
UNIVERSITY OF CONNECTICUT SCHOOL OF LAW

INTERNATIONAL INVESTMENT LAW

LAW 562 – 3 credits

SYLLABUS
(April 14, 2008)

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Course Overview

International investment law is emerging as a distinct and important field of international law. The explosive growth of “investor-state” arbitration creates opportunities for practicing attorneys to assist the evolution of this field, while also drawing on and contributing to international law more broadly. These arbitrations often allege breaches of bilateral or multilateral investment treaties and they are often heard by tribunals established by the International Centre for Settlement of Investment Disputes (ICSID), which is part of the World Bank group. These arbitrations raise important questions both about the rights and obligations of international investors (*e.g.*, whether they should have substantive and procedural rights beyond those afforded domestic investors) and about the appropriate mechanisms for resolving investment disputes (*e.g.*, whether the public should have the right to see and participate in what had traditionally been confidential proceedings). This course examines the substantive law governing international investment, explores how rights and obligations can be enforced in an investment dispute, and considers the proper role of investment law in the international legal system. It also challenges students to become advocates by litigating key issues that arise in investment disputes in a series of simulated mini-arbitrations.

Meeting Place & Time

Class will meet on Fridays between 9:30 and 12:30 in Chase 210. Class will not meet on March 14, for Spring Break.

Required Texts

- Bishop, Crawford, and Reisman, *Foreign Investment Disputes* (Kluwer Law 2005).
- Supplemental readings to be assigned.
- Short papers prepared by the class.

Optional Materials

- UNCTAD has prepared a number of “modules” introducing topics in international investment law. The modules about ICSID dispute settlement are available at <http://www.unctad.org/Templates/Page.asp?intItemID=2102&lang=1>. The modules about substantive rights of international investors are available on TWEN.
- CALI has prepared a number of “lessons” introducing legal research and various topics in international law. Links to some CALI lessons are available on TWEN.
- Transnational Dispute Management (TDM) is a subscription website with many materials focused on international investment law, including a monthly archive of postings to the “OGEMID” discussion group. Students have free access to this website by using the computers in the Library Computer Room (IP address range 137.99.231.xx-137.99.235.xx). Students can also register at <http://www.transnational-dispute-management.com/alert.htm> for occasional email alerts when new materials are posted on TDM.
- Several books about international investment law have been placed on Course Reserve in the Library, to ensure they will be available to everyone for research.
- Investment Treaty News (ITN), published by the International Institute for Sustainable Development, provides a free weekly update about current developments in international investment law. Subscriptions to ITN are available at http://lists.iisd.ca:81/read/all_forums/subscribe?name=itn-english. Previous issues of ITN are available at <http://www.iisd.org/investment/itn/>.
- Many websites have information about international investment law. The following are among the most useful websites for finding basic legal documents, like texts of treaties, arbitral decisions, and arbitral pleadings.
 - Electronic Information System for International Law: <http://www.eisil.org/> ;
 - Energy Charter Secretariat: <http://www.encharter.org/index.php?id=213> ;
 - ICSID: <http://icsid.worldbank.org/ICSID/Index.jsp> ;
 - Investment Claims (Oxford University Press): <http://investmentclaims.com/> ;
 - Investment Treaty Arbitration: <http://ita.law.uvic.ca/> (decisions in investor-state arbitrations);
 - Iran-US Claims Tribunal: <http://www.iusct.com/> and <http://www.iusct.org/index-english.html> ;
 - NAFTA Claims: <http://www.naftaclaims.com/> ;

- Reports of International Arbitral Awards: <http://www.un.org/law/riaa/> (decisions in state-state arbitrations);
- UNCTAD Investment Instruments Online: http://www.unctadxi.org/templates/DocSearch___779.aspx (texts of bilateral investment treaties);
- US State Department: <http://www.state.gov/s/l/c3439.htm> (materials from cases under NAFTA Chapter 11);
- US Trade Representative: http://ustr.gov/Trade_Sectors/Investment/Section_Index.html .

