Office Hours: Monday 4:00 PM – 5:30 PM

Prof. Cristina Cárdenas [ccardenas@reedsmith.com](mailto:ccardenas@reedsmith.com)

352 – 302 – 9279

**Course Goals and Objectives:**

In this course, you will learn about international arbitration: both international commercial arbitration and international investment treaty arbitration. Upon successful completion of the course, students will have the following knowledge and skills:

* Considerations of the impact of diversity of culture in international arbitration.
* How to Commence an arbitration by agreement, or by contractual clauses.
* Understand Investment Treaty Arbitration and its underlying principles.
* Review substantive and procedural arbitration concepts
* Address common procedural and substantive issues through motion practice.
* Examine the conduct of an international arbitration hearing under major institutional and non-institutional arbitration rules.
* Consider the role of legitimacy and public policy in investment treaty arbitration
* Become familiar with ethical and conflict of interest rules applicable to arbitrators, experts and counsel involved in international arbitrations.
* We will consider domestic court assistance, arbitration award recognition, vacatur and enforcement under US law, the New York Convention and the UNCITRAL Model Law.

# OVERVIEW OF INTERNATIONAL ARBITRATION

(Friday, January 22, 2021 – 1:15 pm – 3:15 pm)

* **Topics to Cover:** 
  + Distinctions/differences between international arbitration and litigation
  + Understanding of the fora and rules
  + Cross cultural impacts in international arbitration
* **Reading Materials:** 
  + UNCTAD Dispute Resolution Course – Module 5.1 – International Commercial Arbitration <https://unctad.org/en/Docs/edmmisc232add38_en.pdf>
  + Arbitration Rules:
    - 1976 UNCITRAL Arbitration Rules - [https://pca-cpa.org/wp-content/uploads/sites/175/2016/01/UNCITRAL- 1976-English.pdf](https://pca-cpa.org/wp-content/uploads/sites/175/2016/01/UNCITRAL-1976-English.pdf)
    - ICSID Convention - [https://icsid.worldbank.org/en/Pages/icsiddocs/ICSID- Convention.aspx](https://icsid.worldbank.org/en/Pages/icsiddocs/ICSID-Convention.aspx)
    - ICC Rules - <https://iccwbo.org/dispute-resolution-services/arbitration/rules-of-arbitration/>
    - American Arbitration Association (AAA) Rules - <https://www.adr.org/Rules>
  + UNCITRAL Model law - https://uncitral.un.org/en/texts/arbitration/modellaw/commercial\_arbitration

# THE LEGAL FRAMEWORK

(Friday, January 29, 2021 – 1:15 pm – 3:15 pm)

* **Topics to Cover:** 
  + New York Convention, UNCITRAL Model Law and the Panama Convention
  + The Federal Arbitration Act, 9 USC s. 1, et. seq.
* **Reading Materials:** 
  + John P. Bowman, The Panama Convention and its Implementation Under the Federal Arbitration Act, 11 Am. Rev. Int'l Arb. 1
  + UNCTAD Dispute Resolution Course – Module 5.7 - Recognition and Enforcement of Arbitral Awards: The New York Convention, https://unctad.org/system/files/official-document/edmmisc232add37\_en.pdf
  + Albert Jan Van Den Berg, The New York Convention 1958 and Panama Convention 1975: Redundancy or Compatibility?
  + UNCITRAL Model law - <https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration>
  + The New York Convention (1958) [https://www.uncitral.org/pdf/english/texts/arbitration/NY-conv/New-York- Convention-E.pdf](https://www.uncitral.org/pdf/english/texts/arbitration/NY-conv/New-York-Convention-E.pdf)
  + The Panama Convention - http://www.oas.org/en/sla/dil/inter\_american\_treaties\_B-35\_international\_commercial\_arbitration.asp

# CONSENT AND THE AGREEMENT TO ARBITRATE

(Friday, February 5, 2021 – 1:15 pm – 3:15 pm)

* **Topics to Cover:** 
  + Consensual nature of arbitration
  + Who is bound and what types of disputes can be arbitrated
  + How to draft an arbitration agreement
* **Reading Materials:**
  + UNCTAD Module 2.3 – Consent to Arbitration, <http://unctad.org/en/docs/edmmisc232add2_en.pdf>
  + UNCTAD Module No. 5.2 – The Arbitration Agreement, <https://unctad.org/en/Docs/edmmisc232add39_en.pdf>

# ARBITRATION PROCEDURE AND APPLICABLE LAW

(Friday, February 12, 2021 – 1:15 pm – 3:15 pm)

