

INTERNATIONAL ARBITRATION - LAW 377

COURSE DESCRIPTION AND OUTLINE

Spring 2011

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Course website: <http://moodle.uvic.ca>
Time/location: Monday and Wednesday, 9:00-10:20 am, Room 204

I. COURSE DESCRIPTION

This course introduces students to international arbitration, including arbitral agreements, applicable law, arbitral procedures and arbitrations involving state parties. The course focuses on the resolution of foreign investment disputes through international arbitration. The international legal framework governing foreign investment consists of a vast network of over 2800 international investment agreements (IIAs) supplemented by the general rules of international law. IIAs combine treaty-based standards of promotion and protection for foreign investment with an investor-state arbitration mechanism that allows foreign investors to enforce treaty standards. The last twenty years have witnessed a surge of investment treaty arbitrations. International investment law has emerged as a dynamic area of international law and dispute resolution, ripe with controversies over the balance between state sovereignty and investment protection, the decentralized system of international investment law, the scope of IIA protections, the process of investor-state arbitration and the rights and obligations of international investors.

II. COURSE OBJECTIVES

The objectives of this course are for students to:

- learn the basic legal framework in which international arbitration operates and how the system operates from a practical perspective;
- learn about the international legal regime governing foreign investment; and
- develop research and legal skills in the area of international arbitration and investment law.

III. COURSE MATERIALS

Course materials will be made available through links on the course Moodle site and on reserve in the library.

IV. COURSE METHODOLOGY

The class will include lectures, student presentations and discussion. To the extent possible, the class will operate in a seminar style.

V. COURSE EVALUATION

1.	Award/decision presentation	20%
2.	6000 to 6500 word research paper ¹	70%
3.	Paper presentation	10%
Total		100%

1. Attendance and participation

An enriching class depends on student preparation, attendance, engagement and participation. You are expected to prepare for classes by reading the assigned materials. There are 22 scheduled classes during the term. Students are expected to attend and participate in all classes. Students missing more than two classes (not including the first class), without prior approval of the instructor or a documented excuse in accordance with university policies (i.e. illness, accommodation, bereavement), will be subject to a **2% mark deduction for each class missed**. Please note that students can miss up to two classes for any reason without deduction.

Attendance will be taken at the beginning of each class by means of a sign-in sheet. It is the student's responsibility to sign-in for each class. The sign-in sheet will be available for the first 10 minutes of class. Students arriving after the ten-minute cut-off will be deemed to have missed that class. A student may not sign-in for another student; doing so (and asking another student to do so) would constitute an academic offence and be subject to academic penalties.

2. Presentation on an Arbitral Award/Decision

Each student will be required to make a 15 minute presentation to the class on a specific investor-state arbitration award or decision. Students will choose an award or decision based on a set list of awards/decisions, which will be made available in mid-January.

At the beginning of class, each presenter must distribute a brief outline of their presentation (i.e. one to two pages).

After a brief overview of the award/decision (five to ten minutes maximum), the presentation should focus on a critical assessment of the award/decision and raise questions for class discussion. The focus of the presentation should be to comment on and assess the award/decision, to raise questions about its legal reasoning, outcome or impact. The presentation should not be simply descriptive. Student presentations should be made on the basis that the class has read the assigned materials. A good presentation will raise questions about the award/decision for class discussion.

The student will be evaluated based on:

- clarity and accuracy;
- comprehension and insight;

¹ Excluding footnotes and bibliography.

- ability to communicate clearly;
- organization;
- use of time; ability to present succinctly;
- facilitation: ability to stimulate and effectively channel class discussion; and
- ability to respond to questions

3. Paper

General

- (i) Students will write a research paper on an approved topic relating to international arbitration or investment law.
- (ii) **With the instructor's permission, a student may write a longer paper and use it to satisfy the Faculty's major paper requirement (7500 word minimum not including footnotes). The student must seek the instructor's approval for a Major Paper and submit the form submitted to the Associate Dean's Office before the course add/drop date (Thursday, 13 January 2011).**
- (iii) **You must propose a paper topic to the instructor in writing by the beginning of class on Wednesday, 2 February 2011.** Failure to submit the proposal on time will result in a loss of **three marks** per day on the paper's final numerical mark out of 100 for each day that the outline is late.
- (iv) **You must provide a two-page outline of the paper to the instructor by the beginning of class on Monday, 28 February 2011.** The outline must describe in detail the orienting themes/questions for the paper. In addition, the outline must provide a bibliography of sources that might be used. Failure to submit the outline on time will result in a loss of **three marks** per day on the paper's final numerical mark out of 100 for each day that the outline is late.

