

UNIVERSITY OF PENNSYLVANIA
The Wharton School
Department of Legal Studies and Business Ethics

International Human Rights and Globalization

LGST 224 – 401

LGST 524 -401

Mondays & Wednesdays 3:00 – 4:30 pm
Spring 2018 SYLLABUS

JMHH F65

Professor Janice R. Bellace

Office: 672 Jon M Huntsman Hall (672 JMHH / 6340)
Class times: Mondays and Wednesdays 3:00– 4:30 pm
Office Hours: Wednesdays 4:30 – 5:30 or call/e-mail to arrange a convenient time
Office Phone: 215-898-6820 (for appointments, call Laretta Tomasco at 215-898-1166)
TA Djavaneh Bierwirth djavaneh@wharton.upenn.edu
E-mail: bellace@wharton.upenn.edu (→ use LGST 224 in the subject line)

Goals of the Course

The course aims to provide students with the background to think critically about both the legal and policy implications of requiring business to comply with *international human rights law*. Students should come away from this course with a grasp of relevant international human rights principles, be familiar with typical scenarios where issues of human rights and globalization have been raised and the particular problems that these have presented.

This is a law course, and students will be expected to read some legal material. It is not a history course, but some historical information will be given so that students can understand the social and political context that shapes both perceptions of these problems, and the programs of institutions and groups that are pressuring companies to adhere to international human rights law. Differences between hard law, soft law, custom and generally recognized principles of law will be explored.

Substantive Focus

This course is primarily designed to familiarize students with human rights issues they may encounter once they are working for companies that engage in business across national borders. This includes both direct engagement and supply chain management.

The purpose of this course and the time constraint of a semester course dictate a selection of topics that excludes for the most part civil and political rights and those rights typically violated only by states (not companies). This course focuses on certain economic, social and cultural rights where the conduct of businesses may be implicated. In addition, this course focuses on those principles internationally recognized as “human rights.”

Course Format

A combination of lectures and discussions will be used. In a given class, students may be assigned to represent a certain side or debate a certain issue. In the latter part of the course, student teams will work on a project and will make a project presentation to the class. Timewise, the first half of the course is devoted to coverage of human rights treaties and conventions (in other words, “the law”). In the second half we consider how businesses encounter and respond to human rights issues.

Readings

Many of the assigned readings are in the public domain. Nearly all are available through Penn Libraries. URLs will be given when material on websites is assigned.

During the term, short “handouts” may be distributed via Canvas or distributed in class.

Grading*

Final grades will be done on a curve, based on the 100 point total that it is possible to achieve. The final grade will be calculated as follows:

- 40 points -- Midterm
- 20 points -- Student team project with required summary write-up
- 20 points -- Final Exam (take home)
- 20 points -- Class participation

* The above applies only to students enrolled in LGST 224 (not LGST 524 – See below).

Midterm in-class exam. There will be a closed-book in-class midterm exam worth 40 points. The exam will be mostly short-answer questions based on readings, lectures, class discussions. “Hypothetical” fact situations will be presented to test whether you can (1) recognize a human rights issue in a real life setting and (2) apply legal concepts to the facts and reason to a determination of whether there is a violation of hard or soft law.

Student Team Project. After spring break, you will work with a team to identify a topic that exemplifies a topic covered in the course; e.g., a company operating in a certain country that is accused of violating a specific human right. As a group, you will research this topic. The team will make a 15 – 20 minute presentation to the class. The team (as a whole) must send the slides used (if any) plus a two-page write up of the project to the instructor immediately after the presentation. [This enables the instructor to reflect more carefully on content, not simply presentation, in grading.]

Final Exam. This is a take home exam. It is due on May 1.

Short Assignments. In a few places in the syllabus you will note an assignment. These are highlighted “hand-in” and a very short assignment is indicated. They are designed to get you accustomed to going online and finding out a certain facts related to the labor market. You will be assigned a country (so that from the assignment the class can learn about many countries).

These are mandatory (on a pass-fail basis; in other words, if you don’t hand it in, your participation score will be 0 for that day). Similarly, there are class activities listed. If you are not in class, you can’t take part in the activity – which is why attendance is mandatory. [See scoring below.]

Class Participation. **Speaking out and contributing to the class discussion is important.** Likewise, **active listening** is important. You cannot actively participate in the class if you not present. As such, attendance is required. Any absence should be cleared with the professor or the TA beforehand. The TA will take attendance and will use the 1-2-3 point system (1 point for attendance, 2 for attending the class and participating, 3 for strong contribution in the class).

