



SUBJECT DETAILS

Data on the subject	
Name	Commercial Arbitration and Alternative Dispute Resolution
Degree	Postgraduate in Master in International and European Business Law
Year	2022-2023
Nature	Fall
ECTS Credits	3 ECTS
Department	Law
Area	Law
Teaching staff	Borja Álvarez Sanz, José Ángel Rueda García

Data on the teaching staff	
Teaching staff	Borja Álvarez Sanz
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Tutoring Schedule	Upon request from students

Data on the teaching staff	
Teaching staff	José Ángel Rueda García
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Telephone	(+34) 91 524 71 13
Office	<i>Cuatrecasas, Gonçalves Pereira</i> Almagro, 9 Madrid 28010 Spain
Tutoring Schedule	Upon request from students

A. Professor Borja Álvarez's Class:

SPECIFIC DATA ON THE SUBJECT

Pre-requisites
None
Contribution of the degree to the professional profile
Dispute resolution is instrumental to the functioning of international business and must be managed accordingly by businesses. In choosing a particular method of dispute resolution, the main variables are cost, time, effectiveness and commercial considerations. International commercial arbitration is one of the available alternatives. A range of variables should be examined when including arbitration in a business' dispute resolution strategy. The course explores the main aspects of commercial arbitration that are relevant to the choice of arbitration as a method of dispute resolution.

COMPETENCES TO BE IMPROVED

Generic competences
Instrumental
GC 2: Ability to communicate orally and in writing GC 4: Problem-solving skills GC 5: Decision-making skills GC 6: Team work skills GC 12: Ability to apply theoretical knowledge into practice
Specific competences of the subject
Conceptual (knowing)
SC 9 - Ability to assess pre-contentious (or preventive) strategies in the context of international business at the moment of contract formation and negotiation with business partners. SC 10 - Ability to assess strategies before arbitral tribunals in matters related to international trade.

THEMATIC AREA AND CONTENT

AREA 1: ARBITRATION FRAMEWORK
Theme 1: INTRODUCTION
1.1 ADR and different dispute resolution mechanisms 1.2 Concept of arbitration 1.3 Pros and cons of arbitration 1.4 <i>Ad-hoc</i> and institutional arbitration 1.5 International commercial arbitration vs investment arbitration (ICSID/BIT)
Theme 2: LAW APPLICABLE TO ARBITRATION

2.1 Laws and Rules applicable to arbitration: *lex arbitri*, institutional arbitration rules and substantive law

2.2 UNCITRAL Model Law and brief reference to other jurisdictions (US, UK, Spain and other countries)

Theme 3: INTERNATIONAL ARBITRATION RULES AND TRIBUNAL'S PROCEDURAL POWERS

3.1 UNCITRAL Arbitration Rules

3.2 Institutional arbitration rules

- ICC
- Reference to AAA, LCIA or CIAM (Madrid)

3.3 Arbitration soft law (e.g. IBA Rules, IBA Guidelines)

3.4 Tribunal's procedural orders

AREA 2: COMMERCIAL ARBITRATION PRACTICE

Theme 1: ARBITRATION CLAUSE, FORUM AND ARBITRABILITY

1.1 Arbitration agreement: effects (positive/negative), severability and *Kompetenz-Kompetenz* principle

1.2 The legal significance of the seat of arbitration

1.4 Multi-party arbitration

1.5 Arbitrability

Theme 2: ARBITRATORS

2.1 Number of Arbitrators: sole arbitrator or tribunal

2.2 Impartiality and independence of arbitrators

2.3 Party-appointed arbitrators and president/chairman

2.4 Challenge of arbitrators

Theme 3: KEY PROCEDURAL ISSUES

3.1 Constitution of Arbitral Tribunal

3.2 Submissions of the parties

3.3 Taking of evidence (reference to discovery under 28 U.S.C. section 1782 in the US)

3.4 Award

Theme 4: ANNULMENT & ENFORCEMENT OF ARBITRATION AWARDS

4.1 Annulment of awards

4.1 Domestic enforcement

4.2 International enforcement: NY Convention (1958)

BIBLIOGRAPHY AND RESOURCES

Basic Bibliography

Text books

Mandatory Readings (provided by Prof. via Moodle)

- ***Redfern and Hunter on International Arbitration*** (6th edition), Blackaby, Partasides, et al., 2015, Oxford University Press (*available at KluwerArbitration.com*).

