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MBA 694.02: International Business and Trade Law

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**INTERNATIONAL BUSINESS & TRADE LAW -- LAW 629/MBA 694-02
COURSE DESCRIPTION & SYLLABUS**

**Spring 2004 Semester -- Tuesday 5:30-7:30 PM -- Castles Center 019
Professor David Aronofsky
133 Main Hall/243-4742 (phone)/aronofskyd@mso.umt.edu (e-mail)**

The International Business & Trade Law class will meet each Tuesday 5:30-7:30 p.m. during the Spring 2004 Semester. The course is designed for law students to be the international law firm retained by Montcor, a (hypothetical) rapidly growing Montana high technology, publicly held company; and for MBA students to be Montcor executives served by the lawyers.

Montcor's commercial activities include software design for financial, environmental assessment, health and biotechnical, and other sophisticated applications; Montana-based only (for now) manufacture, assembly and design of computer components for sale to other computer manufacturers around the world; computer systems design and consulting for U.S. and non-U.S. public agency (including military) and corporate clients; data privacy and encryption technology; computer programs which simultaneously translate both written and voice English to any of 30 different languages and vice versa; and a new e-commerce startup venture created to market Montana products and services worldwide. Montcor's Board Chair, CEO and principal shareholder strongly advocates responsible global citizenship; and has formed a charitable foundation which makes sizeable financial contributions to progressive international environmental and human rights organizations and causes.

Montcor began globalizing its business activities a number of years ago; and Montcor's in-house General Counsel (your Professor) has retained the class law firm to handle Montcor international legal work. Law students are responsible for counseling Montcor on various international issues of interest to the Company and its Board Chair/CEO. MBA students will participate directly in these deliberative sessions. Each class will take the form of an issues reporting and update session, with individual students and student groups responsible for knowing these issues.

The course will cover a wide range of current international law trends, developments and issues related to Montcor's business activities with particular emphasis on WTO and NAFTA; multinational corporation environmental, labor and developing country concerns; technology and intellectual property; commercial transaction structures and financing; and transnational litigation. Students taking the course for the Law School writing requirement and MBA students choosing this option will have two-thirds of their grades based on a publishable quality paper at least 50 pages (double-spaced) in length, including its in-class presentation; and one-third based on class preparation/participation, including presentation of Syllabus topic oral reports individually and in groups. For all other students, one-third of the grade is based on a 15-20 page (double-spaced) mini-paper and its class presentation on a Syllabus topic; one-third on a Doing Business Abroad drafting and reporting project by a student group responsible for a country picked from the Syllabus; and one-third on class participation/ preparation, including Syllabus topic oral reports. **ALL MINI-PAPERS ARE DUE MAY 4. ALL MAJOR PAPERS AND DOING BUSINESS ABROAD PROJECTS ARE DUE MAY 17.**

The Class will be divided into 4 groups and all students, including those taking the course for the Law School writing requirement, must participate in a group. In addition to its Doing Business Abroad country project (from which students taking the course for the writing requirement are excused), each group will have class presentations in which all students must participate. Groups will be selected the first day of class and retain the same members throughout the course.

Mini-papers are merely intended to summarize selected topic readings to be provided after the course begins or similar readings picked by the student, along with specific reference to Montcor relevance plus inclusion of any late-breaking legal news updates on the topic. Major papers should incorporate Mini-Paper requirements plus a more comprehensive reading list and an in-depth analysis of Montcor applicability. All Mini-Paper topics are also eligible as major paper topics; and similar topics may be selected subject to Instructor approval following submission of a proposed reading list. **NOTE: ALL STUDENTS MUST CONSULT PROFESSOR ARONOFSKY ABOUT A PROPOSED READING LIST BEFORE PRESENTING A MINI-PAPER OR MAJOR PAPER.** In addition, all asterisked paper and oral report topics (*) should be selected by students taking the course for the Law School Commercial Law requirement. Oral reports should be limited to about 10 minutes (except for group panel presentations, which should be 4-5 minutes apiece); mini-paper oral presentations to 15 minutes; major paper oral presentations to 20 minutes; and Doing Business Abroad Memo oral presentations to 30 minutes per country. Students may submit 1-2 page written outlines of their oral presentations and other relevant materials for extra class preparation/participation credit.

