

Course Outline

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**COURSE:** LAWS 3207 A - International Economic Law: Trade and Investment  
**TERM:** Winter 2007-08  
**PREREQUISITES:** LAWS 2003, BUSI 2601 or BUSI 2602  
**CLASS: Day & Time:** Wednesday - 11:30-2:30  
**Room:** 3269 ME (Mackenzie)  
**INSTRUCTOR:** Professor P.J. Davidson  
**CONTACT: Office:** D590 LA (Loeb)  
**Office Hrs:** Wednesday 2:30-5:00 or by appointment  
**Telephone:** 613-520-2600 x. 8062  
**Email:** [paul\\_davidson@carleton.ca](mailto:paul_davidson@carleton.ca)

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Students with disabilities needing academic accommodations in this course are required to contact a coordinator at the Paul Menton Centre to complete the necessary *letters of accommodation*. The student must then make an appointment to discuss their needs with the instructor at least two weeks prior to the first class or ITV test. This is to ensure sufficient time is available to make the necessary accommodation arrangement. Please note the deadline for submitting completed forms to the PMC for formally scheduled exam accommodations is March 14, 2008 for April examinations. For further information, please see, [http://www.carleton.ca/pmc/students/accom\\_policy.html](http://www.carleton.ca/pmc/students/accom_policy.html)

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**OBJECT OF COURSE**

The object of this course is to introduce the student to some of the legal considerations involved in doing business internationally. A brief review of the international legal framework will be followed by an examination of the international sale of goods and international investment.

The examination of the international sale of goods will deal, *inter alia*, with the following: formation and performance of the export contract; some special forms of export contracts; standardization of international trade terms; the international carriage of goods; payment and financing of the transaction; insurance.

The examination of international investment will include a discussion of the following: the types of foreign investment; reasons for FI; incentives for FI; joint ventures; transfer of technology; and the regulatory framework.

The alternative forms of dispute settlement available for resolving disputes that may arise in either the international trade or investment transaction will be examined. Emphasis here will be on arbitration as the preferred method of dispute settlement.

**FORMAT OF COURSE**

The course will follow a lecture and discussion format. Students are expected to read the assigned readings and be prepared to discuss them in class.

**EVALUATION**

Mid-term	40%
Final exam	60%
	100%

**COURSE MATERIALS:**

1. Text: The required text for the course is: Nicholson, Mary Jo, Legal aspects of international business; a Canadian perspective, (2<sup>nd</sup> ed.) (Scarborough, Ont.: Prentice-Hall Canada, 2007).
2. In addition to the text, the readings will also on occasion refer to materials which are on reserve in the library or are in the reference materials in the library.
3. Students may wish to consult the following texts which are on reserve in the library:
  1. D'Arcy, et al., Schmitthoff's Export Trade: The Law and Practice of International Trade, 10<sup>th</sup> ed., (London: Stevens and Sons, 2000) (call number: KD2463.S35 2000) [an 11<sup>th</sup> edition is available, but not in library].
  2. Day, D.M., The Law of International Trade, 2nd ed., (London: Butterworth & Co, 1993) (call number: K1005.4.D395 1993).
  3. Castel, J.G., William C. Graham, Susan Hainsworth, Armand L.C. de Mestral, and Mark A.A. Warner, The Canadian Law and Practice of International Trade (2<sup>nd</sup>), (Toronto: Emond Montgomery Publications Limited, 1997) (call number KE1940 .C38 1997).
  4. Chuah, J.C.T., Law of International Trade, 2<sup>nd</sup> ed., (London: Sweet & Maxwell, 2001) (call number K 3943 C483 2001) [a 3<sup>rd</sup> edition - 2005 - is available, but not in library].
4. Students may also wish to consult the following sources:
  1. International trade and investment law in Canada. Scarborough, Ont., Carswell. For reference only. Kept up-to-date by looseleaf material. Call number: KE1940.P382.
  2. Jackson, John Howard, Legal problems of international economic relations; cases, materials, and text on the national and international regulation of transnational economic relations. 3rd ed. (St. Paul, Minn.: West Pub., 1995). Call number: K3943.A58J3 1995.
  3. Raworth, Philip Marc, Legal guide to international business transactions, (Calgary: Carswell, 1991). Call number: KE1940.R39.
  4. Seyoum, Belay, Export-import theory, practices, and procedures, (New York: International Business Press, 2000). Call number: HF1414.4.S49.
  5. Canadian International Trade Law website - <http://www.canadianlawsite.com/trade.htm>
  6. Revised Guide to International Trade Law Sources on the Internet - <http://www.llrx.com/features/trade3.htm>
  7. Moreno, Carlos, Legal Aspects of International Trade, prepared by the UNCTAD Secretariat, (New York: UNCTAD, 1999) (call number UN8 TR 99.L21.ENG - floor 2, Documents DDV)
  8. Ramberg, Jan., International commercial transactions, (Paris : ICC ; Cambridge, Mass. : Kluwer Law International ; Stockholm : Norstedts Juridik AB, 2000) (Available at U of O, Call No. K 1030.4 .R36 2000)