Course Requirements

- Class attendance and participation. Students are expected to attend class and to participate meaningfully in discussions during class.
- A substantive research paper on a topic related to international investment law.
- Participation, as advocate or arbitrator, in one in-class arbitration simulation.
- Two very short papers presenting the student's thoughts about the class readings.
- The final grade for each student will be determined by the student's grade on the research paper, plus or minus any adjustments made in my discretion based on performance in class. These adjustments may be as much as two grade steps (*e.g.*, B to A-).

Research Paper

- The proposed topic must be submitted for approval not later than February 29, 2008.
- The proposed outline must be submitted for approval not later than March 28, 2008.
- The final paper is due no later than Monday, May 5, 2008 at 11:59 pm.
- Extensions are disfavored; they will only be granted for good cause and in accordance with School regulations. Any request for an extension must be submitted to me in writing by email not later than Wednesday, April 30, 2008 at 5:00 pm. No extensions will be granted to any graduating student past Sunday, May 11, 2008 at 11:59 pm.
- The topic, outline, and final paper must be submitted to me by email in MS Word or PDF format.
- The paper must be thoroughly researched and supported. It must be your own original work.
- The paper must be 20 to 35 double-spaced pages (12 point, Times Roman, 1" margins). Please number the pages.

- The paper must use footnotes, not endnotes. Footnotes count toward the page limits. Footnotes must be in 12 point type. Lines within each footnote may be single-spaced, but there must be double spaces between footnotes.
- Spelling, grammar, punctuation, formatting, aesthetics, and punctuality all count.
- Citations are expected to be accurate, thorough, and clearly identifiable; they need not strictly comply with Bluebook format.
- Any student who wants the research paper to satisfy the Upperclass Writing Requirement will need my permission. The student will have to agree to an earlier schedule that allows time to review drafts.

Short Papers

- Each student must write two short papers. The papers must be 1.5 to 3 double-spaced pages (12 point, Times Roman, 1” margins).
- The short papers are based solely on class readings. No outside research is required.
- Each student will be assigned two weeks during which he or she is required to submit the short papers.
- The short papers must be posted on TWEN (under “Short Paper Distribution”) not later than Thursday at Noon, to allow the class time to read the paper before the class meeting on Friday morning. As a courtesy reminder for your classmates, when posting your short papers, please check the box for TWEN to send an email alert to the class – all students, however, are expected to check TWEN every Thursday afternoon or evening regardless of any email reminders.

Office Hours

My office hours are on Thursdays between 3:00 and 5:00 or by appointment. To schedule an appointment, please email me or call me at x5437.

Prerequisites

There is no prerequisite. Students without any background in international law may want to read the CALI introductory materials on TWEN or a basic treatise like Mark Janis’ *An Introduction to International Law*.

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Areas of Study

This list is preliminary and will be adjusted during the semester.

	<u>DESCRIPTION</u>	<u>READING</u>
1/25	Introduction: International Investment Law in Context	Watch the “Power Trip” documentary; 60 Minutes Transcript, <i>Enron, US, and India</i> (April 14, 2002); Finnegan, <i>Leasing the Rain</i> , NEW YORKER (April 8, 2002); Paulsson, <i>Enclaves of Justice</i> , TRANSNATIONAL DISPUTE MANAGEMENT (Sept. 2007).
2/1	History of International Investment Law Short Paper	Bishop, Chapter 1 (pp. 1-17); Bishop, Chapter 2 (pp. 19-23, 30-34, 47-48); Bishop, Chapter 4 (pp. 318, 443-73, 487-90); Bishop, Chapter 8 (pp. 933-40); <i>Banco Nacional de Cuba v. Sabbatino</i> , 84 S. Ct. 923 (1964) (excerpted pages on TWEN); Aguilar Alvarez & Park, <i>The New Face of Investment Arbitration: Capital Exporters as Host States under NAFTA Chapter 11</i> , 28 YJIL 365 (2003) (pp. 398-400). Hershey, <i>Calvo and Drago Doctrines</i> , 1 AJIL 26 (1907) (skim whole article). <u>Supplemental reading:</u> Skim U.S.-Argentina BIT, especially Articles II, IV, and VII; Skim U.S. Model BIT (2004), especially Articles 3-6 and 24-25 and Annexes A-B; Trade Act of 2002, § 2102(b)(3); NAFTA Statement on Confidentiality and Minimum Standard of Treatment, especially Part B.

