

Syllabus

TEACHING FACULTY

[Prof. David Linnan \(University of South Carolina\)](#)

COVERAGE

This course commences with several weeks of substantive law background specifically aimed at international transactional practice. In the balance of the course, we then work through different kinds of transactions via the problem method to see the general principles applied in practice. We start by introducing you to the idea that different legal systems involved in cross-border transactions have differing actors and sometimes approach questions differently from the US as a systemic matter. You then encounter the concept that dispute resolution in the international business setting is typically pursued via arbitration rather than litigation (so forget about jury trials, etc., which undergird much of American law school education).

Bear in mind throughout the course that the ambit of transactional or corporate lawyers' work is essentially determined by the scope of clients' business activities. These days, even smaller enterprising retailers operate online (selling also overseas), and even smaller professional firms bid on foreign work whenever US projects slow down, as happens periodically. You do not have to represent Fortune 500 companies to encounter international business problems. Meanwhile, the financial sector and increasingly the renewable energy sector (for both think working in Charlotte), have big clients who traditionally work across borders.

For simplicity's sake, sophisticated clients often adhere to one high regulatory standard worldwide, so even in the domestic legal setting you may suddenly discover that your business clients seek compliance with foreign data protection standards, etc., precisely because they are doing business overseas too. As a practical matter, that often means compliance with foreign (typically EU) standards. Business clients perceive this as standard compliance and administrative simplification, rather than a political statement, notwithstanding ideas about deregulation that wax and wane periodically. Talking about inward foreign investment as shadow topic in our course, do you think BMW Greenville-Spartanburg Manufacturing Inc. cares more about what Washington, DC or Columbia, SC thinks, or more about whatever principles satisfy their corporate headquarters in Munich, which headquarters coincidentally are subject to German and EU law & regulation? So how to figure this all out, if in practice you are not just looking for applicable US law?

This is not a class concentrating on a single area of law, like torts or contracts. Instead, it looks more like transactional or corporate law practice dictated by wherever your clients' expanding business interests take you along for the ride. Much of cross-border practice involves skillfully avoiding problems via foresight, professional judgment and contract drafting. Meanwhile, that is a general characteristic of transactional practice.

MEETING TIMES & PLACES

The class meets on Mondays and Wednesdays from 09:10-10:35 in room 389 of the Law School. I should normally be in my 320 office in the Law School Faculty Suite most afternoons Tuesday and Thursday, meanwhile maintaining formal office hours Monday and

Wednesday 10:45-13:00. You are free to drop by whenever you can catch me in my office. Check with me at the end of class or email me anytime to set a physical or zoom meeting time that fits your individual schedule Monday-Friday.

COURSE MATERIALS, CONCEPT AND TAKE-AWAYS

The main text is Detlev Vagts, William Dodge, Hannah Buxbaum & Harold Koh, *Transnational Business Problems* (7th ed, Foundation 2024). Additional instructional materials will be accessible via links on the biweekly course assignments pages e-mailed to you. The point of biweekly (every two weeks, not twice a week) assignments is to let you look ahead a bit in your assignments, whenever you have time available. This is a small class, so we may try a couple of drafting exercises too, because, beyond the advisory function, transactional lawyers spend much of their time drafting and reviewing documents.

We shall spend the first month or so on developing a general framework for thinking about the kinds of law and legal questions you encounter in international business transactions. This is a mix of public international and private law, hence catchy references to "transnational law." Thereafter, we look at specific kinds of international business transactions via problems. To the maximum extent possible, the course will be taught by the problem method, under which you are required to read class preparation materials posted as part of course materials, perhaps listen to some streaming materials in advance (particularly in the theoretical part of the course), and then prepare distributed problems or assignments or in the casebook for class discussion. If you need a quick reference for public international law, I suggest Rebecca Wallace & Olga Martin-Ortega, *International Law 9th ed*, London: Sweet & Maxwell, 2020, or simply the public international law nutshell on reserve in the Law Library. The casebook has reasonably good coverage of public international law aspects of our problems, but its coverage there is extremely dense and so hard to understand fully unless you have some prior familiarity with public international law.

Understand that perhaps for the first time in law school, your course will be focused less on a detailed examination of specific areas of basic US law, and more on how issues present themselves to clients as they advance in sophistication and do more business across borders. So you need some consciousness of how foreign law and lawyers may differ, and how to deal legally with public international law instruments like treaties. But international law in the business sector is not an open-ended subject like human rights law that sounds a lot like constitutional law. For example, working cross-border sales law under the Convention on the International Sale of Goods (CISG) intellectually resembles more working issues under detailed UCC Article 2-like provisions. Meanwhile, look closely and you will see that many of those provisions may be grounded more in civil than common law approaches to specific issues, and treaty-based law like the CISG may work differently if applied in civil versus common law settings (because of differing judicial approaches and powers, not the least of which will be an almost complete lack of civil jury trials). The other kind of treaty law you would likely encounter in the cross border business setting would be free trade areas (FTAs), on the example of the 1994 NAFTA Agreement, more recently the 2020 USMCA as NAFTA version 2.0, up for potential renegotiation already again in 2026.

