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**Visiting Professor 2016 - VIP**  
Scuola di Giurisprudenza

**PRIVATE INTERNATIONAL LAW (special aspects)**

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These classes are to be understood as a complement to classes on Private International Law held in the International Law course. The first part of the class will be devoted to International Dispute Resolution. The second part will be devoted to Applicable Law. We will always look at international law (when it exists) and at the specific regional legal system of the European Union.

**I – International Dispute Resolution**

March 14, 2016 – Introduction to Dispute resolution

The different choices offered to economic actors in an international setting for conflict/dispute resolution.  
The reasons to choose one method over the other.

**Background reading:**

- ❑ C. Kessedjian, *Droit du commerce international*, PUF, 2013, pp. 437-444.

March 15, 2016 – Mediation

The specificities of mediation in comparison with arbitration and court proceedings. The European Law on mediation in general and particularly for consumer disputes.

**Mandatory readings:**

- ❑ Directive 2008/52/EC 21 May 2008 (under review by the European Commission);
- ❑ On this basis, students are expected to make an internet research and try to answer the following question: where is the European system going regarding mediation?

**Background reading:**

- C. Kessedjian, *Droit du commerce international*, PUF, 2013, pp. 445-456.

March 16, 2016 – Arbitration (1)

The validity of the arbitration agreement (formal validity and validity on the substance).

**For ALL classes on arbitration, students must bring with them:**

- ❑ The NY Convention of 1958;
- ❑ The UNCITRAL model law;
- ❑ French law No. 48 of 2011 (for students that do not read French, see the English translation by Catherine Kessedjian; available on the internet – New York Bar website: <http://www.nysba.org/workarea/DownloadAsset.aspx?id=22324> );
- ❑ The ICC Rules

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March 17, 2016 – Arbitration (2)  
The legality of the arbitration agreement – The arbitrability of the dispute *ratione materiae* and *ratione personae*.

March 21, 2016 – Arbitration (3)  
The effect of the arbitration agreement and its potential extension towards non signatories.

March 22, 2016 – Arbitration (4)  
The composition of the arbitral tribunal; the requirements for the arbitrator and the potential conflict of interests.

March 23, 2016 – Arbitration (5)  
The seat or place of arbitration. Difference between the two concepts. How to choose the place of arbitration? What are the consequences of the choice?

April 11, 2016 – Arbitration (6)  
The applicable law by arbitral tribunal. Differentiation between the law applicable to procedure, the *lex arbitri* and the law applicable to the substance of the dispute.

April 12, 2016 – Arbitration (7)  
The applicable law by arbitral tribunal. Public policy, lois de police, transnational public policy.

April 13, 2016 – Arbitration (8)  
The applicable law to the merits by arbitral tribunal. Comparison with the method used by national judges. The «direct» determination of the law on the merits.

April 14, 2016 – Arbitration (9)  
The award: setting aside, recognition and enforcement.

April 18, 2016 – Arbitration (10)  
Arbitration and European Law

**Mandatory readings:**

- ❑ Regulation B1 1215/2012;
- ❑ ECJ case law: case C-190/89, *Marc Rich* (paras. 18 and 29); case C-391/95, *van Uden* (paras. 22-25, 34, 48); case C-126/97, *Eco Swiss* (paras. 36-37, 40-41); case C-168/05, *Mostaza Claro* (para. 39); case C-185/07, *Allianz v. West Tankers* (paras. 26-34); case C-536/13, *Gazprom* (paras. 41 ff.).

**Background readings:**

- ❑ C. Kessedjian, «*Le Règlement 44/2001 et l'arbitrage*», Rev. Arb., 2009, p. 699 et ff.;
- ❑ C. Kessedjian, «*Arbitrage et droit européen: une désunion irrémédiable?*» Commentaire de l'arrêt *West Tankers*, Dalloz, 2009, p. 981-985;
- ❑ F.-X. Train, *Arbitrage et droit communautaire: La CJCE n'a pas dit son dernier mot*, Gazette du Palais, 2007, pp. 119-123;
- ❑ C. Consolo, *Van Uden e Mietz: un'evitabile Babele*, Il Corriere giuridico, 2002, pp. 30-35;
- ❑ A. Briggs, *Arbitration and the Brussels Regulation Again*, Lloyd's Maritime and Commercial Law Quarterly, 2015, pp. 284-288;

- ❑ F. Lefèvre, *Van der Haegen, Olivier: Arbitration and Brussels I Regulation: Before and After West Tankers*, Hommage à Guy Keutgen pour son action de promotion de l'arbitrage, Ed. Bruylant – Bruxelles, 2013, pp. 285-302;
- ❑ C. Consolo, *Brussels I Regulation, arbitration and parallel proceedings: a discussion of the Heidelberg proposal (in the light of West Tankers and Endesa)*, Sull'arbitrato: studi offerti a Giovanni Verde, Ed. Jovene - Napoli, 2010, p. 245-274;

April 19, 2016 – Arbitration (11)

The special case of investment arbitration.

