

International Petroleum Transactions

Syllabus [8-4-2014]

Prof. Jacqueline L. Weaver

Fall 2014 (3 credit hours)

MW 2:30 to 3:50 pm

My office: TUII Room 122, 713-743-2158

Admin Assistant: Amanda Parker x 3-2481

**Office Hours: TBA. I am usually in the office between 9 AM and 5 PM
on Monday and Wednesday, but I teach from 10:30 to noon, and from 2:30 to 4 pm.**

**Drop-ins welcome anytime that I am in,
or e-mail me at jweaver@uh.edu for a specific time.**

A. Casebook and Class Material.

There are three sources of class material:

1. The casebook (CB), which is Smith, Dzienkowski et al, *International Petroleum Transactions* (3d ed. 2010).

2. Material in a *Course Supplement*. The 2014 Supplement is available at no cost from my assistant, Amanda Parker, in the office suite (Teaching Unit 2, first floor). Only one free copy per student. These are materials on actual contracts and laws, arbitration decisions, articles, graphics, review memos, etc. that we will use extensively in class. It is called "IPT SUPP." in the reading below. Some items in this Supplement are subject to copyright restrictions and use is limited to your personal use for the class. You may not distribute the copyrighted material.

3. In some cases, the Syllabus gives you an internet URL for the assigned reading. You are responsible for downloading and reading this material, which is often in color with many graphics that do not print well in black-and-white. If the URL does not work for some reason, put the title of the document into Google or a browser and you will find the document quite easily.

Other resources: A 232-page E-book is available to download for free at the Open Oil website. Go to: <http://openoil.net>. This E-book has examples of typical contract provisions, with explanations, and you can't beat the price! Other material is also available free at this website.

Optional book to purchase: Duval, LeLeuch, Pertuzio & Weaver, *International Petroleum Exploration and Exploitation Contracts* (Barrows 2009). This is a treatise covering all provisions in int'l petroleum granting contracts, with examples of actual provisions from many countries. It is absolutely not necessary to buy it. No reading is assigned in it. But if you are going to practice in this area, it might be a nice resource to have. The paperback version is \$95. If you are a student, you can get a discount of 15% off this price. If you want to order this book, please contact Barrows Company at (the book is not listed on Amazon.com):

E-mail: gbarrows@barrowscompany.net ; www.barrowscompany.com (website).

16 East 66th Street New York, N.Y. 10065

Tel: (212) 772-1199 Fax: (212) 288-7242

B. Course Goals:

1. Gain an understanding of the international petroleum industry, the key parties involved in it, and its geopolitics.
2. Identify the important kinds of granting contracts that are commonly used in the E&P sector of the international petroleum industry to grant investors the right to develop.
3. Learn how to work with a model contract form. Model contract forms are often used to minimize the transactions costs of doing a deal (by bringing certainty to “boilerplate” issues so that the parties can focus on the crucial issues that may be more contentious) and to instill confidence that the parties are using standards representing “international practice” which are familiar and more certain in meaning. We will use the AIPN Model Form International JOA for this purpose.
4. Understand the key provisions of a host government’s petroleum law and legal framework.
5. Understand the role of Codes of Conduct and international law, particularly as related to issues of socio-economic development and human rights in developing countries.

Overall, this course seeks to give you an understanding of how the key host government contracts relate to commercialization of petroleum reserves and to the policy goals of both the host country (often a developing country) and the investor.

C. Course Rules:

1. Class starts on time. I will end on time—remind me if need be.
2. Class participation is important. Ask questions, comment on points made by me or others, engage in thinking about the world of international petroleum!

Note: Under UHLC and ABA-AALS rules, students must attend at least 80% of the classes in order to receive a grade in the course. That is, you may not miss more than 5 classes. My administrative assistant in my faculty suite handles the class attendance sheets. Do NOT ask me how many absences you have had to date. Keep track yourself or ask her to check. See me if you have an emergency that presents problems with attendance.

