

SYLLABUS

Course: International Investment Law

Time: 4:00pm-6:00pm Tuesday

Professor Julian Cardenas

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Office Hours: Wed. 10:30 a.m. – 12:00 p.m. or by appointment

COURSE OVERVIEW

International Investment Law course is designed to provide JD candidates and LLM students all the notions and tools necessary for the analysis and performance of complex legal issues related to international investment transactions, such as oil and gas, mining, and international construction projects.

During the last 50 years, more than 3000 Bilateral Investment Treaties have been agreed between nations. Also other Multilateral Investment Treaties such as NAFTA and the Energy Charter Treaty, have created a transnational network of sources of law to govern the interdependency relations between States and International Corporations, for the development of local resources and services. This reality has created a specific System of Law to serve a community of investors and States, and has provided a special Jurisdiction for the settlement of disputes through international arbitration.

International Investment Law is one of the fields of International Law that is currently undergoing a major evolution and expansion due to the levels of transparency of arbitration decisions, which are creating a Source Law based on International Arbitral Jurisprudence. This case law has been built by arbitrators from different jurisdictions and legal cultures, working in the settlement of disputes considering the interests and needs of foreign investors and Host States, as a global community involved on Investment Transactions.

Further, the amount of international investment litigation has increased in the last 10 years creating the framework for new standards and rules applicable for the placement of international investments. This evolution is shaping the way to do business in international investment projects in the energy, mining and the construction sector.

The course shall be in the interest of students who want to develop a career as In-house Counsels or Law Firm attorneys, involved in international Investment transactions.

COURSE REQUIREMENTS

Book Requirements: Reading materials will also be assigned throughout the semester and will be emailed to students.

Arbitration Case: An arbitration file will be distributed to the class for a legal discussion over an international arbitration dispute.

Evaluation: Final Paper

Research Paper: Each student will write a 20-25 page term paper on a topic related to a comment on an international investment arbitration award or decision, or topics in the applicability of Bilateral Investment Treaties (BIT) standards in investment transactions.

Papers may refer the following topics:

- 1) Protection standards for in the placement of foreign investment projects.
- 2) Enforcement of BIT standards of protection
- 3) The role of precedent in Arbitral Jurisprudence in International Investment Arbitration.
- 4) Critics and conflicting approaches to the system of international investment arbitration.
- 5) Evolution of International Investment Arbitration
- 6) Empirical studies on international investment law and international arbitration.
- 7) Corporate planning and the practice of treaty shopping in international investment projects.

Other topics surrounded the above mentioned may be discussed with the Professor.

Class discussions: Class participation is necessary and mandatory. Students are expected to complete assigned readings and be prepared for class.

COURSE SCHEDULE

Week 1

August. 27

The history and evolution of international investment law and arbitration, XX and XXI century.

Week 2

Sept. 3

The legal relation of an international investment.
Foreign investors, shareholders, States and State owned companies.

Week 3

Sept. 10

The Notion Foreign Investment
Interpretation based in international treaties and Arbitral Jurisprudence
Feb. 7 International Oil and Gas Arbitration in Latin America.

Weeks 4

Sept. 17.

Sources of Law that integrate the network of applicable law to International investment transactions (Part 1):

- International Contracts
- Administrative Authorizations.

Weeks 5

Sept. 24

Sources of Law that integrate the network of applicable law to International investment transactions (Part 2):

- Municipal Law
- International Law
- Non-State Sources of Law

Week 6

Oct. 1 Bilateral Investment Treaty Standards (Part 1)

- Protection for cases of Expropriation
- Fair and Equitable Treatment

Week 7

Oct. 7 Bilateral Investment Treaty Standards (Part 2)

- Umbrella Clause
- Arbitration and Dispute Resolution Provisions

Week 8

Oct. 14 Bilateral Investment Treaty Standards (Part 3)

- Security and Protection standards
- Repatriation of Capitals clauses

Week 9

Oct. 21 Bilateral Investment Treaty Standards (Part 4)

- Most Favorable Nation Treatment
 - a) Procedural standards
 - b) Substantive standards

Week 10

Oct. 28

The consent to international investment arbitration.

Contracts, Treaties, and Unilateral Declarations on Municipal Law.

Week 11

Nov. 5

Rules of Jurisdiction

- Ratione materiae, ratione personae and ratione temporis.
- Corporate Planning and Treaty Shopping practices.

Week 12

No. 12

Procedural Rules for International Investment Arbitration

ICSID, UNCITRAL, ICC, LCIA and SCC rules.

How they interact and have an effect on the applicable law of an international investment dispute.

Week 13

Nov. 19

Applicable Law to the jurisdiction and merits in investment arbitration

The Interaction of Sources of Law applicable to the interpretation and enforcement of an investment contract.

Week 14 -15

Nov. 26 / Dec. 6

The Arbitration Award and Annulment Procedure

Characteristics and structure of arbitration awards.

Analysis and preparation of commentaries.

Ways of annulment and preparation of the Annulment procedures.

ICSID Convention and New York Convention of 1958.