

**TECHNICAL SHEET OF THE SUBJECT**

Subject data	
Full name	Alternative Dispute Resolution Systems: Mediation and Commercial Arbitration
Code	E000008968
Qualification	Grado en Derecho
Period	Semestral
Credits	6,0
Character	Optativa (Grado)
Departament / Área	Área de Derecho Procesal Departamento de Disciplinas Comunes
Responsible	Marta Gisbert Pomata

Teacher data**SPECIFIC DATA OF THE SUBJECT****Contextualization of the subject****Contribution to the professional profile of the degree**

With this subject we will deepen in the knowledge of non-judicial ways to solve the controversies that arise between parties. Those parties, if they do not reach a solution, will be forced to go to a judicial process. The specific procedural characteristics of these alternative mechanisms, such as the speed, the specialization of the professionals and the economic advantages, have made them increasingly popular. Both mediation and arbitration can be highlighted among these conflict resolution systems due to their importance, and therefore shall be specifically addressed and studied within the subject.

The general aim of this subjects is to offer a detailed study of alternative dispute resolution systems, because they are mentioned in the core subject "General Theory of the Process", but without depth. Having more understanding of ADR systems can be useful for the students in their professional specialization, and this subject's goal is to offer them that opportunity.

Previous requisites

The course will be taught in English, so knowledge of the English language is a prerequisite both for the course and for its passing..

Competencies - Objectives**Competencies****GENERAL**



CGI05	Problem solving. Ability to apply knowledge in practice, obtaining results.	
	RA1	Adequately understand the problems, identifying their parts -distinguishing the central from the accessory or marginal- and the sequence that must be followed for its resolution.
	RA2	Use the theoretical knowledge acquired to solve the problem, proposing different alternatives sufficiently reasoned and legally argued
	RA3	Seeks a satisfactory result, overcoming any obstacles that may arise.
CGI06	Decision making	
	RA1	Propose alternatives in order to solve a problem using both critical sense and initiative.
	RA2	Argue and defend the option chosen, considering the interests at stake and the implications of all kinds and assuming the consequences of that option.
CGI07	Second language proficiency	
	RA1	Within a legal context, understands oral and written discourse and communicates orally and in writing in English according to the competences set by the European Framework of Reference for Languages B2/C1.
ESPECÍFICAS		
CEA08	Understanding law as an instrument for resolving conflicting interests	
	RA1	Identify the underlying social values and principles of processes of configuration of the law. That implies understanding those criteria that , at each moment, inspire or should inspire the elaboration and application of legal norms and the functioning of institutions.
	RA2	Know the main models and theories that mark the evolution of the legal system up to the current constitutional system.
CED02	Apply juridical knowledge	
	RA1	Apply critical capacity to reason in order to be able to position in the different procedural positions required
	RA2	Subsume in the norm the issue arised, identifying the opportune procedural moment in which the conflict is settled and analyzing the consequences applied by the law.



CED04	Identify the elements of a legal problem, proposing alternatives for its solution	
	RA1	Identify the disciplinary origin of the legal issues being addressed in legal and jurisprudential texts.
	RA2	Propose legally founded alternatives for a solution, adequately synthesizing the different arguments.
	RA3	Offer jurisdictional solutions (process) or extra-jurisdictional solutions (arbitration, mediation, conciliation, negotiation), and choose the most efficient procedural option.

THEMATIC BLOCKS AND CONTENTS

Contents – Thematic Blocks

1: INTRODUCTION

1. Introduction to Alternative Dispute Resolution Systems

2: NEGOCIATION

- 2.1 Concept and general aspects.

- 2.2 Types of negotiation.

- 2.3 Criteria for choosing the most appropriate type of negotiation.

1. Simple and Short-Term Negotiation or Complex and Long-Term Negotiation.
2. The need to reach an agreement.
3. Dominant Position.

- 2.4 Methodology

1. Harvard Method of Negotiation
2. Development of a negotiation

- 2.5 The negotiator.

