

**SUBJECT DETAILS**

Data on the subject	
Name	Commercial Arbitration and Alternative Dispute Resolution
Degree	Postgraduate in Master in International and European Business Law
Year	2018-19
Nature	Fall
ECTS Credits	3 ECTS
Department	Law
Area	Law
Teaching staff	María Isabel Rodríguez Vargas & José Ángel Rueda García / Beverly Timmins

Data on the teaching staff	
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Tutoring Schedule	Upon request from students

Data on the teaching staff	
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Tutoring Schedule	Upon request from students

## SUBJECT DETAILS

### SPECIFIC DATA ON THE SUBJECT

<b>Pre-requisites</b>
None
<b>Contribution of the degree to the professional profile</b>
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 IN Parts 1 or 2

<b>Generic competences</b>
<b>Instrumental</b>
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
<b>Specific competences of the subject</b>
<b>Conceptual (knowing)</b>
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

<b>AREA 1: ARBITRATION FRAMEWORK</b>
<b>Theme 1: INTRODUCTION</b>
1.1 ADR and different dispute resolution mechanisms 1.2 Concept of arbitration 1.3 Pros and cons of arbitration 1.4 Ad-hoc and institutional arbitration

1.5 International commercial arbitration vs investment arbitration (ICSID/BIT)
<b>Theme 2: LAW APPLICABLE TO ARBITRATION</b>
2.1 Rules applicable to arbitration: lex arbitri, institutional arbitration rules and substantive law 2.2 UNCITRAL Model Law 2.3 Examples: England, Spain and other jurisdictions
<b>Theme 3: INTERNATIONAL ARBITRATION RULES AND TRIBUNAL'S PROCEDURAL POWERS</b>
3.1 UNCITRAL Arbitration Rules 3.2 Institutional arbitration rules <ul style="list-style-type: none"> <li>• ICC</li> <li>• LCIA</li> <li>• CAM</li> </ul> 3.3 Arbitration soft law (e.g. IBA Rules) 3.4 Tribunal's procedural orders
<b>AREA 2: COMMERCIAL ARBITRATION PRACTICE</b>
<b>Theme 1: ARBITRATION CLAUSE, FORUM AND PROCEDURAL RULES</b>
1.1 Arbitration agreement 1.2 Forum, venue and law of the seat 1.3 Procedural rules 1.4 Multi-party arbitration
<b>Theme 2: ARBITRATORS</b>
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 2.5 Decision-making process
<b>Theme 3: KEY PROCEDURAL ISSUES</b>
3.1 Appointment of arbitrators 3.2 Kompetenz-Kompetenz principle 3.3 Submissions of the parties 3.4 Taking of evidence 3.5 Award: types and content 3.6 Challenge/annulment of awards 3.7 Objection to enforcement 3.8 Role of public policy
<b>Theme 4: ENFORCEMENT OF ARBITRATION AWARDS</b>
4.1 Domestic enforcement 4.2 International enforcement: NY Convention

## BIBLIOGRAPHY AND RESOURCES

Basic Bibliography
Text books
<ul style="list-style-type: none"><li>• <b><i>Redfern and Hunter on International Arbitration</i></b> (5th edition) This is available in <u>print</u> and <u>online</u> (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.</li></ul>
Chapters of books
Articles
Spain Arbitration Review
Websites
<a href="http://www.kluwarbitration.com">www.kluwarbitration.com</a> <a href="http://www.iccwbo.org/court">www.iccwbo.org/court</a> <a href="http://www.lcia.org">www.lcia.org</a> <a href="http://www.clubarbitraje.com">www.clubarbitraje.com</a> <a href="http://www.arbitramadrid.com/web/corte/home/">www.arbitramadrid.com/web/corte/home/</a>
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 LCIA Rules

## TEACHING METHODOLOGY

<b>General methodological aspects of the subject</b>
<b>Contact hours methodology: Activities</b>
Lectures (5 hours) Cases (5 hours, including 2,5 for individual exam)
<b>Independent study methodology: Activities</b>
Preparation of the cases Reading materials

<b>SUMMARY OF STUDENT WORK HOURS</b>			
Activity	Number of class hours	Number of independent study hours	Total number of hours
Lecture	5	10	15
Practical class	2,5	5	7,5
Debate			
In class presentation			
Individual work			
Work in collaboration			
Evaluation: one minute paper			
Evaluation: class test			
Evaluation: exam	2,5		2,5
Evaluation: exam review			
Others			
<b>ECTS Credits:</b>	<b>10</b>	<b>15</b>	<b>25</b>

**GRADE EVALUATION AND CRITERIA – PROF. TIMMINS**

Evaluation Activities	Generic Competences	Indicators
Individual work	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	Knowledge of students will be assessed by oral questions about the materials and cases discussed in class. 1. Participation in class (5%). 2. Practical case study in class (15%).
Evaluation: class test	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 and analyse cases. Their ability to apply the main principles of arbitration will be tested in order to demonstrate their understanding of the key issues discussed in class and their reasoning. 1. Potential benefits of <i>ad hoc</i> arbitration vs institutional arbitration (4%). 2. Challenge of arbitrators and choice of counsel (4%). 3. Tribunal's jurisdiction (4%). 4. Application of the <i>lex arbitri</i> and substantive law (4%). 5. Challenges to validity of proceedings and awards (4%).
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	Students will solve mini case studies on the main issues discussed in the lectures. Understanding of main concepts and their reasoning will be assessed.
Attendance		

