

Class 1

Tuesday, September 6, 2016 12:29 AM

Topics

International business law as:

- Body of law that regulates global trade. Practical complexity comes from the fact that rules and regulations and the supply chain has become highly "unbundled" (for the concept of an "unbundled" supply chain, see Baldwin 2012)
- Set of policy interventions that countries can deploy to improve competitiveness, attract foreign investment, ... (<https://www.weforum.org/agenda/2016/06/what-is-standing-in-the-way-of-hypergrowth-in-your-region>)
- Set of tools used by countries for political purposes to manage international relations

Readings

Mandatory

- Richards, Ch. 1 (pp. 3-8)).
- Baldwin 2012

Non mandatory

- Map of countries' exports: <https://www.weforum.org/agenda/2016/03/this-map-shows-every-country-s-major-export/>
- Shipping routes: <https://www.shipmap.org/>
- Top shipping ports: <http://www.worldshipping.org/about-the-industry/global-trade/top-50-world-container-ports3>
- Key regional growth challenges: <https://www.weforum.org/agenda/2016/06/what-is-standing-in-the-way-of-hypergrowth-in-your-region/>

Files



Richards Ch
1



Baldwin
2012 on u...



The BP Oil
Spill FIRST...

Class 2

Thursday, September 8, 2016 5:37 PM

Topics

Variation in rules at the national level

- Identify the four major legal traditions (civil, common, customary, Islamic law) and their prevalence in the various regions of the world
- Emergence of various legal traditions throughout history
- Convergence of common law towards a single model (driven by the economic system--capitalism and reliance of markets)

Discussion of different ways to regulate the headscarf in the workplace

- Identify differences
- Explain difference in terms of difference in constitutional philosophies (role of the state in protection fundamental rights)

Readings

Richards, Ch. 1 (pp 30-33) (PDF under class 1)

Doing business in the Arab World - Starbucks case

- <http://www.independent.co.uk/news/world/middle-east/saudi-arabian-women-banned-from-starbucks-after-collapse-of-gender-segregation-wall-a6852646.html>
- <http://edition.cnn.com/2016/02/07/world/saudi-starbucks-women-ban-feat/>

Map of legal traditions

- [https://upload.wikimedia.org/wikipedia/commons/9/92/Map_of_the_Legal_systems_of_the_world_\(en\).png](https://upload.wikimedia.org/wikipedia/commons/9/92/Map_of_the_Legal_systems_of_the_world_(en).png)

Common law and civil law

- <http://www.economist.com/blogs/economist-explains/2013/07/economist-explains-10>

Data protection laws

- <https://www.dlapiperdataprotection.com/#handbook/world-map-section>

Readings distributed in class - Employment law and headscarves

- <https://www.oyez.org/cases/2014/14-86>
- <https://www.asil.org/insights/volume/19/issue/3/european-court-human-rights-upholds-frances-ban-full-face-veil>
- http://www.slate.com/blogs/xx_factor/2016/04/04/why_air_france_s_headscarf_mandate_for_flight_attendants_in_tehran_isn_t.html
- <http://www.ibtimes.co.uk/employment-law-burqa-niqab-ban-amanda-trewhella-511859>
- http://www.fasken.com/files/Publication/bac06e8c-6645-4d65-a59a-76531688c3e0/Presentation/PublicationAttachment/86261864-dd8a-4efc-9309-79d84d8d4e6a/HR_Space_-_April_13_2010_-_Dominique_Launay.pdf

Class 3

Tuesday, September 13, 2016 6:18 PM

Topics/Outline

Legal strategies to enter a foreign market

- Contract-based strategies
 - o Direct exporting
 - o Licensing
 - o Franchising
- Corporate-based strategies
 - o Wholly-owned foreign subsidiary
 - o Joint ventures (they can either be simply an agreement between companies or lead to the establishment of a new corporate entity)

Corporate law

- Types of businesses
 - o Separate legal entity (Corporations, Limited liability companies)
 - o No separate entity (contracts, partnerships, joint-venture)
 - o Advantages of setting up a separate business entity?
 - More people can join the business
 - Shareholders enjoy limited liability (shareholders' liability is limited to their capital contribution being effectively transferred to the corporate entity; entity's liability is not limited)
 - Can be easily sold
 - Owners retain sufficient control of business (even when business is owned by the entity)

Corporations

- can have a single shareholder
- can be shareholders of other corporations.

When they own 100% of another corporation, they own a subsidiary. The owner is the parent company or holding company

Governments' use of FDI regulations to control the economy and filter/attract foreign investments:

- China: prohibits the establishment of branch of foreign firms and, for certain strategic sectors, requires foreigners to 1) obtain government approval of the investment, 2) set up Foreign Invested Commercial Enterprises (FICE) and 3) make certain capital contributions (from 33.3% of 70% of capital must be deposited in a bank account in China)
- India: In the pharmaceutical sector, FDI rules depends on whether it is a greenfield (no gov't approval needed) or brownfield (gov't approval needed) investment.
- USA: Very liberal. Some restrictions grounded on national security interests

Readings

Introduction to corporations and multinational enterprises

- http://www.londoninternational.ac.uk/sites/default/files/multinational_enterprises_law.pdf
- Amaeshi et al (PDF)

China

- ESCOVIS 2014 (PDF)
- https://www.fenwick.com/FenwickDocuments/Establishing_Subsiary_in_China.pdf

USA

- KPMG investing in the United States (PDF)

India

- <http://documents.lexology.com/047cd780-04d4-4d1e-a0d5-f6e6995b3155.pdf>
- <http://www.forbes.com/sites/timworstall/2016/08/18/walmarts-reaction-to-indias-100-fdi-rules-will-benefit-the-indian-economy-and-consumer/#34863e035b03>



Amaeshi et
al



Amaeshi et
al



ECOVIS
2014



KPMG
Invest-in-...

