

UNIVERSITY OF PENNSYLVANIA
WHARTON SCHOOL
DEPARTMENT OF LEGAL STUDIES
SPRING TERM 2007

LGST 219 - DR. MAYER

LAW AND POLICY IN INTERNATIONAL BUSINESS

TEXT: Folsom, Gordon, and Spanogle, International Business Transactions. (St. Paul: West, 9th edition, 2006) and the Documents Supplement for this text. These are available in the bookstore, and copies will also be available at the reserve desk in the Lippincott Library.

Course Pack: The course pack (updated – not ones used earlier) will be available from Wharton Reprographics. It will be issued in parts. If current events warrant updating assignments, some new readings may be substituted for course pack assignments currently listed on the syllabus.

There is also a small paperback, International Business Transactions in a Nutshell, that is optional reading.

There will be many handouts distributed in class during the course of the semester. Students are responsible for making sure that they have a complete set. If missing a class, students must arrange to have a classmate pick up the handouts. The distribution of handouts will be recorded on the course webcafe. Students will be billed for these at the end of the semester.

ASSIGNMENTS

PLEASE NOTE: Class lectures and discussions will assume that you have already read the assigned materials. The order of topics is indicated but the dates given are only approximate to allow time for discussion and new developments. If past experience is any guide, we shall fall behind the scheduled dates, meaning that the last assignments listed here may not be covered in class. No test questions will be asked on any material not covered in class by the time of exams. In cases of questions about how far to read ahead, students may contact the professor.

Questions in the textbook can assist you in focusing on issues; answers do not need to be formally prepared unless a question has been specifically assigned for class discussion.

Jan. 8

Overview of Course.

Introduction to basic terms and concepts. Globalization and the legal framework for conducting international business. Coping with the layers of national and transnational, regional, and international laws.

TEXT: 2-45 as background reading.

Jan. 10-17

Current problems in handling international business disputes.

The current international scene: the complicated and problematic landscape facing those involved in business disputes. Forums and institutions for international dispute resolution and difficulties in forum selection. Can we say to what forum/institution an international business dispute should ideally be brought? International arbitration versus litigation in courts; the pros and cons. Evaluation of the policy implications of turning important business disputes over to private institutions.

TEXT: 1186-1215.

Course pack: Diversity or Cacaphony; Forum Shopping, Domestic and International (you should skim the first part for background; in class we shall discuss pp. 560-74); International Commercial Arbitration; Towards a Greater Depolitization of Investment Disputes (Section on ICSID only).

Jan. 22-29

Continuation of previous material. Introduction to jurisdictional problems.

When may a court decide a case involving a foreign defendant? Introduction to basic U.S. concepts of jurisdiction. When can foreign defendant be forced to show up in court? Attempts to standardize jurisdictional rules.

Course pack: Hvide.

Supplement: Selected provisions in the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards (known as the New York Convention) and the Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters (the EEC Brussels Convention).

TEXT: pp. 1234 (starting at part C)-1256.

Jurisdiction of international tribunals. Specific problems with getting the I.C.J. (the World Court) to hear cases involving international business. Selected concepts of jurisdiction from different countries.

Jan. 31-Feb.5

What law(s) apply/should apply to international business?

Perspectives on assigning corporate nationality to international businesses. Problems of deciding what country's law applies to an international business dispute when more than one country's law might apply. The ability of parties to a contract to decide in advance what law will cover any disputes. Choice of law and choice of forum clauses; when are they useful, and in what affects whether or not they are binding?

Course pack: Nationality cases; Corporate Nationality, Investment Protection Agreements; The Current Legal Framework of Sex/Gender Discrimination Law -- Sex, Allies and Bfoqs.

TEXT: 1216-1234, and consult as background the discussion of conflicts of laws principles on 1278-1290.

Supplement: UN Convention of Contracts for the International Sale of Goods (CISG) See articles 1, 7, 10. Convention on the Law Applicable to Contractual Obligations (EEC Rome Convention) See articles 1, 2, 3, 7. Hague Convention on Choice of Court Agreements.

Feb.7-12

Continuation of previous material. The enforceability of foreign judgments in local courts.

When will a business be liable for judgment rendered against it in a foreign court? When can it resist such enforcement and on what grounds?

TEXT: 1321-1391.

Supplement: Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters (EEC Brussels Convention)

Feb. 14-19

Do/should uniform standards govern operations of international businesses, or should they follow local standards?

To what extent can international businesses "escape" strict environmental, health, labor, safety, and other regulations in their home countries by

taking their operations to loosely regulated markets overseas? Should the international legal system allow the race to the bottom? New risks of lawsuits in courts of OECD countries against international businesses based on harms they have caused overseas holding them accountable using international standards.

Should U.S. law govern liabilities arising from the activities of U.S. companies operating abroad? Special problems of recourse to U.S. forums to determine liability for harms and accidents caused overseas and forum non conveniens dismissals. The Bhopal accident litigation.