Main chapters of this seminal hornbook:

- a) Chapter 2 – Agreement to Arbitrate
- b) Chapter 3 – Applicable Laws
- c) Chapter 3 – Establishment and Organization of Arbitral Tribunal
- d) Chapter 5 – Powers, Duties and Jurisdiction of Arbitral Tribunals
- e) Chapter 10 – Challenge of Arbitral Awards
- f) Chapter 11 – Recognition and Enforcement of Arbitral Awards

- ***Reference Texts***

- a) UNCITRAL Model Law (1985, with amendments as adopted in 2006 and 2013)
- b) 1996 Arbitration Act (England, Wales and Northern Ireland)
- c) US Federal Arbitration Act (9 U.S.C. Chapter 1) and Understanding the US Federal Arbitration Act (Thomson Reuters Practical Law)
- d) IBA Guidelines on Conflict of Interest in International Arbitration (2014)
- e) IBA Rules on the Taking of Evidence in International Arbitration (2020)
- f) IBA Guidelines on Party Representation in International Arbitration (2013)
- g) ICC Arbitration Rules (2021)
- h) ICC Model Terms of Reference
- i) UNCITRAL Arbitration Rules (2010, with 2013 amendments)
- j) Sample Flowchart on phases of complex arbitration proceedings
- k) ICC Model Procedural Timetable
- l) NY Convention (1958)
- m) Status of Ratification of NY Convention

- ***Caselaw decisions***

- a) *Sulamerica* [2012] EWCA Civ 638 (16 May 2012)
- b) *Commerzbank* [2017] EWHC 161 Comm (03 Feb 2017)
- c) *Henry Schein*, US Supreme Court (8 Jan 2019)
- d) *BlueBank v. Venezuela*, ICSID Case No. ARB/12/20, Decision on disqualification (12 Nov 2013)
- e) *In re chairman Haigh* [2016] EWHC 422 (Comm.) (2 Mar 2016)
- f) *Eiser ICSID ad hoc Committee Decision on Annulment (ICSID Case No. ARB/13/36 – Annulment)*, ICSID (June 2020)
- g) *ZF Automotive*, US Supreme Court (13 Jun 2022)

- h) *COMMISA v. PEMEX*, 2nd Cir. (2 Aug 2016)
- i) *GE Energy Power Conversion France*, US Supreme Court (1 Jun 2020)
- j) *RBRG Trading* [2018] EWCA Civ 838, England and Wales Court of Appeals (23 Apr 2018)

Additional Readings (available at *KluwerArbitration.com* <Books>):

- *International Arbitration: Law and Practice (2nd edition)*, Gary B. Born, 2015, Kluwer Law International
- *Comparative International Commercial Arbitration*, Lew, Mistelis, Kröll, Blackaby, 2003, Kluwer International Law

Chapters of books

Articles

Websites

www.kluwerarbitration.com
www.iccwbo.org/court
www.lcia.org
<https://www.adr.org/>
<https://madridarb.com>
<http://www.newyorkconvention.org>
<https://uncitral.un.org/en/texts/arbitration>

Notes

Other materials

TEACHING METHODOLOGY

General methodological aspects of the subject			
Contact hours methodology: Activities			
Lectures (7 hours) Cases (3 hours: 1 hour (in-class practice exercise) and 2 hours for individual final exam)			
Independent study methodology: Activities			
Reading materials			
SUMMARY OF STUDENT WORK HOURS			
Activity	Number of class hours	Number of independent study hours	Total number of hours
Lecture	7	10	17
Practical class	1	3	4
Debate			
In class presentation			
Individual work			
Work in collaboration			
Evaluation: one minute paper			
Evaluation: class test			
Evaluation: exam	2	7	9
Evaluation: exam review			
Others			
ECTS Credits:	10	20	30

