COMMERCIAL LAW OF THE
EUROPEAN UNION
SPRING 2005 SEMESTER
Professor Larry Catá Backer

MEETING ROOM: 136
MEETING TIMES: 4:00 to 5:15 P.M., Monday, and Wednesday

PROFESSOR: LARRY CATÁ BACKER
OFFICE: 214
TELEPHONE: 240-5243
E-MAIL lcb11@psu.edu
FINAL EXAM: TAKE HOME EXAM

COURSE INFORMATION

COURSE DESCRIPTION: This course examines the basic substantive law of the European union. The materials concentrate on regulatory systems based on the Treaty protection of the (1) free movement of goods (customs duties, discriminatory taxation, quantitative restrictions), (2) free movement of persons (rights of workers and workers' families, equality principles, reverse discrimination, European citizenship), (3) right to provide professional and personal services (right of establishment, right to provide services, company law harmonization, industrial/commercial property rights), and (4) establishment of the internal market and harmonization of laws within the E.U. (The Common market, harmonization principles, pre-emption, technical harmonization). In addition, the course will introduce the basic doctrine of the external relations powers for the European Union (express and implied treaty making powers) and the Community customs code (classification/valuation of goods, import measures).

REQUIRED BOOKS:


3. GEORGE A. BERMANN, ROGER J. GOEBEL, WILLIAM J. DAVEY, AND ELEANOR M.
COMMERCIAL LAW OF THE
EUROPEAN UNION
SPRING 2005 SEMESTER
Professor Larry Catá Backer

FOX, EUROPEAN UNION LAW: SELECTED DOCUMENTS (St. Paul, MN: Thompson/West, 2002 Ed.) ("STAT").1

RECOMMENDED BOOKS:

While the following books need not be purchased, they may serve as useful references or provide materials for review. In deciding whether or not to purchase these books remember that I will be testing you on the materials covered in class, not those covered in other materials you might consult. Constitutional formulas provided may not coincide with the ones we discuss in class.


READING ASSIGNMENTS:

Reading assignments are set forth below in the syllabus. Reading assignments will also be announced from time to time in class. Additional readings and problems may be added or substituted throughout the semester. Please bring Text, Supp., and any supplemental readings with you to each class.

Understand that there is no guarantee that we will be able to cover in class all material assigned for that class session throughout the semester. Anticipate, therefore, that there may be occasions when you will have read ahead. Do not panic; do not become irritated; do not conclude that there is something amiss; humor me and assume that there is a reason for the pacing of the course. If in doubt, please be sure to see me.

1 Much of the materials in the statutory supplement may be found on line, for example on the official website of the European union: http://www.europa.eu.int. I have no objection if you use the on-line versions of the materials in the Statutory Supplement in lieu of purchasing this book.
COMMERCIAL LAW OF THE
EUROPEAN UNION
SPRING 2005 SEMESTER
Professor Larry Catá Backer

Please keep in mind that you will be responsible for all assigned readings whether or not discussed in class. You will also be responsible for all materials covered in class, whether or not included in your reading materials.

GRADING

The course grade will be based on a take home exam. THE EXAM IS OPEN BOOK. You must work alone. You will have 24 hours to complete the exam from the time you pick it up. However, you will be able to choose the time you take the exam. The exam may be picked up on any day from the first day of final exams to the day before the end of the final exams period (THURSDAY, APRIL 28, 2005 to 5 P.M. THURSDAY MAY 12, 2005). Exams may be picked up at any time from the SECRETARIAT (2nd FLOOR MAIN BUILDING) AND MUST BE RETURNED within 24 hours of pick up. I will not police you – you are on your honor to comply with final exam rules.

In addition, grades may be adjusted upwards, at my discretion, for what in my judgment is exemplary participation throughout the semester.

ATTENDANCE AND CLASS PARTICIPATION

Law School rules require me to notify students of my attendance policy. First year and introductory classes provide the basis for your legal education. It is important for you to attend class. Also, I remind you that material not in your readings and for which you will be responsible will likely be covered in class from time to time during the course of class discussion (and may find its way into the final exam).

Class attendance is required. Starting on the second day of class you will be required to sign in at each class session. You will be asked to sign in at every class so that I may maintain a record of attendance. NOTE: Some of you may find it necessary to miss Wednesday class. I will be taping each of my Wednesday classes and placing them on reserve or otherwise making them available to you. For those who cannot attend the Wednesday class, you will have the obligation to review the tape of the class at your convenience in lieu of class attendance.

Class Meeting Time and Makeups. Class meets twice a week, Monday, and
COMMERCIAL LAW OF THE
EUROPEAN UNION
SPRING 2005 SEMESTER
Professor Larry Catá Backer

Wednesday from 4:00 A.M through 5:15 P.M. I will be away for the first regularly scheduled week of class. Make up classes will likely be scheduled for Fridays and video taped so that if you can’t make class you can view the video at your convenience.

Class participation is required. All students are expected to be prepared for each class session (that is, to have carefully read the material assigned). That does not mean that you are expected to ‘know’ any particular ‘answers.’

I use a modified Socratic method in class. It is my policy to call on students at random. However, at the end of each class session, I may designate one or more students to act as discussion leaders for the next class session, with primary responsibility for the materials to be covered that day. Please come see me before class if you are unprepared and you want to be excused from participation (please have a very good reason ready). Otherwise, your failure to participate on two separate class days will be treated as the equivalent of an absence from class. Please note: participation does not mean having the ‘right’ answers to the questions we discuss. Participation requires only that you have read and thought about the materials to be discussed and that you are prepared to discuss them.

