

SYLLABUS

TRANSNATIONAL BUSINESS TRANSACTIONS (International Business Transactions)

Professor Murphy

Fall 2009

COURSE MATERIALS

Folsom et al., International Business Transactions (West, 10th Ed. 2009) (cited as "Text" in the attached outline) and 2009 Documents Supplement thereto (cited as "Supp." in the attached outline).

Copy Center Materials (cited as "CCM" in the attached outline) available at the Copy Center.

Additional materials may be made available by advance distribution in class from time to time.

COURSE OBJECTIVES

This course will consider key elements of contemporary transnational business law from the standpoint of a practicing attorney based in the U.S.A. It is designed to identify those elements and to suggest how they may be used most effectively in structuring, negotiating and documenting transnational business transactions.

In addition to relevant U.S. law, particular attention will be given to:

- (1) the World Trade Organization and related agreements,
- (2) NAFTA and other U.S. free trade agreements, and
- (3) the European Union.

CLASS PROCEDURE

The class will be devoted primarily to (1) discussing assigned course materials and (2) analyzing typical transnational business documents. We will function by means of the Reporter system described below. Every person who attends class will be **expected** to be prepared, but only Reporters will be **required** to be prepared. I will call only upon Reporters and volunteers.

ASSIGNMENTS

The topic chronology and reading assignments in the attached outline are provisional only. Assignment sheets will be distributed in class weekly in advance.

REPORTERS

Commencing with the class day of August 31, 2009 but excluding the last class day of December 2, 2009, I will call upon Reporters, who will be chosen in a randomly established sequence and will be designated in an assignment sheet for each class day.

Reporters are expected to be **fully prepared** in all the course materials assigned for their classes, and to attend those classes. If, for any reason, a designated Reporter cannot attend **fully prepared** for an assigned class, that designated Reporter must (1) arrange for another member of the class to serve as the substitute for the originally designated Reporter and (2) deliver to me, well in advance of the assigned class, a writing (signed by the substitute Reporter) that identifies the substitute Reporter and evidences the undertaking of the substitute Reporter so to serve.

Regardless of the reason for such failure, any designated Reporter who fails to attend class without having so arranged a substitute Reporter, any substitute Reporter who fails to attend class, and any responsible Reporter (designated or substitute) who attends class **unprepared**, may suffer the grade penalty stated below.

GRADING

Grades will be based on the final exam but may be raised or lowered one notch (e.g., from a B to a B+ or B-) on the basis of class participation. The final exam will be **closed-book** and will follow the format of several short-answer questions plus one essay-answer question.

ATTENDANCE

Any student who attends fewer than 80% of classes will be dropped automatically from the class. Tardiness of 10 minutes or more, and leaving the classroom before the end of the class period, will each count as absence.

QUESTIONS AND VISITS

I welcome your questions after class and your visits to my office in the Law Center. I may be reached by telephone at (713) 622-3840 and by e-mail at ewellmurphyjr@sbcglobal.net.

COURSE OUTLINE

Aug. 24

1. COURSE OVERVIEW.

Reading:

Murphy, Charting the Transnational Dimension of Law (CCM).

Forgue et al., "Who's Who" in Customs and International Trade Law (CCM).

Optional reading:

Matoo et al., From Doha to the Next Bretton Woods (CCM).

Aug. 26

2. THE INTERNATIONAL LAW CONTEXT.

(a) World Trade Organization.

Reading:

Murphy, The World Trade Organization (CCM).

Structure of the World Trade Organization (CCM).

Flow Chart of WTO's Dispute Settlement Process (CCM).

In the twilight of Doha (CCM).

Text pp. 20-24 (Sec. 2.4).
pp. 423-424 (WTO Agreements).

Optional reading:

The nuts and bolts come apart (CCM).

Text pp. 421-423 (Demeret).
pp. 431-441 (Folsom).

(b) Trade groups.

Reading:

Murphy, Trading Against the Tide (CCM).

Lutz and Kembayer, Ten Years of the WTO (CCM).

(c) CISG.

Reading:

Supp. pp. 28-46 (CISG). [Skim, but consider carefully Arts.1-6, 95.]

Aug. 31

3. EXPORT/IMPORT IN GENERAL.

(a) Contract basics.

Reading:

Diagrams of Export Letters of Credit (CCM).

Text pp. 52-79 (Introduction 4.0 to Problem 4.1).
[Skim Part D documents.]

Optional reading:

A New UN Convention on E-Contracts (CCM).

