

SYLLABUS

TRANSNATIONAL BUSINESS TRANSACTIONS (International Business Transactions)

Professor Murphy

Fall 2013

COURSE MATERIALS

Folsom et al., *International Business Transactions: A Problem-Oriented Coursebook* (West, 11th Ed. 2012, ISBN 978-0-314-27446-5) (cited as “Text” in the following Course Outline) and 2012 Documents Supplement thereto (ISBN 978-0-314-27451-9) (cited as “Supp.” in the following Course Outline).

Copy Center Materials (cited as “CCM” in the Course Outline) available at the Copy Center.

Additional materials will be distributed (without charge) in class from time to time.

COURSE OBJECTIVES

This course will consider key elements of contemporary transnational business law from the standpoint of practicing attorneys 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 assigned 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 upon only 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 Sept. 3, 2013 but excluding the last class day of Dec. 3, 2013, I will call upon Reporters who will be chosen in a randomly established sequence and designated for each class day on an assignment sheet previously available in class. .

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. 27

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).

Text pp. 11-15 (Sec. 2.3).

Optional reading:

Unkovic, International Business Law Primer, pp. 115-127 (Secs. I, II) (CCM).

Aug. 29

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).

Text p. 343 (WTO Agreements).

Optional reading:

The nuts and bolts come apart (CCM).

Text pp. 340-343 (Demeret).
pp. 353-363 (Folsom).

(b) Trade groups.

Reading:

Murphy, Trading Against the Tide (CCM).

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

(c) CISG.

Reading:

Text pp. 79-81 (Perillo).

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

Sept. 3

3. EXPORT/IMPORT IN GENERAL.

(a) Contract basics.

Reading:

Diagrams of Export Letters of Credit (CCM).

Text pp. 28-37, 50-58 (Introduction 4.0 to Problem 4.1, omitting Part D).

Optional reading:

Text pp. 37-49 (Part D).

(b) Terms of sale.

Reading:

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

Text pp. 90-113 (Problem 4.2 to Part B).

Sept. 5

(c) Letters of credit: basics.

Reading:

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

Specimen Forms of Letters of Credit (CCM).

Text pp. 224-249, 265-268 (Introduction 5.0 through Questions, omitting UCP 600 to Questions).

Use as research resources for Problem 5.1:

Text pp. 249-257 (UCP 600).

Supp. pp. 986-1008 (U.C.C. Art. 5).

Optional reading:

Text pp. 257-265 (Bergami to Questions).

Sept. 10

(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. 269-289 (Section II through Banco Santander).

Supp. pp. 1002-1003 (U.C.C. Sec. 5-109). [Re-read.]

Optional reading:

Text pp. 289-298 (Gao).

Sept. 12

(e) Standby letters of credit.

Reading:

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

Text pp. 301-334 (Problem 5.3).

Supp. pp. 1002-1003 (U.C.C. Sec. 5-109).
[Re- read.]

Sept. 17

(f) Export sales representation and distribution.

Reading:

Export Sales Structures (CCM).

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. 377 (Harmonized Tariff Schedule).

Sept. 19

(b) Buy American requirements.

Reading:

Letter from Gov. Richards to USTR (CCM).

Text pp. 516-520, 523-534, 542-543 (Sec. II through Questions, omitting Crosby and Grier). [Ignore questions regarding Sec. I.]

Supp. pp. 127, 128 (GATT Arts. III(4), III(8)).
pp. 232-243 (Agreement on Government Procurement). [Skim.]
pp. 716-719 (§§ 301, 308, Trade Agreements Act of 1979).
pp. 819-820 (Buy American Act).
pp. 831-823 (E.O. 10582).

Sept. 24

(c) Countervailing duties.

Reading:

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

Text pp. 544-554 (Introduction 7.0).
pp. 554-557, 559-569, 582-589 (Problem 7.1, omitting Young and Wilcox through Jacobs).

Supp. pp. 128-131, 145-147 (GATT Arts. VI, XVI).
pp. 256-283 (SCM Agreement). [Skim.]
pp. 514-626 (§§1671-1677k, Tariff Act of 1930). [Skim very superficially, but consider carefully the CVD sections cited in Text readings.]

Optional reading:

Text pp. 557-559, 569-581 (Young and Wilcox through Jacobs).

Sept. 26

(d) Anti-dumping duties.

Reading:

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

Text pp. 589-607, 613-626 (Problem 7.2, omitting Canadian Lumber).

Supp. pp. 128-131 (GATT Art. VI). [Re-read.]
pp. 284-302 (Antidumping Code). [Skim.]
pp. 514-626 (§§1671-1677k, Tariff Act of 1930). [Skim very superficially, but consider carefully the AD sections cited in Text readings.]

Optional reading:

Text pp. 607-613 (Canadian Lumber).

Mankiw and Swagel, Antidumping: The Third Rail of Trade Policy (CCM).

Oct. 1

(e) Sec. 201 safeguards.

Reading:

Playing with fire (CCM).

Text pp. 627-655 (Problem 7.3).

Supp. pp. 152-154 (GATT Art. XIX).
pp. 305-311 (Safeguards Agreement).
[Skim.]
pp. 642-674 (§§201-264, Trade Act of 1974). [Skim superficially.]

Oct. 3

5. EXPORTING FROM THE U.S.A.

Reading:

Text pp. 656-690 (Introduction 8.0 and Problem 8.1).

Supp. pp. 833-873, 883-889 (E.A.R., omitting Part 760). [Use as research resource for Problem 8.1.]

Optional reading:

Hopson, How to Avoid the Broad Nature of Export Control Violations (CCM).

Oct. 8

6. SECTION 301 AND SUPER 301.

Reading:

United States Section 301 Proceedings (CCM).

Supp. p. 217 (DSU Art. 23).