**Students must read and bring with them:**

- ❑ The ICSID Convention
- ❑ The EU Proposal for a permanent court within the context of the TTIP negotiations (all the useful links and texts about the TTIP can be founded in the press release webpage: [http://europa.eu/rapid/press-release\\_IP-15-6059\\_en.htm](http://europa.eu/rapid/press-release_IP-15-6059_en.htm))

**A) General readings:**

- ❑ **(background)** C. Kessedjian (ed.), *Le droit européen et l'arbitrage d'investissement: European Law and Investment Arbitration*, Paris, Éd. Panthéon-Assas, 2011;
- ❑ **(background)** C. Kessedjian, «L'arbitrage comme mode de règlement des différends est-il remis en cause par le droit européen?», in *Le droit européen et l'investissement*, Paris, Editions Panthéon-Assas, 2009, pp. 107-121;
- ❑ **(mandatory)** K. Von Papp, *Clash of "Autonomous Legal Orders": Can EU Member State Courts Bridge the Jurisdictional Divide Between Investment Tribunals and the ECJ? A Plea for Direct Referral from Investment Tribunals to the ECJ*, *Common Market Law Review*, 2013, p. 1039–1082;

**B) On bilateral investment treaties between EU MS (mandatory):**

- ❑ ECJ case-law: cases C-205/06, C-249/06 and C-118/07 (the so-called BITs cases);
- ❑ Decision of the European Commission 2015/1470 of 30 March 2015 on State aid SA.38517 (a.k.a. "the Micula case");

**C) On EU jurisdictional system and its relationships with international court systems:**

- ❑ **(background)** B. Cortese, *A la recherche d'un parcours d'autoconstitution de l'ordre juridique interindividuel européen: essai d'une lecture pluraliste 50 ans après Van Gend en Loos et Costa contre ENEL*, in Cortese (ed.), *Studi in onore di Laura Picchio Forlati, Giappichelli*, Torino, 2014, p. 301-339;
- ❑ **(mandatory)** ECJ case-law; Op. 1/91; Op. 1/09; case C-196/09; Op. 2/13.

April 20, 2016 – National Court Proceedings (1)

Introduction. The difficulties to regulate internationally national Court proceedings. The work of the Hague Conference on Private International Law in the field (particularly notification and evidence). The special case of the law of the European Union. History and Structure of the Jurisdictional rules in the Brussels Regime.

**For ALL sessions on National Court Proceedings, students must read and bring with them Regulation EC 44/2001 and Regulation EU 1215/2012.**

April 21, 2016 – National Court Proceedings (2)

Choice of Court. Comparison between the 2005 Hague Convention and the Brussels regime.

**For this session students must read and bring with them** the 2005 Hague Convention on Choice of Court.

**Mandatory reading:**

- Case C-543/10, *Refcomp*.

April 26, 2016 – National Court Proceedings (3)  
Provisional and protective measures.

**Mandatory readings:**

- ❑ Note 10 prepared by Catherine Kessedjian for the Hague Conference in 1998, (to be found on the Hague Conference website)
- ❑ In addition, several cases of the ECJ are pertinent: case C-391/95, *van Uden* (paras. 22-25, 34, 48); case C-99/96, *Mietz* (paras. 53,56); case C-104/03, *Saint Paul Dairy*; case C-616/10, *Solvay*;

**Background reading:**

- Y. Donzallaz, *Les mesures provisoires et conservatoires dans les Conventions de Bruxelles et de Lugano: état des lieux après les ACJCE Mund, Mietz et Van Uden*, *Aktuelle juristische Praxis – AJP*, 2000, p. 956-983;

April 27, 2016 – National Court Proceedings (4)  
Exclusive jurisdiction (particularly for intellectual property disputes and companies)

**Mandatory readings:**

- ECJ case-law: case C-4/03, *GAT*; case C-539/03, *Roche*; case C-144/10, *BVG*.

April 28, 2016 – National Court Proceedings (5)  
Jurisdiction in B2B Contract: the default rule.

**Mandatory readings:**

- ECJ case law: case C-548/12, *Marc Brogsitter*; case C-47/14, *Holterman Ferho*; case C-9/12, *Corman-Collins*; Case C-19/09, *Wood Floor*.

May 9, 2016 – National Court Proceedings (6)  
Jurisdiction in Tort (particularly for internet disputes).

**Mandatory readings:**

- ECJ case-law: case 21/76, *Bier c. Mines de Potasse d'Alsace*; case C-68/93, *Fiona Shevill*; case C-360/12, *Coty Germany*; case C-387/12, *Hi Hotel*; case C-441/13, *Pez Hejduk*; case C-170/12, *Peter Pinckney*; case C-173/11, *Football Dataco*; C-523/10, *Wintersteiger*.

May 10, 2016 – National Court Proceedings (7)  
Jurisdiction in Tort: The specific example of torts in violation of human rights by transnational corporations.

**Mandatory readings:**

- ❑ ILA Sofia Resolution 2012 can be found on [www.ila-hq.org](http://www.ila-hq.org), committees, Former committees, Committee on international litigation in the interest of the public;
- ❑ The *Kiobel* case by the Supreme Court of the USA.

## **II – Applicable law**

May 11, 2016 – A-national rules and *lex mercatoria*  
Definition. The special status of those rules in arbitration. The battle over those rules when preparing the Rome I Regulation.

**Mandatory readings:**

- ❑ European Commission proposal for Regulation Rome I (2005): Article 2 and the corresponding provision in the Preamble.

**Background reading:**

- Kessedjian C., *Droit du commerce international*, PUF, 2013, pp. 80-87.

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May 12, 2016 – Applicable law to contracts

B2B contracts and the special case of the weaker party. The 2015 Hague Principles.

**Students must read and bring with them:**

- Text of the Hague Principles;
- Regulation Rome I.

May 23, 2016 – Applicable law to torts

The special case of human rights violations.

**Students must read and bring with them:**

- ❑ Regulation Rome II;
- ❑ Sofia ILA Resolution of 2012 already mentioned for class of 10 May.

May 24, 2016 – Applicable law to companies

The attempts to deal with this issue internationally. The European paradox.

**Mandatory readings:**

- ❑ Article 54 of the TFEU;
- ❑ ECJ case-law: case 81/87, *Daily Mail* (paras. 23-29); case C-212/97, *Centros* (paras. 27, 39); case C-167/01, *Inspire Art*; case C-203/08, *Uberseering*; case C-2010/06, *Cartesio*; case C-370/10, *Vale* (paras. 30-33).