

Global Village For Future Leaders of Business and Industry at Lehigh University July 8, 2014

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Global entrepreneurship, ethics, and rule of law:

How International legal issues
affect and shape international business.



Summary

1. Importance of international law and international institutions in modern life and international business.
2. Types of careers related to and/or involving international law. My story.
3. Basics of international law with “hot issues”.
4. Examples from my practice of international law matters and cases.
5. Rule of Law, international legal and business ethics, and the link to global competitiveness, economic growth and business development.

CASE STUDY: GREECE



Discussion Topic

With the Greek financial crisis and legal system reforms as a backdrop, the interns will be challenged to apply the “Rule of law” and “justice index” best practices to:

- a) A factual hypothetical;
- b) The relationship of rule of law as it relates to growth and investment; and
- c) What can be done to promote and advance the rule of law in their particular country – starting with the World Justice Project, Rule of Law Index assessment of their country.

Importance of International Law and International Institutions in Modern Life and International Business

A. Business and Trade

1. Harmonization and standardization of contract terms and definitions for global contracts. International Institute for the Unification of Private Law [UNIDROIT], UNCITRAL (UN Commission on International Trade Law); UN Convention on Contracts for International Sale of Goods (CISG) (choice of law).
2. Trade, Uniform Trade Clarification of Commodities. World Customs Organization. World Trade Organization. Rules of origin, customs valuation, harmonized system of goods; (INCO) International Rules for Trade Terms (ICC).
3. GATT. Subsidies and Dumping
4. International Chamber of Commerce Uniform Customs and Practices (UCP) for documentary credits (Letter of Credit) (Bill of Lading).
5. Transport and Carriage of Goods by Sea. UN Convention on the Carriage of Goods by Sea. (Compare to “Admiralty Law”) (Compare “private” versus “public” International law).

6. UN Convention for Recognition and Enforcement of Foreign Arbitral Awards.

7. Hague Conventions – Serving Abroad of Judicial and Extra Judicial Documents; Taking Evidence Abroad in Civil, Commercial matters; Apostille Convention.

8. Dual Taxation treaties. (UN model; OECD Model) (bilateral) (e.g. Rock and roll band tour).

9. Social Security Totalization Agreements (Bilateral)

10. Berne Convention for the Protection of Literary and Artistic Works (Copyright) (e.g. Harry Potter); EU Directive Harmonizing Copyright protection (Copyright); Madrid Convention (Trademarks/Trade dress) (Coca Cola); Paris Convention (Patents).

11. Organization for Economic Cooperation and Development, (OECD) and UN, anti-corruption and bribery rules.



B. Personal, Safety, Health, Environment

12. Telephone calls and communications.(UN Space Treaty) Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space) (Earth orbit, moon) . **International Space Law!**

13. GATT and Lisbon Agreements. Appellations of Origin (feta, tequila, Florida oranges; Idaho Potatoes).

14. Uniform Recognition of Testamentary Dispositions. Wills (Hague)

15. UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage (Ex. Mystras, Greece).

16. Geneva Convention (International Armed Conflicts), (weapons, civilians, prisoners) – war crimes, war criminals. International Criminal Court (Rwanda, Yugoslavia).

B. Personal, Safety, Health, Environment

(continued)

17. Protection of Antarctica. Antarctic Treaty (save the penguins!)

18. European Monetary Union (Maastricht Treaty) (Introduction of EURO, 1999).

19. UN Convention on Road Traffic (universal road sign standards)

20. Hague Child Kidnapping Treaty. (Convention for Civil Aspects of International Child Abduction)

21. Vienna Convention on Consular Relations and Optional Protocols (Ex. Argo Movie).

22. NATO – to prevent wars and armed conflicts.

2. Types of Careers in International Law

- A. Not a niche area anymore. Pervasive. Explosion of global trade, finance and business; and bilateral and multinational treaties.
- B. No conventional path. No conventional undergraduate studies. (Don't study pre-law!). Languages are key. Sensitivity to cultural differences is key (examples). Worldwide networking and contacts is key (examples from my practice). Participation in international organizations is key. Knowledge of basic business, finance and trade is key. Volunteering (ex. USLAC).
- C. * **International law firms** (new alliances and affiliations/my example) (small firms now have expanded opportunity)
 - * **Government**, State Department, Congress, (senate Committee on Foreign Relations)
 - * **UN**, (Iran-US Claims Tribunal) (KOSOVO)
 - * **Foundations**. Global Development of Gates Foundation.
 - * **In house**: Microsoft, Heinz.
 - * **Academia**: Teaching
 - * **International Organizations**: OECD, NATO
 - * **Military** (Ex. Air force – to Law School – to JAG → to International Criminal Tribunal/Hague.