1. Characteristics of a good negotiator
2. Mistakes



3: CONCILIATION

3. Conciliation. Background. Regulation. Requirements. Procedure. Effects. Challenge

4: MEDIATION

4.1 Mediation. Background

4.2 Characteristics and Methodology. The role of lawyers in mediation

4.3 European Mediation Law. Directive 2008/52/EC

4.4 The Law on Mediation in Civil and Commercial Matters

4.5 The minimum statute of the mediator

4.6 The mediation process

4.7 Enforcement of the mediation agreement

4.8 Mediation in the case law

5: ARBITRATION

5.1 Historical background. Concept, classes, nature and basis

5.2 Domestic and international arbitration.

5.3 The arbitration agreement

5.4 The arbitrators

5.5. Arbitral proceedings

5.6. Special arbitration

5.7. Challenging an award

5.8. Enforcement of the award

6: INTERNATIONAL ARBITRATION

6.1. International Arbitration vs. other ADR Systems

6.2 Advantages and Disadvantages of International Arbitration

6.3 The Uncitral model

6.4 The Arbitration Clause

6.5. Institutional Arbitration vs. Ad hoc Arbitration

6.6. Some relevant arbitral tribunals: ICC, LCIA, Madrid Court of Arbitration



BIBLIOGRAPHY AND RESOURCES

Basic Bibliography

- AA.VV., WEIGAND, F., BAUMAN, A. (eds.), Practitioner's Handbook on International Commercial Arbitration, Oxford university Press, 2019.
- BLACKABY, N., Redfern and Hunter on international arbitration, Oxford, Oxford University Press, 2009.
- BLAKE, S., BROWNE, J., SIME, S., A Practical Approach to Alternative Dispute Resolution, Oxford university Press, 5th edition, 2018.
- BLANCO CARRASCO, Mediación y Sistemas Alternativos de Resolución de Conflictos, Reus, Madrid, 2009.
- HINOJOSA SEGOVIA, Rafael (Coordinador), CLAROS ALEGRÍA, Pedro, CUBILLO LÓPEZ, Ignacio, FORTUN COSTEA, Alberto, GISBERT POMATA, Marta, HERNÁNDEZ BURRIEL, Jorge y HERNÁNDEZ-TEJERO GARCÍA, Manuel. Comentarios a la Ley de Arbitraje. Ley 60-2003, de 23 de diciembre, Grupo Difusión, Barcelona, 2008.
- MARSHALL, K.; SANTOS, A.; ADR Training: Negotiation and Dispute Resolution Workbook (NITA), Wolters Kluwer, 2022.
- SOLETO MUÑOZ, H. (Dir.), Mediación y Resolución de Conflictos: Técnicas y Ámbitos, Tecnos, Madrid, 2011.
- STÜRNER, ROLFKAWANO, MASANORI, Comparative studies on business tort litigation, Edited by Rolf Stürner and Masanori Kawano, Tübingen, Mohr Siebeck, 2011.

Complementary bibliography

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- CAMPBELL MCLACHLAN, *Lis pendens in international litigation*, Leiden Boston, Martinus Nijhoff, 2009.
- FENTIMAN, R., *International commercial litigation*, Oxford New York, Oxford University Press, 2010.
- GONZÁLEZ BUENO, C., *40 UNDER 40 INTERNATIONAL ARBITRATION 2021*, Dykinson, 2021.
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- LIM, C. L., HO, J., PAPARINSKIS, M.; *International Investment Law and Arbitration: Commentary, Awards and Other Materials*, Cambridge University Press, 2021.
- WARE, S. J., *Principles of Alternative Dispute Resolution*, West Academic Publishing, 2016.
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**SYLLABUS
2023 - 2024**

TEACHING METHODOLOGY

General methodological aspects of the subject

Metodología Presencial: Actividades

A) Lectures with student participation:

The Professor, following the contents of the subject, through the corresponding explanations, will transmit to the students with the maximum clarity the knowledge of the subject, assuring the understanding of the student.

The student will have to have an active presence during the lessons, trying to intervene every time that he considers opportune requesting clarification of concepts or raising the doubts that arise.

B) Practical classes:

The professor will make special emphasis in the application of the contents to real situations raising practical problems.

C) Simulation of mediation and arbitration:

The teacher will pose a conflict to be solved by arbitration; for this purpose, the students will be assigned a specific role.

Finally, 15 minutes a week will be devoted to analyzing the press reports that the students locate and talk about an alternative method of conflict resolution.

At home methodology: Activities

Autonomous study of the students of the topics presented during the master classes, using the appropriate teaching materials such as textbooks and those proposed by the teacher through moodle.

Preparation of the practical cases by means of the study of the norms that are constituted as presuppositions for the resolution of the cases.

Preparation in groups of the mock arbitration procedure, according to the assigned role, and following the teacher's instructions.



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**SYLLABUS
2023 - 2024**

SUMMARY OF STUDENT WORK HOURS

CLASSROOM HOURS		
Master class	Case Resolution	Test
34.00	20.00	6.00
AT HOME HOURS		
Autonomous study	Case preparation	Study for te test
35.00	28.00	27.00
ECTS: 6,0 (150,00 HOURS)		

**EVALUATION AND GRADING CRITERIA**

Activity	Evaluation criteria	Weight
Participation/Assignments	-Active participation during the classes -Assignments given during the classes, such as the exercise on comparative law, statements of defence, statements of claim, awards and other exercises	5
First test	-Knowledge of the English language - Proficiency in the concepts	10
Arbitration Model	For the simulation of arbitration and mediation in the classroom (20% Mock Case): - Completion of assigned tasks within the group according to the required deadlines. - Active participation in the team meetings, sharing information, knowledge and experiences. - Contributes to the establishment and application of the team's work	20
Final Exam	- Knowledge of the English language - Proficiency in the concepts - Clarity of the explanation - Reasoning and argumentation in the solution of the practical part - Grammatical correctness - Spelling and presentation	65
Extra Punctuation	-Voluntary participation of the student in activities (attendance to conferences, seminars, etc.), related to the subject	+5

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SYLLABUS 2023 - 2024

Grading

1) The exam:

- 60% of its content will be questions of a theoretical nature of the entire syllabus.
- The 40% will be of a practical nature, containing cases similar to those developed in class.

The activities made in class during the semester (including the first test and the mark of the arbitration model) will only be taken into account when the exam is passed with at least fifty percent of the total grade.

2) In order to be able to apply the bonus in the final grade for voluntary activities, it is necessary to have passed with at least 50% of the total grade.

3) In the second and subsequent extraordinary exams, 100% of the grade will correspond to the final exam.

4) The "out-going students" will be evaluated by counting the exam as 100% of the final grade.