**COURSE OUTLINE and READINGS**

(Note: T = top of page  
M = middle of page  
B = bottom of page)

**Part 1. Introduction**

- January 9
- i) Outline of course
  - ii) Role of Law - 1. Rules  
2. Dispute Settlement
  - iii) International Law and international organizations
    - bilateral, plurilateral, multilateral frameworks
    - relationship to domestic law, constitutional problem in Canada
    - some examples of international organizations
  - iv) International Business - trade vs. investment
    - outline of international business transactions

Readings: 1. Text, pp.1-22.

**Part 2. The International Regulatory Framework for international trade**

- January 16
- a) Trade in Goods
    - the GATT & the WTO
    - NAFTA
  - b) Trade in Services
    - the GATS
  - c) Trade Related Intellectual Property

Readings: 1. Text, pp.23-56; 83-85T; 108M-113T; 130M-131M; 136B-140B; 149-155

**Part 3. The International Sale of Goods**

- January 23
- a) Formation of the Contract.
    - offer
    - acceptance
    - consideration
    - certainty

Readings: 1. Text, pp.183-186B.  
2. D'Arcy, et al., Schmitthoff's Export Trade: The Law and Practice of International Trade, 10<sup>th</sup> ed., (London: Stevens and Sons, 2000), pp.52-61.

- b) Performance of the Contract
  - transfer of property, possession,
  - passing of risk
  - acceptance of goods
  - rights of unpaid seller
  - breach of contract and remedies

Readings: 1. Text, pp.186B-188T  
2. D'Arcy, et al., Schmitthoff's Export Trade: The Law and Practice of International Trade, 10<sup>th</sup> ed., (London: Stevens and Sons, 1990), 67-83; 84-103.  
3. Sale of Goods Act, R.S.O. 1990, c.S-1, as amended, ss.1; 26-28; 31-35; 37-39; 42-51. (Online at [www.e-laws.gov.on.ca](http://www.e-laws.gov.on.ca))

- c) Tort Law
- elements of a tort
  - product liability

Readings: 1. Text, pp.188T-191M

January 30

- a) The Export Contract
- special forms of export contracts
  - trade terms
  - role of standard form contracts
  - ICC Incoterms

Readings: 1. Text, pp.191M-202T.

- (See also: 1. ICC INCOTERMS 2000, Report of the Secretary-General, United Nations Commission On International Trade Law, Thirty-third session, New York, 12 June - 7 July, 2000, [http://www.uncitral.org/pdf/english/texts\\_endorsed/INCOTERMS2000\\_e.pdf](http://www.uncitral.org/pdf/english/texts_endorsed/INCOTERMS2000_e.pdf)
2. Latest UCC Revision Drives Universal Use of Incoterms 2000, September 2004, <http://www.uscib.org/index.asp?documentID=2954> . )

- b) Unification in International Trade Law
- UN Convention on Contracts for the International Sale of Goods
  - Ontario international Sale of Goods Act
  - the Constitutional problem in Canada

Readings: 1. Text, pp.202T-228B.

2. United Nations Convention on Contracts for the International Sale of Goods, A/CONF.97/18, April 10, 1980 (attached as a Schedule to #3, below).

