
of the arbitrator realistic when



00:49:00  
you discuss confidential you do

00:49:01  
with your kind, you discuss

00:49:03  
it based on reputation who

00:49:05  
the other parties and how

00:49:07  
you may think that things

00:49:10  
will unfold if you're going

00:49:11  
to lose your client, is

00:49:13  
not going to want this

00:49:14  
Republic, would want to hide

00:49:16  
it under a rock and

00:49:18  
the only way to become

00:49:19  
public. If there were these

00:49:21  
enforced, know that there is



00:49:23

there a strategic decision to

00:49:25

be made, but EBT at

00:49:27

least in my view. This

00:49:29

is not something you you

00:49:30

discuss. And again, there are

00:49:31

you meant for Would I

00:49:34

want that works to be

00:49:35

more Publix? What is there

00:49:36

would be more foreseeability? I

00:49:37

would know. There would be

00:49:39

more predictability of outcomes. I

00:49:41

would know better. How to

00:49:42

choose an arbitrator more than



00:49:43

in like what? We called

00:49:45

the telephone strategies color, your

00:49:48

friends and ask them? What

00:49:49

do they know about this

00:49:50

arbitrator? And how has he

00:49:52

resolved in other cases? Would

00:49:54

it be better not to

00:49:55

have to do this? Yes,

00:49:57

but Anne-Marie side of the

00:50:01

story of Queen Mary, if

00:50:03

I recall correctly, that study

00:50:05

said, that the second thing

00:50:06

that parties buy used, most



00:50:08  
of arbitration. What's on the

00:50:09  
inside. So, daddy still in

00:50:13  
the brain of people, when

00:50:15  
a green to arbitration, a

00:50:17  
very relevant this drug ring

00:50:19  
and I can definitely tell

00:50:20  
you, most of my clients,

00:50:23  
get this question wrong. Dating

00:50:24  
arbitration is confidential percent, even

00:50:27  
investor-state arbitration when you go

00:50:30  
to free trade agreements, when

00:50:32  
you go to Certain mechanisms

00:50:36  
those mechanisms include transparency. Requirements



00:50:38

they are surprised because that's

00:50:47

not the difference between a

00:50:48

between China and Russian but

00:50:51

the rules like everything, our

00:50:54

amended by the agreement of

00:50:55

the parties. And if you

00:50:57

don't agree that something confidential,

00:50:58

unless the rules of you,

00:51:00

our flight arrives for confidentiality

00:51:02

it won't be. So tell

00:51:03

your time, How do you

00:51:08

recognize? Agreements and your preference

00:51:14

of the parents. With the



00:51:16

deputy that you might have,

00:51:17

especially if you are, if

00:51:19

you are lawyers from Europe

00:51:21

and has lawyers Euros are

00:51:24

Gatekeepers in, you have to

00:51:25

comply with Emily Rose and

00:51:27

there's a global prohibition order

00:51:31

against MLA translate Alex or

00:51:36

attraction or interaction. So what

00:51:41

is produced by fraud cannot

00:51:43

produce any result. And that

00:51:45

means that we should have

00:51:48

studied this discussion. Not with



00:51:50

what, how many, what you

00:51:52

need to enforce an arbitration

00:51:53

Clause. With how many parties

00:51:55

do you need to produce

00:51:56

enough to have an arbitration

00:51:58

hearing? Because in terms of

00:52:00

beneficial ownership, you can have

00:52:02

two parties. Let's say one

00:52:04

participation in a country and

00:52:06

a one-party state, or which

00:52:09

is an affiliate of Are

00:52:12

you are and at the

00:52:13

Regal of the same party



00:52:14

so they can establish that

00:52:17

the same one. If you're

00:52:21

not to contract and you

00:52:24

record this garbage rhaetian and

00:52:26

their desired laundromat. Their Machinery,

00:52:29

to launder money that we

00:52:31

have seen it a lot

00:52:33

in the last years in

00:52:34

the engine. Some of you

00:52:37

may be here in America,

00:52:39

the carpet guy sprays yet,

00:52:40

yet lawyers, you know what

00:52:47

the global racing against Germany



00:52:49

language lawyers or they should

00:52:53

at least designate arbitrators the

00:52:55

subject to be a report,

00:53:01

the red flags of money

00:53:02

laundering. When you are dealing

00:53:04

with this 5 million 5

00:53:07

million dollars, I'm not sure.

