

**City University of Hong Kong  
Course Syllabus**

**offered by School of Law  
with effect from Semester A 2020 / 2021**

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**Part I Course Overview**

<b>Course Title:</b>	<u>International Arbitration</u>
<b>Course Code:</b>	<u>LW6408</u>
<b>Course Duration:</b>	<u>One semester</u>
<b>Credit Units:</b>	<u>3</u>
<b>Level:</b>	<u>P6</u>
<b>Medium of Instruction:</b>	<u>English</u>
<b>Medium of Assessment:</b>	<u>English</u>
<b>Prerequisites:</b> <i>(Course Code and Title)</i>	<u>LW6405 Arbitration Law</u>
<b>Precursors:</b> <i>(Course Code and Title)</i>	<u>Nil</u>
<b>Equivalent Courses:</b> <i>(Course Code and Title)</i>	<u>Nil</u>
<b>Exclusive Courses:</b> <i>(Course Code and Title)</i>	<u>Nil</u>

## Part II Course Details

### 1. Abstract

This course aims to:-

- (i) build on the student's knowledge of arbitration by providing a thorough understanding of the special character and particular issues of international commercial arbitration;
- (ii) acquaint the student with the important institutional structures and rules for international arbitration; and
- (iii) provide a comparative examination of the relevant laws, institutions, rules and practices in common law and civil law jurisdictions.

The course will further innovate a student's ability to grasp the fundamental concepts with the ultimate goal of discovering how international arbitration functions from a practical stand point.

LW6408 International Arbitration is a CI Arb recognised course. Students who have successfully completed this course achieving at least 55% of the coursework and examination marks can be exempted from the CI Arb Module.

### 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 <sup>#</sup>	Weighting (if applicable)	Discovery-enriched curriculum related learning outcomes (please tick where appropriate)		
			A1	A2	A3
1.	apply in a real life situation the knowledge of the special character and the complex features peculiar to international commercial arbitration and to discuss how effective such features are applied into practice	Nil	✓	✓	✓
2.	acquire familiarity through discovery/innovation/creativity about the principal international arbitration institutions and their procedures	Nil	✓	✓	✓
3.	apply the applicable laws, as well as the active institutions and their respective rules and practices, which are applicable to international commercial arbitrations conducted in common law and civil law jurisdictions	Nil	✓	✓	✓
		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 self-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. Teaching and Learning Activities (TLAs)

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

TLA	Brief Description	CILO No.			Hours/week (if applicable)
		1	2	3	
Lecture, seminar and tutorial	Lectures will provide basic information and will guide reading and research. The students will be asked to read assigned materials prior to the lectures. The style of lecture will involve interactive discussion to a great extent. Many of the lectures will take advantage of sophisticated mock arbitration scenarios which generate multiple issues of principle and practice. Some of the tutorials will be conducted as seminars, with students assigned the responsibility to lead the discussion.	✓	✓	✓	3 hours

### 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		
Continuous Assessment: <u>40</u> %					
Coursework	✓	✓	✓	40%	See below
Examination	✓	✓	✓	60%	See below
Examination: <u>60</u> % (duration: 3 hours)					
				100%	

#### Remarks:

- (i) A student must obtain a minimum mark of 40% in both coursework and examination and an overall mark of 40% in order to pass a course.
- # Coursework will consist of a written assignment of about 4,000 words incorporating issues of law and practice in international arbitration. There will be one three-hour examination. It will be an open book examination. Students will be permitted to bring into the examination room at the start, and during the examination refer to, such notes, texts, reference works or other materials (except CityU Library books) as they may wish.

The HKSAR Government's Continuing Education Fund (CEF) recognizes the LLMArbDR programme both as a whole and as individual courses (i.e. LW5303, LW6401, LW6405, LW6406, LW6407). The minimum attendance requirement for all CEF courses is **70%**. For the purpose of claiming reimbursement of CEF course fee or the professional recognition (i.e. CIArb, CPD), please note that it is the students' own responsibility to attend every class and examination during the teaching and examination periods.

## 5. Assessment Rubrics

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

Assessment Task	Criterion	Excellent (A+, A, A-)	Good (B+, B, B-)	Fair (C+, C, C-)	Marginal (D)	Failure (F)
1. Coursework	Demonstration of ability to identify issues, current trends and practices.	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.
2. Examination	Application of knowledge learnt to specific problems and issues.	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.

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

#### **1. Keyword Syllabus**

International commercial arbitration. Institutional structures. Arbitral rules. Law and practice – international arbitration (common law and civil law). International treaties and conventions.

