

SYLLABUS

Course: Transnational Petroleum Law in Latin America

Time: 6:00pm-7:30pm M-W Location: ____

Professor Julian Cardenas

jcardena@central.uh.edu

Office: 713.743.2267

Office: 118-TUII

Office Hours: Wed. 10:30 a.m. – 12:00 p.m. or by appointment

COURSE OVERVIEW

This course is designed to present transactional and litigation cases involving Latin American oil producing countries on issues of international investment law, international arbitration, human rights and environmental law, which considered altogether make a significant contribution to the development of a transnational petroleum law.

Over the last decade, Latin America has been renowned as a strategic region for business in the international oil industry. The region is rich in natural resources and hydrocarbons reserves, and has attracted oil companies from all over the world to participate in upstream mega projects in traditional and emerging markets. However, it has been also the scenario of transnational litigation involving States and foreign investors, caused by expropriation waves, tax reforms and environmental claims.

The course will provide tools to develop legal skills acting as in-house counsel or as international attorney in the petroleum industry, such as:

- 1) The identification of petroleum industry best practices from State and Non-State sources of law applicable to petroleum investment projects, based in the review of petroleum contracts, petroleum industry standards and arbitration awards.
- 2) The discovery of new trends in transnational compliance and litigation involving petroleum transactions in Latin America, in order to improve expertise on risk allocation, investment protection and regulation of foreign investment.
- 3) Becoming familiar with the review of Bilateral Investment Treaties and Multilateral Investment Treaties, and the most relevant investment arbitration rules such as ICSID, ICC and UNCITRAL rules.
- 4) Building a broad perspective of petroleum national regulation and transactions in seven countries in Latin America: Venezuela, Bolivia, Ecuador, Argentina, Brazil, Colombia and Mexico.

COURSE REQUIREMENTS

Book Requirements: Materials will be provided by the Professor.

Arbitration Case: Before Spring Break it will be distributed a file for a legal discussion over an international arbitration case involving a petroleum service contract in a Latin American Country.

Guest Speakers: Since this is a course on transnational law, in previous experience we have had the support of international guest speakers that have contributed with our class, telling us about the experiences in their own countries. You can see a brief note about this in the following link from the EENR Center:

<http://www.law.uh.edu/eenrcenter/news/2013-07-02International-Guest-Speakers.asp>

Grades: The final grade will be weighted as follows:

50% - Short research paper 12-14 pages on one of the jurisdiction studied during the course (due at end of semester)

50% - Exam: Topics of the exam related to international investment arbitration standards.

Research Paper: Each student will write a 12- 14 page term paper on a topic related to regulatory oil & gas issues in a Country in Latin America. Papers may refer the following topics:

- 1) Petroleum upstream/downstream regulation in a Latin American oil producing country;
- 2) The implementation of investment law regulation in petroleum transactions in one or more countries in Latin America;
- 3) The implementation of international industry best practices and industry model contracts in a Latin America jurisdiction;
- 4) A commentary of an arbitration award or an arbitration case involving petroleum transactions in Latin America.

Other topics surrounded the above mentioned may be discussed with the Professor.

Class discussions: Class participation is necessary and mandatory. Students are expected to complete assigned readings and be prepared for class.

COURSE SCHEDULE

FIRST PART (Week 1)

Overview of International Law and International Petroleum Transactions in Latin America

Week 1

Jan. 13 & 15

Jan. 13: Overview of Schools of Legal Thought in Oil and Gas Law in the World.

Jan. 15: Introduction of the development of an oil and gas transnational law in Latin America during the last decade.

SECOND PART (Weeks 2 to 4)

The Interaction of International Investment Law and International Petroleum Transactions

Week 2

Jan. 20 & 22

Class: Sources of Law for International Petroleum Contracts

Jan. 20: No classes. Martin Luther King Jr. Holiday

Jan. 22: Historic references to Arbitration and State and Non-State Law Sources. Arbitration Awards Standards. Guidelines and Petroleum Industry Practices.

Week 3

Jan. 27 & 29

Class: The Development of International Investment Law related to Petroleum Transactions in Latin America

Jan. 27. Principles of International Investment Law

Jan. 29. Standards of Bilateral and Multilateral Investment Treaties

Week 4

Feb. 3 & 5

Class: International Investment Arbitration in Petroleum Contracts

Feb. 3 Rules of Proceedings and Basic rules for jurisdiction

Feb. 5 International Oil and Gas Arbitration in Latin America.

THIRD PART (Weeks 5 to 13)

The Interaction of National Petroleum Regulation in Countries in Latin America, Investment Law and Industry Practices

Feb. 10 & 12

Class: Venezuelan Petroleum Regulation

Lessons learned from Venezuelan International ICC and ICSID Arbitration Cases.

- Treaty Shopping.
- Financial Warranty Clauses. OPEC Production Cut Clauses.

Week 6

Feb. 17 & 19 Class: Ecuador Petroleum Regulation

Feb 17. Ecuador Petroleum Regulation.

Feb.19. Investment Arbitration over Tax Measures

- Indirect Expropriation
- Windfall Profit Tax under International Investment Law.

Week 7

Feb. 24 & 26 Class: Colombia Petroleum Regulation

Feb. 24: Colombia Petroleum Upstream Regulation

Feb. 26: Protection of Petroleum Investments in case of Armed Conflicts
Security and Human Rights and Humanitarian Rights Issues.

Week 8

Class: Bolivia

March 3 & 5

March 3: Bolivian Petroleum Regulation

March 5: Consequences of Bolivian Withdraw from the ICSID

Week 9

UHLC Spring Break

Week 10

March 17 & 19 **Practice Case: Arbitration over a Petroleum Service Contract**

Week 11

March 24 & 26 Class: Brazil Petroleum Regulation

March 24: Petroleum Offshore Regulation in Brazil.

March 26: Environmental Regulation for Oil Offshore E&P from State
and Non State Sources of Law.

Week 12
March 31 &
April 1

Class: Argentina Petroleum Regulation

March 31: Upstream Regulation
April 1 : Investor's Behavior - Expropriation

Week 13

April 7 & 9

Class: Mexico Petroleum Regime

April 7: Times of Reform?

April 9: Mexico Model Contracts

FOURTH PART
(Weeks 14-15)

Last thoughts on a transnational law specific for the petroleum industry

Week 14

April 14 & 16

Transnational Petroleum Law
Review of Schools of Thought on Transnational Law.
Is transnational law overlapping International Law?

Week 15

April 21 & 23

Lex Petrolea

April 21: Lex Petrolea as the Result of Arbitration Award Standards.

April 23: Lex Petrolea as the result of petroleum industry practices.

May 7

FINAL 6pm

Test on substantive principles of Investment Law applicable to
Open Book. Petroleum Contracts

MAY 9

A hard copy of your paper must be turned on May 9, 2013.