

# SYLLABUS INTERNATIONAL BUSINESS TRANSACTIONS

Professor Samir Foteh

Spring 2018

## COURSE MATERIALS

Folsom et al., International Business Transactions: A Problem-Oriented Coursebook (West, 12th Ed. 2015, ISBN 978-1-63459-267-3) (cited as "Text" in the following Course Outline) and 2015 Documents Supplement thereto (ISBN 978-1-62810-223-9) (cited as "Supp." in the following Course Outline).

Copy Center Materials (cited as "CCM" in the Course Outline) available from my assistant,

Melissa Fleet, in the TU2 2<sup>nd</sup> floor faculty suite. Please have CCM by the first day of class.

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

## COURSE OBJECTIVES

This course will consider key elements of contemporary international business law from the standpoint of practicing attorneys based in the U.S.A. as well as other locales in the world. 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
- (4) The Gulf Cooperation Countries (GCC)
- (5) Current trends in international arbitration
- (6) Pertinent current events.

## 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 Presenter/Lecture system described below. In addition to Presenters, I will lecture at least one day each week. Every person who attends class will be **expected** to be prepared, but only Presenters will be **required** to be prepared. I will call upon only Presenters and volunteers.

## **ASSIGNMENTS**

The topic chronology and reading assignments in the attached outline are provisional only and subject to change. Additional readings may be distributed throughout the semester.

## **PRESENTERS**

Commencing with the first day of class in the second week, but excluding the last class day, I will call upon Presenters who will be chosen in a randomly established sequence and designated for each class day on a sheet previously available in class.

Presenters 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 Presenter cannot attend fully prepared for an assigned class, that designated Presenter must (1) arrange for another member of the class to serve as the substitute for the originally designated Presenter and (2) deliver to me, well in advance of the assigned class, a writing (signed by the substitute Presenter) that identifies the substitute Presenter and evidences the undertaking of the substitute Presenter so to serve.

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

## **GRADING**

Grades will be based on the **FINAL PROJECT** but may be raised or lowered one level (e.g., from a B to a B+ or B-) on the basis of class participation/attendance. **The FINAL PROJECT** will be explained later in the course.

## **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 may be reached by telephone at 713.256.5588 and by e-mail at [sjfoteh@aol.com](mailto:sjfoteh@aol.com). I am also available, by appointment only, to meet in my office in TUII, Suite 212.

## **ADDITIONAL INFORMATION**

Counseling and Psychological Services (CAPS) can help students who are having difficulties managing stress, adjusting to the demands of a professional program, or feeling sad and hopeless. You can reach CAPS ([www.uh.edu/caps](http://www.uh.edu/caps)) by calling 713-743-5454 during and after business hours for routine appointments or if you or someone you know is in crisis. No appointment is necessary for the “Let's Talk” program, a drop-in consultation service at convenient locations and hours around campus. [http://www.uh.edu/caps/outreach/lets\\_talk.html](http://www.uh.edu/caps/outreach/lets_talk.html).

## **COURSE OUTLINE**

Jan. 17

### **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. 16-21 (Sec. 2.3).

Optional reading:

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

Jan. 22

### **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 pp. 359-360 (WTO Agreements).

Optional reading:

Text pp. 357-359 (Demeret).  
pp. 371-379 (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. 71-89 (CISG). [Skim, but consider carefully Arts.1-6, 95.]

Jan. 24

**3 EXPORT/IMPORT IN GENERAL.**

(a) Contract basics.

Reading:

Diagrams of Export Letters of Credit (CCM).

Text pp. 37-47, 60-69 (Introduction 4.0 to Problem 4.1, omitting Stage 3).

Optional reading:

Text pp. 47-59 (Stage 3).

(b) Terms of sale.

Reading:

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

Text pp. 104-125 (Problem 4.2 to Part B).

(c) Letters of credit: basics.

Jan. 29

Reading:

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

Specimen Forms of Letters of Credit (CCM).