3. You are expected to have done the bulk of the reading in advance. When the syllabus states that class discussion will cover certain questions, come to class with notes so that you can participate in answering.

Where noted in the Syllabus, a short written assignment may be turned into me. These are not required. However, if you want to assess your own ability to understand the reading or write a memo that is similar to what you might be asked to do when you begin practicing in this

area, you may hand the memos in and I will review them and return them to you. **I will not accept any late memos to review.** Do NOT e-mail the assignment. Bring a hard copy to the classroom on the assigned date. Your assignment must be typed, not handwritten. These assignments generally involve 1-2 pages of writing, based on the required reading. They are designed to let you test yourself: are you are keeping up with the reading on a regular basis and are you understanding it? And how are your writing skills?

4. Your grade will consist of a written final exam. Some portion of the final exam may be a take-home question that will be added to your score on the in-class final exam and which will be turned into the class on the last day of class.

Please note that I usually schedule at least two guest lecturers in this class, usually after we have finished Class 13 on Development Contracts. Scheduling depends on their travel calendars. Thus, after Class 13, I may have to change the dates for the readings by inserting the guest lecturers. I do NOT change the reading assignments below; I simply change the dates. This syllabus has 27 units of reading: 25 units as outlined below + 2 more units for guest lectures to be arranged.

Also--I will not be here on **Wednesday Sept. 10**. The make-up class is scheduled for **Friday September 26, same 2:30 time, same classroom**.

Also, I will not be in class on **Monday October 20** because I am giving a lecture at the Rocky Mountain Mineral Law Foundation Short Course in downtown Houston. I will have a guest lecture give this class, so there is no need to have a make up class.

D. The Class Readings.

Classes 1 and 2. Aug. 25 and 27: The Future of the Petroleum Industry.

I will give you an index card to fill out and return to me on Day 2. Please provide the following information, legibly written on the card:

- *Your name, including any nickname you prefer to go by. Give first and last name only.*
- *Your UHLC email address; and any other email address that you use, although I will only send class handouts and announcements about interesting lunch conferences, receptions, etc., to the UHLC email address, using the official class distribution list.*
- *Your home country*
- *Are you a JD or an LLM? If an LLM, are you in the EENR certificate or EENR LLM program? Which one?*
- *Your career goal, if known already*
- *Your undergraduate university and your degree(s) with your major field of study.*
- *Any work or practice experience that you have had to date, in any field.*
- *Any special goal that you have for this course or reason for taking it.*

Topic 1-- The Future of the Energy Industry in Eventful Times and under Global Warming.