The required text for all students is Folsom, Gordon & Spanogle, International Business Transactions Hornbook (2nd ed.). In addition, each student will be assigned other required readings available on-line for oral report and mini-paper presentation purposes.

Professor Aronofsky's office is in 133 Main Hall, and he is generally available there without an appointment. In addition, he will generally stay after class to discuss student work. His phone number and e-mail address are noted above.

JANUARY 27 CLASS: GROUP, ORAL REPORT, MAJOR AND MINI-PAPER TOPIC SELECTIONS/LEGAL SOURCES//PRACTICE ISSUES

I. GENERAL INTRODUCTION

II. COURSE ASSIGNMENTS SELECTIONS

- A. Individual Oral Report Topic Selections
- B. Law School Writing Requirement Topic Selections
- C. Mini-Paper Topic Selections
- D. Doing Business Abroad Countries
 - Group 1. Cuba
 - Group 2. Kenya
 - Group 3. China
 - Group 4. Poland

III. INTERNATIONAL LAW SOURCES/RESEARCH

- A. French, Internet Resources For Researching International and Foreign Law, 52 Syracuse L.Rev. 1167 (2002) (with Syllabus).
- B. Hornbook, pp. 1137-52.

IV. INTERNATIONAL LAW PRACTICE ISSUES (each student reads ONE of the Articles from the list below)

- A. Ellis, Developing a Global Program For Enhancing Accountability: Key Ethical Tenets For the Legal Profession In The 21st Century, 54 South Carolina L.Rev. 1011 (2003).

OR

- B. Whelan, Ethics Beyond the Horizon: Why Regulate the Global Practice of Law?, 34 Vand. J. Transnat'l L. 931 (2001).

OR

- C. Carroll, Innocents Abroad: Opportunities and Challenges for the International Legal Adviser, 34 Vand. J. Transnat'l L. 1097 (2001).

OR

- D. Morningstar, The Three-Dimensional Practice of Law In The International Arena, 39 Stanford J.Int'l L. 285 (2003).

FEBRUARY 3 CLASS: INTERNATIONAL ECONOMIC LAW/GLOBALIZATION/ WTO INTRODUCTION

Each of the 4 Course Groups Will Have An Assigned Presentation In This Class, With Each Group Allocated About 25 Minutes Apiece. It Is Expected That Each Group Member Will Speak For A Few Minutes Apiece.

I. WTO INTRODUCTION (WHOLE CLASS READS).

- A. Hornbook, Chapter 9.

II. INTERNATIONAL ECONOMIC LAW/GLOBALIZATION POLICY ISSUES (Group 1) – This Group should divide up the articles suggested below and do a panel discussion of the authors' various themes.

- A. Head, Throwing Eggs at Windows: Legal and Institutional Globalization in the 21st Century Economy, 50 Kan. L. Rev. 731 (2002).
- B. Kinley, Human Rights, Globalization and the Rule of Law: Friends, Foes or Family?, 7 UCLA J. Int'l L. & Foreign Affairs 239 (Fall 2002/Winter 2003).
- C. Panitchpakdi, The Evolving Multilateral Trade System in the New Millennium, 33 Geo. Wash. Int'l L. Rev. 419 (2001).

- D. Summers, The Battle in Seattle: Free Trade, Labor Rights, and Societal Values, 22 U. Pa. J. Int'l Econ. L. 61 (2001).
- E. Ochoa, Advancing the Language of Human Rights in a Global Economic Order: An Analysis of a Discourse, 23 Boston College Third World L. J. 57 (2003).
- F. DiMatteo, Dosanjh, Frantz, Bowal & Stoltenberg, The Doha Declaration and Beyond: Giving a Voice to Non-Trade Concerns Within the WTO Trade Regime, 36 Vanderbilt J. Transnat'l L. 95 (2003).

III. WTO: THE DISPUTE RESOLUTION PROCESS (Group 2) – This Group should use the articles below plus the relevant Hornbook and other materials of Group choice to explain the WTO dispute settlement process.

