

COURSE OUTLINE

Course Title: International Business Dispute Resolution

Credit: One

Area: Business Policy

Term: PGP II, Term II, Slot IX & X, 2016 – 2017

Instructor: Anurag K. Agarwal

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Course Objective:

Enterprises, the world over, now conduct business on a dramatically more international scale, which results in trans-border disputes and conflict of laws. Speedy resolution of business disputes is imperative to prevent diffusion of corporate resources in avoidable litigation, which is notorious globally for costing a lot in terms of both time and money. In certain jurisdictions the situation is reaching a standstill. Business leaders should spend more time on their business rather than in courts of law. It is precisely because of this reason they need to know the methods of Alternative Dispute Resolution (ADR) – arbitration, conciliation, mediation, negotiation and a mix of these. One method of choice for settlement of business disputes is the ‘international commercial arbitration’, which is popular all over the world and has stood the test of the time. It is increasingly used as the method of dispute resolution in almost all the contracts – construction, supply of goods, employer-employee contracts, etc. The course focuses on international commercial arbitration and also covers other methods of ADR.

Course Objective:

- Provide an opportunity to business students to have an exposure to the legal aspects of dispute resolution.
- To make the students understand the importance of dispute resolution through alternative methods vis-à-vis litigation.
- Make the students aware of the potency of international commercial arbitration and also the limitations

Pedagogy:

Emphasis shall be on discussion of cases, i.e., judgments delivered by different courts and tribunals. These include the US Supreme Court, the House of Lords, International Chamber of Commerce, Paris, Supreme Court of India, etc. Brief lectures would be delivered to provide an overview and summarise important aspects.

Number of sessions:

Total number of sessions is 20

Prerequisites and Eligibility, if any, and their Justification:

Though knowledge of law, particularly contracts and arbitration, is helpful, yet not a prerequisite.

Restriction on Class Size, if any, and their Justification:

None.

Relationship of the Course with the Overall Programme Objective and Related Courses:

It is a general course which is relevant for all businesses. The course dovetails with the overall PGP curriculum and relates to the compulsory course LAB.

Bibliography:

(A) Essential Reading:

- Contracts and Arbitration for Managers by Anurag K. Agarwal, Sage, 2016
- Course Pack: As new judgments are delivered by various courts from time to time, the cases may be updated.
- New York Convention, 1958
- Indian Arbitration and Conciliation Act, 1996
- Judgments available at westlaw.com

(B) Additional Reading:

- International Commercial Arbitration by von Mehren, Varady and Barcelo
- Russell on Arbitration
- Arbitration by S D Singh
- Indian Council of Arbitration Journal
- Latest developments (international and domestic)

Computer Centre Facilities and other Special Infrastructure Needed:

Access to **westlaw.com**, and other law related websites.

Additional Expenses to be incurred by the students:

None

Evaluation Criteria:

Class Participation:	25%
Quiz:	25%
Exam:	50%

Class Participation

The key ingredient to your class participation grade is impact. This is a qualitative measure of your effective contribution to class discussion. Class sessions involve a mix of case discussions and lectures, for which you are expected to do the pre-assigned readings, and prepare to discuss them in class. You are expected to be alert, original and contextual during discussion. Starting from the 2nd session, ____students – roll number 1 onwards – shall be on panel and would be responsible for the discussion. Attendance is compulsory.

Quiz

Quiz shall be open-book, open-notes, 20 minutes. You can type the quiz using a laptop/tablet or similar device and immediately submit by email to the instructor and AA.

End-Term Exam

Open-book, open-notes, in-class exam of 1¼ hours. You can type the exam using a laptop/tablet or similar device and immediately submit by email to the instructor and AA.

News Clippings

An integral part of this course will be updating on important current events which pertain to business disputes, both domestic and international. There is a deluge of such news and views in the print and electronic media,

which makes sifting all the more necessary. My endeavour will be to share with you a couple of selected news clippings. This is in no way meant to supplant your own initiative. You are encouraged to keep yourself abreast with the latest through an economic daily and an international weekly / fortnightly. The more you read the better. The following is an illustrative list: The Times of India, The Hindu, The Economic Times, NYT, The Financial Times, The BusinessWeek, The Time, The Economist, etc.

I will share with you relevant news clippings and you are requested to share with me and the fellow students any news item, article, etc. which you feel is important, interesting and topical. You may send the web link by email or provide the hardcopy to me for distribution to the entire class. I look forward to receiving your suggestions and contributions. Email at the course email id _____@iima.ac.in with cc to akagarwal@iima.ac.in and the Academic Associate _____@iima.ac.in

SESSION-WISE PLAN

Book: Contracts and Arbitration for Managers, Sage, 2016 (CAFM)

Module – I

Creation of Obligations; Breach and Disputes

1. **Introduction; Creation of Obligations by contracts**
Reading: International Commercial Arbitration, *paper by Anurag K. Agarwal, 2006*
2. **International Contracts**
Case: Renuagar Power Company v. General Electric, *Supreme Court of India 1993*
3. **From Negotiation to Litigation**
Reading: Note on ADR
4. **Jurisdiction Issues in International Contracts**
Case: Scherk v. Alberto-Culver Co., *U.S. Supreme Court 1974*
5. **Intention of Parties**
Case: Mitsubishi Motors v. Soler Chrysler-Plymouth, *U.S. Supreme Court 1985*

Module – II

International Commercial Arbitration

6. **Reasonableness of agreement**
Cases: Hooters of America v. Annette Phillips, *U S Court of Appeals, Fourth Circuit, 1999*
7. **Class Arbitration**
Case: AT&T Mobility v. Concepcion et ux, *U.S. Supreme Court, 2011*
8. **Severability**
Case: Buckeye Check Cashing v. Cardegna, *U.S. Supreme Court, 2006*
9. **Illegality in Arbitration**
Case: Soleimany v. Soleimany, *Court of Appeal, Civil Division, England, 1998*
10. **Public Policy**
Case: ONGC v. Saw Pipes, *Supreme Court of India 2003*
11. **Award: Setting Aside or Enforcement**
Case: ONGC v. Sumitomo(edited), *Supreme Court of India 2010*
12. **Cultural Issues in Dispute Settlement**
Reading: Paper by Anurag K. Agarwal, 2006

Module – III
Topical Cases and Issues

13. Reliance Industries Limited v. Union of India (*Panna, Mukta & Tapti*), *Supreme Court of India 2014*
14. NYK Bulkship (Atlantic) NV v. Cargill International SA, *U.K. Supreme Court, 2016*
15. World Sport Group (Mauritius) v. MSM Satellite (Singapore), *Supreme Court of India 2014*
16. Nitro-Lift Technologies v. Eddie Lee Howard, *U. S. Supreme Court, 2012*
17. Bharat Aluminium (BALCO) v Kaiser Aluminium, *Supreme Court of India, 2012*
18. Swiss Timing Limited v Organising Committee, Commonwealth Games 2010, Delhi, *Supreme Court of India, 2014*
19. Enercon (India) v. Enercon GMBH, *Supreme Court of India 2014*
20. Larsen and Toubro v. Mohan Lal Harbans Lal Bhayana, *Supreme Court of India 2014*

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