

CURRENT ISSUES IN CORPORATE LAW
FACULTY OF LAW, DALHOUSIE UNIVERSITY
COURSE OUTLINE & SYLLABUS
Fall 2009

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Office Hours: Mondays and Wednesdays, 3:00 pm to 4:00pm. Otherwise by chance or appointment

Website: <http://ilo.owl.dal.ca/webct/logon/540909031>

May be accessed through My.Dal, under the Learning Resources tab

Classes: Tuesdays, 4:30 am to 6:30 pm, Room 406

Credit Value: 3 Credits

I. Course Description

This seminar course examines current and enduring issues of corporate law, and its curriculum varies each year. For 2009/2010, the course will deal with some of the fundamental ideas, legal issues, theories and law relevant to multinational or transnational business corporations.

Topics will include a discussion of the tension between expansionism and protectionism inherent in the law of foreign investment; the relevant fundamentals of international law and treaty law; a discussion of the controls that can be imposed by the host state and protective measures that can be imposed by the home state; issues related to the liability of multinational corporations; the impact of the corporate social responsibility movement on multinational corporations; and a discussion of the modern dynamics of international investment.

Knowledge of the legal landscape in which multinational business enterprises operate is a valuable tool for lawyers engaged in the practice of corporate law or corporate litigation in Canada, whether in private practice, government practice or as in-house counsel, as well as those interested in the policy issues relevant to modern multinational business entities and the theory of foreign investment. This course is designed to be of value to students with diverse backgrounds and career goals and should be accessible to law students with no prior background in business or finance, other than material covered in Business Associations.

II. Course Website

The course website is located at <http://ilo.owl.dal.ca/webct/logon/540909031>, or may be accessed through the My.Dal website, under the Learning Resources tab. All students registered in the course have been granted access to the website.

The course website contains a copy of this syllabus, downloadable copies of some of the required course materials, a calendar detailing the topics and assigned readings for each class, copies of any PowerPoint slides presented in class, an announcements board, a class roster and links to additional materials and websites related to the course material. The website will be the primary means of communication between the instructor and students outside of the classroom and will be updated often. Please check it regularly.

III. Course Materials

The following textbook is required:

M. Sornarajah, *The International Law on Foreign Investment*, 2nd ed. (Cambridge: Cambridge University Press, 2004) available at University Bookstore (the “Textbook”).

Additionally, students may be required to read certain articles and/or excerpts relevant to other students’ paper presentations. All required readings, other than the Textbook, will be available on the course website.

IV. Evaluation

This course is intended to be participatory in nature. Students will be evaluated on the basis of their participation in class discussions, a class presentation of their paper topic, and a major paper. The evaluation of the course will be weighted as follows:

Major Paper	60%
Class Presentation	20%
Class Participation	20%

Major Paper

Each student is required to write a major paper for this course. The paper will be evaluated in accordance with the Major Paper Guidelines of Dalhousie Law School. A copy of these guidelines appears in the Calendar, and is also available on the course website. Accordingly, each major paper will be evaluated on the basis of the following criteria:

- (a) Research;
- (b) Organization: Logic/Coherence;
- (c) Analysis-Insight-Synthesis;

- (d) Literary Style; and
- (e) Originality.

Papers should involve in-depth research with legal emphasis in a limited field of inquiry. Discussions of a general descriptive nature will not meet the standards set out in the Guidelines. A list of possible topics is provided below.

Papers must comply with the following criteria:

- Papers must be typewritten, double-spaced, in 12 point font, with normal margins, headings, and footnote content.
- Papers should be between 25 and 30 pages in length, and may not exceed 7500 words. Titles, footnotes (case and statute citations) and headings do not need to be included in the word count. Please use the word count tool provided in your word processing software and include a word count in the header of the first page of your paper.
- **If a paper exceeds 7500 words, only the first 7500 words will be evaluated for credit.**
- Papers must be in Microsoft Word 2003-2007 (.doc) format. If it is not possible to provide your paper in this format, please discuss other options with the professor directly.
- Citations must comply with the McGill *Guide to Uniform Legal Citation*.

Papers should be **submitted by electronic download** using the Turnitin drop-box found on the course website. The drop-box will provide you with a receipt. Do not be concerned if the Turnitin program appears to have removed all formatting, as the original formatting remains intact when the paper is uploaded again. If you have any difficulties or uncertainties about using this system, you may also submit your assignment by email to sarahbradley@dal.ca. A receipt will be sent following each such submission.

