

Course Syllabus

Course: Arbitration Law and Practice in P.R. China: With a Comparison of UNCITRAL Model Law

Credit: 1

Teaching hours: 14

Instructor:

Qingakng Dai

B.A, LL.M. PH.D

Associate Professor

Email: daiqk@163.com

Welcome to Contact:

I welcome and encourage all students to contact me by email at any time, or to have a face-to-face talk by appointment, on issues either related to the course or not, e.g. Chinese law and legal practice, or anything else about China, or simply to introduce yourself to me.

Reading Materials:

1. Jingzhou Tao: Arbitration Law and Practice in China, 3rd Edition, Kluwer Law International, 2012;
2. Gary b. Born: International Arbitration: Law and Practice, 2nd Ed., Wolters Kluwer, 2015;
3. UNCITRAL Model Law on International Commercial Arbitration 1985, with amendments as adopted in 2006 (UNCITRAL Model Law);
4. United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958 New York Convention);
5. People's Republic of China Arbitration Law enacted in 1994, amended in 2009 and 2017 (PRC Arbitration Law);
6. People's Republic of China Civil Procedure Law enacted in 1991, and amended in 2012, and 2017.

Course Description and Objectives:

A sustainable healthy development of economy can only be achieved with the parallel development of a competent, impartial and efficient system of disputes resolution. Arbitration is definitely an important part of such a system. The past 40-year rapid-growing Chinese economy witnessed the emergence and development of arbitration practice and related laws in P.R. China.

This course is to provide students with knowledge and understanding of arbitration and related laws in P.R. China and enhance their understandings of arbitration theories and practice through a comparative study on Chinese laws and UNCITRAL Model Law on International Commercial Arbitration 1985 with amendments as adopted in 2006.

Learning Outcome:

After learning this course, students are expected to be able to:

1. Describe the nature of arbitration, including the concept and characteristics of arbitration compared with other types of dispute resolutions;
2. Understand and explain the major provisions of PRC statutes and judicial interpretations related to arbitration in China;
3. Demonstrate an understanding of the major differences of PRC arbitration law and UNCITRAL Model Law on related topics and issues covered in this course;
4. Demonstrate an understanding of the arbitration practice in China, including the major arbitration institutions, related judicial supervision of and judicial assistance and remedies for arbitration in China, etc;
5. Provide basic advice to future clients on arbitration in China, conclusion of arbitration agreements (or arbitration clauses) with contracting parties from China, and the recognition and enforcement of domestic and foreign arbitral awards in China.

Topics to be covered and Course Schedule:

Meeting	Meeting Time	Topic	Reading
----------------	---------------------	--------------	----------------

Date			
Aug. 19	10:00--11:50	Overview of Arbitration in China <ul style="list-style-type: none"> ● arbitration and other types of dispute resolutions; ● arbitration institutions in China ● overview of PRC statutes and judicial interpretations related to arbitration, and treaties and conventions related to arbitration to which PRC has acceded or concluded ● the doctrine of non-arbitrability and non-arbitrable matters under PRC laws 	1. Chapter I, Arbitration law and practice in China; 2. Chapter 1, International Arbitration Law and Practice
	13:00--13:50		
Aug. 20	10:00--11:50	Arbitration Agreement <ul style="list-style-type: none"> ● Formation of arbitration agreement (essential terms and formality requirements); ● The doctrine of severability of an arbitral clause ● Challenges against the validity/existence of arbitration agreement: competence-competence doctrine, jurisdiction, time bar, waiver, etc. ● Effects of an arbitration agreement/arbitral clause upon non-signatories 	1. Chapter II, Arbitration law and practice in China; 2. Chapter 2-5, International Arbitration Law and Practice 3. Related provisions of PRC statutes and judicial interpretations 4. Related provisions of UNCITRAL Model Law; 5. Related provisions of 1958 New York
	13:00--13:50		

			Convention
Aug. 21	10:00--11:50	Choice of Law Issues <ul style="list-style-type: none"> ● Conflict of laws ● Resolution of conflict of laws ● Law applicable to arbitration agreement ● Non-arbitrability and choice of laws ● Lex causae of underlying contract or civil relations ● Law applicable to the arbitral proceeding 	<ol style="list-style-type: none"> 1. Chapter VI, Arbitration law and practice in China; 2. § 2.06, 3.02 of Chapter 2, § 5.03 of Chapter 5, Chapter 13, International Arbitration Law and Practice.
	13:00--13:50	Setting Aside an arbitral award <ul style="list-style-type: none"> ● Presumptive finality of an arbitral award ● Limited grounds for setting aside arbitral awards ● Jurisdiction ● Time period related to setting aside an arbitral award ● Effect of setting aside ● Report and review procedure for setting aside an arbitral award 	<ol style="list-style-type: none"> 1. Chapter III, Arbitration law and practice in China; 2. Chapter 16, International Arbitration Law and Practice; 3. Related provisions of PRC statutes and judicial interpretations 4. Related provisions of UNCITRAL Model Law; 5. Related provisions of 1958 New York Convention

