

SUBJECT DETAILS: Commercial Arbitration and Alternative Dispute Resolution (3 credits total)

Data on the subject	
Name	Commercial Arbitration and Alternative Dispute Resolution
Degree	Postgraduate in Master in International and European Business Law
Year	2015-16
Nature	Fall
ECTS Credits	20 HOURS = 2 CREDITS
Department	Law
Area	Law
Teaching staff	María Isabel Rodríguez Vargas & José Ángel Rueda García

Data on the teaching staff	
Teaching staff	María Isabel Rodríguez Vargas & José Ángel Rueda García
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Tutoring Schedule	Upon request from students

SPECIFIC DATA ON THE SUBJECT

Pre-requisites
None
Contribution of the degree to the professional profile
Education in the adjudication of international disputes involving a sovereign State through alternative dispute resolution mechanisms

COMPETENCES TO BE IMPROVED

What skills you'll gain from this class:

Familiarisation with general international law (particularly, responsibility of States for internationally wrongful acts) and international investment law from both theoretical and practical viewpoints

THEMATIC AREA AND CONTENT

AREA 1: Introduction

Theme 1: Introduction to international investment arbitration

- 1.1 Evolution and concept of investment arbitration
- 1.2 Standards of protection and causes of action in investment arbitration

AREA 2: Development of an investment arbitration proceeding

Theme 1: Investment Arbitration Regimes: Consent

- 1.1 Investment arbitration under treaties and investment laws
- 1.2 Contractual investment arbitration
- 1.3 ICSID
- 1.4 Other international fora (PCA, SCC, ICC, UNCITRAL, LCIA)

Theme 2: Arbitration procedure

- 2.1 Institution of proceeding: forum selection and pre-requisites
- 2.2 Jurisdictional objections and defences
- 2.3 Remedies (types of claims)
- 2.4 Procedural issues: proceeding, written and oral phases, fact and expert witnesses
- 2.5 Governing law

Theme 3: Substantive standards of protection

- 3.1 Fair and equitable treatment and full protection and security
- 3.2 Expropriation
- 3.3 Non-discrimination
- 3.4 Other standards: national treatment, most-favoured-nation treatment

Theme 4: Damages

- 4.1 Methods of valuation
- 4.2 Specific issues

AREA 3: Awards and Post-Award Remedies

Theme 1: Awards

- 1.1 Jurisprudence: the role of precedent in investment arbitration
- 1.2 Form of Awards

1.3 Costs and funding

Theme 2: Post-Award Remedies

2.1 Revision and interpretation of investment awards

2.2 Challenge of investment awards; annulment

2.3 Enforcement and execution of awards

2.4 State immunity and enforcement of awards

BIBLIOGRAPHY AND RESOURCES

Basic Bibliography

Text books (non-exhaustive)

- Coop, Graham / Ribeiro, Clarisse (Editor), *Investment Protection and the Energy Charter Treaty*, 2008
- Dolzer, Rudolf / Schreuer, Christoph, *Principles of International Investment Law*, 2008
- Dugan, Christopher / Wallace, Don / Rubins, Noah / Sabahi, Borzu, *Investor-State Arbitration*, 2008
- Horn, Norbert (Editor), *Arbitrating Foreign Investment Disputes*, 2004
- McLachlan, Campbell / Shore, Laurence / Weiniger, Matthew, *International Investment Arbitration: Substantive Principles*, 2008
- Newcombe, Andrew / Paradell, Lluís, *Law and Practice of Investment Treaties*, 2009
- Reinisch, August, *Standards of Investment Protection*, 2008
- Ribeiro, Clarisse, *Investment Arbitration and the Energy Charter Treaty*, 2006
- Salacuse, Jeswald W., *The Law of Investment Treaties*, 2010
- Schreuer, Christoph, *The ICSID Convention: A Commentary*, 2009
- Tietje, Christian (Editor), *International Investment Protection and Arbitration*, 2008
- Weiler, Todd (Editor), *International Investment Law and Arbitration*, 2005
- Yannaca-Small, Katia, *Arbitration under International Investment Agreements*, 2010

Chapters of books (non-exhaustive)

- Claros Alegría, Pedro / Rueda García, José Ángel: "Spain", in J. Fouret (Ed.), *Enforcement of Investment Treaty Awards*, London, 2015, pp. 403-416

Articles (non-exhaustive)

