

SYLLABUS

INTERNATIONAL INVESTMENT LAW (LAW 20396)

W. MICHAEL REISMAN AND GUILLERMO AGUILAR-ALVAREZ

in YLS Room 124, Wednesdays 9:10 am -11:00 am

(Specific assignments will be made from the selections below; Syllabus is subject to change during the semester)

August 28, 2008

September 3, 2008	<p><u>Introduction:</u></p> <ul style="list-style-type: none"> · BISHOP, CRAWFORD & REISMAN, <u>Foreign Investment Disputes</u>, Chapter 1, pp. 1-17 · <i>Metalclad v. Mexico</i> (excerpts): <ul style="list-style-type: none"> <i>Metalclad v. Mexico</i>, Award (8/30/00), ¶ 28-112 <i>Mexico v. Metalclad</i>, BCSC Reasons for Judgment (5/2/01), ¶ 19-22 <i>Mexico v. Metalclad</i>, BCSC Supp. Reasons for Judgment (10/31/01) · Reisman, “Foreign Investment, Economic Development and National Sovereignty” Keynote delivered in Seoul on April 13, 2007 <p><u>Suggested Readings:</u></p> <ul style="list-style-type: none"> · ROSE-ACKERMAN, “Do BITs Benefit Developing Countries?,” forthcoming in Roger P. Alford and Catherine A. Rogers, eds., <i>The Future of Investment Arbitration</i>, June 19, 2008 · KRISHN, OZYILDIRIM & SWANSON, “Trade, Investment and Growth: Nexus, Analysis, and Prognosis,” Working Paper 6861, National Bureau of Economic Research, December 1998 · World Investment Prospects to 2011: Foreign Direct Investment and the Challenge of Political Risk (a joint publication from the Columbia Program on International Investment and the Economist Intelligence Unit). (http://www.cpii.columbia.edu/) on Aug. 25, 2008.
September 10, 2008	<p><u>Instruments:</u></p> <ul style="list-style-type: none"> · BISHOP, CRAWFORD & REISMAN, <u>Foreign Investment Disputes</u>, pages 19-32, 47-73, 346, 392 · NAFTA Chapter 11 (Structure and Operation) · Energy Charter Treaty <p><u>Suggested Readings:</u></p> <ul style="list-style-type: none"> · PRICE, Daniel M. "An Overview of the NAFTA Investment Chapter: Substantive Rules and Investor-State Dispute Settlement," 27 Int'l L. 727 (1993) · SALACUSE & SULLIVAN, “Do BITs Really Work?: An Evaluation of Bilateral Investment Treaties and Their Grand Bargain,” 46 HARV. INT’L L. J. 67 (2005)
September 17, 2008	<p><u>Consent:</u></p> <ul style="list-style-type: none"> · BISHOP, CRAWFORD & REISMAN, <u>Foreign Investment Disputes</u>, pages 317-323, 367-385 · <i>Plama v. Bulgaria</i>, Decision on Jurisdiction (English) (2/8/05), ¶ 133-141 · <i>Vieira v. Chile</i> (excerpts): <ul style="list-style-type: none"> Award (Spanish Version) (8/21/07) Dissenting Opinion by Susana Czar de Zalduendo (8/21/07) · <i>Waste Management v. Mexico I & II</i> (waiver, admissibility and jurisdiction) <ul style="list-style-type: none"> <i>Waste Management I</i> (Final Award (Dismissing on Jurisdiction)) (6/2/00), ¶ 4-7, 14-31 (Dissenting Opinion (on Jurisdiction)) (6/2/00) <i>Waste Management II</i>