3. International Sale of Goods Act, R.S.O. 1990, c.I-10. (Online at [http://192.75.156.68/DBLaws/Statutes/English/90i10\\_e.htm](http://192.75.156.68/DBLaws/Statutes/English/90i10_e.htm) )

- (See also: Herrmann, Gerold, "The future of trade law unification": Remarks of UNCITRAL's retiring Secretary, Internationales Handelsrecht: Zeitschrift für die wirtschaftsrechtliche Praxis, no.1, February 2001, Luchterhand, Kriftel/Taunus, Germany, pp. 6-12. (Copy on reserve in library))

- c) Countertrade

Readings: 1. Text, 228B-233T.

February 6

International Carriage of Goods

- bills of lading
- duties and liabilities of parties
- the Hague Rules
- the Hague-Visby Rules
- the Hamburg Rules
- the "Himalaya" Clause
- containerization
- combined transport
- carriage of goods by air
- carriage of goods by land

Readings: 1. Text, pp.258M-264M.

2. Christopher J. Giaschi, Canadian Law of Carriage of Goods by Sea: an Overview", November 2004, available at [http://www.admiraltylaw.com/papers/carriage\\_of\\_goods\\_outline.pdf](http://www.admiraltylaw.com/papers/carriage_of_goods_outline.pdf) )

- (See also: 1. Parsons Corporation and others v CV Scheepvaartonderneming Happy Ranger, [2002] EWCA Civ 694, [2002] 2 All ER (Comm) 24 (available at Lexis website).
2. Connaught Laboratories Limited v British Airways, 61 O.R. (3d) 204; 2002 Ont. Rep. LEXIS 223

- February 13 a) Payment and Financing
- methods of payment
  - nature and use of bill of exchange - concept of negotiability
  - credit transfers and collection arrangements
  - use of letters of credit
  - role of U.C.P.
  - the autonomy of the letter of credit
  - the doctrine of strict compliance
  - fraud

Readings: 1. Text, pp.235-258M.

- b) Insurance
- introduction to marine insurance

Readings: 1. Text, pp.264M-267T.

February 20 Study Week - no class

February 27 **MID-TERM EXAM**

#### **Part 4. International Investment**

- March 5 a) Introduction
- types of FI
  - reasons for FI
  - incentives for FI
  - protection of FI
  - legal problems

Readings: 1. Text, pp.332M-333T.

2. Robert Charles Kelso, "Check List of Legal Problems in Considering Foreign Investment", in, Paul O. Proehl (ed.), Legal Problems of International Trade, (Urbana: U. of Illinois Press, 1959), pp.416-425, Call Number: K1005.4.P76..

- b) joint ventures
- purpose
  - types

Readings: 1. Text, pp.327-332M.

2. Jacqueline Mendes, "Joint ventures in international business: brief guideline for small business", (1996) 1 Canadian Journal of International Business Law & Policy, pp.127-131.

(See also : Collins, Timothy M. & Doorley, Thomas L., Teaming Up For the 90s: A Guide to International Joint Ventures and Strategic Alliances (Homewood: Business One Irwin, 1991)

- March 12      Transfer of technology
- types of technology
  - acquisition of technology  
(e.g., licences, options, etc.)
  - payment for technology
  - transfer of technology to developing countries

Readings:      1. Text, pp.271-298; 315M-323M.

- [See also:      1. UNCTAD, Compendium of International Arrangements on Transfer of Technology : Selected Instruments, UNCTAD/ITE/IPC/Misc.5, (New York: United Nations, 2001), available at <http://www.unctad.org/en/docs/psiteipcm5.en.pdf>
2. UNCTAD's Work on Transfer of Technology, presented at the WTO Working Group on Trade and Transfer of Technology, 16 April, 2002, Geneva, <http://stdev.unctad.org/unsystem/swto/index.htm> ]

- March 19      The Regulatory Framework for international investment
- 
- the Investment Canada Act
  - FIPAs (BITs)
  - the WTO - TRIMs
  - NAFTA - chapter 11
  - Multilateral Agreement on Investment (MAI)

Readings:      1. Text, pp.332M-337M.  
2. Introduction, "The Evolving International Framework for Foreign Direct Investment", in, International Investment Instruments - A Compendium, Vol. 1, UNCTAD/DTCI/30, 1996, pp.xvii-xlii (In library - UN8 TR10 96.I53 .ENG - Floor 2 Documents DDR; on-line at [http://www.unctad.org/en/docs/dtci30vol1\\_en.pdf](http://www.unctad.org/en/docs/dtci30vol1_en.pdf) ).

