

Private International Law LAWS 2005

CREDIT HOURS: 4

Professor Sara Seck

A. GENERAL INFORMATION

Class schedule:

- Wednesday 12:30 – 2:20 (W204)
- Friday 11:00 – 12:50 (W204)

Office hours: (W414) [or by appointment: Sara.Seck@dal.ca]

- Wednesday 2:30 – 3:30pm
- Friday 2:00 – 3:00pm

B. COURSE DESCRIPTION

This course is concerned with problems in private law arising out of transactions and occurrences with connections to two or more legal units (provinces or countries). Examples would be contracts made in one country but to be performed elsewhere, and torts with a cross-border element (such as goods negligently manufactured in one country which injure persons in another). Other examples that will be considered include novel transnational corporate accountability litigation strategies designed to provide remedy to foreign victims alleging human rights violations by Canadian companies operating internationally. The type of problems associated with all these examples include (1) which law applies to the determination of liability in such situations, (2) which country's or province's courts have jurisdiction to entertain such disputes, and (3) the enforcement in one country or province of court judgments emanating from another. The objective of the course is for students to learn to recognize private international law situations, to deal with those situations by accepted methods, and to appreciate the results from a variety of points of view. The extent to which the federal nature of Canada affects such matters will be critically examined.

There are no pre- or co-requisites for this course.

C. COURSE MATERIALS

Required text:

Stephen GA Pitel *et al*, *Private International Law in Common Law Canada: Cases, Text and Materials*, 4th ed. (Toronto: Emond Montgomery, 2016).

- Additional required readings, and optional supplementary readings, will be posted on the Brightspace course website.

Optional reference text:

Stephen GA Pitel and Nicholas S Rafferty, *Conflict of Laws*, 2nd ed. (Toronto: Irwin Law, 2016). Available in the Dunn Law Library: Reference Collection (KB 127 P68 2016)

D. EVALUATION JD Students

There are **two options** available for evaluation of the course:

- i) 100% 3 hour closed book final exam (April 24, 2018);
- ii) 30% mid-term assignment, 70 % final exam (same exam as above).

The mid-term assignment will be handed out and posted on Brightspace on February 15, with a submission date of March 1.

Graduate Students and Students from Other Faculties

Please contact me regarding the applicable requirements.

E. ACADEMIC POLICIES

Please take note of the following official policies and procedures:

1. Student Requests for Accommodation

Requests for special accommodation for reasons such as illness, injury or family emergency will require an application to the Law School Studies Committee. Such requests (for example, for assignment extensions) must be made to Associate Dean, Academic Michael Deturbide or the Director of Student Services and Engagement Dana-Lyn Mackenzie as soon as possible, before a scheduled exam or a deadline for an assignment, and will generally require documentation. Retroactive accommodation will not be provided. Please note that individual professors cannot entertain accommodation requests.

Students may request accommodation for either classroom participation or the writing of tests and exams due to barriers related to disability, religious obligation, or any characteristic under the Nova Scotia *Human Rights Act*. Students who require such accommodation must make their request to the Advising and Access Services Center (AASC) at the outset of the regular academic year. Please visit www.dal.ca/access for more information and to obtain the Request for Accommodation – Form A. Students may also contact the Advising and Access Services Centre directly at (902) 494-2836.

2. Submission of Major Papers and Assignments

Major papers and assignments must be submitted in hard copy. Students should hand papers in to the place stipulated by the instructor and ensure they are date and time stamped. Please read the law school policy on late penalties: <https://www.dal.ca/faculty/law/current-students/jd-students/academic-regulations.html>

Please note students may also be required to provide an identical electronic copy of their paper to the instructor by the due date. Papers may be submitted by the instructor to a text-matching software service to check for originality. Students wishing to choose an alternative method of checking the authenticity of their work must indicate to the instructor, by no later than the add/drop date of the course, which one of the following alternative methods they choose:

- a) submit copies of multiple drafts demonstrating development of their work
- b) submit copies of sources
- c) submit an annotated bibliography

3. Plagiarism

All students must read the University policies on plagiarism and academic honesty <http://academicintegrity.dal.ca/> and the Law School policy on plagiarism <http://www.dal.ca/faculty/law/current-students/jd-students/academic-regulations.html>. Any paper or assignment submitted by a student at the Schulich School of Law 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 and should consult with the instructor if they have any questions. Ignorance of the policies on plagiarism will not excuse any violation of those policies.

Advising support and information on fair dealing is available:

- General Academic Support – Advising Halifax:
https://www.dal.ca/campus_life/academic-support/advising.html
- Fair Dealing Guidelines: <https://libraries.dal.ca/services/copyright-office/guidelines/fair-dealing-guidelines.html>

Assistance with writing

Dalhousie offers a number of support services that assist students in their development of academic competencies. The Writing Centre, for instance, works to develop writing skills that meet university expectations. For details on the services offered by the writing centre, and how to make an appointment, see: https://www.dal.ca/campus_life/academic-support/writing-and-study-skills.html

COURSE SCHEDULE – WINTER 2019

References for readings are to Stephen GA Pitel, general editor, *Private International Law in Common Law Canada: Cases, Text and Materials*, 4th ed. (Toronto: Emond Montgomery, 2016) and to mandatory readings posted on Brightspace and online (URL provided). **This reading list will be updated during the course.**

