# Mediation and Arbitration Law

## Prof. Antonino Barletta

***COURSE AIMS AND INTENDED LEARNING OUTCOMES***

The course aims to provide students with an in-depth knowledge of arbitration and the main alternative tools for dispute settlement in the field of civil and commercial law offered by internal rules, also in the light of the evolutionary trends of legislation in this field, the latest developments from the point of view of case law, and the different reforms of proceedings.

At the end of the course, students will be able to identify and appreciate in detail the specificities of arbitration and the alternative tools for dispute settlement in relation to civil proceedings, acquiring the specific ability to understand when the use of these tools is possible and necessary instead of asking for the judicial protection provided by government bodies, with a focus on the use of the latest IT technologies in arbitration and the alternative tools for dispute settlement.

***COURSE CONTENT***

Arbitration, conciliation, mediation pursuant to Legislative Decree no. 28 of 4 March 2010 and assisted negotiation, as reformed by Legislative Decree no. 149 of 10 October 2022, implementing Law no. 206 of 26 November 2021. General concepts. Similar proceedings; settlement, deed determining legal certainty, dispute resolution, signed blank document, expert determination. Electronic arbitration and mediation. *ODR* (*On-line Dispute Resolution*).

Binding arbitration.

- The arbitration agreement and the arbitration clause. The structure and the validity of the arbitration agreement. Its limits. The circulation of the arbitration agreement.

- The arbitrators. The proceeding. The seat of the arbitration. The request for arbitration and its effects. The relationships between arbitrators and the judges of ordinary courts. Multi-party arbitrations. Preliminary investigation. The unusual aspects of a proceeding (suspension, interruption, and termination). Precautionary protection.

- The arbitration award. The nature of the arbitration award. Partial and non-final arbitration awards. The deliberation, drafting, and communication of arbitration awards. The filing of the arbitration award and its effects. Appeals.

Informal arbitration.

- The structure and the effects of the informal arbitration agreement.

- The proceeding and the applicable rules.

- The arbitration award and its effects.

- Remedies.

***READING LIST[[1]](#footnote-1)***

The exam will be based on lecture notes and the teaching material provided during the course.

In order to prepare the exam, non-attending students must study the following texts:

Mandrioli-Carratta, *Diritto processuale civile,* vol. III, last edition, only Chapters VIII and IX. *(Purchase from VP*)

Carratta, *Le riforme del processo civile,* Turin, 2023,only Chapter IV, paragraphs 10-20 and Chapter VI, paragraphs 10-33.

Further teaching material on arbitration law will be made available on Blackboard.

***TEACHING METHOD***

Frontal lectures in class. In order to get a better understanding of the lectures, students are invited to study in advance the topics covered by the sections of the textbook listed on Blackboard.

***ASSESSMENT METHOD AND CRITERIA***

The exam may be different for attending and non-attending students.

Regardless of their preferred assessment method, and according to the instructions provided below, students will have to demonstrate that they have acquired the basic concepts and the main issues implied in the discipline of this subject, and that they are able to use meaningful arguments to propose possible solutions for the situations presented during the exam, showing adequate critical thinking skills while organising the exposition of the topics explained in class or learned through the study of the textbooks indicated in the reading list, and using an appropriate terminology.

- Attending students will have the possibility to take an interim test aimed to assess the knowledge they have acquired after the first half of the lectures of the semester. Further information on the assessment method for the interim test will be promptly notified during the course. If possible, the interim test will consist in a written exam (duration: two hours) based on an open-ended question that will allow students to find connections between different arbitration law institutions. For their answer, students will be given a mark expressed in letters (A=30-27/30; B= 26-24/30; C= 23-21/30; D= 20-18/30), that will contribute to the definition of the final mark expressed in thirtieths. The students who pass the interim test will be exempted from studying the corresponding part of the course content for the final exam, but this will be possible only for one year starting from the interim test. The final assessment will consist in an oral exam, where students will get a mark, expressed in thirtieths, resulting from the average calculated with the interim test. Those who do not intend to make use of the mark obtained in the interim test nor the relative partial reduction of the study material for the final exam, will be allowed to take the oral exam following the instructions below for non-attending students.

-  Non-attending students will have to take an oral exam on the whole course content, according to the reading list mentioned above.

***NOTES AND PREREQUISITES***

Students are expected to have a basic knowledge of the key concepts of civil procedural law. Therefore, those who have not taken the corresponding exam yet are strongly invited to contact the lecturer in order to get useful information that will allow them to properly attend the course.

Students must refer to updated legal texts to study the subject. Students are expected to be informed about possible amendments to laws and regulations that may be made during the year and that will be communicated through Blackboard or with a notice published on the teacher’s personal page (http://docenti.unicatt.it/ita/antonino\_barletta/).

Information on office hours available on the teacher's personal page at http://docenti.unicatt.it/.

1. The textbooks indicated in the reading list can be purchased at UCSC libraries or from any other reseller. [↑](#footnote-ref-1)