

TRANSCRIPT

PBA : Today, we share with you our exchange with Professor Thomas Clay. Good morning, Professor!

Thomas Clay : Hello!

PBA : Thomas Clay, you are a Professor of Law at the University Paris 1 Panthéon - Sorbonne, you are in charge of courses in Arbitration law and alternative dispute resolution. You are an arbitrator, you have also been the provisional administrator of the University Paris I Panthéon - Sorbonne.

You are also known for your political and media activities. You are a lawyer and the founding partner of Clay Arbitration.

Therefore, we have the pleasure of talking to one of the best experts in Arbitration law.

Thomas Clay : Oh, this is a good start !

PBA : We are delighted that you have welcomed us to your offices and we thank you again.

Thomas Clay : It is my pleasure !

PBA : Today we will be discussing a topic for which you benefit from a recognized expertise — the arbitrator. Twenty years ago, you defended your thesis on the arbitrator.

Thomas Clay : It has already been 20 years !

PBA : Already...and we're going to talk about the arbitrator again.

Since you have defended your thesis in the early 2000s, have the requirements for becoming an arbitrator changed ? Today, can anyone become an arbitrator? Is it still an appealing prospect to become an arbitrator in 2021?

These are some of the questions we will try to answer to.

In order to address this issue, we have a first question to answer — how does one become an arbitrator.

Indeed, there is no diploma nor degree that lead to be appointed as an arbitrator. However, as we know, the arbitrator is elevated, for the time of the proceedings, to the rank of a judge. We also know that being a good arbitrator is not just about being a good lawyer or an expert on a technical aspect of the litigation.

Professor, for you, how does one become an arbitrator in 2021?

Thomas Clay : One needs to be interested in the theory of the matter and its practice. Arbitration has the first richness of being inexhaustible. I've been working on Arbitration law for 30 years and I still don't feel like I've reached the bottom of it.

There are not many legal disciplines that are so infinite. It is infinite in its positive law. It is infinite because we still have not finished exploring the history of Arbitration which is 4000 years old. It is infinite for its universalism, it is a law that is nourished — even more than others — from foreign experiences. It is a law that is truly transnational. Not only international but transnational. So you must have that appetite ; you must have the taste for such a limitless subject. It's one of the great chances of Arbitration law, you never finish the learning process. This is for the theory.

In practice, becoming an arbitrator is a complete alchemy between the desire to pursue this career and knowledge. It must be said, one does not become an arbitrator by presenting oneself and saying that one wants to become an arbitrator.

It is a legal discipline with technicalities that need to be known to be able to practice it. It is a complex law, accessible but still complex. And finally, you have to make people want to appoint you. It comes down to one's characteristics, qualities, and perhaps sometimes faults. For example, to be authoritative is not necessarily a fault in an arbitral tribunal, whereas it can be in our everyday life.

It is a complex alchemy to find. We are always chosen *intuitu personae*, for what we are or what we are not. So to be chosen as an arbitrator, you have to be known for who you are.

PBA : What do you think about the creation of specific degrees or diplomas dedicated to Arbitration ? Do you think that being an arbitrator is not a career in itself but rather a consecration, as you said, after years of experience?

Thomas Clay : When I started as a professor there was no existing Arbitration degree in France. This is why I created, at the University of Versailles Saint-Quentin-en-Yvelines, the first international diploma specialized in Arbitration, the Master 2 Arbitration and International Trade (called *MACI*). It was immediately successful. Its success exceeded my expectations, showing that there was a very strong demand. This is partly explained by the fact that French law and the place of Paris are references in the world of Arbitration. There was no other reference diploma in the French landscape, it is a gap that we have filled with the *MACI*.

Afterward, others copied us. Many universities created certificates, Masters and University Degrees. This was followed by private training such as the Center of Mediation and Arbitration of the Paris Chamber of Commerce and Industry or the French Association of Arbitration. Even the Paris Bar created the International School of Alternative Dispute Resolution. I am one of those who think that the more training there is, the better it will be. The more arbitrators there are, the more Arbitration there will be.

My vision of Arbitration law is far from being Malthusian. When I have started, I was exposed to a generation that felt that there had to be as few actors as possible because the cake was not indefinitely extensible ; the fewer at the table, the larger the slices would be. It was a confrontation I had with some of

my colleagues, particularly from the University of Paris II Panthéon - Assas. However, I think that we need to train young people, and anyone who attends the Vis Moot of Vienna realizes that we are not going to stop the massive attraction of younger generations to the Arbitration world. The Vis Moot gathers 3,000 students from all over the world.

PBA : Indeed, with the Vis Moot, we see the interest that young people have in the matter.

Thomas Clay : In the Vis Moot, we see it even more significantly. Students from all over the world work on the same subject, in the same language, and with the same method, for a whole year. It is a combination of universality and unity. Anyone who has already attended this experience, cannot still believe that this movement will stop. On the contrary, the doors and windows of the Arbitration House must be wide open.

This is what I wanted to do, and this is why I had the opportunity to train generations of young people who are now involved in international Arbitration and who are developing their practices of lawyers and arbitrators. I do not think we should have a conservative approach, but rather an open-minded one.

PBA : Do you think that someone starting its career in Arbitration nowadays has the same difficulties as one who started it in the 2000s, when you defended your thesis?

Thomas Clay : That's a very good question!

