

**DRAFT Syllabus [3-20-2013]
International Petroleum Contracts
Prof. Jacqueline Lang Weaver
Fall 2013 (3 credit hours)**

MW 6-7:30 pm

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**Often at lunchtime and on Mondays at 11-12, 1-2 also. Drop-ins welcome anytime.
or email me at jweaver@uh.edu for a specific time.**

NOTE: THIS SYLLABUS IS A DRAFT ONLY, BUT IT DOES TELL YOU WHAT 98% OF THE COURSE WILL COVER AS READING MATERIALS AND THE ORDER OF THE READINGS. I AM SPEAKING AT A CONFERENCE OUT-OF-STATE AND WILL MISS AT LEAST ONE CLASS THAT WILL BE MADE UP. IN ADDITION, I WILL SCHEDULE GUEST LECTURERS, BUT IT IS TOO EARLY TO DO SO AT THE TIME OF POSTING THIS SYLLABUS IN APRIL 2013.

Casebook and Class Material. There are two sources of class material:

1. The casebook (CB) is Smith, Dzienkowski et al, *International Petroleum Transactions* (3d ed. 2010).

2. Additional material is in a *Supplement* at the Copy Center where it is sold for the cost of printing. These are materials on actual contracts and laws, arbitration decisions, articles, graphics, review memos, etc. that we will use extensively in class. It is called "IPT SUPP." in the reading below. Some items in this Supplement are subject to copyright restrictions and use is limited to your personal use for the class. You may not distribute the copyrighted material.

Optional book to purchase—let me know if you want to buy it at half-price directly from the publisher: Duval, LeLeuch, Pertuzio and Weaver, *International Petroleum Exploration and Exploitation Contracts* (Barrows 2009). This is a treatise covering all provisions in int'l petroleum granting contracts, with examples of actual provisions from many countries. It is absolutely not necessary to buy it. No reading is assigned in it. But if you are going to practice in this area, it is a nice resource to have, and you can buy it at half price as long as you are a student here. The syllabus establishes the order in which we will do the reading, but it may not always reflect the amount of time required to discuss the material in any one block. We will not omit or delete material—if we do not cover it adequately on the assigned day, we will pick up that reading the next day. You will have additional readings to support the lectures by the guest speakers. Note in the syllabus that some readings are optional and some are "time permitting." I will let you know what time permits as we proceed.

Course Goals:

1. Gain an understanding of the international petroleum industry, the key parties involved in it, and its geopolitics.

2. Identify the important kinds of granting contracts that are commonly used in the E&P sector of the international petroleum industry to grant investors the right to develop.

3. Learn how to work with a model contract form. Model contract forms are often used to minimize the transactions costs of doing a deal (by bringing certainty to “boilerplate” issues so that the parties can focus on the crucial issues that may be more contentious) and to instill confidence that the parties are using standards representing “international practice” which are familiar and more certain in meaning. We will use the AIPN Model Form International JOA for this purpose.

4. Understand the key provisions of a host government’s petroleum law and legal framework.

5. Understand the role of Codes of Conduct and international law, particularly as related to issues of socio-economic development and human rights in developing countries.

Overall, this course seeks to give you an understanding of how the key host government contracts relate to commercialization of petroleum reserves and to the policy goals of both the host country (often a developing country) and the investor.

Course Rules:

1. Class starts on time. I will end on time—remind me if need be.

2. Class participation is important. Ask questions, comment on points made by me or others, engage in thinking about the world of international petroleum!

3. You are expected to have done the bulk of the reading in advance. When the syllabus states that class discussion will cover listed questions, come to class with notes so that you can participate in answering. **In some cases noted in the Syllabus, a short written assignment is required to be turned into class. Failure to hand in at least 5 of the 6 assignments will decrease your grade by ½ point;** that is, a B + will become a B. Do NOT email the assignment. Bring a hard copy to the classroom on the assigned date or leave in my mailbox earlier if you cannot attend that day. I will not return the assignments to you. Your assignment must be typed, not handwritten.

4. Your grade will consist of a written final exam. Some portion of the final exam may be a take-home question that will be added to your score on the in-class final exam and which will be turned into the class on the last day of class.

Please note that I usually schedule two guest lecturers in this class, after we have finished at least Class 13 on Development Contracts. Scheduling depends on their travel calendars. Thus, after Class 13, I may have to change the dates for the readings by inserting the guest lecturers. I do NOT change the reading assignments below; I simply change the dates. This syllabus has 26 units of reading: 24 units as outlined below + 2 more units for guest lectures are to be arranged.

