Syllabus

Advanced Topics in International Arbitration
LL.M Seminar 2043 (cross-listed) | 1 credit hours

As the law of international arbitration continues to expand and develop, the issues confronted by arbitrators, academics, and practitioners get more complex and specialized. This weekly seminar course on advanced topics in international arbitration seeks to delve into some of these cutting-edge topics in detail. The goal of the course is not only to provide students with information on current controversial topics in international arbitration, but also to give students the analytical tools necessary to tackle other developing issues in the field of international arbitration. The course will cover hot-button issues in both international commercial arbitration and investment treaty arbitration.

The course will not rely on one set text or case book, but will instead utilize awards and articles that will be provided to the students. Students will be expected to have read all of the materials and be prepared to engage in active discussion in each class. As this is a class on questions for which there are few clear answers, there will be no final exam as such.

It is recommended that students have completed a course in commercial or investment arbitration prior to the seminar, or otherwise have some experience in arbitration.

Contact Information

Alvaro Galindo (Adjunct Professor): [Redacted]
David Attanasio (Teaching Assistant): [Redacted]

Course Expectations and Grading

Student participation in class: Fifty percent of each student’s grade will be derived from their preparedness and class participation each week, including during the class debates which will occur during the last two weeks of the course. The professors will structure their lectures to include ample time for student discussion and argument. It is expected that the students will have read the weekly-assigned materials before class and will be prepared to discuss the issues raised therein. To this end, if you are unfamiliar with any basic arbitration concepts underlying that week’s topic (e.g. the importance of consent, competence-competence, lex arbitri, etc.), please let the professor know prior to class.

Seminar papers: The other fifty percent of each student’s grade will be derived from a 10-page extension limit position paper to be submitted during the last two weeks of the seminar. There will be no final exam.

Absences: Since class participation is necessary for the proper functioning of this seminar, we expect students to attend each and every class. One absence is understandable and will not count against your grade, but we would appreciate advance notice if possible. If you need to be absent
for more than one class, please let us know and we can determine whether there is a way you can make up the class participation portion of your grade.

Weekly Topics and Reading

Week One (August 30):
Introductions; Structure of class and expectations; Investment treaties and the ICSID system.

Mandatory Reading:


Additional Reading:

- ICSID, *Background Information on the International Centre for Settlement of Investment Disputes*.

Week Two (September 6):
Transparency in arbitration and in investment treaty negotiations. Discussion of papers.

Mandatory Reading:


• UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration 1-3, 5-12.

**Week Three (September 13):**  
Nature of consent in investment treaty arbitration; denunciation of ICSID; provisional measures.

Mandatory Reading:


• UNCTAD, Course on Dispute Settlement in International Trade, Investment and Intellectual Property, Part 2.5, Requirements Ratione Materiae, pp. 13-25.

• ICSID Convention, Arts. 25, 36, 41, 71-72.

• Denunciation of the ICSID Convention and BITs: Impact on Investor-State Claims, IIA Issues Note No. 2 December 2010.


• Decisions on Provisional Measures in City Oriente (¶¶ 39-92) and EnCana (¶¶ 10-20) (please skim the factual sections and read the assigned paragraphs with care).

**Week Four (September 20):**  
Arbitrator ethics and conflicts.

Mandatory Reading:


• Perenco Ecuador Ltd. v. The Republic of Ecuador and Empresa Estatal Petróleos del Ecuador (Petroecuador), ICSID Case No. ARB/08/6, Decision on Challenge to Arbitrator, 8 December 2009.

• Valasek wrote Yukos awards, says linguistics expert, Global Arbitration Review, 20 October 2015.

Week Five (September 27):
Enforcement of awards.

Mandatory Reading:


• Jonathan Randles, Argentina Says Injunctions Being Used As 'Club' In Deal Talks, Law360, 21 February 2016.

• Jarrod Hepburn, Debate Erupts in U.S. Court as to Argentina’s Arbitration Award Compliance Record, Investment Arbitration Reporter, 23 November 2015.


Additional Reading:

• Edward Baldwin, Mark Kantor, and Michael Nolan, Limits to Enforcement of ICSID Awards, 23 Journal of International Arbitration 1 (2006)

Week Six (October 4):
Finality over correctness: The controversy over recent ICSID annulment awards and proposed appellate mechanisms in investment treaties.

Mandatory Reading:


• Background Paper on Annulment for the Administrative Council of ICSID, August 10, 2012.

Additional Reading:

• *Occidental Petroleum Corporation and Occidental Exploration and Production Company v. The Republic of Ecuador*, ICSID Case No. ARB/06/11, Decision on Annulment of the Award, ¶¶ 185-302 (2 November 2015)

Week Seven (October 18):
Corruption allegations in international arbitration; the clean hands doctrine; third party funding.

Mandatory Reading:

• Carolyn Lamm, Hansel T. Pham, and Rahim Moloo, *Fraud and Corruption in International Arbitration*, in Miguel Ángel Fernández-Ballesteros and David Arias (eds.), *Liber Amicorum Bernardo Cremades* 699-731 (La Ley 2010).


