

## **6238 - Risk Management in International Energy Projects**

2023 Fall Session  
Tuesdays from 5:30-7:30 pm  
RIVERO - 17881

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**Course Materials:** No book for the course. Course materials will be distributed electronically. Please note that modifications may be made to the course syllabus. Notice of such changes will be announced as quickly as possible in class and/or via email.

**Grading:** Students will be graded in three parts. First, there will be a student project. This portion of the course will count for 30% of the final grade. Second, 60% of the grade will be based on a final exam that will be comprehensive and will cover the entire course material. The final 10% of the final grade will be tabulated based on class participation/involvement. Attendance: We will take attendance. Half a grade drop for every two unexecuted absences. If you observe religious or cultural holidays that will coincide with class sessions or conferences, please let me know as soon as possible, so that we may discuss arrangements.

**Meeting:** Please contact me to schedule a meeting. I endeavor to be a resource to you and would like to regularly connect to answer any questions and help in any way possible.

**Accessibility and Accommodations:** If you experience barriers based on a disability (including any chronic or temporary medical or mental health condition), please feel free to reach out to me so that we may discuss options. If you require any support services, you may contact Ms. Samantha Ary, Academic Records Coordinator at [sary@central.uh.edu](mailto:sary@central.uh.edu) or 713-743-7466 or contact the Justin Dart, Jr. Student Accessibility Center (Dart Center) to learn more about academic accommodations and support that may be available. Students seeking academic accommodations must register with the Dart Center to ensure implementation of approved accommodations. Please contact the Dart Center by visiting the website: <https://uh.edu/accessibility/> or calling (713) 743-5400, or emailing [jdcenter@Central.UH.EDU](mailto:jdcenter@Central.UH.EDU)

**Chosen names and Preferred Pronouns:** I want to address each of you in a manner that corresponds to your identity. Please feel free to reach out to me if you want to make me aware of your chosen name or preferred pronoun or if you have concerns about how I or your classmates address you.

**Counseling and Psychological Services (CAPS):** can help students who are having difficulties managing stress, adjusting to the demands of a professional program, or feeling sad and hopeless. You can reach CAPS ([www.uh.edu/caps](http://www.uh.edu/caps)) by calling 713-743-5454 during and after business hours for routine appointments or if you or someone you know is in crisis. No appointment is necessary for the "Let's Talk" program, a drop-in consultation service at convenient locations and hours around campus.

**Diversity, Inclusion, and Wellness:** In this course, all students are welcome regardless of socio-economic status, age, race, ethnicity, disability, religion, national origin, veteran's status, sex, sexual orientation, gender identity, gender expression, political affiliation, marital status and other diverse identities. If you feel like your class performance is impacted in any way by your experiences inside or outside of class, please reach out to me. I want to be a resource for you. If you feel more comfortable speaking with someone besides me, Student Services is an excellent resource: 713-743-2182.

**Recording of Class:** Students may not record all or part of class, livestream all or part of class, or make/distribute screen captures, without advanced written consent of the instructor. If you have or think you may have a disability such that you need to record class-related activities, please contact the Justin Dart, Jr.

Student Accessibility Center. If you have an accommodation to record class-related activities, those recordings may not be shared with any other student, whether in this course or not, or with any other person or on any other platform. Classes may be recorded by the instructor. Students may use instructor's recordings for their own studying and notetaking. Instructor's recordings are not authorized to be shared with anyone without the prior written approval of the instructor. Failure to comply with requirements regarding recordings will result in a disciplinary referral to the Dean of Students Office and may result in disciplinary action.