Classes 1 and 2. The Future of the Petroleum Industry.

IPT SUPP. ITEM 1: “The Future of the Petroleum Industry under Global Warming” (10 pp, including lists of new technologies) Discussion of Peak Oil, geopolitics, Flags and Open Doors, Scramble and Blueprints--and energy forecasts, esp. for oil and gas. I will present a Powerpoint in class on these themes.

IPT SUPP. ITEM 2: Graphics of int’l petroleum markets and industry.

CB Ch. 1. World Energy Resources. Much of this chapter is self-explanatory, and will not be covered in class discussion. The basic geology on pp. 5-16 is usually covered in the Oil

and Gas law course. Note 4 on p. 12 describes unconventional oil and pp. 14-16 describe unconventional gas. Know what these sources are. Omit the note on hard minerals on pp. 16-17. Be sure to read pp. 17-21 on reserves, especially the graphic on page 20. Omit pp. 24-28 because the reading in Item 1 covers this. Do read pp. 28-29 on renewables and review the coal data on p.23. The US is the king of coal!

Optional, but useful: Visit the BP Statistical Review website at www.bp.com and find the link to the latest Statistical Review. Review the charts and graphics in their mind-blowingly bright colors for the sections on oil and gas production, consumption, prices and trade. The Statistical Review is not a forecast; it is a source of historical data. Additional data on petroleum markets can be found on the website of our Energy Information Administration, a division of the U.S. Department of Energy. Visit <http://www.eia.doe.gov> to see the latest price trends in oil markets. Yet, natural gas prices in the US are quite low and have not risen after the global financial crisis/recession. Why is this?



You can find the ExxonMobil Energy Outlooks (produced annually) on the company's website. They have good graphics and useful projections to ponder the future of oil and gas.

Class 3: Ownership of Mineral Rights: Federations.

Within a country, what governmental entities have the authority to grant oil development contracts: the federal government or the states or provinces within a federation? Or both?

CB Ch. 3 pp 191-201. Federations: Russia and Mexico present contrasting models.

IPT SUPP. ITEM 5. The Draft Iraqi Oil Law. Read the Preamble and Articles 1, 2, 3 and 5, 6, 7 and 11 (in Sections 1 and 2 of the Draft law—see the Table of Contents of the Draft Law; you are only reading a small part of the draft law).

BRING TO CLASS AND TURN IN HAND-IN ASSIGNMENT #1: Write a 1-2-page summary of the division of powers between the federal gov't and the provinces in this Draft law. What does the fed gov't control absolutely? What must the provincial authorities approve? What

is required to be jointly approved? Your work must be your own, but you can discuss the assignment with others before you write your own answer independently.

Read the news clippings of Iraq's first auctions of rights to develop its fields; these appear after the Draft Iraqi law in your SUPP. Failure or success of the auctions?

Note: Take a course in natural resources land management (by Prof. Zach Bray) to learn how the US and the states divide or share power over various resources on public lands. About 1/3 of the US is federally owned land. The feds own the OCS (Outer Continental Shelf) which produces roughly 30% of our oil and gas.

Classes 4 and 5 The Host Country and NOCs (National Oil Companies)

CB Ch. 2. The Host Country and National Oil Companies (NOCs). The rise of nationalism, pp. 30-59, but omit *Tringali* tugboat case for now. Also read pp. 67-71 (starting with Notes on p. 67) as a brief background on financing. Prof. Arbogast in the Bauer School of Business offers various courses on project finance, some of which are accessible without a finance background. Others require a good finance background.

IPT SUPP. ITEM 3. "The Changing Role of the NOCs in International Energy Markets." These are slides summarizing a large study on NOCs conducted by the Baker Institute for Public Policy at Rice University. The slides can be accessed at <http://www.rice.edu/energy/publications/docs/NOCs/Presentations/Hou-Jaffe-KeyFindings.pdf> and the graphs are more easily viewed in color. In March 2007, the Baker Institute released a study of the history and formation of 15 different state-owned oil companies and two economic modeling studies aimed at assessing the operational efficiency of NOCs. The papers can be accessed at <http://www.bakerinstitute.org/programs/energy-forum/publications/energy-studies/nocs.html> or at <http://www.rice.edu/energy/publications/nocs.html> (where the slides from conference Powerpoint presentations are also accessible). A 20-page summary report on NOCs is at http://www.bakerinstitute.org/publications/BI_PolicyReport_35.pdf, but is not required reading. This Baker Institute of Public Policy at Rice University is a good website for research for seminar papers on many energy issues, both international and domestic. The Institute hosts interesting speakers on energy, and I will let you know the dates of interesting events, most of which are open to the public for free. The Baker Institute Study on Iraq's Oil Sector explains much about colonialism and the broken promises of the Major Powers as they used countries as pawns on a chessboard—and the rise of Saddam Hussein.

