



Lee M. Caplan

PARTNER

Lee is a partner in the firm's International Arbitration and Dispute Resolution practice.



Practices

International Arbitration & Dispute Resolution
International Trade

International

Africa
Asia
Latin America

Languages

German

Education

University of California, Berkeley, Boalt Hall School of Law JD, 2000
Tufts University, The Fletcher School of Law and Diplomacy MALD, 1995
Vanderbilt University BA, magna cum laude, Phi Beta Kappa, 1992

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Lee counsels private and sovereign clients in a wide range of matters involving international dispute resolution, public international law, and international investment law and policy. He regularly appears before international tribunals in connection with complex and high-value disputes arising out of concession agreements, investment treaties, and other international agreements. Lee's experience spans a range of industries, including oil and gas, hospitality, and telecommunications. He is the co-author of a leading treatise on international arbitration entitled *The UNCITRAL Arbitration Rules: A Commentary*.

Representative experience includes:

- Advising and representing private and sovereign clients in connection with disputes arising under investment treaties and national investment laws. Counseling clients making investments abroad on maximizing investment treaty protections and respecting principles of corporate social responsibility.
- Advising and representing clients in connection with oil and gas disputes arising under petroleum concession agreements, including in commercial arbitration proceedings.
- Engaging US government agencies on behalf of US companies to resolve business disputes with foreign governments through diplomatic channels.
- Advising clients on complex public international law matters, including treaty law and practice, international investment law, the law of the sea, the law of diplomatic protection, and the laws of war.
- Advising and representing clients in connection with maritime boundary disputes, including in proceedings before the International Tribunal for the Law of the Sea (ITLOS).

Lee also heads the firm's Corporate Social Responsibility practice group. Additionally, he serves as a US delegate to the UN Commission on International Trade Law and has served as an advisor to the US Commerce

Previous Work

Prior to joining Arent Fox, Lee worked on numerous international arbitrations. As a senior attorney-adviser at the US State Department's Office of the Legal Adviser, he successfully defended the United States in arbitrations before the Iran-US Claims Tribunal and before an ad hoc arbitral tribunal in *Ecuador v. United States*, a high profile state-to-state arbitration arising under the US-Ecuador Bilateral Investment Treaty. Lee also worked closely with the State Department's Investment Arbitration Team to develop positions taken in US pleadings and non-disputing submissions in NAFTA and CAFTA-DR arbitration, and he regularly advised other State Department offices on matters relating to international arbitration. Lee also served as a US delegate to the United Nations Commission on International Trade Law (UNCITRAL) during the development of rules of transparency for use in investor-State arbitration. Prior to joining the State Department, Lee was an associate in the international arbitration group of a large international law firm, where his practice focused on investor-State arbitration and litigation in support of arbitration.

Lee also has extensive experience in the area of international investment law and policy. While at the State Department, Lee was integrally involved in efforts to encourage and protect foreign investment by US businesses, serving as the Department's principal lawyer in negotiations to conclude investment treaties with China and the Czech Republic and the investment chapter of a free trade agreement with the Trans-Pacific Partnership countries: Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam. In addition, he made critical contributions to the Obama Administration's review of the US Model Bilateral Investment treaty, providing counsel on proposals to revise the template on which US investment treaty negotiations are based. Lee regularly advised the State Department and US embassies on strategies for supporting domestic companies seeking government advocacy when obtaining foreign contracts, pursuing foreign investments, or settling disputes with foreign governments. Lee is the co-author of a leading commentary on the US Model Bilateral Investment treaty in *Commentaries on Selected Model International Investment Agreements*.

Lee has also done substantial work in the field of corporate social responsibility. While at the State Department, he advised the US government on corporate social responsibility matters, including the 2011 revision of the OECD Guidelines for Multinational Enterprises, the development and operation of a more robust US National Contact Point process to resolve CSR complaints, and the drafting of the Declaration on the Rights of Indigenous Peoples and the Principles for Responsible Investment in Agriculture and Food Systems.

Following law school, Lee clerked on the US Court of Appeals for the Fourth Circuit for Judge Diana Gribbon Motz and at the Iran-US Claims Tribunal for Judge Charles N. Brower.

Professional Activities

Lee is an adjunct professor at Georgetown University's Law Center where he teaches International Courts and Tribunals. Previously, he taught International Business Transactions at American University's Washington College of Law.

Lee serves as a peer reviewer for *The Yearbook on International Investment Law and Policy* and as a member of the Editorial Advisory Committee for *International Legal Materials*. He has held leadership positions on the American Bar Association's Committee on International Courts, including serving as co-chair from 2007-2010. Lee also served as a co-mediator for the Sharing Neutrals Federal Mediation Program while in government.

