

## ***COURSE SYLLABUS***

### **COMPARATIVE BUSINESS AND EUROPEAN LAW**

**code 30058 (10 credits)**

**Degree Program: BIEMF – Class 21**

**Spring 2016**

**Instructors: Angelo Borselli (part I: “Bus”) – Matilde Recanati (part II: “Int”) \***

### **COURSE DESCRIPTION AND OBJECTIVES**

The relevance of international commercial transactions in the world economy is undisputed: the world merchandise exports in 2013 amounted to more than 18 trillion USD, increased by two per cent compared to 2012 (US GDP in 2013 amounted to 16.4 trillion USD). China is the major exporter of merchandise (22.3% of its GDP) and almost half of the export (44%) originates from developing countries. While trade in services (e.g. telecommunication, financial, professional, etc.) represents only the 20% of the trade in goods, exports of services increased at a higher pace than goods (6% in 2013). These data do not include foreign trade investment that, for example, amounted to more than 294 billion USD in US in 2013.

The economy largely depends on international transactions. An understanding of the rules governing international commercial transactions is therefore a fundamental tool for virtually any businessperson, policy maker, lawyer or judge. Few professionals do not encounter international business transactions in their career, and a career in this area can be rewarding and exciting.

This course offers an in-depth introduction to the regulation of international commercial transactions. The course has both practical and theoretical goals. From a practical point of view, to understand how to negotiate, draft, manage and litigate international contracts and transactions is obviously essential to practice law and conduct business not only internationally, but also domestically. From a more theoretical point of view, the course has an interdisciplinary approach that considers, in particular, economic and political causes and consequences of trade regulations; and includes a comparative law component that helps students to both understand better their own legal systems, and think “out of the box.” Course participants will embark in a legal (and not only) journey around the world.

More specifically, the course covers the following topics. First, after a brief introduction on negotiating and drafting commercial contracts, it will focus on the international sale of goods and services, examining in particular the Convention on the International Sales of Goods, documentary sales, agency and distributorship agreements, regulations of imports and exports. It will then turn to licensing agreements for the use of intellectual property (trademarks and patents), and direct investments, through the establishment of foreign subsidiaries and joint-ventures abroad and their internal affairs. Business litigation will be covered next, discussing fundamental contractual provisions, common in most international transactions and particularly relevant in case of litigation, such as choice of forum, choice of law, enforcement of

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\* See the class schedule at pp. 5 ff.

foreign judgments, and international arbitration. Finally, the course will focus on the main international (i.e. WTO) or regional (i.e. the EU) agreements aiming at reducing obstacles to trade, such as tariffs and non-tariff barriers, like sanitary measures or technical regulations; including those agreements, such as the TTIP (Transatlantic Trade and Investment Partnership between the EU and the US) still under negotiations. Specific problems such as the influence of monetary and financial issues on the transnational business activities, conflicts between investors and states, expropriations, corruption and violations of human rights by corporations doing business abroad will be also considered.

As mentioned, while the course focuses on technical legal issues, emphasis will be put also on economic and political considerations affecting the regulation of international business, therefore the course might appeal not only to law students, but also to students of economics, business administration, international affairs, and political science.

### **ATTENDANCE**

In presenting the course materials a combination of lectures and class discussions will be used, and you should be prepared to discuss each day's reading assignment when called upon to do so. Occasionally instructors might assign short exercises to complete in class, such as drafting a contractual clause. Prompt and regular attendance and active participation in the discussion are required. The final examination will focus exclusively on the topics covered in our class discussions. Accordingly, failure to attend class is likely to have a material adverse effect on your performance on the final examination, and your class notes will be essential to prepare for the exam. The instructors will keep track of attendance and reserve the right to round up the grade for students who regularly attend classes and participate in the discussion.

### **FINAL EXAM AND GRADING**

The final written examination for this course will consist of three open questions, with sub-questions, each for a maximum grade of 10 points, for a total of 30. Truly exceptional exams will receive a honor ("30 cum laude"). Toward the end of the course we will show and discuss sample questions and offer additional indications on the exam (expected length of answers, etc.).

Students enrolled in the course in the previous academic years, that still have to take the exam, are responsible to prepare for it according to the current syllabus.

