

# University of Saarland

## Faculty of Law

Chair for Civil Law, Commercial and Business Organizations Law,  
Private International Law and Comparative Law

*Institute of European Law*

Professor Michael Martinek



UNIVERSITÄT  
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## Outline for the course “Commercial Arbitration” in the LL.M. Programme on Business Law at Craiova University

### – Tuesday, 16 January 2018, morning session

**Introduction:** Importance, Historical Background and Fundamental Issues of International Commercial Arbitration – Facts and Figures - Advantages and Disadvantages of Arbitration Proceedings – Mediation and other Alternative Disputes Resolution Methods – Online Dispute Resolution for Consumers - Ad hoc-Arbitration and Institutional Arbitration – The Main Arbitral Institutions – The International Court of Arbitration of the International Chamber of Commerce (Paris) and the London Court of International Arbitration – Specialist International Arbitration Organisations (The World Intellectual Property Organisation (WIPO) Arbitration and Mediation Centre – The International Centre of the Settlement of Investment Disputes – China International Economic and Trade Arbitration Commission etc.) – Arbitration between Foreign Investors and States – Arbitration and Bilateral Investment Treaties (BITs) – Arbitration and Multilateral Free Trade Agreements (CETA, TTIP).

### Tuesday, 16 January 2018, afternoon session

**The Legal Framework of International Commercial Arbitration:** The New York Convention 1958 on the Recognition and Enforcement of Foreign Arbitral Awards – Other Conventions on ICA – Brussels I bis Regulation and Arbitration – The UNCITRAL Model Law on Arbitration 1985 / 2006 – The UNCITRAL Model Rules on Arbitration (as revised in 2010) – National State Legislation on Arbitration – Institutional Arbitration Rules – Parties’ Arbitration Agreements (Arbitration Clauses etc.)

### Wednesday, 17 January 2018, morning session

**Typical Steps and Stages in an Arbitral Proceeding:** Constitution of Arbitral Tribunal – Choice and Appointment of Arbitrators – Substitute Arbitrators – Jurisdiction of Arbitral Tribunals (Competence) – Interim Measures, Preliminary Relief – Conduct of Arbitral Proceedings – Place and Language of Proceedings – Statements of Claims and Defence

### Wednesday, 17 January 2018, afternoon session

**Special Issues of Arbitral Proceedings:** – Impartiality and Independence – Counterclaims – Oral Hearings and Writing Proceedings – Default of a Party – Experts Appointed by Arbitral Tribunal – Multiple Parties on Claimant or Respondent Side

**Thursday, 18 January 2018, morning session**

**Termination and Consequences of Arbitral Proceeding:** Making of Award and Termination of Proceedings – Decision Making – Settlement – Form and Content of Award – Effect of Arbitral Award – Termination of Proceedings – Decision on Costs – Correction and Interpretation of Award – Recourse against Award – Recognition and Enforcement of Awards – Privacy and Confidentiality – Exclusion of Liability

**Thursday, 18 January 2018, afternoon session**

**Arbitration in Romania:** Legislative Framework of Arbitration in Romania – The Choice of Law – The Arbitral Proceedings in Romania – The Role of the State Courts – The Arbitral Institutions in Romania

**Friday, 19 January 2018, morning session**

**Presentation of a Case Study and Discussion of Question**

**Friday, 19 January 2018, afternoon session**

Test of two hours – test in writing under supervision – three questions to be answered (fourty minutes for each question)

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**References / Reading Suggestions:**

*General Remark:* The students are invited to do independent research by browsing their way through the internet pursuant to the key issues dealt with in the course of the lecture. In particular, they should visit the websites on International Commercial Arbitration of UNICITRAL, ICC and LCIA, make themselves familiar with the New York Convention 1958, the UNICITRAL Model Law on Arbitration and the UNICITRAL Model Rules on Arbitration as well as with the Arbitration Rules of the ICC and the LCIA.

*Further readings:*

- **Peter Binder, International Commercial Arbitration and Conciliation in UNCITRAL Model Law Jurisdictions, 3<sup>rd</sup> ed., London 2010**
- **Gary Born, International Commercial Arbitration – Commentary and Materials, 3<sup>rd</sup> ed. The Hague 2009**
- **Gary Born, International Arbitration: Law and Practice, The Hague 2010**
- **Michael Bühler / Thomas Webster, Handbook of ICC Arbitration, London 2005**
- **Nicole Conrad / Peter Münch / Jonathan Black-Branch, International Commercial Arbitration, 2013**

- Crenguta Leaua / Flavius a. Baias (eds.), *Arbitration in Romania – A Practitioner’s Guide*, Alphen, The Netherlands 2016
- Yves Derains / Eric A. Schwartz, *A Guide to the ICC Rules of Arbitration*, 2<sup>nd</sup> ed. The Hague 2005
- Rudolf Dolzer / Margrete Stevens, *Bilateral Investment Treaties*, The Hague 1995
- France Ferrari / Stefan Kröll (eds.), *Conflict of Laws in International Arbitration*, 2011
- Philippe Fouchard, Emmanulle Gaillard / Berthold Goldman, *On International Commercial Arbitration*, The Hague 1999
- Jacob Grierson / Annet van Hooft, *Arbitrating under the 2012 Rules – An Introductory Unser’s Guide*, 2012
- Howard Holtzmann / Joseph E. Neuhaus, *A Guide to the UNICITRAL Model Law on International Commercial Arbitration – Legislative History and Commentary*, Deventer 1994
- International Chamber of Commerce (ed.), *The Arbitral Process and the Independence of Arbitrators*, Paris 1991
- Richard A. Kreindler, *Transnational Litigation*, Dobbs Ferry 1997
- Herbert Kronke / Patricia Nascimento / Dirk Otto / Nicola Christine Port, *Recognition and Enforcement of Foreign Arbitral Awards: A Global Commentary on the New York Convention*, 2010
- Julian Lew / Loukas Mistelis / Stefan Kröll, *Comparative International Commercial Arbitration*, The Hague 2003
- William W. Park, *Arbitration of International Business Disputes – Studies in Law and Practice*, Oxford 2006
- Jean-Francois Poudret / Sebastien Besson, *Comparative Law of International Arbitration*, 2<sup>nd</sup> ed. 2007
- Alan Redfern / Martin Hunter, *Law and Practice of International Commercial Arbitration*, 5<sup>th</sup> ed., London 2009
- Christoph Scheuer, *Commentary on the ICSID Convention*, Cambridge 2001
- Hans-Patrick Schroeder, *The Lex mercatoria arbitralis*, 2007
- Rolf A. Schütze (ed.), *Institutional Arbitration*, 2013
- Robert A. Smit, *WIPO Arbitration Rules – Commentary and Analysis*, New York 2000
- Jeff Waincymer, *Procedure and Evidence in International Arbitration*, 2011

- Markus Wirth (ed.), **Best Practice in International Arbitration, Zurich 2006**

- Reinmar Wolff (ed.), **New York Convention, Munich 2012**

**In Romanian:**

**Tudor Chiuariu, Roxana Giurea, Arbitrajul intern si international, Buc, Universul Juridic, 2012**

**Marin Voicu, Arbitrajul; comercial, Jurisprudenta adnotata si comentata 2004-2014, Universul juridic, 2014**

**Titus Prescure, Radu Crisan, Arbitrajul comercia, Universul Juridic, 2010**

**[http://arbitration.ccir.ro/wp-content/uploads/2017/06/Reguli\\_de\\_procedura\\_arbitrala.pdf](http://arbitration.ccir.ro/wp-content/uploads/2017/06/Reguli_de_procedura_arbitrala.pdf)**