Classes 6 and 7: Legal Systems and Petroleum Laws

CB Ch. 4, pp. 214-227. Legal Systems. Civil law, common law, Islamic law, etc. Later, when we study the international model JOA, you will see important differences between the civil law and the common law, as reflected in this model form and its guidance notes.

Host Government Petroleum Laws:

IPT SUPP. ITEM 5. (Note: there is no Item 4 in the Supplement). Return to the Draft Iraqi law. Read Articles 9-20 which are the key parts governing the grant of contracts to develop Iraqi oil and gas. What questions do you have in trying to understand this draft law? It is important to know what you don't understand.

Then read the rest of the draft law, Articles 21-42. Is there anything you don't understand here?

BRING TO CLASS AS REQUIRED HAND-IN ASSIGNMENT #2, DUE ON SEPT. 20. Write a maximum 2-page memo, summarizing the Draft Iraqi Law's Sections IV, V, VI, VII, and VIII (the Sections are basically the chapters). Again, do not send e-mails of your assignment. The Draft Law is a good summary of a typical or model petroleum law, and how it sequences the bidding, exploration, development, production and transportation processes in a fairly short and simple framework. We will make a time line of the key events in a petroleum agreement using this law.

IPT SUPP. ITEM 6: "Summary of UHLC Model Laws for Russian Petroleum Project." This contains an overview of a Model Licensing Act that a team at UHLC drafted for the new Russian Federation in 1990-91 after the Soviet Union collapsed. It was to reflect the best practices in modern international petroleum laws. This Model Law is good background to reading the draft Iraqi law. The project also drafted Model laws for Conservation and the Environment and for Oil Pipelines, and principles for Tax and Fiscal Policy. Brief summaries of these are also provided. A Symposium on the Russian Petroleum Legislation Project at the UHLC is published in vol. 15 of the *Houston J. of Int'l Law*, Nos. 2 and 3 (Winter/Spring 1993). Russia didn't adopt much of what was recommended!

The Early Concessions:

IPT SUPP. ITEM 7. "Smith & Dzienkowski excerpt from 24 Tex. Intl L. J, "A 50 Year Perspective." 5 pp.

IPT SUPP. ITEM 8. State of Alabama oil and gas lease—the U.S. concession. We will review the key paragraphs in this Alabama lease to see what a typical U.S. oil and gas lease looks like. This is the lease used by the sovereign State of Alabama which owns the seabed within 3 miles of the coast, including Mobile Bay in the Gulf of Mexico. Alabama received very high bids for many leases in Mobile Bay under this lease. Those of you who have had Oil and Gas law will find this lease quite familiar, although more favorable to the lessor than the typical private lease.

CB 429-32, and notes 2 and 3, pp 434-35. The Early Mideast Concessions,

CB 435-42. Renegotiating the early concessions in the Mideast.

CB 284-92. Nationalization. The risk of expropriation and measures of compensation.

Class 8. Nationalization and Liamco

IPT SUPP. ITEM 9: LIAMCO arbitral award (24 pp). Libya had a much more favorable concession agreement than the Sultanate of Oman had in CB 413-15.¹

BRING TO CLASS AS REQUIRED ASSIGNMENT #3: As you read this arbitral award, list the clauses that favored Libya and which have now become standard in modern concessions. Your list should include at least 10 items. What clauses most favored LIAMCO? Your list must be divided into these two sections. Your memo should not be longer than one page.

¹ *Optional reading on your own:* Rice University's study of Iran's NOC, the National Iranian Oil Company, or NIOC. Go the website listed above and click on the report, which details the travails of the Iranian National Oil Company, including the massive effect of subsidized pricing of its oil and its current position under President Ahmedinejad (85 pp).

CB 292-304. Compensation for expropriation. Given this history, what should the IOC's investment-backed expectations be? To make a fortune if it discovers a large field?