Class 4

Thursday, September 15, 2016 10:19 AM

Outline

- Mergers and acquisitions (M&A)
 - Differences between a merger and an acquisition
 - Acquisitions: purchase of assets vs. purchase of shares (differences, pros and cons)
 - Merger
 - Three stages of the transaction
 - Internal (to the merging entities) and external (gov't) approvals
 - Role of due diligence
 - Funding
- Differences in strategies of corporate expansion and network building
 - USA: Acquisition (parent/subsidiary model) - priority: clear chain of command
 - EU: Merger (newly established entity with board members from both and merge of some corporate assets) - priority: relationships, shared governance, and minority rights
 - Japan: Keiretsu - priority: exchange of information, mutual support, loyalty
- Corporate inversions
 - Mechanics: Flipping a wholly-owned foreign subsidiary into the parent company
 - Goals
 - To separate heterogeneous operations/liabilities (Google)
 - To avoid tax liabilities (Apple)
 - To avoid tort liabilities (James Hardie)
 - Federal Government's 2016 actions
 - Disregarding inversion in the event of serial inverters
 - Curbing earnings stripping by eliminating deductions

Readings

M&A

- The business perspective: <https://www.bdc.ca/en/articles-tools/marketing-sales-export/exportation/pages/how-enter-foreign-market.aspx>
- The legal perspective: <http://www.lexology.com/library/detail.aspx?g=02f0fda1-d16f-4cc3-92cd-0505ba708dd3>
- Bayer/Monsanto: <http://www.press.bayer.com/baynews/baynews.nsf/id/Slides-for-the-Media-Conference-Call>

Differences in strategies of corporate expansion and network building

- http://www.londoninternational.ac.uk/sites/default/files/multinational_enterprises_law.pdf

Corporate inversions

- Introductory video: <http://for.tn/1YllxyG>
- The political perspective: <https://www.whitehouse.gov/blog/2016/04/08/corporate-inversions-tax-loop-hole-what-you-need-know>
- CEO's perspective: <https://theintercept.com/2016/08/16/ceo-tim-cook-decides-apple-doesnt-have-to-pay-corporate-tax-rate-because-its-unfair/> (the article has a link to a long interview Cook did for the WSJ)
- Case study: James Hardie
<http://sls.sagepub.com.bryant.idm.oclc.org/content/22/1/107.full.pdf+html> (pages 111-116)

Class 5

Tuesday, September 20, 2016 3:07 PM

US Contract law

What are the different types of contract?

What law governs?

- The laws of each nation govern contract
- In the US, this is mostly a matter of state law
- Sales of "goods" are treated differently: Within the US, there is harmonized regulation through the UCC (same statute adopted by all states)
- International sales of goods among merchants are regulated by the CISG

Do the parties have a contract?

- Basic principle: freedom of contract
 - Government is almost indifferent to nature of bargain (no illegal activities)
 - Government is almost indifferent to whether the bargain is fair (unequal bargaining power)
- Elements: Agreement + Consideration + Legality + Writing
 - Agreement: Offer (Intent + Definite + Communicated / Timing) + Acceptance (intent + Mirror Image + Communicated / Timing)
 - Real consent (Misrepresentation; Fraud; Mistake; Duress; Unconscionability)
 - Consideration
 - Illegality
 - Writing (real estate; more than 1 to perform; goods > \$500)

Homework

You are the CEO of GreatDrugs, a Smithfield-based corporation. Your company has defined its plan for manufacturing and distribution of its drug. The manufacturing facility will be Smithfield and drugs will be exported and sold in Brazil, Japan and the Netherlands, in addition to the US. An effective way to manage the supply chain is to use a cloud-based service as it cuts down costs (no need to build an infrastructure for managing the supply chain) and cloud-based service are usually up to speed with technological innovation (<http://www.oracle-downloads.com/moderncloud/>). Upon market research, you conclude that you will obtain cloud-based services from Oracle. This is description of what they offer in the area of supply management (<https://www.oracle.com/applications/supply-chain-management/>). You will ask to enter into the following agreement: <http://www.oracle.com/us/corporate/contracts/cloud-csa-us-en-2351289.pdf>.

After reading the assigned chapter, write a short essay briefly discussing the following questions (to be submitted on Blackboard):

1. What type of contract is this?
2. What law governs the agreement?
3. Who are the parties to the contract?
4. What consideration is exchanged?
5. How will you accept this contract?
6. If, after 3 months, you are not happy with the services, can you stop paying them and look for an alternative provider? (This is the most difficult question. The answer is in 2.1 and 9.4)

The essay must be submitted on Blackboard before Tuesday's class.

Reading on cloud computing: <http://www.dwt.com/Cloud-Computing-Evolving-Contracting-Practices-05-13-2014/>

Reading

Richards - Contract Law in the US



Richards-Co
ntract La...

Class 6

Thursday, September 22, 2016 9:12 PM

Contract negotiation simulation

Outline

Negotiation learning outcomes:

Identifying negative and positive bargaining ranges (gap or overlap of interests)

Information disclosure and effects on bargaining power

- Should the buyer openly tell his budget
- Should the seller openly tell that he has already received an offer for the same property?

Constructing First Offers

- Gathering information to determine the other party's intentions, expectations, and goals
- Managing information to influence the other party's intentions, expectations, and goals

Decision to extend vs abandoning difficult negotiations

Legal learning outcomes

Understanding the dynamic of a negotiation (offers, counteroffer, rejection, acceptance)

Drafting offers and counteroffers

Identifying conditions under which agreement is reached

Class 7

Tuesday, September 27, 2016 9:42 PM

International sales of goods (CISG)

What is a convention?

To which transactions does the convention apply? Applies to

- International transactions
- for the sales of goods
- That is commercial (among merchants)
- Located in different ratifying nations

Choice of law clauses: Parties can always opt-in (if CISG does not apply) or opt-out (if CISG would otherwise apply). In the US, if parties opt-out, UCC applies

Relationship to US law: CISG Creates federal contract law

Real consent

Permissible and impermissible misrepresentations (=> Richards-Contract Law in the US, pp. 343-346)

- A misrepresentation is a statement of a material fact that is false, relied on, and damaging
- Misrepresentations can be innocent (the person making the statement does not know it is false. If so the contract is canceled) or fraudulent (the person making the statement knows it is false. If so, the contract is either canceled or the victim can keep the contract and sue for damages)
- Can silence be deceptive? It can be when the buyer is mistaken about a material fact and seller knows
- Mistakes are treated like innocent misrepresentations

Readings

http://www.uncitral.org/uncitral/en/uncitral_texts/sale_goods/1980CISG.html

http://www.uncitral.org/uncitral/en/uncitral_texts/sale_goods/1980CISG_status_map.html

https://www.floridabar.org/divcom/jn/jnjournal01.nsf/c0d731e03de9828d852574580042ae7a/ce81566ed2199bc38525789d004b7c6a!OpenDocument&Highlight=0,*

Nicholas 2014 on CISG.pdf



Nicholas
2014 on C...