GRADE EVALUATION AND CRITERIA

Evaluation Activities	Generic Competences	Indicators	Evaluation Weighing
Participation	GC 2: Ability to communicate orally and in writing GC 4: Problem-solving skills GC 5: Decision-making skills GC 12: Ability to apply theoretical knowledge into practice	Participation will be assessed on the basis of the attentiveness shown in class by the students and their active role in addressing oral questions about the materials and topics discussed in class.	10%
Evaluation: in-class practice exercises	GC 2: Ability to communicate orally and in writing GC 4: Problem-solving skills GC 5: Decision-making skills GC 6: Team work skills GC 12: Ability to apply theoretical knowledge into practice	Students will review, resolve and discuss practice exercises. Their ability to apply the main principles of arbitration will be tested in order to assess their understanding of the key issues discussed in class and their legal reasoning. <ol style="list-style-type: none"> 1. Potential benefits of <i>ad hoc</i> arbitration vs institutional arbitration. 2. Tribunal's jurisdiction. 3. Challenge of arbitrators. 4. Enforcement of arbitral award. 	30% continuous evaluation (1 practice exercise)
Evaluation: exam (final)	GC 2: Ability to communicate orally and in writing GC 4: Problem-solving skills GC 5: Decision-making skills SC 10 - Ability to structure a claim or defense before an arbitral tribunal	Correct answers to the questions and brief case studies formulated by the professor on written exam covering the main issues addressed in the readings & cases and the reference texts & materials. Understanding of main concepts and legal reasoning will be assessed.	50% final exam
Attendance	Demonstration of interest in the courses	Regular attendance to classes – control by signature of a daily sheet	10%

B. Professor José Ángel Rueda's Class:

SPECIFIC DATA ON THE SUBJECT

Pre-requisites
None
Contribution of the degree to the professional profile
<p>Education in the adjudication of international law disputes involving sovereign States and Regional Economic Integration Organizations and in close connection with human rights litigation through alternative dispute resolution mechanisms.</p> <p>Familiarisation with general international law (particularly, the responsibility of States for internationally wrongful acts), treaty law and international investment law from both theoretical and practical viewpoints.</p> <p>The student will benefit from applying their knowledge of arbitration acquired in the course on Commercial Arbitration and Alternative Dispute Resolution to a specific area of public international law.</p>

COMPETENCES TO BE IMPROVED

Generic competences
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SC 9 - Ability to assess pre-contentious (or preventive) strategies in the context of international business at the moment of contract formation and negotiation with business partners. SC 10 - Ability to assess strategies before arbitral tribunals in matters related to international trade.

THEMATIC AREA AND CONTENT

AREA 1: INTRODUCTION
Theme 1: INTRODUCTION TO INTERNATIONAL INVESTMENT LAW AND ARBITRATION. CURRENT TRENDS IN INTERNATIONAL INVESTMENT LAW AND ARBITRATION (1)
1.1. Presentation of the structure of the course 1.2. Concept and evolution of international investment law and arbitration. Similarities and differences with other international law sectors (special reference to human rights litigation) 1.3. Analysis of U.S. practice, from NAFTA Chapter XI to USMCA

Theme 2: CURRENT TRENDS IN INTERNATIONAL INVESTMENT LAW AND ARBITRATION (2): SPECIAL FOCUS ON INVESTMENT PROTECTION AND ARBITRATION UNDER EU LAW

- 2.1. Analysis of EU practice: TEU and TFEU; CETA model (Canada), IPA model (Singapore)
- 2.2. CJEU's position on investment protection: case law in *Achmea*, *Komstroy*, *PL Holdings*, *Micula*; opinions on FTA with Singapore, CETA, and the ECT
- 2.3. Special reference to the termination of intra-EU bilateral investment treaties (2020)
- 2.4. Arbitral practice: *Vattenfall v. Germany* (2018), *Eskosol v. Italy* (2019), *Reenergy v. Spain* (2022), *Green Power v. Spain* (2022)

