

# International Trade and Investment Law

**Elective  
Past  
Papers**

LL.B. IV





# **GHAQDA STUDENTI TAL-LIĠI**

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2020/2021

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## ABOUT GhSL

Għaqda Studenti Tal-Ligi (The Malta Law Students' Society) is a faculty-based, non-profit organisation at the University of Malta that represents all law students within the Faculty of Laws.

The organisation plays a pivotal role in law students' academic and social life at the University of Malta. The organisation has also been responsible for publishing the prestigious *Id-Dritt*, and the *GhSL Online Law Journal*.

Moreover, GhSL boasts its own Thesis Library, located at the GhSL office in the Faculty of Laws. Additionally, GhSL is the only law organisation responsible for the distribution of authoritative law notes and past papers.

For further queries on this set of notes, as well as any other, please feel free to contact our **Resources Officer** at [resources@ghsl.org](mailto:resources@ghsl.org).





## Advice from an Alumna

By Dr Priscilla Mifsud Parker

The law course is a long journey, but one that, if well-travelled, will lead to beautiful destinations. In an industry which is today attracting many young individuals looking to develop their career in law, it is important to stay ON the beaten track and remain focused. It may go without saying that it is of great importance for all students to attain good academic grades, to be dedicated to their work, as well as to be determined in this highly-competitive industry in order to fulfil their dream of becoming lawyers one day. However what is crucial is that as students and later on as professionals we are innovative by being sensitive to the changes around us. These changes might be political, economic, environmental, socio-cultural or others; what is for sure is that they all have an impact on the profession of a lawyer. We are members of a dynamic profession which is very sensitive to its surroundings. The type and 'genre' of advice which is required from us is all affected by what is being experienced by the receivers of this advice.

Work experience is considered as a vital part of the staple diet of any prospective lawyer in order to put into practice and refine the knowledge gained from the theoretical reality of the lecture halls and lawbooks into the skills required for a successful career in law. An internship will not only show future recruiters that you have a genuine interest in pursuing a career in this sector, but that you have the practical knowledge and skills to succeed in your role.

Here are some personal suggestions that I feel helped me during my journey:

### 1. *Being Ambitious*

A powerful trait in any competitive industry, ambition will help you in your law course, in your career as a lawyer, as well as in your life. Whilst the law course can be quite intimidating and challenging, an ambitious individual who is dedicated to learning new things has the potential to understand and realize long-term goals. Do not view the journey as one whole insurmountable mountain but focus on the next small goal and once achieved move on to the next and goal by goal you will reach your final target point.

In this respect, gaining valuable work experience through an internship is an important step taken by an ambitious young lawyer who wants to attain certain skillsets, and remain a step ahead of his/her peers. By being inquisitive, analytical and humble enough to accept guidance and mentoring one is guaranteed a fruitful experience in a law firm. It is also not only a means to start focusing on the direction of your career and to build upon your chosen path, but will undoubtedly expose you to the international world. This is crucial, as most of the traditional legal sectors have been intertwined with new areas of legislation and all these together now present much more opportunity for intra-jurisdictional work.

### 2. *Networking*

By engaging with counterparty students abroad and in international fora one gains an insight into another reality and is exposed to different cultures, ways of communicating and is able to bridge



the differences between parties to a mundane discussion which will eventually become a transaction or a major project in professional life.

### *3. Organisational Skills*

Organisation is key in any industry. Good organisation skills always stand out to a recruiter when considering potential applicants. Such skills can be obtained by gaining experience either through organising one's own work, study plan, student events or cultural/philanthropic events.

Going hand-in-hand with this, is having a study plan. By planning your studies ahead, one will have a sufficient amount of time to meet all the demands, while also being able to participate in productive outside activities. Reviewing notes or case briefs before class can also help you follow and participate in class discussions better, whilst following case-law allows you to apply them for specific situations. In view of the amount of material involved summarising and carving out the most crucial points is essential to then build your argument in papers.

### *4. Taking your own class notes*

It is always important to take down your own notes as laws are always evolving and passed-down notes would provide the context but are not ideally used for the detail. Researching the particular topic and comparing Malta's law with that of other jurisdiction gives one a completely different outlook and commenting on these variances in an exam paper, dissertation or assignment would distinguish one student from another. Not to be overlooked are also the consultation papers, commentaries and other official public documents that are issued by local authorities from time to time on different areas of law and industry. Being abreast of what is happening in industry will help putting the particular law or regulation in context.