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	<p style="text-align: center;">(Award on Jurisdiction, second claim) (6/26/02), ¶ 2-3, 19-50</p> <ul style="list-style-type: none"> · <i>Sempra v. Argentina</i> (excerpts): <ul style="list-style-type: none"> Decision on Objections to Jurisdiction (5/11/05), ¶ 78-82 · <i>Goetz v. Burundi</i>, Award (Embodying the Parties' Settlement Agreement) English Version (2/10/99), [Vol. XXVI "Yearbook Commercial Arbitration", 24 (2001)], Facts: pages 24-26 and ¶ 12-36 (pages 29-35)
September 24, 2008	<p><u>Criteria for Investment:</u></p> <ul style="list-style-type: none"> · BISHOP, CRAWFORD & REISMAN, <u>Foreign Investment Disputes</u>, pp.213-225, 324-346 · <i>Fraport v. Philippines</i> (excerpts): <ul style="list-style-type: none"> Award and Dissenting Opinion by Bernardo Cremades (8/16/07) · <i>Salini v. Morocco</i>, Decision on Jurisdiction (7/16/01 -- Official English Translation 7/23/01), ¶ 1-64 · <i>Fedax v. Venezuela</i> (excerpts): <ul style="list-style-type: none"> Award on Jurisdiction (7/11/97), ¶ 15-43 · <i>Kardassopoulos v. Georgia</i>, Decision on Jurisdiction, 7/6/07 · <i>Mihaly v. Sri Lanka</i> (excerpts): <ul style="list-style-type: none"> Award (3/15/02), ¶ 32-61 Separate Concurring Opinion (3/15/02) · <i>SGS v. Philippines</i> (excerpts): <ul style="list-style-type: none"> Decision of the Tribunal on Objections to Jurisdiction (1/29/04), ¶ 99-112 Supplementary Declaration by one of the arbitrators, A. Crivellaro (1/29/04) · <i>SGS v. Pakistan</i> (excerpts): <ul style="list-style-type: none"> Decision of the Tribunal on Objections to Jurisdiction (8/6/03), ¶ 133-143 · DOLZER, "The Notion of Investment in Recent Practice," in <u>Law in the Service of Human Dignity: Essays in Honour of Florentino Feliciano</u> (Charnovitz, Steger and Van den Bossche, editors) (2005) page proofs. · <i>CMS Gas Transmission Company v. Argentina</i> (excerpts): <ul style="list-style-type: none"> Decision of the Tribunal on Objections to Jurisdiction (7/17/03), ¶ 26-27 · Questions of Violation of Local Law · <i>Desert Line Projects LLC v. The Republic of Yemen</i> <ul style="list-style-type: none"> Award of February 6, 2008
October 1, 2008	<p><u>Investor:</u></p> <ul style="list-style-type: none"> · BISHOP, CRAWFORD & REISMAN, <u>Foreign Investment Disputes</u>, pages 346-366 · Questions of Minority/Derivative Shareholders · <i>Loewen v. U.S.</i> (Notice of Petition to Vacate) (12/13/04), pages 1-3, 1-21 · <i>Tokios Tokelés v. Ukraine</i> (excerpts): <ul style="list-style-type: none"> Decision on Jurisdiction (4/29/04), ¶ 21-71 Dissenting Opinion by Prosper Weil (4/29/04) Award (on the merits) and Separate Opinion (7/26/07) (not public)

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	<ul style="list-style-type: none"> ·<i>Maffezini v. Spain</i> (excerpts): Decision of the Tribunal on Objections to Jurisdiction (1/25/00), ¶ 39-83 Award on the Merits (11/13/00) (FYI) ·<i>Autopista Concesionada v. Venezuela</i> (excerpts): Decision on Jurisdiction (9/27/01), ¶ 1-36, 38-140 Award of the Tribunal (9/23/03) (FYI) ·<i>GAMI v. Mexico</i> (excerpts): Final Award (11/15/04), ¶ 12-43 ·<i>Impregilo v. Pakistan</i> (excerpts): Decision on Jurisdiction (4/22/05), ¶ 111-184 ·<i>Generation Ukraine v. Ukraine</i> (excerpts): Award (9/16/03), pages 38-41 ·<i>Waste Management v. Mexico II</i> (excerpts): Final Award (4/30/04), ¶ 77-85 ·<i>Soufraki v. UAE</i> ·WISNER & GALLUS, “Nationality Requirements in Investor—State Arbitration,” Vol. 5 <u>Journal of World Investment & Trade</u> 927 (December 2004)
October 8, 2008	<p><u>Governmental Measures:</u></p> <ul style="list-style-type: none"> ·BISHOP, CRAWFORD & REISMAN, <u>Foreign Investment Disputes</u>, pages 837-1005 ·<i>CMS Gas Transmission Company v. Argentina</i> (excerpts): Award (5/12/05), ¶ 26-35; 107-115 ·<i>Loewen v. U.S.</i> (excerpts): Decision on Jurisdiction (1/5/01), ¶ 39-76 ·<i>Lucchetti v. Peru</i> (excerpts): Award of the Tribunal (2/7/05), ¶ 48-62 ·<i>Sempra v. Argentina</i> (excerpts): Decision on Objections to Jurisdiction (5/11/05), ¶ 67-99 ·<i>Tecmed v. Mexico (ratione temporis)</i> (excerpts): Award of the Tribunal (5/29/03) (unofficial English Translation), ¶ 53-71 ·<i>Vivendi v. Argentina</i> (excerpts): Decision on Annulment (7/3/02), ¶ 16-116 Award of the Tribunal (11/21/00) FYI ·<i>Generation Ukraine v. Ukraine</i> (excerpts): Award (9/16/03), ¶ 11.1-11.4 ·<i>Impregilo v. Pakistan</i> (excerpts): Decision on Jurisdiction (4/22/05), ¶ 292-315 <p><u>Suggested Readings:</u></p>

