



THE GNLU CENTRE FOR ALTERNATE DISPUTE RESOLUTION - SKYWARDS LAW

COURSE ON PRACTICAL ASPECTS OF INTERNATIONAL COMMERCIAL AND INVESTMENT ARBITRATION

3-week program of 3 hours daily lessons (40 hours in total between **2nd to 20th August 2021**)

[Limited Seats]

OVERVIEW

Main Course Faculty: Garv Malhotra [see profile <https://www.cids.ch/people/mids-alumni/371-garv-malhotra>]

COURSE DESCRIPTION:

This is an advanced course aimed at understanding some of the key nuances of international commercial and investment arbitration, as practiced. The course assumes that the attendee has a very basic understanding of arbitration and ADR. It is designed for those who wish to consider arbitration, ADR and international disputes as a career option; and for those who wish to enhance their knowledge or gain further practical and operation insights into the area. The course is also designed as a short intensive skill-upgrade executive program for new arbitrators and counsel.

The course will endeavour to foster a practical understanding of the key topics in the field and equip the attendee with helpful tools that will make them understand and practice arbitration and international disputes better. The reading materials will be concise and curated from the works of Indian and international authors.

The faculty employs an innovative hybrid style of teaching. The course will include lectures, discussions on each session's readings and real-life case studies. The key concepts are impressed upon the student through copyrighted graphic models and case studies. Each class will end with the faculty acquainting the attendees with a leading global arbitrator/arbitration counsel and one fundamental work in the field of international arbitration.

The course has been broadly divided into three parts. The first part of the course will focus on procedural and substantive international commercial arbitration; the second part will focus on substantive international investment arbitration. The concluding session will focus on written and oral arbitration advocacy.

KEY COURSE OBJECTIVES:

1. *Developing a soft corner, a genuine interest and a long-term foundation for work in the wonderful field of international arbitration*
2. *Understanding the broad architecture of the international arbitration universe*
3. *Familiarity with the terminology associated with international arbitration and overview of the complete arbitral process.*
4. *Acquisition of basic skills regarding drafting of various documents, notices, applications, etc. in the process of arbitration.*
5. *Basic understanding of strategies that may be adopted in an arbitration case.*

EVALUATION PATTERN:

Class participation – 40 marks;

Term Paper submission (1000 words including footnotes) – 60 marks; and

Total – 100 marks

BASIC READINGS:

1. *Redfern & Hunter on International Arbitration* (Nigel Blackaby et al. eds., 6th ed., 2015)
2. Fali S. Nariman, *Harmony Amidst Disharmony*, Volume II: The International Framework (2020).

[purchase not required]

OUTLINE OF KEY TOPICS IN THIS COURSE

Overview & History of International Commercial & Investment Arbitration

- Introduction to the course
- The need for international arbitration as a dispute settlement mechanism
- Brief history of international arbitration
- Architecture of the international arbitration system: Key instruments
- The look and feel of modern international arbitration
- Key concepts

Overview of the Key International Arbitration Institutions

Institutions administering arbitration

- ICC
- SIAC
- LCIA
- MCIA
- PCA
- ICSID

Other Key Institutions

- UNCITRAL
- IBA
- ICCA
- CIARB

Lifespan of International Arbitration: Understanding the Key Milestones

- Notice of Dispute/Intent
- Notice of Arbitration
- Reply to NoA
- Emergency Arbitration
- Constitution of the Tribunal
- Procedural Orders
- Terms of Reference
- Statement of Claim
- Statement of Defence
- Evidence phase
- Opening Submissions
- Closing Submissions/Post-Hearing Briefs

Conflict of Laws in International Arbitration: Key Concepts

- Seat of Arbitration
- Lex Arbitri
- Mandatory Rules of the Seat of Arbitration
- Curial Law
- Governing Law of the Contract
- Law of Parties' Capacity
- Enforcement of Foreign Arbitral Awards

Procedural Aspects of International Arbitration

- Independence, impartiality of arbitrators and duties of disclosure
- Expedited procedures
 - (a) Emergency arbitration
 - (b) Summary dismissal
 - (c) Expedited rules
- Terms of Reference and Procedural Orders
- Logistics Protocol for virtual hearings
- Conduct of physical hearings
- Redfern Schedule

<p>Use of Disruptive Technologies (AI, Blockchain, Holographics etc.) in International Arbitration: Thinking Ahead</p>
<p>Costs in Arbitration</p>
<p>Third Party Funding in Arbitration</p> <ul style="list-style-type: none"> (a) Key Concepts (b) Key legal issues in India and globally (c) The process of getting an arbitration funded (d) Key Strategic Considerations
<p>Investment Arbitration-I</p> <ul style="list-style-type: none"> - Introduction to International Investment Arbitration - <i>Jurisdiction Rationae Materiae, Rationae Personae, Rationae Temporis</i> - Standards of Treaty Protection <ul style="list-style-type: none"> a. Fair and Equitable Treatment Clauses b. Expropriation
<p>Investment Arbitration-II</p> <ul style="list-style-type: none"> - Standards of Treaty Protection (2) <ul style="list-style-type: none"> a. Full Protection and Security b. National Treatment c. Most Favoured Nation - The Big Debate: Understanding concerns and weighing pointers - Future of International Investment Arbitration
<p>Arbitration Advocacy</p> <p><u>Written Advocacy</u></p> <ul style="list-style-type: none"> • Writing Emails • Drafting Briefs • Document Presentation • Effective Translation • Use of visual aids and other documentary aids <p><u>Oral Advocacy</u></p> <ul style="list-style-type: none"> • Addressing the Arbitrators • Engagement with the Tribunal and the Opposite Counsel • Arbitration room etiquettes and Non-verbal communication • Presentation of own case (Claimant's Perspective & Respondent's Perspective) • Cross-Examination and Arguments <p><u>Arbitration War Stories</u></p>
<p>Evaluation</p> <p>The final exam will be in the form of a strictly 1000 word (inclusive of footnotes) research paper submission. A limited choice of topics shall be provided during the course.</p>
<p>Guidelines to students</p> <p>When it comes to learning about the practical aspects of international arbitration, there is no alternative to actually practicing the subject. However, short of that, this course is designed as an executive program aimed at building solid foundations for any work.</p> <p>Students are expected to read each session's designated materials along with relevant statutory provisions/rules as the case may be.</p>