

INTERNATIONAL BUSINESS TRANSACTIONS

W, Th 9:10-10:15 a.m.
Room 109

Professor Brand
Fall 2007

SYLLABUS

REQUIRED MATERIALS:

- 1) R. Brand, *Fundamentals of International Business Transactions* (Kluwer Law International, 2000)
- 2) R. Brand, *Fundamentals of International Business Transactions: Documents* (Kluwer Law International, 2000)
- 3) Documents for a Sample International Sales Transaction, Incoterms, UCP (distributed in class)

PLEASE NOTE:

While the normal Law School attendance policy does not count missed make-up classes, for purposes of this course, missing a make-up class will be counted as an absence just the same as missing a regularly-scheduled class. You must attend at least 80% of all classes on the dates and times listed in the schedule on the final page of this syllabus as distributed on the first day of class.

There are 23 assignments listed below. There will be 28 class meetings for the semester. This recognizes that there are times when it may be necessary to spend more than a single day on an assignment.

- 1) I. INTRODUCTION: DEALING WITH THE INCREASED RISKS OF TRANSNATIONAL TRANSACTIONS
II. THE EXPORT-IMPORT TRANSACTION: THE FOUNDATION OF INTERNATIONAL TRADE
 - A. The Export-Import Contract
 - B. The Documentary Sales Transaction

Preface and pp. 1-30

Docs: Sample International Sale Documents (online at www.law.pitt.edu/brand)

- 2) continuation of the documentary sales transaction
pp. 31-69
Docs: Incoterms; ESGA; UCC 1-201 2-105(4), 2-319--2-324, 2-401, 2-501, 2-503, 2-513, 7-102, 7-503 (note that the new UCC Article 2 eliminates sections 2-319 through 2-324 as "inconsistent with modern commercial practice")

- 3) C. The Consequences of Nonperformance
1. Excuse for Nonperformance
 2. Damages for Breach
 3. The Remedy for Breach: Specific Performance v. Damages

pp. 70-128

Docs: ESGA 32(2), 51; UCC 2-615, 2-616, 2-713

- 4) D. The Codification of International Sale of Goods Law

pp. 128-171

Docs: CISG

- 5) E. The Letter of Credit Transaction--Financing the Export-Import Transaction

1. Introduction to Basic Letter of Credit Law
2. The Separate Contract Rule

pp. 186-212

Docs: UCP; UCC 5-103, 5-106--5-109, 5-111

- 6) 3. The "Irrevocable" Letter of Credit
4. Strict Compliance!?!

pp. 212-258 [note: the *Rockwell* case on page 236 should be read with the material on page 231, before part 5]

Docs: UCP; UCC 3-301, 3-302, 3-307, Article 5

- 7) **III. GOVERNMENTAL REGULATION OF INTERNATIONAL TRADE**

- A. Introduction
- B. The Historic Evolution of United States Trade Law
- C. GATT and its Relationship to United States Trade Law
- D. U.S. Regulation of the Import Transaction

p. 259-306

- 8) E. U.S. Regulation of the Export Transaction

pp. 306-362

- 9) **V. PROFESSIONAL RESPONSIBILITY IN A TRANSNATIONAL TRANSACTIONS PRACTICE**

pp. 395-455

- 10) **VI. DISPUTE RESOLUTION IN INTERNATIONAL TRADE**
A. Why a Transactions Lawyer Needs a Basic Understanding of Dispute Settlement Issues
B. Jurisdiction to Adjudicate--What Forums Are Available When the Dispute Arises?
pp. 457-533
Docs: European Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels Regulation), available at: http://europa.eu.int/eur-lex/pri/en/oj/dat/2001/l_012/l_01220010116en00010023.pdf
- 11) C. Choosing the Law Prior to the Dispute
D. Choice of Forum Issues: Litigation or Arbitration?
pp. 533-590
Docs: U.N. Convention on Recognition and Enforcement of Foreign Arbitral Awards; 2005 Hague Convention on Choice of Court Agreements, available at: http://www.hcch.net/index_en.php?act=conventions.text&cid=98
- 12) E. Recognition and Enforcement of Foreign Judgments in the United States
F. The European Approach to Recognition and Enforcement and the Hague Conference on Private International Law
pp. 590-665
Docs: Uniform Foreign Money-Judgments Recognition Act; Brussels Regulation; Uniform Enforcement of Foreign Judgments Act; 2005 Uniform Foreign Country Money-Judgments Recognition Act, available at <http://www.law.upenn.edu/bll/archives/ulc/ufmjra/2005final.htm>
- 13) G. Foreign Currency Judgments--Another Look at Choice Forum and Choice of Law
pp. 665-693
Docs: Uniform Foreign-Money Claims Act
- 14) **VII. DEALS AND DISPUTES INVOLVING FOREIGN SOVEREIGNS: FOREIGN SOVEREIGN IMMUNITY AND ACT OF STATE**
A. Sovereign Immunity--The Jurisdictional Defense
pp. 775-824
Docs: Foreign Sovereign Immunities Act
- 15) B. The Act of State Doctrine--The Substantive Defense
pp. 824-904