### **MATERIALS AND HOW TO USE THEM TO BE PREPARED**

The reference textbook for this course is R. H. Folsom et al., *International Business Transactions. In a Nutshell*, West, last ed. (2012). The detailed syllabus below indicates precisely the different parts you will be responsible for and the corresponding class.

In addition, it is essential to read before class (and review for the final exam) the assigned cases and materials on which you will be randomly called on in class. You can

find them analytically indicated in the following class schedule. These materials are posted on Bocconi's e-learning space. Please note that, also in order to have effective materials in English, several cases are from the U.S. Notwithstanding the particular jurisdiction(s) considered, however, we will focus on general principles that govern the transactions considered and several of the principles discussed are relevant in most countries.

We cannot stress enough that this class adopts the so-called “**Socratic method**”, and therefore you need to show up in class prepared and actively engage in the discussion. You are required to read all the assigned cases and materials, and to review them for the final exam. Be advised, however, that while the cases and materials indicated in the fourth column from the left in the syllabus below must be read before class, you have the option to read the Folsom reference textbook either before or after class. The reference textbook, in fact, is intended to provide further guidance on the topics covered and it might be helpful to review and systematize your notes. Normally, attending class regularly and reviewing the assigned cases and materials and the topics discussed, along with class notes and lecture slides, will allow you to prepare for the exam.

One important methodological note. We strongly suggest that you “outlining” the judicial decisions assigned. To do that you should prepare for each case (they are fairly short) a one page memo indicating: 1. Court: the court deciding the case and the date; 2. Parties: the names of the litigants (plaintiff = the party that sues; defendant = the party that is sued, sometimes they might be called “appellant” and “respondent” if the lawsuit is an appeal of a decision of a lower court); 3. Issue: this is a one or two lines indication of the central legal problem decided, e.g. “Is the contract invalid due to a violation of a public policy mandatory provision?”; 4. Facts: a brief description of the facts originating the controversy: pay attention to details, and distinguish the “facts” from the “legal rules” applied to those facts; 5. Arguments: the major reasons that the parties advocate to convince the judge that they are right; 6. Decision: the decision of the court, who wins, what is – according to the judge – the correct interpretation of the facts or law; 7. Rationale: the legal (and partially factual) reasons why the court decided as it did; 8. Dissent: one of the judges, when there is a panel of three or more judges, might dissent from the majority and offer a different opinion. It is not always present. To remember this technique, think of the initials of the different steps: “CPI-FADR-D”

We will try to follow the syllabus. However, given the interactive nature of the class, depending on our discussion, some of the assigned cases and materials might not be covered, or only briefly covered, in class, or their analysis might be postponed to a following class. As mentioned before, the final exam will focus almost exclusively on topics actually covered in our class discussions.

We will also make the slides used available during the course. Please note that the slides are copyrighted and can only be used by regularly enrolled students for exam purposes only. They cannot in any way be distributed, shared, altered with other people, and cannot be retained after the completion of the exam. Non-compliance with these rules is a violation of Bocconi's Honor Code that will be prosecuted, and can also result in civil and criminal liability.

## **OFFICE HOURS AND CONTACT INFORMATION**

Angelo Borselli will hold office hours on Thursdays, from 10.30 to 11.30 a.m., in room 1.E4.SR.01. Matilde Recanati's office hours will be on Tuesdays, from 12.30 to 13.30 pm, in room 1.C1.14. Both rooms are on the first floor of the Grafton Building, in via Roentgen. Appointments can be made through the yoU@B student Diary.

Students can contact the instructors via e-mail (respectively at [angelo.borselli@unibocconi.it](mailto:angelo.borselli@unibocconi.it) and [matilde.recanati@unibocconi.it](mailto:matilde.recanati@unibocconi.it)) and, if necessary, schedule an appointment outside the above-mentioned office hours.

## **HONOR CODE FOR THE BOCCONI COMMUNITY**

Università Bocconi conceives of education as an ongoing process that stretches across a person's entire professional life. The University hopes that the entire Bocconi community will respect the values of fairness and correctness associated with it, values which inspire and guide the conduct of all community members as they pursue common objectives and a shared mission. The Università Bocconi Honor Code is published at <http://www.unibocconi.eu/honorcode>. We encourage all students to read it.