* **Topics to Cover:** 
  + Law governing the agreement to arbitrate v. the law governing the arbitration
  + Law governing the substance of the dispute (applicable law)
  + Establishment of procedure
  + Privilege and other procedural issues
  + Admissibility
* **Reading Materials:**
  + UNCTAD Module 5.4 – The Arbitral Proceedings <https://unctad.org/en/Docs/edmmisc232add36_en.pdf>
  + UNCTAD Module 5.5 – Law Governing the Merits of the Dispute <https://unctad.org/en/Docs/edmmisc232add40_en.pdf>
  + Jan Paulsson, “*Jurisdiction and Admissibility” -* [http://ssrn.com/abstract=1707490](http://ssrn.com/abstract%3D1707490)

# THE ARBITRAL TRIBUNAL

(Friday, February 19, 2021 – 1:15 pm – 3:15 pm)

* **Topics to Cover:** 
  + Establishment of jurisdiction
  + Kompetenz-Kompetenz and severability of the arbitration agreement
  + Conflicts and ethical issues
  + Grounds for challenge
  + Powers and duties
* **Reading Materials:**
  + The positive and negative effects of the *Kompetenz – Kompetenz* principle, along with the issue of severability and autonomy of the arbitration agreement. See pages 33 – 35 of UNCTAD Module 5.2 – The Arbitration Agreement - [http://unctad.org/en/Docs/edmmisc232add39\_en.pd](http://unctad.org/en/Docs/edmmisc232add39_en.pdf)f
  + Also look at the Module 5.2’s discussion of the impact of UNCITRAL Model Law Articles 8 and 16 on how a domestic court should deal with competing arguments about jurisdictional decisions made by international arbitration Tribunals.
  + IBA 2014 Revised Guidelines on Conflict of Interest in International Arbitration - [https://www.ibanet.org/Document/Default.aspx?DocumentUid=68336C49-4106-46BF-A1C6- A8F0880444DC](https://www.ibanet.org/Document/Default.aspx?DocumentUid=68336C49-4106-46BF-A1C6-A8F0880444DC)
  + UNCTAD Module 5.3 – The Arbitral Tribunal <https://unctad.org/en/Docs/edmmisc232add34_en.pdf>

# ARBITRATION PLEADINGS AND EVIDENCE

(Friday, February 26, 2021 – 1:15 pm – 3:15 pm)

* **Topics to Cover:** 
  + Structure of pleadings
  + Documentary evidence
  + Request for disclosure
  + Adverse inference for failure to produce
  + Fact witness evidence and experts
* **Reading Materials:**
  + Debevoise & Plimpton LLP Protocol to Promote Efficiency in International Arbitration - [https://www.debevoise.com/~/media/files/capabilities/arbitration/protocol\_promote\_efficiency\_intl\_arbitration1.pdf.](https://www.debevoise.com/%7E/media/files/capabilities/arbitration/protocol_promote_efficiency_intl_arbitration1.pdf)
  + IBA Rules on the Taking of Evidence in International Arbitration - http://www.ibanet.org/Publications/publications\_IBA\_guides\_and\_free\_materials.aspx#takingevid [ence](http://www.ibanet.org/Publications/publications_IBA_guides_and_free_materials.aspx#takingevidence)

# THE ARBITRATION HEARING: HOW INTERNATIONAL ARBITRATIONS ARE ORGANIZED, AND THE KEY PROCEDURAL ISSUES ARISING IN AN ARBITRATION

(Friday, March 5, 2021 – 1:15 pm – 3:15 pm)

* **Topics to Cover:** 
  + What goes on at a hearing? How to structure and organize the hearing.
  + Structure of hearing, phasing, approaches to evidence and hearings
  + Possibility of bifurcation or more
  + Opening/closing submissions
* **Reading Materials:**
  + UNCTAD Module 5.4 on the Arbitration Process - <http://unctad.org/en/Docs/edmmisc232add36_en.pdf>
  + UNCITRAL Notes on Organizing an Arbitration - <http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/2016Notes_proceedings.html>

# INVESTMENT TREATY ARBITRATION

(Friday, March 12, 2021 – 1:15 pm – 3:15 pm)

* **Topics to Cover:** 
  + History and background
  + Who can claim?
  + Fundamental Scope of protection – Non-Discrimination Norms – National Treatment and MFN
  + Fair & Equitable Treatment
  + Compensation for Expropriation
* **Reading Materials:**
  + ICSID Convention (Washington Convention) and ICSID Arbitration Rules - <https://icsid.worldbank.org/en/Pages/process/Arbitration.aspx>
  + UNCITRAL Dispute Resolution Module 2.1 on ICSID - <https://unctad.org/en/Docs/edmmisc232_en.pdf>
  + UNCTAD Module 6.1 on NAFTA (Look at NAFTA Chapter Eleven’s investor state dispute resolution process) - <https://unctad.org/en/Docs/edmmisc232add24_en.pdf>

