

Course title	Law and Business in a Cross-Cultural Context (Appropriate Dispute Resolution)				
Responsible person to enter grades	Itamochi Kengo, Alan K. KOH		開講区分	単位数	
			1st semester	1.0	
Numbering Code	J2MC611	Day・Period, etc.	Other(対面)	Timetable Slot Code	1J362

#### Lesson topic

The “Law and Business in a Cross-Cultural Context (LB3C)” series of courses focuses on how lawyers can resolve business disputes with a cross-border element through appropriate legal and non-legal mechanisms. This course ( “LB3C-ADR” ) aims to equip students with practical skills that can be deployed in the appropriate resolution of commercial disputes via international commercial arbitration.

LB3C-ADR can serve as a preparatory course for students interested in the Intercollegiate Negotiation Competition organised annually by Sophia University (INC Sophia) in November/December. INC Sophia (<https://www.nego.com.jp/eng/>) aims to bring together teams from universities in and outside Japan, and welcomes teams participating in English.

#### Lesson target

Through lectures, case studies, and practical exercises, students will develop the ability to resolve basic legal issues with reference to the UNIDROIT Principles of International Commercial Contracts 2016 (PICC), draft written memoranda setting out their arguments based on the PICC, and make oral arguments before a judging panel.

#### Syllabus and plan

The eight sessions (with tentative timings in JST and dates in parentheses) cover the following topics.

1. Day 1: Introduction to International Commercial Contracts (Apr 18 (Fri), 4th period 15:10-16:40)
  - a. Key provisions in the PICC
  - b. Resolving basic legal issues using the PICC
2. Day 1: PICC in Practice: Case Study 1 (Apr 18 (Fri), 5th period 17:00-18:30)
  - a. How to structure written submissions
  - b. Performance and Non-Performance
3. Day 2: PICC in Practice: Case Study 2 (Apr 22 (Tue), 3rd period 13:20-14:50)
  - a. Grounds for Avoidance
  - b. Remedies
4. Day 2: Introduction to Arbitration (Apr 22 (Tue), 4th period 15:10-16:40)
  - a. Basic elements of arbitration
  - b. Introduction to UNCITRAL Arbitration Rules
5. Day 3: UNCITRAL Arbitration Rules in Practice: Case Study 3 (Apr 24 (Thu), 3rd period 13:20-14:50)
6. Day 3: Oral Argument: Case Study 4 (Apr 24 (Thu), 4th period 15:10-16:40)
  - a. Watching and analyzing mini-mock arbitration proceedings
7. Day 4: Mini-Moot: Assessment (Jun 9 (Mon), 4th period 15:10-16:40)
8. Day 4: Mini-Moot: Assessment (cont' d); Conclusion (Jun 9 (Mon), 5th period 17:00-18:30)

Note that Sessions 7 and 8 take place about 7 weeks after Sessions 1-6. The topics and schedule may be slightly adjusted depending on the progress over the days.

## Evaluation method

Written Memorandum: 50%

Moot (Oral Presentation): 50%

Assessment 1 is an individual written memorandum of 7 pages (excluding cover page) written in English. Seven (7) days before Session 7, students must submit their draft memoranda by email to the instructor. After Session 7, students should revise their draft memoranda based on feedback (if any) from the instructor and submit the revised, final versions one week after Session 8 for final assessment.

The mark awarded will be mainly based on the revised, final version of the memorandum, although the draft version submitted before the moot (oral presentation) may be taken into consideration.

Students are encouraged to discuss their draft memoranda amongst themselves, but plagiarism is strictly prohibited. Memoranda must be submitted in either .doc, .docx, or .pdf formats (not Ichitarō or Google docs). Times New Roman font size 12 for main text (10 for footnotes) in single-spaced format with at least 2.5cm margins on A4 size is recommended as the default formatting. Written memoranda (drafts or final versions) must be sent to the instructor by email, with the student's name clearly indicated.

Assessment 2 is an individual mini-arbitration moot in English during Sessions 7 and 8. Students will make oral arguments based on their written memoranda and respond to an opponent's arguments and questions from the instructor (as the "arbitral tribunal") during the moot. Slide decks (Google slides, PowerPoint etc) and reading aloud directly from the memoranda are NOT allowed. Time allocated to each student to speak and answer questions will depend on the total class enrolment (~15 to 30 minutes).