Seating is assigned. To make seat selection somewhat less arbitrary, the seat you choose on the second day of class will be your assigned seat. I will circulate a seating chart on Tuesday for you to fill in.

Class Notes and Recording of Class. Please feel free to get together with your classmates for studying and sharing notes. It is sometimes efficient. Take as many notes as you like... NO RECORDING OF CLASS. Sorry.

A word on my approach to class. I hope you will develop your understanding of the materials through Socratic dialogue and class discussion. I hope to begin to teach you not only the substantive rules and approaches to problem solving in Constitutional law, but also how to think like a lawyer, and how to argue and defend a position before your peers (just like you’ll have to do in court or at a meeting). To that end, you should understand several things:

1. There are few sure answers in law, though there are approaches aplenty. Those of you who are looking to understand the complex and dynamic process of commercial law making within the European Union by simple answers to easy questions should look elsewhere.
2. Do not expect to agree with me on everything, especially substantive conclusions. Often, I will play devil’s advocate. I will challenge all positions, even my own. Let your values, logic, etc. guide you to whatever substantive conclusion your heart desires.
3. **You should expect to be challenged, even when you are right!** Understand that one of my goals for this year is to teach you how to defend your answers, and persuasively present your analysis, even under aggressive questioning. **Don't take it personally.** Aggressively testing your ideas and answers to questions (as well as the level of your preparation) doesn't mean that I don't respect you. Understand that you may not always have the right answer, or that I may want to use your response to take the materials in a direction different from that you had in mind. Also -- there may not be a right answer. And remember: before you panic if you had the right answer to all the questions, there would be no need for you to attend class!

**CONFERENCES**

I maintain an open door policy. I encourage you to see if me should you have any questions or concerns. **I encourage you to contact me by e-mail.** I will respond promptly.

**SYLLABUS**

For those planning ahead, I provide the following syllabus. In addition to the readings in the TEXT, be sure to read the materials in the SUPP., and in any additional handouts. The TEXT will contain references to the appropriate material in the SUPP.

**SUMMARY OF SYLLABUS:**

- Introduction -- 3 classes
- Free Movement of Goods -- Duties, Charges, Internal Taxes -- 2 classes
- Free Movement of Goods -- Quantitative Restrictions -- 4 classes
- The Common Market and Legal Harmonization -- 3 classes
- Free Movement of Workers -- 3 classes
- European Citizenship -- 1 class
- Right of Establishment -- 3 classes
- The Special Case of Professionals and Establishment -- 1 class
- Industrial and Commercial Property Rights -- 1 class
- External Relations Powers of the E.U. -- 2 classes
- The WTO and the EU -- 1 class
- Community Customs Code -- 1 class
COMMERCIAL LAW OF THE
EUROPEAN UNION
SPRING 2005 SEMESTER
Professor Larry Catá Backer

EU Remedies for Unfair Trade Practices – 2 classes

SYLLABUS:

I. Introduction (Chapters 2, 3, and 7)
   3. Direct Effects and Supremacy. TEXT 238-280; SUPP. 93-100.

II. Free Movement of Goods – Duties, Charges, Internal Taxes (Chapter 12)
   1. Customs, Duties and Charges Having Equivalent Effect. TEXT 452-58; SUPP. 140
   2. Discriminatory or Protective Internal Taxation. TEXT 458-474; SUPP. 140.

III. Free Movement of Goods: Quantitative Restrictions (Chapter 13)
   1. Art. 28 and Quantitative Restrictions. TEXT 475-488; SUPP. 141.
   2. Art. 30 Limitations on Art. 28. TEXT 488-508; SUPP. 141-144.
   3. Elaboration of Free Movement Principles. TEXT 508-525; SUPP. 144-146.

IV. The Common Market and Harmonization of Laws (Chapter 14)
   1. Completion of Common Market/Harmonization. TEXT 536-548; SUPP. 151-152.

V. Free Movement of Workers (Chapter 15)
   3. Who is a Worker, etc., and Reverse Discrimination. TEXT 626-629; SUPP. 158.

VI. European Citizenship and Free Movement (Chapter 16)
COMMERCIAL LAW OF THE 
EUROPEAN UNION 
SPRING 2005 SEMESTER 
Professor Larry Catá Backer

1. European Citizenship. TEXT 630-652; SUPP. 159-165.

VII. Right of Establishment and to Provide Services (Chapter 17)


VIII. Lawyers and Other Professionals (Chapter 18)


IX. Industrial and Commercial Property Rights (Chapter 19)


XI. External Relations Powers of the EU (Chapter 27)

1. Division of Power over Foreign Affairs. TEXT 1023-1041; SUPP. 224-230.

XII. The WTO and the EU (Chapter 29)

1. The Limits of the Common Commercial Policy. TEXT 1073-1101; SUPP. 236-239.

XIII. The Community Customs Code (Chapter 30)


XIV. EC Remedies for Unfair International Trade Practices (Chapter 31)
1. Anti-Dumping Regime. TEXT 1126-1159; SUPP. 241.
2. Subsidized Imports. TEXT 1159-70.