Attempts to standardize regulation of the transport and disposal of hazardous wastes, and US resistance to the Basel Convention.

TEXT: 1091-1122, 1256-1278.

Supplement: Alien Tort Claims Act and Torture Victims Protection Act.

Course pack: Binding Corporations to Human Rights Norms through Public Law Settlement; Commentary: The Basel Convention, Back to the Future; India's Toxic Landfills: A Dumping Ground for the World's Electronic Waste.

Feb. 21-26

Regulating foreign direct investment (FDI).

Various approaches to regulating incoming foreign investment, laws and related policies and how they shift in relation to political currents.

TEXT: 928-960, 967-976, 984-1004, 1152-1162; 1169-1183.

Supplement: North American Free Trade Agreement, Foreign Investment Law of the United Mexican States.

Feb. 28

TENTATIVE DATE FOR MIDTERM (The class may decide that a vote is needed to decide whether another date is preferable; the professor is open to changing the date.) Midterm will be taken during the time of the regular class period in the regular classroom.

Mar.12-14

Continuation of previous material. Dealing with expropriation risks in foreign investment.

Different types of expropriation of foreign-owned property. What are the applicable standards for deciding when such takings are legal? Types of insurance covering the special risks of expropriation of investments in emerging economies. Long-term development contracts. How to draft an investment agreement so as to maximize chances of getting to a neutral forum.

TEXT: 1122-1134, 1148-1151, 1162-1168.

Course pack:

An Evaluation of Current Legitimacy-based Objections to NAFTA's Charter 11; Creeping Expropriation and MIGA; Economic Development Agreements

Mar. 19-21

Legal problems facing in international business in disputes involving foreign governments and their agencies.

Barriers to bringing lawsuits against foreign governments and how to anticipate possible defenses. The doctrine of sovereign immunity. When can a foreign government claim legal immunity when sued by a private party? Problems of the U.S. Foreign Sovereign Immunities Act of 1976.

TEXT: 1135-1140.

Supplement: Foreign Sovereign Immunities Act

Mar. 26-28

Continuation of previous material. The act of state doctrine as currently applied in U.S. courts.

The impact of foreign relations concerns on U.S. litigation involving acts by foreign governments. How closely related are the policy concerns underlying sovereign immunity defenses and act of state defenses? Do the rules as they now stand make sense?

TEXT: 1140-1148.

Course pack: IAM V. OPEC.

April 2-4

Force majeure and frustration as excuses for non-performance of contracts.

Different national approaches to excusing parties for non-performance of contracts in specific circumstances. Special legal problems of suing state-run/state-related enterprises for breach of contract. To what extent can such enterprises be excused from contractual performance by acts of their own governments that prevent them complying with the terms of their contracts with foreign parties?

TEXT: 136-168.

Course pack: States and State-Controlled Corporations.

April 9-11

Patterns of extraterritoriality in the area of antitrust.

Issues that are raised when national economic regulation extends beyond a country's own frontiers. Extraterritorial applications of U.S. antitrust law and European competition law and responses to these. What are the policies behind such extraterritorial extension of economic regulation? Do we need a uniform international approach to regulating competition?

TEXT: 1290-1320.

Course pack: International Antitrust at the Crossroads; Global Antitrust and the Evolution of an International Standard; Extraterritorial Jurisdiction – European Responses.

Supplement: UK Protection of Trading Interests Order 1992; Order Requiring Persons in Canada to Give Notice

April 11

How far does the reach of SEC enforcement extend beyond U.S. borders?

Extraterritorial application of U.S. securities regulations in suits involving conduct by non-U.S. citizens or securities transactions in other countries.

Course pack: Recent Trends in SEC Regulation of Foreign Issuers: How the U.S. Regulatory Regime is Affecting the United States' Historic Position as the World's Principal Capital Market; International Law and Ramifications of the Sarbanes-Oxley Act of 2002.

April 16

Penalizing international business for corrupt overseas payments.

The U.S. policy of criminalizing questionable payments to foreign officials. The U.S. Foreign Corrupt Practices Act. Other responses to the problems of corruption/corrupt payments. New international and OECD initiatives and Transparency International.

The U.S. Foreign Corrupt Practices Act. Other responses to the problems of corruption/corrupt payments.

TEXT: 732-763.

Supplement: Foreign Corrupt Practices Act (as amended); UN Convention Against Corruption 2003; Convention on Combating Bribery of Foreign Public Officials (OECD).

April 18

Rules requiring international business to comply with economic boycott policies.

U.S. restrictions on exports. What policies underlie the restraints on U.S. exports and how effective have they been? What are the costs for U.S. business operations? Current issues.

TEXT: 668-703.

Supplement: Export Administration Act of 1979 (as amended) and Export Administration Regulations.

PLEASE NOTE: Our final exams in this course are always on the date and time and in the room scheduled by the University. This university wide scheduling system assigns final exams based on the day of the week and hour of the first class meeting of each course. Information on the date and time for the final exam is available on various Penn websites. The final exam room assignment is usually made during the last week of classes.