INVESTOR-STATE DISPUTE RESOLUTION

LAWG 675
Fall 2016

Mondays, 5:45 p.m. - 7:45 p.m.
Room: Hotung 1008

Professor: Marguerite C. Walter¹
Office hours: immediately following class or by appointment


www.italaw.com
www.investorstatelawguide.com
www.investmentclaims.com
http://investmentpolicyhub.unctad.org/IIA
www.globalarbitrationreview.com
www.iareporter.com

Additional reading material will be posted to the course website via Canvas throughout the semester.

Session One (Aug. 29)

Topics: Introduction and purpose of the course; sources of international law; customary international law underpinnings of international investment law; purpose of investment law

READING: KNS, Chapters 1 & 2.

RESEARCH: Does your home country have IIAs? How many? With which treaty partners? What kinds of protections do these treaties offer? What kinds of dispute resolution?

** NO CLASS ON MONDAY, SEPTEMBER 5 **

Session Two (September 12)

Topics: Definitions: investor, investment

¹ Ms. Walter is teaching this course in her personal capacity. All views expressed are solely those of Ms. Walter and do not necessarily reflect the views of the United States Government or the U.S. Department of State.
READING: Review definitions of investor and investment in IIAs posted to Canvas; KNS, Chapter 3.

Session Three (Sept. 19)

Topic: Expropriation

READING: KNS, Chapter 4; be ready to discuss hypothetical posted to Canvas.

Session Four (Sept. 26)

Topic: Standards of host state behavior

READING: KNS, Chapter 5

Session Five (Oct. 3)

Topic: Standards of host state behavior, cont'd; overview of a typical investment arbitration

READING: KNS, Chapters 5 and 6

Session Six (TUES., Oct. 11)

Topic: Selection/challenge of arbitrators; evidence and document production; provisional measures; bifurcation/trifurcation

READING: Paulsson, "Moral Hazard" and Brower's response; IBA Guidelines on Taking of Evidence; IBA Guidelines on Conflicts of Interest

Session Seven (Oct. 17)

DEADLINE FOR SELECTION OF PAPER TOPICS

Topic: Third-party funding; ethics in international arbitration

READING: IBA Guidelines on Conflicts of Interest; Hong Kong review of third-party funding

Session Eight (Oct. 24)

Topic: Consent to arbitration; cooling-off periods; sources of substantive law

READING: Abaclat v. Argentina

Session Nine (Oct. 31)

Topic: Jurisdictional objections and defenses - denial of benefits clauses; nationality
READING:  Plama v. Bulgaria; Pac Rim v. El Salvador; Waguih Siag v. Egypt

Session Ten (Nov. 7)

DEADLINE FOR OUTLINES

Topic:  Jurisdictional objections and defenses - fork in the road; attribution; abuse of process; illegality; State counterclaims


Session Eleven (Nov. 14)

Topic:  Damages (causation, types of damages, quantum, restitution); awards of costs

READING:  ADC v. Hungary, Lemire v. Ukraine

Session Twelve (Nov. 21)

Enforcement of awards: enforcement, annulment, set-aside

READING:  KNS, Chapter 6 (6.2.3 - end)

Session Thirteen (Nov. 28)

Last class; student presentations of research and conclusions.

DECEMBER 16:  PAPERS DUE BY 5 P.M.

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Course Requirements:

Attendance/Participation:  20%

Evaluation criteria:

• Regular attendance
• Preparation
• Participation in discussion
• Final presentation

Paper:  80%

Parameters:

• 20-30 pages, double-spaced
Evaluation criteria:

- Demonstrate clear understanding of basic laws and rules of investor-state arbitration
- Apply understanding of investor-state arbitration to specific issue or problem, taking a clear position and advancing a specific thesis
- Use course information as well as resources developed through independent research to support thesis
- For non-native English speakers, perfection level of English grammar or vocabulary only matters insofar as it may affect comprehension on the part of the reader