### *5. Participation*

Participation is a main element of the learning process. Being actively involved during seminars and lectures and participating in legal debate sessions, mock trial competitions and moot courts are essential in order to improve your persuasive and presentation skills. If you find this very difficult (all of us have different characters and traits), then try to focus on participation in other events which will expose you to public speaking starting off in smaller groups in a more familiar environment and trying out new experiences and larger audiences as you go along.

### *6. Practice is the key to success*

This leads us to our next point – practice. Attaining good grades is undoubtedly an important part of the law course, however, in themselves, they are not enough to show that you have substantial material to succeed. Working within a law firm introduces you to the world of work, and allows you to gain specific industry-related skills which one will only ever be able to learn in a workplace setting.

Work experience can provide you with valuable insight which will help you decide what your career aspirations are and in which areas you would like to further delve into.

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UNIVERSITY OF MALTA  
FACULTY OF LAWS  
LL.B. HONS. 4th YEAR & LLD I YEAR  
JANUARY 2016 EXAMINATIONS

**CML4015 – International Trade and Investment Law**

**DATE:** Friday 15th January, 2016

**READING TIME:** 10.00AM to 10.05AM

**DURATION OF EXAMINATION:** 10.00AM to 12.05PM

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**INSTRUCTIONS TO STUDENTS:**

Answer ONE question from Section 1 and ONE question from Section 2. Each question carries equal marks. Each section to be answered on a separate script.

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**Section 1 – International Trade Law**

1. The World Trade Organisation's dispute settlement system provides for a two-instances system of adjudication. Discuss the main provisions of the World Trade Organisation's "*Understanding on Rules and Procedures Governing The Settlement Of Disputes*", focusing particularly on the composition and procedures of the Panel and the Appellate Body.

Or

2. The *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (Anti-dumping) and the *Agreement on Subsidies and Countervailing Measures* (Anti-subsidy) constitute the World Trade Organisation's response to unfair trade practices. Outline concisely the main elements of these agreements, in particular the investigation procedures leading to establish that illegal dumping and subsidies are taking place.

**UNIVERSITY OF MALTA**  
**FACULTY OF LAWS**  
**LL.B. HONS. 4<sup>th</sup> YEAR & LL.D YEAR I & II**  
**SEPTEMBER 2016 EXAMINATIONS**

**EXAMINATION:** CML4015 – International Trade and Investment Law

**DATE:** Friday 2<sup>nd</sup> September, 2016

**READING TIME:** 10.00AM to 10.05AM

**DURATION OF EXAMINATION:** 10.05AM to 12.05PM

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**INSTRUCTIONS TO STUDENTS:** Answer **ONE** Question from Section 1 **and** **ONE** Question from Section 2. Each question carries equal marks. Each Section is to be answered on a separate script.

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**Section 1 – International Trade Law**

1. Analyse the main provisions of the General Agreement on Tariffs and Trade (GATT), in particular the Most-Favoured-Nation (MFN) principle and the National Treatment principle.

Or

2. The General Agreement on Trade in Services (GATS) is a multi-lateral framework of principles and rules regulating trade in services. Discuss.

## **Section 2 – International Investment Law**

1. Comment on the type of provisions one would expect to find in:
  - a) a Bilateral Investment Treaty; and
  - b) in a Joint Venture Agreement.

**Or**

2. Describe some of the incentives that have been provided through Maltese legislation over the years for the purpose of promoting investment and economic growth.



**UNIVERSITY OF MALTA**  
**FACULTY OF LAWS**  
**LL.B. HONS. 4<sup>th</sup> YEAR**  
**JANUARY 2017 EXAMINATIONS**

**EXAMINATION:** CML4015 – International Trade and Investment Law

**DATE:** Monday 16 January 8.30am to 10.35am

**READING AND NOTING TIME:** 8.30am – 8.35am **DURATION OF EXAMINATION:** 8.35am to 10.35am

**Writing is permitted during the reading and noting time**

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**INSTRUCTIONS TO STUDENTS:** Answer **ONE** Question from Section 1 **and** **ONE** Question from Section 2. Each question carries equal marks. Each Section is to be answered on a separate script.