Grading

Papers will be graded on the following basis:

1. **Thesis:** clear articulation of argument
2. **Organization:** clear structure throughout paper
3. **Research:** breadth and depth of research
4. **Analysis:** logic, balance, depth, context, critical analysis
5. **Originality/creativity:** novelty, insight
6. **Style:** correct legal citation, flow and grammar

All citations in papers must conform to the current edition of the *Canadian Guide to Uniform Legal Citation* (McGill Guide). Substantial non-compliance with the McGill Guide will result in a deduction up of to 10 marks. Non-compliant citations are subject to a one mark penalty per citation.

The paper must include a separate bibliography of all sources.

Due date and submission requirements

- (i) A hard copy of the paper must be submitted to the general office by **Tuesday, 5 April 2011 at 4:00 pm** (the last day of classes for the term). **You must also submit a copy of the paper to the Moodle course site.**
- (ii) **Students writing papers in other courses or having other commitments that make completion of the paper by 5 April 2011 extremely onerous may seek a time extension. The last possible date for submitting a paper is 21 April 2011 (the last day of exams). Students must seek an extension in writing by the 28 February.**
- (iii) **Students must note the word count for the paper or book review on the title page of the paper.**
- (iv) **Codenames should not be used on papers or book reviews.**
- (v) Failure to submit the paper by the deadline will result in a loss of **three marks** per day on the paper's final numerical mark out of 100 unless the instructor or Associate Dean has granted an extension. **Failure to submit the paper electronically will result in a loss of three marks on the paper's final numerical mark.**
- (vi) **Papers that are under the minimum word count will not be accepted. Papers should not be longer than 7000 words (excluding footnotes). Major papers should not be longer than 8500 words (excluding footnotes). Papers that are longer than these maximums may be penalized if the greater length reflects a failure to write concisely.**
- (vii) **The final paper must include a bibliography of all sources.**

4. Paper Presentation

Beginning Monday, 7 March 2011, students will begin presenting their research paper topics to the class. The instructors will assign presentation time slots.

Presentations should be no more than 10 minutes and should describe the question raised by the paper and the student's "answer"/analysis based on the student's work to date.

The presenter may wish to distribute a brief outline of their paper to the class.

The student will be evaluated based on:

- clarity and accuracy;
- comprehension and insight;
- ability to communicate clearly;
- organization;
- use of time; ability to present succinctly; and

- ability to respond to questions.

5. Grading System

The table below shows the official grading system used by the instructor in arriving at final assessments of student performance.

Passing Grades	Grade Point Value	Percentage Value	Description	Comments
A+	9	90-100%	Exceptional	Grades in this range are normally achieved by a minority of students. These grades indicate a student who is self-initiating, exceeds expectation, and has an insightful grasp of subject matter.
A	8	85-89%	Outstanding	
A-	7	80-84%	Excellent	
B+	6	75-79%	Very good	Grades in this range are normally achieved by the largest number of students. These grades indicate a good grasp of subject matter or excellent grasp in one area balanced with satisfactory grasp in the other area.
B	5	70-74%	Good	
B-	4	65-69%	Solid	
C+	3	60-64%	Satisfactory	These grades indicate a satisfactory performance and knowledge of subject matter.
C	2	55-59%	Minimally satisfactory	
D	1	50-54%	Marginal	A student receiving this grade demonstrates a superficial grasp of subject matter.
F	0	49% and below	Unsatisfactory	

VI. UNIVERSITY REGULATIONS, EXPECTATIONS AND ACCOMMODATION

1. Regulations

Students should obtain and review all regulations and policies contained in the University of Victoria Calendar, 2010-2011, both generally and specifically for the Faculty of Law.

2. Classroom Climate

An inclusive, respectful, and diverse classroom environment is crucial to our work in this course. To ensure that all class members feel welcomed and equally able to contribute to class discussions, both I

as instructor and you as students must endeavor to be respectful in our language, our examples, and the manner in which we conduct our discussions and group work. We have both an ethical and legal obligation to support this kind of environment.

