

دانشگاه تهران
دانشکده حقوق و علوم سیاسی
درس: حقوق تجارت بین الملل و مالکیت فکری

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نیم سال دوم سال تحصیلی ۹۹-۱۳۹۸

Tehran University
Faculty of Law and Political Science

International Trade Law and Intellectual Property Rights

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Semester II

۹۹-۱۳۹۸

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Session 1: Introduction

1. The economy of Iran and commercialisation of IPRs
2. The historical development of IPRs in Iran
3. The share of IPRs in national economies with focus on Iran
4. The legal infrastructure of knowledge economy
5. An evaluation of national IPRs on the basis of
 - a. Economic developments
 - b. Ideological orientation
 - c. International considerations

Seminar questions

1. What are the international considerations in Intellectual Property Laws in Iran?
2. What are the other laws apart from IPRs laws, which could be relevant?
 - a. Tort
 - b. Contract law
 - c. Property law
 - d. Criminal Law
3. What could be the relation between economic development and IPRs laws?
4. Should IP laws Iran focus on the protection of domestic and indigenous knowledge and technology or should have an international focus?
5. Are the IP laws of Iran based on economic justification or ideological orientation?

Readings:

1. William M Landes and Richard A Posner, The Political Economy of Intellectual Property Law (will be made available to students)
2.
3. ...

Session 2: Foreign investment, transfer of technology and IPRs laws (Macro policy issues)

- History of foreign trade and foreign investment
- Multinational corporations, foreign investment and transfer of technology to developing countries: macro policy issues
- The foreign investment priorities in Iran
- National policy for transfer of technology and know-how
- Economic development and IPRs
- The right to development and international law of development
- UNCTAD, transfer of technology and developing countries
 - International code of conduct on the transfer of technology
- Attraction of foreign investment
- The new trends in foreign investment: the shift from export of good and services to export of ideas, knowledge and technology
- Emergence of new patterns of foreign investment
- The applications of FIPA and other laws of general application to IPRs

Seminar questions:

1. What is the relationship between a strong intellectual property regime and foreign direct investment?
2. How pro-competitive measures under TRIPs could promote technology diffusion in developing countries?

Readings:

1. Keith E Maskus, *The Role of Intellectual Property Rights in Encouraging Foreign Direct Investment* (ssrn.com)
2. Bernard Hoekman, Keith Maskus and Kamal Saqqi, *Transfer of Technology to Developing Countries: Unilateral and Multilateral Policy Options* 2004 (available on SSRN)
3. Landau, Warren, *Multinational Corporations and Lesser Developed Countries-Foreign investment, transfer of technology and the Paris Convention*, 5 U. Dayton Law Review 105 (1980)

Session 3: International trade and emergence of multilateral regimes

- General introduction:
- History of International Trade
 - Rise of mercantilism
 - Emergence of protectionism

- The advantages and disadvantages of international trade
 - Legal regimes affecting international trade
 - The legal infrastructure of international trade
 - The legal infrastructure of international trade
1. Lex mercatoria and private law
 2. State made law and regulation
 - a. Multilateral and international arrangements
 - b. National laws and regulation
 - c. Regional law and regulation
 - The emergence of multilateral institutions
 - a. Theories of international trade and GATT
 - i. Comparative advantage
 - ii. Free trade and international economic cooperation
 - b. History of GATT and its rounds
 - i. Kennedy Round
 - ii. Tokyo Round
 - iii. Uruguay Round
 - c. Principles of GATT
 - i. General Most-Favoured-Nation Treatment
 - ii. National Treatment on Internal Taxation and Regulation
 - iii. General Elimination of Quantitative Restrictions
 - iv. Non-discriminatory Administration of Quantitative Restrictions
 - v. Subsidies
 - vi. Exceptions

Seminar question:

1. Which economic philosophy in terms of rationales of intellectual property rights would link intellectual property rights and trade policy?

Readings

1. Christopher May, *A Global Political Economy of Intellectual Property Rights*, Rutledge 2000
2. Andrew Schrank, *The Political Economy of Intellectual Property Protection: The case of Software*, *International Studies Quarterly* (2005) 49, 45-71

Session 4: WIPO, harmonisation debate, international law and international trade law

- IPRs in historical and global perspectives

- The economic history of major IPRs conventions
 - a. Bern Convention
 - b. Paris Convention
- The creation of WIPO and its international mission
- The nature and scope of legal obligations under WIPO treaties.
- A critical analysis of the role of WIPO:
- The limits to the capacity of great conventions and the role of WIPO as part of the UN
- The current and future mission of WIPO
- The relevance of public international law
- Iran's relationship with WIPO
 - a. Technical assistance
 - b. International reputation
 - c. Public international law commitments
 - d. Economic advantages

Seminar questions:

1. Do we need uniform intellectual property laws? Would we be better (worse) off if we have uniform intellectual property laws? Would we be better (worse) off if we do not have uniform intellectual property laws?