AREA 2: DEVELOPMENT OF AN INVESTMENT PROTECTION CASE

Theme 1: ACCESS TO INVESTMENT ARBITRATION: JURISDICTION

- 1.1. Investment arbitration under treaties and investment laws; *Maffezini v. Spain* (2000)
- 1.2. Contractual investment arbitration
- 1.3. Arbitral fora available for investors: ICSID, PCA, SCC, ICC, UNCITRAL...
- 1.4. Objections to jurisdiction. Analysis of *RREEF v. Spain* (2016)
- 1.5. Abuse of process in investment arbitration: Analysis of *Philip Morris v. Australia* (2015)

Theme 2: SUBSTANTIVE STANDARDS OF PROTECTION OF INTERNATIONAL INVESTMENT LAW (1): FAIR AND EQUITABLE TREATMENT

- 2.1. Contents of the standard of fair and equitable treatment
- 2.2. Detailed analysis of case law: *El Paso v. Argentina* (2011); *Philip Morris v. Uruguay* (2016), *Eiser v. Spain* (2017), *Masdar v. Spain* (2018), *InfraRed v. Spain* (2019)

Theme 3: SUBSTANTIVE STANDARDS OF PROTECTION OF INTERNATIONAL INVESTMENT LAW (2): EXPROPRIATION

- 3.1. Expropriation; definition in investment treaties and types
- 3.2. Analysis of case law: *Metalclad v. Mexico* (2000), *Yukos v. Russia* (2014), *Philip Morris v. Uruguay* (2016)

Theme 4: SUBSTANTIVE STANDARDS OF PROTECTION OF INTERNATIONAL INVESTMENT LAW (3): OTHER STANDARDS

- 5.1. Umbrella clause: origins and contents
- 5.2. Most-favoured nation clause; reference to its substantive contents
- 5.3. Analysis of case law: *White Industries v. India* (2011), *SGS v. Paraguay* (2012)

AREA 3: INVESTMENT ARBITRATION

Theme 1: INVESTMENT ARBITRATION: GENERAL FEATURES; AWARDS AND POST-AWARD REMEDIES

- 1.1. Jurisdictional objections and defences
- 1.2. Procedural issues: proceeding, written and oral phases, fact and expert witnesses; transparency (reference to the Mauritius Convention)
- 1.3. Costs and funding (reference to *third-party funding*)
- 1.4. Revision and interpretation of awards (reference to the ICSID Convention)
- 1.5. Challenge of investment awards; annulment. Reference to *InfraRed v. Spain* [annulment] (2022) as ICSID practice.
- 1.6. Enforcement and execution of awards (reference to the New York Convention)
- 1.7. Future of investment treaty protection? Reference to the UNCITRAL project for a Multilateral Investment Court

BIBLIOGRAPHY AND RESOURCES

Basic Bibliography

Textbooks

For a proper analysis of the course we recommend the following books:

- Dolzer, R., & Schreuer, C. (2nd ed., 2012). *Principles of International Investment Law*. Oxford: Oxford University Press.
- Reinisch, A., & Schreuer, C. (2020). *International Protection of Investments: The Substantive Standards*. Cambridge: Cambridge University Press.
- Schreuer, C. (2009), *The ICSID Convention: A Commentary*. Cambridge: Cambridge University Press.
- Schill, S. (upcoming 2021). *Schreuer's Commentary on the ICSID Convention: A Commentary on the Convention on the Settlement of Investment Disputes between States and Nationals of Other States* (3rd ed.) (L. Malintoppi, A. Reinisch, C. Schreuer, & A. Sinclair, Eds.). Cambridge: Cambridge University Press.
- Hobér, K., (2018), *Investment Treaty Arbitration. Problems and Exercises*, London: Elgar.