- Scan the **2014 ExxonMobil Energy Outlook to 2040** available at http://www.exxonmobil.com/Corporate/files/news_pub_eo.pdf. This Outlook is only about 50 pages long, but it is a large file because it has so many photos and graphics. For class, mainly look at the graphics and data on energy supply and demand projections, especially oil and gas. Be prepared to *discuss in class* the major trends projected in energy supply and demand. Today, the world is about 80% dependent on fossil fuels (oil, gas and coal) for its energy needs. What is the forecasted percentage in 2040? What fuels are growing the fastest? Oil? Renewables? Where is most of the future energy demand arising? What transportation sector is driving the demand for gasoline and diesel? What does the Outlook say about carbon dioxide emissions and a "carbon tax"? What does it say about capturing carbon dioxide and storing it underground to prevent global warming? How does the Outlook address the issue of global climate change?
- Also in advance of class, visit www.bp.com, and find the link for the **BP Statistical Review of Energy**. The most famous chart in this Statistical Review is the oil price chart from 1861 to today that shows the many tumultuous events in petroleum geopolitics, in addition to the workings of market forces. Click on the links for the Oil Sector data and then for oil price data. Notice how oil prices only dipped for a short time during the Global Financial Crisis, but then rose again. A wealth of energy data and charts is displayed in the BP Statistical Review.
- **IPT SUPP. ITEM 1**: Future of the Petroleum Industry (10 pp). Short article by Prof. Weaver abstracted from her chapter on the "*The Future of the Petroleum Industry under Global Warming*," in William H. Rodgers, Jr. *et al.* (eds.), *CLIMATE CHANGE: A READER* (Carolina Academic Press 2011). This reading is already a bit outdated in that oil companies are not embracing CCS (carbon capture and storage) as strongly as they did in 2009. Why not? What is the favored "solution" to mitigating climate change today? This article summarizes many of the topics in the Powerpoint that I will show in class.
- **IPT SUPP. ITEM 2**. Excerpts from **Shell Energy Scenarios to 2050, Scrambles v. Blueprints (20 pp)**. Shell's energy scenarios are not like the typical energy outlooks written by other oil companies or by government agencies (such as the International Energy Agency or the U.S. Energy Information Administration). Rather, the scenarios tell stories about possible future paths, based on input from many socio-economic and political schools of thought. Read the sections of this report on the Scramble path and the Blueprint path. You can access the entire report here if you want to see its colorful graphics: <http://s00.static-shell.com/content/dam/shell/static/future-energy/downloads/shell-scenarios/shell-energy-scenarios2050.pdf>. Or just put the title of the report "**Shell Energy Scenarios to 2050**" in your browser, and you should be able to call it up easily.
- I will show a Powerpoint in class that covers the broader geopolitical issues and trends in energy (including coal and renewables) that affect world energy markets.

For class discussion related to the Powerpoint shown in class and the Shell Scenarios: What geopolitical events have occurred recently that are representative of Blueprints versus Scramble? Of nations adopting policies based on Open Doors (markets and trade and cooperation) versus Flags (nationalism and zero-sum thinking). Are we in an era of Low-Trust Globalization? What

kind of national energy policy do you think your home country should follow, given the energy futures depicted in the ExxonMobil Energy Outlook, the Shell Scenarios, and the Powerpoint?

- **IPT SUPP. ITEM 3:** Graphics of int'l petroleum markets and industry.
- The last graphic shows the various contracts involved in international petroleum operations. This course will focus on the Granting Contract (a PSC or License) and the JOA.

JOIN THE AIPN STUDENT CLUB AT UHLC and you will have access to about 15 model contracts, to its *Journal of World Energy L. & Business*, and to discounts on lunch talks and other conferences. Go to www.aipn.org to register as a student member. Enter my name as the current AIPN member who will recommend you for membership. The student president of the AIPN Club this year is Misha Paltiyevic and he can be reached at Mishapalt@gmail.com. If you join, you should then start receiving e-mails from AIPN directly alerting you to all the events that they support. The AIPN also awards \$5,000 scholarships to students, but the next round will be for the 2015-16 school year. The AIPN also holds a writing competition and, to date, a UHLC student has won it virtually every year. The student is awarded a fully paid trip to the AIPN's International Conference (held in October) in places such as Paris, Bangkok, Scotland, and Singapore; a UHLC student is headed to Budapest this October as a winner.

- **CB Ch. 1.** World Energy Resources. Much of this chapter is self-explanatory, and will not be covered in class discussion. The basic geology on pp. 5-16 is usually covered in the Oil and Gas law course. Note 4 on p. 12 describes unconventional oil and pp. 14-16 describe unconventional gas. Know what these sources are. Omit the note on hard minerals on pp. 16-17. Be sure to read pp. 17-21 on reserves, especially the graphic on page 20. Omit pp. 24-28 because the reading in Item 1 covers this. Do read pp. 28-29 on renewables and review the coal data on p. 23. The US is the king of coal!