#### **1.1 Detailed Syllabus**

##### Introduction

The legal nature of international commercial arbitration

##### Sources of law and forms

- (i) Many of these topics will be referred to in lectures throughout the course, and need not be examined in detail as a discrete subject on the syllabus;
- (ii) Domestic and international arbitration; international and transnational; private international and public international;
- (iii) Ad hoc and institutional arbitration;
- (iv) Given the emphasis of the course, it will include close analysis of the rules and practices of: the Hong Kong International Arbitration Centre; China International Economic and Trade Arbitration Commission; and the London Court of International Arbitration;
- (v) The subject would not be adequately considered, however, without detailed consideration of: the International Chamber of Commerce Court of Arbitration; the Chartered Institute of Arbitrators; and the American Arbitration Association;
- (vi) Reference will be made to other institutions as well, including: regional centres such as those in Kuala Lumpur (the Asian-African Legal Consultative Committee - AIAC), Sydney, Hawaii, and Vancouver; The Japan Commercial Arbitration Association; USSR Foreign Trade Arbitration Commission; USSR Maritime Arbitration Commission; Stockholm Chamber of Commerce; Netherlands Arbitration Institute; Euro-Arab Chambers of Commerce;
- (vii) International arbitration under public international law:
- (viii) Permanent Court of Arbitration, The Hague; The International Centre for the Settlement of Investment Disputes; US-Iran Claims Tribunal;
- (ix) Forms as adopted by trade usage: China Maritime Arbitration Commission; The London Maritime Arbitrators' Association; The Grain and Feed Trade Association; Federation of Oil, Seeds and Fat Association;
- (x) Legislation:
  - Arbitration Ordinance LHK Cap 609
  - Arbitration Law of China
  - General Principles of the Civil Law of China & Civil Procedure Law of China
  - Arbitration Acts 1950, 1975 & 1979; The Arbitration Act 1996
  - The Commercial Arbitration Act of the Republic of China

- (xi) Treaties and instruments, including:-
- Geneva Conventions of 1923 and 1927
  - New York Convention of 1958
  - European Convention of 1961
  - World Bank Convention of 1965
  - UNCITRAL Model Law and Arbitration Rules

#### The arbitration agreement

- (i) Form and content
- (ii) Arbitrability of the subject matter; applicable law
- (iii) Distinction between clause/agreement and submission
- (iv) Effectiveness; recognition by national courts
- (v) Separability

#### Appointment of the arbitrator

- (i) Procedures, qualifications, composition of the tribunal
- (ii) Role of domestic courts
- (iii) Challenge to appointment
- (iv) Nature of the role of party-appointed arbitrator
- (v) Immunity of international arbitrators

#### Authority of the arbitrator

- (i) Nature and extent of arbitrator's power in international arbitration
- (ii) The ability of the arbitrator to determine his jurisdiction: competenz kompetenz; international public policy and international commercial arbitration
- (iii) Challenge to jurisdiction and the role of the national courts
- (iv) Supervision and assistance by national courts

#### Conservatory measures and joinder of parties

- (i) Means to preserve or to render protection to the subject matter of the arbitration
- (ii) Joinder of parties
- (iii) Multiparty arbitration

#### The law governing the arbitration

- (i) The laws which may be involved in an international commercial arbitration; lex arbitri and the arbitration agreement, procedure and subject matter
- (ii) Identifying the law of the arbitration
- (iii) Importance of the place of the arbitration; delocalisation theory
- (iv) Transnational arbitrations

### International arbitration in practice

- (i) Initiating arbitration proceedings
- (ii) The impact of arbitration rules, with special reference to the UNCITRAL Rules and the rules of the Hong Kong International Arbitration Centre
- (iii) Choice of the mode of hearing, settling language and venue
- (iv) Pleadings
- (v) Discovery and inspection of documents
- (vi) Procedure at a hearing
- (vii) Evidence
- (viii) Authority of arbitrator to make orders
- (ix) Expert witnesses
- (x) Dissenting awards
- (xi) Harmonization of arbitration practice: the UNCITRAL Rules; ICSID Rules; the IBA Rules of Evidence

### The determination of the applicable law

- (i) Introduction to private international law with particular reference to principles concerning contracts and arbitration
- (ii) Convergent substantive law rules
- (iii) Conflicts avoidance
- (iv) General principles of law - their meanings and effect

### The law applicable to the dispute

- (i) Express and implied provisions in the agreement to arbitrate; party autonomy
- (ii) Lex Mercatoria - its meaning, sources, effect and limitation
- (iii) Non legal standards: amiables compositeurs and awards made ex aequo et bono

### The award

- (i) Form of award
- (ii) Delivery of award
- (iii) Appeal and challenge of the award

### Recognition and enforcement of arbitral awards

- (i) Distinction between foreign and domestic awards
- (ii) History of recognition and enforcement: an international perspective
- (iii) The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958
- (iv) Rules for enforcement

- (v) Meanings of grounds to refuse enforcement

#### Arbitration involving government and state owned entities

- (i) The distinctions and significance of state, state entity and state enterprise
- (ii) Capacities and abilities as a party to an agreement to arbitrate
- (iii) Sovereign immunity; waiver
- (iv) Enforcement of award against sovereign

#### International arbitration in China re-examined

- (i) Rules of the China International Economic and Trade Arbitration Commission
- (ii) Rules of the China Maritime Arbitration Commission
- (iii) Practice and enforcement of awards

## **2. Reading List**

### **2.1 Compulsory Readings**

*(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.)*

Redfern and Hunter on International Arbitration, 6<sup>th</sup> Revision, February 2020, ISBN 100198714254.