## Evaluation baseline

With the method stated above, grades will be determined based on the extent to which students have achieved the course objectives.

Written memoranda (assessment 1) will be graded mainly on the quality of legal analysis; clarity of expression of ideas; organization (use of headings, etc); and quality of sources used and cited. OSCOLA, Bluebook, Chicago, McGill, AGLC, or any other legal citation format familiar to the student is acceptable. In-text citations are required. Perfect English fluency is not required or expected.

Generative AI tools are permitted provided a separate document (not counted in the main paper's page count of 7 pages) is provided explaining clearly and exhaustively: 1) the AI tool(s) used; 2) the inputs used to prompt the AI tools; 3) the AI-generated outputs; and 4) how the memorandum as submitted by the student differs from the AI-generated outputs. Any errors or inaccuracies generated by AI tools uncorrected before submission are strictly the responsibility of the student.

The moot assessment (2) will be graded on clarity of expression and quality of responses to questions and the opponent's arguments etc.

## Notice (include info. on related class)

Prior learning in Contract Law / Arbitration / Legal Analysis and Skills / Corporate Law / Business courses or their equivalent may be an advantage but is not required.

This course focuses on the practical aspects of arbitration - preparing written submissions and delivering oral arguments - rather than details on arbitration law or procedure in the academic sense. The applicable rules of substantive law in this course - PICC - are also different from the focus of the Vis Moot (the Vienna Sales Convention).

#### Review and preparation

Students are required to read the prescribed readings before each class. Additional readings and exercises will also be distributed for use in class.

Notetaking on personal computing devices is permitted.

While in-class participation is not assessed for the purposes of determining your final grade, participation is strongly encouraged. Students may be called by name to answer questions or share their opinions.

The use of dictionaries (paper or electronic) or other tools are permitted in class, but the use of any tool that records sound or images is prohibited unless expressly permitted and subject to specific conditions.

Kobe University requires 45 hours of study from students to award one credit, including both in-class instructions as well as study outside classes. Students are required to prepare for each class and complete the review after each class, depending on the respective class goals.

#### Office hour · Contact information

Contact details will be announced during the course.

#### Message for student

This course is for you if you have ever wondered, “how should I deal with commercial disputes involving my company/business through a legal process”, “what happens in an arbitration?” and “could I be a good advocate?” Your contributions based on your experiences - academic or professional, in or outside Japan - and opinions will make this class a worthwhile experience for all.

You are strongly encouraged to take this course together with “Law and Business in a Cross-Cultural Context (Negotiation)” .

For KIMAP graduate students who are considering participating in Sophia INC, please note that:

1. Participants with prior legal professional experience are required to disclose such experience, and they are held to a higher standard by the judges (i.e. the judging will be harsher).
2. The competition's November/December timing might be post-completion of KIMAP candidature.

#### Improvements in Teaching

N/A

#### Text

None; the prescribed readings in the syllabus and any additional material assigned in class will suffice.

## Reference Material

### (Mandatory)

UNIDROIT Principles of International Commercial Contracts 2016 (main text and official commentary)

(<https://www.unidroit.org/instruments/commercial-contracts/unidroit-principles-2016/> )

UNICTRAL Arbitration Rules (2010 onwards)

(<https://uncitral.un.org/en/texts/arbitration/contractualtexts/arbitration>)

### (Recommended)

Christian Twigg-Flesner, *Foundations of International Commercial Law* (Routledge 2022), ch 10 (UNIDROIT Principles of International Commercial Contracts) and ch 11 (Dispute resolution: international commercial arbitration)

Stefan Vogenauer (ed), *Commentary on the UNIDROIT Principles of International Commercial Contracts (PICC)* (2nd edn, Oxford University Press 2015)

Gary B Born, *International Arbitration: Law and Practice* (3rd edn, Kluwer Law International 2021)

Nigel Blackaby, Constantine Partasides, and Alan Redfern, *Redfern and Hunter on International Arbitration* (7th edn, Oxford University Press 2023)

## Classroom Language

English

## Keywords

Contract Law, Arbitration, Commercial Law, Business Law