00:53:11

You should be able to

00:53:12

comply because this is a

00:53:14

public order Reggie. So you

00:53:16

should be able to to

00:53:17

comply with your obligations under

00:53:19

the I'm not an expert



00:53:27  
on money laundering regulations, although

00:53:29  
I have operated in jurisdictions

00:53:31  
where lawyers are required for

00:53:33  
Porter's the arbitral regime, tries

00:53:37  
to deal with that problem

00:53:38  
is by imposing an obligation

00:53:40  
on arbitrators essentially themselves on

00:53:43  
their own initiative. If they

00:53:45  
become aware of circumstances that

00:53:47  
suggests there's fraud or illegality

00:53:48  
to raise the issue, right?

00:53:51  
So, so that it's not

00:53:52  
so much on an arbitrator's



00:54:02

to have an eye to

00:54:04

public policy considerations as a

00:54:06

principle applies, to other kinds

00:54:13

of illegality or or fraud,

00:54:17

that's it becomes And whether

00:54:24

or not they're subject to

00:54:25

the regulatory regime is something,

00:54:27

I'm not an expert on

00:54:28

others in this room will

00:54:29

know better, whether that's because

00:54:30

there's a sanction in terms

00:54:33

of of AML regulations, but

00:54:35

from the perspective of an



00:54:36  
arbitration practitioner watch those issues

00:54:48  
and not to participate again.

00:54:52  
The first one is, don't

00:54:59  
undervalue the reputation of arbitrators

00:55:02  
City, arbitrators are not there

00:55:04  
to pay to play the

00:55:06  
reputation of one case. There's

00:55:11  
no more appointments. She's reputation

00:55:14  
in the market Eastern. I

00:55:25  
respect your reputation, but I'm

00:55:27  
afraid that there are no

00:55:28  
apologies of money, laundering of

00:55:31  
money laundering and there's not



00:55:33

there's no specific training or

00:55:37

education. What is my there

00:55:40

you have then you may

00:55:41

be chose the wrong arbitrator.

00:55:44

Oh I'm sorry. I was

00:55:46

just going to say I

00:55:47

think from my experience when

00:55:48

there has been fraud that

00:55:50

award usually becomes public because

00:55:53

somebody is going to take

00:55:54

it to a court. And

00:55:55

so the issue of confidentiality

00:55:58

becomes known because it's in



00:56:00

front of a court. But

00:56:02

Merrick take note, good ICC

00:56:05

training on fraud coming up

00:56:07

next year. So, thank you

00:56:11

for your question. Before we

00:56:12

move on, does anybody else

00:56:14

want to talk about why

00:56:15

Ward's should or should not

00:56:16

be published by? Don't think

00:56:18

they should be published? Can

00:56:22

I just throw in one

00:56:24

factor on the on the

00:56:25

pile for consideration? I will



00:56:28

say most common of my

00:56:29

clients will expect that their

00:56:31

arbitration will be called the

00:56:34

survey report but just to

00:56:36

put that put another pointer,

00:56:38

put the quite a different

00:56:39

way. There is a case

00:56:42

to be made that there

00:56:43

are areas of law where

00:56:45

the streets are. So uniformly

00:56:48

submitted to arbitration for resolution

00:56:50

that there is essentially a

00:56:52

vacuum of publicly available information



00:56:54

about how the law in

00:56:56

that area is developing and

00:56:58

I'm going to get the

00:56:58

name wrong. I'm going to

00:56:59

forget the name of the

00:57:00

English judge, who we don't

00:57:10

have any judicial decisions, construing

00:57:13

standard form contracts or chewing,

00:57:15

you know, other other Organize

00:57:22

ourselves by reference. To what

00:57:24

is this language actually mean?

00:57:25

And you can have a

00:57:26

vacuum of information that that's



00:57:28

one of the significant arguments

00:57:31

in favor of finding a

00:57:32

way to make available in

00:57:33

a way that is consistent

00:57:34

with our expectations. I think

00:57:38

that that is I remember

00:57:40

that it was the English

00:57:41

Lord who said that arbitration

00:57:43

was killing me development of

00:57:45

Law and I think we

00:57:47

have to come back to.