(b) Terms of sale.

Reading:

Obligations Between Seller and Buyer in Incoterms
FOB and CIF Sales (CCM).

Text pp. 112-128 (Problem 4.2 through
Incoterms). [Consider carefully
Incoterms provisions at pp. 120-128.]
pp. 132-133 (Spanogle to Questions).

Sept. 2

(c) Letters of credit: basics.

Reading:

Diagrams of Export Letters of Credit (CCM). [Re-read.]

Specimen Forms of Letters of Credit (CCM).

Text pp. 293-341 (Introduction 5.0 through Questions).

Supp. pp.1079-1100 (U.C.C. Art. 5). [Skim, but consider carefully the sections cited in Text readings.]

Sept. 7

There will be no class this day (holiday).

Sept. 9

(d) Letters of credit: fraud.

Reading:

Former Texas U.C.C. Sec. 5.114 (CCM).

Maurice O'Meara Co. v. National Park Bank (CCM).

Sztejn v. J. Henry Schroder Banking Corp. (CCM).

Text pp. 342-355, 358-367 (Section II through Banco Santander, omitting Dolan).

Supp. pp. 1094-1095 (U.C.C. Sec. 5-109). [Re-read.]

Optional reading:

Text pp. 368-376 (Gao).

Sept. 14

(e) Standby letters of credit.

Reading:

SRS Products Co. v. LG Engineering Co. (CCM).

Text pp. 380-414 (Problem 5.3).

Supp. pp. 1094-1095 (U.C.C. Sec. 5-109).
[Re- read.]

Sept. 16

(f) Export sales representation and distribution.

Reading:

Export Sales Structures (CCM).

Text pp. 261-274 (Part A).

Specimen Form of Transnational Sales
Representation Agreement (CCM).

Specimen Form of Transnational Distribution
Agreement (CCM).

[Acting as counsel to the parties, Reporters will
identify, and attempt to negotiate the removal of,
provisions of the specimen forms that are highly
disadvantageous to their respective clients.]

Optional reading:

Cohen, Checklist for Preparation of International
Distributor and Sales Representative Agreements
(CCM).

4. EXPORTING TO THE U.S.A.

(a) U.S. Customs.

Reading:

Classification – Liquidation (CCM).

Text p. 462 (Harmonized Tariff Schedule).
pp. 464-466 (House Committee).

pp. 491-495 (La Nasa).

Sept. 21

(b) Buy American requirements.

Reading:

Letter from Gov. Richards to USTR (CCM).

Text pp. 617-621, 623-628, 631-637, 644-646 (Sec. II through Questions, omitting Crosby, Growing, Grier and questions regarding Sec. I).

Supp. pp. 126, 127 (GATT Arts. III(4), III(8)).
pp. 230-241 (Agreement on Government Procurement). [Skim.]
pp. 732-734 (§§ 301, 308, Trade Agreements Act of 1979).
pp. 914-915 (Buy American Act).

Sept. 23

(c) Countervailing duties.

Reading:

U.S. AD and CVD Proceedings (CCM).

Text pp. 647-656 (Introduction 7.0 to Walders and Pratt).
pp. 662-665, 668-678, 699-706 (Problem 7.1, omitting Young, Wilcox, Nedzel, Green and Jacobs).

Supp. pp. 128-131, 144-146 (GATT Arts. VI, XVI)
pp. 254-281 (SCM Agreement). [Skim.]
pp. 539-646 (§§1671-1677k, Tariff Act of 1930). [Skim very superficially, but consider carefully the CVD sections cited in Text readings.]

Optional reading:

Text pp. 666-668, 679-699 (Young, Wilcox,

Nedzel, Green and Jacobs).

Sept. 28

(d) Anti-dumping duties.

Reading:

U.S. AD and CVD Proceedings (CCM). [Re-read.]

Text pp. 706-726, 738-753 (Problem 7.2, omitting Klaproth and ITC).

Supp. pp. 128-131 (GATT Art. VI). [Re-read.]
pp. 282-300 (Antidumping Code). [Skim.]
pp. 539-646 (§§1671-1677k, Tariff Act of 1930). [Skim very superficially, but consider carefully the AD sections cited in Text readings.]

Optional reading:

Text pp. 726-737 (Klaproth and ITC).

Antidumping: The Third Rail of Trade Policy (CCM).

Sept. 30

(e) Sec. 201 escape clause.

Reading:

Maloney, CIT Decision Weighs in Favor of Textile Importers (CCM).

