
Course: Law

Degree: Bachelor

Branch: Core curriculum

Study plan: Aviso n.º 9088/2019, de 23 de maio

Teaching staff:

Professor in charge of the curricular unit
Mestre Carolina Pitta e Cunha

Other Professors of the curricular unit

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Language of instruction:

English

Functioning:

Ten one hour and fifteen-minute classes on the introduction to international commercial arbitration.

Intended learning outcomes:

The course aims to provide students with a basic introduction to the law and practice of international commercial arbitration.

The course will not focus on one particular national law on (international) commercial arbitration, but rather seek to provide students with a basic understanding of the main issues that may arise with respect to the choice and use of arbitration as a method for resolving international commercial disputes and the framework(s) governing international commercial arbitration under selected 'international' legal instruments, including the Convention on the Recognition and Enforcement of Foreign Arbitral Awards signed in New York on 10 June 1958 (hereinafter, the '**New York Convention**'), the UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006 (hereinafter, the '**UNCITRAL Model Law**'), selected arbitration rules and other practice rules and guidelines. Albeit not focused on one national law, occasional reference will also be made to the ways in which specific national laws on (international) arbitration (particularly, English Law, French Law, Swiss Law and Portuguese Law) approach the different issues covered throughout our course.

This is a short course on the essentials of international commercial arbitration. Depending on their interest in the subject, students are encouraged to enroll in more extensive and/or advanced arbitration courses, and to take part in national and/or international moot court competitions relating to arbitration.

Syllabus:

1. Introduction to international commercial arbitration
 - a. What is *international commercial arbitration*?
 - b. Arbitration and other alternative dispute resolution mechanisms
 - c. Advantages and disadvantages of arbitration



- d. Institutional arbitration vs. ad hoc arbitration
- 2. Sources of international commercial arbitration
 - a. The various sources governing international commercial arbitration: international treaties (in particular, the New York Convention); national laws (including arbitration laws and the UNCITRAL Model Law); arbitration rules (including institutional rules and the procedural rules governing *ad hoc* arbitrations); international arbitration practice (in particular, the International Bar Association's rules and guidelines); and the arbitration agreement...
 - b. ... and the *applicable laws* (or rules), including the law governing the arbitral proceedings, the rules governing the arbitral proceedings, the law governing the merits of the dispute, the law(s) governing the arbitration agreement and arbitrability, and the law(s) of the place(s) of enforcement
- 3. The arbitration agreement
 - a. Definition and effects
 - b. Types: arbitration clauses and submission agreements
 - c. The doctrine of separability
 - d. Validity requirements
 - e. Drafting of the arbitration agreement
- 4. The arbitral tribunal, the arbitral proceedings and the interaction between State courts and arbitral tribunals
 - a. The arbitrators' jurisdiction and the doctrine of competence-competence
 - b. The arbitrators' appointment
 - c. The powers and duties of arbitrators
 - d. The arbitral proceedings: general overview
 - e. Brief reference to the role of courts before, during and after the arbitral proceedings
- 5. The law applicable to the merits, the making of the arbitral award, and the challenge and enforcement of arbitral awards
 - a. The law applicable to the merits: available choices and determination
 - b. Form, content and effects of the arbitral award
 - c. Available forms of recourse to courts against arbitral awards; possibility of appeal on the merits?
 - d. Setting aside, recognition and enforcement proceedings: difference and grounds

Evidence of the syllabus coherence with the curricular units intended learning outcomes:

The syllabus covers all the necessary subjects for an essential introduction to international commercial arbitration.

Recommended prior learning (or curricular units whose prior attendance is recommended):

Albeit not mandatory, prior knowledge of private international law (or 'conflict of laws') can help students to better understand the multiplicity of sources governing international commercial arbitration, and the issues regarding the determination of the laws (or rules) governing each of the topics that will be covered during the course, including the arbitration agreement, matters of procedure, the merits of the dispute and the effects of the arbitral award.

Prior knowledge of contract law and civil procedure is also recommended.

Teaching and assessment methods:

- **Teaching:**

The course will be delivered in a mixed lecture/interrogative method. The teacher will introduce the relevant topics and may invite students to answer questions based on their own intuitions and/or previous knowledge. PowerPoint presentations will be used to structure the discussion and provide students with an explanation of the key legal concepts, principles and doctrines. Students will be provided in advance with copies of the key legal instruments that will be referred to during the course and an indication of the basic readings regarding each of the topics covered in class.

- **Assessment:**

In-class exam.

Evidence of the teaching methods and the intended learning outcomes:

This is a short course on international commercial arbitration, with only ten one hour and fifteen-minute classes (including, potentially, an in-class exam) spread over just five days. Even though the course is recommended to 3rd and 4th year students, many of the students taking the course will not have previous knowledge of private international law, civil procedure and/or alternative dispute resolution methods, including arbitration. In this context, a mixed lecture/interrogative method is the one best suited to providing students with the basic framework for understanding the law and practice of international commercial arbitration.

Bibliography:

- Margaret L Moses, *The Principles and Practice of International Commercial Arbitration* (3rd edn, CUP 2017);
- Nigel Blackaby, Constantine Partasides and Alan Redfern, *Redfern and Hunter on International Arbitration: Student Version* (7th edn, OUP 2023);
- Gary B. Born, *International Arbitration: Law and Practice* (3rd edn, Kluwer Law International 2021).

Legislation:

- New York Convention;
- UNCITRAL Model Law;
- Selected arbitration rules:
 - o The 'Arbitration Rules' of the International Chamber of Commerce, in force as from 1 January 2021;
 - o The 'UNCITRAL Arbitration Rules (with article 1, paragraph 4, as adopted in 2013 and article 1, paragraph 5, as adopted in 2021)' (Vienna 2021);
- Other practice rules and guidelines:
 - o The 'IBA Guidelines for Drafting International Arbitration Clauses', as adopted by a resolution of the IBA Council on 7 October 2010;
 - o The 'IBA Guidelines on Conflicts of Interest in International Arbitration', as adopted by a resolution of the IBA Council on 23 October 2014;
 - o The 'IBA Rules on the Taking of Evidence in International Arbitration', as adopted by a resolution of the IBA Council on 17 December 2020.
- Occasional reference will also be made to national laws on (international) arbitration, including, for example, the English Arbitration Act 1996, the French Code of Civil Procedure, the Swiss Federal Act on Private International Law and the Portuguese Law on Voluntary Arbitration.