

**UNIVERSITY OF PENNSYLVANIA  
WHARTON SCHOOL  
DEPARTMENT OF LEGAL STUDIES AND BUSINESS ETHICS  
FALL TERM 2007  
LGST 219 SYLLABUS**

**LAW AND POLICY IN INTERNATIONAL BUSINESS**

**Professor:** Dr. Ann Mayer

**Office:** 661 Jon M. Huntsman Hall

**Office Hours:** Tuesday 3:00-4:15 and by appointment. Do not hesitate to telephone or e-mail to make an appointment outside regular office hours.

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**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. **OPTIONAL READING:** A paperback, International Business Transactions in a Nutshell.

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

**Assigned readings:** Class lectures and discussions will assume that you have already read the assigned materials. 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.

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**Handouts:** 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 should 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.

**Tentative date for the midterm:** The professor proposes that the midterm be on October 24. The class may decide that a vote is needed to decide whether another date is preferable. The professor is open to changing the date if it proves particularly inconvenient and if a majority of students can agree on another date.

**Final exam:** Our final exams in this course are always on the date and time and in the room scheduled by the University. This 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.

**Webcafe:** The professor will record what has been covered in class, announcements, and handouts distributed after every class in a file called class records.

## **TOPICS COVERED:**

The numbered sessions below will be unlikely to correspond to individual class meetings, and one session may spread over several class meetings. The topics listed will be covered in order, but the length of time that will be devoted to each topic could expand or contract, depending in part on the level of student interest and the length of class discussions. In cases of questions about how far to read ahead, students may contact the professor.

Unless our classes go unusually fast, most likely we shall not complete the full syllabus. No test questions will be asked on any material not already covered in class by the time of exams.

### **Session 1**

#### **Overview of Course.**

Introduction to basic terms and concepts. Distinctions between law and policy. 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.

### **Session 2**

#### **Current problems in selecting institutions to resolve international business disputes.**

Discussion of a sample problem illustrating generic legal questions raised by today's international business cases. Problems of selecting forums and institutions for international dispute resolution and strategies used in this area. The varieties of laws that can apply to international cases; why the law of the forum will not necessarily be used. Special features of the U.S. legal system will be emphasized.

International arbitration versus litigation in courts, with assessments of the pros and cons. Evaluation of the policy implications of privatizing the work of deciding important business disputes.

**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).

### Session 3

#### **Introduction to jurisdictional problems.**

What rules do courts refer to in deciding whether they can resolve an international business dispute? Introduction to basic U.S. concepts of jurisdiction. When can foreign defendants be forced to show up in court? Selected concepts of jurisdiction from different countries. Attempts to standardize jurisdictional rules. Jurisdiction of international tribunals. Specific problems with getting the ICJ (the World Court) to hear cases involving international business.

**Supplement:** Important 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 (known as the Brussels Convention).

**Course pack:** Hvide.

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

### Session 4

#### **What laws govern/should govern international business disputes?**

Approaches to deciding what country's law applies to an international

business dispute when more than one country's law might apply. Problems in assigning corporate nationality to international businesses. Potential advantages of being classed as a foreign corporation. Recourse to contracts to decide in advance what law will cover any disputes. Choice of law and choice of forum clauses – legal and policy dimensions.

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

## Session 5

### **The enforceability of foreign judgments in local courts.**

When will a business be liable for judgment rendered against it in an international arbitration or in foreign court? On what bases can such enforcement be resisted?

**TEXT:** 1321-1391.

**Supplement:** The New York Convention: Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters (the Brussels Convention)

## Session 6

### **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 moving operations to loosely regulated markets overseas? Should the race to the bottom be regulated – and, if so, how? What international legal standards should apply? New risks of lawsuits in OECD countries against international businesses based on harms they have caused overseas.

Special problems in using U.S. forums to determine liability for harms and accidents caused overseas. ATCA cases. Forum non conveniens dismissals. The Bhopal accident litigation and controversy.

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

**TEXT:** 1091-1122, 1266-1278.

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

**Course pack:** Binding Corporations to Human Rights Norms through Public Law Settlement (the section up to section III.A being required reading, the remainder optional reading); Commentary: The Basel Convention, Back to the Future; India's Toxic Landfills: A Dumping Ground for the World's Electronic Waste.

## Session 7

### **Regulating foreign direct investment (FDI).**

Various approaches to regulating incoming foreign investment; laws and related policies and how they have shifted in relation to changing political currents. The European Union and NAFTA systems. U.S. attitudes and the role of CFIUS. Recent controversies about CFIUS decisions.

**TEXT:** 928-960, 967-976, 984-1004, 1152-1183.

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

## Session 8

### **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? What level of compensation is owing? What is the current status of international law in this area? Types of political risk insurance programs. Long-term development contracts.

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

#### **Course pack:**

An Evaluation of Current Legitimacy-based Objections to NAFTA's Charter 11 (with the focus on the Myers and Metalclad cases, the rest being background reading); Creeping Expropriation and MIGA; Economic Development Agreements

Session 9      **Legal problems facing businesses suing foreign governments and their agencies.**

The doctrine of sovereign immunity. What rules determine whether a foreign government can claim legal immunity when sued by a private party? The U.S. Foreign Sovereign Immunities Act of 1976 and unresolved problems.

**TEXT:** 1135-1140.

**Supplement:** Foreign Sovereign Immunities Act

Session 10      **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. Controversies regarding the act of state doctrine. 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.

Session 11      **Force majeure and frustration as excuses for non-performance of contracts.**

Different national and international rules on excusing parties for non-performance of international contracts. Special legal problems of suing state-run/state-related enterprises for breach of contract.

**TEXT:** 136-168.

**Course pack:** States and State-Controlled Corporations.

Session 12      **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. The policies behind such extraterritorial extension of economic regulation. Do we need a uniform international approach to regulating competition?

**TEXT:** 1290-1307, 1314-1320.

**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

Session 13

**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.

Session 14

**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).

Session 15

**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.