UNIVERSITÀ
DEGLI STUDI DI MILANO-BICOCCA

COURSE SYLLABUS

Diritto dell'Arbitrato Interno e Internazionale

1819-4-A5810179

Learning objectives

Providing students with the general rules governing the arbitration proceeedings, taking into account both the national and the international experience, the course – ideally a second step of the “procedural legal education” taught in the civil procedure class – offers a deep knowledge of one of the most important alternative dispute resolution means (A.D.R.).

Contents

The course deals with the rules of arbitration in the Italian system and the examination of the different models of arbitration.

The crisis of the general jurisdiction has in effect facilitated the demand for ADR, within which arbitration takes an important place.

The first part of the course is based on the examination and comparison of different institutions, similar to arbitration (such as “transaction”, “negotiation of assessment” (“negozio di accertamento”), “arbitraggio”, “blank cheque” (“biancosegno”), “expert resolution” (“perizia contrattuale”), mediation: in other words all the different types of Alternative Dispute Resolution).

The second part of the course concerns the principal kinds of arbitration as expressed in Italian law, such as internal and international ritual arbitration, and free arbitration, which is a particular kind of protective measure typical of our legal system.

The phenomenon is interesting from the point of view of both its systemic and dynamic aspects, because it represents an exemplary vantage point from which to understand the huge breadth of the reality of the 'process', in comparison with the essence of the ordinary jurisdiction, and consequently to question the principles and forms of the process which can in practice be applied also to arbitration.

Particular attention will be dedicated to standard forms, being the internal ritual arbitration, the irritual or free arbitration (which represents a very particular form of protection - in its origins and its contents - of our system, unknown in other legal systems), and corporate arbitration.

Finally, from a different approach, the course will examine the phenomenon of arbitration in the international space and the various aspects of the dissemination of awards between legal systems (recognition and execution).

Detailed program

General notions. Definition and origins of arbitration. Arbitration as a form of alternative dispute resolution compared to ordinary jurisdiction. Differences between Arbitration and similar institutions: “transaction”, “negotiation of assessment” (“negozio di accertamento”), “arbitraggio”, “blank cheque” (“biancosegno”), “expert resolution” (“perizia contrattuale”).

The A.D.R. (Alternative Dispute Resolutions). In particular, Mediation and the d.lgs. 28/2010 law.

Different models of arbitration. "Ritual" arbitration and “free” arbitration. "Negotiated" arbitration and ad hoc arbitration. Legal arbitration and equitable arbitration. Internal arbitration and foreign arbitration. Optional and obligatory arbitration.

Ritual arbitration. Constitution of the arbitration process. The specific precondition of arbitration: the agreement to arbitrate and its different types (compromise, compromise clauses and the agreement to arbitrate in non-contractual contexts). Objective limits (non-arbitrable disputes). Limits and subjective matters in the agreement to arbitrate. Forms and regimes of the validity of the agreement to arbitrate.

Arbitrators. Number of arbitrators (the problem of multiple arbitration). Requirements for being an arbitrator. Nomination of arbitrators and their substitution. The relationship between the mandate and the contract of the arbitration. Rights and duties of arbitrators. Impartiality and recusion of arbitrators.

The proceedings. The seat (location) of the arbitrator. The "jurisdiction" to arbitrate. Formal rules as to how the proceedings move along. The request for arbitration and its effects. The variation of the thema decidendum. Orders relating to multiple parties (multi-party actions and joining proceedings). Relationship between arbitration and ordinary proceedings: connection, prejudiciality and pending proceedings. Interim/interlocutory matters. Disclosure/discovery. Crises in the proceedings (suspension, interruption and extinction). Arbitration and emergency measures/orders.

The award. Timing for the pronouncement and procedure of the deliberation, drafting and communication of the award. The criteria of judgment. Awards which are not definitive. The nature of the award. The filing of the award and its effects.

Ways of challenging awards. The "typical" system according to which a ritual award is impugned. Challenge for nullity. Revocation. Opposition by a third party(ies). Correction of the award.

Irritual arbitration. Forms and effects of the agreement to arbitrate. The procedure and the rules applicable to it. The award and its effects. Impugning the award.

Foreign arbitration. Hierarchy of sources. The effectiveness in Italy of foreign awards. The circulation of awards.

During the course there will be source research exercises and discussions of the problems in arbitration. There will also be a competitive seminar including a simulation of an arbitration

Prerequisites

Students are required to know the general principles of the italian civil law and procedure, in accordance with the prerequistes as provided by the Law Department.

Teaching methods

Lessons; moot arbitration.

Assessment methods

Ora exam

Textbooks and Reading Materials

For attending student

1) Thorough knowledge of articles 806 and following of the c.p.c.

2) Notes and materials from the course lessons.

For not attending student

1) Thorough knowledge of articles 806 and following of the c.p.c.

2) Verde, Lineamenti di diritto dell’arbitrato, Giappichelli, last edition

Bove, La giustizia privata, Cedam, last ed.