Lee is a member of the American Society of International Law.

Publications & Presentations

Publications

- *The Iran-United States Claims Tribunal* (Brill Nijhoff Press, 2d ed., forthcoming 2019) (with Charles N. Brower, Jeremy K. Sharpe & Jarrod Wong)
- "The UNCITRAL Arbitration Rules," *Encyclopedia of International Procedural Law*, Max Planck Institute (forthcoming 2019)
- Book Review: *Practising Virtue: Inside International Arbitration*, by David D. Caron, Stephan W. Schill, Abby Cohen Smutny and Epaminontas E. Triantafilou, Oxford University Press, 2015, 32(4) *Arbitration International* 702 (2016) (with Jeremy K. Sharpe)
- "Challenges at the Iran-United States Claims Tribunal," in *Challenges and Recusal of Arbitrators and Judges in International Courts and Tribunals* (C. Giorgetti ed., Brill Nijhoff Press, forthcoming 2015)
- "Ukraine Crisis Raises Questions For Foreign Investors," *Law360* (Sep. 9 2014)
- *The UNCITRAL Arbitration Rules: A Commentary* (Oxford University Press, 2d ed., 2013), (with David D. Caron)
- "The United States Model Bilateral Investment Treaty," in *Commentaries on Selected Model International Investment Agreements* (Chester Brown, ed., 2013), (with Jeremy K. Sharpe)
- "A Proposed Set of Procedural Rules for Weaker Players in Investor-State Arbitration," in *The Yearbook on International Investment Law and Policy* (Chapter 9), (Vale Columbia Center on Sustainable International Investment, 2010/2011)
- "Addressing Small and Medium-Sized Enterprises' Access to Investor-State Arbitration," in *The Future of Investment Arbitration* 297 (Catherine Rogers & Jack Coe, eds., 2009)
- "2007 Year In Review: ABA International Law Section, Committee on International Courts," 42 *International Lawyer* 435 (Summer 2008) (contributor)
- "2006 Year In Review: ABA International Law Section, Committee on International Courts," 41 *International Lawyer* 291 (Summer 2007) (contributor)
- *The UNCITRAL Arbitration Rules: A Commentary* (Oxford University Press, 2006), (with David D. Caron & Matti Pellonpää)
- "2005 Year In Review: ABA International Law Section, Committee on International Courts," 3 *Transnational Dispute Management* (April 2006) (contributor)
- "Private International Law," in *2005 Digest of United States Practice in International Law 2004* (Chapter 15), (U.S. Department of State, 2005)
- "State Immunity, Human Rights, and *Jus Cogens*: A Critique of the Normative Hierarchy Theory," 97 *American Journal of International Law* 741 (2003)
- "The Constitution and Jurisdiction over Foreign States: The 1996 Amendments to the Foreign Sovereign Immunities Act in Perspective," 41 *Virginia Journal of International Law* 369 (2000)
- "A Bibliographic Essay on the Iran-United States Claims Tribunal" in *The Iran-United States Claims Tribunal & The Process of International Claims Resolution* (David D. Caron & John R. Crook eds., 2000) (contributor)