00:57:48

What is the purpose of

00:57:49

specially if commercial arbitration and



00:57:51

is, and should be there

00:57:54

between two parties. And I'm

00:58:00

very sorry that parties want

00:58:02

to go to arbitration to

00:58:03

have their dispute between them

00:58:06

resolved. Not a common law

00:58:09

system where we're creating precedents

00:58:11

that we should be seeing

00:58:13

applied in future cases, but

00:58:15

no stopping this dispute in

00:58:17

the most economic way. Got

00:58:22

it all Touch by the

00:58:23

poor judges concerns that English



00:58:25

lies dying because of arbitration.

00:58:37

Were Europeans who know the

00:58:46

difference between. Rescue Toccata and

00:58:52

non Western Dakota very quickly.

00:58:58

Non-publication, I'm through a it's

00:59:04

not one or the other,

00:59:05

is there going to be

00:59:06

publication with anonymization, right? So

00:59:09

it's not really one or

00:59:10

the other know, as a

00:59:12

choice there is a way

00:59:13

of protecting that cost information

00:59:16

that you don't want to



00:59:18

be out there a while

00:59:20

to seem. So I think

00:59:21

a lot of these goals

00:59:22

can be accomplished through the

00:59:23

process. And hopefully, as time

00:59:24

goes by, as these awards

00:59:27

are online, people can see

00:59:29

them. See how they look

00:59:30

and from there, maybe, we'll

00:59:32

see is even more towards

00:59:33

being published because they will

00:59:35

feel comfortable with that. Has

00:59:37

a, she has a process



00:59:39  
that everything that we've been

00:59:41  
debating can actually be accomplished

00:59:43  
CC, time will tell, but

00:59:45  
we're seeing a slow March.

00:59:49  
Or we, you know whether

00:59:51  
this is actually at going

00:59:52  
right there. Thank you marrick.

00:59:56  
I'm so just too before

00:59:59  
we get to our last

01:00:02  
and most fun topic. I

01:00:08  
just want to remind everyone

01:00:10  
that there is a difference

01:00:11  
between institutional and ad hoc



01:00:12  
arbitration. And this is important

01:00:15  
when you're dealing with your

01:00:16  
arbitration agreement because those institutions,

01:00:19  
and as someone who still

01:00:22  
has my little ICC flag

01:00:24  
with me at all times

01:00:25  
institutions are there to help

01:00:28  
you in the event. That

01:00:29  
there is something wrong with

01:00:31  
your claws. So, as was

01:00:33  
mentioned, earlier, the institution can

01:00:35  
determine the number of arbitrators

01:00:37  
the institution can appoint an



01:00:39

arbitrator on behalf of the

01:00:41

non-participating party. They can fix

01:00:43

the place. Arbitration may take

01:00:45

care of the finances. And

01:00:47

so that's also something to

01:00:49

consider when your dashing arbitration

01:00:52

agreement is do you want

01:00:53

an ad hoc arbitration or

01:00:55

do you want an institution

01:00:56

arbitration? And I think that

01:00:58

the ICC rules provide a

01:01:00

lot of safeguards and And

01:01:02

having what we are about



01:01:04

to talk about which is

01:01:05

pathological arbitration agreements. So For

01:01:10

the next 2 minutes. If

01:01:13

everyone can kind of, you

01:01:15

know, just talked to your

01:01:16

neighbors, you have the little

01:01:17

notepad and a pen. And

01:01:19

look at these Clauses and

01:01:21

come up with what's wrong

01:01:23

with them, or how you

01:01:24

would fix them, or some

01:01:25

type of advice. That would

01:01:28

be great though. Thank you.



01:03:19

Is everybody ready? Was anybody

01:03:22

like more time raising hands?

01:03:25

All right. So who is

01:03:28

brave enough to talk about?

01:03:29

Claus number one. Actually. I

01:03:42

think with the fullest when

01:03:43

it gives the provisions for

01:03:45

both, but it doesn't say

01:03:46

when would be good for

01:03:47

arbitration? And when will we

01:03:48

go for? Litigation is just

01:03:50

giving both options but Ben

01:03:52

has which applicable, it doesn't



01:03:53  
say that. Dessa what it

01:03:58  
results in is not an

01:04:00  
unequivocal submission of deceased arbitration,

01:04:02  
right? It's like well, we

01:04:04  
could do either. And if

01:04:08  
I'm a list, you would

01:04:10  
be surprised how many closes

01:04:12  
like that? You see, particularly,

01:04:14  
when people start getting Santa

01:04:15  
Claus's, you have huge problems

01:04:19  
because I trust them, but

01:04:26  
you will like that in

01:04:28  
separate cuz of the contract.