Class 8

Thursday, September 29, 2016 9:46 PM

Performance of the contract under the CISG

Reading: Nicholas 2014

Contracts for the carriage of goods

Seller/buyer relationship with regard to title/risk of loss (Incoterms)

Readings

<http://www.incotermsexplained.com/the-incoterms-rules/>

<http://www.persianguroup.biz/files/incoterms/incoterms%202010%20poster.jpg>

<http://www.undp.org/content/dam/undp/documents/procurement/documents/UNDP-Shipping-Guide.pdf> (Unit 1: chapters 3, 5, 6, 7; Unit 2: chapters 1, 2)

Nicholas 2014 on CISG.pdf

Class 9

Tuesday, October 4, 2016 12:04 PM

Force Majeure Clauses

Excuses for nonperformance under Art 79 of the CISG

(1) A party is not liable for a failure to perform any of his obligations if he proves that the failure was due to an impediment beyond his control and that he could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences.

(2) If the party's failure is due to the failure by a third person whom he has engaged to perform the whole or a part of the contract, that party is exempt from liability only if:

(a) he is exempted under the preceding paragraph; and

(b) the person whom he has so engaged would be so exempt if the provisions of that paragraph were applied to him.

Sample of Force Majeure Clause

- <https://ppp.worldbank.org/public-private-partnership/ppp-overview/practical-tools/checklists-and-risk-matrices/force-majeure-checklist/sample-clauses>

Events that trigger the need for a force majeure clause

- Shipper's bankruptcy: Hanjin Shipping ([http://www.masudafunai.com/Files/16001_Client%20Advisory%20\(09-07-16\).pdf](http://www.masudafunai.com/Files/16001_Client%20Advisory%20(09-07-16).pdf))
- Pirates: <http://worldmaritimeneews.com/archives/134829/annual-global-cost-of-piracy-measured-in-billions/>
- Backlog at port: <http://www.agg.com/The-West-Coast-Port-Slow-Down-Caused-You-to-Fail-to-Deliver-the-Goods-Under-Your-Supply-or-Transportation-Contract-Are-You-Liable-to-the-Customer-03-19-2015/>

Differences between impossibility, force majeure, and impracticability

Readings

<https://www.venable.com/understanding-force-majeure-clauses-2-25-2011/>



Excuses for
non perfo...

Class 10

Thursday, October 6, 2016 12:02 PM

International institutions

UN

- GA (<http://www.un.org/en/ga/>)
- Security Council (<http://www.un.org/en/sc/>)
 - Powers
 - Permanent and nonpermanent members
- Secretariat (<https://www.un.org/sg/en>)
- ICJ

Source of international law

- Primary (treaties and customs)
- Secondary (general principles, judicial decisions, teachings)

Concepts

Sovereignty

- Self-determination
- Recognition of states as legal actors

Multilateralism vs Universalism (no UN-led world legal order)

Human rights and their progressive realization

UN as a system (diffused power/agency)

UN is not a legal actor

Links

<http://www.un.org/en/member-states/index.html>

http://unfccc.int/essential_background/convention/items/6036.php

<http://www.un.org/en/sc/members/>

https://youtu.be/3xhWV4_p7BE



Beckman
on Intern...



barkin ch 5

Class 11

Tuesday, October 11, 2016 12:19 PM

WTO

History and basic structure

Functions

- Implementing WTO trade agreements
- Forum for trade negotiations
- Handling trade disputes
- Monitoring national trade policies
- Technical assistance and training for developing countries
- Cooperation with other international organizations

Principles

- Import restrictions should be tariff-based
- Guiding principle: Non discrimination
 - Most-favored-nation treatment
 - Exception 1: Preferential Trade Arrangements are permitted because of regional trade agreements (RTAs)
 - Exception 2: Enabling Clause permits less developed countries to grow their economies (Generalized System of Preference)
(https://www.wto.org/english/docs_e/legal_e/enabling1979_e.htm)
- National treatment
- Exceptions
 - actions taken against dumping (selling at an unfairly low price)
 - subsidies and special “countervailing” duties to offset the subsidies
 - emergency measures to limit imports temporarily, designed to “safeguard” domestic industries

Dispute Resolution

- The "shrimp-turtle" case
- The tuna-dolphin dispute

Reading

Understanding the WTO (pages 1-13, 44-48; 53-59; 67-70)

Html and pdf versions (pages are based on the PDF version):

- https://www.wto.org/english/thewto_e/whatis_e/tif_e/tif_e.htm
- https://www.wto.org/english/thewto_e/whatis_e/tif_e/understanding_e.pdf

Additional resource

Data on tariffs trends: <http://data.worldbank.org/indicator/TM.TAX.MRCH.WM.AR.ZS?end=2012&start=1996&view=chart>

Class 12

Thursday, October 13, 2016 2:20 PM

1. Regional Trade Agreements

Preferential rules of origin in regional trade agreements

https://www.wto.org/english/res_e/reser_e/ersd201305_e.htm

Database of RTAs

<http://rtais.wto.org/UI/PublicAllRTAList.aspx>

<http://rtais.wto.org/UI/PublicMaintainRTAHome.aspx>

2. European Union: What is it and how does it work?

The Union

- Political-economic union of 28 member states (http://ec.europa.eu/enlargement/policy/from-6-to-28-members/index_en.htm)
- Conditions for membership (http://ec.europa.eu/enlargement/policy/conditions-membership/index_en.htm)
- Relationship with WTO

7 Institutions (<http://law-illinois.libguides.com/c.php?g=388499&p=2635770>)

- Separation of powers
 - executive power (Council of the European Union and European Commission)
 - legislative power (European Parliament; Council of the European Union; and European Commission)
 - judicial power (European Court of Justice)

Internal single market (<http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuld=theme3.html> -

Read: 3.1. The internal market: framework

- 4 basic freedoms (free movement of goods, services, capitals, people)
- Standardized system of laws that apply in all member states
- Common currency (Euro: 19 of 28 countries)
- Harmonized product standards

EU Law

- Legal instruments (https://ec.europa.eu/info/law/law-making-process/types-eu-law_en)
 - Differences between regulations and directives
- Principles and doctrines, in treaties or developed by ECJ, to facilitate progressive elimination of barriers (https://ec.europa.eu/info/about-european-union/about-european-commission/areas-eu-action_en)
 - Principles of conferral, proportionality, and subsidiarity
 - Exclusive, shared, and supporting competences and effect on the relationship between EU and domestic legislation (supremacy and preemption)

3. North American Free Trade Agreement (NAFTA)(1994)

Institutions and background (http://www.naftanow.org/about/default_en.asp)