I think the environment today is much more favorable than 20 years ago. When my generation came to the Arbitration market, the discipline was unknown. For example, there was no manual. The Arbitration law textbooks were written in the 2010s. There were also very few firms hiring. We appeared in a very high-end niche. We had to speak several languages. That was a problem. But in exchange, there were few competitors. We were relatively few on the market. When you look at my generation of scholars, there are three or four specialists over a generation, on a 10-year scale.

Today the advantage is that there are a lot of professional opportunities. Certainly not as much as we would like, but still. Every major law firm has an Arbitration department. Moreover, if we take as an evaluation criterion the activity of the International Chamber of Commerce, which increased by 30 or 40% the number of its sentences per year, we can see how a real culture of Arbitration exists. And it is growing ... ! The Arbitration Bar organizes meetings, exchanges, reviews... It is a living field ! With the pandemic, it is developing even more easily since we do everything through video conferencing. The market is therefore much more open.

The counterpart is that there is more competition. French students, in particular, are competing with students from around the world. Some, especially from Eastern Europe, have a determination and a rage to succeed that the French do not have.

I see these young people coming in with spectacular resumes ! They speak 7 or 8 languages perfectly. They arrive on the French market, and it is true that a French student — if he did not have the open-mindedness during his course to internationalize his curriculum — risks to be in a situation of inferiority to this type of profile.

PBA : To bounce back on what you have just said, what would you advise to the ones who start their career now and want to stand out ?

What practical advice would you give to the young ones who want to become arbitrators or even just start their career in Arbitration law ?

Thomas Clay : You are right to distinguish these two moments, starting your career in Arbitration and becoming an arbitrator cannot happen simultaneously.

Sometimes, I have young people coming to me and asking “How can I become an arbitrator ?” I have a somewhat disheartening answer, which is to tell them to wait 30 years and come back to see me.

It’s not always true, you can become an arbitrator quite young. It did happen to me. You can become an arbitrator at 35 for example.

PBA : It seems to me that this remains rare cases.

Thomas Clay : Yes, it’s rare, but it happens. It also depends on the culture of the different countries. In France, we tend to apply the dogma of Plato, which is to say that to be a good judge, you have to be an old one. In other countries, such as Switzerland, young arbitrators are appointed more easily. That is the Swiss culture of appointment. As soon as I have cases in which I feel that we could appoint an inexperienced arbitrator — but young and competent — I do it. I think we need to feed the community.

The ideal training to enter the Arbitration field and one day become an arbitrator — at least from my subjective point of view — is to have a good full legal training in a French University, up to and including the Master 2. I think students must first complete a generalist Master 2 (for example on contract law, civil law, business law, etc.). First of all, you have to be a very good French jurist.

Then, it is absolutely necessary to complete your course with specialized training, which would be, if you want to work in the Arbitration field, a Master 2 in internal or international Arbitration (*international arbitration is more amusing in my opinion*). There are not that many, but there are a few. For the MACI, we received 1,000 applications for 30 places and we had students from Yale or Harvard who wanted to complete their education. Now there are other degrees that have been created : there is a very good Master 2 at the University of Paris 1 Panthéon - Sorbonne, there is a University Diploma in the University of Paris 2 Panthéon - Assas, there is an LLM in Science po, a Master in Geneva. And London, obviously, is also very dynamic.

The third level of training has to be abroad. Whether in London or the United States, students need to speak and write fluently English. Having the ability to work in English as a native speaker is very important. Obviously, we’ll never get there completely, when you are a native speaker in French, it’s impossible to be as good as an English native speaker. I notice it quite distinctly during my hearings when I have a barrister in front of me, his English is indisputably better than mine. French students have other advantages, they are very methodic for example.

You have to speak English very well, but that is not enough. English is the minimum recommended. You need a third and fourth language. For example, in the first part of my career, I used my other spoken languages. Especially Spanish and Italian which I speak for family reasons.

I began my career with files for which I needed to work in Spanish, because they took place in Latin America, but things are moving. For the last 7 or 8 years, our work with African countries has increased, especially francophone countries. French is gaining market share, particularly in the International Court of Arbitration statistics.

Thus students need this three-level education. First of all, a complete French formation in which they learn to write French very well. It is important to have strong writing skills ; a beautiful style and an incisive pen are a must and I'm not even talking about spelling mistakes ! I am talking about a developed style and understanding of the language. Secondly, you have to focus on a specialized degree and then complete it, thirdly with an overseas experience.

On the other hand, concerning the doctoral thesis, it is only reserved for a small part of students.

And that allows me to answer another question you asked me. I don't believe that being an arbitrator is a profession. I think it's an activity.

PBA : For you, it's not a career in itself ?

Thomas Clay : It does not have to be. It tends to be, obviously. For example, I'm an arbitrator and an academic. As you were kind enough to recall, I chaired the University Paris 1 Panthéon - Sorbonne for several months and it was a full-time activity. I'm also a lawyer, but some lawyers, that are appointed to be arbitrators, practice more as lawyers than arbitrators.

If you only practice as an arbitrator — and there are a few people in the world to do so — then your economic prosperity depends on it, and there is a bias. It is, therefore, necessary to avoid the professionalization of the , even if the movement tends to be directed on this path.

But as cases are becoming more and more complex, to be able to hold on to this kind of case, you must have a staff and therefore it forces you to professionalize the activity. That's what I did, I professionalized my business but it didn't become my profession.

PBA : Most assuredly. Finally, could you describe the future of Arbitration in three words ?

Thomas Clay : In three words... the present, the past, and the future.

PBA : We thank you very much for taking the time to answer all of our questions and we are sure that our exchange will be valuable for the students and professionals who are listening to us.

Thomas Clay : I hope so ! Thank you !