

City University of Hong Kong

Course Syllabus

offered by School of Law
with effect from Semester A 2024/25

Part I Course Overview

Course Title:	International Investment Law
Course Code:	LW6142E
Course Duration:	One semester
Credit Units:	3
Level:	P6
Medium of Instruction:	English
Medium of Assessment:	English
Prerequisites: (Course Code and Title)	Nil
Precursors: (Course Code and Title)	Nil
Equivalent Courses: (Course Code and Title)	Nil LW6168E Selected Problems in International Investment Law (Students who have completed LW6143C/LW6142E are not allowed to take LW6168E. Also, students who have completed LW6168E are not allowed to take LW6143C/LW6142E.)
Exclusive Courses: (Course Code and Title)	LW6543C/LW6542E International Investment Law

Part II Course Details

1. Abstract

This course provides students with an in-depth understanding of the legal and treaty structures governing the liberalisation, protection, and facilitation of international investments. Through practical examples, the course enhances students' grasp of these laws and treaties and offers insights into the resolution of international investment disputes.

Students will engage with the political and social contexts of foreign direct investment (FDI) and capital investment activities. Special emphasis will be placed on evaluating the effectiveness and legitimacy of various investment regulations, including public and private law as well as hard and soft law.

The course's primary objectives include the following:

- First, the course explores the historical and theoretical foundations of international investment law, allowing students to understand the origins and development of this legal field. By examining key legal principles and milestones, students will gain a comprehensive background that frames contemporary issues in international investment.
- Next, students will delve into methodologies and principles for interpreting international law treaties. This includes an analysis of the Vienna Convention on the Law of Treaties and other relevant instruments, equipping students with the tools to critically analyse and interpret treaty provisions effectively.
- A crucial component of the course is distinguishing between obligations arising from treaty law and those from customary international law. By examining specific case studies and judicial decisions, students will learn to identify and differentiate these obligations, thereby enhancing their understanding of the dual sources of international investment law.
- The interaction between treaty-based obligations and customary international law will be scrutinised, highlighting how these legal sources reinforce and complement each other. This exploration will include discussions on the relationship between these legal norms in practice.
- Students will also analyse the conditions under which state conduct is attributed for the enforcement of investment treaty obligations. This involves a detailed study of state responsibility principles and their application in investment arbitration cases, providing a nuanced understanding of state liability in international investment law.
- The significance of domestic investment law and its interplay with international law is another focus area. Students will examine how domestic legal structures interact with international treaties and customary law to regulate investments, with case studies illustrating these complex relationships.
- Finally, the course highlights the rise of investment facilitation in recent treaties, such as the EU-Angola Sustainable Investment Facilitation Agreement (SIFA), the Brazilian Cooperation and Facilitation Investment Agreements, the groundbreaking WTO Investment Facilitation for Development Agreement (finalised in July 2023), and the EU-ESA Economic Partnership Agreement (EPA). This includes a detailed analysis of these agreements, their provisions, and their significance in promoting and managing international investment.

By the end of the course, students will be equipped with a thorough understanding of international investment law, its application, and its evolving nature in the international economic system.

2. Course Intended Learning Outcomes (CILOs)

(CILOs state what the student is expected to be able to do at the end of the course according to a given standard of performance.)

No.	CILOs	Weighting (if applicable)	Discovery-enriched curriculum related learning outcomes (please tick where appropriate)		
			A1	A2	A3
1.	Demonstrate an attitude of discovery and curiosity as related to relevant legal rules pertaining to the theory and practical application of investment treaty law.	40%	✓	✓	✓
2.	Acquire the necessary skills and abilities in order to conduct the following: <ul style="list-style-type: none"> ▪ Find and understand relevant legal theories and principles related to investment treaty law in commercial settings. ▪ Identify and analyse the basic principles of international investment law, and the enforcement of these principles. ▪ Explain the functioning of international institutions relevant to this field, especially that of arbitral tribunals such as those under ICSID. ▪ Understand and apply relevant cases in investment law to solve commercial-related problems. ▪ Assess practical problems and identify where potential disputes may arise and how investment law principles may apply to resolve the problems. ▪ Apply the principles to actual and potential legal problems arising from those laws and treaties, including an objective discussion of all relevant arguments. ▪ Conducting legal research independently in relation to investment disputes. 	40%	✓	✓	✓
3.	Accomplish and present written evidence of the following to demonstrate acquisition of required skills and abilities: <ul style="list-style-type: none"> ▪ Case summary of a relevant investment law case discussed during the course. ▪ Written analysis of a investment treaty-related problem scenario using a prescribed format. ▪ IRAC based analysis of treaty disputes in a commercials setting. This is essentially the final examination. 	20%	✓	✓	✓
		100%			

