

# LW4663: SELECTED PROBLEMS IN INTERNATIONAL INVESTMENT LAW

---

## Effective Term

Semester A 2022/23

## Part I Course Overview

### Course Title

Selected Problems in International Investment Law

### Subject Code

LW - Law

### Course Number

4663

### Academic Unit

School of Law (FL)

### College/School

School of Law (FL)

### Course Duration

One Semester

### Credit Units

3

### Level

B1, B2, B3, B4 - Bachelor's Degree

### Medium of Instruction

English

### Medium of Assessment

English

### Prerequisites

Completed year one of LLB

### Precursors

Nil

### Equivalent Courses

Nil

### Exclusive Courses

Nil

## Part II Course Details

### Abstract

- Introduce students to the treaties that regulate foreign investment;
- Provide an understanding of the various protections that are afforded to foreign investors;
- Develop a critical awareness of the consequences of the emerging body of foreign investment treaties and related arbitration awards;
- Enable students to understand the different dispute settlement mechanisms afforded to foreign investors; and
- Encourage effective research, writing and oral communication skills in relation to foreign investment issues.

### Course Intended Learning Outcomes (CILOs)

CILOs		Weighting (if app.)	DEC-A1	DEC-A2	DEC-A3
1	Describe and explain the basic concepts and principles relating to international investment law		x	x	x
2	Apply the above concepts and principles to solve hypothetical or real situations		x	x	x
3	Communicate ideas, arguments or advice clearly and coherently both orally and in writing		x	x	x
4	Critically analyse and evaluate concepts, principles and policy underpinning international investment law		x	x	x
5	Identify and examine current problems associated with international investment law		x	x	x

#### 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.

### Teaching and Learning Activities (TLAs)

TLAs	Brief Description	CILO No.	Hours/week (if applicable)
1	Lectures and tutorials (combined).  Students are required to do preparatory readings before class.  Lectures and individual or small-group activities.	1, 2, 3, 4, 5	3 hours per week

**Assessment Tasks / Activities (ATs)**

ATs		CILO No.	Weighting (%)	Remarks (e.g. Parameter for GenAI use)
1	Class participation & presentations	1, 2, 3, 4, 5	20	

**Continuous Assessment (%)**

20

**Examination (%)**

80

**Examination Duration (Hours)**

2 or 3

**Additional Information for ATs**

Standard (A+, A, A-...F).

Grading is based on student performance in assessment tasks / activities.

Assessment will be by continuous assessment, by coursework, inter-active in-class exercises and by examination.

The apportionment of marks will be:-

Inter-active in-class exercises and presentations: 20%

Examination: 80%

Examination duration: Three hours/two hours

Grading pattern: Standard (A+ A A- ... F)

Students must obtain a minimum mark of 30% in both coursework and examination and an overall mark of 40% in order to pass the course. Coursework for this purpose means those ways in which students are assessed otherwise than by the end of session examination.

To enable the full benefit to be obtained from this course, students should attend all of the classes and activities.

The course leader will announce whether the examination will be closed book or open book.

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.

**Assessment Rubrics (AR)****Assessment Task**

Class participation/presentations

**Criterion**

Identifying issues and resolving such issues by applying the relevant legal principles and provisions.

**Excellent (A+, A, A-)**

Strong evidence of original thinking; good organization, capacity to analyse and synthesize; superior grasp of subject matter; evidence of extensive knowledge base.

**Good (B+, B, B-)**

Evidence of grasp of subject, some evidence of critical capacity and analytic ability; reasonable understanding of issues; evidence of familiarity with literature.

**Fair (C+, C, C-)**

Student who is profiting from the university experience; understanding of the subject; ability to develop solutions to simple problems in the material.

**Marginal (D)**

Sufficient familiarity with the subject matter to enable the student to progress without repeating the course.

**Failure (F)**

Little evidence of familiarity with the subject matter; weakness in critical and analytic skills; limited, or irrelevant use of literature.

---

**Assessment Task**

Examination

**Criterion**

Identifying issues and resolving such issues by applying the relevant legal principles and provisions.

**Excellent (A+, A, A-)**

Strong evidence of original thinking; good organization, capacity to analyse and synthesize; superior grasp of subject matter; evidence of extensive knowledge base.

**Good (B+, B, B-)**

Evidence of grasp of subject, some evidence of critical capacity and analytic ability; reasonable understanding of issues; evidence of familiarity with literature.

**Fair (C+, C, C-)**

Student who is profiting from the university experience; understanding of the subject; ability to develop solutions to simple problems in the material.

**Marginal (D)**

Sufficient familiarity with the subject matter to enable the student to progress without repeating the course.

**Failure (F)**

Little evidence of familiarity with the subject matter; weakness in critical and analytic skills; limited, or irrelevant use of literature.

---

## Part III Other Information

**Keyword Syllabus**

- Foreign investment
- Investment treaties
- Investment arbitration
- Investor protection

**Detailed Syllabus**

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

1. Introduction

The law of international investment as a part of international law;; diplomatic protection; state sovereignty and state acts; relevant institutional structures; the conflicting interests of host countries and investors, political risks and foreign direct investment; international investment and developing countries.

