This unit offers a study of the legal framework in which international business is conducted. It explains what international law is and how it relates to local law. It explores the impact of international law on management, economics and marketing within the framework of foreign trade and investment, bilateral and multilateral treaties. This includes the study of the contract of sale; contract of international agency; contract of international credit; and the contract of carriage of goods. There is also a study of the constitutions and functions of some international institutions such as the United Nations Organisation, International Court of Justice, the OECD, UNCTAD, the World Bank and the IMF.
Introduction
This unit offers a study of the law surrounding certain common international transactions. The peculiar legal problems which arise when trade occurs across national borders will be identified along with a variety of legal mechanisms which have been developed to reduce the uncertainty and cost which often accompany attempts to identify and assert legal rights arising out of international trade transactions. The focus will be on international sales of goods and supply of services and the law to be studied will include domestic contract, agency, transport and finance law along with the increasing number of bilateral and multilateral treaties that impact on international trade. Forms of doing business abroad will also be examined. The course will conclude with a brief examination of dispute resolution in international transactions.

The goal of the unit
The objective of the course is to provide the business executive with an overview of the legal environment in which he/she must make his strategies and set achievable objectives. It is not designed to make the executive proficient in international business law but is intended to equip him to create his/her own mental map to identify the important legal guideposts that constrain or expand his business opportunities or that create threats to his/her enterprise. At the end of each session, the executive is expected to ask the correct questions of his/her legal professional and to have a feel for the sufficiency of the information that is being provided to him/her regarding the relevant legal environment.

Broad learning outcomes
The MBA student will be evaluated on the basis of his/her perceived capability to respond to given situations from the perspective of managing the risks and opportunities arising from the international and local business legal and political environment. This will arise principally in one final written examination, at which the student, given sets of circumstances, will have to articulate a strategic approach in managing legal issues that may arise. This will require at core, the ability to identify the legal issues that will matter to his company’s operations, sustainability and competitive position. At a minimum, the student must demonstrate that he/she can identify the legal institutions and the areas of local and international law that will affect his or her enterprise. His/her response will be judged excellent if he/she can demonstrate capability to place all the information and ideas amassed from readings and lectures into a strategic framework for managing legal and political risks in the context of business objectives. The formula for this evaluation will be as follows: Final Examination (60%), Group Presentation (30%), and Class Participation (10%). A corrective factor can be introduced by the professor in two instances: special effort which benefited the entire class and was beyond the course requirement, and to resolve the final grade favorably in exceptional borderline cases.

Textbook(s)

Recommended/required text(s)

Schaeffer, Earle and Agusti, International Business Law and Its Environment (5th ed.)
Session topics

THE LEGAL ENVIRONMENT OF DOING INTERNATIONAL BUSINESS

Session 1: 10 April 2005

- Law and Its Impact on Business Objectives and Strategies
- Politico-Social Environment and Law
- International Law vis-a-vis Domestic Law
- The Question of Overlapping Jurisdictions
- Business Strategies and the Issue of Enforcement
- Understanding the Minimum Legal Information a CEO Needs to Know
- Creating a Legal Map for the CEO
- Scope of the Course
- Forms of International Business
- Understanding Different Legal Environments for Doing Business
- International Organizations
- Regional Economic or Trade Areas

Reading  Schaeffer, Earle and Agusti, *International Business Law and Its Environment* (5th ed.)

INTERNATIONAL BUSINESS CONTRACTS

- What A CEO Needs to Know About Contracts and their Role in the Business Environment
- Formal Requisites
- Essential Requisites
- Formation of Contracts
- Performance of Contracts
- Extinguishment of Contracts
- Applicable Law
- Jurisdiction
- Enforcement
- Effect of International Conventions
- Interpretation of Contracts
- Conflict of Law Rules
- Electronic Contracts & Electronic Evidence

INTERNATIONAL LAW AND FOREIGN INVESTMENTS

Session 2: 11 April 2005

- Historical Development
- Ad Hoc Arbitrations and the Stabilization Clause
- International Center for the Settlement of Investment Disputes
- International arbitrations vis a vis domestic law

Reading Refer to coursepack

Session 3: 12 April 2005

- Franchising
- Licensing
- Distribution
- Transfer of technology agreements
- E-commerce
- Enforcement issues in borderless world

Reading Schaeffer, Earle and Agusti, *International Business Law and Its Environment* (5th ed.)