- (See also,      1. OECD Publishes Documents Relating to 1995-1998 MAI Negotiations, [http://www.oecd.org/document/51/0,2340,en\\_2649\\_33783766\\_2065331\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/51/0,2340,en_2649_33783766_2065331_1_1_1_1,00.html)
2. "Trade and Foreign Direct Investment", new Report by the WTO Secretariat, WTO Press/57, October 9, 1996, (In library; also available at WTO Website - [http://www.wto.org/english/news\\_e/pres96\\_e/pr057\\_e.htm](http://www.wto.org/english/news_e/pres96_e/pr057_e.htm) ).
3. WTO website, Trade and Investment [http://www.wto.org/english/tratop\\_e/invest\\_e/invest\\_e.htm](http://www.wto.org/english/tratop_e/invest_e/invest_e.htm) )

## Part 5. Settlement of Disputes

- March 26      a) Litigation
- jurisdiction
  - applicable law
  - enforcement
  - sovereignty
  - extraterritoriality

Readings:      1. Text, pp.341-360M.  
2. Handout.  
3. Hague Convention on Choice of Court Agreements, Final Act of the Twentieth Session of the Hague Conference on Private International Law, June 30, 2005 (available at [http://www.hcch.net/index\\_en.php?act=conventions.text&cid=98%20](http://www.hcch.net/index_en.php?act=conventions.text&cid=98%20) )

4. Ronald A. Brand, "The New Hague Convention on Choice of Court Agreements", ASIL Insight, available at <http://www.asil.org/insights/2005/07/insights050726.html>

April 2

- b) Arbitration
- reasons for
  - types
  - N.Y. Convention
  - the Model Law
  - arbitration law in Canada
  - drafting arbitration agreements
  - arbitration proceedings
  - the UNCITRAL Rules

- Readings:
1. Text, pp.360M-371.
  2. Davidson, Paul J., "International Commercial Arbitration Law in Canada", (1991) 12 *Northwestern Journal of International Law & Business*, pp.97-106M. (Available on-line through Lexis)
  3. International Commercial Arbitration Act, 1988, R.S.O. 1990, Chap.I.9.)

- (See also, 1. Claude R. Thomson, and Annie M. K. Finn, International Commercial Arbitration - A Canadian Perspective, *International Commercial Arbitration in the New Millennium*, (Canadian Bar Association, 2001), available at

[http://www.fasken.com/web/fmdwebsite.nsf/0/0AAF7806C199589285256A680064EFFA/\\$File/INTERNATIONAL\\_ARBITRATIONACD.PDF?OpenElement](http://www.fasken.com/web/fmdwebsite.nsf/0/0AAF7806C199589285256A680064EFFA/$File/INTERNATIONAL_ARBITRATIONACD.PDF?OpenElement)

2. Paul J. Davidson, "Drafting of Conciliation/Arbitration Agreements", in Paul J. Davidson, ed., Proceedings of A Seminar on Commercial Arbitration, Held in Ottawa, 19 June 1985, (Ottawa: CACAC, 1986), pp.9-24. (On reserve in library)
3. Notes on Organizing Arbitral Proceedings, (Vienna: UNCITRAL, 1996) (call number: DOC UN1 V 96.U55 .ENG).

**INTERNATIONAL ECONOMIC LAW**SELECTED BIBLIOGRAPHYBOOKS:General International Law

1. Harris, D.J., Cases and Materials on International Law, 4th ed., (London: Sweet & Maxwell, 1991).
2. Kindred, Hugh M., et al., International Law - Chiefly as Interpreted and Applied in Canada, 6th ed., (Toronto: Emond Montgomery, 2000), (see website by author: <http://is.dal.ca/~wwwlaw/kindred.intllaw/> ).
3. Starke, J.G., Starke's international law, 11th ed., (London: Butterworths, 1994).
4. Wallace, Rebecca M.M., International Law - A Student Introduction, (3<sup>rd</sup> ed.), (London: Sweet & Maxwell, 1997).

