

WEEK ONE: LAW IN A GLOBAL CONTEXT

An Intensive Program Integrating Transnational Legal Perspectives
Into the First Year Curriculum

Georgetown University Law Center
January 7 - 11, 2008

The legal problems today's students must be prepared to face increasingly transcend national boundaries and involve more than one legal system. To prepare for this transnational environment, first year students at Georgetown University Law Center begin their second semester with a one week intensive course called, "Week One: Law in a Global Context ("Week One"). (Electives are available for upper class students during the same week.)

During the week, students analyze a complex legal problem involving not only U.S. law, but also international and/or foreign law in a transnational legal setting. The problems are designed to introduce some of the various transnational sources of law and dispute resolution techniques that students may encounter in the future. Each problem also emphasizes the importance of careful analysis of statutes, regulations, or international agreements, as well as analysis of case law.

Week One takes advantage of the benefits of problem-based learning. Rather than dividing their time between multiple courses, students spend the entire week dealing with the multiple facets of one complex problem. Students are assigned to different lawyering roles within their problem, in order to more fully capture the intellectual benefits of engaged learning. This approach allows students to become more involved with all aspects of the problem and helps to demonstrate that complex legal problems often involve cross-cutting legal issues that rarely fall into the neat categories captured by traditional courses. In small group settings, students are introduced to at least one legal decision-making process in addition to those of adjudication in U.S. courts -- e.g., arbitration and/or negotiation and/or proceedings before a foreign tribunal.

During Week One, students work in a simplified but realistic legal setting, with a closed packet of materials, that introduces some basic concepts of international and/or foreign law that are in some respects different from U.S. law. The materials are not intended to cover comprehensively a particular subject area nor to be a prerequisite to anything else, but to provide a sufficient introduction to allow analysis of the Week One problem.

Week One courses require about 15 hours of 'in-class' time, spent in various settings. Students attend some large class lectures provided by faculty and participate in several small break-out sessions, facilitated by full time faculty and/or upper class Global Teaching Fellows, during which the students engage in interactive learning. Within each problem, students are assigned different

lawyering roles. In these roles, they are at times required to strategize and collaborate with co-counsel, to negotiate with opposing counsel or counsel for other parties, to draft agreements, or to argue a motion before an American or European court or an arbitral panel.

Most of the U.S. aspects of the problems are rooted in issues that the students cover in one of their fall courses. The problems can involve contracts, torts, civil procedure, and/or constitutional law. We provide a thumbnail of the four problems that will be used in the Spring 2008 semester as an illustration of the kinds of problems faculty members design for Week One. (In subsequent years, these problems may be modified or replaced with new problems.)

Two first year sections, each of which are studying constitutional law this Fall, will work on a **death penalty/extradition problem**, which features an attempt by the United States to secure the extradition of two suspected terrorists who have been indicted in federal court for participating in terrorist acts on U.S. soil. In the indictment, the United States seeks the death penalty, a circumstance that might create problems under two international human rights treaties if the fugitives were extradited from the countries in which they now reside -- France and Russia. Students will be asked to evaluate whether those two treaties -- the European Convention on Human Rights and, to a lesser extent the International Covenant on Civil and Political Rights -- bar extradition in the circumstances of the case, working within an assigned role as counsel for one of the defendants or one of the governments or as a neutral decision maker. The reading materials will include excerpted decisions from the European Court of Human Rights and the U.N. Human Rights Committee, as well as background information on international law and the two human rights instruments. Students will be asked throughout the week to compare the institutional features of the international decision-making bodies with each other and with the U.S. Supreme Court, as well as to compare treaty interpretation under human rights treaties with constitutional interpretation as they are studying it in their Fall Constitutional Law course. Faculty members will facilitate discussions in small groups and will monitor students' oral arguments before an international decision-making body. In their last class, students will hear from a panel of expert lawyers who have practiced in the area. For example, in past years, panelists have included attorneys from the US Department of State, the Department of Justice, and private practice.