Title IX/Sexual Misconduct: Per the UHS Sexual Misconduct Policy, your instructor is a “responsible employee” for reporting purposes under Title IX regulations and state law and must report incidents of sexual misconduct (sexual harassment, non-consensual sexual contact, sexual assault, sexual exploitation, sexual intimidation, intimate partner violence, or stalking) about which they become aware to the Title IX office. There are places on campus where you can make a report in confidence. You can find more information about resources on the Title IX website at <https://uh.edu/equal-opportunity/title-ix-sexual-misconduct/resources/>

UHLC Honor Code: applies to all aspects of the class. *You are responsible for knowing all Honor Code provisions and for complying with the Honor Code.* Please ask me if you have any questions regarding how the Honor Code's provisions apply to specific activities or situations related to my course. *Please note that it is an Honor Code violation to review the graded assignments distributed to, or written by, any of my students from prior years.*

## Course Syllabus

“Article” = Bishop, Dimitroff & Miles, *Strategic Options Available When Catastrophe Strikes the International Energy Project*

“Mandatory Reading” is intended to be used in class discussion

“Optional Material” to be discussed in class but will not be part of the final exam

One “make up” class at the end of the semester in the event that we have to miss a class, if the discussion runs over from one week to the next, or if a current topic comes up that the class would like to learn about.

DATE	TOPIC	ASSIGNMENT
Aug 22	<p><b><u>1. Overview of Issues related to International Service Agreements</u></b></p> <p>A. Class expectations B. Class breakdown C. International Energy Projects</p>	<p><b>Mandatory Reading</b></p> <p><i>Unexpected Killers of Your International Energy Deal</i></p>
Aug 29	<p><b><u>3. What Claims Can Be Brought?</u></b></p> <p>A. Analysis of sample construction contract types and allocations of risk</p> <p>B. Incoterms</p> <p>C. Introduction into Treaty Violations: Bilateral Investment Treaties, USMCA</p>	<p><b>Mandatory Reading</b></p> <p>Pages 1-8 of Article</p> <p><i>American Manufacturing &amp; Trading, Inc. v. Republic of Zaire</i>, ICSID ARB/93/1, 36 I.L.M. 153 1 (1997).</p> <p><b>Optional Reading</b></p> <p>USMCA: <a href="https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between">https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between</a></p>
Sept 5	<p><b><u>3. What Claims May Be Brought?</u></b></p> <p>B. Breach of Contract</p> <p>C. Letter of Credit Litigation</p> <p>D. Good Faith and Fair Dealing</p>	<p><b>Mandatory Reading</b></p> <p>Pages 9-14 of Article</p> <p><i>Nassar v. Florida Fleet Sales, Inc.</i>, 79 F. Supp. 2d 284 (S.D.N.Y. 1999).</p> <p><i>SRS Products Co., Inc. v. LG Engineering Co.</i>, 994 S.W.2d 380 (Tex. App.- Houston [14th Dist.] 1999, no pet.).</p> <p><b>Optional Reading</b></p>

DATE	TOPIC	ASSIGNMENT
		R. Doak Bishop, <i>The Duty to Negotiate in Good Faith and the Enforceability of Short-Form Natural Gas Clauses in Production Sharing Agreements</i>
Sept 12	<p><b><u>3. What Claims Can Be Brought?</u></b></p> <p>E. Interim Measures to Freeze Assets or Preserve Evidence</p> <p>F. Interim Measures (Courts vs. Emergency Arbitration)</p>	<p><b>Mandatory Reading</b></p> <p>Pages 14-22 of Article</p> <p>Rules 64 and 65 of the Federal Rules of Civil Procedure</p> <p><i>De Beers Consolidated Mines v. United States</i>, 325 U.S. 212,214-15 (1945).</p> <p><i>Deckert v. Independence Shares Corporation</i>, 311 U.S. 282 (1940).</p> <p><i>United States v. First National City Bank</i>, 379 U.S. 378 (1965).</p>
Sept 19	<p><b><u>4. What Forums are Available?</u></b></p> <p>A. International Arbitration</p>	<p><b>Mandatory Reading</b></p> <p>Pages 23-32 of Article</p> <p><i>National Oil Corp. v. Libyan Sun Oil Co.</i>, First Award of 31 May 1985,29 I.L.M. 565 (1990), Final Award of 23 February 1987,29 I.L.M. 601 (1990).</p> <p><i>A Practitioner’s Guide: An Overview of the Major International Arbitration Tribunals</i>. 3 S.C. J. Int’l. L. &amp; Bus. 21 (Fall 2006).</p> <p><b>Optional Reading</b></p> <p>ICSID Convention, Regulation and Rules can be found at: <a href="https://icsid.worldbank.org/rules-regulations/convention">https://icsid.worldbank.org/rules-regulations/convention</a></p> <p>ICSID International Facility Rules can be found at: <a href="https://icsid.worldbank.org/resources/rules-and-regulations/additional-facility-rules/overview#:~:text=The%20ICSID%20Additional%20Facility%20was,scope%20of%20the%20ICSID%20Convention">https://icsid.worldbank.org/resources/rules-and-regulations/additional-facility-rules/overview#:~:text=The%20ICSID%20Additional%20Facility%20was,scope%20of%20the%20ICSID%20Convention</a></p> <p>[Skim] ICC 2021 Arbitration Rules can be found at: <a href="https://iccwbo.org/dispute-resolution-services/arbitration/rules-of-arbitration/">https://iccwbo.org/dispute-resolution-services/arbitration/rules-of-arbitration/</a></p> <p>Skim ICDR International Dispute Resolution Procedures – Amended and Effective as of March 1, 2021: <a href="https://www.icdr.org/rules_forms_fees">https://www.icdr.org/rules_forms_fees</a></p>

