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Atty. Manuel Bautista, Jr. giving his lecture on International Arbitration

PDRCI trains 66 new arbitrators

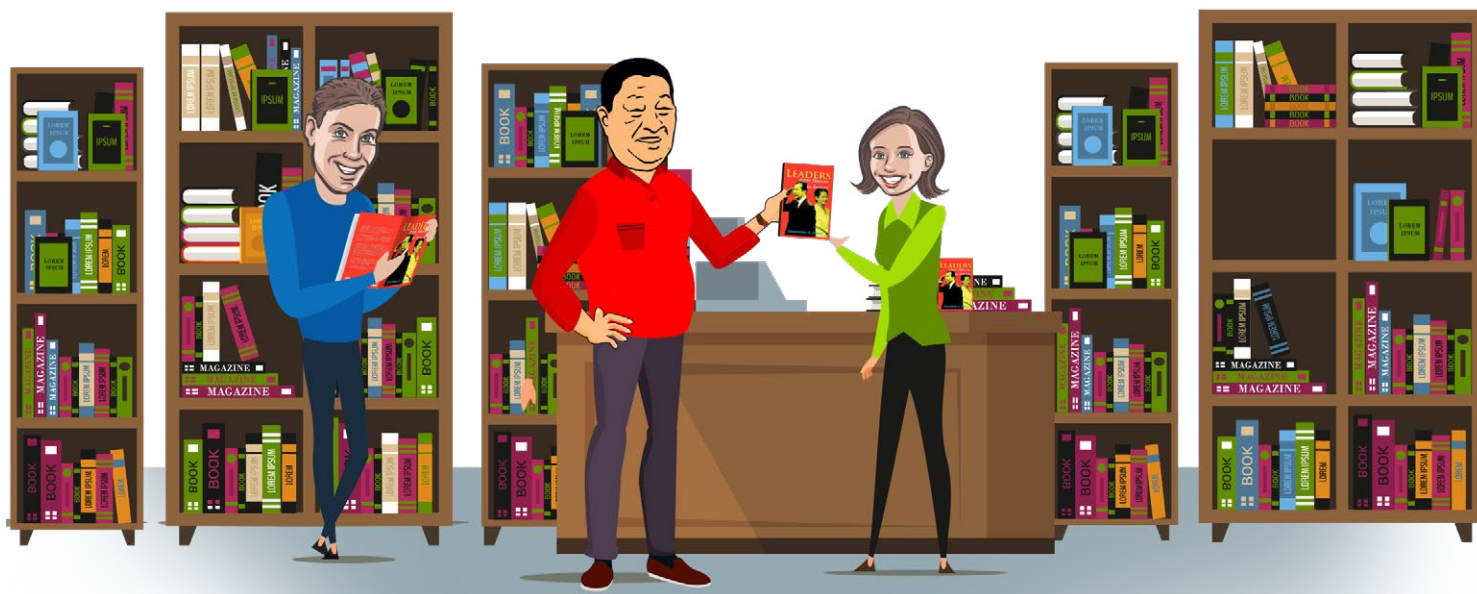
PDRCI recently held its 17th commercial arbitration training seminar (CATS) on June 24 to 28, 2019 at the University of the Philippines College of Law at Bonifacio Global City in Taguig City. Sixty-six participants attended the training.

The five-day intensive training began with an introduction to arbitration by Prof. Mario E. Valderrama. This was followed by a discussion on the arbitration agreement and commencement of arbitration by PDRCI Corporate Secretary Atty Patricia-Ann T. Prodigalidad.

On the second day, Atty. Gwen B. de Vera spoke on emergency arbitration and the arbitral tribunal, after which Atty. Shirley F. Alinea, PDRCI Deputy Secretary General, discussed consolidation of arbitrations, arbitration of multiple contracts, joinder of parties, and preliminary matters.

The third day featured the lecture by Atty. Ray Anthony O. Pinoy on the conduct of the case management conference. Atty. Teodoro A.Y. Kalaw IV the spoke on arbitration hearings and the arbitral award.

WHAT'S INSIDE



PART I

Hidden arbitrator bias

By Roberto N. Dio

Part 1 discusses apparent bias and its elements, lack of independence and lack of impartiality.