INTERNATIONAL RULES ON TRADE IN GOODS AND SERVICES

Session 4: 15 May 2005

- Coverage of WTO rules on trade in goods
- Principal disciplines on trade in goods
- Non-violation of bindings rule
- Most favored nation rule
- National treatment rule

Reading Roque, International Trade Rules and Trade Remedies (*ppt presentation*) and WTO webpage

Session 5: 16 May 2005

- Non-circumvention rule
- Technical barriers to trade
- Environmental issues and the WTO
- Labor and human rights and the WTO
- Trade Remedies: Safeguards, Antidumping, Countervailing duties
- Special problems of developing countries
- Settlement of trade disputes in the WTO and other organizations
- Regional trade arrangements

Reading Roque, International Trade Rules and Trade Remedies (*ppt presentation*)
INTERNATIONAL SALE OF GOODS

Session 6: 17 May 2005

- Definition of goods
- Definition of sale of goods
- Definition of international sale of goods
- Creation of an contract of international sale of goods
- Form of the contract of sale
- Custom and industry standards
- Incoterms

Reading  
Baviera, the Law on Sales

Session 7: 21 April 2005

- Interpretation of contract for international sale of goods
- Effect of International Conventions
- Vienna Convention on the Sale of Goods
- Enforcing payment
- Enforcing delivery
- Delivery and misdelivery issues
- Buyers and Sellers Remedies
- Jurisdiction of Suits
- Enforcement of Foreign Judgments

Reading  

MODES OF INTERNATIONAL PAYMENT

Session 8: 03 May 2005

- *The Obligation to Pay in Domestic Law*
- Sales Contracts and the Buyer’s Duties
- Foreign Investment Law
- Negotiable Instruments and Bills of Exchange in Philippine Law
- Commercial Credit Instruments
- Shipping Documents and Documents of Title to Goods
- International Bills of Exchange
- Letters of Credit

Reading  
FOREIGN INVESTMENT LAW

- Basic Issues of Corporate Governance
- The Corporate Structure and Issues of Control
- Foreign Investment Policies in Developing Countries
- Forms of foreign investment
- International regulation of foreign investment
- International protection of foreign investment
- Resolving investment disputes


SETTLEMENT OF INTERNATIONAL COMMERCIAL DISPUTES

Session 9: 26 May 2005

- Cost of Disputes to Business
- Formal Dispute Settlement: various strands
- Alternative dispute resolution
- Negotiation
- Arbitration
- Conciliation
- Mediation


Session 10: 07 June 2005

- International fora for resolving disputes
- Enforcement of foreign judgments
- Enforcement of foreign arbitral awards
- The CEO’s role in managing external disputes
- Drafting Dispute Resolution Clauses

Attendance

Participation in class, whether it be listening to a lecture or getting involved in other activities, is an important part of the learning process. For this reason the GSM has decided not to move to on-line teaching. It is, therefore, important that you attend classes (and be on time).

More formally, the University regulations state that ‘to complete a course or unit a students shall attend prescribed classes, lectures, seminar and tutorials’. Students whose attendance at MBA units has been unsatisfactory will not be granted a pass grade. More than two missed classes without prior permission from the lecturer is classified as unsatisfactory. Students should not expect to obtain approval to miss more than two classes per unit, unless there are exceptional circumstances.

Assessment

<table>
<thead>
<tr>
<th>Component</th>
<th>Weight</th>
<th>Due date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Group Presentation</td>
<td>30%</td>
<td>June 17 2004</td>
</tr>
<tr>
<td>Final Examination</td>
<td>60%</td>
<td>June 26 2004</td>
</tr>
<tr>
<td>Class Participation</td>
<td>10 %</td>
<td></td>
</tr>
</tbody>
</table>

The purpose of assessment

The Group Presentation: Guidelines for Assessment

The Purpose of the group is to allow a more extensive discussion among students in a group setting where, as leaders of the business organization, they will have to make decisions knowing the most important legal issues for which they will require due diligence from the appropriate counsel. Thus, knowing, in general, the legal parameters or constraints facing them in their environment they may be able to assess the nature and level of risks and opportunities and manage them accordingly. The presentation will be assessed on the following criteria:

1. ability to scan the environment for legal issues and make proper qualitative risk assessment of the same;
2. ability to identify the proper questions that should be asked in due diligence review, knowing in general the probable response, but recognising the need for professional expertise to generate an accurate, nuanced and more probably correct and balanced answer to legal issues;
3. ability to integrate these risks, which they should be able to properly classify into a general, theoretical business plan.

The group presentations, therefore, test both your understanding of the law and your ability to apply legal reasoning techniques.

There are a number of reasons for having assessable tasks as part of an academic program. The assessable tasks are designed to encourage you to explore and understand the subject more fully. The fact that we grade your work then give you an indication of how much you have achieved. Providing feedback on your work also serves as part of the learning process.
The standard of assessment

The Graduate School must ensure that the processes of assessment are fair and are designed to maintain the standards of the School and its students. The School follows the University of Western Australia’s grading system:

<table>
<thead>
<tr>
<th>Grade</th>
<th>Percentage</th>
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<tbody>
<tr>
<td>HD (Higher Distinction)</td>
<td>80-100%</td>
</tr>
<tr>
<td>D (Distinction)</td>
<td>70-79%</td>
</tr>
<tr>
<td>CR (Credit Pass)</td>
<td>60-69%</td>
</tr>
<tr>
<td>P (Pass)</td>
<td>50-59%</td>
</tr>
<tr>
<td>N+ (Fail)</td>
<td>45-49%</td>
</tr>
<tr>
<td>N (Fail)</td>
<td>0-44%</td>
</tr>
</tbody>
</table>

The School awards marks leading to these grades by using the following general criteria which are presented here as an indication of the School’s expectations. These general criteria may be supplemented by specific standards provided with regard to a particular assignment.