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**Section 1 – International Trade Law**

The World Trade Organisation's General Agreement on Trade in Services (GATS) consists of general rules for international trade in services. Discuss with reference to the main provisions of the GATS. **(100 Marks)**

**Or**

The World Trade Organisation's dispute settlement process entails four main stages: consultations, panel proceedings, appellate review proceedings and implementation/enforcement. Analyse these four main stages with particular reference to the Panel and Appellate Body proceedings. **(100 Marks)**

**Section 2 – International Investment Law**

1. Would you consider a joint venture to be a *sui generis* contract or a form of partnership? Can international comparative law shed any light on the legal nature and concept of joint venture? What legal consequences are likely to arise if a court were to classify a joint venture as a form of partnership? **(100 Marks)**

**Or**

2. How would you define the term “foreign direct investor” and what type of protection is normally accorded to these investors under a Bilateral Investment Treaty? **(100 Marks)**



UNIVERSITY OF MALTA  
FACULTY OF LAWS

EXAMINATION: CML 4015 INTERNATIONAL TRADE AND INVESTMENT LAW

DATE: TUESDAY 23<sup>rd</sup> JANUARY 2018 DURATION OF EXAMINATION: 8. 30AM TO 10. 35AM

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Answer ONE Question from Section A and ONE Question from Section B. Each question carries equal marks. Each Section is to be answered on a separate script.

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Section A – International Trade Law

1. The General Agreement on Tariffs and Trade (GATT) provides the rules for the elimination of discriminatory treatment in international trade in goods. Discuss and analyse the main provisions of the GATT, in particular the Most Favoured Nation treatment (MFN) obligation and the national treatment obligation (NT). (50 Marks)

Or

2. The Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Antidumping) and the Agreement on Subsidies and Countervailing Measures (Anti-subsidy) are two World Trade Organisation's agreements that respond to unfair international trading practices. The two Agreements lay down similar rules and also adopt similar investigation procedures for determining the subsidy/dumping, the injury to domestic industry and the causal link between the injury and the subsidy/dumping. Discuss and comment on the main provisions of these Agreements. (50 Marks)

**Section B – International Investment Law**

3. The Convention on the Settlement of Investment Disputes between States and Nationals of Other States, commonly known as the ICSID Convention, is the framework most frequently used to resolve disputes related to foreign direct investment through international conciliation or arbitration proceedings. Outline the structure of the International Centre for the Settlement of Investment Disputes with particular reference to its jurisdiction and the powers and functions of its different organs. **(50 Marks)**

**Or**

4. “International investment law is designed to promote and protect the activities of private *foreign* investors”. The nationality of the investor is key this body of law. Examine the various issues that may arise in determining the nationality of investors (both individuals and juridical persons) for the purpose of gaining access to the benefits under the relevant international investment treaties. **(50 Marks)**



**University of Malta**  
**Faculty of Laws**

**CML4015 International Trade and Investment Law**

**Date:** Monday 3<sup>rd</sup> September, 2018    **Duration of Examination:** 10.00am-12.05pm

**INSTRUCTIONS TO STUDENTS:** Answer **ONE** Question from Section A and **ONE** Question from Section B  
Each question carries equal marks. Each Section is to be answered on a separate script.

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**Section A – International Trade Law**

1. The General Agreement on Trade in Services (GATS) establishes the legal framework for international trade in services. Discuss by referring to the main provisions of the GATS, in particular the general obligation of the Most-Favoured Nation Treatment (MFN) and the specific commitments of market access and national treatment. (50 marks)

Or

2. Outline and discuss the World Trade Organisation's "*Understanding on Rules and Procedures Governing the Settlement of Disputes*", with particular focus on consultations, the Panel process, the Appellate Body process and the implementation /enforcement of recommendations and rulings. (50 marks)

**Section B – International Investment Law**

3. Compare and contrast the main corresponding provisions in any two (2) Bilateral Investment Treaties of your choice. (50 marks)

Or

4. Outline the structure of a standard joint venture contract and comment on the key provisions one expects to find within this type of agreement. (50 marks)

**University of Malta  
Faculty of Laws**

**January/February 2019 Examination Session**

**CML4015 INTERNATIONAL TRADE AND INVESTMENT LAW**

**Date:** Wednesday 6<sup>th</sup> February 2019

**Duration of Examination:** 10:00AM-12:05PM

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**INSTRUCTIONS TO STUDENTS:**

Answer **ONE (1)** question from Section A and **ONE (1)** question from Section B. Each question carries equal marks.

Each Section is to be answered on a separate script.