Policy on Electronic Devices. **The use of laptops or tablets is not permitted in class. Smartphones must be in silent/do not disturb mode.** All electronic devices should be kept in your pocket/backpack.

Experience and academic research have shown that using such devices in class lessens learning and greatly reduces active engagement in the class. [Research also shows that students who multi-task (that is, listen but also glance down at smartphones/laptops) remember less – even the next day.]

The slides used during class will be distributed on Canvas immediately after the class.

Graduate Students

Graduate students registered under the LGST 524 course number must make an appointment with the instructor to discuss what their requirements will be (usually, a term paper, on a mutually agreed topic.)

Topics and Assignments

Wednesday, January 10 -- No Class

Monday, January 15 – Martin Luther King HOLIDAY

Wednesday, January 17

Introduction

Concept of “Human Rights”
Globalization – a recent phenomenon?
International Law in Historical and Contemporary Perspective
Introductory case

Reading:

William Galston, “The Growing Threat of Illiberal Democracy”, WSJ, January 3, 2017
<http://www.wsj.com/articles/the-growing-threat-of-illiberal-democracy-1483488245>

Monday, January 22

*** Showing of the film “The Pianist” ****

→ *Class will not end until about 5:30 pm. All students are expected to be in the classroom to watch this film (regardless of whether you have seen the film before). Students who have another class at 4:30 pm **must** arrange with the instructor to see this film at another time.*

→ **In-class assignment** Note important dates (listed on the screen) and what happened on that day. Jot down instances where you think Wladyslaw Szpilman’s “human rights” were violated. Immediately after the film, look at your list and add items as you think of them. **KEEP** this list (you will need it for the Feb 1 assignment).

Wednesday, January 24

Introduction to international law regarding human rights

Introduction to international human rights concepts and frameworks that will be applied to future case studies. Topics will include: emerging custom and soft law; laws concerning business operations; distinguishing between civil and political rights, the so-called first

generation rights, and second and third generation rights, such as economic, social and cultural rights and the right to development.

Readings:

Universal Declaration of Human Rights (1948)
Fundamental Freedoms excerpt (re drafting of UDHR)

Eric Posner, "The Human-Rights Charade," Chronicle of Higher Education, Nov. 17, 2015
<http://chronicle.com/article/Peace-LoveGrandstanding/149961>

Tod Lindberg, "Hypocrisy Rules," book review of Eric A. Posner's, The Twilight of Human Rights Law (WSJ Dec, 16, 2014).

Monday, January 29

Wednesday, January 31

International law regarding human rights

What events led to the notion of human rights arising? What rights were seen to have been violated? What did the Universal Declaration of Human Rights aim to do? Who are the duty bearers?

Hand-in Review the list you made when watching the film. Now revise it by making reference to the UDHR where applicable. Hand in your list of Wladyslaw Szpilman's human rights that were violated 1939-1945.

Matthew Craven, International Covenant on Economic, Social and Cultural Rights, in An Introduction to the International Protection of Human Rights, eds. Raija Hanski and Markku Suksi (Turku/Abo, 1997) 101-123.

Monday, February 5

Economic Rights at Work and Labor Standards

What do people mean when they use the term "human rights"? Does it cover safety and health issues, or basic working conditions such as the length of the work day? Does the International Covenant on Economic, Social and Cultural Rights cover rights at work? How would these be enforced? The role of the ILO.

Readings:

The Triangle Fire, pages 11 – 21.

<http://m.dol.gov/shirtwaist/> U.S. Dept of Labor website gives some basic facts. Read "Aftermath."

Tanzeen Fire, Rana Plaza collapse

Fair Labor Standards Act (USA) <http://www.dol.gov/elaws/esa/flsa/screen5.asp>

Philip Alston and Ryan Goodman, International Human Rights, Text and Materials (Oxford: Oxford University Press: 2013): excerpt from chapter 4, Economic & Social Rights, pp. 277-287.

Hand-in by noon on Wednesday, Feb 7 the answers to the following two questions

(1) when your home country first regulated the length of the working day for factory workers, and

(2) when your home country first mandated that working women receive a maternity leave (that is, not risk being fired for being absent). Also, note the length of the leave at the current time, and state whether it is a paid maternity leave or unpaid.