- A. One student should do a brief summary of the WTO dispute resolution process.
- B. Bacchus, Groping Toward Grotius: The WTO and the International Rule of Law, 44 Harvard Int'l L. J. 533 (2003).
- C. Bacchus, Thoreau's Pencil: Sharpening Our Understanding of World Trade, 30 Florida State Univ. L. Rev. 911 (2003).
- D. Roberts, Beyond Notions of Diplomacy and Legalism: Building a Just Mechanism For WTO Dispute Resolution, 40 American Business L. J. 511 (2003).
- E. Ehlermann, Experiences From the WTO Appellate Body, 38 Texas Int'l L. J. 469 (2003).
- F. Gerhart, The Two Constitutional Visions of The World Trade Organizations, 24 Univ. of Pennsylvania J. Int'l Econ. L. 1 (2003).

IV. THE WTO EU-US FOREIGN SALES CORPORATION CASE (Group 3) –This Group will present the WTO Case between the European Union and the U.S. Challenging the U.S. Foreign Sales Corporations Law as a WTO violation. One student should present the case facts; another the EU legal position; another the U.S. position; another the WTO Decisions in summary form; another a brief case analysis from the Rosenberg article below; and another news updates, including the U.S. Congressional and Bush Administration responses. Materials to be used may include:

- A. The January 14, 2002 Appellate Decision, 2002 WL 44907 (W.T.O.)
- B. The October 12, 2001 Dispute Settlement Body Decision, 2001 WL 1215248 (W.T.O.).

- C. Rosenberg, How a Taxing Problem Has Taken Its Toll: A Common Person's Guide to an International Tax Dispute, 20 Boston U. Int'l L.J. 1 (2002).
- D. News updates (LEXIS/NEXIS recommended, with NEWS Library, CURNWS File and ITRADE Library, secondary sources files likely to be helpful).

SPECIAL NOTE: All WTO decisions are also available on the WTO website at www.wto.org.

V. THE WTO EU-US MUSIC COPYRIGHT CASE (Group 4) – This Group will present the WTO Case between the European Union and the U.S. challenging the U.S. Copyright Law exemption for certain music played in bars and restaurants as a WTO TRIPS violation. One group member present the facts; another the EU legal position; another the U.S. legal position; and another the WTO panel and arbitral decisions in summary form; another a case analysis from the Christakos & Hagins articles below; and another news updates on the case, including the U.S. response. Materials to be used may include:

- A. June 15, 2000 Panel Report, 2000 WL 816081 (W.T.O.).
- B. January 15, 2001 Arbitrator Award, 2001 WL 1397425 (W.T.O.).
- C. Christakos, WTO Panel Report on Section 110(5) of the U.S. Copyright Act, 17 Berkeley Tech. L.J. 595 (2002).
- D. Hagins, Robbing Peter Gabriel To Pay Paul's Diner: Plunder, the Free Market, and the Fairness in Music Licensing Act, 7 Texas Rev. of Law & Politics 385 (2003).
- E. News Articles (see LEXIS/NEXIS sources in WTO Case above).

FEBRUARY 10 CLASS: THE WTO CONTINUED

This class will also involve WTO case and related issues presentations by each class group, with each group member to make a brief individual presentation.

I. WTO BANANAS DISPUTE (Group 1).

This Group will present the WTO Bananas Case. Materials to be covered can be found in Bhala, The Bananas War, 31 McGeorge L. Rev. 839 (2000); Note, Bananas, Beef, and Compliance in the WTO: The Inability of the WTO Dispute Settlement Process to Achieve Compliance from Superpower Nations, 10 Minn. J. Global Trade 133 (2001); Bishop, The Second Legal Revolution in International Trade Law: Ecuador Goes Ape in Banana Trade War with European Union, 12 Int'l Legal Perspective 1 (Fall 2001/Spring 2002); plus any 2000 and 2001 WTO Panel Decisions. Group members should present

the facts; the various parties' positions; all relevant WTO decisions in their presentation; and case news updates following the last WTO decision.

II. WTO BEEF HORMONES DISPUTE (Group 2).

This Group will present the WTO Beef Hormones Case. Materials to be covered can be found in Wager, The Never-Ending Story: The Implementation Phase of the Dispute Between the EU and the U.S. on Hormone-Treated Beef, 33 Law & Policy of International Business 777 (2002); the 2001 Note cited in the above Bananas Case; and Ford, The Beef Hormone Dispute and Carousel Sanctions, 27 Brooklyn J. Int'l L. 543 (2002). Group members should present the facts; the various parties' positions; all relevant WTO decisions; and case news updates following the last WTO decision.

