Professor: Lorna Dwyer

Course Description

The Latin American Business Transactions course will provide the students with an overview of 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 19th 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

- M. Garro. Unification and harmonization of private law in Latin America.
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

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

Section 4 The Outbound Foreign Direct Investment

A. Types of International Investment
B. Mexico’s Foreign Investment Law
   1. Mexico’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

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)

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 industrials)
         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


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.

- Schipani, Sandro. El contrato en el sistema juridico Latinoamericano. Universidad Externado de Colombia 1998
- Intellectual Property (Paris/71; Roma/61; Convención Panamericana sobre propiedad literaria y artistica; OMPI Organización mundial de la propiedad Intelectual
- Decision 486, 2000 Industrial property

Section 8 The Integration Process in the Americas

B. NAFTA role in Hemispheric Integration (North American Free Trader Aerea, 1994)
E. Andean Community (Comunidad Andina, Cartagena 1969)

- Central America-Dominican Republic Free trade Agreement CAFTA. Briefing Book. Office of the United States Trade Representative.
  - Kavass, Grupo andino and its documents. International Journal of Legal Information. Pg. 87 (TA)