2/8	<p>Scope of International Investment Law: Of “International” “Investors” and “Investments”</p> <p>Short Paper</p>	<p>Bishop, Chapter 4 (pp. 324-66);</p> <p><i>Tokios Tokenes v. Ukraine</i>, Decision on Jurisdiction (4/29/04), ¶¶ 21-71;</p> <p><i>Aguas del Tunari v Bolivia</i>, Decision on Jurisdiction (2005), ¶¶206-209, 214-18, 222-247, 315-23, 328-33;</p> <p><i>Salini Costruttori v. Morocco</i>, Decision on Jurisdiction (7/23/01) ¶¶ 36-63, translated in 42 ILM 609 (2003);</p> <p><i>Mitchell v. D.R. Congo</i>, Annulment Decision (11/1/06), ¶¶ 23-41;</p> <p><i>Fraport v. Philippines</i>, Award on Jurisdiction (2007), ¶¶ 300-01, 306-07, 334-40, 343, 346-49, 383-404;</p> <p>***</p> <p><u>Supplemental reading:</u> ICSID Convention, Articles 25-27, 36, 41, 46; Model U.S. BIT, Articles 1-2, especially definitions of “covered investment” and related terms; NAFTA, Article 1139, especially definitions of “investment” and related terms.</p>
2/15	<p>Consent to Investment Arbitration</p> <p>Mock Arbitration #1</p>	<p>Bishop, Chapter 4 (pp. 319-24; 367-385);</p> <p><i>Plama v. Bulgaria</i>, Decision on Jurisdiction (2/8/05) ¶¶ 133-141;</p> <p><i>Pope & Talbot v. Canada</i>, Decision on Jurisdiction (1/26/00) ¶¶ 16-34;</p> <p>Paulsson, <i>Arbitration without Privity</i>, 10 ICSID REV. – FILJ 232 (1995) (pp. 232-41, 254-57);</p> <p>***</p> <p><u>Supplemental reading:</u> ICSID Convention, Articles 71-72; Bolivian Notice of Denunciation of the ICSID Convention; Bolivia-U.S. BIT, Articles IX, XVI.</p>
2/22	<p>Expropriation</p> <p>Short Paper</p>	<p>Bishop, Chapter 8 (pp. 837-49; 866-75; 877-78; 883-900; 907-09; 911-23);</p> <p>Bishop, Chapter 9 (pp. 1109-33);</p> <p><i>CMS v. Argentina</i>, Award (5/12/05), ¶¶ 53-82 (facts) ¶¶ 252-265;</p> <p><i>Methanex v. USA</i>, Award (8/3/05), Part IV, Chapter D, pp. 1-8.</p>