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Sept 26	<p><b><u>4. What Forums are Available?</u></b></p> <p>A. International Commercial Arbitration</p> <p>B. Administrating Forums</p> <p>C. Enforcement</p>	<p><b>Mandatory Reading</b></p> <p>Pages 23-32 of Article</p> <p>1958 Convention on the Recognition and Enforcement of Arbitral Awards (the New York Convention) can be found at: <a href="https://www.newyorkconvention.org/english">https://www.newyorkconvention.org/english</a></p>
Oct 3	<p><b><u>4. What Forums are Available?</u></b></p> <p>D. Arbitrator Selection</p> <p>E. Clause Drafting</p> <p>F. BITs</p>	<p><b>Mandatory Reading</b></p> <p>Washington Convention</p> <p>Model BIT</p> <p>Sample Treaties</p>
Oct 10	<p><b><u>3. What Claims Can Be Brought?</u></b></p> <p>G. Force Majeure (case studies on COVID and Winter Storm Uri)</p>	<p><b>CLASS WILL RECEIVE PROJECT ASSIGNMENT</b></p>
Oct 17	<p><b><u>4. What Forums are Available?</u></b></p> <p>C. National Courts: Litigation in the United States</p>	<p><b>Mandatory Reading</b></p> <p>Pages 41-53 of Article</p> <p><i>Colorado River Water Conservation Dist. v. United States</i>, 424 U.S. 800 (1976).</p> <p><i>Turner Entertainment Co. v. Degeto Film GmbH</i>, 25 F.3d 1512 (11th Cir. 1994).</p> <p><i>Southwest Livestock &amp; Trucking Co., Inc. v. Ramon</i>, 169 F.3d 317 (5th Cir. 1999)</p> <p><i>Eastman Kodak Co. v. Kavlin</i>, 978 F. Supp. 1078, 1081 (S.D. Fla. 1997).</p> <p><i>Wilwa v. Royal Dutch Petroleum Co.</i>, 226 F.3d 88 (2d Cir. 2000), <i>cert. denied</i>, --- S. Ct. --- (March 26, 2001)</p>