3. Basics of Private International Law in International Business Matters

A. Distinction between [conflicts of laws] in disputes vs. [agreements between international states and entities].

B. Private international law seeks to:

- 1) Determine which law applies to a particular business transaction or contract based on: Nationality, domicile, situs, capacity, title, contract choice clauses, policy.
- 2) Harmonize laws across countries (Why?)

Three basic initial legal concerns in any international business transaction:

1. Common law versus civil law. Critical to negotiating contracts.
2. Varying government involvement regarding approvals, licensing, business set up.
3. Preference or bias for local parties and their interests. Limits or remedies and protections in case of breach

D. Legal risk and the perception of legal risk effects business development and growth. Legal risk is “existential” risk.

E. The basic types of international business transactions.

1. Direct Sales/Purchases
2. Agents and Distributorships
3. Joint ventures and Alliances/ Mergers and Acquisitions
4. Subsidiary or branch
5. Licensing/Technology transfer

F. Some Basic Issues in all of the above.

- Securing Payment. Letters of Credit.
- Definition of Legal Terms (ex. INCO) (CISG)
- Dispute resolution (which law applies, which forum/arbitration?)
- Import and export licensing and controls
- US FCPA
- Foreign Labor Statutes
- Control
- Tax
- Trade Secrets and intellectual property
- Termination
- Securities laws

Hot Issues in International Business Law

1. Emerging Markets (China, India, Brazil, Indonesia)
2. Rule of Law factors, such as government stability, legal certainty, lack of corruption, transparencies – are highly relevant, in such emerging markets – “great opportunity → great risk”
3. FCPA (increased enforcement by Department of Justice and SEC); Increasing EU legislation in light of OECD Anti-Corruption Treaty; UK Bribery Act.
4. Intellectual Property and Technology Issues / Protecting Privacy and Trade Secrets.
5. Increasing interaction with foreign lawyers. Different cultures (ex. “e-mail”); different legal systems and titles (lawyer, notary, foreign legal consultant). Different “privilege” protections.

4. Real World Examples from my practice

- A. Paper company Acquisition/Privatization
- B. Greek Yogurt Company litigation
- C. Software Licensing and maintenance agreement
- D. Real Estate Broker Exclusive Rights agreement
- E. Drink/Lighter/exclusive rights agreements
- F. Greek frozen pizza acquisition
- G. Estate Planning for Beverly Hills Celebrity
- H. State Tobacco litigation in Greece
- I. International Divorce (Greece/Canada)
- J. Child kidnapping (NJ-Greece case)
- K. Greek condo developer (sale of project shares) in US
- L. Boeing US litigation

5. Rule of Law

International legal and business ethics, and the link to global competitiveness

1. Greek Financial Crisis Example / “Troika” loan document requirements.

2. Central Importance of Rule of Law: “The Rule of Law is the foundation for community of opportunity and equity – it is the predicate for the eradication of poverty, violence, corruption, pandemics and other threats to civil society.” William H. Neukom, President of World Justice Project.

3. The 10 Rule of Law Factors

WJP Rule of Law Index 2013

The WJP Rule of Law Index™, version 3.0

Version 3.0 of the Index is composed of 10 factors derived from the WJP's universal principles. These factors are divided into 49 sub-factors which incorporate essential elements of the rule of law.

Factor 1: Limited Government Powers

- 1.1 Government powers are effectively limited by the fundamental law
- 1.2 Government powers are effectively limited by the legislature
- 1.3 Government powers are effectively limited by the judiciary
- 1.4 Government powers are effectively limited by independent auditing and review
- 1.5 Government officials are censured for misconduct
- 1.6 Freedom of opinion and expression
- 1.7 The state complies with international law
- 1.8 Transition of power occurs in accordance with the law

Factor 2: Absence of Corruption

- 2.1 Government officials do not receive or receive bribes
- 2.2 Government officials exercise their functions without improper influence
- 2.3 Government officials do not misappropriate public funds for other purposes

Factor 3: Clear, Publicized and Stable Laws

- 3.1 The laws are comprehensive to the public
- 3.2 The laws are published and widely accessible
- 3.3 The laws are stable

Factor 4: Order and Security

- 4.1 Crime is effectively controlled
- 4.2 Civil conflict is effectively limited
- 4.3 People do not resort to violence to address personal grievances

