

PUBLIC INTERNATIONAL LAW – (Spring 2006)

Tuesdays and Thursdays – 10:10-11:40 a.m.

Professor Benjamin G. Davis
Office: Room 2009 D
Tel.: 419-530-5117
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Description of the Course:

This course intends to convey a thorough understanding of the law and practice of public international law - its practical, doctrinal, theoretical, and policy aspects.

Objectives for the course:

- To familiarize you with the black-letter law;
- To enable you to evaluate critically the doctrines and policies that lie behind the black-letter law;
- To develop and enhance your ability to analyze cases, interpret statutes, and think through states and other international actors;
- To help you integrate technology in your approaches to public international law;
- As borders fall, to help you integrate an international dimension in your approach to all law;
- To encourage you to think about your role as a lawyer acting internationally.

Casebook:

Our casebook is International Law, Cases and Materials by Damrosch, Henkin, Crawford Pugh, Schachter and Smit (Fourth Edition 2001) (hereinafter “casebook”) together with Basic Documents Supplement to International Law Cases and Materials Fourth Edition (hereinafter “supplement”) published by West Group. You are responsible for the sections of all 20 chapters and the supplement that I assign over the course of the semester.

Additional materials will be provided by me as we proceed. These additional materials will be handed out in class and provided outside my door after class. You are responsible for making sure that you have these additional materials.

Other Materials:

I sincerely discourage you from spending money on commercial outlines, etc. The most important preparation is your thinking about and analysis of the assignments.

Assignments:

Assignments for the course will be handed out in class, posted on the course information bulletin board, posted on my office door, and posted on a website for the course. Assignments for the next week will be provided the previous week. You are responsible for getting your assignments.

Study groups:

I encourage you to form small study groups together to think about the material. If after a week or three you are having difficulty forming a study group, please come to see me and I will see what can be done.

Newspaper and other media:

I encourage you to read newspapers and other media each week and think whether any public international law issues in your assignments are relevant to what you read. This reading is particularly of interest as regards developments post-September 11, 2001.

Teaching methods:

Classes will be taught through questions and answers (Socratic method and reverse Socratic method) and short lectures. Students should be prepared to be called on to participate on a random basis during the course of the semester. Class participation counts towards your grade (see below) so “passing” is severely discouraged.

As appropriate, students will be invited to act out an exercise in front of the class and participate in discussion of the approaches taken in the exercise. Some of the exercises will be done during class.

The American Bar Association, the College of Law and I require regular and punctual class attendance. At the beginning of class, I will circulate a class attendance sheet. It is your responsibility to ensure that you have signed the attendance sheet. **I WILL WITHDRAW YOU FROM THIS COURSE IF YOU ACCUMULATE MORE THAN TWO WEEKS OF ABSENCES (4 CLASSES).** Please do not interpret this policy as a license or encouragement to miss four classes; my personal and professional opinion is that attending class is the most efficient use of your time and that all absences should be avoided.

NOTE: IT IS AN HONOR CODE VIOLATION FOR A STUDENT TO MISREPRESENT THE STUDENT’S OWN ATTENDANCE OR THE ATTENDANCE OF ANOTHER STUDENT.

Grading:

10 per cent of your grade will be based on classroom participation. Quantity of comments, quality of comments, and extent of comments (opening a case for example) will be evaluated after each class and over the semester to determine this portion of the grade. 90 per cent of your

grade will be based on a three hour, in class open book exam. The exam will consist of two or three fact-pattern questions that will require you to identify and resolve a number of legal issues. Multiple choice and/or short answer-style questions may also be included. More information about the exam will be provided later in the semester. Review sessions will be organized as we reach the end of the term.

Office hours:

Based on your preferences received over the first two weeks, I will fix office hours. In general, I will be available for the half hours before and following a class. I am always available by appointment.

Please feel free to send me e-mails as that is usually the easiest way to contact me. I will attempt to respond in the next class to all e-mails received before 1500 two days before class by class time (i.e. Sunday at 1500 for Tuesday; Tuesday at 1500 for Thursday). If possible, I will answer e-mail queries received later than 1500 hours but I reserve the right to put them over to the next class.

These communications with me do not count towards class participation.

Moments of Panic/Epiphany:

Please feel free to come in to see me at any time if you are feeling particularly confused and/or panicky about the course. Law school can be stressful but I hope that at some point it will be fun as you continue/complete this new endeavor. Please feel free to come in if you want to discuss a topic of interest to you from the reading.

