
INTERNATIONAL BUSINESS LAW in Spring 2019 (BA3084)

Course Code	BA3084	Professor(s)	Fred Einbinder
Prerequisites	None	Office Number	G-3A04
Class Schedule	MR: 15:20-16:40 in PL-3	Office Hours	Mondays & Thursdays 11:30 - 12:30, and by appointment
Credits	4	Email	feinbinder@aup.edu
Semester	Spring 2019	Office Tel. Ext.	640, - 0608908466

Course Description

- **COURSE DESCRIPTION:**

1. The International business law course at AUP differs from most courses of a similar nature offered at US institutions in its adoption of a comparative law perspective. While considerable time is devoted to American law given its importance and influence the focus of the first part of the course is on French law as the best representative of the Civil law tradition. Students are introduced to the major legal traditions of the world, comparative law methodology and issues and learn to analyze and compare how different legal systems handle key business issues, (ex. US and French evidence gathering and litigation) . Aspects of Chinese, Japanese, English, Indian and German law will also be studied.
2. French legal sources, history, structure and the organization of legal professionals are examined with a focus on how French contract law influences French negotiation practice and conflict resolution in business..
3. European Union law is briefly examined by focusing on its dynamic interplay with national law the role played by the European Court of Justice.
4. The second part of the course begins by focusing on areas of law that may properly be termed 'international' including international documentary terms (incoterms) financing, payment security and dispute resolution mechanisms (litigation and arbitration).
5. Using the fascinating case of Ecuador v. Texaco/Chevron narrated by Paul Barrett in Law of the Jungle as a means of integrating these themes, we will study and debate the contentious and complex issues of Extraterritoriality, Anti-corruption, Corporate Governance, Business and human rights issues. Doing so will at the conclusion of the course will allow us to see the dynamic interplay between comparative law with part public international law and business ethics.

B. SCOPE

The scope of the course is international in some areas, e.g. international sales contracts but regional (European) in other areas, e.g. business organizations, and national (French) in the first half of the course which centers on torts and contracts..

Our study of the 'civil law tradition' is fully justified by the fact that not only it is the law of Continental Europe and all of Latin American but its influence can also be seen, to varying degrees in Africa, the Middle East, and Asia.

C. METHOD

Class sessions will consist of lectures, discussion and occasional individual oral questioning. I hope that we can take advantage of the opportunity of the diversity of national backgrounds of the students in the class affords us in discussing specific topics, e.g. the practical difficulty of enforcing the provisions of the OECD Anti-bribery Convention in the context of the need to foster "Guangxi" relationships in China.

1. **Teamwork and leadership goals** are attained by student team class presentations. Students will be divided into teams which will, for example; analyse and compare French and US approaches to evidence gathering and redress (civil and criminal), McTorts (US and English cases involving McDonalds) , differing perspectives on privacy and the law, comparing how French and American law regulate, investigate, compensate and remedy pharmaceutical companies and the comparative and international law and ethical issues in the Law of the Jungle narrative.
2. **A research paper of approximately 10-15 pages is required.** The purpose of this research paper is to give the student the opportunity to do some research on an area of interest that cannot be covered in class due to time limitations.

Students must prepare an outline of their proposed study and discuss it with the professor long before their project is due.

Students who do not have a background in American law will be encouraged to prepare a research paper on a subject relating to American law.

Students lacking a US law background are strongly encouraged to read the introductory chapters in Fletcher, American Law in a Global context:

Course Learning Outcomes

Become familiar with the diversity of legal traditions in the world.

Use comparative law methodology in comparing civil and common law solutions to major business issues.

Be in a position to intelligently debate key issues in comparative law (Convergence? Law and Culture), imperialistic tendencies of the common law and English language? Benefits and pitfalls of legal “harmonization”

Become familiar with the basic principles, history and philosophical underpinnings of French law as a representative of the Civil Law Tradition.

Understand fundamental aspects of French contract law.

Understand how European Union law and National law interact and develop.

Obtain a sufficient knowledge of key aspects of international sales contracts to permit the student to participate in contract negotiations.

Analyze and evaluate disputed positions on legal issues affecting business internationally- extraterritoriality, corporate governance, comparative criminal procedure to permit lively debate. Demonstrate ability to interact effectively in teams to permit debate in an attempt to persuade or influence colleagues.

Research effectively timely legal subjects of particular interest individually and prepare a clear and concise written report.