Note for future research you might do in a writing course at the law center or in practice:

- The BP Statistical Review website at www.bp.com has a vast amount of historical data on energy that researchers often use, often available in charts and graphics in mind-blowingly bright colors. The Statistical Review is not a forecast; it is a source of historical data.
- Much additional data on petroleum markets can be found on the website of our Energy Information Administration, a division of the U.S. Department of Energy. Visit <http://www.eia.doe.gov>. The EIA also provides forecasts.
- The EIA provides short reports, called Country Analysis Briefs, or "CABs" on many oil and gas producing countries that give you a quick overview, in 10 pages or so, with nice graphics, of a country's energy profile. You can find them at this link: <http://www.eia.gov/countries/>. Check out Mexico's chart on oil production. Could this explain its recent reforms? Look at Venezuela--not a happy picture. New African countries are beginning to get their own CABs, or to be grouped into one report, such as that on East African countries.
- The International Energy Agency also has lots of data, reports, and forecasts of world energy trends, at <http://www.iea.org>.

Class 3: Ownership of Mineral Rights: Federations.

Within a country, what governmental entities have the authority to grant oil development contracts: the federal government or the states or provinces within a federation? Or both?

- **CB Ch. 3 pp 191-201. Federations:** Russia and Mexico present contrasting models. Petroleum contracts must be consistent with the host government's petroleum laws, and the laws must be consistent with the host country's Constitution.

- **IPT SUPP. ITEM 4.** (37 pp., but you will not be reading all of it). The Draft Iraqi Oil Law, followed by some news clippings about the first auction rights for access to Iraqi oil.
- **IPT SUPP. ITEM 5: Questions on Draft Iraqi Law for class discussion.** (4 pp.) We will spend about 40 minutes on this topic. Item 5 contains a targeted set of questions that you should read in advance and answer, based on selected provisions from the draft Iraqi law. Do not read the entire law! I will call on class members randomly to answer these questions. You should have written notes to refer to.
- Read the news clippings of Iraq's first auctions of rights to develop its fields; these appear after the Draft Iraqi law in your SUPP ITEM 4. Failure or success of the auctions?
- **IPT SUPP. ITEM 5A (optional):** Mozambique's draft petroleum law is considerably simpler than Iraq's. It is a mere 11 1/2 pages long.

Note: Take a course in federal resources management (by Prof. Zach Bray or Marcilynn Burke) to learn how the U.S. and the states divide or share power over various resources on public lands. About 1/3 of the U.S. is federally owned land. The federal government owns virtually all the OCS (Outer Continental Shelf) which produces roughly 30% of our oil. (The states own the first 3 nautical miles out from the shoreline; 9 miles for Texas.)

Classes 4 and 5 The Host Country and NOCs (National Oil Companies)

- **CB Ch. 2. pp. 30-59.** Nationalism, sovereignty, the United Nations, IOC arrogance, OPEC and NOCs. Omit *Tringali* tugboat case at pp 42-43.
- **ITEM 6A:** UN Resolutions on Sovereignty (3 pp). The 1963 UN Resolution was signed by almost all countries. The 1966 UN Resolution is a signpost to changes in host government contracts. The 1974 UN Resolution was not signed by 16 Western capital-exporting countries Why not? What is so unacceptable?
- CB pp. 67-71 (starting with Notes on p. 67) as a brief background on financing. Prof. Arbogast in the Bauer School of Business offers various courses on project finance, one of which (usually taught in the Spring) is accessible without a finance background. Others require a good finance background.
- **IPT SUPP. ITEM 6B.** "The Changing Role of the NOCs in International Energy Markets." These are slides summarizing a large study on NOCs conducted by the Baker Institute for Public Policy at Rice University and released in March 2007. Note: The slides no longer appear to be accessible at the Baker Institute link, but I will distribute the slides to the class distribution list. The slides derive from the Baker Institute's study of

the history of 15 different state-owned oil companies, accompanied by two economic modeling studies aimed at assessing the operational efficiency of NOCs. This Baker Institute of Public Policy at Rice University is a good website for research for seminar papers on many energy issues, both international and domestic. The Institute hosts interesting speakers on energy, and I will let you know the dates of interesting events, most of which are open to the public for free.

