

UNIVERSITY OF MIAMI SCHOOL OF LAW

**COMPLEX INTERNATIONAL NEGOTIATIONS (LAW 536)**

**Professor Jonathan C. Hamilton**

Distinguished Faculty Chair, International Arbitration Institute, University of Miami  
Partner, Head of Latin American Arbitration, White & Case LLP

**SYLLABUS – FALL 2021 SEMESTER**

This course focuses on lawyering skills relevant to navigating the new era of globalization, drawing on lessons from international arbitration cases. The course examines the legal and policy framework for globalization and international investment, including the new NAFTA to global debates over international investment and development. It examines those issues through case studies derived from international arbitration cases that relate to the cycle of foreign investment and resolution of international disputes through complex negotiations. There is a particular focus on strategic economic sectors such as energy, infrastructure and transportation, and the role of the public and private sectors. The course focuses on the development of written and oral presentation skills by involving students to engage in class discussions and acting as counsel in an international business negotiation, including in practical exercises throughout the course. Class requirements include participation in a case study and a negotiation exercise and a focused take-home examination. This course satisfies the skills requirement.

**Course and Grading Policies**

- Preparation for and participation in class (15%)
- One page single-spaced commentary due during the week of the course (15%)
- Negotiation exercise (30%)
- Client memorandum submitted as a take-home examination (40%)

Students will be divided into four groups and each group will be assigned a specific class day. Members of the group must be prepared to answer questions related to the readings for their assigned day. However, the Professor may call on any student at any time.

**Contact Information**

jhamilton@whitecase.com (please copy natalia.jaramillo@whitecase.com)

Professor Hamilton will be available to speak in groups or individually immediately after class most days.

## **Class Schedule and Reading List**

### **Class 1: Complex International Negotiations and Cross-Border Investments (10/18; 12:30pm-1:50pm)**

Contract renegotiation and adaptation, World Bank Toolkit for PPPs in Roads and Highways, Mar. 2009

Robert P. Barnidge Jr, The International Law of Negotiation as a Means of Dispute Settlement, 36 Fordham Int'l L.J. 545, 2013

Overcoming Cultural Barriers in Negotiation, Harvard Law School, 2015

John Ikenberry, The Next Liberal Order: The Age of Contagion Demands More Internationalism, Not Less, 99 Foreign Affairs 4, 133-142, July 2020

*Plama Consortium Limited v. Republic of Bulgaria*, Aug. 27, 2008 (read in detail, including with respect to investment model and management of the investment, including the relevance of factual issues related to negotiations between the investor and state)

### **Class 2: Navigating Project Finance and Political Risk: Ecuador (10/19; 12:30pm-1:50pm)**

Latin American Investment Protections, Chapter on Ecuador, May 10, 2012 (Excerpt, pages 1-9, 31-37)

White & Case Advises on Successful Renegotiation of Quito International Airport Concession, White & Case, Feb. 17, 2011

Project Finance Investors: Solution to Populismo, May 1, 2014

*Corporación Quiport S.A. and others v. Republic of Ecuador*, Order of Discontinuance, Nov. 11, 2011

Jonathan C. Hamilton, Expropriation, Denunciation, Arbitration, Negotiation and the Resolution of the Quito International Airport Project, 2015

Airport deal marks end of *Quiport v. Ecuador*, Global Arbitration Review Feb. 24, 2011

The Return of Investment Protections in Ecuador, White & Case, June 25, 2021

### **Class 3: Dispute Resolution through Negotiation: Peru (10/20; 12:30pm-1:50pm)**

Latin American Investment Protections, Chapter on Peru, May 10, 2012 (Excerpt, pages 485-511, 517-525)

Peru faces second claim over transmission line, Global Arbitration Review, Feb. 27, 2012

Peru defeats credit-crunch claim at ICSID, Global Arbitration Review, Apr. 23, 2013

Peru claim continues at half-power, Global Arbitration Review, Aug. 14, 2013

Peru brings ICSID claim against power investor, Sep. 20, 2013

*Caravelí Cotaruse Transmisora de Energía S.A.C. v. Republic of Peru*, Settlement Agreement, Dec. 2013

