
INTERNATIONAL BUSINESS LAW in Spring 2021 (BA3084)

Course Code	BA3084	Professor(s)	Fred Einbinder
Prerequisites	None	Office Number	G-3A03
Class Schedule	M: 15:20-16:40 in C-102 R: 10:35-11:55 in C-102	Office Hours	Mondays and Thursdays 14:15-15:15 or by appointment (by TEAMS and perhaps in person later in semester)
Credits	4	Email	feinbinder@aup.edu
Semester	Spring 2021	Office Tel. Ext.	640, Cell 0608908466

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 and 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 an means of integrating these themes, we will study and debate the contentious and complex issues of Extraterritoriality, Anti-Corruption, Corporate Governance, Environmental Protection, and 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. **Full and effective class participation is expected of all students.** The "remote" format necessitated due to Coronavirus constraints is less than ideal to accomplish this objective. However, class participation (and in particular student presence) has been excellent in previous classes taught by the professor during the Virus. A major factor in ensuring class participation has been the requirement for students to "brief" assigned cases and materials and submit these briefs to the professor by AUP Email prior to each class. These briefs are included as part of the component for the class participation component (20%) of student's overall grade.
2. **Teamwork and leadership goals** are attained by student team class presentations. Students will be divided into teams which will, for example, analyse and compare European and US approaches to Antitrust/Competition law, The "Gig" economy and attempts to control Big Tech and the comparative and international law and ethical issues in the Law of the Jungle narrative.
3. **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 are encouraged to prepare a research paper on a subject relating, at least partially, 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

OR Langvardt, et. al, BUSINESS LAW-the textbook used in Legal Environment.

Course Learning Outcomes

Become familiar with the major legal traditions in the world (civil, for example France) and common law (England & US) and compare how their respective methods and "culture" structure international business.

Analyze and debate controversial legal issues affecting business internationally: extraterritoriality, corporate governance, comparative criminal procedure.

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

Demonstrate ability to interact effectively in teams to permit debate in an attempt to persuade or influence colleagues.

Undertake research and writing enabling the student to explore in-depth a legal topic that relates to their future plans.

General Education

[PLEASE REMOVE THIS SECTION IF THE COURSE DOES NOT FULFILL ANY GLACC REQUIREMENT]

GLACC

The Global Liberal Arts Core Curriculum (GLACC) degree requirements include the following categories of courses:

- Integrative Inquiry (coded CCI)
- Experiential learning (coded CCX)
- Research, Interpretation, and Writing (coded CCE)
- Digital Literacy and Communication (coded CCD)
- Disciplinary Research Methods and Writing (coded CCR)
- Quantitative Reasoning (coded CCM)
- Experimental Reasoning Course with Lab (coded CCS)
- Expression Française (coded FR)
- AUP Capstone (coded CCC)

This course can be used to fulfill the [INDICATE THE REQUIREMENT(S) FULFILLED BY THE COURSE] requirement and as such has the following learning outcomes:

[INDICATE THE GENERAL EDUCATION LEARNING OUTCOMES]

Course Outline

SCHEDULE – READING ASSIGNMENTS- TO BE READ PRIOR TO CLASS

Coverage and Readings are SUBJECT TO MODIFICATION (particularly in light of remote or hybrid learning constraints and date changes)

1-Monday, January 18th, 2021

Introduction : The Need For A Comparative Law Perspective

Major legal systems of the World : Civil, Common, Chinese, Religious legal traditions-their Geographical Distribution. Importance in Business. The practical Importance of philosophical and ethical issues-(To Whom is a Duty Owed? (The Parable of the “Good Samaritan”)

Read; Ronald P. Sokol, *The Kindness of Strangers* (June 6,2006-NYT) ; The Dunn case (man drowns while teens watch and film in Florida)

2-Thursday January 21st , 2021

Comparative Law (Continued)

The Civil Law family

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

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

- Current events-The Carlos Ghosn saga, Dieselgate (Volkswagen) and class actions

READ : Merryman, The Civil Law Tradition, pp. 1-38 (chapters I-VI), pp. 143-151 (chapter XIX “Perspectives”); Motoko Rich, *Ruling on Carlos Ghosn highlights harsh policies for those who assert innocence*’ NYT,(Jan.30,2019)

Libyan American Oil co. (Liamco) v. Government of the Libyan Arab Republic

Einbinder, Outline pp.1-12

3-Monday , January 25 th 2021

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, English, Japanese and others

READ:

Einbinder, Cases , Materials and Texts on International Business Law (pages TBA)

