

## **CORPORATE TRANSACTIONS IN LATIN AMERICA FALL 2006**

**Professor:** Lorna Dwyer

### **Course Description**

The Latin American Business Transactions course will provide the students with an overview at Civil and Commercial Latin American legal systems, focusing in Mexican and Colombian legislation. The Course introduces students to some of the most important legal issues of doing business in Latin America.

The first two sections of the course introduce students to the Latin American legal environment. Students will develop an understanding and awareness of the differences between the Common Law and the Napoleonic or Civil Law System and, how those differences reflect in the international business transactions. In this section, the course will study the sources and origins of Civil and Commercial Law, its creation and most importantly, its interpretation and application. Particular attention will be paid to the culture of “lawyering” in Latin America which is distinguishable from the American legal culture.

The third and fourth sections will study the legal framework for Business Transactions in Latin America. We will examine Constitutional Law and Investment Law in Mexico under NAFTA, and in Colombia.

Next, the course will identify the main forms and legal structures for businesses in Latin America. We will examine commercial companies in Mexico and Colombia. We will look at joint ventures in both countries. For each representative nation, students will study the requirements for the creation of different legal structures and their regulation. Students will learn to draft basic agreements and forms.

The sixth section of the course will then explore the Latin American contract system. Here, students will study the laws that control agency, distributorship, and licensing agreements such as those that protect intellectual property. The protection of Intellectual Property will be studied under NAFTA and Mexican and Colombian Law.

Finally, the course will study some regional and international agreements which are relevant for business transactions in Latin America. These will include the North American Free Trade Agreement (NAFTA); the Andean Community (Comunidad Andina), and Mercosur (Common South Market) that affect trade in Latin America.

**Strongly Recommended (but not Required) Courses:** Agency & Partnership, International Business Transactions or International Law

## Section 1 Introduction to Latin American Legal System

- A. Institutional Background of the Latin American Legal System
  1. The Evolution of the Civil Law Tradition (Code Civil)
  2. The Civil Law Tradition before the Revolution in Europe
  3. The Intellectual Revolution
  4. The Napoleon Code and its Spread throughout Latin American Countries.
  5. The Revolution in Latin America
  6. The Independence and the 19<sup>th</sup> Century
  7. The Chilean Code
  8. The German Legal Science.
- B. Contemporary Civil Law
  1. Introduction
  2. Legal Cultures in the Age of Globalization Implications of the Diversity of Legal Cultures for “Lawyering” in the Americas.
  3. Legal Education of a Civil Law Lawyer
  4. The legal profession
- C. Fields of Substantive Law in Civil Law Systems
  1. Division of Law
  2. Public and Private Law
  3. Civil and Commercial Law
- D. System and Organization of the Codes
  1. Coverage and Structure of the Civil Code (Mexico and Colombia)
  2. Coverage and Structure of the Commercial Code (Mexico and Colombia)
  3. Interdependence between the Civil Code and the Commercial Code.  
The Commercial Law as *lex specialis*.
- E. Main differences between the Civil and the Common Law System

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- Barreto, Ricardo. Doing Business in Brazil. American Bar Association. 2002.
  - Glendon, Mary Ann, Gordon Michael, Carozza Paolo. Comparative legal traditions in a nutshell. St. Paul Minn: West Group, 1999.
  - Chaspeen John Charles, Born in Blod and Fire, A Concise History of Latin America, University of North Carolina at Chapel Hill, Norton Company, New Cork, 2001
  - M. Garro. On some practical implications of the diversity of legal cultures for lawyering in the Americas. Revista Juridica de la Universidad de Puerto Rico. Summer 1995
  - Gordon, Michael. Doing Business in Mexico. Transnational Publishers, Inc. New York. 2005.
  - M. Garro. Unification and harmonization of private law in Latin America.
  - Merryman, John Henry, Clark David, O. Haley John, A civil Law lawyer looks at a common law lawyer’s views on civil law. “The Civil Law Tradition”. Brooklyn Journal of International Law. Dec. 1991.
  - Merryman, John Henry, Clark David, O. Haley John. The Civil Law Tradition: Europe, Latin America, and East Asia. Charlottesville, Va.: Miche Co., -1994.