III. WTO ASBESTOS DISPUTE (Group 3).

This Group will present the WTO EU-Canada Asbestos Case. Materials to be covered can be found in Yavitz, The WTO Appellate Body Report, European Communities – Measures Affecting Asbestos and Asbestos-Containing Products, Mar. 12, 2001, WT/DS135/AB/R, 11 Minn. J. Global Trade 43 (2002); McConnell, The Asbestos Case at the WTO: The Treatment of Public Health Regulations Under the General Agreement of Tariffs and Trade 1994 and the Agreement on Technical Barriers to Trade, 10 Tulsa J. Comp. & Int'l L. 153 (2002); and Note & Comment, A Greening of the WTO? A Case Comment on the Asbestos Report, 26 Brooklyn J. Int'l L. 1789 (2001); and case news updates following the last WTO decision. Group members should follow the case presentation format above.

IV. THE CANADA-U.S. SOFTWOOD LUMBER DISPUTE (Group 4).

This Group will present the WTO Canada-U.S. Softwood Lumber case. Materials to be covered can be found in a series of articles starting in 27 Canada-U.S. L. J. 285 (2001) plus the August 29, 2003 WTO Panel Report available on either Westlaw or the WTO website. Group members should follow the case presentation format above, including someone presenting news updates following the August 2003 WTO decision.

FEBRUARY 17 CLASS: NAFTA

I. GENERAL PRINCIPLES/ISSUES (WHOLE CLASS READS)

- A. Hornbook, Secs. 21.9-21.15; and Chapter 29.
- B. Made in the USA Foundation v. U.S., 242 F.3d 1300 (11th Cir. 2001).

II. NAFTA DISPUTES

- _____ A. Hansen, Judicialization and Globalization in the North American Free Trade Agreement, 38 Texas Int'l L. J. 489 (2003).

- _____ B. Tollefson, Metalclad v. United States Revisited: Judicial Oversight of NAFTA's Chapter Eleven Investor-State Claim Process, 11 Minn. J. Global Trade 183 (2002).

III. MISCELLANEOUS NAFTA TRADE ISSUES

- _____ A. Kovatch, The NAFTA's Rules of Origin, Certificate of Origin, and Record-Keeping Requirements, 12 Transnat'l Law. 403 (1999).
- _____ B. Note, Partners, Politics and Promises: An Analysis of the NAFTA's Arbitral Panel Decision Concerning the U.S.-Mexico Trucking Dispute, 32 N.M. L. Rev. 471 (2002); **AND** Public Citizen v. Dept. of Transportation, 316 F.3d 1002 (9th Cir. 2003); **AND** Transport Robert (1973) LTEE v. INS, 195 F. Supp. 2d 136 (D.D.C. 2002).

IV. ENVIRONMENTAL ISSUES

SPECIAL NOTE: Whoever does these reports should also review www.cec.org and be prepared to discuss in general terms how NAFTA's environmental side agreement works.

- _____ A. Block, Trade and Environment in the Western Hemisphere: Expanding the NAAEC into the Americas, 33 Environmental L. 501 (2003) (especially pp. 501-530).
- _____ B. Kibel, The Paper Tiger Awakens: North American Environmental Law After the Cozumel Reef Case, 39 Colum. J. Transnat'l L. 395 (2001).

V. LABOR ISSUES

SPECIAL NOTE: Whoever does these reports should also review www.naalc.org and be prepared to discuss in general terms how NAFTA's labor side agreement works.

- _____ A. Summers, NAFTA's Labor Side Agreement and International Labor Standards, 3 J. Small & Emerging Bus.L. 173 (1999).
- _____ B. Russo, NAALC: A Tex-Mex Requiem for Labor Protection, 34 U. Miami Inter-Am. L. Rev. 51 (2002).