## CLASS SCHEDULE AND ASSIGNMENTS

<b>Class</b>	<b>Date</b>	<b>Topic</b>	<b>Cases and materials on e-learning</b>	<b>Reference on Folsom</b>	<b>Instructor Bus/Int</b>
1	08.02.2016 12.30-14.00	Introduction. Private and public transnational business law	<ul style="list-style-type: none"> <li>▪ No assignments</li> </ul>		Angelo Borselli <i>Bus</i>
2	10.02.2016 13.00-16.00	Negotiating and Drafting International Contracts.	<ul style="list-style-type: none"> <li>▪ No assignments, hypos and exercises will be presented in class</li> </ul>	Chapter 1	Angelo Borselli <i>Bus</i>
3	11.02.2016 8.45-10.15	International Convention for the Sale of Goods (CIGS).	<ul style="list-style-type: none"> <li>▪ American Mint v. GoSoftware</li> </ul>	Chapter 2 [pages from 41 to 149]	Angelo Borselli <i>Bus</i>
4	15.02.2016 12.30-14.00	International Convention for the Sale of Goods (CIGS).	<ul style="list-style-type: none"> <li>▪ MCC v. Ceramica Nuova</li> </ul>	Chapter 2 [pages from 41 to 149]	Angelo Borselli <i>Bus</i>
5	17.02.2016 13.00-16.00	International Convention for the Sale of Goods (CIGS). Unidroit Principles.	<ul style="list-style-type: none"> <li>▪ Medical Marketing v. Internazionale Medico Scientifica</li> </ul>	Chapter 2 [pages from 41 to 149]	Angelo Borselli <i>Bus</i>
6	18.02.2016 8.45-10.15	International Convention for the Sale of Goods (CIGS).		Chapter 2 [pages from 41 to 149]	Angelo Borselli <i>Bus</i>
7	22.02.2016 12.30-14.00	Shipping Goods. Commercial Terms. Bill of Lading.	<ul style="list-style-type: none"> <li>▪ Dingxi v. Becwood</li> </ul>	Chapter 2 [pages from 41 to 149]	Angelo Borselli <i>Bus</i>
8	24.02.2016 13.00-16.00	Financing Trade. Letters of Credit.	<ul style="list-style-type: none"> <li>▪ Courtaulds v. North Carolina Nat'l Bank</li> </ul>	Chapter 3 [pages from 178 to 203 and from 219 to 228]	Angelo Borselli <i>Bus</i>
9	25.02.2016 8.45-10.15	Sales Agents and Distributorship Agreements.	<ul style="list-style-type: none"> <li>▪ Helen Kaminsky v. Marketing Australian</li> <li>▪ Southern Int' Sales v. Potter &amp; Brumfield</li> </ul>		Angelo Borselli <i>Bus</i>
10	29.02.2016 12.30-14.00	Licensing Distribution or Production Abroad. Franchising and Trademarks.	<ul style="list-style-type: none"> <li>▪ Italian Business Law - Chapter IV (excerpt)</li> <li>▪ Scotch Whisky v. Barton Distilling</li> </ul>	Chapter 4 [pages from 234 to 266 and from 272 to 276]	Angelo Borselli <i>Bus</i>
11	02.03.2016 13.00-16.00	Technology Transfers. Licensing Patents and Know-How.	<ul style="list-style-type: none"> <li>▪ Italian Business Law - Chapter V (excerpt)</li> <li>▪ Microsoft v. AT&amp;T</li> </ul>	Chapter 4 [pages from 234 to 266 and from 272 to 276]	Angelo Borselli <i>Bus</i>