All papers submitted in this course will be reviewed by highly sensitive electronic anti-plagiarism software. All students should review the information provided below under the heading Academic Honesty.

Due Date

Paper for this course are due prior to 5:00 pm on Friday, December 11th. Each student is responsible for ensuring that his or her paper is in the drop-box or received by the professor prior to 5:00 pm on Friday, December 11th. The grade for any paper received after this time will be reduced by 5% for every day or partial day between the deadline and the date of receipt.

Academic Honesty

You are welcome and encouraged to discuss your paper topic with others, however, every student must write his or her paper independently. Accordingly, all students must read:

1. the University policies on plagiarism and academic honesty referenced in the Policies and Student Resources sections of the academicintegrity.dal.ca website;
2. the Law School policy on plagiarism, as set out in the law school regulations (available in hard copy from the Associate Dean's office and online at http://law.dal.ca/Current_Students/Course_Selection_Materials/Regulations_Handbook/index.php); and
3. the Orientation Handbook (provided to all first year students and available online at http://law.dal.ca/Files/First_Year_Handbook_2007.pdf)

Any paper or assignment submitted by a student at Dalhousie Law School may be checked for originality to confirm that the student has not plagiarized from other sources. Plagiarism is considered a serious academic offence which may lead to loss of credit, suspension or expulsion from the law school, or even revocation of a degree. It is essential that there be correct attribution of authorities from which facts and opinions have been derived. Prior to submitting any paper or other assignment, students should read and familiarize themselves with the policies referred to above.

Ignorance of the policies on plagiarism will not excuse any violation of those policies.

Suggested Paper Topics

The following are a list of possible paper topics that students may wish to consider. This list is intended to be suggestive only and students are welcome to write a paper on a subject of their own choice, provided that the chosen topic is related to the course subject matter. Consultation with the professor regarding the selection of a paper topic is welcome and highly recommended.

These topics are stated neutrally; each student should frame his or her thesis in accordance with his or her own research findings and opinions.

1. The use of Canada's *Foreign Investment Act* to protect the assets of nationally important industries, such as aerospace (e.g. MacDonald, Dettwiler and Associates Ltd. Radarsat-2 and Canadarm technology), natural resources (e.g. acquisition of PrimeWest Energy by TAQA, the national energy company of Abu Dhabi) and telecommunications (e.g. the recently proposed sale of the assets of Nortel).
2. A critical consideration of the effectiveness of private regulations or voluntary codes of conduct (e.g. labour, environmental, or human rights standards) in influencing the conduct of transnational corporate entities and achieving desired policy objectives.
3. Implications of the Corporate Social Responsibility movement on the duties of directors of multinational/transnational corporations.

4. Case study of the influence of private regulation and the corporate social responsibility movement for a particular multinational corporation (interesting examples include Nike, Gap, Body Shop, Dow Chemical, Exxon).
5. An examination of the social and economic implications of foreign investment for a particular country and how the legal mechanisms established by that country affect these outcomes (interesting examples include Bolivia, Costa Rica, Chile, China, India and the former Soviet-bloc countries of Eastern Europe).
6. Legal initiatives taken by the Argentinean government to attract foreign investment through the 1990s, and its response to the sudden withdrawal of foreign investment in the early 2000s.
7. Expropriation of the assets of Abitibi/Bowater by the government of Newfoundland in 2009 and potential legal consequences under NAFTA.
8. Legal and economic implications of South Africa, Kenya, and Uganda's attempts to produce generic versions of HIV/AIDS drugs to help fight the disease in their respective countries without U.S. patent-holder authorization.
9. The role of the International Center for the Settlement of Investment Disputes in the creation of laws governing multinational corporations.
10. The effectiveness of multinational corporations themselves as sources of regulation (e.g. the case of Gap Inc. and child labour standards in India)
11. Corporate liability for human rights abuses committed abroad (e.g. the US *Alien Tort Statute* (28 U.S.C. § 1350), also known as the *Alien Tort Claims Act*, as a mechanism of control).

Class Presentation

Students will be required to prepare and deliver a presentation to the class based upon the topic of their major paper. Presentations should be approximately 20 minutes in length, and will be followed by a class discussion of the topic presented, also approximately 20 minutes in length. Presentations may, but need not, involve a PowerPoint presentation or other audio-visual aids. Students are responsible for ensuring that any required equipment is available and functional. The presentation should be an interesting and insightful analysis of the student's chosen topic, which should involve significant outside research.