Aug. 22	10:00--11:50	Recognition and Enforcement of arbitration awards (domestic & foreign) in China	<ol style="list-style-type: none"> 1. Chapter VI, Arbitration law and practice in China; 2. Chapter 17, International Arbitration Law and Practice; 3. Related provisions of PRC statutes and judicial interpretations 4. Related provisions of UNCITRAL Model Law; 5. Related provisions of 1958 New York Convention
	13:00--13:50		
Aug. 29	18:10--19:00		
Sept. 5	18:10--19:00		
		<ul style="list-style-type: none"> ● Different types of arbitral awards & legal basis for recognition and enforcement ● Jurisdiction ● Limitation period ● Documents required & court fees ● Grounds for denying recognition and enforcement ● Waiver of objections ● Enforcement measures & time limits for the court ● Report and superior review procedure: pros & cons 	

Attendance:

Class attendance is mandatory and you are expected to be on time. Attendance will be taken at the beginning of each class. If there is some reason why you must miss class, please contact the instructor in advance via telephone or email and ask for an excused absence. Your final grade in the course may be lowered one level (e.g., B to B-) for each unexcused absence. If you miss a class, you are responsible for finding out what you missed, handing in assignments on time, and obtaining any handouts or assignments.

Grading:

The final grade of students will be composed of class participation (30%) and a

written home assignment (70%).

The class participation grade will take into account of attendance, preparation for class, participation in class.

The written home assignment involves a simulated franchise contract between a Florida company and Nanjing Company with an arbitration clause referring to arbitration in Singapore in accordance with the arbitration rules of Singapore International Arbitration Center (SIAC); Nanjing Company breached the contract; Students are required to advise the Florida Company on what to do if they go to SIAC for arbitration against the Nanjing Company and an arbitration award in favor of the Florida Company is granted. The homework will be given during the 1st meeting of the course and is to be completed at home and delivered by email before September 7, 2019.

Grading information and grading scale:

The Levin College of Law's mean and mandatory distributions are posted on the College's website and this class adheres to that posted grading policy. The following chart describes the specific letter grade/grade point equivalent in place:

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

The law school grading policy is available at:

<http://www.law.ufl.edu/student-affairs/current-students/academic-policies#9>.

Workload/class preparation and the 2:1 out of class/in class requirement (ABA Standard 310)

It is anticipated that you will spend approximately 2 hours out of class reading and/or preparing for in class assignments for every 1 hour in class.

University Policy on Academic Misconduct

UF students are bound by The Honor Pledge, which states: “We, the members of the University of Florida community, pledge to hold ourselves and our peers to the highest standards of honor and integrity by abiding by the Honor Code. On all work submitted for credit by students at the University of Florida, the following pledge is either required or implied: ‘On my honor, I have neither given nor received unauthorized aid in doing this assignment.’” The Honor Code (<https://sccr.dso.ufl.edu/students/student-conduct-code/>) specifies a number of behaviors that are in violation of this code and the possible sanctions. Furthermore, you are obligated to report any condition that facilitates academic misconduct to appropriate personnel. If you have any questions or concerns, please consult with the instructor.

Evaluations

Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Guidance on how to give feedback in a professional and respectful manner is available at <https://gatorevals.aa.ufl.edu/students/>. Students will be notified when the evaluation period opens, and can complete evaluations through the email they receive from GatorEvals, in their Canvas course menu under GatorEvals, or via <https://ufl.bluera.com/ufl/>. Summaries of course evaluation results are available to students at <https://gatorevals.aa.ufl.edu/public-results/>.

Accommodations for Students with Disabilities:

Students requesting accommodation should first register with the UF Disability Resource Center (352-392-8565, www.dso.ufl.edu/drc/) by providing

appropriate documentation. Once registered, students will receive an accommodation letter, which should be presented to the UF Law Office of Student Affairs when requesting accommodation. This procedure should be followed as early as possible in the semester. Law students with disabilities can also contact the Levin College of Law Office of Student Affairs for assistance on these matters in 164 Holland Hall, 273-0620, www.law.ufl.edu/students/.

Disclaimer

This syllabus represents the instructor's current plans and objectives which are subject to changes to enhance the class learning opportunity.