NAFTA Goals and Rules

- Goods (Preferential treatment for NAFTA goods; Rules of origin) (<https://www.cbp.gov/trade/nafta/guide-customs-procedures/description-nafta>)
 - Problem: When does a product qualify for preferential treatment under NAFTA? Preference Criterion for Your Product and "rules of origin" (<http://www.shippingsolutions.com/blog/nafta-rules-of-origin-part-2>)
 - Goods must be wholly obtained or produced entirely within NAFTA region
 - Goods containing non-originating materials must undergo tariff shift to be considered a product manufactured within NAFTA region (each of the non-originating materials used in the production of the goods must undergo the applicable change as a result of production occurring entirely in the NAFTA region)
 - In some cases, a good that possess a minimum regional value content (a certain percentage of the value of the goods must be from North America) can be considered as originating within NAFTA
- Services (http://tcc.export.gov/Trade_Agreements/Exporters_Guides/List_All_Guides/NAFTA_chapter12)

[_guide.asp](#))

- Providers can operate in any member nation without establishing or maintaining a residence in that country
 - Must not be non-NAFTA-owned
 - Licensing requirements must be transparent
- Investment

(http://tcc.export.gov/Trade_Agreements/Exporters_Guides/List_All_Guides/NAFTA_chapter11_guide.asp)

- FDI is facilitated
- Foreign investors have direct legal remedy against host country that violates investment rights (NAFTA arbitration panel)

Additional resource

CIA factbook entry for EU: <https://www.cia.gov/library/publications/the-world-factbook/geos/ee.html>

Text of NAFTA agreement: <https://www.nafta-sec-alena.org/Home/Legal-Texts/North-American-Free-Trade-Agreement>

Class 13

Tuesday, October 18, 2016 9:59 PM

TPP - Research questions

Question 1. Negotiating the agreement. Where did President Obama get his authority to negotiate the deal from? Why were the negotiations secret and is this the normal process? Were there countries that took part of the negotiations but ended up not signing the partnership agreement?

- In 2015, Congress authorized President Obama to negotiate the agreement. This is referred to as "fast track" or Trade Promotion Authority (TPA). Congress approves with instructions of goals and priorities that need to be pursued in negotiations.
- Ordinarily, trade agreement negotiations are secret to enable negotiations and not to weaken any of the parties
- Secrecy is criticized because it undermines the democratic process.

Question 2. What does the TPP have to say about barriers to trade of goods? Is it different from the obligations arising from the US membership in WTO?

- TPP must not undermine WTO obligations
- Guided by same principles (reciprocity, MFN, transparency, regulatory cohesion)
- Will benefit US in some areas of trade - US domestic interest to get better treatment than under WTO (leather products now subjected to 198% tariff and quotas in Japan)

Question 3. What is the investor-state dispute system and why is it controversial?

- Provides investors with remedy
- It's an arbitration
- No appeal
- WTO does not allow investors to sue countries
- US gov't maintains (<https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2015/march/investor-state-dispute-settlement-isds>)
 - o To protect US business that invest abroad: it's more impartial to US investors than a foreign court
 - o US is already party to agreements with ISDS provisions and it has not been harmful

Question 4. What are the non-trade issues that are discussed in the TPP? Is there an effort to harmonize regulatory standards? What is the TPP's goal with regard to this effort?

- TPP includes chapters on issues other than trade (Intellectual Property; Labor practices; Good governance; Competition; environmental protection)
- Overall, goal is to achieve non-trade oriented goals (economic growth for all countries, growth with good governance)

Question 5. Is the TPP enforceable in the US as it stands today or something needs to be done? What is the national interest of the United States in the TPP? Think about the countries that are part of the agreement, and those that are not.

- All signatories must complete their own domestic ratification procedures by 2018. If not all 12, at least 6 countries representing 85% of aggregate GDP for TPP region
- To become US law, TPP must be approved by Congress. Congress can still reject that final deal but it cannot block or amend the text
- US strategic interests include boosting trade in the region, undermine China's trade dominance, force China to comply with some of the TPP requirements, and forge political alliances with countries in the region,

Resources

<https://ustr.gov/trade-agreements/free-trade-agreements/trans-pacific-partnership/tpp-fact-sheets>

Class 14

Thursday, October 20, 2016 8:16 PM

US Customs and Border Protections (CBP)

Main reading: <https://www.crowell.com/documents/Customs-101-Importation-Process-Basics.pdf>

Customs and Border Protection (CBP) (<http://www.cbp.gov/>)

What is the CBP?

Mission

Informed Compliance Framework

Importers must disclose and properly classify what is being imported. Importers must do so with “reasonable care” (duty to provide CBP with accurate information regarding the admissibility, tariff classification, value, and origin of the imported goods)

Entry process

Importers

Cargos

Formal entry requirements

Entry documentation

Assessment of duties - Process

- Goods arrived at port of entry
- Goods are not prohibited (carrier's certificate)
- Customs inspect and release (delivery authorized)
- Dues paid/bond posted

Dutiable Status Formula

- Classification
 - Every good imported into the United States must be assigned a tariff classification under the Harmonized Tariff Schedule (HTS) of the United States
 - HTS tariff classification of a product will dictate the applicable rate of duty
 - HTS must be consistent with how other countries' classifications (WTO)
- Valuation
 - Two most important methods of appraisal, which are applied in hierarchical order: (1) transaction value; (2) deductive value (resale value of goods in US)
- Rate of duty
 - Types: ad valorem or specific rate based on quantity
 - Country of origin: the country of origin of an imported article is “the country of manufacture, production, or growth”
 - If an imported product is wholly obtained or produced in a single country, then that country will be considered the country of origin
 - If the imported article contains material from, or was processed in more than one country, then origin is the country where the article last underwent a “substantial transformation.”
 - tariff-shift under NAFTA
 - Also country of origin marking or labeling obligations:
 - All foreign goods be marked with their country of origin “in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit” → Made in _____
 - an article is exempt from marking when it was substantially transformed in the United States before sale to the ultimate purchaser → no label
 - “Made in USA” = higher standard (virtually all U.S. content) → Made in USA (under the authority of Federal Trade Commission (FTC), which is charged with preventing deception and unfairness in the marketplace)

Exercise on the dutiable status formula: Ice Skates, Inc.

Your company secured a sponsorship contract with James Hurley, the prospective winner of the gold medal in figure skating at the next winter Olympic Games. In exchange for a hefty fee, Mr. Hurley agreed that your company can create a new line of ice skate for men. You plan to manufacture 10,000 pairs of skates per year. You have to decide in which country you want to manufacture the skates. Your company has manufacturing plants in the following countries: Australia, Viet Nam, Morocco and Chile. Look at the

Harmonize Tariff System to identify in which country production would be more convenient based on US import duties (Relevant website: <https://hts.usitc.gov>)

Special treatment of food imports

FDA ensures that foreign products are safe, sanitary, and labeled according to U.S. requirements. (All imported food is considered to be interstate commerce.)

