

Course: Basic Concepts in International Arbitration

Adjunct Professor David Riesenberg

Fall 2021 -- LAW338 -- 1 Credit

Course Description: This is an intensive course intended for two types of students: (1) those who are generally interested in international business transactions and want an overview of the most frequent method for resolving contractual disputes, and (2) those who intend to take additional intensive courses in the field of international arbitration in the future.

Course Dates & Times: August 30 – September 4, 2021

- Monday-Thursday 12:30 – 1:50 pm Room (F108)
- Friday 2:00 pm – 5:00 pm Room (F108)
- Saturday 10:00 am – 1:20 pm Room (F108)

Reading Assignments and Participation:

Students will be assigned readings from a textbook, Jan Paulsson, *The Idea of Arbitration* (Oxford University Press 2013), and from primary source materials. The primary source materials will be available on the Blackboard website.

Before each class, students should carefully read the passages from the textbook and generally skim the primary source materials for each class. This will enable students to participate fully during the in-class discussion. Students' in-class participation will account for 25% of the final grade.

Exam Paper:

The remaining 75% of the final grade will be based upon a short exam paper of five (5) pages maximum, covering three (3) exam questions. The exam questions will be released to the students on Friday, September 10, 2021. The paper must be submitted on Friday, September 17, 2021, before 4:00 PM. In his or her paper, each student must present original analysis and argument supported by citations to the course material, referring to both the textbook and the primary source materials, as relevant.

Lecture 1: The System of International Arbitration (Aug. 30, 80 min.)

- Read Chapter 6 of *The Idea of Arbitration* pages 174 – 199
- Skim these Primary Sources:
 - 1958 New York Convention
 - 1976 UNCITRAL Arbitration Rules
 - 1985 UNCITRAL Model Law

Lecture 2: Allocating Responsibilities to Arbitrators & Courts (Aug. 31, 80 min.)

- Read Section 3.1 of *The Idea of Arbitration* pages 51-82
- Skim these Primary Sources:
 - *Outokumpu* Motion to Compel of July 22, 2016
 - *Outokumpu* Opinion of June 1, 2020
 - *Outokumpu* GAR Article of June 1, 2020

Lecture 3: Conducting an Arbitration (Sept. 1, 80 min.)

- Read Section 3.2, 3.3, 3.4 of *The Idea of Arbitration* pages 82-98
- Skim these Primary Sources:

- 1988 ICC Rules of Arbitration
- 1989 Texas International Arbitration Act
- *Bridas* Partial Award of June 24, 1999
- *Bridas* Opinion of Sept. 9, 2003
- *Bridas* Opinion of April 21, 2006

Lecture 4: Enforcement & Set-Aside (Sept. 2, 80 min.)

- Read Chapter 2 of *The Idea of Arbitration* pages 29-50
- Skim these Primary Sources:
 - *Thai-Lao Lignite* Petition to Confirm of June 8, 2010
 - *Thai-Lao Lignite* Opinion & Order of Aug. 3, 2011
 - *Thai-Lao Lignite* English Judgment of Oct. 26, 2012
 - *Thai-Lao Lignite* GAR Article of Jan. 9, 2013
 - *Thai-Lao Lignite* Opinion of July 20, 2017

Lecture 5: Investor-State Dispute Settlement & “Exclusive Competence” (Sept. 3, 180 min.)

- Read Chapter 8 of *The Idea of Arbitration* pages 231-255
- Skim these Primary Sources:
 - Section 1605 of the Foreign Sovereign Immunities Act
 - Parts I, III, and IV of the 1994 Energy Charter Treaty
 - *Komstroy* Majority Award of Oct. 23, 2013
 - *Komstroy* Dissenting Opinion of Oct. 25, 2013
 - *Komstroy* Opinion & Order of Nov. 13, 2018
 - *Komstroy* GAR Article of Sept. 26, 2019
 - *Komstroy* Opinion of Jan. 15, 2021
 - *Komstroy* Opinion of Sept. 2, 2021

Lecture 6: Review & Catch Up (Sept 4, 200 minutes)

- Again review (skim again) the primary sources discussed previously, especially any that caused difficulty during the previous sessions.

Fall 2021 Classroom Policies

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.

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.

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 or contact the University's Title IX Office at titleixcoordinator@miami.edu.