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. 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.

The course will not rely on one set text or case book, but will instead utilize awards, articles, and other materials that will be provided to the students via the class web site. Students will be expected to have read all of the materials and to be prepared to engage in active discussion in each class. The professor will indicate when certain lengthy materials (particularly awards) can be skimmed, and what issues to spot in those materials.

Contact Information

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):**
Part I: Arbitrator ethics and conflicts.

**Mandatory Reading:**


**Additional Reading**

• Decision adopted by the PCA’s Secretary General: http://www.italaw.com/sites/default/files/case-documents/ita0625.pdf


Part II: Class arbitration.

Mandatory Reading:

• *Abaclat & Others v. Argentina*, ICSID Case No. ARB/07/5, Decision on Jurisdiction and Admissibility, August 4, 2011, ¶¶ 473-492, 515-551.

• *Giovanni Alemanni and Others v. Argentina*, ICSID Case No. ARB/07/8, Decision on Jurisdiction and Admissibility, ¶¶ 261-273.

Week Five (September 27):
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.

Week Six (October 4):
Parallel Proceedings – Lis Pendens, Consolidation, Res Judicata, Parallel Enforcement.

Mandatory Reading:

• Michael Polkinhorne and Leon Ioannou, Recent decision confirms France’s readiness to enforce international arbitral awards annulled at place of arbitration (2006).


• Apotex Holdings and Apotex Inc. v. United States, ICSID Case No. ARB(AF)/12/1, Award (Aug. 25, 2014), Part VII.


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).

• Rahim Moloo, A Comment on the Clean Hands Doctrine in International Law, Transnational Dispute Management, February 2011.


• M.J. Goldstein, Should the Real Parties in Interest Have to Stand Up? 8(4) Transnational Dispute Management (Oct. 2011)