Victory in Spain-Peru Global Economy Dispute, White & Case, Aug. 1, 2013

Peru settles trio of power line claims, Global Arbitration Review, Mar. 28, 2014

### **Class 4: Negotiations and Political Transition: Argentina (10/21; 12:30pm - 1:50pm)**

Latin American Investment Protections, Chapter on Argentina, May 10, 2012 (Excerpt, pages 1-9, 32-40)

Kirchner era ends in Argentina, but maybe not "Kirchnerismo," Washington Post, July 17, 2015

Macri raises hopes for Argentina's economic renewal, Financial Times, Jan. 20, 2016

*Abaclat and others v. Argentine Republic*, ICSID Case No. ARB/07/5, Decision on Jurisdiction, Aug. 4, 2011 (review facts)

Abaclat voted most influential award of the decade, *Global Arbitration Review*, Feb. 8, 2013

Argentina to pay Italian holdout creditors, *Financial Times*, Feb. 2, 2016

How Argentina pulled off a deal in creditor impasse, *Financial Times*, Dec. 5, 2016

**Class 5: Shifting Contexts and Treaties: Mexico (10/22; 2:00pm-5:00pm)**

New NAFTA curbs ISDS, *Global Arbitration Review*, Oct. 1, 2018

Revised “new NAFTA” signed in Mexico, *Global Arbitration Review*, Dec. 2019

USMCA, Chapter 14 on Investment Text, entry into force in July 1, 2020

NAFTA, Chapter 11 on Investment Text, entry into force in Jan. 1, 1994

Project Finance Overview, *Practical Law*, 2018

Key Issues in Developing Project Financed Transactions, World Bank, Feb. 10, 2013

Sample Infrastructure Concession Contract with Commentary, World Bank, Dec. 2009

**Class 6: Reaching Agreement in Complex Negotiations: República (10/23; 10:00am-1:20pm)**

Negotiations Regarding Toll Road Project in República

Role-Specific Instructions

## **Fall 2021 Classroom Policies**

### **Mask and Physical Distancing**

According to University and Law School policy, masks are required at all times including in our classroom. Students must maintain adequate physical distancing and comply with all signage in and around the building. Everyone is expected to behave in a manner that is beneficial to the health and safety of all students, faculty, and staff. Appropriate masks cover the entire nose and mouth, fitting snugly over the face. Students without an appropriate face covering will not be permitted in the classroom.

### **Class Recordings**

Students are expressly prohibited from recording any part of this course. Meetings of this course might be recorded by the University. Any recordings will be available to students registered for this class as they are intended to supplement the classroom experience. Students are expected to follow appropriate University policies and maintain the security of passwords used to access recorded lectures. Recordings may not be reproduced, shared with those not enrolled in the class, or uploaded to other online environments. If the instructor or a University of Miami office plans any other uses for the recordings beyond this class, students identifiable in the recordings will be notified to request consent prior to such use.

### **Disability & Accommodation**

If a student has a disability, or suspects that he or she may have a disability, please contact Jessie Howell, Director of Accessibility, for information about available opportunities, resources, and services. Her phone number is 305-284-4551, and her email address is [access@law.miami.edu](mailto:access@law.miami.edu).

### **Title IX**

The University of Miami seeks to maintain a safe learning, living, and working environment free from all types of sexual misconduct including but not limited to: Dating Violence, Domestic Violence, Sex- or Gender-Based Discrimination, Sexual Assault (including Sexual Battery), Sexual Exploitation, Sexual Harassment, and Stalking. For additional information about the University's efforts to prevent, stop, and address sexual misconduct, including resources and reporting options, please visit [www.miami.edu/titleix](http://www.miami.edu/titleix) or contact the University's Title IX Office at [titleixcoordinator@miami.edu](mailto:titleixcoordinator@miami.edu).

### **Attendance Policy**

Due to the small number of meetings, attendance to all meetings/classes for short courses is mandatory. Students who miss more than one class session (80 minute) of a 1-credit short course are subject to administrative withdrawal and will have a W for the course on their transcripts.