### **2.2 Additional Readings**

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

#### **Recommended Reading**

1. Hong Kong Arbitration Law Handbook, 2018, Christopher To and Damon So.
2. Redfern and Hunter on International Arbitration, 2015, Nigel Blackaby, Constantine Partasides QC, Alan Redfern, and Martin Hunter.
3. A commentary on the LCIA Arbitration Rules 2014, Shai Wade, Philip Clifford.
4. Analytical commentary to the UNCITRAL arbitration rules, Peter Binder [This book provides commentary and legislative material on the UNCITRAL Arbitration Rules 2010].
5. Handbook of ICC arbitration: commentary, precedents, materials, Thomas H. Webster, Michael W. Bühler.
6. Handbook on international arbitration and ADR, Thomas E. Carbonneau, executive editor; assistant editors, Jeanette Jaeggi, Sandra K. Partridge.
7. Handbook of UNCITRAL arbitration: commentary, precedents and materials, Thomas H. Webster.
8. International arbitration and forum selection agreements: drafting and enforcing, Gary B. Born.
9. International commercial arbitration / compiled and edited by Clive M. Schmitthoff [This is 7 volumes loose-leaf set].



10. International commercial arbitration and conciliation in UNCITRAL model law jurisdictions, Peter Binder.
11. International handbook on commercial arbitration, general editor Jan Paulsson; with the assistance of International Bureau of the Permanent Court of Arbitration, The Hague. [This 5 volume loose-leaf set is updated to 2011 supplement].
12. The leading arbitrators' guide to international arbitration, editors, Lawrence W. Newman, Richard D. Hill.
13. Transparency in international investment arbitration : a guide to the UNICTRAL Rules on Transparency in Treaty-Based Investor-State Arbitration, edited by Dimitrij Euler, Markus Gehring and Maxi Scherer.
14. *Russell on Arbitration, 2015* by David St John Sutton.
15. International Arbitration and Forum Selection Agreements: Drafting and Enforcing, 5th Edition, 2016, Gary B. Born.
16. International Arbitration and Public Policy, 2014, Devin Bray; Heather L. Bray.
17. International Arbitration and the Courts, 2015, Devin Bray; Heather L. Bray.
18. International Arbitration Checklists, 3rd Edition, 2016, Grant Hanessian; Lawrence W. Newman; Kabir A. N. Duggal; Kyle Richard Olson.
19. International Arbitration A Practical Guide, 2012, Stuart Dutson; Andy Moody; Neil Newing.
20. Ethics in International Arbitration, 2014, Catherine Rogers.
21. Defining Issues in International Arbitration, 2016, Julio Cesar Betancourt.
22. Document Production in International Arbitration, 2015, Reto Marghitola.
23. Interim Measures in International Arbitration, 2014, Lawrence W. Newman; Colin Y.C. Ong.
24. A Counsel's Guide to Examining and Preparing Witnesses in International Arbitration, 2015, Ragnar Harbst.
25. Choice of Venue in International Arbitration, 2014, Michael Ostrove; Claudia Salomon; Bette Shifman.
26. Injunctive Relief and International Arbitration, 2014, Hakeem Seriki.
27. Comparison of International Arbitration Rules, 4th Edition, 2013, Simpson Thacher and Bartlett LLP.
28. Introduction to International Arbitration Practice, 2014, Pierre Karrer.

### 2.3 Online Resources

1.	<a href="http://www.legislation.gov.hk">www.legislation.gov.hk</a>
2.	<a href="http://www.judiciary.gov.hk">www.judiciary.gov.hk</a>
3.	<a href="http://www.hkiac.org">www.hkiac.org</a>
4.	<a href="http://www.adr.org">www.adr.org</a>
5.	<a href="http://www.cedr.co.uk">www.cedr.co.uk</a>

6.	<a href="http://www.jamsadr.com">www.jamsadr.com</a>
7.	<a href="http://www.odr.info">www.odr.info</a>
8.	<a href="http://www.arbitrators.org">www.arbitrators.org</a>
9.	<a href="http://www.hklawsoc.org.hk">www.hklawsoc.org.hk</a>
10.	<a href="http://www.hkba.org">www.hkba.org</a>
11.	<a href="http://www.ciarb.org">www.ciarb.org</a>
12.	<a href="http://www.icc.org">www.icc.org</a>
13.	<a href="http://www.lcia.org">www.lcia.org</a>
14.	<a href="http://www.cietac.org">www.cietac.org</a>
15.	<a href="http://www.aiac.world">www.aiac.world</a>