Classes 6 and 7: Legal Systems and Petroleum Laws

CB Ch. 4, pp. 214-227. Legal Systems. Civil law, common law, Islamic law, etc. Later, when we study the international model JOA, you will see important differences between the civil law and the common law, as reflected in this model form and its guidance notes.

Host Government Petroleum Laws:

IPT SUPP. ITEMS 4 and 5. Return to the Draft Iraqi law in Item 4 and the questions in Item 5. Read Articles 8-20 which are the key parts governing the grant of contracts to develop Iraqi oil and gas. What questions do you have in trying to understand this draft law? It is important to know what you don't understand.

Then read the rest of the draft law, Articles 21-42. Is there anything you don't understand here?

The Draft Law is a good summary of a typical or model petroleum law, and how it sequences the bidding, exploration, development, production and transportation processes in a fairly short and simple framework. As a review, make a time line of the key events in a petroleum agreement using this law. How long might this contract endure?

IPT SUPP. ITEM 7: For your review: "Summary of UHLC Model Laws for Russian Petroleum Project." This is an overview of a Model Licensing Act that a team at UHLC drafted for the new Russian Federation in 1990-91 after the Soviet Union collapsed. It was to reflect the best practices in modern international petroleum laws. The project also drafted Model laws for Conservation and the Environment and for Oil Pipelines, and principles for Tax and Fiscal Policy. Brief summaries of these are also provided. A Symposium on the Russian Petroleum Legislation Project at the UHLC is published in vol. 15 of the *Houston J. of Int'l Law*, Nos. 2 and 3 (Winter/Spring 1993). Russia didn't adopt much of what was recommended!

The Early Concessions:

IPT SUPP. ITEM 8. Smith & Dzienkowski excerpt from 24 Tex. Intl L. J., *A 50 Year Perspective*. (5 pp)

IPT SUPP. ITEM 9. State of Alabama oil and gas lease—the U.S. concession. We will review the key paragraphs in this Alabama lease to see what a typical U.S. oil and gas lease looks like. This is the lease used by the sovereign State of Alabama which owns the seabed within 3 miles of the coast, including Mobile Bay in the Gulf of Mexico. Alabama received very high bids for many leases in Mobile Bay under this lease. Those of you who have had Oil and Gas law will find this lease quite familiar, although more favorable to the lessor than the typical private lease. For those of you who have not had U.S. Oil and Gas law, the Appendix to this Syllabus has some questions on the Alabama Lease

CB 429-32, and notes 2 and 3, pp 434-35. The Early Mideast Concessions, including Sultan of Oman 1937 Concession.

CB 435-42. Renegotiating the early concessions in the Mideast.

CB 284-92. Nationalization. The risk of expropriation and measures of compensation.

Class 8. Nationalization and Liamco

IPT SUPP. ITEM 10: LIAMCO arbitral award (24 pp). Libya had a much more favorable concession agreement than the Sultan of Oman had in 1937 at CB 431-32.

OPTIONAL HAND-IN ASSIGNMENT #1: As you read this arbitral award, list the clauses that favored Libya and which have now become standard in modern concessions. Your list should include at least 10 items. What clauses most favored LIAMCO? Your list must be divided into these two sections. Your memo should not be longer than 1-2 pages.

CB 292-304. Compensation for expropriation. Given this history, what should the IOC's investment-backed expectations be? To make a fortune if it discovers a large field?

CB 320-23. Recent Venezuelan nationalization. The actual Chavez decree is in **SUPP. ITEM 11**, a short 3 pages!

CB 323-27. Privatization. Why have some countries converted their state-owned companies into privately-owned entities?

Classes 9-13 (5 days). Today's Development Contracts and Petroleum Laws

Note: Class 9 is the make-up class, scheduled on Friday September 26, because we did not have class on Wednesday Sept. 10.