A1: *Attitude*

Develop an attitude of discovery/innovation/creativity, as demonstrated by students possessing a strong sense of curiosity, asking questions actively, challenging assumptions or engaging in inquiry together with teachers.

A2: *Ability*

Develop the ability/skill needed to discover/innovate/create, as demonstrated by students possessing critical thinking skills to assess ideas, acquiring research skills, synthesizing knowledge across disciplines or applying academic knowledge to real-life problems.

A3: *Accomplishments*

Demonstrate accomplishment of discovery/innovation/creativity through producing /constructing creative

works/new artefacts, effective solutions to real-life problems or new processes.

3. Learning and Teaching Activities (LTAs)

(LTAs designed to facilitate students' achievement of the CILOs.)

LTA	Brief Description	CILO No.			Hours/week (if applicable)
		1	2	3	
1	Explanation of the main features of international investment law and arbitration through lectures on (1) Admission of foreign investment; (2) Defining Investment and Investor; (3) Expropriation in international investment law ; (4) Relative Standards of Protection I – National treatment; (5) Relative Standards of Protection II – Most favoured national treatment; (6) Absolute Standards of Protection I – Fair and Equitable Treatment; (7) Absolute Standards of Protection II - Full Protection and Security ; (8) Contract Disputes and Treaty Disputes (“Umbrella” Clauses); (9) Performance Requirements and Currency Transfer Provisions ; (10) Exceptions. More practical work and application of what has been learnt at the lectures.	✓	✓	✓	3
2	In-class legal interpretation and analysis exercises, small-group analysis and evaluation of investment treaties, in-class presentation by students of their drafting and interpretative works, followed by critique and discussions.		✓	✓	
3	Film clips will be shown to sensitise students to various types of investment lawyers' activities (ranging from client's advice to pleading) and stimulate their critical thinking.		✓	✓	
4	In-class exercises, small-group analysis and evaluation of treaties, contracts, and models, in-class presentation by students of their works, followed by critique and discussions.		✓	✓	

4. Assessment Tasks/Activities (ATs)

(ATs are designed to assess how well the students achieve the CILOs.)

Assessment Tasks/Activities	CILO No.				Weighting	Remarks
	1	2	3	4		
Continuous Assessment: 30%						
Class participation (Active involvement in class, which includes consistent attendance, engaging in thoughtful discussion, and maintaining focused attention during lectures).	✓	✓	✓		10%	Weeks 1 to 13. The use of Generative AI tools is not

						allowed.
Students' presentations and submission of a case summary	✓	✓	✓		20%	Weeks 3 to 13. The use of Generative AI tools is not allowed.
Examination: 70%						
Final Examination (duration: 3 hours)	✓	✓	✓		70%	End of term. The use of Generative AI tools is not allowed.
					100%	

This is an open-book exam.

Applicable to students admitted before Semester A 2022/23 and in Semester A 2024/25 & thereafter

Students must obtain a minimum mark of 40% in the final examination and an overall mark of 40% in order to pass the course.

When University facilities and resources are available, students are required to take a computer-based examination in computer labs. During the examination, students are blocked from access to files, programme and the Internet.

Applicable to students admitted from Semester A 2022/23 to Summer Term 2024

Students must obtain a minimum mark of 50% in the final examination and an overall mark of 50% in order to pass the course.