Imported food products are subject to FDA inspection when offered for import at U.S. ports of entry
FDA may detain shipments of products offered for import if the shipments are found not to be in compliance with U.S. requirements

Both imported and domestically-produced foods must meet the same legal requirements in the United States.

https://help.cbp.gov/app/answers/detail/a_id/337/~importing-tea,-coffee-and-spices-for-commercial-purposes

<http://www.fda.gov/Food/GuidanceRegulation/ImportsExports/Importing/default.htm>

Duty-saving devices

Customs bonded warehouses (<http://www.giship.com/services/us-customs-bonded-warehousing/>)

Foreign Trade Zones (<http://ftz9.org/about-us/who-and-what-is-a-foreign-trade-zone/>)

Duty drawbacks (<http://www.insidecounsel.com/2012/11/07/regulatory-understanding-how-to-take-advantage-of>)

Class 15

Thursday, October 27, 2016 1:25 PM

US policy on exports

Authority

- Congress has authority except for trade that may be against the national interest (President has authority)
 - Time of war: embargo against enemies
 - Time of peace: embargo against threat to national security (http://pmddtc.state.gov/embargoed_countries/index.html)
- Congress delegated to the President by Congress
 - Export Administration Act of 1979 (see below, CCL)
 - Arms Export Control Act of 1976 (see below, USML)

Goals (https://www.law.cornell.edu/uscode/html/uscode50a/usc_sec_50a_00002402----000-.html)

- Minimize uncertainties in export control policy and to encourage trade with all countries with which the United States has diplomatic or trading relations
- But establish control exports
 - To advance US foreign policy interests (ex. restrict trade with countries that sponsor international terrorism, those that are subject to domestic unilateral or UN sanctions)
 - Comply with international treaties (ex. [Wassenaar Arrangement](#) on nonproliferation)
 - Preserving goods in short supply (demand increased; supply is short; prices are off) (ex. domestic crude oil)

Overview (<http://www.state.gov/strategictrade/overview/>)

Nature of the type of goods

- Commerce Control List (CCL)
 - Dual-use: equipment, software, or technology "that would contribute to projects of proliferation concern" (can be used for military purposes) - commercial items with possible military applications, and some military items of lesser sensitivity.
 - Example: Chemical/biological weaponry
- United States Munitions List (USML)
 - Exclusive military use (no dual use)
- Nuclear Regulatory Commission Controls (NRCC)
 - Nuclear equipment and materials

The Export Licensing Process (for dual-use materials, products and technology (CCL))

Regulated by

- Bureau of Industry and Security (<http://www.bis.doc.gov>). under Dept of Commerce (commercial goods)
- State Department (defense goods and services)

Reach of controls

- Any good/component manufactured in the US (ex. Japanese co. sells computer with US components to Czech co.)
- US citizens/corporation transferring goods abroad
- Includes technology accessible in the US by foreign employee who intend to return to their home countries
- With regard to technology, "export" takes place when foreign national access it
- Goods delivered to US subsidiary
- Goods merely transshipped or transmitted through the US

When is a license necessary?

- What? Classification of goods/services <https://www.bis.doc.gov/index.php/regulations/commerce-control-list-ccl>; <https://www.law.cornell.edu/cfr/text/15/738.2>
 - Items with specific Export Control Classification Number (ECCN) are subject to license (modified version of the list maintained by the Wassenaar Arrangement)
 - Items and licensing requirements are listed in Commerce Control List (CCL)
- Where? Match ECCN with country chart (https://www.bis.doc.gov/index.php/forms-documents/doc_download/14-commerce-country-chart)
- Who is the recipient? <https://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern>; <http://www.state.gov/strategictrade/redflags/index.htm>

- For what use?
 - License may restrict certain end-uses

Possible outcomes

- No license
- License exception
- Export license

Documentation

- Export license application
- Shipper's export declaration
(<https://www.odfl.com/docs/7525Vform.pdf>/https://www.ups.com/media/en/eei_sample.pdf)
- Certain import documents (to verify who the end-user is or what use is intended for)

Example from the corporate world: Microsoft policies

- <https://www.microsoft.com/en-us/exporting/overview.aspx>
- <https://www.microsoft.com/en-us/exporting/exporting-information.aspx>
- <https://www.microsoft.com/en-us/exporting/faq.aspx>

Arab League boycott of Israel (<https://www.bis.doc.gov/index.php/enforcement/oac>)

Systematic efforts by Arab League member states to isolate Israel economically to prevent Arab states and discourage non-Arabs from trading with Israel

US laws discourages US companies from furthering or supporting the boycott of Israel sponsored by the Arab League

US laws prohibit:

- Agreements to refuse or actual refusal to do business with Israel/blacklisted companies
- Agreements to furnish or actual furnishing of information about business relationships with Israel/blacklisted companies

Compliance with boycott requests may be prohibited and may be reportable to BIS

Civil and criminal sanctions/administrative remedies (revoke or denial of export privileges)

Class 16

Tuesday, November 1, 2016 4:51 PM

Midterm

Class 17

Thursday, November 3, 2016 4:42 PM

Import relief

Justification: protect domestic industry/firms/employment

Obama's statement: <https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2015/january/fact-sheet-obama-administration's>

Participants in U.S. import policy.

- Authority of both Congress and President
- Coordinated role of the Department of Commerce and the International Trade Commission (ITC) in dumping and subsidization investigations (ITC is a U.S. agency and not an international body)
- U.S. Trade Representative (USTR) in representing the executive branch in international trade matters.

Trade Act of 1974 - Protections from market disruptions

Section 201 - GATT Escape Clause (https://www.usitc.gov/press_room/us_safeguard.htm)

- Domestic industries seriously injured or threatened with serious injury by increased imports may petition the ITC for import relief
- Elements: increasing imports; domestic industry (goods must be directly competitive); injury; causation
- ITC investigates; if finding is affirmative, it must recommend a remedy to the President, who determines what relief, if any, will be imposed
- Relief may be in the form of
 - tariff increase
 - quantitative restrictions
 - orderly marketing agreements - bilateral arrangement whereby an exporting country (government or industry) agrees to reduce or restrict exports without the importing country having to make use of quotas, tariffs, or other controls on imports (coordination of the total supply)
- Remedies are supposed to be temporary (5 years)

Case study: Steel

Special rules

- NAFTA (Section 302 of the Trade Act)
- CHINA (Section 421 of the Trade Act)

Case Study: Tires

- <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2010/december/united-states-prevails-wto-section-421-safeguard>
- <http://www.latimes.com/business/la-fi-tariffs-trade-analysis-20160724-snap-story.html>

Protection of labor (<https://www.doleta.gov/tradeact/factsheet.cfm>)

