

**COURSE DATA****Data Subject**

Code	44562
Name	Domestic and international commercial arbitration and state courts. Present and Future
Cycle	Master's degree
ECTS Credits	3.0
Academic year	2020 - 2021

Study (s)

Degree	Center	Acad. year	Period
2217 - M.U. en Derecho, empresa y justicia 17-V.2	Faculty of Law	1	First term

Subject-matter

Degree	Subject-matter	Character
2217 - M.U. en Derecho, empresa y justicia 17-V.2	15 - Arbitraje comercial interno e internacional y tribunales estatales. Presente y futuro	Obligatory

Coordination

Name	Department
ESPLUGUES MOTA, CARLOS AURELIO	65 - International Law 'Adolfo Miaja de la Muela'

SUMMARY

National and International commercial activity has grown steadily during the last decades. The analysis of this whole situation has been done in too many cases only from a commercial or economic perspective without taking into account the relevance of the legal dimension in the proper development of any commercial operation. And in many cases, when this has been done there has been a somehow rigid -and usual final- reference to both choice of law and choice of jurisdictions rules.

The goal of our topic is to break down this approach and to analyse the resolution of commercial disputes as a primary element to take into account when preparing any commercial operation and drafting the legal support to it. In this task, three different elements will be stressed:



- 1) Firstly, the different ways to solve commercial disputes in Europe and Latinamerica will be approached in depth.
- 2) Secondly, their interrelation will be studied, analyzing their singularities, their potential ways of cooperation and the problems arisen out of their coexistence.
- 3) Finally, and with a much more generic character, the student must take full account of the legal and economic incidence that the issue of the resolution of conflicts has in the area of international trade and the necessity to deal with it and to articulate sound responses to it when entering into a commercial transaction. Students taking this topic should be capable of choosing the correct dispute resolution mechanism when they finish it.

PREVIOUS KNOWLEDGE

Relationship to other subjects of the same degree

There are no specified enrollment restrictions with other subjects of the curriculum.

Other requirements

All students should preferable have a degree in Law.

OUTCOMES

2217 - M.U. en Derecho, empresa y justicia 17-V.2

- Students should be able to integrate knowledge and address the complexity of making informed judgments based on incomplete or limited information, including reflections on the social and ethical responsibilities associated with the application of their knowledge and judgments.
- Students should possess and understand foundational knowledge that enables original thinking and research in the field.
- Saber aplicar los conocimientos adquiridos durante el curso, a través de la resolución de problemas puntuales y multidisciplinarios desde la óptica de la actividad comercial nacional e internacional y la seguridad jurídica.
- Identificar, analizar e interpretar los problemas jurídicos complejos conforme a criterios jurídicos y deontológicos, con el debido respecto a valores democráticos y a principios fundamentales, sin que tenga cabida la discriminación por razón de sexo, creencia o lugar de procedencia.
- Conocer y aplicar las técnicas de comunicación y expresión oral y corporal en los debates y discusiones planteadas respecto de problemas jurídicos actuales, participando de forma activa en la resolución de los mismos.
- Capacidad de implementación práctica de los conocimientos aprendidos en los debates y discusiones, así como ser capaces de dirigirlos e identificar y analizar las conclusiones más relevantes.



- Identificar y valorar los problemas jurídicos de interés en una sociedad globalizada en el ámbito de la actividad empresarial que requieren de una profundización en la investigación jurídica para ser afrontados de forma plural.
- Utilizar los conocimientos avanzados adquiridos aplicables a la realidad empresarial de forma solvente, tanto de forma individual como en equipo, desde una perspectiva pluridisciplinar.
- Saber identificar los posibles conflictos de interés en el seno de las empresas y operadores económicos en sus relaciones con otros agentes y, especialmente, con los consumidores, para conocer y desarrollar técnicas y mecanismos de tutela y protección de los derechos e intereses de las partes de la relación jurídica.
- Aplicar los conocimientos y técnicas adquiridos a entornos y situaciones interdisciplinares complejas para anticiparse a los problemas, valorando la creatividad y solvencia de las propuestas.
- Saber trabajar el liderazgo en equipos específicos e interdisciplinares.
- Adquirir y/o mejorar la capacidad y habilidad de coordinación, así como desarrollar destrezas interpersonales que faciliten el trabajo en grupo.
- Saber precisar, comparar y contrastar mediante razonamientos lógicos argumentos proporcionados por otros, bien en debates, bien cuando se trabaje en grupo, sobre la base del respeto mutuo.

LEARNING OUTCOMES

The study of this topic will allow the student to acquire those knowledges and techniques necessary to fully be aware of the potencialities and difficulties arising out of the resource to both state courts and ADR devices -arbitration, mediation, negotiation- as instruments and ways to solve national and transnational disputes.