FEBRUARY 24 CLASS: OTHER REGIONAL INTERNATIONAL TRADE & BUSINESS GROUPS/ACTIVITIES

I. GENERAL INTRODUCTION (whole class reads)

- A. Hornbook, Secs. 21.1-21.8; 21.16-21.19
- B. Hornbook, Chapter 28.
- C. Hornbook, Secs. 10.17-10.19; 10.23.

II. RECENT U.S. TRADE INITIATIVES

SPECIAL NOTE: Whoever does this topic will briefly recap the following developments using information found at the U.S. Trade Representative website (www.ustr.gov).

- A. U.S. Caribbean Basin Trade Enhancement Act, U.S. Senate Report 106-160 (9/16/99) **AND** Dypski, The Caribbean Basin Initiative: An Examination of Structural Dependency, Good Neighbor Relations, and American Investment, 12 J. Transnat'l L. & Pol'y 95 (2002).
- B. U.S. African Growth and Opportunity Act, U.S. House Report 106-606 (5/4/00); **AND** Trent, Implications for Foreign Direct Investment in Sub-Saharan Africa Under the African Growth Opportunity Act, 23 Northwestern J. of Int'l L. & Business 213 (2002).
- C. 2003 U.S. Free Trade Agreements with Chile and Singapore.

III. FTAA, MERCOSUR AND CENTRAL AMERICA

SPECIAL NOTE: In addition to the readings noted below, whoever takes these topics should also review relevant information about each topic at www.ustr.gov.

- A. Bruner, Hemispheric Integration and the Politics of Regionalism: The FTAA, 33 U. Miami Inter-Am. L. Rev. 1 (2002); **AND** Altieri, NAFTA and the FTAA: Regional Alternatives to Multilateralism, 21 Berkeley J. Int'l L. 847 (2003).
- B. O'Keefe, The Central American Integration System (Sica) at the Dawn of a New Century: Will the Central American Isthmus Finally Be Able to Achieve Economic and Political Unity?, 13 Fla. J. Int'l L. 243 (2001); **AND** 2003 USTR Central America Free Trade Agreement Developments.
- C. Aramburu, The Evolution of Mercosur in a South American Integration, 13 Pace Int'l L. REV. 183 (2001); **AND** Pallares, International Regime of Commercial Companies in Argentina and Mercosur, 32 Stetson L. Rev. 785 (2003).
- D. Sheppard, The Andian Trade Preference Act: Past Accomplishments and Present Circumstances Warrant Its Immediate Renewal and Expansion, 34 George Washington Int'l L. Rev. 743 (2003).

IV. EUROPEAN UNION

- A. Maazel, What Is the European Union?, 16 BYU J. Pub. L. 243 (2002).

V. ASIA (ASEAN/APEC)

- _____ A. Fischer, A Commentary on Regional Institutions in the Pacific Rim: Do APEC and ASEAN Still Matter?, 13 Duke J. of Comparative & Int'l L. 337 (2003); **AND** White, Foreigners Beware? Investing in a Jungle with Many Predators: The ASEAN Investment Area, 27 Tex. Int'l L.J. 157 (2002).

VI. AFRICA

- _____ A. Udombana, The Unfinished Business: Conflicts, The African Union and The New Partnership For Africa's Development, 35 George Washington Int'l L. Rev. 55 (2003); **AND** Packer & Rukare, The New African Union and Its Constitutive Act, 96 A.J.I.L. 365 (2002).

MARCH 2 CLASS: U.S. INTERNATIONAL TRADE & CUSTOMS LAWS

I. GENERAL OVERVIEW (whole class reads)

- A. Hornbook, Secs. 9.11-9.17.
B. Hornbook, Chapters 10-15 and 19 (for general familiarity).

II. CUSTOMS/FOREIGN TRADE ZONES

- _____ A. Customs (Hornbook, Chapters 10 and 11).
1. Using Hornbook and other materials, apply U.S. TSUS schedule to determine hypothetical classification and valuation of a key Montcor imported product component **AND** include rule of origin analysis.
2. Routh, A Few Pointers on Customs Law, Fundamentals of International Business Transactions (Nov. 2000 ALI-ABA Course Materials available in Lexis CLE Library).
- _____ B. Foreign Trade Zones (Hornbook, Secs. 10.8-10.9).
1. Miami Free Trade Zone Corp. v. U.S. Foreign Trade Zones Bd., 136 F.3d 1310 (CAFC 1998).
2. Identify All Montana Foreign Trade Zones using Federal Register search.