Text pp. 753-779 (Problem 7.3).

Supp. pp. 151-152 (GATT Art. XIX).
pp. 303-309 (Safeguards Agreement). [Skim.]
pp. 662-696 (§§201-264, Trade Act of 1974). [Skim superficially.]

Oct. 5

5. EXPORTING FROM THE U.S.A.

Reading:

Text pp. 780-807, 813-818 (Introduction 8.0 and Problem 8.1, omitting Lowenfeld and Joyner).

Supp. pp. 928-969, 978-984 (E.A.R., omitting Part 760). [Use as research resource for Problem 8.1.]

Oct. 7

6. SECTION 301 AND SUPER 301.

Reading:

Text pp. 885-896 (Problem 8.4 to Part B).

Supp. p. 215 (DSU Art. 23).
pp. 696-714 (§§301-310, Trade Act of 1974). [Skim, but consider carefully the sections cited in Text readings.]

7. INTELLECTUAL PROPERTY TRANSACTIONS.

(a) TRIPs.

Reading:

Text pp. 912-924 (Introduction 9.0).
pp. 1017-1019 (President's Submission).

Supp. pp. 348-374 (TRIPs). [Skim, but consider carefully the sections cited in Text readings.]

Oct. 12

(b) Section 337.

Reading:

Text pp. 995-1014 (Problem 9.3 to Part B).

Supp. pp. 499-507 (§337, Tariff Act of 1930 as 19 USC §1337). [Skim, but consider

carefully the sections cited in Text readings.]

(c) **Special 301.**

Reading:

Text pp. 1014-1017, 1019-1027 (Part B, omitting President's Submission).

Supp. pp. 659-662 (§182, Trade Act of 1974 as 19 USC §2242).

Oct. 14

(d) **Counterfeit goods.**

Reading:

Imitating property is theft (CCM).

Text pp. 959-976 (Problem 9.2 to Part B).

Oct. 19

(e) **Gray market goods.**

Reading:

Examples of Gray Market Sales (CCM).

A. Bourjois & Company, Inc. v. Katzel (CCM).

Diagram of K Mart Corp. v. Cartier, Inc. (CCM).

Text p. 959 (Sec. I). [Re-read.]
pp. 976-995 (Part B).

Supp. pp. 537-539 (§526, Tariff Act of 1930 as 19 USC §1526).

Optional reading:

Bikoff, Wilson and Beyer, New Weapons in the Battle Against Parallel Imports (CCM).

Oct. 21

(f) Licensing.

Reading:

Text pp. 1031-1035 (Draft License Agreement).
[Acting as counsel to the parties, Reporters will identify, and attempt to negotiate the removal of, provisions that are highly disadvantageous to their respective clients.]

(g) Franchising.

Reading:

Specimen Form of Transnational Franchise Agreement (CCM). [Acting as counsel to the parties, Reporters will identify, and attempt to negotiate the removal of, provisions that are highly disadvantageous to their respective clients.]

Text pp. 925-929 (Sec. II to Glickman).
pp. 942-944 (Hefter and Zeidman).

Oct. 26

8. TRANSNATIONAL INVESTMENT.

(a) Investment from the U.S.A.: structures.

Reading:

Specimen Structures for Transnational Investment (CCM).

Specimen Form of Transnational Stock Purchase and Option Agreement (CCM).

Closing Documents under SPOA (CCM).

Comparison of Offshore Jurisdictions (CCM).
[Skim superficially.]

Optional reading:

Text pp. 1060-1076 (Introduction 10.0, Parts A through I).

Oct. 28

(b) Investment from the U.S.A.: protection.

Reading:

Text pp. 1273-1275 (OPIC and MIGA).
p. 1294 (ICSID).

Murphy, International Energy Disputes: Past, Present and Future (CCM).

Fischer, Reviving the U.S. Bilateral Investment Treaty Program (CCM).

Treaty Scoreboard of The Institute for Transnational Arbitration (CCM). [Skim.]

(c) GATS and TRIMs.

Reading:

Text pp. 897-903, 906-908 (Part B to Questions, omitting USTR Release).

Supp. pp. 320-343 (GATS). [Skim superficially.]
pp. 375-378 (TRIMs). [Skim superficially.]

Nov. 2

(d) Investment into the U.S.A.: FINSA.

Reading:

Text pp. 1297-1306 (Part B to Questions).

Supp. pp. 1042-1050 (Foreign Investment and National Security Act).