DESCRIPTION OF CONTENTS

1. Resource to national courts and ADR mechanisms and the resolution of national and international disputes.

- 1.1. Recourse to national courts as the traditional dispute resolution's mechanism.
- 1.2. ADR mechanisms: arbitration, mediation, negotiation...
- 1.3. Comparison

2. International jurisdiction rules for state courts in the EU (ad intra and ad extra)

- 2.1. The process of harmonization of International Private Law and Procedure Law in the EU.
- 2.2. The system of international jurisdiction in the UE.
- 2.3. The several systems of international jurisdiction in Latinamerica.
- 2.4. Potential future reforms of the EU model: special reference to its interaction with arbitration.



3. Freedom of circulation of judicial resolutions and public documents in the EU

- 3.1. The freedom of circulation of judicial resolutions in the EU: bases and solutions.
- 3.2. The effects of foreign judicial judgments in Latinamerica.
- 3.3. The freedom of circulation of foreign public documentos in the EU: regulation, solutions and future.

4. International commercial arbitration: Spanish solutions and comparative approaches.

- 4.1. The basis of the regulation of international commercial arbitration: analysis of some relevant issues.
- 4.2. Arbitration agreement and arbitrability.
- 4.3. Arbitration procedure.
- 4.4. Relationshipsh between state courts and the arbitration: appointment of arbitrators, provisional measures, setting aside of the arbitration award.
- 4.5. Ways of conclusion of the arbitration.

5. Investment arbitration

- 5.1. Basis of the regulation of investmente arbitration.
- 5.2. The CIADI system.
- 5.3. BITs and the CIADI system.

WORKLOAD

ACTIVITY	Hours	% To be attended
Theory classes	19,50	100
Seminars	6,00	100
Classroom practices	4,50	100
TOTAL	30,00	

TEACHING METHODOLOGY

In this topic very practica lectures will be combined with the individual and collective preparation of papers and specific tasks. The student is also expected to participate in some specialized seminars and collective workshops.

EVALUATION

1 °) Evaluation of the participation in the lecture as well as any other activities implemented with special reference to the number and quality of the interventions of the student. 30.0%

2 °) Evaluation of the tutorial with assessment of the level of preparation of the student and of his/her acquired knowledge: 25.0%



3 °) Evaluation of the expositions to be implemented by every student in the lectures. 45.0%

REFERENCES

Basic

- BARONA, S. (coord.), Comentarios a la Ley de Arbitraje, Cizur Menor, Civitas, 2ª ed., 2011, p. 59 y ss.
- Ibid., Psicoanálisis del arbitraje: solución o problema en el actual paradigma de justicia, Valencia, Tirant, 2020.
- Ibid., Mediación, Arbitraje y Jurisdicción en el actual paradigma de Justicia, Cizur Menor, Civitas Thomson Reuters, 2016.
- Ibid., Nociones y principios de las ADR, Valencia, Tirant, 2018.
- CONEJERO, C., HIERRO, A., MACCHIA, V. et al, El arbitraje comercial internacional en Iberoemárica. Marco Legal y jurisprudencial, Madrid, La Ley, 2009.
- ESPLUGUES, C. (ed.), New Developments in Civil and Commercial Mediation, Heidelberg, Springer, 2015.
- Ibid., Mediación civil y comercial, Valencia, Tirant, 2019.
- Ibid., Tratado de arbitraje comercial internacional en LA, Valencia, Tirant, 2019.
- Ibid., Tratado de inversiones y arbitraje de inversiones en LA, Valencia, Tirant, 2020
- Ibid., Derecho del comercio internacional, Valencia, Tirant, 9 ed., 2020.
- ESPLUGUES, C., BARONA, S., Global Perspectives on ADR, Cambridge, intersentia, 2014.
- ESPLUGUES, C., IGLESIAS, J.L., PALAO, G., Derecho internacional privado, Valencia, Tirant, 14 ed., 2020.
- FERNÁNDEZ MASIA, Tribunales nacionales, arbitraje internacional y protección de inversiones extranjeras, Madrid, Marcial Pons, 2008.
- ZAPATA, A., BARONA, S., ESPLUGUES, C., El arbitraje interno e internacional en Latinoamérica, Bogotá, UExternado, 2010.

ADDENDUM COVID-19

This addendum will only be activated if the health situation requires so and with the prior agreement of the Governing Council

This subject is taught during the second semester of the academic year 2020-21. The CCA of the Master will proceed to adopt, where appropriate, and taking into account the evolution of the current pandemic of COVID-19 and the indications of the academic and health authorities, the measures it deems appropriate to ensure the normal development of the subject during the months from January to March 2021 in which the face-to-face phase of the Master will be developed. Measures that will be communicated publicly and immediately to all the students of the subject and that will seek, at all times, to combine the permanence of the teaching activity with the preservation of the health of teachers and students.