CB 320-23. Recent Venezuelan nationalization. The actual Chavez decree is at the back of ITEM 9 in the Supplement, a short 3 pages!

Time permitting: CB 323-27. Privatization. Why have some countries converted their state-owned companies into privately-owned entities?

Classes 9-13 (5 days). Today's Development Contracts and Petroleum Laws

CB Ch. 7 pp. 415-28. Bidding systems. Return to ITEM 5 on the Draft Iraqi Law and read the clippings at the end. Note the bid variables used in the auctions.

CB 447-63. Modern Concessions. You should continue to develop a list of those clauses which now appear in a modern concession, making it much fairer to the host country than the early concessions.

CB 463-81. Production Sharing Contracts.

IPT SUPP ITEM 11 is the Powerpoint that I will present in class. It has slides and graphics illustrating the revenue streams in the fiscal provisions of the different types of contracts.

IPT SUPP ITEM 10. Two items: The Management Committee provisions of the recent PSC for Pakistan, and an Abstract of the Trinidadian PSC. Read the Pakistani Man Comm provisions carefully. Review the Trinidadian Abstract to be sure that you understand what all the headings/major terms mean, such as Relinquishment, Development Plan, etc. and how the contract provisions are sequenced from exploration through production.

CB 482-87. Risk Service Contracts (similar to a PSC).

CB 487-91. Technical Assistance or Service Contracts.

IPT SUPP. ITEM 12. Service and Risk Service Contracts, (JLW memo (3 pp)

CB 492-501. Participation agreements (host country shares risks and rewards of profits). Participation was a key demand of OPEC countries as they struggled to change their early concessions. Participation essentially puts the country's NOC in a contract like the JOA that we will study below, allowing the country to share in profits. The country still does not bear any exploration risk, however. You will "participate" as a player in a JOA when we reach this part of the course.

CB 508-15 Stabilization clauses.

IPT SUPP. ITEM 13. Flexibility in Int'l Petroleum Contracts (JLW memo, 3 pp)

IPT SUPP. ITEM 14. A summary of the major differences between US and int'l types of development contracts; this memo also includes a list of trends in modern international contracts (5 ½ pages)

I will also present a PPT on the non-fiscal provisions of int'l petroleum contracts. You will receive this as a handout later.

Classes 14-17 (4 days). Joint Operating Agreements.

These class days include about 20-30 minutes in class to discuss the JOA Exercise with the other players in your group. You may have to meet with your group before or after a class or other convenient time also to finish the Exercise, and correspond via email or phone.

IPT SUPP. ITEM 15: Chapter on JOAs by JLW. Use of this chapter is restricted to class purposes only and you may not duplicate or send this chapter. It is an early version of the chapter on JOAs that now appears in the IPEEA book, published by Barrows..

IPT SUPP ITEM 16: AIPN’s Model 2002 JOA (edited version 41 pages long compared to the original of 88 pages). We will focus on key provisions of this model JOA: Articles 3, 4, 5, 6, 7 and 8. Article 1 on Definitions is important—always. The Table of Contents is useful for finding provisions. Bring the Model JOA to class. If you would like to get the full Model JOA, join the AIPN. Visit www.aipn.org. Membership for students is only \$25 and can be extended at this rate for 5 years. You get enormous amounts of free research, articles, model contracts and a networking forum.

IPT SUPP. ITEM 17: Int’l JOA—Small Group Exercise. You will be divided into small groups to work on two scenarios that illustrate the workings of the key provisions of the JOA. The scenario is very relevant to the BP Oil Spill; Anadarko, the nonoperating owner of a 35% interest has publicly stated that it considers BP to have been grossly negligent as Operator.

ASSIGNMENT #4 TO BRING TO CLASS, HAND-IN #4: One of the group’s members will be the Reporter and will summarize your group’s work in a 2-page memo to me. All 5 of you in the Group must sign off on the memo before it is turned in.

IPT SUPP. ITEM 18: These AIPN Guidance Notes explain how contracts must be modified for civil law jurisdictions. These Notes should convince you that knowledge of civil law is very good for those from common law countries and vice versa.

Class 18. When things go wrong: Barriers to litigating disputes

IPT SUPP. ITEM 19: “Barriers to Litigating Disputes.” FSIA, Act of State, Political Question, Forum Nonconveniens, Hickenlooper Amendment. (18 pages). This item ends with a real-life scenario facing an oil company operating in Myanmar today--and questions for you to answer in class at pp.17-18.