- Mirow, Matthew C. (Matthew Campbell), 1962, Latin American law: a history of private law and institutions in Spanish America; Austin: University of Texas Press, 2004.
- Orrantia Fernando. Conceptual differences between the civil law system and the common law system. (Symposium: Doing Business in Mexico; The legal cultural and practical aspects). Southwestern University Law Review. Fall 1990
- Ravassa, Gerardo Jose. Derecho Mercantil Internacional. Doctrina y Ley Ltda. 2001.
- Redden Kenneth and Schlueter Linda, Modern Legal Systems Cyclopedia. V10. South America. William S. Hein & Co. Law Publisher, 1991.
- Taylor Gary. NAFTA provokes legal culture clash: Lawyers labor at bringing harmony to divergent systems. The National Journal. June 27, 1994 V16 n43 pA1 col 1(51 col in).
- Vargas, Jorge. Mexican Law: a treatise for legal practitioners and international investors. St. Paul, Minn.: West Group, 1998.

## **Section 2 Sources and Origins of Civil and Commercial Law**

### A. Primary Sources

1. Enacted Law.
  - 1.1 Creation
  - 1.2 Interpretation
  - 1.3 Derogation
2. Custom
3. General Principles

### B. Authorities

1. Case Law
2. Doctrine

### C. Fundamental Principles of Private (Civil and Commercial Law)

### D. Usages and Customs

### E. Doctrine

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- Betancourt Rey, Miguel. Derecho Privado. Categorías Básicas. Universidad Nacional de Colombia 1996.
  - Dolinger, Jacob. A civil law lawyer looks at a common law lawyer's view on civil law: John Henry Merryman's. "The Civil Law Tradition". Commentaries.
  - Glendon, Mary Ann, Gordon Michael, Carozza Paolo, Comparative legal traditions in a nutshell. St. Paul Minn: West Group, 1999.
  - Merryman, John Henry, Clark David, O. Haley John. The Civil Law Tradition: Europe, Latin America, and East Asia. Charlottesville, Va.: Michie Co., -1994. Chapter 9.
  - Zamora, Stephen. Mexican Law. Oxford: New York: Oxford University Press, 2004.

- Vargas, Jorge. Mexican Law: a treatise for legal practitioners and international investors. St. Paul, Minn.: West Group, 1998.
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### **Section 3 Legal Framework for Business Transaction in Latin America**

#### A. Constitutional Framework

1. Introduction: The Theory of the State and Constitutions
2. The Constitution of Mexico.

#### B. Monopoly (Monopoly State Enterprises PEMEX and CFE)

#### C. Coverage and Structure of the Civil Code (Mexico and Colombia)

#### D. Coverage and Structure of the Commercial Code (Mexico and Colombia) The Commercial Law as *lex specialis*

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- Folsom Ralph, Wallace Michael and Lopez David, NAFTA, a problem oriented coursebook, Westgroup, 2000
- Mirow, Latin American Law, A History of Private Law and Institutions in Spanish America, University of Texas Press, Austin, 2004
- Vargas, Jorge A., Mexican Law: A Treatise for legal practitioners and International Investors. St. Paul, Minn. West Group, 1998. Vol. 1
- Zamora, Stephen; Cossio, Jose Ramon, Perez Nieto, Leonel; Rodan-Xopa Jose, and Lopez, David. Mexican Law. Oxford: New York: Oxford University Press, 2004

### **Section 4 The Outbound Foreign Direct Investment**

#### A. Types of International Investment

#### B. Mexico's Foreign Investment Law

1. Mexican's Constitution and Foreign Investment
2. Mexican Investment Law
  - 2.2 Five common questions
  - 2.3 Acquisition of immovable assets

#### C. Commercial companies and investment

#### D. The Outbound Foreign Direct Investment under NAFTA. Metalclad Corporation Vs. Mexico

#### E. Foreign Investment under NAFTA,

#### F. The convergence of foreign investment law in NAFTA nations

#### G. Arbitrating under Chapter 11 of the NAFTA

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- Folsom Ralph, Wallace Michael, Spanogle John, International Business Transactions, a problem oriented course, West Group, 2003.
- Folsom Ralph, Wallace Michael, Lopez David, NAFTA a problem oriented course, West Group, 2000, pages 286-321.
- Gordon, Michael W. "Doing Business in Mexico". Transnational Publisher Inc, 2005. Vol. 1, Part VI, Chapter 9, "Arbitrating under chapter 11 of the NAFTA. A Mexican Investor v. US, pages: 1-39

- Mendoza, Antonio. International Business Planning: Policy and Procedure, American Casebook series, West Group. 2001, page 1-9.
- Vargas, Jorge A., Mexican Law: A Treatise for legal practitioners and International Investors. St. Paul, Minn. West Group, 1998. Vol. 3 24-56.