01:04:30

So, you need to reconcile

01:04:31

the contract, which are absolutely

01:04:32

incompetent. These really exist in

01:04:43

the courts are going to

01:04:44

find. This is not an

01:04:45

arbitration Clause arbitration has lost

01:04:49

the right to put arbitration.

01:04:51

So so they're going to

01:04:56

Messing with the Delaware. Okay?

01:04:59

Number to the second one,

01:05:01

who wants to talk about

01:05:02

that one? Mentioned. If I

01:05:17

can, you say that again



01:05:18

in the microphone for our

01:05:19

listeners at home, he is

01:05:29

something that is not necessary

01:05:32

for the intention to be

01:05:34

designated to the arbitration clause.

01:05:36

And you also said that

01:05:39

it seems like a l

01:05:41

c, i a however, who

01:05:44

knows where the name of

01:06:05

the institution doesn't get translated

01:06:07

properly. You want to tell

01:06:12

us what you do since

01:06:13

we have and what would



01:06:15

you do with this class?

01:06:16

Would you go to court?

01:06:17

VDOT Bridget but probably the

01:06:20

parties can renegotiate on the

01:06:23

institution or submit the dispute

01:06:25

to court to decide on

01:06:26

the institution. But I'm not

01:06:38

sure and I would like

01:06:39

to hear the part about

01:06:40

the day, there is a

01:06:43

clear intention of arbitration because

01:06:45

the first is the worst

01:06:47

there, don't say all these



01:06:49

pews are to be arbitrated.

01:06:51

They say all disputes to

01:06:55

be resolved, through arbitration will

01:06:58

be held, or we would

01:06:59

be before the CIA. So,

01:07:01

if you consider that with

01:07:03

the first line is, is

01:07:05

not saying is not to

01:07:07

me. At least at first

01:07:08

glance is not conveying a

01:07:10

clear indication driving Theory. I

01:07:14

don't know what was, but

01:07:15

do you guys think? Now,



01:07:16

I can see that in

01:07:26

context all disputes to be

01:07:27

resolved through arbitration, by the

01:07:28

caa's read more naturally as

01:07:31

all disputes. Comprehensively are to

01:07:36

be resolved in arbitration by

01:07:37

the CIA rather than any

01:07:39

disputes or disputes that are

01:07:41

resolved by arbitration should be

01:07:42

resolved by the way I

01:07:43

think you have to do

01:07:44

more blue pencil work get

01:07:46

to the second interpretation then



01:07:48  
to the first but you

01:07:50  
know this is not where

01:07:51  
you want to be. But

01:07:59  
thank you. That's very interesting

01:08:00  
because that is what happens

01:08:01  
in practice. Okay, the third

01:08:04  
one's a little long and

01:08:05  
I believe that this was

01:08:06  
an arbitration agreement that may

01:08:08  
have been submitted to an

01:08:09  
institution So, what's wrong with

01:08:13  
it? Hi Liz. Would you

01:08:22  
like to tell us what's



01:08:23

wrong with it? Since we

01:08:24

are running on the first

01:08:31

sentence? Okay? The second sentence,

01:08:33

any matter of dispute and

01:08:36

which is not provided for

01:08:37

presumably. In this agreement shall

01:08:40

be submitted to arbitration cuz

01:08:46

you have no idea what

01:08:46

that even means. It's not

01:08:48

clear that they're submitting all

01:08:49

disputes but only disputes that

01:08:51

are not Provided for in

01:08:54

the agreement. So it's it's



01:08:55

it's frankly I actually meant

01:09:01

to say and then I

01:09:03

don't know whether Knoxville Tennessee

01:09:05

has enacted statutes a relationship.

01:09:06

Maybe it has in which

01:09:09

case ye Knoxville but again,

01:09:13

not really what you want.