- 16) **VIII. LEGISLATING MORALITY IN INTERNATIONAL BUSINESS TRANSACTIONS: NATIONAL AND INTERNATIONAL PROHIBITIONS ON CORRUPT BUSINESS PRACTICES**
pp. 905-941
Docs: Foreign Corrupt Practices Act; OECD Convention on Combating Bribery
- 17) **IX. BEYOND THE DIRECT SALE: ALTERNATIVE FORMS OF INVOLVEMENT IN INTERNATIONAL TRADE**
pp. 943-973
- 18) **X. INVESTMENT ABROAD--EXTENDING THE INVOLVEMENT; INCREASING THE RISK**
A. Introduction
B. Expropriation--The Ultimate Risk
 1. Development of the Right to Compensation
pp. 975-1022
- 19) 2. Insurance for Political Risk--The Overseas Private Investment Corporation (OPIC) and the Multilateral Investment Guaranty Agency (MIGA)
C. Bilateral Investment Treaties
D. The International Center for the Settlement of Investment Disputes Between States and Nationals of Other States (ICSID)
E. The Draft Multilateral Agreement on Investment
F. Revisiting the Takings Issue
pp. 1022-1091
Docs: 22 U.S.C. §§ 2191, et. seq.; Convention on the Settlement of Investment Disputes; U.S. Model Bilateral Investment Treaty; MIGA Treaty
- 20) **XI. U.S. ANTITRUST REGULATION OF INTERNATIONAL BUSINESS TRANSACTIONS**
A. Introduction: The Economics and History of U.S. Antitrust Law
pp. 1093-1161
Docs: Antitrust statutes and regulations
- 21) B. Restraints of Trade Involving Governments
pp. 1161-1206
Docs: 1980 British Protection of Trading Interests Act

- 22) **XII. U.S. TAXATION OF EXPORT AND OVERSEAS OPERATIONS**
- A. Introduction
 - B. The Basic Factors: Status and Source
 - C. Fundamental Issues of Corporate Taxation
 - D. An Overview of U.S. Taxation of Overseas Markets
 - E. Entering the Overseas Market: The Foreign Tax Credit and Branch Operations

pp. 1207-1257

Docs: Indicated sections of the Internal Revenue Code

- 23)
- F. Bilateral Tax Treaties
 - G. Establishing a Foreign Subsidiary
 - H. Operating Through a Foreign Subsidiary
 - I. Intercompany Pricing: Preventing Tax Avoidance Through § 482 Reallocations

pp. 1257-1360

Docs: U.S. Model Tax Treaty; Indicated sections of the Internal Revenue Code

Class Schedule

W, 8/29		W, 10/17	
Th, 8/30		Th, 10/18	
W, 9/5		W, 10/24	
Th, 9/6		Th, 10/25	
F, 9/7	make-up class (1:25-4:05)		
W, 9/12	no class	W, 10/31	
Th, 9/13	no class	Th, 11/1	no class
W, 9/19	no class	W, 11/7	no class
Th, 9/20	no class	Th, 11/8	no class
F, 9/21	make-up class (1:25-4:05)	W, 11/14	
W, 9/26		Th, 11/15	
Th, 9/27		F, 11/16	make-up class (1:25-4:05)
W, 10/3		W, 11/21	(no class - Thanksgiving recess)
Th, 10/4		Th, 11/22	
W, 10/10	no class	W, 11/28	
Th, 10/11		Th, 11/29	
F, 10/12	make-up class (1:25-4:05)	W, 12/5	
		Th, 12/6	

-Attendance. Consistent with ABA accreditation rules and the policy explained in the University of Pittsburgh School of Law Student Handbook, any student not attending at least 80% of all classes during the semester will not be entitled to take the exam, and will receive a grade of “F” for the course. **While the normal Law School attendance policy does not count missed make-up classes, for purposes of this course, missing a make-up class will be counted as an absence just the same as missing a regularly-scheduled class. You must attend at least 80% of all classes on the dates listed above schedule as it is distributed on the first day of class.**

-Disability. If you have a disability for which you are or may be requesting an accommodation, you are encouraged to contact both your instructor and Disability Resources and Services, 216 William Pitt Union (412) 648-7890 or (412) 383-7355(TTY), as early as possible in the term. DRS will verify your disability and determine reasonable accommodations for this course.

-Religious Observances. The University of Pittsburgh has a tradition of recognizing religious observances of members of the University community in instances where those observances may conflict with University activities. On such dates, students will not be penalized for absences if (and only if) advance notice is provided to the professor of the purpose of the absence. Examples of such occasions are Yom Kippur and Good Friday, but other days of religious observance may also conflict with scheduled academic activity or evaluation. Students missing class for religious observances are encouraged to ask colleagues to tape the class and share class notes.

-Anti-Harassment Policy. No University employee, student or individual on University property may intentionally harass or abuse a person (physically or verbally) with the purpose or effect of unreasonably interfering with such person's work or academic performance, or of creating an intimidating, hostile, or offensive work environment. Consistent with the University Nondiscrimination Policy Statement, this Anti-Harassment Policy includes cases where the conduct is based on race, color, religion, national origin, ancestry, sex, age, marital status, familial status, sexual orientation, disability or veteran status. Violations of this policy should be reported immediately to any faculty or administrator.