III. ANTIDUMPING AND COUNTERVAILING DUTIES

- _____ A. Walders & Pratt, Trade Remedy Litigation – Choice of Forum and Choice of Law, 18 St. John's J. of Legal Commentary 51 (2003).
- _____ B. Sheppard, The Continued Dumping and Subsidy Offset Act (Byrd Amendment): A Defeat Before the WTO May Constitute an Overall Victory For U.S. Trade, 10 Tulane J. Int'l & Comparative Law 121 (2002); **AND** Jan. 16, 2003 WTO Appellate Body Decision available at www.wto.org.

- _____ C. Antidumping
 - 1. Hornbook, Chapter 12 (Whoever does this topic should give hypothetical example applicable to Montcor).
 - 2. Note, Hardened Positions: Guatemala Cement and WTO Review of National Antidumping Determinations, 76 N.Y.U. L. Rev. 1259 (2001).

- _____ D. Countervailing Duties
 - 1. Hornbook, Chapter 13 (Whoever does this topic should give hypothetical example applicable to Montcor)..
 - 2. Wilcox, GATT-Based Protectionism and the Definition of a Subsidy, 16 B.U.Int'l L.J. 129 (1998).

IV. ESCAPE CLAUSE/NON-TARIFF BARRIERS (Hornbook, Chapters 14 and 15).

- _____ A. Escape Clause/TAA
 - 1. U.S. GAO Report 01-838 (Aug. 24, 2001).
 - 2. Former Employees of Chevron Products Co. v. U.S. Labor Dept., 279 F. Supp.2d 1342 (Ct. Int'l Trade 2003).

V. SECTION 301

- _____ A. Murphy, WTO Upholds U.S. Section 301 Trade Authority as GATT-Consistent, 94 A. J. I. L. 376 (2000).

- B. Chang, Taming Unilateralism Under the Multilateral Trading System: Unfinished Job in the WTO Panel Ruling on U.S. Sections 301-310 of the Trade Act of 1974, 31 Law & Pol'y Int'l Bus. 1151 (2000).

MARCH 9: SPECIAL CURRENT EVENTS TOPICS PRESENTATIONS

This class will involve four panel presentations on current special topics. In addition to suggested readings provided by your Professor, each group is asked to treat these presentations as briefings and focus on making them as current as possible.

- A. Group 1: U.S. Steel Tariffs Controversy.

- B. Group 2: WTO Biosafety and Phytosanitary Issues/GMO's.

- C. Group 3: Mad Cow Disease Legal Issues and Developments.

- D. Group 4: Islamic Law Issues Potentially Applicable to Montcor.

MARCH 16 CLASS: MINI-PAPER PRESENTATIONS: INTELLECTUAL PROPERTY

I. GENERAL OVERVIEW (whole class reads)

- A. Hornbook, Chapters 23 and 24.

II. MINI-PAPER ORAL PRESENTATIONS

- _____ A. AIDS Pharmaceutical Patents Controversy.
- _____ B. Other Developing Countries Intellectual Property Issues.
- _____ C. Other International Patent Law Issues and Developments.
- _____ D. International Trademark Law Issues & Developments (including gray market, piracy and counterfeiting).
- _____ E. International Copyright Law Issues & Developments.

MARCH 23 CLASS: TECHNOLOGY LAW MINI-PAPERS

- _____ A. International Technology/Internet Regulation,
- *_____ B. International E-Commerce Law Issues & Developments.
- *_____ C. International Data Privacy and Encryption Technology Issues & Developments.
- *_____ D. Yahoo! International Litigation Issues & Developments.
- *_____ E. International Cybercrime Issues & Developments.

MARCH 30: SPRING BREAK/NO CLASS

APRIL 6 CLASS: INTERNATIONAL BUSINESS REGULATION MINI-PAPERS

- *_____ A. International Antitrust Issues & Developments (including EU Microsoft and GE-Honeywell Merger Matters).
- *_____ B. International Securities Law Issues & Developments.
- *_____ C. International Bankruptcy Law Issues & Developments.
- *_____ D. International Tax Law Issues & Developments.
- *_____ E. International Corporate Governance Issues & Developments.