(e) Techniques.

Reading:

Specimen Form of Transnational Stock Purchase and Option Agreement (CCM). [Re-read. Acting as counsel to the parties, Reporters will identify, and attempt to negotiate the removal of, provisions that are highly disadvantageous to their respective clients.]

Closing Documents under SPOA (CCM). [Re-read.]

Nov. 4 **9. ANTI-BRIBERY.**

Reading:

Corruption Perceptions Index (CCM).

Text pp. 851-855, 857-874, 875-885 (Problem 8.3, omitting Nigeria, Payoffs, and Sella).

Supp. pp. 60-64 (UN Convention). [Skim.]
 pp. 65-71 (OECD Convention). [Skim.]
 pp. 1006-1012 (Foreign Corrupt Practices Act).

Nov. 9 **10. U.S. SANCTIONS.**

Reading:

U.S. Sanctions Against Cuba (CCM).

Text pp. 621-623 (Crosby).
 pp. 819-836 (Problem 8.2 to Part B).

Supp. pp. 985-1005 (Helms-Burton Act, Cuban Democracy Act, Cuban Assets Control Regulations).
 pp. 1222-1225 (U.K., Canada Orders).

[Skim Supp. readings, but consider carefully the sections cited in Text readings.]

Nov. 11 **11. U.S. ANTI-BOYCOTT LEGISLATION.**

Reading:

Abrams v. Baylor College of Medicine (CCM).

Text p. 819 (Sec. I). [Re-read.]
pp. 836-851 (Part B).

Supp. pp. 920, 921-926 (50 App. USC
§§2402(5)(A) and (B), 2407, 2410).
pp. 969-978 (15 CFR §760.2). [Use as
research resource for Part B problem.]

Nov. 16

12. THE EUROPEAN UNION.

(a) History and organization.

Reading:

The European Union (CCM).

Text pp. 1501-1531 (Appendix).

Optional reading:

Murphy, Structuring Operations in Europe (CCM).

Nov. 18

(b) Free internal movement.

Reading:

Rome Treaty, Arts. 28-31. (CCM)

Text pp. 548-550 (Folsom).
pp. 555-562 (Folsom to Part B).

(c) Competition rules.

Reading:

Rome Treaty, Arts. 81-86 (CCM).

Text pp. 945-948 (Folsom).

1098-1099 (Part B to Questions).

(d) Intellectual property rights.

Reading:

Rome Treaty, Arts. 28-30, 81, 94-97 (CCM).

Intellectual Property Rights (CCM).

Text pp. 1036-1045 (Folsom to Questions).

(e) Harmonization of laws.

Reading:

Rome Treaty, Arts. 94-97 (CCM).

Text pp. 1092-1097 (Comment to Questions).

Nov. 23

13. NAFTA.

(a) Background and general scope.

Reading:

Murphy, The North American Free Trade Agreement (CCM).

The Structure of NAFTA (CCM).

NAFTA in a Nutshell (CCM).

Supp. pp. 387-389, 477-490 (NAFTA Chapters 1, 20-22). [Skim superficially.]

Optional reading:

Murphy, Judging the Twinkle in God's Eye (CCM).

Law Practice by U.S. and Canadian Lawyers in Mexico under NAFTA (CCM).

Supp. p. 452 (NAFTA Annex 1210.5, Sec. B).

Nov. 25 There will be no class this day (holiday).

Nov. 30 (b) **Investment; trade in goods and services; government procurement.**

Reading:

U.S. Investment and Services in Mexico under NAFTA (CCM).

Text pp. 631-632 (Folsom). [Re-read.]
pp. 1279-1294 (Bryan to ICSID).

Supp. pp. 389-452, 470-477 (NAFTA Chapters 3-12, 19). [Skim superficially.]

Optional reading:

Text pp. 565-574 (McCall, Folsom).
pp. 610-611 (Vargas).

Supp. pp. 1226-1233 (Mexican Foreign Investment Law).

(c) **Intellectual property rights.**

Reading:

Text pp. 1046-1057 (Radway through Questions).

Supp. pp. 452-470 (NAFTA Chapter 17). [Skim superficially.]

(d) **Access to the Mexican energy industry.**

Reading:

U.S. Participation in the Mexican Oil and Gas Industry under NAFTA (CCM).

Dec. 2

14. COURSE RETROSPECTIVE.

No required reading.

Optional reading:

Murphy, Seeing NAFTA Through Three Lenses
(CCM).