**PART II**

Data on the subject	
Name	Commercial Arbitration and Alternative Dispute Resolution
Degree	Postgraduate in Master in International and European Business Law
Year	2018-19
Nature	Fall
ECTS Credits	2 CREDITS
Department	Law
Area	Law

Teaching staff

María Isabel Rodríguez Vargas & José Ángel Rueda García

### 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
<b>Theme 4: Damages</b>
4.1 Methods of valuation
4.2 Specific issues
<b>AREA 3: Awards and Post-Award Remedies</b>
<b>Theme 1: Awards</b>
1.1 Jurisprudence: the role of precedent in investment arbitration
1.2 Form of Awards
1.3 Costs and funding
<b>Theme 2: Post-Award Remedies</b>
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

<b>Basic Bibliography</b>
<b>Text books (non-exhaustive)</b>
<ul style="list-style-type: none"> <li>➤ Coop, Graham / Ribeiro, Clarisse (Editor), <i>Investment Protection and the Energy Charter Treaty</i>, 2008</li> <li>➤ Dolzer, Rudolf / Schreuer, Christoph, <i>Principles of International Investment Law</i>, 2008</li> <li>➤ Dugan, Christopher / Wallace, Don / Rubins, Noah / Sabahi, Borzu, <i>Investor-State Arbitration</i>, 2008</li> <li>➤ Horn, Norbert (Editor), <i>Arbitrating Foreign Investment Disputes</i>, 2004</li> <li>➤ McLachlan, Campbell / Shore, Laurence / Weiniger, Matthew, <i>International Investment Arbitration: Substantive Principles</i>, 2008</li> <li>➤ Newcombe, Andrew / Paradell, Lluís, <i>Law and Practice of Investment Treaties</i>, 2009</li> <li>➤ Reinisch, August, <i>Standards of Investment Protection</i>, 2008</li> <li>➤ Ribeiro, Clarisse, <i>Investment Arbitration and the Energy Charter Treaty</i>, 2006</li> <li>➤ Salacuse, Jeswald W., <i>The Law of Investment Treaties</i>, 2010</li> <li>➤ Schreuer, Christoph, <i>The ICSID Convention: A Commentary</i>, 2009</li> <li>➤ Tietje, Christian (Editor), <i>International Investment Protection and Arbitration</i>, 2008</li> <li>➤ Weiler, Todd (Editor), <i>International Investment Law and Arbitration</i>, 2005</li> <li>➤ Yannaca-Small, Katia, <i>Arbitration under International Investment Agreements</i>, 2010</li> </ul>
<b>Chapters of books (non-exhaustive)</b>
<ul style="list-style-type: none"> <li>➤ Claros Alegría, Pedro / Rueda García, José Ángel: "Spain", in J. Fouret (Ed.), <i>Enforcement of Investment Treaty Awards</i>, London, 2015, pp. 403-416</li> </ul>



### 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](http://www.transnational-dispute-management.com)

### Websites (free access unless otherwise stated)

International Centre for Settlement of Investment Disputes (ICSID): <https://icsid.worldbank.org>  
Permanent Court of Arbitration (PCA): [www.pca-cpa.org](http://www.pca-cpa.org)  
United Nations Commission for International Trade Law (UNCITRAL): [www.uncitral.org](http://www.uncitral.org)  
Arbitration Institute of the Stockholm Chamber of Commerce (SCC): [www.sccinstitute.com](http://www.sccinstitute.com)  
International Court of Arbitration of the International Chamber of Commerce (ICC): [www.iccwbo.org](http://www.iccwbo.org)  
London Court of International Arbitration (LCIA): [www.lcia.org](http://www.lcia.org)  
International Court of Justice (ICJ): [www.icj-cij.org](http://www.icj-cij.org)  
Investment Treaty Arbitration: [www.italaw.com](http://www.italaw.com)  
NAFTA Claims: [www.naftaclaims.com](http://www.naftaclaims.com)  
Investment Claim (payment access): [www.investmentclaims.com](http://www.investmentclaims.com)  
Investor-State Law Guide (payment access): [www.investorstatelawguide.com](http://www.investorstatelawguide.com)  
Transnational Dispute Management (payment access): [www.transnational-dispute-management.com](http://www.transnational-dispute-management.com)

### Notes

To be indicated during the course

### Other materials

To be indicated during the course, particularly case law

## 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	18
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			
<b>ECTS Credits:</b>	<b>20</b>	<b>30</b>	<b>50</b>

### GRADE EVALUATION AND CRITERIA

Evaluation Activities	Generic Competences	Indicators	Evaluation Weighting
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 professors 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 professors or fellow students	20 %
Evaluation: exam (final)	GC 2: Ability to communicate orally and in writing GC 4: Problem-solving skills	Correct answers to the questions formulated by the professors on written exam.	50%

	<p>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%