<p><b>Oct 24</b></p>	<p><b><u>4. Interacting with Foreign Forums</u></b></p> <p>C. Obtaining Evidence Abroad and Proving Laws of Foreign Countries</p> <p>D. Enforcement of US Judgements Abroad</p>	<p><b>Mandatory Reading</b></p> <p>Bishop and Dimitroff, <i>International Litigation in Texas: Obtaining Evidence Abroad and Proving the Laws of Foreign Countries</i></p> <p><b>Optional Reading</b></p> <p>U.S. Code Title 28, Part V, Chapter 117, § 1782</p>
<p><b>Oct 31</b></p>	<p><b><u>5. What Parties Can Be Sued?</u></b></p> <p>A. Foreign Sovereigns &amp; State Enterprises</p>	<p><b>Mandatory Reading</b></p> <p>Pages 53-58 of Article</p> <p><i>Complaint of Sedco</i>, 610 F. Supp 306 (S.D. Tex. 1982).</p> <p>Foreign Sovereign Immunities Act 28 USC § 1603 can be found at: <a href="http://www4.law.cornell.edu/uscode/28/1603.html">http://www4.law.cornell.edu/uscode/28/1603.html</a></p> <p>Foreign Sovereign Immunities Act 28 USC § 1604 can be found at: <a href="http://www.law.cornell.edu/uscode/28/1604.html">http://www.law.cornell.edu/uscode/28/1604.html</a></p> <p>Foreign Sovereign Immunities Act 28 USC § 1605 can be found at: <a href="http://www.law.cornell.edu/uscode/28/1605.html">http://www.law.cornell.edu/uscode/28/1605.html</a></p> <p>Foreign Sovereign Immunities Act 28 USC § 1608 can be found at: <a href="http://www.law.cornell.edu/uscode/28/1608.html">http://www.law.cornell.edu/uscode/28/1608.html</a></p> <p>Foreign Sovereign Immunities Act 28 USC § 1609 can be found at: <a href="http://www.law.cornell.edu/uscode/28/1609.html">http://www.law.cornell.edu/uscode/28/1609.html</a></p> <p>Foreign Sovereign Immunities Act 28 USC § 1610 can be found at: <a href="http://www.law.cornell.edu/uscode/28/1610.html">http://www.law.cornell.edu/uscode/28/1610.html</a></p> <p>Foreign Sovereign Immunities Act 28 USC § 1611 can be found at: <a href="http://www.law.cornell.edu/uscode/28/1611.html">http://www.law.cornell.edu/uscode/28/1611.html</a></p>
<p><b>Nov 7</b></p>	<p><b><u>5. What Parties Can Be Sued?</u></b></p> <p>B. Bringing Claims Against Affiliates of Foreign Corporations</p>	<p><b>Mandatory Reading</b></p> <p>Pages 58-61 of Article</p> <p><i>Brunswick Corp. v. Waxman</i>, 459 F.Supp. 1222,1230 (E.D.N.Y. 1978).</p> <p><i>DeWitt Truck Brokers v. W Ray Flemming Fruit Co.</i>, 540 F.2d 681,687-688 (4th Cir. 1976).</p>
<p><b>Nov 14</b></p>	<p><b><u>5. What Parties Can Be Sued?</u></b></p> <p>C. Non-Signatory Affiliates in an</p>	<p><b>Mandatory Reading</b></p> <p>Pages 61-67 of Article</p> <p><i>Sunkist Soft Drinks, Inc. v. Sunkist Growers, Inc.</i>, 10 F.3d</p>

<b>DATE</b>	<b>TOPIC</b>	<b>ASSIGNMENT</b>
	<p>Arbitration</p> <p>D. Arbitration of Related Claims: Unified Contractual Scheme</p> <p>E. Political Risk Insurance: Overseas Private Investment Corporation</p>	<p>753, 757-58 (11th Cir. 1993), <i>cert. denied</i>, 115 S. Ct. 190 (1994)</p> <p><i>JJ Ryan &amp; Sons v. Rhone Poulenc Textile, S.A.</i>, 863 F.2d 315, 320-21 (4th Cir. 1988)</p> <p><i>Carlin v. 3V, Inc.</i>, 928 S.W.2d 291,294-97 (Tex. App. - Houston [14th Dist.] 1996, no writ).</p> <p><i>Deloitte Noraudit A/S. Deloitte Haskins &amp; Sells, US.</i>, 9 F.3d 1060, 1064 (2d Cir. 1993).</p>
<b>Nov 21</b>	<b>Group Presentations</b>	
<b>Nov 28</b>	<b>Review class / Catchup / Open topic</b>	
<b>Dec 5</b>	<b>Final Exam</b>	