APRIL 13 CLASS: DEVELOPING COUNTRY MINI-PAPER PRESENTATIONS

- * A. International Moneylaundering Issues & Developments.
- * B. Developing Country, International Financial Institution/Development Bank Law Issues & Developments
- * C. Transnational Corporation Conduct Codes/Labor Issues & Developments including the Nike case pending in U.S. Supreme Court).
- D. International Environmental Law Issues & Developments.
- * E. International Corruption and Bribery Issues & Developments (SPECIAL NOTE: A person doing this topic to meet the Law School commercial law requirement must include a corporate compliance component to the paper).

APRIL 20 CLASS: INTERNATIONAL BUSINESS STRUCTURES AND FINANCING

I. INVESTMENT & CURRENCY CONTROLS.

- * A. Investment Controls
 - 1. Hornbook, Chapter 25.
 - 2. Vandevelde, Investment Liberalization and Economic Development, 36 Colum. J. Transnat'l L. 501 (1998).
- * B. Currency & Foreign Exchange Controls
 - 1. Hornbook, Chapter 31.
 - 2. Wu, Recent Developments in the Currency War: The Euro, The Dollar, The Yen and The Bemu, 15 Conn. J. Int'l L. 1 (2000).

II. INTERNATIONAL BUSINESS STRUCTURES/JOINT VENTURES.

- * A. International Branches & Subsidiaries.
 - 1. Hornbook, Chapter 26.
- * B. International Joint Ventures
 - 1. Hornbook, Chapter 27.
 - 2. Klein, Structuring the International Joint Venture (available in Westlaw at 534 PLI/Tax 471).
- * C. International Distribution & Agency Agreements.

1. Hornbook, Chapter 4.
2. Oliveros, Carolita – Various International Distribution Materials – ALI-ABA Course Materials (Available LEXIS CLE Library).

III. INTERNATIONAL SALES/CISG.

*

- A. Hornbook, Chapters 1, 2 and 3.
- B. Zeller, The UN Convention on Contracts for the International Sale of Goods (CISG) – A Leap Forward Towards Unified International Sales Laws, 12 Pace Int'l L. Rev. 79 (2000).

IV. FINANCING TRANSACTIONS/LETTERS OF CREDIT.

Note: Whoever signs up for this report will do a 10 minute demonstration of how a letter of credit transaction works.

*

- A. Hornbook, Chapters 6 and 7.
- B. Lipton, Documentary Letters of Credit in the Global Information Age, 22 Ford. Int'l L.J. 1972 (1999).

V. EXPORT CONTROLS & ECONOMIC SANCTIONS

*

- A. Corr, Complying with Export Controls On Technology Transfers in the Post-Cold War, Post-9/11 Era, 25 Houston J. Int'l L. 441 (2003).
- B. Addis, Economic Sanctions and the Problem of Evil, 25 Human Rights Quarterly 573 (2003).

APRIL 27 CLASS: FOREIGN SOVEREIGN IMMUNITIES ACT & OTHER INTERNATIONAL BUSINESS LITIGATION

I. GENERAL BACKGROUND (WHOLE CLASS READS)

- A. Hornbook, Chapters 33G, 34.

II. SPECIFIC CASES.

- A.. FSIA and Act of State Cases/Issues

- _____ 1. Republic of Argentina v. Weltover, 112 S.Ct. 2160 (1992).
- _____ 2. Dole Food Co. v. Patrickson, 123 S. Ct. 1655 (2003).