- Annacker, Claudia / Creig, Robert T., "State Immunity and Arbitration," 15(2) *ICC Court of Arbitration Bulletin*, Special Supplement 70-78 (2004)
- Commission, Jeffrey P., "Precedent in Investment Treaty Arbitration-A Citation Analysis of a Developing Jurisprudence," 24(2) *Journal of International Arbitration* 129-158 (2007)
- Tai-Heng Cheng, "Precedent and Control in Investment Treaty Arbitration," 30 *Fordham Int'l Law Journal* 1014-1049 (2007)
- Rueda García, José Ángel, "Provisional Measures in Investment Arbitration: Recent Experiences in Oil Arbitrations Against the Republic of Ecuador", *Transnational Dispute Management*, Vol. 6, Issue 1, March 2009, at www.transnational-dispute-management.com

Websites (free access unless otherwise stated)
<p>International Centre for Settlement of Investment Disputes (ICSID): https://icsid.worldbank.org Permanent Court of Arbitration (PCA): www.pca-cpa.org United Nations Commission for International Trade Law (UNCITRAL): www.uncitral.org Arbitration Institute of the Stockholm Chamber of Commerce (SCC): www.sccinstitute.com International Court of Arbitration of the International Chamber of Commerce (ICC): www.iccwbo.org London Court of International Arbitration (LCIA): www.lcia.org International Court of Justice (ICJ): www.icj-cij.org Investment Treaty Arbitration: www.italaw.com NAFTA Claims: www.naftaclaims.com Investment Claim (payment access): www.investmentclaims.com Investor-State Law Guide (payment access): www.investorstatelawguide.com Transnational Dispute Management (payment access): www.transnational-dispute-management.com</p>
Notes
To be indicated during the course
Other materials
To be indicated during the course, particularly case law
Additional Bibliography
Text books
Chapters in books
Articles
Websites
Notes
Other material

TEACHING METHODOLOGY

General methodological aspects of the subject
Contact hours methodology: Activities

1 hour pre and/or after each class-session
Independent study methodology: Activities
Reading materials and self-preparation of answers to questions

SUMMARY OF STUDENT WORK HOURS			
Activity	Number of class hours	Number of independent study hours	Total number of hours
Lecture	15		
Practical class	5		
Debate			
In class presentation			
Individual work			
Work in collaboration			
Evaluation: one minute paper			
Evaluation: class test			
Evaluation: exam			
Evaluation: exam review			
Others	<u>20</u>	<u>45</u>	<u>65</u>
ECTS Credits:	2		

GRADE EVALUATION AND CRITERIA

Evaluation Activities	Generic Competences	Indicators	Evaluation Weighting
Individual work			
Work in collaboration	Ability to work together with fellow students	Unity of the work	10 %
Debate	Ability to discuss a topic, defend a position and counter-argue the opposite position	Coherent oral expression, correct use of the sources of knowledge to construe an argument, correct answer to questions posed by the professors or fellow students	10 %
Class presentation	Ability to explain one of the topics of the course	Coherent oral expression, correct use of the sources of knowledge to construe a presentation, correct answer to questions posed by the professors or fellow students	20 %
Evaluation: one minute paper			
Evaluation: class test			
Evaluation: exam (final)	Demonstration of assimilation of the contents of the course	Correct answers to the questions formulated by the professors	50%
Attendance	Demonstration of interest in the courses	Regular attendance to classes – control by signature of a daily sheet	10%

SUBJECT DETAILS

Data on the subject	
Name	Commercial Arbitration and Alternative Dispute Resolution: (International Commercial Arbitration)
Degree	Postgraduate in Master in International and European Business Law
Year	2015-16
Nature	Fall
ECTS Credits	1
Department	Law
Area	Law
Teaching staff	Raquel Mendieta Grande

Data on the teaching staff	
Teaching staff	Raquel Mendieta Grande
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Office	Ashurst LLP, calle Alcalá, 44, 4º, 28014 - Madrid
Tutoring Schedule	Upon request from students

SPECIFIC DATA ON THE SUBJECT

Pre-requisites
None
Contribution of the degree to the professional profile
<p>Dispute Resolution is an area of increasing activity. International Commercial Arbitration is one of the areas of most important growth, especially in a global economy. The importance of the different rules and the implications of the different venues makes essential to know the implications of every detail to advise properly in the disputes world.</p>

COMPETENCES TO BE IMPROVED

Generic competences
Instrumental
<p>To draft legal documents</p> <p>To present arguments convincingly</p>
Interpersonal
<p>To be part of a team developing a team work</p> <p>To lead a team when necessary</p>

Systemic
<p>To understand complex issues</p> <p>To divide complex issues in a number of more simple items</p>
Specific competences of the subject
Conceptual (knowing)
<p>Basic concepts of ADR and arbitration</p>
Procedural (doing)
<p>Different laws and rules of arbitration</p>
Professional (knowing how)
<p>To be able to analyse an arbitration case, the different available strategies, applicable procedures and being able to defend a case orally and in writing</p>