## **Section 5 Business Structures**

- A. Creation of a Legal Structure for Business in Latin America
  1. What is needed to set up a Company? (general issues confronting the creation of a commercial company)
  2. Legal Requirements and Formalities of Charting a Business Organization
  3. Foreign Companies
- B. Classification of Commercial Companies (Mexico, Colombia, Argentina)
  1. La Empresa Unipersonal (Single Person LLCs)
  2. La Sociedad de Responsabilidad Limitada LTDA (Limited Liability Company, close Corporation )
  3. La Sociedad Anónima S.A. (Corporation (for-profit) )
  4. Las Sociedades En Comanditas Simples S en C (Limited Partnership LP)
- C. Joint Ventures. It's legal nature. (Argentina Brazil and Chile)

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- American Bar Association. Joint Ventures in the international arena. Darrel Prescott, Salli Anne Swartz editors. 2003 (Joint Ventures: practical issues and helpful hints: Argentina, Brazil, Chile)
  - American Bar Association. Doing Business in Argentina. 2000.
  - Franco, Isabel. Joint Ventures in the International Arena. Darrell Prescott, Sally A Swartz. 2003 ( Chapter 6. Argentina Brazil and Chile).
  - Gordon, Michael. Doing Business in Mexico. Transnational Publishers, Inc. New York. 2005. Vol 1. Part. 1,2,3. Vol. 3 Part. 6
  - Gutterman, Alan S., 1995. The Law of domestic and international strategic alliances: a survey for the corporate management. Westport, Conn: Quorum Books, 1995
  - Lucio II, Saturnino. Structuring foreign ownership interests in Latin American companies. Florida Journal of International Law. Spring 1992 v7 n1 p73-78
  - Mendoza, Antonio. International Business Planning: Policy and Procedure. 2001
  - Moreyra Garcia-Sayan Joint-Venture agreements under Peruvian General Corporation Law. 32 Stetson L. Rev. 769
  - Pallares, Beatriz. International Regime of Commercial Companies in Argentina and Mercosur. 32 Stetson L. Rev. 785. 2003
  - Vargas Jorge A. Mexican Law: a treatise for legal practitioners and international investors. St. Paul, Minn. West Group, 1998. (-J. Rein, Randal. Commercial companies in Mexico)
  - Zamora, Stephen. Mexican Law. Oxford: New York: Oxford University Press, 2004.

## **Section 6 Intellectual Property**

- A. Introduction

- B. The protection of the ownership of the IPR under international law.
  - 1. The Nice Agreement
  - 2. The Vienna Trademark registration treaty (1973)
  - 3. The protection under NAFTA
  - 4. Grate market trading, compulsory licensing and counterfeiting
- C. Protection of the IPR under Mexico's Legal System
  - 1. Industrial Property:
    - 1. Inventions
      - 1.1. Patents
      - 1.1. Utility Models (Modelos de utilidad)
      - 1.3 Industrial Designs (Disenos industriales)
      - 1.4 Commercial trade secrets (Secretos Industriales)
  - 2. Distinctive Marks:
    - 2.1 Trade marks
    - 2.2 Commercial Advertisements and Slogans (Avisos Comerciales)
    - 2.3 Trade names (Nombres comerciales)
    - 2.4 Appellations of Origin (Denominaciones de origen)
  - 3. The protection of Industrial Property under IPA
  - 4. Copyright
- D. Contractual Protection of Intellectual Property Rights
  - 1. Introduction
  - 2. The International Licensing Agreement
  - 3. Franchising

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- Vargas, Jorge A. Mexican Law: a treatise for legal practitioners and international investors. St. Paul, Minn: Wet Group, 1998 Vol 1
  - Folsom Ralph, Wallace Michael, Lopez David, NAFTA a problem oriented course book. West Group 2003.
  - Folsom, Wallace and Spanogle, International Business Transactions, A problem Oriented Course book, 6 Edition, Thomson West 2003.
  - Mendoza, Antonio. International Business Planning: Policy and Procedure, American Casebook series, West Group. 2001
  - Zamora, Stephen; Cossio, Jose Ramon, Perez Nieto, Leonel; Rodan-Xopa Jose, and Lopez, David. Mexican Law. Oxford: New York: Oxford University Press, 2004.