Factor 5: Fundamental Rights

- 5.1 Equal treatment and non-discrimination are effectively guaranteed
- 5.2 The right to life and security of the person is effectively guaranteed
- 5.3 The process of law and rights of the accused are effectively guaranteed

- 5.4 Freedom of opinion and expression is effectively guaranteed
- 5.5 Freedom of belief and religion is effectively guaranteed
- 5.6 Freedom from arbitrary interference with privacy is effectively guaranteed
- 5.7 Freedom of assembly and association is effectively guaranteed
- 5.8 Fundamental labor rights are effectively guaranteed

Factor 6: Open Government

- 6.1 Administrative procedures are open to public participation
- 6.2 Official drafts of laws and regulations are available to the public
- 6.3 Official information is reasonably available

Factor 7: Regulatory Enforcement

- 7.1 Government regulations are effectively enforced
- 7.2 Government regulations are applied and enforced without improper influence
- 7.3 Due process is respected in administrative proceedings
- 7.4 The Government does not expropriate private property without adequate compensation

Factor 8: Access to Civil Justice

- 8.1 People are aware of available remedies
- 8.2 People can afford and afford legal counsel in civil disputes
- 8.3 People can access an effective civil court
- 8.4 Civil justice is impartial
- 8.5 Civil justice is free of improper influence
- 8.6 Civil justice is free of unreasonable delays
- 8.7 Civil justice is effectively enforced
- 8.8 ADR systems are accessible, impartial, and effective

Factor 9: Effective Criminal Justice

- 9.1 The criminal investigation system is effective
- 9.2 The criminal adjudication system is timely and effective
- 9.3 The correctional system is effective in reducing criminal behavior
- 9.4 The criminal justice system is impartial
- 9.5 The criminal justice system is free of improper influence
- 9.6 Due process of law and rights of the accused are effectively protected

Factor 10: Informal Justice

- 10.1 Informal justice systems are timely and effective
- 10.2 Informal justice systems are impartial and free of improper influence
- 10.3 Informal justice systems respect and protect fundamental rights

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4. The UN “Guiding Principles on Business and Human Rights” (known as “Ruggie principles”)

The Three “Ruggie Principle” pillars:

1. States duty to protect against human rights abuses by businesses and corporations (domestically and abroad). ex:gender inequality; sex abuse; racism; oppression of indigenous people; ethnic minorities; religious oppression; children; disabled; forced migration; migrant workers; environmental contamination and risks, [proper business, procurement and lobbying activities].
2. Corporate responsibilities to act ethically and with due diligence to respect the rights of others.
3. State and corporate responsibility to provide access to remedies in order to prevent and remediate infringement.



6. Discussion Topics

Factual Hypothetical

Olympus Partners Inc. (“Olympus”) is a US based private equity fund with its principal offices in the US. Olympus perceives an increase in the international consumption of “healthy Mediterranean food products”, having launched a successful foray into Greek yogurt. Olympus wants to acquire Alpha Foods (“Alpha”). Alpha imports extra virgin olive oil and several popular varieties of Greek wine to the US and countries around the world . Alpha is owned by the Pappas family, a wealthy and influential family. Alpha is affiliated with Pappas Estates (“Pappas”) which owns the many hectares of olive groves and vineyards supplying Alpha.

In due diligence, you find out that the financial records of Alpha reflect certain unclear “marketing and travel” expenses by John Pappas to a local council member. This local council member has lead the opposition to zoning and licensing of rival agri-business enterprises to Pappas. In addition, you discover that pesticides used by Pappas have been contaminating a neighboring EU Natura 2000 ecological preserve – but that local officials, on Pappas’ payroll, have not reported this to the Greek Ministry of the Environment. Further, on questioning Alpha executives on their relatively low payroll, they inform you that they use Asian and North African illegal immigrants for the crop and farm work, thus saving on health care and proper employee wages and benefits. The workers are housed 10 to a room in company provided housing deemed a “benefit” to them – which further increases company profits.

QUESTIONS

- **Although Olympus perceives this to be a great business opportunity, what are the risks?**
- **What is the relationship, if any, between Rule of Law and “Ruggie Principle” adherence, and sustainable growth and development of business and investment in a country?**
- **Review of Rule of Law Justice Index for your country [slide presentation]. What can you do to promote and advance the rule of law and the UN principles?**

Ευχαριστώ

Grazie

Teşekkürler

Köszönettel

Merci

THANK
YOU

Gracias

Obrigado!