I recently met lawyer Homobono Adaza, former provincial governor and national assemblyman, at a wake of a common friend. He was as sharp and witty as ever and looked fit for his advanced age, which he kept undisclosed. He was still active in the practice of law, managing his own law firm, and writing his tenth book on Philippine politics.

One of his books, *Leaders from Marcos to Arroyo* (AuthorHouse, 2009), was available on Amazon, he announced. "It must be biographical," I commented. "Every book," he asserted, "is biographical."

Attorney Adaza captured in that single quip a phenomenon that arbitrators are increasingly aware of but only a few openly acknowledge: implicit bias. If books are biographical, what about arbitral awards?

Are arbitrators, like book authors, susceptible to some hidden biases? If so, what can parties and arbitrators do to minimize, if not avoid, implicit bias?

Apparent bias

Most arbitrators are familiar with *apparent bias*, the kind of bias defined in the law and which disqualifies an arbitrator from acting in a dispute.

Under the Arbitration Law [Rep. Act 876 (1953)], for instance, the arbitrator cannot be someone who is related by blood or marriage within the sixth degree to any party to the controversy (Sec. 10, first ¶). Under the same law, an arbitrator cannot also serve in any proceeding if he has or had any financial, fiduciary or "other interest" in the controversy or cause to be decided or in the result, or if he has personal bias, which may prejudice the right of any party to a fair and impartial award.

The law considers (a) relationship by consanguinity or affinity to the party, or the presence of a (b) financial, fiduciary or other interest in the dispute or controversy, as a conclusive presumption of bias that will disqualify an arbitrator. The disqualification cannot be waived in domestic arbitration, but may arguably be waived in international commercial arbitration under Article 4, Waiver of the right to object, of the 1986 Model Law, which the Philippines adopted in 2004.

After the appointment, an arbitrator in a domestic arbitration has a continuing duty to immediately disclose to the parties “any circumstances likely to create a presumption of bias” or which he believes may disqualify him as an impartial arbitrator (RA 876, Sec. 10, second ¶). In international commercial arbitration, the arbitrator has a duty, from the time of his appointment and throughout the arbitral proceedings, to disclose without delay “any circumstances likely to give rise to justifiable doubts as to his impartiality or independence.” [1986 Model Law, Art. 12 (1)].



In common usage, *independence* refers to the absence of interest, benefit, or improper connections or relationships, while *impartiality* means freedom from prejudgment or prejudice. Both lack of independence and lack of impartiality are thought to result in a conflict of interest in the arbitrator. The common assumption is that an arbitrator in international disputes must be both impartial and independent [William Park, “Arbitrator Bias,” *Transnational Dispute Management* (Jan., 2015)].

An arbitrator should disclose all facts or circumstances that may give rise to justifiable doubts as to his impartiality or independence—such as past or present business relationship, whether direct or indirect, with a party, its representative, or a potentially important witness. With respect to present relationships, the duty of disclosure applies “irrespective of their magnitude,” which means full and complete disclosure.



Freedom from conflict of interest has dogged arbitrators for so long that the International Bar Association (IBA) has issued its Rules of Ethics for International Arbitrations (“IBA Ethics Rules”) first in 1987 and its Guidelines on Conflicts of International Arbitration again in 2004 (“IBA Conflicts Guidelines”).

The failure to make such disclosure creates an appearance of bias and may itself be a ground for disqualification, “even though the nondisclosed facts or circumstances would not of themselves justify disqualification.” (Art. 4.1)

Next issue: Problems arising from disclosure and it was addressed by the International Bar Association.

The IBA Ethics Rules devotes an extended article on the elements of bias, affirming lack of independence and impartiality as the criteria for assessing questions relating to bias. Under Article 3 of the Rules, partiality arises where an arbitrator “favours one of the parties” ahead of the award or where “he is prejudiced” in relation to the subject matter of the dispute. Dependence—the opposite of independence—arises from continuous or substantial relationships between an arbitrator and the parties, or with someone closely connected with one of the parties.



