

UNIVERSITY OF PENNSYLVANIA  
WHARTON SCHOOL  
DEPARTMENT OF LEGAL STUDIES  
FALL TERM 2009

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 identical to 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.

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 should arrange to have a classmate pick up the handouts. The handouts for each class will be recorded on the course webcafe.

**ASSIGNMENTS**

Class lectures and discussions will assume that students have already read the assigned materials. Please note that the order of topics is settled but the dates given are only approximate, as they will be influenced by the length of our discussions and potentially also by 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 already covered in class by the time of exams! Where questions arise about how far students need 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.

Sept. 9

**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.

Sept. 14-16

**Current problems in handling international business disputes.**

Discussion of a sample problem illustrating generic legal questions raised by international business cases. Forums and institutions for international dispute resolution and strategies used in forum selection and the varieties of laws that can apply. Special features of the U.S. legal system.

**TEXT:** 1186-1215.

**Course pack:** Diversity or Cacophony; 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).

Sept.21-23

**Continuation of previous material. Introduction to jurisdictional problems.**

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.

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 defendant be forced to show up in court? Attempts to standardize jurisdictional rules. 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.

**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).

**Course pack:** Hvide.

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

Sept. 28-  
Oct. 5

**Continuation of previous material. What law(s) apply/should govern international business disputes?**

Problems in assigning corporate nationality to international businesses. Problems in deciding what country's law applies to an international business dispute when more than one country's law might apply. 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:** 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.

Oct. 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 an international arbitration or in foreign court? On what bases can such enforcement be resisted?

**TEXT:** 1321-1391.

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

Oct.14-21

**Should uniform standards or local standards govern operations of international business?**

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 may apply? New risks of lawsuits in OECD countries against international businesses based on harms they have caused overseas.

Special problems of recourse to U.S. forums to determine liability for harms and accidents caused overseas. ATCA cases. Forum non conveniens dismissals of cases filed in US courts. The Bhopal accident litigation.

Attempts to regulate the international 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 – part up to section III.A being required reading, the remainder optional reading; Keeping Africa Out of the Global Backyard; In My Backyard: How Enabling Hazardous Waste Trade to Developing Nations Can Improve the Basel Convention's Ability to Achieve Environmental Justice; India's Toxic Landfills: A Dumping Ground for the World's Electronic Waste.

Oct. 26

**TENTATIVE DATE FOR MIDTERM** (The class may decide by majority vote that another date is preferable; the professor is open to changing the date.) The midterm exam will be taken during our regular class period in our regular classroom.

Oct. 28-  
Nov. 2

**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.

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

**Course pack:** The Committee on Foreign Investment and National

Securities Act of 2007.

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

Nov. 4-9

**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? 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 Chapter 11 – the focus to be on the Myers and Metalclad cases, the rest being background reading; Creeping Expropriation and MIGA; Economic Development Agreements

Nov. 11

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

The doctrine of sovereign immunity. What rules decide 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

Nov. 16-18

**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.

Nov. 23-25

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

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

**TEXT:** 136-168.

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

Nov. 30

**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:** 1290-1307, 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

Dec. 2

**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.

Dec. 7

**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).

Dec. 9

**International economic boycotts and anti-boycott laws.**

U.S. restrictions on exports. What policies underlie U.S. boycotts and anti-boycott laws, and how effective have they been? What are the costs? Current issues.

**TEXT:** 668-703.

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

**PLEASE NOTE THAT PENN SETS THE FINAL EXAM SCHEDULE:** 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.