One first year section, which is studying torts this Fall, will address an **Internet defamation problem**. The problem involves a French Plaintiff and two possible California defendants: a news network that posted an article on its website alleging that the plaintiff used his wine export business to launder money for organized crime figures in Russia and Italy, and a website hosting service that hosts the news network's website. The students will be assigned roles, representing one of the three parties or the neutral decision-makers in the case. On Thursday of Week One, they will engage in a simulated ICDR arbitration

hearing in which the advocates will argue, and the neutrals will decide, whether French or United States law would govern the dispute. After the decision-makers rule on the choice of law issues, the proceeding will switch to a mediation session in which the students playing the role of neutrals will act as mediators in an effort to resolve the dispute. The assigned readings and classroom sessions during the week are designed to prepare the students to engage in the simulated hearings and mediation session and cover the theory and doctrine governing recognition and enforcement of arbitration agreements and awards, recognition and enforcement of foreign judgments, components of defamation law and limitations on Internet Service Provider liability in several jurisdictions, and choice of law decisions. Faculty members and Global Teaching Fellows will lead breakout sessions in small groups on three days, and at the end of the week students will have had the opportunity to hear from a panel of expert practitioners who deal on a regular basis with some of the issues that the students explored during the week relating to international dispute resolution.

One section of first year students, which is studying contracts and civil procedure this Fall, will work on a **transnational contracts and dispute resolution problem**, which involves basic contract doctrines (such as impracticability and *force majeure*) featured in several factual variations and procedural postures. The core problem involves a contract for the sale of goods (sea barges used in major construction projects). The purchaser of the barges is an Indiana corporation that had contracted to build a dam in Thailand. The supplier, a French company which owned and operated a barge production facility in China, had contracted to build the barges and deliver them to Thailand. Various events in China intervened. Students explore questions of choice of law and choice of forum in a situation where the contract specified neither and national laws come to different conclusions on whether a serious change in circumstance (a political event) make the contract unenforceable. The possibility that application of an international treaty (the Convention on the International Sale of Goods) would, if applicable, help resolve the matter will be explored. Students will be asked to consider how the problem could have been avoided by negotiating a dispute resolution clause in the original contract. Through various exercises, students will be introduced to theories of international and intercultural negotiation and to major systems of international arbitration. Students, in assigned roles, will participate in drafting and negotiating a dispute resolution clause. Each student will argue a motion for enforcement of a foreign arbitral award or a foreign judgment before a judicial panel. The week will conclude with a panel of experienced international litigators, transnational lawyers, arbitrators and faculty, who helped the students to integrate their learning experience.

One first year section, which is studying Torts law, will work on a **pharmaceutical testing case**. The problem features new drug testing conducted overseas by a U.S. pharmaceutical company. Foreign plaintiffs allegedly injured as a result of the testing have sued the company under the Alien Tort Statute. They claim that various international agreements on medical

experimentation prohibit the kind of testing undertaken here, that is, the use of a placebo-controlled drug trial in an ill population in a situation in which there already exists an effective alternative therapy. Their claims raise several legal issues: whether the international agreements on which plaintiffs rely support jurisdiction under the Alien Tort Statute; whether actions by private actors support jurisdiction under this statute; and whether the case should be dismissed on grounds of forum non conveniens. Throughout the week students will breakout into role groups. On Thursday, during oral arguments, students will address issues of jurisdiction raised by claims relating to overseas drug testing by US pharmaceutical company. The week will conclude with a panel of experienced attorneys who will address the issues raised during the week.

Week One is a required, one-credit course for first year students, which is graded pass/fail. All members of the faculty, including both first year and upper class teachers, have the opportunity to participate in Week One on a rotating basis. During Week One 2007, more than a third of the full time faculty participated, as well as a smaller number of adjunct professors and guest speakers. More than 40 upper class students served as Global Teaching Fellows. Faculty members who designed the problems also prepared teaching guides for faculty participation.

The impetus for development of Week One was the Law Center's 2004-2009 strategic plan, in which the faculty recommended incorporating more international and transnational material in the first year. The program was proposed by the Curriculum and Academic Standards Committee in 2004-2005 and approved by the faculty and has been carried forward in a highly collaborative way by a group of faculty, which has grown over time. Vicki Jackson has been the overall coordinator of the effort, working with several other faculty members who assumed significant responsibility for conceptualizing and developing the problems and pedagogy, including Barry Carter, Richard Diamond, Michael Gottesman, Lisa Heinzerling, Richard Lazarus, Carrie Menkel-Meadow, Julie O'Sullivan, Julie Ross, and Carlos Vázquez.