THEMATIC AREA AND CONTENT

AREA 1: ARBITRATION FRAMEWORK
Theme 1: INTRODUCTION
<p>1.1 ADR; different mechanisms</p> <p>1.2 Concept of arbitration</p> <p>1.3 Pros and cons of arbitration</p> <p>1.4 Ad hoc and institutional arbitration</p> <p>1.5 International Commercial Arbitration</p>

1.6 Foreign Investment disputes(ICSID). Cross reference

Theme 2: ARBITRATION LAW

2.1 Arbitration Law and Substance Law

2.2 UNCITRAL Model Law

2.3 England

2.4 France

2.5 Spain

2.6 Other jurisdictions

Theme 3: INTERNATIONAL NON LEGAL ARBITRATION RULES

3.1 UNCITRAL Arbitration Rules

3.2 Court of Arbitration Procedural Rules

- ICC
- LCIA
- CAM

3.3. Arbitration Soft Law (IBA Rules etc)

AREA 2: COMMERCIAL ARBITRATION PRACTICE

Theme 1: ARBITRATION CLAUSE, FORUM AND PROCEDURAL RULES

1.1 Arbitration clause

1.2 Forum/venue

1.3. Procedural rules

1.4. Multi-Party Arbitration

Theme 2: ARBITRATORS

2.1 Number of Arbitrators: sole arbitrator or Arbitration Tribunal

2.2 Impartiality and independence of arbitrators

2.3 Ex party arbitrators and Chairperson

2.4 Challenge of Arbitrators

2.5 Decision making process

Theme 3: KEY PROCEDURAL ISSUES

3.1 Appointment of arbitrators

3.2 Kompetenz-Kompetenz principle

3.3 Submission by the parties

3.4 Taking of Evidence

3.5. Award: different types and content

3.6 Challenge/annulment of awards

Theme 4: ENFORCEMENT OF ARBITRATION AWARDS

4.1 Domestic enforcement

4.2 International enforcement: NY Convention

BIBLIOGRAPHY AND RESOURCES

Basic Bibliography

Text books

- ***Redfern and Hunter on International Arbitration*** (5th edition)
This is available in print and online (Georgetown Law Only) with most of the materials in the print version reproduced. To access the online version once you are in KluwerArbitration.com, click on the "Books" tab and then scroll down to select "Redfern and Hunter on International Arbitration, Blackaby, Partasides, et al. (2009)." This is the newest edition of this seminal commentary; it covers from the drafting of the arbitration agreement to the enforcement of arbitral awards. This updated edition includes a more in-depth analysis of investment treaty arbitration and international arbitration. This edition also has more information on the law and practice of international arbitration in the United States, Latin America, China and India, along with its coverage of the U.K. and EU.

Chapters of books
Articles
Spain Arbitration Review
Websites
www.kluwerarbitration.com www.iccwbo.org/court www.lcia.org www.clubarbitraje.com www.arbitramadrid.com/web/corte/home/
Notes
Other material
UNCITRAL Model Law UNCITRAL Arbitration Rules IBA Guidelines on Conflict of Interest in International Arbitration IBA Rules on the Taking of Evidence in International Arbitration IBA Guidelines on Party Representation in International Arbitration NY Convention International Law Association Recommendation on Public Policy ICC Rules 2012 LCIA Rules
Additional Bibliography
Text books

Chapters in books
Articles
Websites
Notes
Other material

TEACHING METHODOLOGY

General methodological aspects of the subject
Contact hours methodology: Activities
<ul style="list-style-type: none"> Lecture (5 hours) Cases (5 hours, including 2,5 for individual exam)
Independent study methodology: Activities
<ul style="list-style-type: none"> Preparation of the cases Reading materials

SUMMARY OF STUDENT WORK HOURS			
Activity	Number of class hours	Number of independent study hours	Total number of hours
Lecture	5	25	8
Practical class	2,5		2,5
Debate			
In class presentation			
Individual work			
Work in collaboration			
Evaluation: one minute paper			
Evaluation: class test			
Evaluation: exam	2,5		5
Evaluation: exam review			

Others			
ECTS Credits:	1		

GRADE EVALUATION AND CRITERIA

Evaluation Activities	Generic Competences	Indicators	Evaluation Weighting
Individual work	Interest Participation Awareness of key issues	Making good questions Being proactive Provide good solution to the different issues	25%
Work in collaboration			
Debate			
Class presentation			
Evaluation: one minute paper			
Evaluation: class test			15%
Evaluation: exam (final)	Drafting legal documents Presenting a good case	Correcting drafting and paper structure and presentation Correct reasoning Convincing tribunal (teacher)	50%
Attendance			10%