## **Section 7      Some Aspects on Contract Law in Latin America**

- A. General Aspects
  - 1. The Formation of Contracts
  - 2. Main contract's clauses
  - 3. Principal Effects
  - 4. The Relevance of Classification of Contracts in Latin American Law.
- B. The Power of Attorney
- C. Agency and Distribution
  - 1. Definition

## 2. Basic Aspects of Commercial Agency Agreements under Argentina, Colombia, and Mexico Laws.

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- Arrubla Paucar, Jaime. *Contratos Mercantiles*. Tomo I, Biblioteca Juridica Dike. Bogota 2004.
  - DiezPicazo y Ponce de Leon. *La compraventa internacional de mercaderias*. Civitas.1998.
  - Garro M, Alejandro; Reconciliation of legal traditions in the U.N. Convention on Contracts for the International Sale of Goods; *International Lawyer Summer v 23 n2 p. 443-483*.
  - Jausas, Augustin. *International Encyclopedia of Agency and Distribution Agreements*, Kluwer Law International and International Bar Association, 2005
  - Kalvis Torgans, Amy C. Bushaw. Some comparative aspects of contract law in civil and common law systems. *International Legal Perspectives Fall 2001 v12 il-2 p37-72*.
  - Lafont Pianetta, Pedro. *Manual de Contratos. Contratacion Internacional*. Ediciones el Profesional. 2004.
  - Schipani, Sandro. *El contrato en el sistema juridico Latinoamericano*. Universidad Externado de Colombia 1998
  - Zamora, Stephen. *Mexican Law*. Oxford: New York: Oxford University Press, 2004.
  - Folsom Ralph, Wallace Michael, Spanogle Jhon. *International Business Transactions, a problem oriented course book*. West Group 2003
  - Jausas, Agustin. *International Encyclopedia of Agency and Distribution Agreements*. Kluwer Law International and International Bar Association 2005 (Colombia, Mexico, Argentina, Chile, Brasil)
  - Mendoza, Antonio. *International Business Planning: Policy and Procedure*. 2001
  - Vargas Jorge A. *Mexican Law: a treatise for legal practitioners and international investors*. St. Paul, Minn. West Group, 1998. Vol 1. Chapter 8. Mexican Franchising Industry.
  - United Nations Convention on contracts for the International Sale of Goods (Vienna 1980)
  - Intellectual Property (Paris/71; Roma/61; Convención Panamericana sobre propiedad literaria y artística; OMPI Organización mundial de la propiedad Intelectual
  - Decision 486, 2000 Industrial property

### **Section 8 The Integration Process in the Americas**

- A. The Evolution of the Integration Process.
- B. NAFTA role in Hemispheric Integration (North American Free Trader Aerea, 1994)
- C. Mercosur. (Common South Market. Treaty of Asunción 1991
- E. Andean Community (Comunidad Andina, Cartagena 1969)

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- Ardsley-on-Hudson, NY:Transnational Juris Publications, 1980.

- Barreto, Ricardo. Doing Business in Brazil. American Bar Association. 2002.
- Baker & Mackenzie, NAFTA handbook: a practical guide for doing business under NAFTA. Chicago. CCH. Incorporated, c1994.
- Central America-Dominican Republic Free trade Agreement CAFTA. Briefing Book. Office of the United States Trade Representative.
- Ferrari, Marhta Haines. British Institute of International and Comparative Law. Baker&Mckenzie.2000.
- Folsom, Ralph. NAFTA and free trade in the Americas in a nutshell. St. Paul, Minn.: West, c 2004.
- Folsom, Ralph. Understanding NAFTA and its international business implications. New York. M. Bender/Irwing, 1996.
- Folsom, Ralph; Wallace Gordon Michael, Lopez David.. NAFTA: a problem – oriented course book.St. Paul, Minn: West Group. 2005.
- Gordon, Michael. Doing Business in Mexico. Transnational Publishers, Inc. New York. 2005. Vol. 1. Part. 1 to 5.
- Hallstrom, Par. The GATT panels and the formation of international trade law. Stockholm:Juristforlaget. 1994.
  - Kavass, Grupo andino and its documents. International Journal of Legal Information. Pg. 87 (TA)
  - Kennedy, Kevin. The First Decade of NAFTA. The Future of Free Trade in North America. Transnational Publishers. 2004
  - Mendoza, Antonio. International Business Planning: Policy and Procedure. 2001.
- Norton, Joseph Jude. NAFTA and beyond: a new framework for doing business in the Americas. Dordrecht; Boston: M. Nijhoff; Norwell, MA. 1995.
- Porrata-Doria, Rafael. Mercosur: the common market of the southern cone. Durham, NC Carolina Academic Press. 2005.
- Vagts, Dodge & Koh's. Transnational business problems. University casebookseries.