# CONFIDENTIALITY AND TRANSPARENCY ISSUES IN ARBITRATION

(Friday, March 19, 2021 – 1:15 pm – 3:15 pm)

* **Topics to Cover:** 
  + Is arbitration confidential?
  + Different rule provisions
  + Transparency issues and a way forward
* **Reading Materials:** 
  + ICC Note to the Parties and Arbitral Tribunals on the Conduct of the Arbitration - https://iccwbo.org/publication/note-parties-arbitral-tribunals-conduct-arbitration/
  + Stephan Schill, Reforming Investor–State Dispute Settlement: A (Comparative and International) Constitutional Law Framework *Journal of International Economic Law*, Vol 20(3) 1 September 2017.

<https://academic.oup.com/jiel/article-abstract/20/3/649/3933549>

* + Gus Van Harten, *Five Justifications for Investment Treaties: A Critical Discussion*, 2(1) Trade L. & Dev. 1 (2010).

# AWARD CHALLENGE, RECOGNITION AND ENFORCEMENT

# (Friday, March 26, 2021 – 1:15 pm – 3:15 pm)

* **Topics to Cover:** 
  + Types of awards – interim vs final
  + Remedies
  + Effect of awards
  + Clarification and review of awards
  + Grounds for challenge to award (application to set aside)
  + Courts entitled to hear challenge
  + Recognition and enforcement – New York Convention
* **Reading Materials**:
  + The New York Convention (1958) [https://www.uncitral.org/pdf/english/texts/arbitration/NY-conv/New-York- Convention-E.pdf](https://www.uncitral.org/pdf/english/texts/arbitration/NY-conv/New-York-Convention-E.pdf)
  + UNCITRAL Model Law <https://www.uncitral.org/pdf/english/texts/arbitration/ml-arb/07-86998_Ebook.pdf>
  + Federal Arbitration Act, 9 USC s. 1, et. seq.
  + UNCTAD Module 2.8 - ICSID – ICSID Post Award Remedies UNCTAD Module 2.8 <https://unctad.org/en/Docs/edmmisc232add7_en.pdf>
  + Industrial Risk Insurers v. M.A.N. Gutehoffnungshutte GmbH, 141 F.3d 1434, 1436 (11th Cir. 1998)
  + Yusuf Ahmed Alghanim & Sons, W.L.L. v. Toys “R” Us, 126 F.3d 23 (2d Cir.)

# COURT MEASURES AND THE COURT INTERPLAY WITH ARBITRATION

(Friday, April 2, 2021 – 1:15 pm – 3:15 pm)

* **Topics to Cover:** 
  + Interplay between domestic courts and international arbitration
  + Court support of arbitration, interim measures, anti-suit injunctions, etc.
* **Reading Materials:**
  + UNCTAD Module 5.8 – Court Measures - https://unctad.org/en/Docs/edmmisc232add42\_en.pdf
  + The New York Convention (1958) [https://www.uncitral.org/pdf/english/texts/arbitration/NY-conv/New-York-](https://www.uncitral.org/pdf/english/texts/arbitration/NY-conv/New-York-Convention-E.pdf) [Convention-E.pdf](https://www.uncitral.org/pdf/english/texts/arbitration/NY-conv/New-York-Convention-E.pdf)
  + Julian D M Lew, Does National Court Involvement Undermine the International Arbitration Processes? <https://digitalcommons.wcl.american.edu/auilr/vol24/iss3/3/>
* Karaha Bodas Co., L.L.C. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara, 335 F.3d 357 (5th Cir. 2003)
* Paramedics Electromedicina Comercial Ltda v GE Medical Systems Information Technologies Inc*.* 369 F.3d 645 (2d Cir. 2004)

# ARBITRATION AND SOVEREIGN IMMUNITY ISSUES

(Friday, April 9, 2021 – 1:15 pm – 3:15 pm)

* **Topics to Cover:** 
  + The Foreign Sovereign Immunities Act
  + The enforcement of arbitral awards against a sovereign

* **Reading Materials**:
  + Articles 30 and 31, ILC DRAFT Articles on State Responsibility.
  + The Foreign Sovereign Immunities Act,  Title 28, §§ 1330, 1332, 1391(f), 1441(d), and 1602–1611 of the United States Code

# HOT TOPICS IN INTERNATIONAL ARBITRATION

(Friday, April 16, 2021 – 1:15 pm – 3:15 pm)