CB Ch. 7 pp. 415-28. Bidding systems. Return to **ITEM 5** on the Draft Iraqi Law and read the clippings at the end. Note the bid variables used in the auctions.

CB 447-63. Modern Concessions. You should continue to develop a list of those clauses which now appear in a modern concession, making it much fairer to the host country than the early concessions.

CB 463-81. Production Sharing Contracts.

IPT SUPP ITEM 12 is the Powerpoint that I will present in class on fiscal provisions, illustrating the major differences among types of host government contracts. It has slides and graphics illustrating the revenue streams in the fiscal provisions of the different types of contracts.

IPT SUPP ITEM 12A. Old vs. New Thai concession (3 pp)

IPT SUPP ITEM 12B. Review sheets of Fiscal provisions. Is there anything in these 4 pages that you do not understand?

IPT SUPP ITEM 12C. Legal and political risk provisions in petroleum contracts. The lawyers' main job is to review the non-fiscal provisions in a contract, looking for ways to reduce risk.

IPT SUPP ITEMS 13A, 13B and 13C. The Management Committee provisions of 2001 PSC for Pakistan are Item 13A, *followed by a Question sheet. For required class discussion:* Read the Pakistani Management Committee provisions and answer the **bolded** questions following it. There are 16 questions, but only some of them are bolded. **You may also use the questions as an OPTIONAL HAND-IN ASSIGNMENT # 2.**

ITEM 13B, the Trinidadian PSC Abstract, is for review purposes only. It is missing some provisions because it is a "freebie" that Barrows Publishing distributes to attract new customers to its services. Look at the titles of Articles 1-38, and the Annex titles on the first two pages. Virtually all PSAs will have these same subject titles. At this point, you should know what to expect to find under "Relinquishments," "Development and Production Work

Programmes," and the other titles. And you should know how the contract provisions are sequenced from exploration through production. Why do you know from the Titles of the Articles that Trinidad is using a PSC? What key Article would not appear in a License/Concession?

ITEM 13C is Ghana's Management Committee provision in its royalty/tax license. Both PSCs and licenses can have management committees.

CB 482-87. Risk Service Contracts (similar to a PSC).

CB 487-91. Technical Assistance or Service Contracts.

IPT SUPP. ITEM 14. Service & Risk Service Contracts.(JLW review memo. 3 pp).

IPT SUPP. ITEM 15. Flexibility in Int'l Petroleum Contracts (JLW memo, 2 pp). For your review.

CB 492-501. Participation agreements (host country shares risks and rewards of profits). Participation was a key demand of OPEC countries as they struggled to change their early concessions. Participation essentially puts the country's NOC in a contract like the JOA that we will study below, allowing the country to share in profits. The country still does not bear any exploration risk, however. You will "participate" as a player in a JOA when we reach this part of the course.

CB 508-15 Stabilization clauses.

IPT SUPP. ITEM 16. Review. A summary of the major differences between US and int'l types of development contracts; this memo also includes a list of trends in modern international contracts (7 pages).

Classes 14-18 (5 days: 4 days for JOAs, 1 day for guest lecturer on Monday, October 20.) Joint Operating Agreements--4 days.

The 4 class days that cover the JOA will include about 20-30 minutes of in-class time for you to discuss the JOA Exercise with the other players in your group. You will have to meet with your group during non-class hours in order to finish the Exercise.

IPT SUPP. ITEM 17: Chapter on JOAs by JLW. Use of this chapter is restricted to class purposes only and you may not duplicate or send this chapter. It is an early version of the chapter on JOAs that now appears in the IPEEA book, published by Barrows..

