

**LL4338V/LL5338V/LLJ5338V/LL6338V**

**ADVANCED PRACTICUM IN INTERNATIONAL ARBITRATION**

**(Semester 2, 2025-26)**

**Course Description**

This is an advanced practice-oriented course designed to build on students' assumed existing basic knowledge of international commercial and investment treaty arbitration.

The course will introduce students to the strategic decisions, practice skills, analytical tools and ethics considerations that underlie key phases of an international arbitration. The phases common to commercial and investment treaty arbitration (with necessary variation) include: drafting arbitration clauses; commencing arbitration with the Notice of Arbitration/Request for Arbitration; constitution of the tribunal, including arbitrator selection, conflicts of interest and challenges; the preliminary or case management meeting and related procedural orders and timetables; interim/provisional measures and emergency arbitration; written submissions; expedited arbitration and early dismissal; document production; fact and expert witnesses; hearings and oral advocacy; drafting decisions/awards; and proceedings to enforce, set-aside or annul the award.

Using factual scenarios, students will take part in strategy, drafting and advocacy exercises. The emphasis will be on primary materials: statutes, institution rules, treaties, case law, commentary and "soft law" instruments. To maximize the benefit of the exercises, the focus will be on SIAC practice on the commercial side, and on ICSID practice on the investment treaty side. There will be some coverage of other commercial and treaty arbitration options, including the ICC and UNCITRAL.

**\* Reading materials, and the release of assignments and deadlines, are subject to change. Students will be informed of any such changes. All readings will be uploaded to Canvas.**

**Objectives**

In the course, students are expected to:

- develop their existing knowledge of international arbitration law, theory and practice
- appreciate the role of strategy at different phases of international arbitration
- hone written analysis and written advocacy skills
- conduct a document production exercise
- experience oral advocacy
- view the practice from the tribunal's perspective, by drafting awards
- build contract and treaty interpretation skills
- build teamwork skills
- recognise professional responsibility / ethical issues

**Class 1: Commercial and Treaty Arbitration: Introduction [GS / FG]**

This class will include a refresher on basic concepts of international commercial and treaty arbitration. Students will also consider an initial introduction to the Anchuria-Jempang-NGC dispute Scenario which will evolve throughout the semester. Class discussion and in-class exercises will include consideration of strategic issues such as party consent, the role of institutions, whether arbitration should be commenced and why, choosing commercial or treaty arbitration, choosing commercial arbitral institutions and rules, and drafting arbitration clauses.

**Class 2: Starting a Commercial Arbitration [AH / FG]**

This class will focus on two critical early stages in a commercial arbitration: (i) drafting the Notice of Arbitration (NOA), and (ii) constituting the tribunal. The lecture will cover the strategy and drafting of the NOA, and the strategic stage of selecting, appointing and (potentially) challenging arbitrators for conflict or other concerns. Class exercises will include the evaluation of arbitrator candidates for a SIAC arbitration under the Scenario, using bios and curriculum vitae available on the internet, and evaluating possible conflict of interest. Written Assignment 1 will involve drafting a NOA.

**Class 3: Interim Measures and Emergency Arbitration [AH / FG]**

This class will discuss interim or provisional relief in international commercial arbitration, including by way of Emergency Arbitration under institutional rules before the tribunal is constituted. The class will discuss the types of interim relief available, how and under what circumstances such relief should be granted, the overlapping jurisdiction of arbitral tribunals and the courts. Class exercises will include strategic considerations of whether an application should be made for interim relief in the context of the Scenario, and if so, for what relief; and the form of the relief.

**Class 4: The Progress of an Arbitration [AH / RN]**

After reviewing Written Assignment 1, the class will explore the structure and progress of a typical commercial arbitration, with a particular focus on how these stages and procedures are determined at the outset of the arbitration. We will cover the Preliminary Meeting in an SIAC arbitration, which convenes the tribunal and parties for the first time and leads to the important Procedural Order No. 1. The discussion will include strategic considerations of the format of the submissions (memorial versus pleading style) and practical considerations for drafting; timetabling of proceedings; questions of bifurcation; confidentiality; and broader consideration of tribunal discretion. Class exercises will include small-group advocacy of procedural issues arising from the Scenario.