Wednesday, February 7

Fundamental Human Rights and Rights at Work

The International Labor Organization and its “standard” setting role in establishing how rights connected to work are guaranteed. The mandate of the ILO and the ILO conventions affecting human rights.

Readings:

ILO Declaration on Fundamental Principles and Rights at Work

Monday, February 12

Wednesday, February 14

Children and Work

Who is a child? Differing notions of the age at which a person can work and types of work thought appropriate for young persons. Relevance of work prohibitions when schooling is not present. Religious views on appropriate activity for children.

Family enterprises and parental direction of a young person’s activity. Stages of economic development and mandated years of education.

Challenges in monitoring child labor and in taking measures to reduce the amount of child labor. Differing views on the ages at which young persons can work and in what types of work. Discussion of whether views are based on culture or whether views relate to the stages of economic development.

Documents to Read:

ILO Convention No. 138, Minimum Age (1973)

ILO Convention No. 182, Worst Forms of Child Labour (1999)

UN Convention on the Rights of the Child

CEACR Observation under Convention No. 182, Mauritania (December 2007).

CEACR Observation under Convention No. 182, United States (December 2001, December 2002).

Reading:

Child beggars thrive on Muslim holy season in Gulf states (Oct. 12, 2007)

Hand-in One paragraph stating the minimum school leaving age in your country (that is, up until what age is schooling compulsory). State the year that age was set (if there was a lower age previously, state what the lower age was).

In-class activity: Debate a proposed amendment to ILO Convention No 138 that would permit a country to carve exception to its child labor laws because of religious or cultural beliefs of the family. (Students will be legislators in a country, some assigned to support and some oppose the proposal.)

Monday, February 19

Wednesday, February 21

Non-discrimination at work / Sexual equality and discrimination

Different bases of discrimination. In what ways do the problems of women's human rights warrant separate consideration? How do standards protecting their human rights relate to problems relating to the conduct of business in an era of globalization?

Readings:

ILO Convention No. 111, Discrimination (1958)

UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)

ILO CEACR, Observation on C. 111, Afghanistan (2000)

ILO CEACR, Observation on C. 111, Democratic Rep. of the Congo (2013, 2010)

World Bank, Gender at Work: A companion to the World Development Report on Jobs

http://www.worldbank.org/content/dam/Worldbank/document/Gender/GenderAtWork_web.pdf

Read pp. 1-4, 10-12, 19 (Figure 2.1), 20 (Figures 2.2, 2.3), 23 (figure 2.7), 24, 41, 55

"British Airways clash over who wears the trousers," Daily Telegraph, Jan. 31, 2014

"Korean Air faces penalties over 'nut rage' incident," articles from 2014-2015

"Caste, Inequality and the Rise of Hindu Nationalism," pgs 1-3, Newsweek, July 26, 2015

"Roma: Moving target." Financial Times 02-25-2014.

Hand-in labor force participation rates for men and women in 1960, 1980 and 2015 for the USA and another country of your choice. State your source for this data.

Monday, February 26

Gender Pay Equity and Human Rights

In what ways do the patterns of female labor force participation disfavor them with regard to pay? Is this impermissible “discrimination”? How do employers set wage rates for average rank-and-file information age workers?

ILO Convention No. 100, Equal Remuneration (1951)
Equal Pay Act, 1963 (USA)
EU Equal Pay Directive, 1975.

ILO CEACR, Observation on C. 100, Sweden (2011)

“Gender Differences in Pay,” Francine D. Blau and Lawrence M. Kahn, 2000 & 2013
(excerpts) http://econ2.econ.iastate.edu/classes/econ321/orazem/blau_wages.pdf

“What Data Analytics Says About Gender Inequality in the Workplace,” Ben Waber, Bloomberg Business Week, Jan 2014.

“Is the Professor Bossy or Brilliant? Much Depends on Gender,” NY Times, Feb 6, 2015.

“Speaking While Female,” Adam Grant and Sheryl Sandberg, NY Times, Jan. 23, 2015

“Why Women Stay Quiet at Work,” Sheryl Sandberg and Adam Grant, NY Times, Jan 12, 2015

“How Much Would You Make if You Were a Man?” Amelia Showalter, Chris Wilson, TIME online, Feb 3, 2016

“The Price Women Leaders Pay for Assertiveness – and How to Minimize It, Wall Street Journal, May 30, 2016

In-class activity: Job evaluation exercise

Wednesday, February 28

Forced Labor and Human Trafficking

What constitutes work not done voluntarily? How do companies confront the issue of meeting tight production deadlines or having work performed in a harsh environment?