When University facilities and resources are available, students are required to take a computer-based examination in computer labs. During the examination, students are blocked from access to files, programme and the Internet.

5. Assessment Rubrics

(Grading of student achievements is based on student performance in assessment tasks/activities with the following rubrics.)

Applicable to students admitted before Semester A 2022/23 and in Semester A 2024/25 & thereafter

Assessment Task	Criterion	Excellent (A+, A, A-)	Good (B+, B, B-)	Fair (C+, C, C-)	Marginal (D)	Failure (F)
Class Participation	Identifying issues and resolving such issues by applying the relevant legal principles and provisions.	Strong evidence of original thinking; good organization, capacity to analyse and synthesize; superior grasp of subject matter; evidence of extensive knowledge base.	Evidence of grasp of subject, some evidence of critical capacity and analytic ability; reasonable understanding of issues; evidence of familiarity with literature.	Student who is profiting from the university experience; understanding of the subject; ability to develop solutions to simple problems in the material.	Sufficient familiarity with the subject matter to enable the student to progress without repeating the course.	Little evidence of familiarity with the subject matter; weakness in critical and analytic skills; limited, or irrelevant use of literature.
Examination	Identifying issues and resolving such issues by applying the relevant legal principles and provisions.	Strong evidence of original thinking; good organization, capacity to analyse and synthesize; superior grasp of subject matter; evidence of extensive knowledge base.	Evidence of grasp of subject, some evidence of critical capacity and analytic ability; reasonable understanding of issues; evidence of familiarity with literature.	Student who is profiting from the university experience; understanding of the subject; ability to develop solutions to simple problems in the material.	Sufficient familiarity with the subject matter to enable the student to progress without repeating the course.	Little evidence of familiarity with the subject matter; weakness in critical and analytic skills; limited, or irrelevant use of literature.

Applicable to students admitted from Semester A 2022/23 to Summer Term 2024

Assessment Task	Criterion	Excellent (A+, A, A-)	Good (B+, B)	Marginal (B-, C+, C)	Failure (F)
Class Participation	Identifying issues and resolving such issues by applying the relevant legal principles and provisions.	High	Significant	Moderate	Inadequate
Examination	Identifying issues and resolving such issues by applying the relevant legal principles and provisions.	High	Significant	Moderate	Inadequate

Part III Other Information (more details can be provided separately in the teaching plan)

1. Syllabus

1.1 Keyword Syllabus

(An indication of the key topics of the course.)

Introduction, The Sources of International Investment Law, Investment Contracts, Admission and Establishment, Expropriation Substantive Standards of Protection, Responsibility of the Host State, Dispute Resolution, The ICSID System, Emerging Issues in Modern Investment Law, Case Study.

1.2 Detailed Syllabus

The course aims to examine the following issues (but not necessarily in that order):

Week 1- Introduction to Investment Law

Week 2 – Admission of Foreign Investment: Liberalisation, Facilitation, and Protection

Week 3 - Defining Investment and Investor

Week 4 - Expropriation in international investment law

Week 5 - Relative Standards of Protection I – National treatment

Week 6 - Relative Standards of Protection II – Most favoured national treatment

Week 7 – Absolute Standards of Protection I – Fair and Equitable Treatment

Week 8 - Absolute Standards of Protection II - Full Protection and Security

Week 9 - Performance Requirements

Week 10 - Contract Disputes and Treaty Disputes (“Umbrella” Clauses)

Week 11 - Currency Transfer Provisions

Week 12 - Exceptions

Week 13 - The Future of the Foreign Investment Law Regime?

2. Reading List

2.1 Required Textbook

(Compulsory readings can include books, book chapters, or journal/magazine articles. There are also collections of e-books, e-journals available from the CityU Library.)

- Radi, Yannick. *Rules and Practices of International Investment Law and Arbitration*
London: Cambridge University Press 2020

2.2 Recommended Reading

(Additional references for students to learn to expand their knowledge about the subject.)