2/29	<p>Absolute Standards</p> <p>Mock Arbitration #2</p>	<p>Bishop, Chapter 8 (pp. 953-969);</p> <p>Bishop, Chapter 9 (pp. 1011-57);</p> <p><i>CMS v. Argentina</i>, Award (5/12/05), ¶¶53-67, 266-284;</p> <p><i>Lauder v. Czech Republic</i>, Award (9/3/01), ¶¶165, 289-304;</p> <p>Schwebel, <i>The US 2004 Model Bilateral Investment Treaty: An Exercise in the Regressive Development of International Law</i>, TRANSNATIONAL DISPUTE MANAGEMENT (2006), pp. 3-5;</p> <p>Bernstein, <i>Brash Funeral Chain Meets Its Match in Old South</i>, NEW YORK TIMES (1/27/96).</p> <p>***</p> <p><u>Supplemental reading:</u> IISD Model BIT, Article 7</p>
<p>Paper topics must be submitted for review and approval by February 29, 2008.</p>		
3/7	<p>Arbitrary and Discriminatory Treatment</p> <p>Short Paper</p>	<p>Bishop, Chapter 8 (pp. 951-53, 972-77);</p> <p>Bishop, Chapter 9 (pp. 1071-1095; 1133-1155);</p> <p><i>Occidental v. Ecuador</i>, Award (7/1/04), ¶¶ 167-179;</p> <p><i>UPS v. Canada</i>, Cass Dissent to Award (5/24/07), ¶¶ 1-17; 49-63; 110-33.</p> <p>***</p> <p><u>Supplemental reading:</u> NAFTA, Article 1102 Indian Model BIT, Article 4 IISD Model BIT, Article 5</p>
3/14	<p>No class. Spring break.</p>	

3/21	<p>Most-Favored-Nation Treatment</p> <p>Mock Arbitration #3</p>	<p>Bishop, Chapter 9 (pp. 1156-1165);</p> <p><i>Suez & AWG v. Argentina</i>, Decision on Jurisdiction, ¶¶52-69 (8/3/06);</p> <p><i>National Grid v. Argentina</i>, Decision on Jurisdiction, ¶¶53-94 (6/20/06);</p> <p><i>Plama v. Bulgaria</i>, Decision on Jurisdiction, ¶¶183-227 (2/8/05);</p> <p><i>MTD v Chile</i>, Award, ¶¶100-04 (05/25/04);</p> <p><i>ADF v USA</i>, Award, ¶¶193-98 (1/9/03).</p> <p>***</p> <p><u>Supplemental reading:</u> US Model BIT, Articles 4, 14; Canada Model BIT, Article 4, Annex III; IISD Model BIT, Article 6; International Law Commission, Articles on MFN Clauses, Articles 9-10.</p>
3/28	<p>Contracts and Treaties; Other Obligations</p> <p>Short Paper</p>	<p>Bishop, Chapter 3 (pp. 286-302, 311-16);</p> <p>Bishop, Chapter 6 (pp. 670-79, 699-703);</p> <p>Bishop, Chapter 9 (pp. 1095-1103, 1166-70);</p> <p><i>Vivendi v. Argentina</i>, Decision on Annulment, ¶¶93-115 (7/3/02);</p> <p><i>SGS. v. Pakistan</i>, Decision on Jurisdiction, ¶¶133-174 (8/6/03);</p> <p>Schramke, <i>Interpretation of Umbrella Clauses in Bilateral Investment Treaties</i>, TRANSNATIONAL DISPUTE MANAGEMENT (2007), pp. 8-20;</p> <p><i>CMS v. Argentina</i>, Decision on Annulment, ¶¶86-100 (9/25/07).</p> <p>***</p> <p><u>Supplemental reading:</u> US Model BIT, Articles 7-11, 16, 24.1.</p>
<p>Paper outlines must be submitted for review and approval by March 28, 2008.</p>		