Outline and Reading List

Please find below an outline and reading list for our study of public international law this semester. I may modify this list from time to time, and will apprise you of any such modifications in class.

Week 1 (Starting January 9)

Introduction to the Study of International Law
Note on Electronic Technologies and International Law
Historical Introduction
Selections from Chapter 1 – The Nature of International Law

Week 2 (Starting January 16)

Selections from Chapter 1 – The Nature of International Law (cnt'd)
Selections from Supplement
Selections from Chapter 2 – Sources and Evidence of International Law

Selections from Supplement

Week 3 (Starting January 23)

Selections from Chapter 2 – Sources and Evidence of International Law (cnt'd)
Selections from Supplement

Week 4 (Starting January 30)

Selections from Chapter 3 – International Law and Municipal Law: States
Selections from Supplement

Week 5 (Starting February 6)

Selections from Chapter 4: States
Selections from Supplement

Week 6 (Starting February 13)

Selections from
Chapter 5: Organizations: International and Non-Governmental and
Selections from Supplement
Selections from
Chapter 6: Individual and Private Corporations
Selections from Supplement

Week 7 (Starting February 20)

Selections from Chapter 8: Human Rights
Selections from Supplement

Week 8 (Starting February 27)

Selections from
Chapter 9: International Responsibility and Remedies
Selections from Supplement
Selections from
Chapter 10: State Responsibility for Aliens and Foreign Investors
Selections from Supplement

Week 9 (Starting March 13)

**Selections from
Chapter 11: Dispute Settlement
Selections from Supplement
Selections from
Chapter 12: The Use of Force
Selections from Supplement**

Week 10 (Starting March 20)

**Selections from
Chapter 13: Bases of Jurisdiction
Selections from Supplement**

**Week 11 (Starting March 27)
Selections from
Chapter 14: Immunity from Jurisdiction
Selections from Supplement**

Week 12 (Starting April 3)

**Selections from
Chapter 15: International Criminal Law
Selections from Supplement**

Week 13 (Starting April 10)

**Selections from
Chapter 16: The Law of the Sea
Selections from Supplement
Selections from
Chapter 17: Protecting the Environment
Selections from Supplement
Selections from
Chapter 18: International Watercourses
Selections from Supplement
Selections from
Chapter 19: Outer Space and Polar Regions
Selections from Supplement**

Week 14 (Starting April 17)

**Selections from
Chapter 20: International Economic Law and Organizations
Selections from Supplement**

**University of Toledo, College of Law
Public International Law, Spring 2006
Professor Benjamin G. Davis**

Final Examination

8:30 a.m. Thursday, 27 April 2006

Attached is your Public International Law exam. It contains four (4) pages. You have three (3) hours to complete it.

You may not take the examination or your bluebook(s) out of the exam room. If you want to leave the room, you must leave all materials on your desk.

Do not speak with anyone about the exam or its contents prior to all students having handed in the complete examination.

The exam is OPEN BOOK.

The exam is for a total of 180 points and contains two parts.

Part I is an essay question. You should use one hundred twenty (120) minutes to complete Part I. This part counts for 120 points.

Part II is an essay question. You should use sixty (60) minutes to complete Part II. This part counts for 60 points.

Based on the casebook, the supplement and additional materials we have studied this semester you should address all the issues fairly raised by each problem, even if you believe a particular issue to be dispositive. Remember: If you do not write it, I do not know that you know it.

For purposes of the exam, please assume that all states are members of the United Nations and that all states have properly ratified all treaties we have discussed.

Should you find it necessary in answering a question to assume a fact not given in the problem as stated: you may do so but you should clearly indicate that you are making an assumption and should briefly explain why you consider it a reasonable assumption to make.

Write your exam number at the top of every page of your examination. I must receive all pages of your examination. You will receive a grade of "F" for this exam unless I receive all pages of your examination.

Do not read further until you are told you may start.

Part I

120 minutes

Sarah Bloom, intrepid journalist, paused from her morning coffee and looked across the Mystical River valley in the contested border region of Ludacris that divides the State of Turkiyestan from the State of Iranestan. The Mystical River flows into the MidEarthian Sea which is a small sea which eight states, including State of Turkiyestan and the State of Iranestan, make up the coastal states.