_____ 3. Hashemite Kingdom of Jordan v. Layale Enterprises, Inc., 272 F.3d 264 (5th Cir. 2001).

_____ 4. World Wide Minerals Ltd. V. Republic of Kazakhstan, 296 F.3d 1154 (D.C. Cir. 2002).

B. Other Cases/Issues

_____ 1. Bernat F. v. Guadalajara, Inc., 210 F.3d 439 (5th Cir. 2000).

_____ 2. In re Maxwell, 93 F.3d 1036 (2d Cir. 1996).

_____ 3. Iragorri v. United Technologies, Corp., 274 F.3d 65 (2d Cir. 2001)(en banc).

_____ 4. Standard Bent Glass Corp. v. Glassrobots Oy, 333 F.3d 440 (3d Cir. 2003).

MAY 4 CLASS: DOING BUSINESS ABROAD PRESENTATIONS

SPECIAL NOTE: THE MAY 4 CLASS WILL BE AN EXTENDED DINNER SESSION AT YOUR PROFESSOR'S EXPENSE AT SITE TO BE DETERMINED

DOING BUSINESS ABROAD PROJECT INSTRUCTIONS FOR ALL GROUPS

As indicated above, the class will be divided into project groups with each group preparing a Doing Business Abroad Memorandum **AND** drafting an international licensing or joint venture agreement chosen by the group for the specific countries covered by the Memorandum. The purpose of this assignment is to identify all relevant legal issues and other considerations for Montcor in the assigned countries. Each Memorandum should contain:

- * A synthesis of international business law treatise topics applicable in each country, showing how each topic applies to Montcor (HINT: MARTINDALE-HUBBELL HAS SOME OF THESE LAWS BUT THIS IS NOT SUFFICIENT)
- * A draft licensing or joint venture agreement with a hypothetical host country entity covering one or more Montcor activities, plus any helpful explanation.
- * A summary of any U.S. court cases and arbitration decisions since January 1, 1996 which involve relevant host country (including FSIA and private party) disputes.
- * A summary of non-U.S. court cases and arbitration decisions, including WTO panel and arbitration decisions, since January 1, 1996 involving relevant host country legal disputes from at least one Lexis or Westlaw database library.

- * A list of any U.S. antidumping, countervailing duty, 301 or escape clause/trade adjustment assistance legal proceeding involving the host country since January 1, 1996 (findable in Lexis or Westlaw Federal Register databases) if they are relevant to Montcor.
- * Reference to whether the countries are members of WTO or any other trade-related treaty or entity which permits favorable trade or customs treatment for Montcor, plus an explanation of how Montcor benefits from such membership.
- * Names of 2 host country law firms obtained from Martindale-Hubbell which could be recommended as local counsel for Montcor, explaining why the firms are picked.
- * Current U.S. Government and host country government reports describing the legal, business, political, etc. climates, plus any recent World Bank or IMF report.
- * Any law review article(s) written since 1999 about the country (wholly or partly) describing any issue relevant to Montcor's business activities.
- * Any other points the group considers relevant, including news stories about host country legal issues relevant to Montcor; law review articles about the country; and pertinent Internet sources. A MEMO LACKING THESE SOURCES WILL BE CONSIDERED INCOMPLETE.

SPECIAL INDIVIDUAL COUNTRY GROUP INSTRUCTIONS

In addition to the above instructions applicable to all groups, each of the 4 Doing Business Abroad Country Groups should note the following.

Group 1: Cuba

The Cuba Group DBA Memorandum must contain additional sections addressing:

- Whether Montcor can even do business in Cuba given current U.S. economic sanctions and legal restrictions on U.S. companies; and if so, how such business should be structured.
- How recent U.S. Congressional efforts to ease and eliminate legal restrictions on doing business in Cuba, if ultimately successful, could enable Montcor to do any and/or more business there.

Group 2: Kenya

The Kenya Group DBA Memorandum must contain additional sections addressing:

- What specific projects of potential relevance to Montcor have been funded by the World Bank and the African Development Bank.
- What religious issues, if any, affect US companies doing business there.
- How current U.S. Africa trade laws might help promote Montcor activity there.
- How the East African Treaty of Cooperation and other, more recent Africa multi-country treaties might be used to structure a venture.

Group 3: China

The China Group DBA Memorandum must contain additional sections addressing:

- How China's WTO membership might affect the proposed business activities.
- How the newly proposed ASEAN free trade agreement, if ever adopted in meaningful form, might be effectively used by Montcor to structure its China activities.

Group 4: Poland

The Poland Group DBA Memorandum must contain additional sections addressing:

- How Poland's new EU Membership could likely affect Montcor's overall business activities; and whether its EU Membership phase-in provisions offer any particular advantage or disadvantage to Montcor.
- How any other Polish treaties, especially with non-EU countries such as Russia, could likely affect Montcor's business strategy here.