Students will be required to attend a brief meeting with the professor at a mutually convenient time outside of class hours, approximately one week prior to their presentation to discuss their paper topic, their research and writing progress, and the

content of their presentation. Students should also be prepared to suggest and provide a brief background reading for other students to read prior to their presentation.

Students should consult the tentative class schedule below for presentation dates that are preferable to them and email the instructor **no later than September 25th** with a list of their top 3 choices, in order of preference. Every effort will be made to accommodate student preferences where possible. Students who do not submit their preferences will be assigned an available presentation date.

Class Participation

This is a relatively small class, and the engaged participation of all students is important. Participation will be evaluated based upon attendance and active participation in class discussions, to the extent that such participation is relevant and demonstrates an informed engagement with the assigned readings and the subject matter of the course.

V. Students with Special Needs/Requests for Accommodation

Professor Pothier is the faculty advisor to students with disabilities. Students wishing to discuss in-class accommodation or in-class study assistance needs should see Professor Pothier.

Students seeking special accommodation with regard to any aspect of course evaluation (including exam deferrals and extensions to deadlines) must make an application to the Studies Committee. Academic regulations require such requests to be made as soon possible and, in any event, no later than the date on which the exam is to be written or the paper or other assignment is to be submitted. Students should contact Associate Dean Michael Deturbide or Assistant Dean Elizabeth Hughes for more information about requests for accommodation and about the Studies Committee process.

VI. Pandemic H1N1 Influenza Advisory in relation to Academic Continuity

In the event of an escalation of the pandemic H1N1 influenza virus, the University may need to authorize Academic Units to change elements of class schedules and/or evaluation plans as outlined in course syllabi. Any change is intended to support the primary goal of reducing the risk of spreading a pandemic influenza among students, faculty and staff.

Although it is difficult to predict the severity of the pandemic, the University is committed to minimizing the impact on student's academic progress. Therefore, every effort will be made to provide students with options for continued learning and for continued fair evaluations.

Changes may include but are not limited to:

- Adjustments to course assignments;

- Changes to the dates of exams;
- Arrangements for alternative evaluations for students affected by H1N1 influenza virus;
- Adjustments to work terms;
- Modification of marks awarded for participation;
- Adjustments to attendance policies.

Any alternative plan made in individual courses may be superseded by University-wide or Government measures to reduce the spread of the pandemic H1N1 influenza virus.

VII. Tentative Class Schedule and Assigned Readings

The following provides an outline of the material to be covered in each class. Students are expected to have reviewed the material to be covered in preparation for each class. Classes will typically involve a presentation, either by the instructor or fellow students, followed by a class discussion. Students are encouraged to actively participate in all discussions.

The following is a tentative class and assignment schedule only. It may be necessary to amend, supplement or otherwise revise this tentative schedule, in whole or in part, as the term progresses. If this occurs, students will be informed in class of any such amendments or revisions, and the course website will be updated accordingly. If a student must be absent from class, it is that student's responsibility to determine if any changes to the schedule have been announced.

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Course Schedule
Fall Term 2009

September 15	Course Description & Introduction to the Law of International Foreign Investment <i>Readings:</i> Textbook, Chapter 1, pp.1-33
September 22	Factors Shaping the Law of International Foreign Investment <i>Readings:</i> Textbook, Chapter 2, pp. 65-96
September 29	Controls by the Host State <i>Readings:</i> Textbook, Chapter 3, pp. 97-135
October 6	The Liability of Multinational Corporations and Home State Measures <i>Readings:</i> Textbook, Chapter 4, pp. 169 - 203
October 13	Bilateral Investment Treaties <i>Readings:</i> Textbook, Chapter 5, pp. 204-217 and 259-268
October 20	Multilateral Instruments on Foreign Investment <i>Readings:</i> Textbook, Chapter 6, pp. 269-299
October 27	The Taking of Foreign Property <i>Readings:</i> Textbook, Chapter 8, pp. 344-375 and 395-401
November 3	Compensation for Nationalization of Foreign Investments <i>Readings:</i> Textbook, Chapter 10, pp. 435-488
November 10	Presentation 1 Presentation 2 Presentation 3
November 17	Presentation 4 Presentation 5 Presentation 6
November 24	Presentation 7 Presentation 8 Presentation 9
December 1	Presentation 10 Presentation 11 Presentation 12