About the Authors

Roberto N. Dio is the Secretary General of Philippine Dispute Resolution Center. He has been a commercial and construction arbitrator for close to 15 years. He is a senior litigation partner of Castillo Laman Tan Pantaleon & San Jose, www.cltpsj.com.ph, and serves as a volunteer supervising lawyer of the University of the Philippines Office of Legal Aid.

The appearance of bias is best overcome by the duty of disclosure, as described in detail in Article 4 of the Rules.



MEMBER SPOTLIGHT

Atty. Aislyn Janelle L. Yao works as an Attorney III at the Philippine Private-Public Partnership Center, which she joined in April 2018.



She studied management with applied chemistry at the Ateneo de Manila University (AdeMU), where she also obtained her Juris Doctor (JD) degree in 2014. Her JD thesis delved on the Exception to the Double Jeopardy Rule in Light of the Philippine Ratification of the Rome Statute.

Atty. Yao was a champion moot-court debater in law school, where her team won as Best Team in the 2010 Sta. Maria Persons Moot Court Competition. In 2011, she was part of the AdeMU Law School (ALS) team that won the Philippine National Championship and, thereafter, the Best Memorial Award in the international rounds of the Philip C. Jessup International Moot Court Competition. In 2013, her ALS team received honorable mention for Best Respondent Memorial in the Willem C. Viz International Commercial Arbitration Moot Court Competition.

She was the Internal Vice President of the ALS Student Council in her senior year and, before that, finance officer of the Ateneo Society of International Law and co-head, hotel-academics of the Ateneo Central Bar Operations.

Atty. Yao was an associate attorney of Zambrano Gruba Caganda and Advincula until February 2018. She is a licensed real estate broker and a certified open water diver. [!\[\]\(05be7c7a8995decd503647c99211f7c2_img.jpg\)](#)

Participants of 17th Commercial Arbitration Training Seminar. Ma. Joscet Abellar, Allesandra Albarico, Hanna Almirez, Joseph Alvaera, Rita Alvaera, Janna Aquino, Lovely Avisado, Cesar Baluyut, Ohmar Banaag, Elium Banda, Jr., Jasper Barrientos, Miguel Buenaventura, Leonardo Calderon III, Josephine Cañeba, Josef Cenizal, Clifford Chan, Dennis Chan, Charlemagne Chavez, Hans Chua, Bien de Guzman, Gianna de Jesus, Erwin Del Mundo, Hacel dela Cruz, Rona Diaz, Joan Dimapilis, Maria Fernandez, Arianne Ferrer, Mary Florete, Wilfried Formalejo, Alden Gianan, Bernard Gregorio, Ma. Joycelyn Guirnalda, Abraham Guiyab, Jamalodin Hadjijusman, Daniel Hofileña, Angeline Ifurung, Encebrin Inanuran, Alanna Khio, Keith King, Mai Doloseile Liao, Robert Lim, Arnold Manzano, Monica Marcelo, Ma. Alexandria Maroto, Florianne Marzan, Marc Monterde, Kristian Palmares, Jamaica Pelayo, Lois Pelito, Ma. Lourdes Polido, Teffanie Quibod, Mikel Rama, Camille Remorosa, Jennifer Reyes, Sheena Rima, Ma, Victoria Rodriguez, Jose Roy III, Ina Rugay, Adonis Sepacio, Miguel Sevilla, Jesselie Sunga, Marl Chester Ti, Kristel Tiu, Emmanuelle Valencia, Fidel Valeros, Jr., and Paola Vargas.

PDRCI trains 66 new arbitrators

On the fourth day, Atty. Donemark L. Calimon talked on the recognition, enforcement, setting aside and refusal to enforce arbitral awards. Atty. Manuel P. Bautista of King and Spalding Singapore talked on international commercial arbitration.

On the last day, the participants staged a mock arbitration facilitated by Atty. Chet de Jesus Tan (lead), and Attys. Oscar Carlo F. Cajucom and Diana Lyn Bello-Castillo. In the afternoon, they took a written assessment examination to qualify them to become PDRCI-trained arbitrators. [!\[\]\(fe3aebe81acea8d45108cd2768939da7_img.jpg\)](#)

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EDITOR **ROBERTO N. DIO**
 CONTRIBUTOR **SHIRLEY ALINEA**
 STAFF WRITERS **CHET J. TAN, JR.**
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