2. The Sources of International Investment Law

The law of treaties; interpretation of treaties; customary international law of investment; bilateral investment treaties, multilateral treaties, model treaties, guidelines and codes of conduct, national legislations; arbitral awards; regional agreements; relevant international organisations.

### 3. Jurisdiction and Admissibility

Principle of consent; the scope of jurisdiction; existence of an investment; nationality of individuals and companies; the distinction between jurisdiction and admissibility; shareholder protection.

### 4. Expropriation

Treaty provisions, case law and theory pertaining to expropriation; compensation; valuation of expropriated property; direct and indirect taking of foreign assets; expropriation of contractual rights.

### 5. Substantive Standards of Protection

Rights of investor for fair and equal treatment, full protection and security, free transfer of funds, national treatment, most-favoured-nation treatment (MFN), access to justice, protection against arbitrary or discriminatory treatment; umbrella clauses.

### 6. Responsibility of the Host State

State responsibility for illegal acts, exhaustion of local remedies and procedures, state immunity; attribution; state entities; necessity, armed conflicts, and emergencies.

### 7. Dispute Resolution

Arbitration; State-State disputes; Investor-State disputes; conciliation; applicable laws; annulment and enforcement of arbitral awards; possible dispute settlement fora.

### 8. The ICSID System

Parties, subject-matter and consent to ICSID arbitration; rules of procedure; ICSID's Additional Facility; annulment proceedings; MFN-clauses relating to dispute settlement; provisional measures; remedies; compensation.

### 9. Emerging Issues in International Investment Law

Recent developments in ICSID practice and procedure; regional, sectoral, and multilateral agreements on investment; investment and environment; investment and human rights; investment and development; good governance; legitimacy and effectiveness of the legal regime for the protection of international investments.

## Reading List

### Compulsory Readings

	Title
1	Rudolf Dolzer, Christoph Schreuer: Principles of international investment law; Oxford: Oxford University Press, 2012.

### Additional Readings

	Title
1	Jeswald W. Salacuse, The Law of Investment Treaties; Oxford University Press, 2015.
2	Zachary Douglas, Joost Pauwelyn, and Jorge E. Viñuales (eds), The foundations of international investment law: bringing theory into practice; Oxford, Oxford University Press, 2014.
3	Jonathan Bonnitcha, Substantive protection under investment treaties: A Legal and Economic Analysis; Cambridge Cambridge University Press, 2014.
4	R. Doak Bishop, James Crawford, W. Michael Reisman: Foreign investment disputes: cases, materials, and commentary; The Hague: Kluwer Law International, 2014.
5	Freya Baetens (ed.), Investment Law within International Law: Integrationist Perspectives; Cambridge University Press, 2013
6	Krista Nadakavukaren Schefer, International investment law: text, cases and materials; Edward Elgar, 2013
7	Hege Elisabeth Kjos, Applicable Law in Investor-State Arbitration: The interplay between national and international law; Oxford, Oxford University Press, 2013.
8	Chester Brown (ed), Commentaries on selected model investment treaties; Oxford, Oxford University Press, 2013.

9	Chester Brown and Kate Miles, <i>Evolution in investment treaty law and arbitration</i> , Cambridge, Cambridge University Press, 2011.
10	Lucy Reed, Jan Paulsson, Nigel Blackaby: <i>Guide to ICSID arbitration</i> ; The Hague: Kluwer Law International, 2010.
11	M. Sornarajah: <i>The international law on foreign investment</i> ; Cambridge, Cambridge University Press 2010.
12	Zachary Douglas, <i>The international law of investment claims</i> ; Cambridge, Cambridge University Press, 2009.
13	Andrew Newcombe and Lluís Paradell, <i>Law and practice of investment treaties: standards of treatment</i> ; The Hague, Kluwer Law International, 2009.
14	Christopher Dugan, Noah D. Rubins, Don Wallace, Borzu Sabahi: <i>Investor-State Arbitration</i> ; Oxford, Oxford University Press, 2008.
15	Campbell McLachlan, Laurence Shore, and Matthew Weiniger, <i>International investment arbitration: substantive principles</i> ; Oxford, Oxford University Press 2007.
16	Norbert Horn, Stefan Kroell (eds.): <i>Arbitrating foreign investment disputes</i> ; The Hague: Kluwer Law International, 2004.
17	Christoph H. Schreuer: <i>The ICSID Convention: A commentary on the Convention on the Settlement of Investment Disputes between States and Nationals of Other States</i> ; Cambridge, Cambridge University Press, 2001.
18	<a href="http://www.kluwerarbitration.com">www.kluwerarbitration.com</a>
19	<a href="http://icsid.worldbank.org/ICSID/Index.jsp">http://icsid.worldbank.org/ICSID/Index.jsp</a>
20	<a href="http://www.investmentclaims.com">www.investmentclaims.com</a>
21	<a href="http://ita.law.uvic.ca/">http://ita.law.uvic.ca/</a>
22	<a href="http://www.naftaclaims.com">www.naftaclaims.com</a>
23	<a href="http://www.iareporter.com">http://www.iareporter.com</a>
24	<a href="http://www.iisd.org/investment/itn/">http://www.iisd.org/investment/itn/</a>