**Class 5: Treaty Arbitration [GS / RN]**

This class will start with a lecture on the core substantive protections in the Scenario: investment treaty protections (expropriation, fair and equitable treatment, full protection and security), the basic principles of state responsibility and treaty interpretation. We will then cover ICSID procedure and practice, including the Request for Arbitration, the First Session, and Preliminary Objections. Class exercises will involve a discussion of strategic and practical considerations when choosing between treaties under which an investment arbitration may be commenced.

**Class 6: Expedited Arbitration and Early Dismissal [AH / RN]**

This class will focus on specialised procedures available for expedited arbitration (and similar alternatives) and for early dismissal of claims or defences for manifest lack of merit. Class exercises will include discussions on the application of expedited procedures, practical considerations in meeting the relevant thresholds to succeed in such applications, the interplay between party autonomy and procedural efficiency, and the right to a hearing. The students will discuss and debate a real case of early dismissal based on redacted submissions. **Written Assignment 2** will involve drafting a decision on an early dismissal application.

**Class 7: Document Production [GS / RN]**

After reviewing Written Assignment 2, this class will start with a lecture on the purpose and basics of document production in international arbitration, with focus on the IBA Rules on the Taking of Evidence. The class will undertake a document discovery exercise based upon the Scenario using the Redfern Schedule, including drafting requests for the production of documents, objections to such requests (if any) and decisions on the objections. In addition the class will consider alternatives to the Redfern Schedule, including the Armesto Schedule. Finally, students will receive instructions for next week's **In-Class Assignment 1**.

**Class 8: Document Production Presentations, Fact and Expert Witness Evidence [GS / FG]**

The first part of this class will involve **In-Class Assignment 1**, with oral presentations by 2 groups, of the Document Production assignments from Class 7.

The class will then examine the ways to collect fact witness evidence, with reference to the IBA Rules on the Taking of Evidence and relevant ethical considerations. Class exercises will include mock fact witness interviews and outlining a witness statement. The witness statements will be used for the cross-examination exercise in Class 10. The class will then turn to the preparation of expert reports, including the selection of experts, the independence of experts, preparation and presentation of expert evidence, the duties of experts and the ethical responsibilities of counsel.

### **Class 9: Hearings, Oral Advocacy, Decision-Making and Cross-Examination [GS / AH]**

This class will look at aspects of the main evidentiary hearing. Students will consider practical aspects including the preparations for a hearing, and typical tribunal directions in that regard; document bundles; and the management of hearings and hearing time. The class will then consider best practice for oral advocacy at hearings, before turning to cross-examination rules and techniques (which will form the basis for the presentations in Class 11) and Tribunal decision-making and Awards (which will form the basis for Written Exercise 3, Award writing). Students will receive instructions for next week's **In-Class Assignment 2** (cross-examination) and for **Writing Assignment 3** which will involve drafting a Final Award.

### **Class 10: Cross-Examination Practical [GS / AH]**

There will be no lectures in this hearing, which will focus on **In-Class Assignment 2**. 4 groups of students will conduct brief cross-examinations of witnesses based on the witness statements from Class 8, after which verbal feedback will be provided.

### **Class 11: Set-Aside and Annulment [GS / DC]**

This class will consider why "final and binding" arbitration awards are not necessarily final and binding: setting-aside proceedings in respect of commercial arbitration awards and non-ICSID investment awards, and the unique option of annulment proceedings in respect of ICSID awards. Students will consider the grounds for setting aside and annulment, and the procedures which must be followed. We will look at the attitude of courts towards setting aside applications, and the approach and attitudes of ICSID annulment committees, and the possible cost implications. Students will also discuss the strategic and tactical considerations which influence the decision whether to pursue set-aside / annulment proceedings.

### **Class 12: Enforcement [AH / DC]**

The final class will focus on the enforcement of arbitration awards. Topics will include the interplay between setting aside proceedings and resistance to enforcement; domestic enforcement procedures; international enforcement and the New York Convention; grounds for resisting enforcement; and the procedures and remedies available. The lecture will also address the relevance of enforcement strategies from the earliest stages of an arbitration. Finally, the class will consider practical steps for tracing, freezing, seizing and realising assets, and for enforcing final non-monetary orders.