For your reference, you may wish to consult the University's Policy on Human Rights, Equity and Fairness (<http://www.uvic.ca/universitysecretary/policies/>) and Policy on Discrimination and Harassment Policy (<http://www.uvic.ca/universitysecretary/policies/>). In particular, Section 5.1 of the Policy on Human Rights, Equity and Fairness provides that "All members of the university community are responsible for promoting a supportive and inclusive learning and working environment and for dealing respectfully and fairly with each other."

In addition, as lawyers in training, I expect you to conduct yourself in accordance with professional standards and rules of conduct. In particular, the Law Society of British Columbia's Professional Conduct Handbook provides in Chapter 1, Rule 4 that: "A lawyer's conduct toward other lawyers should be characterized by courtesy and good faith."

I expect all aspects of this class to be conducted with this commitment firmly in mind. If you have any concerns about the climate of the class, please feel free to contact me or the Associate Dean.

3. Academic Integrity

As part of the academic community of both the Faculty of Law and the University as a whole, academic integrity is centrally important in the work of faculty and students. All student work in this course must adhere to the University's Policy on Academic Integrity.

In particular, please note that the policy on plagiarism is as follows:

"A student commits plagiarism when he or she:

- submits the work of another person as original work
- gives inadequate attribution to an author or creator whose work is incorporated into the student's work, including failing to indicate clearly (through accepted practices within the discipline, such as footnotes, internal references and the crediting of all verbatim passages through indentations of longer passages or the use of quotation marks) the inclusion of another individual's work
- paraphrases material from a source without sufficient acknowledgement as described above

Students who are in doubt as to what constitutes plagiarism in a particular instance should consult their course instructor.

The University reserves the right to use plagiarism detection software programs to detect plagiarism in essays, term papers and other assignments."

4. Students with a Disability

If you have any type of disability, there are support systems, resources, and accommodation actions available to you. If you wish to access any of these supports, resources or accommodations, I encourage you to contact the Associate Dean or the Resource Centre for Students with a Disability (<http://rcsd.uvic.ca>). I would be more than happy to work with you to ensure your success in this course.

5. Accommodation of Religious Observances

The University of Victoria and the Faculty of Law have policies guaranteeing accommodation for those students who are unable to participate in a class or an aspect of the course owing to a religious holiday (see <http://www.uvic.ca/universitysecretary/policies/>). If you will be missing a class, know that you will be unable to complete an assignment or exam, or otherwise require accommodation on account of a religious holiday, please speak with me (or the Associate Dean) and I will be pleased to work out some satisfactory form of accommodation.

VII. DOUBLE-SIDED PRINTING ENCOURAGED

In recognition that members of the university community have a personal responsibility for the way their conduct impacts the local and global environment, students are encouraged that all reports and other documents, whenever possible, be printed on both sides of the paper (University of Victoria Operational Policy 6485, Waste Management, section 2.8.1)

VII. COURSE OUTLINE

- Class 1: Overview of International Arbitration
- Class 2: Historical Development of International Investment Law and Arbitration
- Class 3: Research/Paper Session
- Class 4: Concession Agreements and Investment Contracts
- Class 5: Investment Treaties: Background, Structure, Obligations and Dispute Settlement
- Class 6: Applicable Substantive Law and Interpretation
- Class 7: Investment
- Class 8: Investors
- Class 9: National Treatment
- Class 10: MFN Treatment
- Class 11: Minimum Standards of Treatment/Fair and Equitable Treatment
- Class 12: Expropriation
- Class 13: Contract v. Treaty Claims and the Umbrella Clause
- Class 14: Exceptions and Defences
- Class 15: Reparations
- Class 16: Overflow/Basics of Dispute Settlement
- Class 17: Jurisdiction in Investment Arbitration
- Class 18: Procedural Issues
- Class 19: Control Mechanisms – Annulment and Review of Arbitral Awards
- Class 20: Enforcement of Awards and Sovereign Immunity
- Class 21: Investment and Labour, the Environment and Human Rights
- Class 22: International Obligations of Investors and Corporate Social Responsibility