Students may also rely on, among others, the following, non-exhaustive, list of reference books:

- McLachlan, Campbell / Shore, Laurence / Weiniger, Matthew, *International Investment Arbitration: Substantive Principles*, 2008
- Newcombe, Andrew / Paradell, Lluís, *Law and Practice of Investment Treaties*, 2009
- Salacuse, Jeswald W., *The Law of Investment Treaties*, 2010

Students shall also read the excerpts of relevant case law that the professor shall share with the students via Moodle

Chapters of books (non-exhaustive)

- Iglesia, Alfonso / Rueda, José Ángel, “La protección de las inversiones exteriores a y desde España: nuevos reveses en el ámbito intracomunitario”, in *Anuario de Arbitraje 2022*, Thomson-Civitas, 2022, pp. 437-467.
- Rueda, José Ángel, “Third-party funding and access to justice in investment arbitration: security for costs as a provisional measure or a standalone procedural category in the newest developments in international investment law”, in Fach Gómez, K. (Ed.), *European Yearbook of International Economic Law. Special issue: Private Actors in International Investment Law*, Springer, 2021, pp. 103-121.
- Rueda, José Ángel, in J. Fourret (Ed.), *Enforcement of Investment Treaty Arbitration Awards*, Globe Law and Business, 2021, pp. 623-640.
- Rueda, José Ángel, “The Most-Favoured-Nation Clause as a Remedy Against Fragmentation of International Investment Law. Some Reflections in View of Spanish Practice”, in C. Jiménez Piernas (Ed.) & A. M. Aronovitz (Ass. Ed.): *New Trends in International Economic Law. From Relativism to Cooperation*, Schulthess Éditions Romandes, Geneva/Zurich, 2018, pp. 71-100.

Articles (non-exhaustive)

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Websites (free access unless otherwise stated)

- International Centre for Settlement of Investment Disputes (ICSID): <https://icsid.worldbank.org> (publicly available case law)
- Permanent Court of Arbitration (PCA): www.pca-cpa.org (publicly available case law)
- United Nations Commission for International Trade Law (UNCITRAL): www.uncitral.org
- International Court of Justice (ICJ): www.icj-cij.org (publicly available case law)
- Investment Treaty Arbitration: www.italaw.com (publicly available case law)
- Transnational Dispute Management (*payment access*): www.transnational-dispute-management.com
- European Commission’s website on Investment: <https://ec.europa.eu/trade/policy/accessing-markets/investment/>

Notes

To be indicated during the course

Other materials

To be indicated during the course, particularly case law (to be uploaded to Moodle with specific instructions on the excerpts that have to be read)

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	13	15	28
Practical class	5	15	20
Debate			
In class presentation			
Individual work			
Work in collaboration			
Evaluation: one minute paper			
Evaluation: class test			
Evaluation: exam	2		2
Evaluation: exam review			
Others			
ECTS Credits:	20	30	50

GRADE EVALUATION AND CRITERIA

Evaluation Activities	Generic Competences	Indicators	Evaluation Weighing
Debate	GC 2: Ability to communicate orally and in writing GC 4: Problem-solving skills GC 5: Decision-making skills GC 12: Ability to apply theoretical knowledge into practice	Coherent oral expression, correct use of the sources of knowledge to construe an argument, correct answer to questions posed by the professor or fellow students	20 %
Class presentation	GC 2: Ability to communicate orally and in writing GC 4: Problem-solving skills GC 5: Decision-making skills GC 6: Team work skills GC 12: Ability to apply theoretical knowledge into practice SC 10 - Being able to design strategies and adversarial proceedings before national courts, community courts and / or alternative dispute resolution bodies in matters related to international trade (as well as their coordination)	Coherent oral expression, correct use of the sources of knowledge to construe a presentation, correct answer to questions posed by the professor or fellow students	20 %
Evaluation: exam (final)	GC 2: Ability to communicate orally and in writing	Correct answers to the questions formulated by the professor on written exam.	50%

	<p>GC 4: Problem-solving skills GC 5: Decision-making skills GC 12: Ability to apply theoretical knowledge into practice</p> <p>SC 9 - Being able to design pre-contentious (or preventive) strategies that are appropriate for the protection of proper international business development at EU level</p> <p>SC 10 - Being able to design strategies and adversarial proceedings before national courts, community courts and / or alternative dispute resolution bodies in matters related to international trade (as well as their coordination)</p>		
Attendance	Demonstration of interest in the courses	Regular attendance to classes – control by signature of a daily sheet	10%