IPT SUPP ITEM 18: AIPN's Model 2002 JOA (edited version 41 pages long compared to the original of 88 pages). We will focus on key provisions of this model JOA: Articles 3, 4, 5, 6, 7 and 8. Article 1 on Definitions is important—always. The Table of Contents is useful for finding provisions. Bring the Model JOA to class. If you would like to get the full Model JOA, join the AIPN. Visit www.aipn.org. Membership for students is only \$25 and can be extended at this rate for 5 years. You get enormous amounts of free research, articles, model contracts and a networking forum. There is now a 2012 version of the AIPN Model JOA, with a few changes. Some of the model contracts are printed in Spanish, Portuguese and other languages .

IPT SUPP. ITEM 19: Int'l JOA—Small Group Exercise. You will be divided into small groups of 5 students each to work on a scenario that illustrates some of the key provisions of the JOA and how the Model AIPN JOA offers options and alternatives for parties to choose.

Note: BP, Anadarko and Mitsui (through a subsidiary MOEX) had signed a JOA on the leased block in the Gulf of Mexico that became the site of a terrible blowout (11 workers

killed) and a huge oil spill in 2010. Before settling with BP, Anadarko and Mitsui refused to pay for any of the costs of the BP Deepwater Horizon oil spill because they alleged BP was grossly negligent. BP owned 65% of the lease, Anadarko owned 25% and Mitsui owned 10%. The AIPN JOA has a similar provision for gross negligence, as an option.

REQUIRED ASSIGNMENT TO BRING TO CLASS: One of the group's members will be the Reporter and will summarize your group's work in a 2 or 3-page memo to me. All five of you in the Group must sign off on the memo before it is turned in. This is a required assignment.

IPT SUPP. ITEM 20: These AIPN Guidance Notes explain how contracts must be modified for civil law jurisdictions. These Notes should convince you that knowledge of civil law is very good for those from common law countries and vice versa.

Class 19. When things go wrong: Barriers to litigating disputes

IPT SUPP. ITEM 21: "Barriers to Litigating Disputes." FSIA, Act of State, Political Question, Forum Nonconveniens, Hickenlooper Amendment. (18 pages) This item ends with a real-life scenario facing an oil company operating in Myanmar (before Myanmar opened up to the West about 3 years ago)--and questions for you to answer at pp. 17-18. In class, we will cover Review Questions 1-4 following the scenario, based on the reading on "Barriers to Litigating Disputes." Question 5 involves the Alien Tort Claims Act, which we will study in the next sections of readings below.

Classes 20, 21, 22 and part of 23 (3 1/2 days) Indigenous Title, Human rights, Environmental and Social Obligations.

CB Chapter 10: Sustainable Development Chapter.

CB 713-20. Overview material.

CB 721-67. Indigenous title and indigenous rights; Stakeholder consultation

CB 767-806. Human rights and the Alien Tort Claims Act (ATCA).

Note: The US Supreme Court decided the *Kiobel* case in May 2013. Two issues were before it: (1). Can corporations be sued as defendants under ATCA? (2). Do the federal courts have jurisdiction over extra-territorial acts committed in another country that allegedly violate international law, especially when neither the plaintiffs nor the defendants are U.S. citizens? The Supreme Court decided that ATCA did not have extra-territorial reach, and therefore dismissed the case before it. The Court did not address the first issue. While ATCA may no longer be a major litigation threat to companies, the human rights aspects of working in countries that have war lords, brutal security forces, and dictators remain.

CB 806-22. Contract provisions and best practices.

Read CB 793-95. Is this Voluntary Code the best that can be expected of IOCs working in countries with dictators who do not respect human rights? Is it realistic to expect companies to follow these practices?

OPTIONAL ASSIGNMENT #3: Summarize, using bullets in outline form, the obligations imposed on companies that sign this Voluntary Code on Security and Human Rights--as if you were writing a memo for the General Counsel of the oil company you work for.

IPT SUPP. ITEM 22: Excerpts on Local Content from IPEEA treatise (*Int'l Petroleum Exploration and Exploitation Agreements* (Barrows 2009), coauthored by Weaver, LeLeuch, Duval and Pertuzio).