Class	Date	Course Topics	Reading Assignments
1 M1	Weds, Jan. 9	<i>Introduction</i> Case study 1: Texaco/Chevron re Ecuador Case study 2: Iran/Canada divorce	pp3-5 https://business-humanrights.org/en/texacocheron-lawsuits-re-ecuador https://www.cbc.ca/news/canada/british-columbia/woman-says-shes-trapped-in-iranian-marriage-years-after-canadian-divorce-1.4807921
2 M1	Fri, Jan 11 Room 448 (old 401)	<i>Chapter 2: History and Theory</i>	pp7-28
3 M1	Weds, Jan 16	<i>Chapter 3: Conflicts and the Constitution</i>	pp29-64
4 M2	Fri, Jan 18	<i>Chapter 4: Public Policy I</i>	pp66-102
5 M2	Weds, Jan 23	<i>Chapter 4: Public Policy II</i>	pp102-135
6 M2	Fri, Jan 25	<i>Chapter 5: Connecting Factors</i> Brightspace (online)	pp139-141; 147-156; 176-194; 197-207 <i>Office of the Children’s Lawyer v. Balev</i> , 2018 SCC 16 https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17064/index.do
7 M3	Weds, Jan 30	<i>Chapter 6: Jurisdiction</i>	pp213-243; 262-276; 285-289 <i>Airia Brands Inc. v. Air Canada</i> , 2017 ONCA 792 (leave refused) https://www.canlii.org/en/on/onca/doc/2017/2017onca792/2017onca792.html
No class	Fri, Feb 1 (Munro Day)	[University closed]	

8 M3	Weds, Feb 6	<i>Chapter 7: Discretion to Decline Jurisdiction and Injunctions to Restrain Foreign Proceedings</i>	pp297-298; 327-363; 385-390 <i>Leon v VW</i> 2018 ONSC 4265 https://www.canlii.org/en/on/onsc/doc/2018/2018onsc4265/2018onsc4265.pdf
9 M3	Fri, Feb 8	<i>Forum Selection Clauses and FNC</i> <i>Defamation and FNC</i> <i>Transnational Corporate Accountability: FNC, Act of State, necessity</i>	<i>Douez v Facebook, Inc</i> , 2017 SCC 33 https://scc-csc.lexum.com/scc-csc/scc-csc/en/16700/1/document.do <i>Haaretz.com v. Goldhar</i> , 2018 SCC 28 https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17115/index.do <i>Araya v Nevsun Resources Ltd</i> , 2017 BCCA, on appeal SCC https://www.canlii.org/en/bc/bcca/doc/2017/2017bcc401/2017bcc401.pdf
10 M4	Weds, Feb 13	<i>Chapter 8: Recognition and Enforcement of Foreign Judgments</i>	pp393-438
11 M4	Fri, Feb 15 Hand out mid-term assignment	<i>Chapter 8 Recognition and Enforcement ...</i>	pp438-467; 480-490 [recall <i>Airia</i> , class 7] <i>Yaiguaje v. Chevron Corporation</i> , 2018 ONCA 472 http://www.ontariocourts.ca/decisions/2018/2018ONCA0472.pdf
No class	Feb 18-22	Winter Study Break	
No class	Weds Feb 27	[NO CLASS]	
12 M5	Fri March 1 Hand in mid-term assignment	<i>Chapter 9: Choice of Law Method</i> <i>Chapter 10: Applying Foreign Law</i>	pp508-534 [Skim pp535-545] pp547-575

13 M5	Weds March 6	<i>Chapter 10: Applying - continued</i> <i>Chapter 11: Law of Procedure</i>	<i>pp575-587</i> <i>pp 591-617</i>
14 M6	Fri March 8	<i>Chapter 12: Torts</i>	<i>pp627-631; 636-637; 643-681</i> [recall <i>Haaretz</i> , class 9]
15 M6	Weds March 13	<i>Chapter 13: Contracts and Unjust Enrichment</i>	<i>pp691-694; [skim 694-704]; 704-739; 752-760; 769-774</i>
16 M7	Fri March 15	<i>Chapter 14: Property – Immovables</i> <i>Chapter 15: Property - Movables</i>	<i>pp779-810</i> <i>pp811-828</i> [We will not cover ch16]
17 M7	Weds March 20	<i>Transnational Corporate Accountability and Choice of Law:</i> <i>Home state vs host state law</i> <i>Customary International Law</i> <i>Business & human rights, and non-judicial remedy mechanisms</i>	<i>Das v. George Weston Limited,</i> 2018 ONCA 1053 http://www.ontariocourts.ca/decisions/2018/2018ONCA1053.htm <i>Nevsun</i> continued (see class 9) OHCHR, Accountability and Remedy Project: http://www.ohchr.org/EN/Issues/Business/Pages/OHCHRaccountabilityandremedyproject.aspx x [Read text on this page, and links at ARP I , and ARP II , and ARP III]
18 M8	Fri March 22	<i>Chapter 17: Marriage & Cohabitation</i> <i>Chapter 18: Dissolution</i>	<i>pp907-922</i> <i>pp924-944</i> [Bill C-78 update, see class 20]

19 M8	Weds March 27	<i>Chapter 19: Nullity</i> <i>Chapter 20: Children</i>	<i>pp945-960</i> <i>pp961-997 [skim 978-997]</i>
20 M8	Fri March 29	<i>Chapter 20: Children – continued</i>	Bill C-78, Legislative Background https://www.justice.gc.ca/eng/rp-pr/fl-lf/famil/c78/03.html [Skim A; Read E International Conventions; F Miscellaneous 1.] <i>Office of the Children’s Lawyer v. Balev</i> , 2018 SCC 16 [revisited from class 6] <i>Ojeikere v. Ojeikere</i> , 2018 ONCA 372 http://www.ontariocourts.ca/decisions/2018/2018ONCA0372.pdf [We will not cover Chapter 21]
21	Weds April 3	EXAM REVIEW I	
22	Fri April 5	EXAM REVIEW II	
	Monday Tuesday April 22 23	Office Hours TBA	
	Weds April 24	Final Examination – open book	