- Adjustment assistance is a form of direct assistance to groups of domestic workers (\$) or firms (technical assistance in developing plan for coping with competition/no \$ directly). Also as relief for outsourcing

Section 301 – Retaliation (http://www.trade.gov/mas/ian/tradedisputes-enforcement/tg_ian_002100.asp)

- When negotiations to remove the offending trade practice fail, the United States may take action to raise import duties on the foreign country's products as a means to rebalance lost concessions ("retaliation list")
- Designed to enforce trade agreements, resolve trade disputes, and open foreign markets to US goods and services
- Principal statutory authority under which US may impose trade sanctions on foreign countries that either violate trade agreements or engage in other unfair trade practices
- Used by US as negotiation weapon. When negotiations to remove the offending trade practice fail, US may take action to raise import duties on the foreign country's products as a means to rebalance lost concessions
- Example: Retaliation against EU for banning hormone-treated beef. US has imposed prohibitive duties in the order of 100 percent ad valorem tariffs on 34 products
(<https://www.gpo.gov/fdsys/pkg/FR-2009-08-13/pdf/E9-19455.pdf>)

Section 337 – Unfair Competition (www.stepto.com/resources-detail-6611.html)

- Designed to offset unfair competition related to goods imported into the US
- Often used to prevent the importation of goods that infringe the intellectual property rights of US companies. Examples: IP (patent) infringement, improper marking, deceptive advertising, bribery
- Relief: Exclusion order: "Offending" goods can be excluded from entry
- Examples: Unfair Import Investigations Information System (<https://pubapps2.usitc.gov/337external/>)

Tariff Act of 1930

Protection from unfair imports (https://www.usitc.gov/press_room/usad.htm)

- Dumping (https://www.wto.org/english/tratop_e/adp_e/adp_info_e.htm#gattwto)
 - Selling in the import market at a lower price than the goods are sold in the home market (dumping equation)
 - WTO has not outlawed dumping; it merely permits the imposition of duties designed to offset it
 - Why dumping is considered improper? US importers and consumers actually benefit when goods are dumped. The U.S. producers of the dumped goods oppose the practice. In addition, benefits for consumers are likely to be short term
 - Dilemma
 - Information issues: government generally demands access to confidential pricing information when conducting dumping and subsidization investigations.
 - If the foreign producer refuses to provide such information, the government is permitted to calculate the pricing figure using adverse facts available to it. However, if the company provides the information, there is the threat that it will fall into the hands of the exporter's US competitors.
 - Export Subsidies (https://www.wto.org/english/tratop_e/adp_e/adp_info_e.htm#export)
 - Export or domestic subsidies provided by foreign country to foreign firms to help a specific industry (not available to all)
 - Examples: provision of capital, loans, good or services at a preferential rate; debt forgiveness; assumption of costs/expenses of manufacturing
 - Process for Dumping and Export subsidies
 - Private firm may petition the government for relief
 - Dep't of Commerce determines whether the dumping or subsidizing exists and, if so, the margin of dumping or amount of the subsidy
 - ITC determines whether there is material injury or threat of material injury to the domestic industry
 - Dep't of Commerce issues an antidumping order (in a dumping investigation) or a countervailing duty order (in a subsidy investigation)
 - ITC determinations may be appealed to the US Court of International Trade, or, in cases involving Canada and/or Mexico, to a binational panel under the auspices of NAFTA
 - Relief: increased tariff enforced by the US Custom Service Antidumping and Countervailing Duty Investigations (https://www.usitc.gov/trade_remedy/731_ad_701_cvd/investigations.htm)
- Case study: Fishery subsidies
- <http://www.reuters.com/article/us-trade-fisheries-idUSKCN11K2HP>
 - https://www.wto.org/english/tratop_e/rulesneg_e/fish_e/fish_e.htm

Problem with Non-market Economies (<https://www.uschina.org/sites/default/files/NME.pdf>)

- Subsidies analysis cannot be applied to goods from nonmarket or transition economies (NMEs) (Vietnam + China)
- These are economies that do not operate on market-based principles (government guides markets) and their prices for final goods do not reflect fair value
- China negotiated a special protocol of accession to the WTO (China is exempt only until December 2016) → antidumping relief available (and now Chinese prices or costs are not used in antidumping comparisons!)

Class 18

Tuesday, November 8, 2016 12:05 AM

Contracting with foreign governments

US Policy <<https://ustr.gov/issue-areas/government-procurement>>

A longstanding objective of U.S. trade policy has been to open new opportunities for U.S. goods, services and suppliers to compete on a level playing field for foreign government procurement

Government procurement typically comprises 10 percent to 15 percent of a country's GDP

The United States includes government procurement obligations in its free trade agreements (FTAs) with the aim of ensuring that US goods, services and suppliers will be given fair and non-discriminatory opportunities to compete in the government procurement of US trading partners

To advance US policy, US has signed: (https://www.wto.org/English/tratop_e/gproc_e/memobs_e.htm)

1. WTO Agreement on Government Procurement
<https://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm>
2. United Nations Convention against Corruption
(<https://www.unodc.org/unodc/en/treaties/CAC/signatories.html>)

Principles of criminal law

- Criminal law's goals include deterrence, retribution, incapacitation and rehabilitation (principle of punishment)
- Criminal punishment can be imposed only when the government proves beyond reasonable doubt that
 - the accused committed an act or omission that is classified by state or federal law as a crime (act rea)
 - with the state of mind required by the statute (mens rea)

Bribery/Foreign Corrupt Practices Act (FCPA)

- <https://www.justice.gov/criminal-fraud/foreign-corrupt-practices-act>
 - http://www.proskauerguide.com/law_topics/27/
1. Bribery
 2. Record-keeping requirements (Publicly traded companies)
 3. Internal controls provision (Publicly traded companies)

Examples of 2016 cases: <https://media2.mofo.com/documents/160315topten.pdf>

Implications for business: <https://www.mofo.com/practices/litigation/fcpa-anti-corruption/>

The special case of China:

https://www.skadden.com/sites/default/files/publications/China_and_the_Foreign_Corrupt_Practices_Act.pdf

Class 19

Thursday, November 10, 2016 1:29 PM

International level

The Universal Declaration of Human Rights (UDHR) is a milestone document in the history of human rights. Drafted by representatives with different legal and cultural backgrounds from all regions of the world, the Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 ([General Assembly resolution 217 A](#)) as a common standard of achievements for all peoples and all nations. It sets out, for the first time, fundamental human rights to be universally protected and it has been translated into over 500 languages (<http://www.un.org/en/universal-declaration-human-rights/>)

Both Rights and Obligations (<http://www.ohchr.org/EN/Issues/Pages/WhatAreHumanRights.aspx>) States assume obligations and duties under international law to respect, to protect and to fulfil human rights. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfil means that States must take positive action to facilitate the enjoyment of basic human rights. At the individual level, while we are entitled our human rights, we should also respect the human rights of others.