General Education

Course Outline

SCHEDULE – READING ASSIGNMENTS

TO BE READ PRIOR TO CLASS SESSIONS

1-Monday, January 21st, 2019

Introduction : The Need For A Comparative Law Perspective

Major legal systems of the World : Civil, Common, Chinese, Religious law, Geographical Distribution

2-Thursday January 24th, 2019

Comparative Law (Continued)

The Civil Law family

Comparative Law Methodology and Contemporary Issues of Debate (Cultures, Economic Analysis, Best Law, Convergence? Separation?, Imperialism)

The interaction between International Public Law, Private Law and Comparative Law-
EUROTUNNEL as an example

READ : Merryman, The Civil Law Tradition, pp. 1-38 (chapters I-VI), pp. 143-151 (chapter "Perspectives")

Other cases and texts,

Recommended: Steiner, French Law

3-Monday , January 28th 2019

The French legal system as a representative of the Civil Law Tradition

The need for a historical perspective – "A Page of History is worth a volume of logic"

The French Judicial System

Comparison of Legal professionals-French, American and English

READ:

Einbinder, Cases , Materials and Texts on International Business Law (arranged by packets)

Sington, "French Juristes Take the Management Road", Int'l Corp. Law July 91

Excerpts from Deposition of Fred Einbinder in Spie-Capag v. Engineering Science US District Court – San Francisco

Renfield Corporation v. Remy Martin SA; Excerpts from Dayan v. McDonald's (Illinois)-the role of Huissiers

4. Thursday, February 4th

Comparing French and American law of Civil and Criminal procedure

US "Discovery" , Cross-examination, French "dossier" (file)

READ : Einbinder, Cases and Materials on International Business Law

READ : Merryman, pp. 68-90 (chapters XI-XIII), pp. 102-124 (chapters XV-XVI)

Recommended: Steiner, French Law

5- February 4th

Comparative criminal procedure

The Investigating Magistrate ('Juge d'instruction'), Inquisitorial, Accusatorial, adversarial systems,

READ: Einbinder, Cases and Materials on International Business law;

Merryman, Ch. On Criminal Procedure

6-February 7th

French civil and criminal procedure; recent constitutional and structural developments

Comparisons with US law

Prosecutors as 'Judges' ?,

READ : Einbinder, Cases and Materials on International Business Law

Recommended: Steiner, French Law

7-February 11th

French Tort Law. Comparison with American, Chinese law

The Duty to Render Assistance

Read:; Fletcher, 440-441 (handout); Sokol, NYT article; Einbinder, Cases and Materials on International Business Law

8-Feb. 14

Comparison of French and American Tort law (cont'd)

Master and Servant Liability;

Read; Einbinder,

9-Feb. 18

More comparisons (including English law of Libel)

“McTorts”

READ: McTorts ('presentations by teams') Discussion of balancing individual and corporate responsibility; Litigation decisions- Legal and Business strategies

10-Feb. 21st

French and Anglo-American Contract Law compared

Pre-contractual liability

Agreements to Agree, What did the parties mean? The role of Good faith

READ: Einbinder, back to the McDonalds case-“good faith” in Illinois

Recommended: Steiner

11-Feb. 24th

Contract Law-cont'd

Defects of Consent – Mistake (Erreur) - Duress (Dol), Fraud

Focus on Mistake to illustrate American, French and English approaches-

Sherwood 'cow' case (US) , Poussin (French), Constable (Eng.)

READ: Einbinder

Rec. Steiner

12-Feb. 28

Contract law (cont'd)

French law- Objet, Lesion

Excuses for Performance – Comparative law US/English/French/German law/ Force majeure, frustration of purpose, commercial impracticability

READ: Einbinder

Rec. Steiner

SPRING BREAK

13. Monday, March 18th -MIDTERM EXAMINATION

14. March 21st

Review of the Midterm; Introduction to EUROPEAN UNION LAW An Overview of the Legal Structure of the European Community with particular reference to the European Court of Justice at Luxembourg; The relationship between European Community Law and the National Laws of the Member States

READ: Einbinder

15. March 25th

EUROPEAN UNION LAW (cont'd)

Jurisdictional Issues

The Four Freedoms of Movements - Focus on Freedom of Establishment and Persons

The CAMPENON BERNARD SGE (European jurisdiction) experience; The Thieffrey case and lawyers practices, return to Eurotunnel