* **Topics to Cover:** 
  + Artificial intelligence
  + Virtual arbitrations
  + Third Party funding
  + Environmental and human rights issues
* **Reading Materials:** 
  + To be announced

**Class Attendance**

Attendance will be taken at each class meeting. Students are allowed two absences during the course of the semester. Students are responsible for ensuring that they are not recorded as absent if they come in late. A student who fails to meet the attendance requirement will be dropped from the course. The law school's policy on attendance can be found [here](https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/uf-law-student-handbook-and-academic-policies#:~:text=co%2Dcurricular%20activities.-,Attendance,regular%20and%20punctual%20class%20attendance.&text=UF%20Law%20policy%20permits%20dismissal,of%2012%20credits%20per%20semester.).

**Final Exam and Grading**

The law school policy on exam delays and accommodations can be found [here](http://www.law.ufl.edu/student-affairs/current-students/forms-applications/exam-delays-accommodations-form).

Grades will be based on a written final exam; however, a grade on the margin may be adjusted based on strong class participation.

This course follows the Levin College of Law’s grading policies found [here](https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/uf-law-student-handbook-and-academic-policies). The below chart describes the specific letter grade/grade point equivalent in place:

|  |  |
| --- | --- |
| Letter Grade | Point Equivalent |
| A | 4.0 |
| A- | 3.67 |
| B+ | 3.33 |
| B | 3.0 |
| B- | 2.67 |
| C+ | 2.33 |
| C | 2.0 |
| C- | 1.67 |
| D+ | 1.33 |
| D | 1.0 |
| D- | 0.67 |
| E (Failure) | 0.0 |

Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Click [here](https://gatorevals.aa.ufl.edu/students/) for guidance on how to give feedback in a professional and respectful manner. Students will be notified when the evaluation period opens and may complete evaluations through the email they receive from GatorEvals, in their Canvas course menu under GatorEvals, or via [ufl.bluera.com/ufl/](file:///C:\Users\nance\AppData\Local\Microsoft\Windows\INetCache\Content.Outlook\70WP0DTB\ufl.bluera.com\ufl\). Summaries of course evaluation results are available to students [here](https://gatorevals.aa.ufl.edu/public-results/).

The law school policy on exam delays and accommodations can be found [here](http://www.law.ufl.edu/student-affairs/current-students/forms-applications/exam-delays-accommodations-form).

**Disability Services**

Students requesting accommodations for disabilities must first register with the Disability Resource Center (<http://www.dso.ufl.edu/drc/>). Once registered, students will receive an accommodation letter, which must be presented to the Assistant Dean for Student Affairs (Assistant Dean Brian Mitchell). Students with disabilities should follow this procedure as early as possible in the semester.

**COVID Practices**

Many students will have face-to-face instructional sessions to accomplish the student learning objectives of this course. In response to COVID-19, the following policies and requirements are in place to maintain your learning environment and to enhance the safety of our in-classroom interactions. I may take noncompliance into account when grading students or determining if a student may remain in the course.

You are required to wear approved face coverings at all times during class and within buildings. Following and enforcing these policies and requirements are all of our responsibility. Failure to do so will lead to a report to the Office of Student Conduct and Conflict Resolution. You also will no longer be permitted on the UF Law campus. Finally, Dean Inman will also report your noncompliance to the relevant state board of bar examiners.

This course has been assigned a physical classroom with enough capacity to maintain physical distancing (6 feet between individuals) requirements. Please utilize designated seats and maintain appropriate spacing between students. Please do not move desks or stations.

Sanitizing supplies are available in the classroom if you wish to wipe down your desks prior to sitting down and at the end of the class.

Be mindful of how to properly enter and exit the classroom.  Practice physical distancing to the extent possible when entering and exiting the classroom.

If you are experiencing COVID-19 symptoms (<https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>), please do not come to campus or, if you are already on campus, please immediately leave campus. Please use the UF Health screening system and follow the instructions about when you are able to return to campus.  (See <https://coronavirus.ufhealth.org/screen-test-protect/covid-19-exposure-and-symptoms-who-do-i-call-if/>.)

Course materials will be provided to you with an excused absence, and you will be given a reasonable amount of time to make up work. (See <https://catalog.ufl.edu/UGRD/academic-regulations/attendance-policies/>).

**Class Discussion**

Students may not take, circulate, or post photos or videos of classroom discussions, whether they are in-person, hybrid, or completely online. Students failing to follow this rule will be referred to the College of Law Honor Code Council and the University’s Office of Student Conduct and Conflict Resolution.

**Course Workload and Preparation**

Students should expect to spend at least two hours outside of class reading and preparing for every hour of class.