4/4	<p>Investment Arbitration #1: Ethics and Politics</p> <p>Mock Arbitration #4</p>	<p>Bishop, Chapter 2 (pp. 43-46);</p> <p>Bishop, Chapter 4 (pp. 317-318);</p> <p>Bishop, Chapter 12 (pp. 1440-1443; 1505-14);</p> <p><i>Ghana v Telekom Malaysia</i>, District Court of the Hague (10/18/04 & 11/5/04);</p> <p><i>Poland v. Eureko</i>, Court of First Instance of Brussels (12/22/2006), excerpts;</p> <p>Thomas Buergenthal, <i>The Proliferation of Disputes, Dispute Settlement Procedures and Respect for the Rule of Law</i>, Transnational Dispute Management (2006), pp. 7-8;</p> <p>Howard Mann, <i>The Emperor's Clothes Came Off</i>, Transnational Dispute Management (2005);</p> <p>A Marriott, <i>The Arbitrator is Counsel</i>, Transnational Dispute Management (2006);</p> <p>Noah Rubins et al., <i>ICSID Arbitrators: Is there a Club and Who Gets Invited?</i>, Global Arbitration Review (2006);</p> <p>Selected articles from <i>Investment Treaty News</i>.</p> <p>***</p> <p><u>Supplemental reading:</u></p> <p>ICSID Convention, Articles 14, 37-40, 56-58;</p> <p>ICSID Arbitration Rules, Rules 6, 9;</p> <p>International Bar Association (IBA), <i>Guidelines on Conflicts of Interest in International Arbitration</i> (2004) (skim)</p> <p>US Model BIT, 23-36 & Annex D (skim)</p> <p>IISD Model BIT, 45-46</p>
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4/11	<p>Investment Arbitration #2: Remedies, Annulment, and Enforcement</p> <p>Short Paper</p>	<p>Bishop, Chapter 4 (pp. 392-417); Bishop, Chapter 11 (pp. 1245-66, 1298-1305); Bishop, Chapter 13 (pp. 1515-33; 1542-78; 1583-89); <i>CMS v. Argentina</i>, Decision on Stay, ¶¶33-50 (9/1/06); <i>CMS v. Argentina</i>, Decision on Annulment; skim & ¶¶41-57, 135-36 (9/25/07).</p> <p>***</p> <p><u>Supplemental reading:</u> ICSID Convention, Articles 50-55; US Model BIT, Article 34 & Annex D.</p>
4/18	<p>Investment And ...</p> <ul style="list-style-type: none"> ... National Security ... Corruption ... Human Rights <p>Short Paper</p>	<p>Bishop, Chapter 10 (pp. 1225-39); <i>World Duty Free v. Kenya</i>, Award, ¶¶ 3, 6, 66-72, 126-157 (10/4/06); <i>Inceysa v. El Salvador</i>, Award, ¶¶ 101-18, 230-52, 335-38 (8/2/2006).</p> <p>***</p> <p><u>Supplemental reading:</u> Bishop, Chapter 10 (pp. 1217-24) (skim); US Model BIT, Articles 12, 13, 18; IISD Model BIT, Articles 11-18, 22, 25, 31-32, 34(c), 44, 49; Norway Model BIT, Preamble; UN Global Compact, 10 Principles.</p>

4/25	<p>Necessity and Other Sovereign Defenses</p> <p>Short Paper</p>	<p>Bishop, Chapter 7 (pp. 797-99); Bishop, Chapter 8 (pp. 931-46); Bishop, Chapter 10 (pp. 1203-1216); <i>CMS v. Argentina</i>, Award (5/12/05), ¶¶ 334-52 <i>CMS v. Argentina</i>, Decision on Annulment (9/25/07), ¶¶ 101-50; <i>LG&E v. Argentina</i>, Decision on Liability (10/3/06), ¶¶ 201-14, 226-66.</p> <p>*** <u>Supplemental reading:</u> US – Argentina BIT, Articles IV and XI; Articles on State Responsibility, Articles 25, 27.</p>
5/2	<p>Political Risk Insurance – An Alternative to International Investment Law?</p>	<p>Bishop, Chapter 5 (pp. 491-92, 501-02, 510-14, 518-19 (arts. iv-v), 536-37, 555-62, 563-71, 587-88, 616-22); Perry Bechky, <i>The Ponderosa Claim</i> (pp. 11-14); <i>US v India</i> – Claim (skim); 60 Minutes Transcript, <i>Enron, US, and India</i> (April 14, 2002) (re-read).</p>