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**Section A – International Trade Law**

1. World Trade Organisation (WTO) law provides rules with respect to dumping and subsidisation, which practices are considered to be unfair trade practices.

Outline and discuss the main elements of the the WTO's Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-dumping) and the Agreement on Subsidies and Countervailing Measures (Anti-subsidy). (50 marks)

Or

2. The World Trade Organisation's Agreement on Trade in Services (GATS) is the first multilateral agreement which has established international rules for trade in services.

Analyse and discuss the main provisions of the GATS, in particular the modes of supply of a service, the general obligation of the Most Favoured Nation Treatment (MFN), exceptions, the specific commitments of market access and national treatment, the schedule of specific commitments and its modification. (50 marks)

**Section B – International Investment Law**

3. For an international tribunal to take cognizance of an international investment dispute there should at least be three elements involved: a foreign national, a foreign investment and an agreement extending the Tribunal's jurisdiction over the issue. Discuss. (50 marks)



Or

4. This question relates to discriminatory treatment of foreign investors and is divided in three parts. Please answer each part of the question separately:
  - a. Discuss the characteristics of non-discrimination clauses commonly found in International Investment Agreements (IIAs) (25 marks);
  - b. "For the purpose of establishing discrimination one must prove that an investor has been treated differently from another in like situations". Analyse the issues that may arise in determining this "likeness", illustrating your arguments by means of practical examples (20 marks); and
  - c. discuss how an IIA could extend protection to an investor in a pre-establishment situation (5 marks).



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FACULTY OF LAWS  
DEPARTMENT OF COMMERCIAL LAW  
FEBRUARY 2021 EXAMINATION SESSION

CML4015 International Trade and Investment Law

Tuesday, 9<sup>th</sup> February 2021

**Examination time: 10:00 – 12:00** + 15 extra minutes for uploading/downloading.

In case of difficulty during the examination (issues with exam paper, electricity power cut, internet connection, etc), you may contact the Faculty of Laws on the following:

**Telephone: 2340 3251; 2340 3204**

**Email: [laws@um.edu.mt](mailto:laws@um.edu.mt)**

*Please note that for immediate feedback it is best to communicate using telephone. Use email only if there are circumstances when the use of telephone is not possible.*

Keep your mobile phone handy since important communications during the examination may be communicated by the University through SMS.

By sitting for this examination, I declare that I am aware of the provisions of the regulations regarding conduct during examinations and I pledge to observe them.

Students may not obtain or seek to obtain advantage in an examination, or give or endeavour to give assistance to other students. Students who are found guilty of a breach of the University Assessment Regulations are liable to disciplinary action which may result in the examination being cancelled and other consequences.

Students may be subject to an additional oral examination to safeguard against plagiarism, collusion or other misdemeanours.

With regard to FLOWmulti examinations, you are advised to type directly on WISEflow (and not on MS Word intending to copy and paste on WISEflow).

With regard to FLOWassign examinations, you are advised to upload your work in PDF format.

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## INSTRUCTIONS TO STUDENTS:

Answer **ONE (1)** question from **Section A** and **ONE (1)** question from **Section B**.

Each question carries equal marks.

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### SECTION A – INTERNATIONAL TRADE LAW

1. “While a national treatment obligation prohibits discriminatory treatment of lawfully ‘imported products vis-à-vis like domestic products (inland parity), the MFN obligation restricts the right of members to discriminate ‘between and among like products of different origins’ (foreign parity)” (Mitsuo Matsushita et al).

Analyse, compare and contrast the elements of the Most Favoured Nation and National Treatment principles with respect to the General Agreement on Tariffs and Trade (GATT) and the General Agreement on Trade in Services (GATS).

2. The Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Antidumping) and the Agreement on Subsidies and Countervailing Measures (Anti-subsidy) both respond to unfair trade practices.

Explain the scope of these multilateral agreements, while identifying any similarities and contrasts in the main provisions of these agreements.

### SECTION B – INTERNATIONAL INVESTMENT LAW

3. On what basis would an international arbitration tribunal determine whether the expropriation of an investment by the host country be “legal” or “illegal”?

What consequences and remedies could a *legal* expropriation and an *illegal* expropriation lead to should the tribunal establish that the expropriation has taken place.

4. In what manner are the nature and extent of investment incentives granted by a host State conditioned by international treaty obligations? Explain your views by reference to Maltese legislation and Malta's international treaty context.