12	03.03.2016 8.45-10.15	Direct Foreign Investment. Branch vs. Subsidiary.	▪ NLRB v. Deena Artware	Chapter 5 [pages from 280 to 311 and from 320 to 322]	Angelo Borselli <i>Bus</i>
13	07.03.2016 12.30-14.00	Cont'd. Shareholders' Agreements	▪ Comparative Corporate Law Ch. 8 (excerpt)		Angelo Borselli <i>Bus</i>
14	09.03.2016 13.00-16.00	Cont'd. Shareholders' Agreements			Angelo Borselli <i>Bus</i>
		Cont.'d. Agency Problems: Directors and Shareholders	▪ Comparative Corporate Law Chs. 5-7 (excerpt)		
15	10.03.2016 8.45-10.15	Cont.'d. Agency Problems: Directors and Shareholders			Angelo Borselli <i>Bus</i>
16	14.03.2016 12.30-14.00	Cont'd. Mergers	▪ Comparative Corporate Law Ch. 9 (excerpt)		Angelo Borselli <i>Bus</i>
17	16.03.2016 13.00-16.00	Cont'd. Mergers			Angelo Borselli <i>Bus</i>
		International Business Litigation in Court (Before, At and After the Trial)	▪ Ashai v. Superior Court	Chapter 8	
18	17.03.2016 8.45-10.15	Cont'd. International Business Litigation in Court (Before, At and After the Trial)	▪ In re Union Carbide Disaster	Chapter 8	Angelo Borselli <i>Bus</i>
19	11.04.2016 12.30-14.00	International Commercial Arbitration.	▪ Parson Overseas v. RAKTA	Chapter 8	Angelo Borselli <i>Bus</i>
20	13.04.2016 13.00-16.00	MFN, NT & Binding. Tariffs and Non-Tariff Barriers (NTBs).	▪ Brancusi v. U.S. ▪ Anheuser-Bush Brewing v. U.S. ▪ Earth Island v. Mosbacher		Angelo Borselli <i>Bus</i>
21	14.04.2016 8.45-10.15	Review Section – Part I			Angelo Borselli <i>Bus</i>
22	20.04.2016 13.30-16.00	WTO. Trade in services.	▪ WTO, Antigua&Barbuda v. US (Gambling case)	Chapter 5 [pages from 312 to 320]	Matilde Recanati <i>Int</i>

23	21.04.2016 8.45-10.15	The mega-Free Trade Agreements. The US-EU TTIP	<ul style="list-style-type: none"> <li>▪ Mega-regional Trade Agreements Game-Changers or Costly Distractions for the World Trading System? pp. 13-21</li> </ul>		Matilde Recanati <i>Int</i>
24	27.04.2016 13.30-16.00	Why is TTIP so controversial?	<ul style="list-style-type: none"> <li>▪ The top 10 myths about TTIP (EU Commission)</li> </ul>		Matilde Recanati <i>Int</i>
25	28.04.2016 8.45-10.15	Mega-free trade agreements and rules of origin: the case of textile sector	<ul style="list-style-type: none"> <li>▪ U.S. Textile Manufacturing and the Trans-Pacific Partnership Negotiations</li> </ul>		Matilde Recanati <i>Int</i>
26	02.05.2016 12.30-14.00	International protection of investment: the Investor-State Dispute Settlement (ISDS)	<ul style="list-style-type: none"> <li>▪ EU Commission, Factsheet on Investor-State Dispute Settlement</li> </ul>	Chapter 5 [pages from 332 to 337]	Matilde Recanati <i>Int</i>
27	04.05.2016 13.30-16.00	The Free circulation of goods in the EU and its impact on business	<ul style="list-style-type: none"> <li>▪ Cassis de Dijon (Case 120/78)</li> <li>▪ German Beer Case (Case 178/84)</li> </ul>		Matilde Recanati <i>Int</i>
28	05.05.2016 8.45-10.15	The Free circulation of persons and services in the EU	<ul style="list-style-type: none"> <li>▪ The Gebhard Case (C-55/94)</li> <li>▪ The Van Binsbergen Case (C-33/74)</li> </ul>		Matilde Recanati <i>Int</i>
29	09.05.2016 12.30-14.00	The IMF, International Monetary Systems and Currency Controls.	<ul style="list-style-type: none"> <li>▪ Ghana IMF article</li> <li>▪ Allied Bank v. Banco Cartago</li> </ul>		Matilde Recanati <i>Int</i>
30	11.05.2016 13.30-16.00	Corruption and extraterritorial criminal laws. Violations of Human Rights.	<ul style="list-style-type: none"> <li>▪ Filartiga v. Pena-Irala</li> </ul>		Matilde Recanati <i>Int</i>
		Sovereign Immunity and Act of State in relation to Takings.	<ul style="list-style-type: none"> <li>▪ Argentina v. Weltover</li> </ul>	Chapter 6	
31	12.05.2016 8.45-10.15	Cont'd. Sovereign Immunity and Act of State in relation to Takings.  Review Section – Part II	<ul style="list-style-type: none"> <li>▪ Dunhill v. Republic of Cuba</li> <li>▪ Banco Nacional de Cuba v. Chase Manhattan Bank</li> </ul>	Chapter 6	Matilde Recanati <i>Int</i>