Readings:

US Department of Justice Definition

<http://www.justice.gov/crt/about/crm/1581fin.php>

U.S. Department of State – Human Trafficking Defined chart
<http://www.state.gov/j/tip/rls/tiprpt/2008/105487.htm>

Eradication of forced labour, CEACR General Survey
[http://www.ilo.org/public/libdoc/ilo/P/09661/09661\(2007\)1B.pdf](http://www.ilo.org/public/libdoc/ilo/P/09661/09661(2007)1B.pdf)
pages 4 – 8 (section 2 of the chapter)

ILO Convention No. 29, Forced Labour (1930)
ILO Convention No. 105, Abolition of Forced Labour (1957)

March 5 and 7: Spring break (no class)

Monday, March 12

Companies and Human Rights: Corporate Decision Making

How do companies meet labor needs? At what level and how are decisions taken?

*** Showing of the film “Conspiracy” ****

- all students must view this in order to complete the following assignment due March 20
Answer the following three questions (one page maximum) on the film “Conspiracy”.
- 1. What was the “business goal” articulated by the chairman of the meeting?
- 2. Who disagreed with the *goal* itself, and on what grounds?
- 3. Who had major disagreement with the *feasibility* of being able to achieve the goal using the means proposed?

.....
Reading (read **after** viewing the film and before March 14 class)
Barry Gewen, “The Everyman of Genocide” book review of David Cesarani’s “Becoming Eichmann.” NY Times Sunday book review, May 14, 2006.
.....

Wednesday, March 14

Hand-in one page written statement on the film “Conspiracy” (see above)

Finish Forced Labor discussion

Monday, March 19

***** In-class exam *****

Wednesday, March 21

Responsibility of Companies re Human Rights: Soft Law Norms

What responsibilities do companies have with regard to human rights issues? Impact of “group think” on individual ethical reasoning.

Readings:

2000 UN Global Compact

2011 UN Guiding Principles on Business and Human Rights

Monday, March 26

Wednesday, March 28

Corporate Complicity

Oil pipeline in Myanmar / Unocal materials

Materials re Observance by Myanmar of Convention No. 29, Forced Labour

In-class activity: Plaintiffs (lawyers and NGO activists) and defendants (lawyers & senior management) argue Unocal case

Monday, April 2

Corporate Stance with regard to Human Rights issues

The rise of the Corporate Social Responsibility movement. Questions of whether imposing responsibility for protecting human rights on companies involves fundamental distortions of their functions.

Chocolate video

Readings:

Milton Friedman, “The Social Responsibility of Business is to Increase its Profits,” NYTimes Magazine, Sept. 13, 1970

Are Companies Responsible for Creating Jobs? WSJ October 28, 2011

Hitting the Wall: Nike and International Labor Practices, HBS Case Study 2002

“Stranded” (Apple iPhone 5 Malaysia) Bloomberg Business Week, November 2013

“Jeans maker launches cheap financing for more ethical factories,” Financial Times, Nov. 4, 2014

Flextronics accused of using slave labor to help build iPhone 5

<http://www.electronista.com/articles/13/11/07/apple.pulled.orders.from.malaysian.factory.because.of.low.yields/>

Wednesday, April 4

Promoting corporate adherence to human rights: Corporate Codes of Conduct

Pros and cons of using corporate codes of conduct to promote compliance with human rights.

What is the range of options for promoting TNCs’ compliance with human rights? For making non-compliance costly? What can past experience tell us about the utility of non-binding guidelines designed to promote TNCs’ compliance with human rights standards? Can TNCs’ internal codes of conduct steer them away from involvement in human rights abuses or operations that make them complicit in others’ human rights violations? Are other mechanisms more effective?

In-class activity: Debate whether the protection of human rights can and should be the sole responsibility of governments.