HD The student has a clear understanding of theory, concepts and issues relating to the subject and is able to adopt a critical perspective. The student is able to clearly identify the most critical aspects of the task and is able to offer a logically consistent and well-articulated analysis within the analytic framework presented in the course. The student is able to draw widely from the academic literature and elsewhere but maintains relevance.

D The student has a clear understanding of theory, concepts and issues relating to the subject. The student is able to develop an analysis of an issue using the analytic framework presented in the course and is able to identify and evaluate the critical issues. The student is able to draw upon relevant academic and other material.

CR The student demonstrates an understanding of the analytic framework developed in the course and a partial understanding of concepts and issues. The student is able to identify some key issues and is able to present a logical discussion, but with some conceptual errors or gaps between analysis and conclusions. The student is able to draw upon an adequate range of references and other materials.

P The student generally takes a descriptive rather than analytic approach to the subject. The student is able to demonstrate some understanding of the issues involved but does demonstrate the ability to apply the analytical framework that had been developed in the course. Draws primarily upon course materials for referencing.

N+ The student is unable to demonstrate that he or she understands the core elements of the subject matter. The student is able to provide some insight into issues but misapplies analytic framework developed in course, omitting key factors and, for example, drawing conclusions that are not related to the preceding discussion.

N The student is unable to demonstrate any understanding of the subject matter. Material presented for assessment is unrelated to course framework and shows no effort to identify or address critical aspects of the topic.

The scaling of marks to ensure comparability between classes in an acceptable academic practice. The GSM and Board of Examiners has the right to scale marks where it is considered necessary to maintain consistency and fairness.
**Appeals against assessment marks**

In the first instance, students are strongly advised to talk informally to the lecturer about the grade awarded.

The University provides the opportunity for students to lodge an appeal against any mark which he or she feels is unfair. Any student making an appeal is under an obligation to establish a prima facie case by providing particular and substantial reasons for the appeal.

There is a 10 day time limit for making any such appeal. An appeal against academic assessment may result, as appropriate, in an increase or decrease in the mark originally awarded. The University regulations relating to appeals and the form on which the appeal should be lodged can be found in the GSM website.

**Acknowledgements and plagiarism**

In the course of your individual and group work assignments, you will encounter ideas from many sources. These will include journal and newspaper articles, commentaries, books, web sites and other electronic sources, original case sources, lecture materials. All MBA assignments that you submit must acknowledge all the different sources you have used.

Not to acknowledge your sources is plagiarism, a form of dishonesty. Plagiarism is the misappropriation of the work or ideas of others and presenting them as your own. This is reprehensible from both an ethical and legal viewpoint. Neither the School nor the University accepts ignorance or the fact that a student’s previous acts of plagiarism had been undetected as a defence.

In order to avoid engaging in plagiarism it is your responsibility to acknowledge all of your sources in any work submitted for assessment and it is essential that you reference the work of others correctly. Where you quote directly from a source, you must ensure that any direct quotations are placed in quotation marks and are fully referenced. Even when you do not quote directly and are just referring to or expanding on the work of others, you must still acknowledge the sources of your information and ideas. Close paraphrasing in which you change a few phrases around, leave a clause out of a long sentence or put the original sentences in a different order is still plagiarism.

Advice on proper referencing is given below. If you have any doubts concerning appropriate referencing formats or how to acknowledge the work of others correctly, you should seek the advise of your lecturer.

It is GSM policy that no student will profit from plagiarism. Generally, a mark of ‘Fail’ will be recorded for the assignment in which this has occurred, regardless of its other merits or qualities. Serious cases shall be referred to the University’s Board of Discipline. All students should note that cases of copying are automatically reported to the Sub-Dean and documentary evidence along with associated correspondence is placed on the student’s permanent record.

**Taping of Lectures**

The Graduate School does not provide tape recordings of lectures, however if you do wish to tape record a lecture then as a matter of courtesy, you should obtain the permission of the lecturer first.
Referencing

It is important that the referencing of any sources used in your written work is done properly, if only to substantiate the points you are making in your assignment or project. The Harvard style is the preferred and there are some notes for guidance which have been prepared by the library staff: ‘Citing your sources Harvard Style’ http://www.library.uwa.edu.au/guides/citingsources/harvard.html

Endnote is a really good system for building up a database of references. Not everyone will want to invest the time in using this system but you should consider it if you intend to build up resource materials or plan to undertake extensive research in a particular area. The library staff have also developed a tutoring package: ‘A quick Guide to Using EndNote’ which provides the basics for using EndNote with an essay http://www.library.uwa.edu.au/guides/endnote/quick_endnote.pdf

This is linked to from the how to Use EndNote page www.library.uwa.edu.au/guides/endnote/ which provides more comprehensive information.