Text pp. 245-281 (Introduction 5.0 through Questions).

Use as research resource for Problem 5.1:  
Supp. pp. 1091-1114 (U.C.C. Art. 5).

Jan. 31

**(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. 282-300 (Section II to Gao).

Supp. pp. 1108-1109 (U.C.C. Sec. 5-109). [Re-read.]

Optional reading:

Text pp. 301-309 (Gao).

Feb. 5

**(e) Standby letters of credit.**

Reading:

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

Text pp. 314-349 (Problem 5.3).

Supp. pp. 1108-1109 (U.C.C. Sec. 5-109).  
[Re-read.]

Feb. 7

**(t) 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, Presenters 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. 394 (Harmonized Tariff Schedule).

Feb. 12

##### **(b) Buy American requirements.**

Reading:

Letter from Gov. Richards to USTR (CCM).

Text pp. 542-551, 553-563, 568-569 (Sec. II through Questions, omitting Crosby and Grier). [Ignore questions regarding Sec. I.]

Supp. p. 131 (GATT Arts. III(4), III(8)).  
pp. 213-225 (Agreement on Government Procurement). [Skim.]

pp. 794-797 (§§ 301, 308, Trade  
Agreements Act of 1979).  
pp. 883-884 (Buy American Act).  
pp. 909-911 (E.O. 10582).

Feb. 14

(c) Countervailing duties.

Reading:

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

Text pp. 571-608 (Introduction 7.0 through  
Problem 7.1).

Supp. pp. 132-135, 149-151 (GATT Arts. VI, XVI).  
pp. 259-288 (SCM Agreement). [Skim.]  
pp. 571-692 (§§ 1671-1677k, Tariff Act of  
1930). [Skim very superficially, but  
consider carefully the CVD sections  
cited in Text readings.]

Feb. 19

(d) Anti-dumping duties.

Reading:

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

Text pp. 608-643 (Problem 7.2).

Supp. pp. 132-135 (GATT Art. VI). [Re-read.]  
pp. 227-247 (Antidumping Agt.). [Skim.]  
pp. 571-692 (§§ 1671-1677k, Tariff Act of  
1930). [Skim very superficially, but  
consider carefully the AD sections  
cited in Text readings.]

Optional reading:

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

Feb. 21

(e) Sec. 201 safeguards.



Reading:

Problem 7.3 (CCM).

Safeguards Agreement (CCM). [Skim.]

§§201-264, Trade Act of 1974 (CCM). [Skim superficially.]

Feb. 26

**5. EXPORTING FROM THE U.S.A.**

Reading:

Text pp. 645-682 (Introduction 8.0 and Problem 8.1).

Supp. pp. 923-965, 975-982 (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).

Feb. 28

**6 SECTION 301 AND SUPER 301.**

Reading:

United States Section 301 Proceedings (CCM).

Supp. p. 362 (DSU Art. 23).

Optional reading:

Supp. pp. 709-728 (§§301-310, Trade Act of 1974).

**7. INTELLECTUAL PROPERTY TRANSACTIONS.**

(a) TRIPs.

Reading:

Text pp. 753-767 (Introduction 9.0).  
pp. 866-868 (President's Submission).

Supp. pp. 303-330 (TRIPs). [Skim.]

Mar. 5

**(b) Section 337.**

Reading:

Text pp. 844-864 (Problem 9.3 to Part B).

Supp. pp. 525-534 (§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. 864-866, 868-878 (Part B, omitting President's Submission).

Supp. pp. 705-709 (§182, Trade Act of 1974 as 19 USC §2242).

Mar. 7

**(d) Counterfeit goods.**

Reading:

Imitating property is theft (CCM).

Text pp. 804-822 (Problem 9.2 to Part B).

Mar. 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. 804 (Sec. I). [Re-read.]  
pp. 823-844 (Part B).

Supp. pp. 569-571 (§526, Tariff Act of 1930 as 19  
USC §1526).

Optional reading:

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

Mar 21

(f) Licensing.