HAND-IN ASSIGNMENT #5 TO BRING TO CLASS. Answer Review Questions 1-4 following the scenario, based on the reading on “Barriers to Litigating Disputes.” Question 5 involves the Alien Tort Claims Act, which we will study in the next sections of readings below. Your hand-in assignment should NOT include Q 5.

Classes 19, 20, 21 and half of 22 (3 1/2 days) Indigenous Title, Human rights, Environmental and Social Obligations.

CB Chapter 10:

CB 713-20. Overview material.

CB 721-67. Indigenous title and indigenous rights; Stakeholder Consultation

CB 767-806. Human rights and the Alien Tort Claims Act (ATCA). The US Supreme Court has the *Kiobel* case on ATCA on its docket for 2012-2013. The Court will address two issues: 1. Can corporations be sued as defendants under ATCA?; and 2. Do the federal courts have jurisdiction over acts committed in another country that are alleged to violate international law, especially when both the plaintiffs and the defendants are not U.S. citizens? Stay tuned for

developments here. Whatever the Court decides, the human rights aspects remain for oil companies working in countries that have war lords, brutal security forces, and dictators.

CB 806-22. Contract provisions and Best practices.

HAND-IN ASSIGNMENT #6 TO BRING TO CLASS: Read CB 793-95. Summarize, using bullets in outline form, the obligations imposed on companies that sign this Voluntary Code on Security and Human Rights.

IPT SUPP. ITEM 20: Excerpts on Local Content from IPEEA treatise (*Int'l Petroleum Exploration and Exploitation Agreements* (Barrows 2009), coauthored by Weaver, LeLeuch, Duval and Pertuzio).

IPT SUPP. ITEM 21. PPT slides on Sustainable Development..

I have videos of Shell in Camisea (good) and in Nigeria (where it recently settled a case with Ken SaroWiwa's family), and "Extreme Oil" excerpt on the Lagos Agrio trial in PetroEcuador/Texaco case. There is not time to show all of them. I also have a PPT on Tullow Oil's well sites in Uganda in a wildlife preserve and national park of outstanding beauty.

Classes 22 (other ½), 23 and 24 (2 1/2 days) Maritime Boundaries, Rule of Capture, Unitization and JDZs.

CB 105-131 Maritime Boundaries, UNCLOS: CB 105-25. (20 pp) The UN Convention on the Law of the Sea establishes the rules for maritime boundaries. Why are islands so valuable to own? Know the different zones and the degree of sovereignty over each under UNCLOS.

Boundary Disputes: when boundaries collide:

CB 125-31. North Sea dispute, pre-UNCLOS dispute in ICJ (6 pp).

CB 131-45. Black Sea dispute, post-UNCLOS dispute in ICJ (14 pp)

CB 159-67. Rule of capture (between competing operators on different blocks inside one country. This case leads into the discussion of unitization. (8 pp). What is the defining principle of law proclaimed by the Netherlands highest court about: (a) The rule of capture; and (b) The rule of decision for this dispute. Who won?

Unitization:

CB 168-70 Cross-Border UZ (2 pp)

CB 627-35 UZ in U.S. vs internationally (8 pp)

CB 637-38. Notes 2, 3, 4 (2 pp)

CB 638-44 UZ (6 pp)

CB 170-180 JDZ. Boundaries are not determined, but countries agree to develop despite lack of fixed boundary (10 pp)

Congo/Angola Agreement. Short handout of 6 pp or so.

Classes 25-28 will be scheduled for guest lecturers and to assure that the material is covered, should class times run over. The class times for guest lecturers must be arranged around their travel schedules. Thus, some of these lectures will probably occur earlier in the course, not during the last week, because that is when the lecturer is available. In the past, we

have usually been fortunate to have John Bowman of King & Spalding lecture on International Arbitration clauses in petroleum contracts and Jay Martin of Baker Hughes lecture on the Foreign Corrupt Practices Act.

If travel schedules preclude the guest lecture, I will assign the reading and do the lecture, esp. on the Foreign Corrupt Practices Act (FCPA) which is essential to cover. Regardless of who lectures on the FCPA, you will read the SEC prosecution of Statoil for paying bribes in Iran in the CB at 246-68 (and accompanying notes).

FINAL EXAM IS DECEMBER 18 FROM 6 PM TO 9 PM.