Excerpts from Deposition of Fred Einbinder in Spie-Capag v. Engineering Science US District Court (ND California) – San Francisco; Renfield Corporation v. Remy Martin SA-(NY) –Comparing the availability of atty-client privilege for in-house counsel; Excerpts from Dayan v. McDonald's (Illinois)-the role of Huissiers. Admissibility of evidence

4. Thursday, Jan. 28rd

Comparing French and American law of Civil and Criminal procedure- US “Discovery” & Cross-examination compared to the French “instruction” phase and the constitution of the “*dossier*” or file

READ : Einbinder, Outline pp.12-14; Einbinder, Cases and Materials; Einbinder, Excerpts from *Corruption Abroad: From Conflict to Co-Operation: A Comparison of French and American Law and Practice*, (2020) International, Comparative, Ethical and Policy Law Review (2020);

Merryman, 102-124 (chapters XV-XVI) Steiner, Excerpts from French Law-*The Core Principles Governing the French Judicial process*

5- Monday, February 1st

Comparative criminal procedure

The Investigating Magistrate ('Juge d'instruction'), Inquisitorial, Accusatorial, adversarial systems; Comparisons with US law- Prosecutors as 'Judges' ?

READ: Tony Mauro and Haya El Nasser, '*Après Dieu, c'est lui*', *USA TODAY*, -Princess Diana case; Einbinder, , Cases and Materials on International Business Law; Einbinder, Excerpts from *Corruption Abroad*

Merryman, Ch.XVII 126-133

6-Thursday, February 4th

More on French and other civil law systems civil and criminal procedure (Japanese law) ; recent constitutional and structural developments. International comity

READ : *Materials on the Ghosn case and Japanese Law; Excerpts from* Diego Zambrano, *A Comity of Errors: The Rise, Fall, and Return of International Comity in Transnational Discovery*, *Berkeley Journal of International Law* (2016)

pp. 157-174

Monday, February 8th-NO CLASS-Mini-Break

Tort Law. Comparing French, American and other legal systems

The Duty to Render Assistance-A return to the Kindness of Strangers (re-read-see class 1)

Read: Fletcher, 440-441 (handout)

Einbinder, Outline 14-17

7- Thursday, Feb 11th

Comparison of French and American Tort law –Negligence,

Master and Servant Liability (Vicarious) And what about UBER EATS delivery ?

Read; Karel Roynette, *Drawing the Line of the Scope of the Duty of Care in American Negligence and French Fault-Based Tort Liability*, 8 J.Civ.L.Stud. (2015)

8- Monday, Feb. 15 th

More tort comparisons-Emphasis on restaurants and food cases

Back to the “Good Samaritan”

Donoghue v. Stevenson, and other food cases (France and the USA)

READ: Excerpts from Chapman, *The Snail and the Ginger Beer* (2010);

French case-Aubron v. Soulard with translated note, and Webster v. Blue Ship Tea Room (from Einbinder, Chapter on Management and Law in Hotel Management (1998) pp 415-429

9- Thursday, February 15th

Torts: “Mass Torts”, Group and Class Actions, Disasters and Pharmaceutical “secondary” effects. Case Study of Vioxx (US) and Mediator (France)

READ: Excerpts, Einbinder, *Mass Torts: Dispute Resolution in France and the United States- The Vioxx and Mediator Cases Compared*, *U. of Washington International Law Review* (2020)

10. Monday, Feb. 22- French and Anglo-American Contract Law compared

Pre-contractual liability

What did the parties mean? The role of Good faith, -“Good faith” in Illinois. Comparisons with French, German, Swiss, English and Australian law

READ: Einbinder, pp.18-22 ;. Back to the McDonalds v. Dayan case (class 3),; French cases in Einbinder, Cases and materials- Sheila O'Donnell, *The (varying) importance of being earnest*, International Corporate Law (1991) Etalissements Vilber-Lourmat SA CLM v. The ICL company, Cases illustrating Developments on Good faith In England and commonwealth countries

Thursday, February 25th, NO CLASS- Mini-Break 2

11- Monday, March 1st

Contract Law-cont'd

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

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

The Walker v. Sherwood ‘cow’ case (US), St. Arroman, Poussin (French), and English Constable cases compared

READ: Walker, St. Arroman and Constable cases in Einbinder, Cases and Materials;

Rec. Steiner, French Law,

12- Thursday, March 4th

Contract Continued

French law- Objet, Lesion

READ: Einbinder, Cases and Materials, **Ted Bates v. James Sugar** case,

13- Monday March 8th

Introduction to EUROPEAN UNION LAW An Overview of the Legal Structure of the European Union 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. The Four Freedoms of Movements.