Promotion of human rights is an important national interest (<http://www.state.gov/j/drl/hr/>)

- Hold governments accountable to their obligations under universal human rights norms and international human rights instruments;
- Promote greater respect for human rights, including freedom from torture, freedom of expression, press freedom, women's rights, children's rights, and the protection of minorities;
- Promote the rule of law, seek accountability, and change cultures of impunity;
- Assist efforts to reform and strengthen the institutional capacity of the Office of the UN High Commissioner for Human Rights and the UN Commission on Human Rights; and
- Coordinate human rights activities with important allies, including the EU, and regional organizations.

Business and human rights (<http://www.ohchr.org/EN/Issues/Business/Pages/BusinessIndex.aspx>)

With the increased role of corporate actors, nationally and internationally, the issue of business' impact on the enjoyment of human rights has been placed on the agenda of the United Nations. Over the past decade, the United Nations human rights machinery has been considering the scope of business' human rights responsibilities and exploring ways for corporate actors to be accountable for the impact of their activities on human rights.

On 16 June 2011, the UN Human Rights Council endorsed [Guiding Principles on Business and Human Rights for implementing the UN "Protect, Respect and Remedy" Framework](#), providing – for the first time – a global standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity.

UN Global Compact

What is it?

- Leading global voluntary initiative for corporate social responsibility that also addresses the issue of business and human rights
- Launched in 2000, aimed at getting business leaders to voluntarily promote and apply within their corporate domains nine (now 10) principles relating to human rights, labor standards, the environment, and anti-corruption
- At present, several thousand companies, many of them large transnational companies, from all continents have signed on to the Global Compact.

The Ten Principles of the UN Global Compact (<https://www.unglobalcompact.org/what-is-gc/mission/principles>)

The human rights agenda has entered into the corporate world by reshaping their organization (there are directors and divisions devoted to human rights practices and sustainability) (see list of speakers: <http://www.ohchr.org/Documents/Issues/Business/ForumSession5/SpeakersList.pdf>)

Domestic level

2010 California Transparency in Supply Chains Act

The Modern Slavery Act 2015

- Requires certain firms to audit the supply chain and disclose/publish the findings of the audit
- No real sanctions for failure to comply
- The hope is that consumers and stockholders will take these disclosure into account when making

purchasing/investing decisions

The Dodd–Frank Wall Street Reform and Consumer Protection Act

- Dodd-Frank (Wall Street Reform and Consumer Protection) Act, which primary goal was to reform the American financial regulatory environment that affect all federal financial regulatory agencies and almost every part of the nation's financial services industry
- *Section 1502 - Mineral conflict rule*
(<https://www.sec.gov/News/Article/Detail/Article/1365171562058>)
Provision requiring disclosures on conflict materials in or near the Democratic Republic of the Congo
 - Purpose: exploitation and trade of conflict minerals by armed groups is helping to finance conflict in the DRC region and is contributing to an emergency humanitarian crisis
 - Requires filing a Conflict Minerals Report with the SEC that states whether it is “DRC Conflict Free,” “Not Been Found to Be 'DRC Conflict Free,’” or “DRC Conflict Undeterminable”
 - Partially unconstitutional (disclosures are “compelled speech” in violation of First Amendment)

- *Section 1504 - Resource extraction payments*
(<https://www.sec.gov/news/pressrelease/2016-132.html>)

All issuers, including foreign private issuers and smaller reporting companies, that are required to file an annual report with the SEC pursuant to Section 13 or 15(d) of the Exchange Act and engage in the commercial development of oil, natural gas, or minerals are required to provide the new disclosures. The rules require the disclosure of all payments made by the issuer or any subsidiary or entity controlled by the issuer to foreign governments, including subnational governments (e.g., state, county), or the US federal government to further the commercial development of oil, natural gas, or minerals. The issuer disclosures include the type and total amount of payments for each project, the government that received the payments, and the resource to which the payment relates.

Class 20

Thursday, November 17, 2016 9:25 PM

WTO, The General Agreement on Trade in Services (GATS): objectives, coverage and disciplines

The General Agreement on Trade in Services has three elements: the main text containing general obligations and disciplines; annexes dealing with rules for specific sectors; and individual countries' specific commitments to provide access to their markets, including indications of where countries are temporarily not applying the "most-favored-nation" principle of non-discrimination.

- https://www.wto.org/english/tratop_e/serv_e/gatsqa_e.htm
- https://www.wto.org/english/thewto_e/20y_e/services_brochure2015_e.pdf

Modes of supplying services (how does it relate to employment?)

- Cross-border supply
- Consumption abroad
- Commercial presence
- Presence of natural persons

Basic obligations

- MFN Treatment (Favor one, favor all)
- Transparency
- Market Access
- National Treatment

Schedules

- Each WTO Member is required to have a Schedule of Specific Commitments which identifies the services for which the Member guarantees market access and national treatment and any limitations that may be attached

Exemptions for measures necessary to:

- protect public morals or maintain public order;
- protect human, animal or plant life or health; or
- secure compliance with laws or regulations not inconsistent with the Agreement including, among others, measures necessary to prevent deceptive or fraudulent practices

Class 21

Tuesday, November 22, 2016 2:32 PM

US Employment law

When is somebody "employed" and why it matters?

- Misclassification issues: Employee vs Independent contractor

Hiring process

- Discrimination and accommodation issues

How is the relationship regulated?

- Federal and state regulation on equal pay, minimum wage, medical leave, social security

Issues in the employer/employee relationship

- Workplace testing (physical skills, competency, drugs)
- Workplace surveillance (monitoring of calls, mail, email, and internet traffic are permitted; video surveillance is ok)
- Performance reviews (part of employee record; evidence of performance)

Termination of the relationship

- Employment-at-will vs other arrangements (concept of "good cause")
- Unemployment Compensation (cannot be collected by those who left the job voluntarily or terminated for willful misconduct)

Comparative employment law

- "at will" employment as the American exception (less so that in the past => flexibility)
- Labor relations (labor unions are stronger in EU countries)
- Job security (EU workers are better protected; where unions are strong, workers cannot be easily fired)
- Employee participation in management (where unions are strong, some managerial decisions must be disclosed and discussed with employees)
- Connect this to immigration and the free circulation of services under the GATS



Employment Law US ...



Employment Law Co...