Optional reading:

Supp. pp. 674-692 (§§301-310, Trade Act of 1974).

7. INTELLECTUAL PROPERTY TRANSACTIONS.

(a) TRIPs.

Reading:

Text pp. 752-765 (Introduction 9.0).
pp. 857-859 (President's Submission).

Supp. pp. 326-351 (TRIPs). [Skim.]

Oct. 10

(b) Section 337.

Reading:

Text pp. 836-855 (Problem 9.3 to Part B).

Supp. pp. 471-479 (§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. 856-857, 859-868 (Part B, omitting
President's Submission).

Supp. pp. 639-642 (§182, Trade Act of 1974 as 19
USC §2242).

Oct. 15

(d) Counterfeit goods.

Reading:

Imitating property is theft (CCM).

Text pp. 799-817 (Problem 9.2 to Part B).

Oct. 17

(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 pp. 799-800 (Sec. I). [Re-read.]
pp. 817-836 (Part B).

Supp. pp. 512-514 (§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. 22

(f) Licensing.

Reading:

Text pp. 872-876 (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. 766-770 (Sec. II to Glickman).
pp. 783-785 (Hefter and Zeidman).

Oct. 24

8. TRANSNATIONAL INVESTMENT.

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

Reading:

Text pp. 900-916 (Introduction 10.0, Parts A through I).

Specimen Structures for Transnational Investment (CCM).

Specimen Form of Transnational Stock Purchase and Option Agreement (CCM) and Closing Documents under SPOA (CCM). [Skim, but focus on the resulting investment structure.]

They sell sea shells (CCM).

Optional reading:

Storm survivors (CCM).

Oct. 29

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

Reading:

Text pp. 1103-1105 (OPIC and MIGA).

ICSID (CCM).

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

United States Adopts New Model Bilateral Investment Treaty (CCM).

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

(c) GATS and TRIMs.

Reading:

GATS (comments) (CCM).

GATS (CCM). [Skim superficially.]

TRIMs (comments) (CCM).

Supp. pp. 352-355 (TRIMs). [Skim superficially.]

Oct. 31

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

Reading:

Text pp. 1127-1132 (Part B). [Ignore questions regarding Problem 10.7.]

Supp. pp. 947-955 (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. 5 **9. ANTI-BRIBERY.**

Reading:

Inter-American Convention (CCM). [Skim.]

The corruption eruption (CCM).

Text pp. 722-749 (Problem 8.3).

Supp. pp. 60-64 (UN Convention). [Skim.]
pp. 65-71 (OECD Convention). [Skim.]
pp. 911-917 (Foreign Corrupt Practices Act).

Optional reading:

Unkovic, International Business Law Primer, pp. 129-138 (Sec. IV) (CCM).

Nov. 7 **10. U.S. SANCTIONS.**

Reading:

U.S. Sanctions Against Cuba (CCM).

Text pp. 520-522 (Crosby).
pp. 691-707 (Problem 8.2 to Part B).

Supp. pp. 890-910 (Helms-Burton Act, Cuban Democracy Act, Cuban Assets Control Regulations).

pp. 1119-1122 (U.K., Canada Orders).

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

Nov. 12

11. U.S. ANTI-BOYCOTT LEGISLATION.

Reading:

Abrams v. Baylor College of Medicine (CCM).

Text p. 691 (Sec. I). [Re-read.]
pp. 707-721 (Part B).

Supp. pp. 825, 826-831 (50 App. USC
§§2402(5)(A) and (B), 2407, 2410).
pp. 874-883 (15 CFR §760.2). [Use as
research resource for Part B problem.]

Nov. 14

12. THE EUROPEAN UNION.

(a) History and organization.

Reading:

The European Union (CCM).

Text pp. 1308-1339 (Appendix).

Optional reading:

Gardner et al., New Treaty, New Influence? (CCM).

Murphy, Structuring Operations in Europe (CCM).

Nov. 19

(b) Free internal movement.

Reading:

Text pp. 448-450 (Folsom).
pp. 455-462 (Folsom to Part B).

Optional reading:

E.U. Treaty, Arts. 34-37. (CCM)

(c) Competition rules.

Reading:

Text pp. 786-789 (Folsom).
934-939 (Folsom).

Optional reading:

Text pp. 939-945 (Commission).

E.U. Treaty, Arts. 101-106 (CCM).

(d) Intellectual property rights.

Reading:

Intellectual Property Rights (CCM).

Text pp. 877-886 (Folsom to Questions).

Optional reading:

E.U. Treaty, Arts. 34-37, 101, 114-118 (CCM).

(e) Harmonization of laws.

Reading:

Text pp. 932-933 (Comment).

Optional reading:

E.U. Treaty, Arts. 114-118 (CCM).

Supp. pp. 1090-1098 (EU SE Regulation).

(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. 364-366, 449-462 (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).

O'Neil, Mexico Makes It (CCM).

Nov. 26

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

Reading:

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

NAFTA Chapter 12 (CCM). [Skim.]

Text pp. 509-511 (Vargas).
pp. 528-529 (Folsom).
pp. 1116-1125 (Bryan to Questions).

Supp. pp. 366-424, 442-449 (NAFTA Chapters 3-11, 19). [Skim superficially.]

Optional reading:

Text pp. 465-475 (McCall, Folsom).

Supp. pp. 1123-1130 (Mexican Foreign Investment Law).

(c) Intellectual property rights.

Reading:

Text pp. 887-896 (Radway to Questions).

Supp. pp. 425-442 (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).

Nov. 28 There will be no class this day (Thanksgiving holiday).

Dec. 3 **14. COURSE RETROSPECTIVE.**

No required reading.

Optional reading:

Murphy, Seeing NAFTA Through Three Lenses (CCM).