Presentations

- Panelist, "The Proposal for a Multilateral Investment Court," The Elegance of International Law: A Conference in Commemoration of David D. Caron, September 15, 2018, Berkeley, CA
- Faculty, Executive Training on Investment Arbitration for Government Officials (presentations on managing investment treaty programs and state attribution), Columbia Center for Sustainable Investment, Columbia Law School, New York, July 30, 2018
- Moderator, "Investment Arbitration: Is FET Getting Clearer?," Center for International Legal Studies (CILS) Conference on International Arbitration, June 7, 2018, Salzburg, Austria
- Panelist, State Experience in the Prevention of Investment Treaty Disputes and the Improvement of State Readiness for Investment Arbitration, ABA/ASIL Investment Arbitration and Transpacific Transactions Conference, May 10, 2018, Singapore
- Panelist, "Practical Strategies for Claimants and States in Investment Arbitration on Preliminary and Jurisdictional Objections," CIArb Conference on Arbitrating Disputes with Foreign Sovereigns and Sovereign-Owned Entities, April 3, 2018, Washington, DC
- Panelist, "Business and Human Rights: What Do They Mean For Lawyers?," New York City Bar/Vance Center for International Justice, February 8, 2018, New York
- Panelist, "UNCITRAL Working Group III Project on ISDS Reform," Discussion on Reflective Loss in Investor-State Arbitration, Meeting of the U.S. Department of State's Advisory Committee on Private International Law, October 31, 2017, Washington, DC
- Moderator, "The Importance of Treaty Drafting," APEC Capacity Building Workshop on Investor-State Dispute Settlement (ISDS): Prevention and Management, October 3, 2017, Washington, DC
- Faculty, Executive Training on Investment Arbitration for Government Officials (presentations on managing investment treaty programs and state attribution), Columbia Center for Sustainable Investment, Columbia Law School, New York, July 31, 2017
- Presenter, "Update on the UNCITRAL Arbitration Rules," 8th Conference on Teaching Transnational Commercial Law, International Law Institute, November 17, 2016, Washington, DC
- Faculty, Executive Training on Investment Arbitration for Government Officials (presentations on managing investment treaty programs and state attribution), Columbia Center for Sustainable Investment, Columbia Law School, New York, July 31, 2016
- Commentator, "Drawing a Line Between the Practice of Treaty Shopping in International Arbitration and Other Business-Related Corporate Restructuring: The Arbitrator's Perspective," APEC Conference, Lima, Peru, February 23, 2016
- Moderator, "Remedies: From Treaty and Tribunals to Non-Judicial and Judicial," Business and the Bar: The Legal Profession's Leadership on Business and Human Rights, American Bar Association, June 9, 2015, Geneva, Switzerland
- Moderator, "The U.S. National Contact Point: Charting the Course," U.S. National Action Plan Dialogue, Georgetown University Law Center, April 16, 2015, Washington, DC
- Panelist, "The Future of Investment Arbitration," IBA International Arbitration Day: ICSID's 50th anniversary, Washington, DC, February 27, 2015
- Panelist, "Investment Arbitration - Current Controversies and Hot Topics," "Round Table Series: A Discussion on Current Trade Issues and Investment Arbitration, American University Washington College of Law, Washington,

DC, November 13, 2014

- Advisor/Presenter, "Workshop on International Arbitration Agreements," Commercial Law Development Program, U.S. Department of Commerce, and Iraqi State Shura Council, Istanbul, Turkey, May 19-22, 2014
- Panelist, "The Interrelationship of the Trans-Pacific Partnership and NAFTA: Impact on Canadian and U.S. Stakeholders," Food & Drug Law Institute Annual Meeting, Toronto, May 15, 2014
- Panelist, "BIT by BIT: Can Bilateral Investment Treaties Protect Labor and Environmental Rights in the 21st Century?," Georgetown Law Center, Washington, DC, April 9, 2014
- Panelist, "The ICSID Debate: A Negotiator's Perspective," Georgetown Law Center, International Arbitration Month, Washington DC, February 13, 2014
- Panelist, "Transforming the Investment Treaty System through Joint Termination and Amendment," Columbia Law School, Center for International Commercial & Investment Arbitration and the Vale Columbia Center on Sustainable International Investment, New York, October 14, 2013
- Presenter, "Investment Disputes and Resolution Mechanisms," US Global Investment Policy Course, U.S. Foreign Service Institute, Arlington, VA, July 23, 2013
- Panelist, "Multiparty Investor Disputes in the Energy Sector - Preclusion, Consolidation, or Free-For-All?" Seventh Annual Investment Treaty Arbitration Conference, Washington, DC, April 22, 2013
- Panelist, "State-to-State Investment Treaty Arbitration: Dead End or New Frontier?" Columbia Law School, Center for International Commercial & Investment Arbitration and the Vale Columbia Center on Sustainable International Investment, New York, November 29, 2012
- Panelist, "Importance of Policy Coherence and Clarity in Treaty Drafting," APEC Workshop on Dispute Prevention and Preparedness, Washington, DC, July 27, 2010
- Chair, "The Relevance of Non-Investment International Obligations in the Adjudication of Investment Disputes," OECD Special Legal Experts Meeting, OECD Investment Committee, Paris, October 8, 2009
- Panelist, "Post-Annulment Options: Possible Recourse by Investor's Home State," British Institute of International & Comparative Law Investment Treaty Forum Public Conference, London, May 9, 2008, reprinted in *Transnational Dispute Management* (September 2008)
- Commentator, "Is There A New Common Law of Investment Arbitration?" George Washington University Law School Symposium, Washington, DC, October 16, 2007
- Moderator, "The Challenges Facing Less-Developed Countries (LDCs) and Small and Medium-Sized Enterprises (SMEs) in Investment Arbitration," American Bar Association Roundtable Discussion, October 10, 2007.

Bar Admissions

District of Columbia

Maryland