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	<ul style="list-style-type: none"> · REED & BRAY, “Fair and Equitable Treatment: Fairly and Equitably Applied in Lieu of Unlawful Indirect Expropriation?” in Rovine, <u>Contemporary Issues in International Arbitration and Mediation</u> 13 (2007) · REISMAN & SLOANE (excerpts), “Indirect Expropriation and Its Valuation in the BIT Generation,” 74 BRIT. Y.B. INT’L L. 115 (2004)
October 15, 2008	<p><u>Applicable Law:</u></p> <ul style="list-style-type: none"> · <i>Duke Energy Electroquil Partners & Electroquil S.A. v. Republic of Ecuador</i> Award of August 18, 2008, pages 46-109 · PARRA, “Applicable Law in Investor State Disputes” in Rovine, <u>Contemporary Issues in International Arbitration and Mediation</u> 3 (2007) · REISMAN, “The Regime for Lacunae in the ICSID Choice of Law Provision and the Question of Its Threshold” in Essays in Honor of Ibrahim F.I. Shihata, 15:2 ICSID Review Foreign Investment Law Journal 362 (Fall 2000); also printed in Liber Amicorum Ibrahim F.I. Shihata, Kluwer Law International (2001)
October 22, 2008	NO CLASS (Fly-Back week)
October 29, 2008	<p><u>BIT Claims, Stabilization, and Contract Claims:</u></p> <ul style="list-style-type: none"> · <i>Duke Energy Electroquil Partners & Electroquil S.A. v. Republic of Ecuador</i> Award of August 18, 2008 · <i>Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania</i> Award of July 24, 2008 with Gary Born’s Concurring and Dissenting Opinion · <i>Duke Energy International Peru Investments No. 1, Ltd. v. Republic of Peru</i> Award of August 18, 2008
November 5, 2008	<p><u>The National Security Defense and the State of Necessity Exception:</u></p> <ul style="list-style-type: none"> · <i>CMS v. Argentina</i> · <i>LG&E v. Argentina</i> · <i>BG v. Argentina</i> (2007) · Article 25, ILC Articles on State Responsibility
November 12, 2008	<p><u>Damages:</u></p> <ul style="list-style-type: none"> · BISHOP, CRAWFORD & REISMAN, <u>Foreign Investment Disputes</u>, pages 1245-1298; In particular, please study <i>Chorzow Factory Case</i>, 1928 PCIJ, No. 13, <i>id.</i> at 1278-1283; · <i>ADC v. Hungary</i> (2006) p. 89-103. · <i>BG v. Argentina</i> (2007) · Abdala, Spiller & Zuccon, Chorzow’s Compensation Standard as Applied in <i>ADC v. Hungary</i>
November 19, 2008	<p><u>Damages:</u></p> <ul style="list-style-type: none"> BISHOP, CRAWFORD & REISMAN, <u>Foreign Investment Disputes</u>, pages 1298-1372 · <i>Wena v. Egypt</i> (Award and Ad Hoc Committee Decision)

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November 26, 2008	<p><u>Causation (damages):</u></p> <ul style="list-style-type: none"> · <i>Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania</i> <li style="padding-left: 2em;">Award of July 24, 2008 with Gary Born's Concurring and Dissenting Opinion
December 3, 2008	<p><u>Damages:</u></p> <ul style="list-style-type: none"> · BISHOP, CRAWFORD & REISMAN, <u>Foreign Investment Disputes</u>, pages 1373-1390 · <i>Canfor v. US</i> (2007) costs · MARK KANTOR, <u>Valuation for Arbitration: Compensation Standards, Valuation Methods and Expert Evidence</u> (2008), pages 60-70, 280-286.
December 10, 2008	<p><u>Control Mechanisms:</u></p> <ul style="list-style-type: none"> · AGUILAR ALVAREZ AND REISMAN, <u>The Reasons Requirement in International Investment Arbitration: Critical Case Studies</u> (2008), pages 1-31. · <i>CMS v. Argentina</i>, Ad Hoc Committee · <i>Luchetti v. Peru</i>, Ad Hoc Committee
Examination	24-hour scheduled take-home exam.
	For students who wish to read the entire decision in cases which have been excerpted, most of the cases are available online on www.worldbank.org/icsid/cases/cases.htm , http://www.state.gov/s/l/c3439.htm or http://ita.law.uvic.ca ; assigned selections will, of course, be posted on YLS Inside.