Readings:

Richard Locke, “Can Global Brands Create Just Supply Chains?” (Nike) Boston Review, May 21, 2013

<http://bostonreview.net/forum/can-global-brands-create-just-supply-chains-richard-locke>

Codes of Conduct

Nike

http://www.nikeresponsibility.com/report/uploads/files/Nike_Code_of_Conduct.pdf

[NIKE Code of Conduct](http://www.nikeresponsibility.com/report/uploads/files/Nike_Code_of_Conduct.pdf)

s3.amazonaws.com/nikeinc/assets/48557/Nike_Code_of_Conduct.pdf?144539612

H&M

http://about.hm.com/content/dam/hm/about/documents/en/CSR/codeofconduct/Code%20of%20Conduct_en.pdf

http://www.your-bizbook.com/contentassets/ef398a110094413e961fae025bde0da6/code-of-conduct_en.pdf

Levi Strauss

<http://www.levistrauss.com/wp-content/uploads/2014/01/WORLDWIDE-CODE-of-business-conduct.pdf>

<http://www.levistrauss.com/sustainability/people/apparel-workers/>

<http://lscos3.amazonaws.com/wp-content/uploads/2014/01/LSCO-Sustainability-Guidebook-2013--December.pdf>

Amnesty International, Human Rights Principles for Companies: A Checklist.

US Dept of Labor, The Apparel Industry and Codes of Conduct

Apple's Supplier Labor Practices in China Scrutinized, Forbes Dec 12, 2013

<http://www.forbes.com/sites/connieguglielmo/2013/12/12/apples-labor-practices-in-china-scrutinized-after-foxconn-pegatron-reviewed/>

Apple Supplier Code of Conduct

images.apple.com/euro/supplier-responsibility/c.../supplier_code_of_conduct.pdf

Monday, April 9

Promoting human rights: the role of NGOs

How non-governmental organizations came to play a central role in the human rights domain and in the monitoring of TNCs' compliance with international human rights law. Debates on the roles they can/should they play in regulating the conduct of international business.

Readings:

Chris Marsden, Dealing with Joel Bakan's Pathological Corporation: A strategy for campaigning human rights and environmental NGOs, Global Policy Forum July 2004 from <http://www.globalpolicy.org/soecon/tncs/2004/07pathological.htm>

"Web activists tear down corporate walls," Financial Times March 21, 2014

Wednesday, April 11

Catch-up day

Monday, April 16

Enforcing Human Rights: the use of national courts

What are TNCs' current levels of exposure to legal liability in courts of countries like the USA for human rights violations in their overseas operations? What obstacles stand in the way of persons wanting to sue recover for injuries caused by the overseas activities of TNCs that violate human rights law? Where does international law stand on the question of whether or when TNCs can be held liable for human rights violations?

Readings:

Supreme Court: Presumption Against Extraterritoriality Applies to Alien Tort Statute (Gibson Dunn law firm client briefing paper re Supreme Court's decision in the Kiobel case), May 2013)

Supreme Court denies Nestlé, Cargill, ADM Appeal in Slave Labor Case, Wall Street Journal, Jan. 11, 2016

Protocol for the Growing and Processing of Cocoa Beans (Harkin-Engel Protocol)
<http://www.cocoainitiative.org/images/stories/pdf/harkin%20engel%20protocol.pdf>

Hershey Shareholders Allege Company Uses Cocoa Produced Through Unlawful Child Labor in Africa, HeraldOnline, November 1, 2012

Court dismisses child labor claims against Hersey, Pittsburgh Post-Gazette, Sept 2, 2013.

Wednesday, April 18

Concepts of Sovereignty
Rights of Indigenous Peoples

National Sovereignty versus Supranational Norms: whether, at a time when globalization is weakening states and enhancing the power of multinational companies and brands, companies are being pressed to take on responsibilities that many claim are inherently governmental and/or that infringe national sovereignty.

Rights: whether the modern state controls those within its borders or whether persons who historically were present and had autonomy within an area have rights separate from those granted by the state.

Readings:

Convention No. 107 – Indigenous and Tribal Populations Convention, 1957.
http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::p12100_instrument_id:312252#A22

Seeking Balance: Growth vs. Culture in Amazon, (Ecuador oil) NY Times, Dec 10, 2003

U.S. Judge Hand Win to Chevron, (SD NY district court Ecuador) WSJ, March 4, 2014

Canada's Own Pipeline Problem, (First Nations claims) WSJ April 19, 2015

Monday, April 23 and Wednesday, April 25

*** Student Presentations ***

→ **Two-page project write-up is due** by 10 pm of the day your team presents.

Final take home exam: due Tuesday, May 1 -- by 12 noon