READ: Einbinder, Outline 22-24; Thieffrey v. Conseil de L'Ordre des avocats de Paris and Campenon Bernard cases, Return to EUROTUNNEL (class 1)

14. Thursday, March 11th

MIDTERM EXAMINATION

15. Monday, March 15th

REVIEW OF MID-TERM EXAMINATION

INTERNATIONAL CONTRACTS-Trade terms-

International Documentary Terms – INCOTERMS

READ : Einbinder, 24-26Examine INCOTERMS

16. Thursday, March 18th

INTERNATIONAL CONTRACTS (cont'd)

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

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

Read: Einbinder, Cases and materials

17. Monday, March 22nd

INTERNATIONAL CONTRACTS-Payment and Financing mechanisms

ICC Documentary Credits

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

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

READ: American Bell International v. Islamic Republic of Iran, Einbinder, Cases and Materials, Fraud in the Transaction law review article

18. **Thursday, March 25th**

JURISDICTION (particularly Extraterritorial Jurisdiction)

Jurisdiction (The peculiarities of US law - Denmark to Texas)

READ: Einbinder, Outline 30-31, Einbinder, Cases and Materials, Daimler AG v. Baumann,; Dunn v. A/s EM Z. (Denmark and Texas)

19. **Monday, March 29th**

Jurisdiction cont'd- Comparison with European Legal systems, Conflict of Jurisdiction, Conflicts of Laws, Choice of Law, Extraterritoriality

READ: Morrison v. Australia National bank (Amicus curiae brief filed by the French Republic), Einbinder, Cases and

20. **Thursday, April 1st**

INTERNATIONAL DISPUTE RESOLUTION MECHANISMS Comparison of Litigation and Arbitration-Advantages/Disadvantages

Lex Mercatoria

Einbinder, Outline, 26-30;

SPP v. Arab Republic of Egypt, Egoth plus ICSID proceedings The “Pyramids” case in Jan Paulsson, The Egyptian Pyramids case

Monday, April 5th- NO CLASS-Easter Monday

21. Thursday, April 8th

Privacy and International Business-The Importance of a comparative Approach in analyzing Privacy issues , French concepts of dignity compared with American Monetization. Big Tech and Privacy (EU and US conflicts)

Read: Jeanne Hauch, *Protecting Private Facts in France: The Warren & Brandeis Tort is alive and Well and Flourishing in Paris*, Tulane L. Rev. (1994); James Q. Whitman, *The Two Western Cultures of Privacy: Dignity versus Liberty* 113 Yale L.J. 1151 (2004)

22- Monday, April 12th

The Interplay of Comparative Law and International Law-

Business and Human Rights-Extraterritoriality

Alstom Tramway of Jerusalem case

Alien Torts cases (return to Daimler class 18 ; Canada as the center of extraterritorial human rights litigation

READ: Einbinder, 31-end; Alstom Jerusalem Tramway case (French court of appeals)

23 –Thursday, April 15 th

Legal Anthropology-eg. Legal professionals and their Ethics, Corruption, Human Rights, Environmental Protection, Criminal Liability

Business and Ethics

READ: Barrett, LAW OF THE JUNGLE, pp. 1-115

Recommended: Ruggie, JUST BUSINESS: Multinational Corporations & Human Rights

24. Monday, April 19TH

Anti-Corruption The OECD anti-Bribery Convention

Alstom and Siemens bribery cases compared

READ: Excerpts from Einbinder, *Corruption Abroad* , DOJ press releases in Alstom and Siemens

Barrett, 115-180

25- Thursday, April 22th

Developments in Legal practice-eg; Third party financing, US “entrepreneurial legal professionals and international legal developments, Environmental Protection

Read: Barett, 180-end

26- MONDAY, APRIL 26TH

TEAM PRESENTATIONS

27- MONDAY, May 3rd

FINAL EXAM

MAY 10th- INDIVIDUAL RESEACH PAPERS DUE (18h PARIS TIME)

Textbooks

Title	Author	Publisher	ISBN	Required
LAW OF THE JUNGLE	PAUL M BARRETT	BROADWAY	9780770436360	Yes
THE CIVIL LAW TRADITION	John Henry MERRYMAN and Rigelio Perez-PERDOMO	Stanford U	9780804755696	Yes

Attendance Policy

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

CLASSROOM PARTICIPATION (Comprises 'Briefs' of cases and readings submitted prior to class and oral participation in class)

20 %

<u>MIDTERM</u>	MARCH 11th	20%
	(probable Take-Home)	
<u>FINAL EXAMINATION</u>	MAY 3rd	
	(probable Take-Home)	20%
<u>TEAM PRESENTATION</u>	APRIL 26th	15%
<u>RESEARCH PROJECT DUE –MAY 10th</u>		25%
		<u>100%</u>

- **COURSE TEXT AND RECOMMENDED READINGS**

Please refer to Textbook and Bibliography sections

Other