You are encouraged generally to read the newspapers/websites with an eye toward questions involving international business transactions and are invited to bring them up in class for discussion. For example, the federal government has become more active in screening foreign investments/influence into the US during the past 6-7 years under the Committee on Foreign Investment in the United States, or CFIUS. CFIUS is the US Government's

Executive Branch Committee nominally headed up by the President which increasingly may screen foreign investments in the US. Meanwhile, you should have heard recently about the 5-G, AI and expanding chip technology tussles surrounding China, issues concerning various popular apps “made in China”-- think TikTok-- and the internet in general. Meanwhile, the recent IRA legislation via domestic preference EV provisions has injected directly climate change into the trade law setting. Guess what will engage VW-Scout in Blythewood as new EV manufacturer scheduled to go into production in 2026? And the brouhaha of trade arguments and geo-political issues (e.g., Ukraine and Taiwan) are slowly encouraging the remaking of global supply chains.

Contrary to popular (political) belief, trade tensions with China in particular are leading more to a regional reshuffling of the deck in terms of business arrangements/supply chains overseas across borders, rather than a repatriation of substantial overseas business to the US. So, for example, Southeast Asia and India benefit currently from factory migration out of China. Typically China + 1 strategies, as they call them in business school, have resulted in so-called “friend-shoring” rather than “reshoring” in remaking supply chains. Politics aside, factories are largely not returning to the US, because they often serve global regional markets anyway (in Asia now increasingly from India, Vietnam, Thailand, or Indonesia, rather than from China). And services operations, as well as regional headquarters, often favor Singapore for its infrastructure and sophisticated services markets. By course's end, you should understand the basic issues and kinds of legal frameworks applicable in the broad international business transactions area.

ASSESSMENT

The primary contributor to your grade will be performance on a 24-hour checkout final examination, plus class participation. There will also be several documentation and negotiating exercises in the form of group work (in groups of 3-4). You will also have a few simple assignments of this kind individually to work through things like CISG problems. Your group work will also include for certain exercises presentations of individual problems for class (including powerpoint presentation and fielding questions).

Your group projects will incorporate an element of self-grading business-school style, to make sure that all group members invest the required effort in their work. The point of self-grading in that sense is not to evaluate who had the best ideas within the group, but rather to ensure that all group members do their fair share of the work. Incidentally, practicing lawyers largely work in groups when doing complex transactional work. Practically speaking, both class participation and the self-grading normally could move you up or down no more than half a grade (e.g., from B to B+ in the case of class participation, or perhaps B+ to B on the self-grading side, if you left your groupmates in the lurch).

LEARNING OUTCOMES

This course provides an introduction to the law, theory and practice of international business transactions. International business transactions as a course is really the transactional twin traditionally of a private international law course focusing on cross-border litigation including areas like conflicts of law. It really has two distinctly different aspects from a student perspective. One is that it is basically a transactional course, whereas most US law school courses focus largely on the litigation side. And to do transactional work, you learn how business clients work in a practical sense within the framework of corporate and securities law, commercial and contract law, and increasingly intellectual property and

competition law, all of which you study in specific domestic law courses. The other involves the idea that working on business transactions across borders requires some familiarity with aspects of public international law, particularly in the area of international economic law. Equally important, much of the rest of the world tends to be more civil law oriented. You cannot assume that the domestic (common law) legal structures and institutions you have been studying so intensely in a US law school will exist in identical form overseas.

Concerning the general differences between purely domestic and most international transactions, our chief goal is to introduce you to enough international law to allow you to understand how the framework of cross-border transactions may differ (also including inward foreign investment, since there recently South Carolina leads the US on a per capita basis). Similarly, you will be introduced to the idea that the default dispute resolution approach in cross-border transactions is typically arbitration (written into most if not all international contracts), placing most such disputes simply beyond the reach of American jury trials and courts. So we shall also introduce you to the concept of cross-border commercial arbitration. Additionally, state-owned enterprises (SOEs) are relatively unusual within the US simply because of how the US economy is organized. But SOEs and broader claims to a role for the state in the economy are much more common abroad, so that we introduce you to the concept of sovereign immunity and how it may be restricted in private economic dealings (because SOEs are usually subject to restrictive views of sovereign immunity, but even so different rules apply in areas like dispute resolution).

In a practical sense, transactional lawyers function very differently from litigators because they are engaged in negotiating transactions and drafting contracts in forging the framework of individual business arrangements for clients in an uncertain world. Transactional lawyers work via drafting contracts and against a background understanding of broader legal frameworks and issues. They have to reach conclusions on likely outcomes in structuring business relationships and counselling their clients, rather than just making the best argument possible after the fact in litigation, if and when things go south. So rather than teaching you substantive law generally in this course, we shall endeavor to introduce you to the exercise of thinking about avoiding problems in advance via contract drafting and business planning, which is very different functionally from what lawyers do in dispute settlement.

Having said all of that, this course is intended as an introduction to both the transactional and international perspectives. There is no assumption that you know all the details of domestic law areas in advance. So you can look at this course either as helping you to integrate in a practical sense all those areas of domestic law where you already know some detailed law, or it should help you in understanding what deeper familiarity with specific legal areas you might seek, should you decide transactional or corporate law practice were your cup of tea.