01:09:16

And it just didn't work

01:09:17

out with this in. This

01:09:18

is like a real Clause

01:09:19

that and I believe this

01:09:20

is a real called and

01:09:21

it's the last one. The



01:09:37

last one is actually from

01:09:38

something I had to deal

01:09:40

with. So what's wrong with

01:09:41

the last one? I guess,

01:09:49

it says, she'll be finally

01:09:52

settled through. Arbitration southern district

01:09:54

of New York, but doesn't

01:09:55

specify, you know, which institution

01:09:58

southern district of New York

01:09:59

is just a venue. So

01:10:02

there's no real explanation of

01:10:04

how, you know, what would

01:10:06

be the arbitration mechanism. I



01:10:08

guess there's a clear intention

01:10:09

to arbitrate, but really nothing

01:10:11

beyond that. We have another

01:10:13

opinion. Burmese not very clear.

01:10:23

They want arbitration because when

01:10:25

I saw southern district of

01:10:27

New York, I was thinking

01:10:28

about the court. So I'm

01:10:31

puzzled are the last five

01:10:33

words sentence. I, I don't

01:10:36

know what they want, arbitration

01:10:37

oak or not. Yes, thank

01:10:40

you. I can tell you



01:10:41

that when you saw this

01:10:42

clause in the contract, it

01:10:44

was a clear, copy paste.

01:10:45

And someone forgot to delete

01:10:46

a word or phrase. So,

01:10:49

I'm clear with a forgot

01:10:50

to delete arbitration or the

01:10:52

reference to the southern district

01:10:53

of New York, which would

01:10:55

have been, you know, that

01:10:57

exclusive jurisdiction Clause. So, does

01:11:01

anybody have any questions in

01:11:03

general? I believe we have



01:11:05  
reached the end of our

01:11:05  
time but Like the sister,

01:11:25  
I think her measure something.