She thought to herself that it was great to be back in the State of Turkiyestan after all those years. She had emigrated 20 years ago from the State of Turkiyestan to the State of Americanski where she was a resident alien in the process of applying for Americanski nationality – all that remained was her final interview with the Americanski Immigration and Naturalization Services. She marveled at her luck in having met Indiana Bloom her Americanski husband of almost 18 years and wished he could have been on this trip.

As she sat with her old Turkiyestan relatives and watched the clouds billowing overhead that sunny day, she noticed one very large dark cloud coming over the far hill and rolling down through the Iranestan side of the valley. It was from the direction of Ispadan, Iranestan – widely known as the home of the secret nuclear facilities of the Iranestan Government.

As the dark cloud floated down the valley she saw sheep and goats fall to the ground, the grass turned brown, and shepherds were seen running down the hill to escape the dark cloud and then falling. Sarah Bloom quickly grabbed her old fashioned film camera and took several pictures of the devastation from the dark cloud.

The cloud crossed the river and immediately the color of the clear blue water became a muddy orange. Dead fish popped on the surface as the water appeared to be heating up. Fish caught later downstream were noted to have higher than normal levels of radioactivity.

As the cloud started up the State of Turkiyestan side of the valley, Sarah Bloom's relatives fled higher up the valley side. Sarah Bloom, intrepid journalist, remained where she was and took photo after photo of the cloud as it came and engulfed her. The cloud spread up and down the valley over the next hour.

Suddenly, several units of Iranestan troops were seen coming down the far side of the valley – picking up the dead goats, sheep, and shepherds. A small contingent of troops crossed the small footbridge across the contested Mystical River border and took samples of soil as well as several animal carcasses. Sarah Bloom's relatives watched helplessly as Sarah Bloom was carried away from the State of Turkiyestan by the Iranestan authorities, over the Mystical River, and over the far hill to places unknown in the State of Iranestan. All that was left of Sarah was her camera.

Sarah Bloom’s relatives alerted Sarah’s spouse back in Americanski – Indiana Bloom. They told Indiana Bloom that all the people who were in the valley had become violently sick from radiation sickness. They said that film in Sarah’s camera had been exposed by radiation and nothing could be seen in the pictures.

Indiana Bloom immediately called their friend Senator Darth Sidius of the Americanski legislature and member of the Senate Armed Services Committee explaining the disappearance of Sarah Bloom and seeking Senator Sidius’ assistance. .

Senator Sidius had just stepped out of a highly classified Hexagon military briefing on spy satellite intelligence that an “event” of some significance had occurred in Ispadan over the past 72 hours.

Senator Sidius was worried about the international law implications – both big and small – of all these developments.

Senator Sidius calls you in as his expert international legal advisor and asks you to prepare a memo describing what you see as the international law implications of all the developments above.

Part II.

60 minutes

To: Legal Adviser
From: United States Secretary of Defense, Donald Rumsfeld
Date: Today
Re: ASIL Resolution

At its annual business meeting of March 30, 2006, the American Society of International Law has adopted a resolution which states the following:

Resolution Adopted

Under the procedure set forth in Article IX of the [ASIL Constitution](#), the following resolution was adopted at the Annual General Meeting of the American Society of International Law on March 30, 2006.

The American Society of International Law, at its centennial annual meeting in Washington, DC, on March 30, 2006, Resolves:

1. Resort to armed force is governed by the Charter of the United Nations and other international law (*jus ad bellum*).
2. Conduct of armed conflict and occupation is governed by the Geneva Conventions of August 12, 1949, and other international law (*jus in bello*).

3. Torture and cruel, inhuman, or degrading treatment of any person in the custody or control of a state are prohibited by international law from which no derogations are permitted.

4. Prolonged, secret, incommunicado detention of any person in the custody or control of a state is prohibited by international law.

5. Standards of international law regarding treatment of persons extend to all branches of national governments, to their agents, and to all combatant forces.

6. In some circumstances, commanders (both military and civilian) are personally responsible under international law for the acts of their subordinates.

7. All states should maintain security and liberty in a manner consistent with their international law obligations.

Please advise me in 60 minutes as to the implications, if any, you see as a matter of United States domestic law, United States Foreign Relations Law, and International Law of the adoption of this resolution by an overwhelming majority of the members of the American Society of International Law.

END OF THE EXAM

PUBLIC INTERNATIONAL LAW – (Spring 2007)

Mondays and Wednesdays – 1:00 -2:30 p.m.