Class 22

Thursday, November 24, 2016 2:14 PM

Employment discrimination

Title VII (<https://www.eeoc.gov/laws/statutes/titlevii.cfm>)

- General provisions
- Coverage: <https://www.eeoc.gov/employers/coverage.cfm>
- Prohibited policies and practices: <https://www.eeoc.gov/laws/practices/index.cfm>

Sexual harassment (https://www.eeoc.gov/laws/types/sexual_harassment.cfm)

- “Quid pro quo”
- Hostile environment

Liability of organizations for employee's actions

- Respondeat superior
- Negligent hiring, training, retention

Reading

- <http://www.acc.com/legalresources/quickcounsel/pdahitw.cfm>
- <https://www.hg.org/article.asp?id=34389>
- LGBT Rights: http://ilga.org/wp-content/uploads/2016/05/03_ILGA_WorldMap_ENGLISH_Overview_May2016.png

Class 23

Tuesday, November 29, 2016 10:23 PM

Intellectual property rights - Domestic

Trade secrets

- Definition
- Protection: Legal protections include [non-disclosure agreements](#) (NDA)
- Misappropriation
- Protection ends when it is common knowledge within the community in which it is profitable

Trademark

- Definition = distinctive nonfunctional mark
- Protection = exclusive use of the mark (can be licensed for free or for royalty => franchising)
- Infringement: use that causes likelihood of ...
 - Confusion for average consumer
 - Dilution (= use that diminishes distinctive quality of famous mark factors)
- Lost if holder abandons it or it becomes generic (aspirin)

Copyright

- Definition = original and creative work that is fixed in a durable medium
- Protection = exclusive right to reproduce (can be licensed for free or for royalty)
- Infringement = copying or facilitating
- Fair use defense (purpose, amount, effects on market)

Patent

- Definition
- Requirements: new, useful, and nonobvious (to a person having ordinary skill in the type of technology used in the invention)
- Invention becomes public but holder has right to exclude others (monopoly); does not guarantee ability to use it
- Infringement = unauthorized 3rd party use

Licensing agreements

Contract that grants to the licensee the right to produce and sell goods, apply a brand name or trademark, or use patented technology owned by the licensor and give the licensor the right to collect royalties

It creates an income stream for the owner of an IPR

No particular protection in addition to standard protection of agreements under domestic contract law

Reading

<http://www.btlaw.com/files/anintellectualpropertyprimer.pdf>

Class 24

Thursday, December 1, 2016 9:21 AM

Intellectual property rights - international dimensions

Role of domestic law

- Regulation (biopiracy)
- Enforcement

Franchising, trademarks, and entry in foreign markets

Role of international legal instruments

- Patents (Paris Convention + Patent Cooperation Treaty + Hague System for the Int'l Registration of Industrial Design) - WIPO
 - Principle of "national treatment" for patents and trademarks
 - PCT (http://www.wipo.int/pct/en/pct_contracting_states.html)
 - WIPO runs a centralized patent application process
 - 12-month grace period to patent applicant to file patents in other countries (applications are public so other people may copy them and file for a patent in a different country)
 - Hague System (<http://www.wipo.int/hague/en/>)
 - EU: Convention (single filing)
- Trademarks (Paris Convention + Madrid Agreement) - WIPO
 - Internet domain names
- Copyrights (Berne Convention) (http://www.wipo.int/treaties/en/ip/berne/summary_berne.html) - WIPO
 - National treatment
 - Minimum standards of protection under domestic law
 - Principle of "independence" of protection: Protection is independent of the existence of protection in the country of origin of the work
- TRIPS - WTO (https://www.wto.org/english/tratop_e/trips_e/intel2_e.htm)
 - Standards
 - National treatment
 - Most-favoured-nation treatment
 - Escape clauses for patents (allows compulsory licensing and government use without the authorization of the right holder in way that is limited to the supply of the domestic market)
 - Inventions contrary to *ordre public* or morality (inventions dangerous to human, animal or plant life or health or seriously prejudicial to the environment)
 - Diagnostic, therapeutic and surgical methods for the treatment of humans or animals
 - Plants and animals
 - Enforcement
 - Dispute settlement (WTO)
- Anti-Counterfeiting Trade Agreement (ACTA): Future?
- Parallel imports/gray market (import of lawfully acquired goods that would be in violation of an IPR if acquired in the US)

Also remember **Trade Act of 1974 - Protections from market disruptions, Section 337 – Unfair Competition** (www.steptoelaw.com/resources-detail-6611.html)

Reading



IP law
internatio...

Class 25

Tuesday, December 6, 2016 11:40 AM

US system of courts

Separation of power: role of judiciary (<https://www.usa.gov/branches-of-government>)

Checks and balances (<https://federalistfuture.files.wordpress.com/2011/12/checksandbalancechart.jpg>)

Federalism: Federal and state (<http://mrkash.com/activities/images/federalism.jpg>)

Three-tier system (<http://judiciallearningcenter.org/wp-content/uploads/2012/07/DIAGRAM-levels-of-courts1.jpg>)

Geographical distribution (https://saylordotorg.github.io/text_the-legal-and-ethical-environment-of-business/section_05/7d3d95d9fc82f0d668eb9f54541f3ced.jpg)

Dispute resolution

processes (https://www.gjel.com/images/personal_injury_lawsuit_timeline_flowchart.pdf)

Disputes

- What is a dispute?
- What happens to disputes?
- Anticipating legal disputes = Structure the transaction in a way that (1) minimizes the risk of disputes and (2) creates advantageous conditions in the event of a dispute (forum selection and arbitration clauses in contracts)

Litigation

- Definition
 - Litigation is the dispute resolution process that ends with adjudication in a court of law
 - It involves, at minimum, a plaintiff and a defendant
- Major steps of a Lawsuit (<https://www.stoel.com/how-does-a-lawsuit-work-basic-steps-in>)
 - (Pre-trial) Discovery
 - Class action lawsuits (<http://litigation.findlaw.com/legal-system/class-action-cases.html>)
 - Jurisdiction (= power of a court to hear and decide a case) against foreign nations and private defendants (individuals and firms)
 - Service of process involving foreign defendants (the 1965 Hague Convention)
- Enforcement of judgments

Alternative Dispute Resolution (ADR) processes(alternative to litigation)

- Litigation => Adjudication => Collection
- Negotiation =>Settlement =>Enforcement by filing breach of contract (settlement agreement) case
- Mediation =>Settlement =>Enforcement by filing a breach of contract (settlement agreement) case
- Arbitration =>Award =>Collection
(<https://m.att.com/shopmobile/legal/terms.wirelessCustomerAgreement.html>)