

UNIVERSITY OF HOUSTON LAW CENTER
INTERNATIONAL LITIGATION
Spring 2014

INSTRUCTOR:

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Mondays – January 13—April 28, 2014 4:00—6:00 p.m.

Text: Russell J. Weintraub, International Litigation and Arbitration (6th Edition)

13 January **COURSE OVERVIEW:** Introduction to the topics, issues and strategic considerations to be analyzed with respect to both international litigation and arbitration.

TOPIC: Suing Foreign Defendants in United States Courts – Problems of In Personam and In Rem Jurisdiction

ASSIGNMENT: Russell J. Weintraub, Chapter 1, Section 1.

Class discussion of strategic considerations and factors why a plaintiff would want to maintain suit in a United States court and why a foreign defendant would want to close that forum. Due process limits on the assertion of personal jurisdiction over foreign defendants. Analysis of the two-pronged test the United States Supreme Court has established to limit the assertion of personal jurisdiction: minimum contacts and fairness. Discussion of specific personal jurisdiction and general personal jurisdiction.

20 January HOLIDAY, NO CLASS

27 January TOPIC: Problems of In Personam and In Rem Jurisdiction,
Continued.

“Stream of commerce” theory as a basis to establish minimum contacts to maintain personal jurisdiction over a foreign defendant. Fairness prong of due process standard as an independent limitation on the assertion of personal jurisdiction over foreign defendants. Comparison of United States jurisdictional principles with those of the European Economic Community (“Brussels Convention”) and with Japanese jurisdictional cases. Transient presence as a basis for assertion of personal jurisdiction over individuals – “Gotcha” jurisdiction. Piercing the corporate veil to establish personal jurisdiction. The problem of acquiring personal jurisdiction over a foreign defendant based on the defendant’s web site accessible in the forum. In rem and quasi in rem jurisdiction. Discussion of actual motion and supporting affidavits to dismiss case against German company for lack of personal jurisdiction (materials provided by Professor Sheppard).

03 February TOPIC: Problems of In Personam and In Rem Jurisdiction,
Continued.

10 February NEW TOPIC: Suing Defendants in United States Courts –
Agreements to Litigate or Arbitrate Abroad.

ASSIGNMENT: Russell J. Weintraub, Chapter 1, Section 2.

Efficacy of forum-selection clauses: standards for enforcement and exceptions to enforcement. Drafting considerations. Enforcement of forum-selection clause in a bill of lading. Arbitration clause as a “specialized kind of forum-selection clause.” Limitation on the “fraud” exception to enforcement of the agreement on forum.

17 February RENEWED TOPIC: Agreements to Litigate or Arbitrate
Abroad, continued.

“New York” Arbitration Convention – United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Provisions for enforcement of arbitration agreements and enforcement of arbitral awards. Grounds for non-recognition of arbitral awards.

24 February **NEW TOPIC:** Suing Defendants in United States Courts –
Enjoining Suit Abroad.

ASSIGNMENT: Russell J. Weintraub, Chapter 1, Section 3

Foreign anti-suit injunctions. Standards to be applied. Comparison with domestic cases. Power to enjoin parties from proceeding with later filed suit.

03 March **NEW TOPIC:** Suing Defendants in United States Court –
Service of Process

ASSIGNMENT: Russell J. Weintraub, Chapter 1, Section 4

Service of process on foreign defendant. Hague Service Convention. Federal Rule of Civil Procedure 4. Efficacy of service under state “long-arm” statutes. Service on domestic subsidiary. Removal jurisdiction – When does 30 day period for removal to Federal Court begin to run?

10 March **SPRING BREAK**

17 March **NEW TOPIC:** Taking of Evidence

ASSIGNMENT: Russell J. Weintraub, Chapter 1, Section 5.

Hague Evidence Convention: How applied, what countries have adopted and with what reservations. Effect of “blocking” statutes on the taking of evidence abroad. Effect on discovery in U.S. courts: whether to order discovery and appropriate sanctions if discovery order is not obeyed. Discovery related to jurisdiction itself.

24 March **TOPIC:** Taking of Evidence, continued.

31 March **NEW TOPIC:** Suits by Foreign Plaintiffs – Forum Shopping
and Forum Non-Conveniens

ASSIGNMENT: Russell J. Weintraub, Chapter 2, Section 1.

Analysis of cases brought by foreign plaintiffs, usually plaintiffs injured abroad, in courts of the United States. Analysis of why the United States is a magnet forum and what strategies are employed by plaintiffs and defendants in attempts to utilize

or close that forum. Circumstances under which court vested with subject matter jurisdiction and personal jurisdiction over the defendant should dismiss the case under the doctrine of forum non-conveniens. Importance of the applicable choice of law on decision to dismiss case. Proper standard for appellate review. Conditions to be imposed as basis for granting motion to dismiss case on grounds of forum non-conveniens.

07 April
continued.

TOPIC: Forum Shopping and Forum Non-Conveniens,

NEW TOPIC: Suits by Foreign Plaintiffs – Erie, Reverse Erie and Litigation Strategy.

ASSIGNMENT: Russell J. Weintraub, Chapter 2, Section 2.

In federal court, whether the district court must apply the forum non-conveniens doctrine of the state in which it sits. Strategic options available to foreign plaintiffs who suffer a forum non-conveniens dismissal in federal court and strategy for a defendant sued by a foreign plaintiff in the event motion for forum non-conveniens dismissal is denied. Interplay of forum non-conveniens with injunctions against suits in another forum.

14 April

NEW TOPIC: Recognition of Judgments

ASSIGNMENT: Russell J. Weintraub, Chapter 3.

Examination of the standards here and abroad for recognition of foreign judgments. Whether reciprocity is a requirement for recognition of foreign judgments, and if so, which branch of government should establish a reciprocity requirement? Strategic considerations for the defendant faced with a suit filed abroad: objection to jurisdiction versus a collateral attack on the judgment. Analysis of Uniform Foreign Money-Judgments Recognition Act and questions that have arisen concerning the adequacy of its notice provisions.

21 April **TOPIC:** Recognition of Judgments, continued.

28 April **NEW TOPIC:** Foreign Sovereign Immunity

ASSIGNMENTS:

1. Russell J. Weintraub, Chapter 5
2. Additional cases to be provided by Professor Sheppard.

Overview of Foreign Sovereign Immunities Act and background on the development of sovereign immunity. Meaning of “foreign state” and scope of “commercial activity.” Service on foreign states, applicability of punitive damages, jurisdiction vested in federal courts, provisions regarding jury trials and conditions for waiver of sovereign immunity. Drafting considerations in contracts when dealing with foreign states.

05 May 4:00—6:00 P.M. FINAL EXAM – OPEN BOOK.

You may bring your book, class notes and any other printed or written material.