Reading:

Text pp. 881-886 (Draft License Agreement). [Acting  
as counsel to the parties, Presenters 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,  
Presenters will identify, and attempt to negotiate  
the removal of, provisions that are highly  
disadvantageous to their respective clients.]

Text pp. 768-772 (Sec. II to Glickman).  
pp. 787-789 (Hefter and Zeidman).

Mar 26

## **8 TRANSNATIONAL INVESTMENT.**

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

Reading:

Text pp. 911-928 (Introduction 10.0 to Questions).

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).

Mar. 28

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

Reading:

Text pp. 1103-1105 (Part C to BG Group).  
pp. 1111-1115 (Insuring the Risk). [Ignore questions concerning Problem 10.6.]

ICSID (CCM).

Murphy, International Energy Disputes: Past, Present and Future (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. 331-334 (TRIMs). [Skim superficially.]

Apr. 2

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

Reading:

Text pp. 968-980 (Part B). [Ignore questions regarding Problem 10.2.]

Supp. pp. 1025-1034 (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, Presenters 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.]

Apr. 4

**9. ANTI-BRIBERY.**

Reading:

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

Text pp. 715-750 (Problem 8.3).

Supp. pp. 91-95 (UN Convention). [Skim.]  
pp. 63-69 (OECD Convention). [Skim.]  
pp. 1013-1023 (Foreign Corrupt Practices Act).

Optional reading:

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

Apr. 9

**10. U.S. SANCTIONS.**

Reading:

U.S. Sanctions Against Cuba (CCM).

Text pp. 551-553 (Crosby).  
pp. 682-700 (Problem 8.2 to Part B).

Supp. pp. 885-907 (Cuban Assets Control Regulations, Cuban Democracy Act, Helms-Burton Act).  
pp. 1189-1190, 1253-1255 (Canada, U.K. Orders).

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

Apr. 11

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

Reading:

Abrams v. Baylor College of Medicine (CCM).

Text p. 682-683 (Sec. I). [Re-read.]  
pp. 700-715 (Part B).

Supp. pp. 914, 916-921 (50 App. USC §§2402(5)(A) and (B), 2407, 2410).  
pp. 965-975 (15 CFR §760.2). [Use as research resource for Part B problem.]

Apr. 16

**12. THE EUROPEAN UNION and G.C.C.**

(a) History and organization.

Reading:

Text pp. 1311-1345 (Appendix A).

Optional reading:

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

Murphy, Structuring Operations in Europe (CCM).

Apr. 18

**(b) Free internal movement.**

Reading:

Text pp. 471-473 (Folsom).  
pp. 477-484 (Folsom to Part B).

Optional reading:

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

**(c) Competition rules.**

Reading:

Text pp. 790-793 (Folsom).  
932-937 (Folsom to Commission).

Optional reading:

Text pp. 938-943 (Commission).

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

**(d) Intellectual property rights.**

Reading:

Intellectual Property Rights (CCM).

Text pp. 886-897 (Folsom to Questions).

Optional reading:

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

**(e) Harmonization of laws.**

Reading:

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

Optional reading:

E.U. Company Regulation (CCM).

**G.C.C. materials to be distributed**

Apr. 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).

Hills, NAFTA's Economic Upsides (CCM).

Supp. pp. 376-378, 467-480 (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).

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

Reading:

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

NAFTA Chapter 12 (CCM). [Optional]



Text pp. 535-536 (Vargas).  
pp. 557-559 (Folsom).  
pp. 958-966 (Bryan to Questions).

Supp. pp. 1237-1245 (Mexican Foreign Investment Law).

(c) Intellectual property rights.

Reading:

Text pp. 898-907 (Radway to Questions).

(d) Access to the Mexican energy industry.

Reading:

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

Murphy, U.S. Perspectives on Mexico's Energy Reform (CCM).

Apr. 25

**14. FINAL PROJECTS DUE**

(This is **NOT** an optional class. Attendance will be required.)

