

How to Deal with Different Legal Cultures while Teaching International Business Transactions ?

by

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Since three years, I am pleased to teach International business transactions to students from various parts of the world. As we know, most of the time, international business transactions bind parties from different countries, from different legal cultures and from different backgrounds. On the basis of that reality, I have developed some techniques which seem effective. Thus, the purpose of this paper is to share these teaching techniques with other colleagues.

Methods of teaching

The course named International business transactions that I teach has two major stages.

The first one consists of mandatory readings followed by lectures in order to pass down some fundamental materials to students. The lectures cover the following subjects: jurisdiction and choice of law; international delivery and International commercial terms; price and international payment; penal clause; exclusivity clause and non-competition clause; force majeure and hardship; forum shopping and settlement of disputes. Each subject is taught during a class of three hours. Thus, at the end of these lectures, students should have acquired the accurate knowledge that can enable them to draft the various clauses of an international commercial contract.

The second stage of my course is an occasion for students to try to draft the main provisions of an international commercial contract.

At the beginning of any academic year, I write some facts which describe the results of an international commercial negotiation occurred between two parties. Since those parties are in principle established in different countries, they are likely to have different cultures and to operate in different legal systems. Therefore their contract should take those realities into consideration. Generally, I have different sets of facts and I make sure that parties involved are located in various parts of the world. In other words, facts submitted to students imply that they should deal with different legal systems and different cultures.

On the basis of those facts, students are invited to draft one of these two types of international contracts: a contract for international sale of goods and an international master franchise arrangement. Such drafting is performed by students in groups of two or three. Each group is carefully formed so that it is a mix of students of different genders, of different origins and of different cultures.

After three classes of three hours each and before four other classes remaining, the facts are distributed to students. In principle, any set of facts should be the basis of one single contract. Nevertheless, for the purpose of this exercise, two teams are in charge to draft a suitable and well balanced contract. Since commercial negotiations are ended, the mandate of each group of students is then to draft a fair and balanced contract while wisely protecting the interests of the party that they are acting for.

In the present instance, concerning a contract for the international sale of goods, one team drafts a contract on behalf of the seller and on the basis of the same facts, the other team drafts another contract on behalf of the buyer. Regarding an international master franchise arrangement, one team drafts a contract on behalf of the master franchisor and on the basis of the same deal reached by the parties, the other team drafts another contract on behalf of the subfranchisor.

Directives concerning the work to be done by students :

Students have five weeks to draft their contract. Since at least two legal systems are involved in any deal agreed by the parties, the drafters should make sure that the clauses contained in their

contracts comply either with the relevant legal systems. They are supposed to be aware that the infringement of some mandatory provisions in force in those relevant legal systems could invalidate one or many of the clauses included in the contract drafted. In addition, such requirement show them the necessity to occasionally rely on the expertise or on the advices given by local lawyers who are more familiar with the rules of law in force in the legal systems involved.

Contract drafted by students may not contain technical clauses (for example clause regarding the quality or the description of the goods). It should merely be focused on provision which are relevant or necessary to secure the interest of both parties. In consequence, the length of the contract should not exceed five pages (on paper 8½x11).

In addition to a set of provisions contained in the required contract, each group of students should write an explicative report. To write or to draft a contract means to choose words and tools that will hopefully lead to the wished contract. Therefore, the aim of that report is to set out the reasons of contractual choices made by the team. The group should also explain its silences on certain points for which one could have expected some provisions. The text of this report should not exceed fifteen pages. Such report shall include all useful references and be introduced as a research report, with a table of contents and footnotes.

Students have five weeks to draft their contract and to write the explanatory report. After that time, the contracts and the reports are due and handed over to the professor for grading. For this purpose, the professor keeps the reports and one copy of the contracts drafted. Then he makes sure that every team receives the contracts drafted by the other groups. The agenda of the next classes is to discuss about each of the contract drafted. On that occasion, the drafters can improve their choices through the comments made by their mates and by the professor.