- Chaisse, J. (et al.) *Handbook of International Investment Law and Policy - Volume I (Definitions, Standards of Treatment, Promotion and Protection of International Investments)* (New York: Springer-Nature, 2021) 601.
[\[available online via CityU library or CityU VPN\]](#)

- Dolzer, Rudolf and Schreuer, Christoph *Principles of International Investment Law* (2nd ed) Oxford, Oxford University Press 2012
- McLachlan, Campbell et al *International Investment Arbitration: Substantive Principles* (2nd ed) Oxford, Oxford University Press 2017
- Nadakavukaren Schefer, Krista *International Investment Law: Text, Cases and Materials* (3rd ed) Cheltenham, Edward Elgar 2020
- Sornarajah, M. *The International Law on Foreign Investment* (4th ed) Cambridge, Cambridge University Press 2021
- Subedi, Surya P. *International Investment Law: Reconciling Policy and Principle* (5th ed) London, Hart Publishing 2024

Other reading lists and materials will be posted on Canvas for each lecture.

- In addition, knowledge of current legal, social and economic events will play a leading role in our discussions of transnational economic problems. Discussions are predicated on an assumption of familiarity with the assigned materials; all readings should therefore be completed before the relevant class session.
- Students will be expected to read the international section of a reputable national newspaper (*Financial Times* and *International Herald Tribune* are recommended) in preparing for weekly classes.
- Students should subscribe to the Social Sciences Research Network (SSRN) (<http://hq.ssrn.com/login/pubsiginjoin.cfm>) in order to access (for free) a wealth of articles and book chapters.

2.3 Online Resources

<http://icsid.worldbank.org/ICSID/Index.jsp>

http://www.unctadxi.org/templates/DocSearch____779.aspx (search engine for BITs)

<http://ita.law.uvic.ca>

<http://www.investmentclaims.com>

<http://www.naftaclaims.com>

<http://www.iareporter.com>

<http://www.iisd.org/investment/itn/>

<http://www.ll.georgetown.edu/intl/guides/InternationalInvestmentLaw.cfm>

<http://www.mpil.de/ww/en/pub/library.cfm> (Library of the Max Planck Institute for Comparative Public Law and International Law, Heidelberg)

<http://www.ppl.nl/bibliographies/all/?bibliography=investment> (Bibliography on New Aspects of International Investment Law compiled by the Peace Palace Library, The Hague, The Netherlands)

<http://www.cityu.edu.hk/lib/eres/ej/index.htm> (CityU Library e-Journals)

<http://libweb.cityu.edu.hk/lbdinst/westlaw.htm> (access to WESTLAW via CityU Library)

2.4 Supplementary Materials

Convention on the Settlement of Investment Disputes Between States and Nationals of Other States – History of the Convention, Documents concerning the origin and the formulation of the convention, 4 vols., Washington, D.C.: International Centre for Settlement of Investment Disputes, 1968-1970.

ICSID Reports, Cambridge, Grotius, 1993- (12 vols.)

Investment Laws of the World, International Centre for the Settlement of Investment Disputes (ICSID), Dobbs Ferry, N.Y, Oceana Publications (lose-leaf binders) 1972- (10 vols.)

International investment instruments: a compendium; United Nations Conference on Trade and Development (UNCTAD), Division on Transnational Corporations and Investment. New York: United Nations, 1996-2005 (10 vols.)

International Investment Law: A Changing Landscape, A Companion Volume to International Investment Perspectives, OECD, 2005

James Crawford (ed.), The International Law Commission's articles on state responsibility: introduction, text and commentaries; Cambridge: Cambridge University Press, 2002.

Philip Kunig, Niels Lau, Werner Meng (eds.): International economic law – Basic documents; Berlin: W. de Gruyter, 1993.

World Investment Report, United Nations Conference on Trade and Development (UNCTAD), New York: United Nations, 1991-2007

2.5 Journals (selected)

Arbitration International

Journal of International Arbitration

Journal of International Economic Law

ICSID Review-Foreign Investment Law Journal (FILJ)

Journal of World Investment and Trade