

Description

This seminar addresses various legal regimes, both domestic and international, governing an area of vital international economic activity. It examines domestic laws, particularly within the United States, bilateral treaties, regional arrangements (such as the North American Free Trade Agreement (NAFTA)), and rules of customary international law that purport to regulate either incoming or outgoing foreign investment. We will be giving considerable attention to the type of treatment that by law ought to be accorded foreign investors once established in a country.

Foreign investment is subject to diffuse regulation and no single overriding treaty or institutional regime. Not only does "foreign investment" have to be defined, but even once we know what we wish to talk about, we have no single institution, no single legal text -- compared to the General Agreement on Tariffs and Trade (GATT) in the case of trade in goods for example -- with which to structure the discussion. To complicate matters, the literature on the subject is vast and there are a number of perspectives (from sociological to historical) possible. To make the subject more manageable and to lend coherence, we will focus on only some select legal topics and will examine only foreign direct investment or "FDI," that is, instances involving ownership with an element of active control by a foreigner -- as when such a foreign born individual or a company based in a foreign country acquires a controlling interest in an existing U.S. company or real estate or when such a person starts up a new company in the U.S. (the latter known as "greenfield investment"). This excludes for the most part, "passive" investment such as through ownership of stock in a mutual fund. Our interest is with both foreign investment coming into the U.S. and outgoing investment by U.S. nationals and companies but we will also address these issues from the perspective of less developed economies.

Although we will not, as a class, examine many related issues, including project finance, securities regulation, insurance, and international taxation, students who decide to write an optional research paper (for an additional two credits of independent study that will fulfill the JD major writing requirement) may choose to focus on related topics that are not the subject of class discussion and/or readings. Topics must, however, be approved in advance with the professor.

A few more words about what the class is not about. This is a class which focuses on regulation and the resolution of discrete investment disputes, not the "art of the deal." This is not an international version of the deal course. It is not a course about bargaining in international business transactions nor is it about the underlying contracts that characterize such deals. Nor is it a course about foreign investment and public policy (compare the fall seminar on that topic taught by Karl Sauvant). This course does not have a "law and economics" bent and no economics knowledge is assumed (although some might be useful background).

Requirements

This is a semester long 2 credit seminar, with two hour class meetings on a weekly basis, devoted to examining assigned readings that will be assigned the week before the class meets. The class meets on Thursdays, from 10:10 a.m. to noon. There will also be visiting lecturers on the subject over lunch time periods on Feb. 28th, Mar. 27th, Apr. 3rd, and Apr. 24th. Students are required to attend these luncheon sessions so registered students in the class need to be sure that their other courses do not conflict with such talks, which will be held from noon to 1 p.m. on the days indicated. (Because of these additional noon time talks, we will not have regularly scheduled classes on Mar. 13th, Apr. 10th or Apr. 17th but students may be assigned additional readings over those periods not to be discussed in class.) Assignments and required readings will be available from week to week at the Secretariat (Greene 711).

Class attendance and participation are, as with all seminars, essential. If you anticipate that you will not be able to attend sessions due to call-backs or other commitments, you are urged not to enroll in this class. As with most seminars, students should come ready to participate actively in discussion; this is not a lecture course. Starting with the second week of class, all students are required to submit one to two page "reaction papers" on the weekly readings whenever the class meets; these reaction papers are due no later than 9 a.m. of the morning before the class meets: that is, on Wednesdays at 9 a.m. Papers submitted late will be penalized. Reaction papers must be posted on the discussion portion of the course web page by the time indicated and will be the focus of class discussion the next day in class. (Students who have difficulty posting their reaction papers onto the course website by the 9 a.m. deadline should email their reaction papers as an attachment directly to Professor Alvarez's

assistant, Joshua Hudelson: JHudel@law.columbia.edu.) Students should attempt to skim the reaction papers of other class members prior to class to be ready for discussion. Reaction papers should ideally address one or more of the questions raised in the readings. (A sample reaction paper written by a former student, along with a helpful explanation (written by another professor who asks for a similar paper; see what I mean by a critique) is included in the first weeks packet of readings to help students write their first reaction paper for the second class meeting.) The ten reaction papers submitted over the course of the semester as well as weekly class participation will be the basis of students final grade. (These papers will fulfill the minor writing requirement for JD students.)

Students who are on the wait list for this course who are seriously interested in registering should attend the first session of the class. In the past, due to the heavy amount of add/drop during the first two weeks of term, all students on the waiting list have been admitted into the course. Students seriously interested in remaining in this class should submit the required reaction paper for the second weeks readings, whether or not they have been formally admitted into the class. SIPA students or other non-law degree candidates with no prior legal training are not permitted to enroll in this course due to its heavy legal content.

Suggested Optional Background Reading (available at most bookstores):
Thomas Friedman, *The Lexus and the Olive Tree* (2d ed. 2000)
William Greider, *One World, Ready or Not* (1997)
Joseph Stiglitz, *Globalization and its Discontents* (2002)

Tentative Syllabus

Tentative Syllabus (Revised 1/17/08)

Class 1, Jan. 17: Introduction

Class 2, Jan. 24: Tensions over FDI (First Reaction Paper)

Class 3, Jan. 31: U.S. Law, BITs, and Policy Toward Incoming FDI

Class 4, Feb. 7: Customary International Law and FDI

Class 5, Feb. 14: Introduction to NAFTA Dispute Settlement

Class 6, Feb. 21: No Class

Class 7, Feb. 28: Indirect Takings and Compensation
Feb. 28 Noon Talk: Mark Kantor

Class 8, Mar. 6: The NAFTA and Fair and Equitable Treatment
Mar. 6: Noon Film: Bill Moyer's "Trading Democracy"

Mar. 13: No Class

Mar. 20: No class (spring break)

Class 10, Mar. 27: The NAFTA and Non-Discriminatory Treatment
Mar. 27: Noon Talk: Todd Weiler

Class 11, Apr. 3: NAFTA Commission Interpretations/The Problem of Inconsistent Caselaw
Apr. 3: Noon Talk: Charles Brower II

Apr. 10: No class

Apr. 17: No class

Class 12, Apr. 24: The Future of the FDI Regime
Apr. 24: Noon Talk: Peter Muchlinski

Apr. 28-29: International Conference on "Global Players from Emerging Markets"

May 1: Final Reaction Paper (#10) due on "Global Players from Emerging Markets"