READ : Einbinder; Thieffrey case, Campenon Bernard, Eurotunnel cases

16. March 28

INTERNATIONAL CONTRACTS

International Documentary Terms – INCOTERMS

READ : Einbinder, Cases and Materials on International Business Law

Website references on INCOTERMS

17. April 1st

INTERNATIONAL CONTRACTS (cont'd)

The development of an International Sales law, UN Convention on Contracts for the International Sale of Goods -Applicability, Major provisions

18. April 4

International contracts (cont'd)

ICC Documentary Credits

The Letter of Credit arrangement, the "fraud in the transaction" exception

Financing Mechanisms-Guarantees, First demand bonds, Public-Private infrastructure projects

Islamic financing law

19. April 8

JURISDICTION (particularly Extraterritorial Jurisdiction)

Jurisdiction (The peculiarities of US law ex. CBSGE from Denmark to Texas)

Comparison with European Legal systems

Conflict of Laws

Extraterritoriality

READ: The **ALSTOM and MORRISON cases**

Einbinder, Cases, Materials and Text in International Business Law

Barrett, Law of the Jungle

20. April 11th

International Dispute Resolution Mechanisms

Comparison of Litigation and Arbitration-Advantages/Disadvantages

Lex Mercatoria

The “Pyramids” case

READ: Einbinder, International Business law; Paulsson, The Egyptian Pyramids case

Barett, Law of the Jungle

21- April 15

International Dispute resolution (cont'd)

Read: Einbinder, International Business Law

Barett, Law of the Jungle

22 -April 18

International Criminal Liability

Business and Ethics

Anti-Corruption The OECD anti-Bribery Convention

Alstom and Siemens bribery cases compared

READ: Einbinder; Barrett

23- April 25

Business and Human Rights

Alstom Tramway of Jerusalem case

Alien Torts cases; Canada as the center of litigation

Read: Einbinder

Barett, Law of the Jungle-the Texaco/Chevron v. Ecuador Legal saga

Ruggie, Just Business: Multinational Corporations and Human Rights

24- April 29

Comparative Corporate Governance (US, France, Germany & Japan)

More on Human Rights and Business

READ: Einbinder, Barett

25-May 2 -

TEAM PRESENTATIONS (related to Law of the Jungle issues)

26-May 6

TEAM PRESENTATIONS (related to Law of the Jungle Issues)

27&28 MAY 16th 3:30-5:45

FINAL EXAMINATION

INDIVIDUAL RESEARCH PAPERS DUE

Textbooks

Title	Author	Publisher	ISBN	Required
LAW OF THE JUNGLE	BARRETT		9780770436360	Yes
CIVIL LAW TRADITION	MERRYMAN		9780804755696	Yes

Attendance Policy

PLEASE NOTE

Copies of the University's on absence and academic dishonesty policies were given to each student at registration. You are responsible for adhering strictly to these policies in all classes. Additional copies of the policies are available at the office of the Register.

Students studying at The American University of Paris are expected to attend ALL scheduled classes, and in case of absence, should contact their professors to explain the situation. It is the student's responsibility to be aware of any specific attendance policy that a faculty member might have set in the course syllabus. The French Department, for example, has its own attendance policy, and students are responsible for compliance. Academic Affairs will excuse an absence for students' participation in study trips related to their courses.

Attendance at all exams is mandatory.

IN ALL CASES OF MISSED COURSE MEETINGS, THE RESPONSIBILITY FOR COMMUNICATION WITH THE PROFESSOR, AND FOR ARRANGING TO MAKE UP MISSED

WORK, RESTS SOLELY WITH THE STUDENT.

Whether an absence is excused or not is ALWAYS up to the discretion of the professor or the department. Unexcused absences can result in a low or failing participation grade. In the case of excessive absences, it is up to the professor or the department to decide if the student will receive an "F" for the course. An instructor may recommend that a student withdraw, if absences have made it impossible to continue in the course at a satisfactory level.

Students must be mindful of this policy when making their travel arrangements, and especially during the Drop/Add and Exam Periods.

Grading Policy

E. GRADING

<u>MIDTERM</u>	MARCH 15th	20%
<u>TEAM PRESENTATIONS</u> 20%	MAY 2nd & 6th	
<u>FINAL EXAMINATION</u>	MAY 16th	25%
<u>RESEARCH PROJECT</u>	<u>DUE -MAY 16th</u>	20%
<u>CLASSROOM PARTICIPATION</u>		15 %
		100%

The examination will be made up of “objective” questions as well as hypothetical issue questions that will require application of the legal principles covered.

Other