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- As borders fall, to help you integrate an international dimension in your approach to all law;
- To encourage you to think about your role as a lawyer acting internationally.

Casebook:

Our casebook is International Law, Norms, Actors, Process (Second Edition 2006) (hereinafter “casebook”). You are responsible for the sections of all 14 chapters that I assign over the course of the semester.

Additional materials will be provided by me as we proceed. These additional materials will be handed out in class and provided outside my door after class. You are responsible for making sure that you have these additional materials.

Other Materials:

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Teaching methods:

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10 per cent of your grade will be based on classroom participation. Quantity of comments, quality of comments, and extent of comments (for example, opening of a case or a problem) will be evaluated after each class and over the semester to determine this portion of the grade. 90 per cent of your grade will be based on the exam. The exam will be three hours long and open book.

The exam will consist of two or three essay questions that will require you to identify and resolve a number of legal issues.

My grading practice for class participation is to make a note after each class as to who spoke and what they said. As soon as practicable after class, these notes are then saved on a spreadsheet with my evaluation of each comment. These notes are then destroyed. At the end of the semester I evaluate all the interventions on the spreadsheet by each student for quantity, quality and extent and assess an appropriate number of points for each student.

My grading practice for exams is to review each exam at least twice. Exam essays that do a better job on seeing the issues, presenting the rules, doing a thorough analysis and coming to a conclusion tend to earn more points than exams that do this less well. Exams with more correct multiple choice answers tend to earn more points.

Exams are graded anonymously. Class participation is not graded anonymously, however, I have my assistant add the ten per cent class participation points to the ninety per cent exam points. Grades are finally determined after a normalization process consistent with College guidelines.

More information about the exam will be provided later in the semester. Review sessions will be organized as we reach the end of the term.

Office hours:

Based on your preferences received over the first two weeks, I will fix office hours. In general, I will be available for the half hours before and following a class. I am always available by appointment.

Please feel free to send me e-mails as that is usually the easiest way to contact me. I will attempt to respond in the next class to all e-mails received before 1500 two days before class by class time (i.e. Saturday at 1500 for Monday; Monday at 1500 for Wednesday). If possible, I will answer e-mail queries received later than 1500 hours but I reserve the right to put them over to the next class.

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Outline and Reading List

Please find below a list of the chapters from which I will select our readings for our study of public international law this semester. I may modify this list from time to time, and will apprise you of any such modifications in class.

Chapter 1 – Tracing the Evolution of International Law Through Two Problems

Chapter 2 – Making Law in a Decentralized System

Chapter 3 – The Traditional Actions: States and International Organizations

Chapter 4 – The Challenge of Non-State Actors

Chapter 5 – International Law in the Domestic Arena

Chapter 6 – The Reach of Domestic Law in the International Arena: Jurisdiction and Its Limits

Chapter 7 – The Claims of Individuals on States

Chapter 8 – Mitigating the Harms of War: International Humanitarian Law

Chapter 9 – Individual Accountability for Violations of Human Dignity: International Criminal Law and Beyond

Chapter 10 – Responding to the First Global Commons Issue: The Law of the Sea

Chapter 11 – Protecting the International Environment

Chapter 12 – Managing the World Economy

Chapter 13 – The Use of Force

Chapter 14 – Conceptual Challenges to International Law: Legitimacy, Relevance and Justice

**University of Toledo, College of Law
Public International Law, Spring 2007
Professor Benjamin G. Davis**

Final Examination

8:30 a.m. Thursday, 26 April 2007

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You may not take the examination or your bluebook(s) out of the exam room. If you want to leave the room, you must leave all materials on your desk.

Do not speak with anyone about the exam or its contents prior to all students having handed in the complete examination.

The exam is OPEN BOOK.

The exam is for a total of 180 points and contains two parts.

Part I is an essay question. You should use eighty (80) minutes to complete Part I. This part counts for 80 points.

Part II is an essay question. You should use one hundred (100) minutes to complete Part II. This part counts for 100 points.

Based on the casebook and additional materials we have studied this semester you should address all the issues fairly raised by each problem, even if you believe a particular issue to be dispositive. Remember: If you do not write it, I do not know that you know it.

For purposes of the exam, please assume that all states are members of the United Nations and that all states have properly ratified all treaties we have discussed.