General International Economic Law

1. Jackson, John H. and William J. Davey, Legal Problems of International Economic Relations: Cases, Materials and Text, 3<sup>rd</sup> ed., (St. Paul, Minn.: West Publishing Co., 1995).
2. Kohona, Palitha T.B., The Regulation of International Economic Relations Through Law, (Dordrecht: Martinus Nijhoff, 1985).
3. Paterson, Robert K., Canadian Regulation of International Trade and Investment, (Toronto: Carswell, 1986).
4. Paterson, Robert K. and Martine M.N. Band, International Trade and Investment Law in Canada (2nd ed.), (Scarborough: Carswell, 1995).
5. van Themaat, Pieter VerLoren, The Changing Structure of International Economic Law, (The Hague: Martinus Nijhoff, 1981).

The GATT and the WTO

1. Bhala, Raj, International Trade Law, (Charlottesville: Michie Law Publishers, 1996).
2. Dennin, Joseph F., Law and Practice of the World Trade Organization, (Dobbs Ferry: Oceana, 1995- ).
3. GATT, Guide to GATT Law and Practice - Analytical Index, 6th ed., (Geneva: GATT Publication Services, 1994). [DOC UN9 TT 94.G73.ENG].
4. Hudec, Robert E., The GATT Legal System and World Trade Diplomacy, 2nd. ed, (Salem, N.H.: Butterworth Legal, 1990).
5. Hudec, Robert E., Enforcing international trade law; the evolution of the modern GATT legal system. (Salem, N.H.: Butterworth Legal, 1993) [Sequel to: The GATT legal system and world trade diplomacy].
6. Jackson, John H., World Trade and the Law of the GATT, (Indianapolis: Bob Merrill, 1969).
7. Jackson, John H., The World Trading System, (Cambridge: The MIT Press, 1997).
8. Johnson, Jon R., International Trade Law, (Concord, Ont.: Irwin Law, 1998).
9. McGovern, Edmond, International Trade Regulation, loose-leaf service, (Exeter: Globefield Press).
10. Shrybman, Steven, The World Trade Organization: A Citizen's Guide, (Ottawa: The Canadian Centre for Policy Alternatives, 1999).
11. Thomas, Jeffrey S. and Michael A. Meyer, The New Rules of Global Trade, (Toronto: Carswell, 1997).
12. Trebilcock, Michael J. and Robert Howse, The Regulation of International Trade, 3<sup>rd</sup> ed., (London and New York: Routledge, 2005).



JOURNALS:

1. American Journal of International Law
2. Canadian Yearbook of International Law
3. Canadian International Lawyer
4. Canada-United States Business Law Review
5. Revue de droit des affaires internationales/International Business Law Journal
6. International Financial Law Review
7. International Legal Materials
8. Journal of International Law & Economics
9. Journal of Law, Policy & International Business
10. Journal of World Trade
11. International Law Journals and Reviews of various Law Schools
12. The International Lawyer

SERIES:

1. Canadian Council On International Law, Proceedings of Annual Conferences.
2. Department of External Affairs, Proceedings of Annual International Trade Law Seminar.
3. GATT, GATT Focus, newsletter published 10 times a year. (Now the WTO Focus.)

INTERNET SOURCES: There are a number of internet sites which deal with international economic law or aspects of it. The following are just a few of the many sites which should be consulted.

1. WTO:  
<http://www.wto.org>
2. International Trade Law sites:  
[http://www.law.ecel.uwa.edu.au/intlaw/international\\_trade\\_law.htm](http://www.law.ecel.uwa.edu.au/intlaw/international_trade_law.htm)  
<http://lexmercatoria.net>
3. United Nations -  
<http://www.un.org>
- UNCITRAL:  
<http://www.uncitral.org/en-index.htm>
5. UNCTAD:  
<http://www.unctad.org/en/enhome.htm>
6. Departments of Foreign Affairs and International Trade -  
<http://www.international.gc.ca>
7. International Trade Law (The University of Western Australia) (good sources)  
[http://www.law.ecel.uwa.edu.au/intlaw/international\\_trade\\_law.htm](http://www.law.ecel.uwa.edu.au/intlaw/international_trade_law.htm)
8. Update to *Guide to International Trade Law Sources on the Internet*  
<http://www.llrx.com/features/trade2.htm>
9. The Canadian Council for International Business  
<http://www.ccib.org>
10. Transnational Law Database  
<http://www.tldb.de/>