IPT SUPP. ITEM 23. PPT slides on Sustainable Development, although the slides focus largely on environmental provisions. Revenue Management laws, currency stabilization funds and a host of other types of statutes are often needed to fight the petro-curse.

I have videos of Shell in Camisea (good) and in Nigeria (where it settled a case with Ken SaroWiwa's family a few years ago), and "Extreme Oil" excerpt on the Lagos Agrio trial in PetroEcuador/Texaco case. There is not time to show all of them. I also have a PPT on Tullow Oil's well sites in Uganda in a wildlife preserve and national park of outstanding beauty.

Classes 23 (other ½), 24 and 25 (2 1/2 days) Maritime Boundaries, Rule of Capture, Unitization and JDZs.

CB 105-125 Maritime Boundaries, UNCLOS (20 pp). The UN Convention on the Law of the Sea establishes the rules for maritime boundaries. Why are islands so valuable to own? Know the different zones and the degree of sovereignty over each under UNCLOS.

Boundary Disputes: when boundaries collide:

CB 125-31. North Sea dispute, pre-UNCLOS dispute in ICJ (6 pp).

CB 131-45. Black Sea dispute, post-UNCLOS dispute in ICJ (14 pp).

CB 159-67. Rule of capture (between competing operators on different blocks inside one country. This case leads into the discussion of unitization. (8 pp) What is the defining principle of law proclaimed by the Netherlands' highest court about: (a) the rule of capture; and (b) the rule of decision for this dispute. Who won?

Unitization (UZ):

CB 168-70 Cross-Border UZ (2 pp)

CB 627-35 UZ in the United States vs internationally (8 pp)

CB 637-38. Notes 2, 3, 4 (2 pp)

CB 638-44 UZ (6 pp)

CB 170-180 JDZ. Boundaries are not determined, but countries agree to develop despite lack of fixed boundary (10 pp).

Optional reading: Congo/Angola Agreement. Short handout of 6 pp. or so.

Classes 26-27 will be scheduled for guest lecturers. The class times for guest lecturers must be arranged around their travel schedules. Thus, some of these lectures will probably occur earlier in the course, not during the last week, because that is when the lecturer is available. In the past, we have been fortunate to have John Bowman of King & Spalding lecture on International Arbitration clauses in petroleum contracts and Jay Martin of Baker Hughes lecture on the Foreign Corrupt Practices Act. For the FCPA lecture, you will read the SEC prosecution of Statoil for paying bribes in Iran in the CB at 246-68 (and accompanying notes).

FINAL EXAM IS DECEMBER 8 FROM 1 PM TO 4 PM (with an extra hour for non-native English speakers).

The Nature of a U.S. Oil and Gas Lease

The granting paragraph on page 1 of the Alabama lease (the beginning paragraph of the agreement; it is not numbered) and paragraph 2 are key provisions. To assure your understanding of the basics of the US lease, answer the following questions:

- If you are the lessee/licensee, would you bargain for a 5-year or a 10-year primary term in paragraph 2?
- If a lessee signs a lease on January 1, 2003, with a 10-year primary term, and has no production on January 1, 2013, what will happen to this lease? What if the lessee is drilling a well on that day? What if the lessee has finished drilling and has discovered oil, but has no pipeline connection that will allow oil to be produced?
- Now read paragraph 3(a) on delay rentals. What does this require that lessee do if lessee wants to extend the lease past the first year and has not yet commenced drilling a well? Is the lessee obligated to drill a well under this provision? That is, could the State sue the lessee for breach of contract if it does not drill a well? Or does paragraph 3 give lessee an option to drill, if the lessee wants to extend the lease? Why would a lessee decide not to pay the rentals?
- The royalty clause is in paragraph 5, which has a blank to be filled in. The typical royalty in the US is now about 25%, although for many decades it was a standard 1/8 of production.
- If a lessee drills only dry holes during the 10 years of its primary term, what source of revenue will the State receive under this lease at the end of that 10 years?