Should you find it necessary in answering a question to assume a fact not given in the problem as stated: you may do so but you should clearly indicate that you are making an assumption and should briefly explain why you consider it a reasonable assumption to make.

Write your exam number at the top of every page of your examination. I must receive all pages of your examination. You will receive a grade of "F" for this exam unless I receive all pages of your examination.

Do not read further until you are told you may start.

Part I

80 minutes

Over the course of this semester we have studied a number of problem situations which have had to be addressed by international legal persons (states primarily, but also international governmental organizations). The parties to these difficult situations have been states, sub-national entities, non-state actors, corporations, individuals, and non-governmental organizations. Some of these matters have been addressed in bilateral processes and others have been in regional or multilateral processes. Some of these matters have taken advantage of the presence of international institutions while others have been addressed through the internal institutions of individual states.

In analyzing these problem situations we have sought to ascertain the relevant rules of international law and we have thought about how to apply these rules. In some of these cases treaty language has stated the rule (sometimes codifying a customary international law rule) and in other cases customary international law has been the source of the relevant rule.

I would like you to think about the manner in which international law has or has not “worked” in these various situations we have studied. What, if any, are the deficiencies in international law and how can they be addressed in the present structure of the world? What, if any, are the aspects of international law that work well and how can they be built upon in the present structure of the world?

Feel free to cite to any section(s) of the readings that you deem relevant as part of providing your evaluation of international law as you have seen it operate in the course. What, if anything, is to be done?

Part II.

100 Minutes

Joe Johnson walked into his office as general counsel of Very Big Corporation of the United States. He opened the urgent e-mail from the Chair of the Board of the corporation which stated as follows:

“Joe,
We have a contract to approve here and I did not notice your legal analysis as part of it. See attachment.
Best,
Sarah
Sarah deBoss”

Joe opened the attachment and saw it was a contract to provide oil drilling equipment for a

project in southern Fudan – in the Sarfur region. Joe became immediately concerned as he had read about the hundreds of thousands of people that were dying in that area of Fudan due to the ongoing civil war and the actions of armed groups that were said to be associated with the government.

Fudan is an extremely underdeveloped arid country located in Africa. Its government is dominated by a ruling clique coming from the Northern part of the country that had come to power in a bloody coup seven years ago, replacing the internationally recognized coalition government made up of both Northerners and Southerners. Since the coup only a few states had developed diplomatic relations with the new Fudanese government - one of those states being the United States.

The United States had attempted, to no avail, to broker a peace agreement between the government, the armed groups, and the Southerners over the past few years. It was widely reported in the official reports of the United States Department of State that Fudan was a very poor country which also had a very significant problem with corruption of governmental officials.

Joe noted one curious point in the contract. It specified at some length a series of villas in the capital of Martoum to be rented by the oil drilling company. The precision with which the housing was designated and the very high price of the housing bothered Joe. He was also worried about the security arrangements as detailed in the contract.

Joe went in to see the President of Very Big Corporation, Marty Mason, and told him about the e-mail from the Chair of the Board Sarah deBoss. Joe asked Marty about the housing particulars and Marty explained that Very Big Corporation had had to agree to that arrangement to get the deal – the housing was in fact owned by the brother of the Prime Minister of Fudan. No housing, no deal.

Joe also asked Marty how the security elements of the contract were going to work – given the humanitarian crisis going on. Marty explained that the Fudanese government had assured him that the security would be ably provided by some of the armed groups in the South that were helping preserve “order” in the Sarfur region.

Marty then told Joe this was a hostile environment to work in but this two year contract represented a very big deal for the company and could represent 40 per cent of profits for each of the next two years.

Joe went back to his office worried about the contract. He suspected that the housing was little more than a bribe to the Prime Minister of the Fudanese government. He worried about the armed groups providing security for the project. Those groups were also likely to be involved in the killing of civilians in the civil war.

Joe noted that the contract language on applicable law specified that “international law is the law that shall apply in this contract between the State of Fudan and Very Big Corporation”. While

Joe had some experience dealing with international contracts, he did not have any experience with dealing with an international contract in this kind of hostile environment with international law as the choice of law. Any dispute resolution would be in international arbitration.

Joe calls you (his personal lawyer (not a lawyer for Very Big Corporation)) and asks you what do you think about this contract? Joe asks you for your best advice as to what you think he should do? Should the company sign the contract? If so, what does one do if a problem arises later?

What is your advice to Joe?

END OF THE EXAM