01:11:26  
Some of that stuff and

01:11:35  
I don't think southern district

01:11:36  
of New York is seen

01:11:38  
as a geographic location. I

01:11:40  
mean, it's when lawyers here

01:11:41  
in at least it's the

01:11:42  
federal court, but yeah. I

01:11:46  
did change the name of

01:11:46  
the court so you can

01:11:48  
figure out who this came



01:11:49

from, just in case, My

01:12:01

questions with regards to confidentiality

01:12:03

when it's not mentioned in

01:12:04

the agreement and the parties

01:12:06

are not able to come

01:12:07

to a consensus, they want

01:12:08

to publish your not. So

01:12:10

do they actually have to

01:12:11

present Arguments for and against

01:12:13

or how is it decided

01:12:15

in that scenario? You just

01:12:16

send an email to the

01:12:17

Secretariat and say we do



01:12:19

not want this published. The

01:12:24

fever is given to it

01:12:25

not being published and there

01:12:28

will be many, many, many

01:12:29

paragraphs, many letters that will

01:12:31

explain to you how to

01:12:31

do that. What if the

01:12:37

parties did not of out

01:12:39

on the roll? Is it

01:12:41

is not going to be

01:12:41

serious, is going to is

01:12:44

not going out. And then,

01:12:47

so why does it look



01:12:48  
see if I did? The

01:12:50  
what, what is the rule

01:12:55  
for? Probably what I would

01:13:00  
tell you is I like

01:13:01  
she's more would love your

01:13:02  
comment but unfortunately that's how

01:13:06  
it is. There's no rule

01:13:07  
in the rules that I

01:13:08  
see. Seaweed always ask you

01:13:09  
if one party has no,

01:13:11  
it's no. There's a big

01:13:13  
push for publication and I

01:13:16  
think that she's doing the



01:13:17  
right thing that she always

01:13:18  
does the right thing, but

01:13:21  
there's an argument to be

01:13:25  
made that if you didn't

01:13:26  
opt out there was are

01:13:28  
cleared. Don't say nothing about

01:13:29  
that. So it's not, I

01:13:32  
think you could also get

01:13:33  
in a lot of situations

01:13:34  
and the preference of the

01:13:37  
ICC. I would think speculating

01:13:41  
would be that they want

01:13:43  
Awards to be published and



01:13:45  
with a lot of non-participating

01:13:46  
responding if you had just

01:13:49  
an opt-in system, you would

01:13:51  
probably not get a lot

01:13:53  
of awards published. And so

01:13:55  
that is why I think

01:13:56  
it's it's very important to

01:13:57  
underscore the fact that you

01:13:58  
can now put it in

01:13:59  
your arm. Agreement, that you

01:14:01  
do not want your award

01:14:03  
published. The other point making

01:14:06  
this is instead, of course,



01:14:07

like all of us in

01:14:10

this room probably, or maybe

01:14:11

not the students at the

01:14:13

ICC is an institution that's

01:14:14

offering a service and they

01:14:16

need to stay sufficiently attuned

01:14:22

to the Expo. We aren't

01:14:23

we? All put our hands

01:14:24

up. Staying with your clients

01:14:25

with one competition, he would

01:14:26

have posted, okay Shania. I

01:14:27

imagine the reason there's not

01:14:29

been an instant Draconian and



01:14:32  
position of a of a

01:14:33  
black leather interpretation of the

01:14:35  
rules because they realize their

01:14:36  
mindsets are changing. And and

01:14:39  
and it requires a little

01:14:42  
bit of time for people

01:14:43  
to become attuned to that

01:14:45  
and of testing the waters

01:14:48  
to see whether this is,

01:14:49  
or is something that is

01:14:51  
a problematic utterly uninformed about

01:14:55  
why the practice is not

01:14:56  
as, you know, Guillotine. Like



01:15:00

I said, I think Okay.

01:15:12

Last question. I'm just a

01:15:18

short question. Do you think

01:15:19

that the decision about the

01:15:21

costs of the arbitration should

01:15:23

be included in every tration?

01:15:25

Clause, it depends what you

01:15:29

say because I'm Again, people

01:15:33

don't listen to enough to

01:15:34

lease. And the problem you

01:15:36

see all the time is

01:15:37

they include concepts are called

01:15:39

shall be paid by the



01:15:41  
prevailing party. What does that

01:15:42  
mean? If there are 10

01:15:44  
games and you win, five

01:15:46  
are you the prevailing party?

01:15:47  
Are you not the prevailing

01:15:48  
party? The ICC rules already

01:15:51  
deal with that and give

01:15:53  
discretion to the arbitrator's. My

01:15:56  
opinion is, it's better for

01:15:58  
the arbitrator's to deal with

01:16:00  
that. When you negotiate a

01:16:01  
contract to decide Workout cost

01:16:04  
should be allocated. I agree.



01:16:08

I agree that again to

01:16:11

the fall back under. The

01:16:12

rules has the discretion of

01:16:13

the arbitrators and cost can

01:16:15

be an important power for

01:16:17

the arbitrator's to actually sanction

01:16:19

party behavior. And I don't

01:16:21

think that should be taken

01:16:21

away from the arbitrator's. They

01:16:23

should have that power to

01:16:25

put the cost on parties

01:16:27

that have made, the preceding

01:16:29

heavier that have not complied



01:16:31  
with orders. From the arbitral

01:16:32  
tribunal is important power of

01:16:35  
the arbitrator's to use cause

01:16:36  
okay, can you get the

01:16:39  
actual last question because he's

01:16:41  
a partner him. So I

01:16:46  
just want to comment on

01:16:47  
the cost ratio. I think

01:16:48  
that's a good question. It's

01:16:49  
not often addressed unfortunately, but

01:16:53  
given that place following result

01:16:57  
used to only be a

01:16:59  
UK concert and the US



01:17:02

has a Quite Contrary presumption.

01:17:04

But now with investment arbitration

01:17:07

it's becoming almost the universal

01:17:10

rule in investment arbitration. And

01:17:13

so I think in commercial

01:17:14

agreements there often could be

01:17:16

some misunderstanding as to which

01:17:21

ruled which general was going

01:17:24

to apply is it going

01:17:25

to be the prevailing party

01:17:27

is going to get cost

01:17:28

allocation of the end or

01:17:30

not? And I think it's



01:17:31  
important because it also affects

01:17:33  
who brings clients because if

01:17:36  
you if you only bring

01:17:37  
claims if you think you're

01:17:39  
going to win then maybe

01:17:41  
some of the spurious claims

01:17:42  
would not be brought. so,

01:17:44  
I do think it has

01:17:45  
a benefit in adding it

01:17:48  
to your cause Thank you.

01:17:52  
And thank you everyone for

01:17:53  
being here. Still drinks. I

01:17:59  
think there's still food. I



01:18:01

don't think we're kicking anyone

01:18:02

out. Thank you. And I

01:18:09

hope everyone learned something and

01:18:12

you have all of our

01:18:12

names. So if anybody has

01:18:14

any questions and we don't

01:18:15

get a chance to chat,

01:18:16

send us an email. I

01:18:18

am speaking on behalf of

01:18:19

everyone and I was great

01:18:21

to see all you do.

01:18:22

Thank you.