Reading:

1. *Mossinghoff, Gerald J.* National Obligations under Intellectual Property Treaties: The Beginning of a True International Regime. 9 Fed. Cir. B.J. 591 (1999-2000)
2. www.WIPO.org

Session 5: GATT, WTO and Intellectual Property Rights

- Uruguay Round and the IPRs agenda: a controversial start
 - The changing shift from goods to services and IPRs
 - Protection of IPRs by linking them to trade in bilateral consultation with developing countries
 - The shift towards multilateral approach
 - Intellectual property rights and foreign investment
 - Incorporation of IP conventions into WTO
- TRIPs: Background and Principles
- Factors contributing to the new trade policy
 1. The advent of copy-prone electronic technology and products

2. The growing competitiveness of newly industrialised developing countries in the manufacturing sector
 3. Increasing globalisation of the market place
 4. The growing perception of intellectual property as a strategic asset
 5. Globalisation of the markets and the limits of the great conventions
- The divergent North South perspectives on IPRs
 - The gradual development of the connection between IPRs and GATT
- The keystone of the TRIPs is the adoption of the principles that are central to the WTO
- Objectives
 1. Preamble
 2. Article 7
 - Principles
 1. The public interest principle
 - Article 8(1) permits Member States to adopt necessary measures
 - To protect public health and nutrition and
 - To promote the public interest in sectors of vital importance to their socio-economic and technological development
 2. The prevention of abuse
 - Article 8(2)
 - The applicability of basic GATT standards to IPRs
 1. The principle of national treatment
 - Rules and standards concerning the availability, scope and use of IPRs
 - Effective and appropriate enforcement mechanism
 - What are the differences between the principles of national treatment in IP Conventions (WIPO regime) and the national treatment under the GATT and WTO?
 - Article 1 (3)(1)
 - The relationship between the Rome Convention of 1961 and TRIPs
 2. Most-favoured nation treatment
 - Article 4
 - Intellectual Property Conventions and TRIPs(Article 2)
 - Expansion of the IPRs: Performers, producers of “phonograms” and broadcasting organisations.
 - Reciprocity is not unique to TRIPs but MF does shift the ground for intellectual property governance somewhat and is directly the result of its inclusion in international trade law

Session 6: The changing regime from WIPO to TRIPs

- History and main features of the great conventions (under the umbrella of WIPO) on international protection of intellectual property rights
 - Territoriality and IPRs
 - Mutual recognition
 - Minimum standard of justice
- Motivations for the shift from WIPO to GATT
- The international trade dimension of intellectual property rights
- The expansion of private domain in IPRs reflects the conflicting priorities in developing and developed countries
- WIPO under pressure from developing countries in 1970s:
 - Demand for a more preferential treatment
 - The deadlock of 1984 Diplomatic conference
 - The limits to WIPO capacity

Seminar questions:

1. What are the differences between WIPO and TRIPs regimes of international protections of intellectual property rights?
2. How could we explain the public choice dimension of shift from WIPO to GATT and to TRIPs?
3. What are the main reasons for choosing GATT/WTO framework for the international protection of IPRs?
4. What are the advantages of TRIPs for the owners of IPRs compared to WIPO regime?

Readings

1. Laurence R Helfer, *Regime Shifting: the TRIPs Agreement and New Dynamics of International Intellectual Property Lawmaking*, (ssrn.com)
2. L L Hicks and J R Holbein, *Convergence of National Intellectual Property Norms in International Trading Agreements*, 12: 5 Am. U.J.Int’l L. & Policy 769 (1997)

Session 7: Post-TRIPs intellectual property regime shifting by developing states

- The Doha declaration and reversing the tide
- Developing countries seek to ensure a greater use of industrial property granted in their territory whereas the developed countries seek strict safeguard of IP holders’ rights

- Public choice revisited
- Areas of tension between TRIPs and some Intellectual property regimes in:
 - Biodiversity
 - The Convention on Biological Diversity (1992)
 - Conference of the Parties
 1. Protection of traditional knowledge of indigenous communities
 2. Advocating that IPRs applicants should disclose the country of origin of the genetic resources or traditional knowledge which form the basis of their applications
 - Plant Genetic Resources for Food and Agriculture
 - Should we consider PGRs as public goods?
 - Is there a difference between PGRs in their natural state and in global seed banks?
 - Boundaries between biological materials in the public domain and those that could be privatised?
 - Additional rules supported by developing countries:
 1. Farmers rights
 2. National sovereignty
 3. Ban on intellectual property claims over the genetic materials held in international seed banks
 - The international treaty on plant genetic resources for food and agriculture
 - Public Health
 - Human Rights

Seminar questions:

1. Would compulsory licensing under Article 13 satisfy the needs of developing countries? What is the nature of such a license?

Readings

1. P Drahos and Ruth Mayne (eds), *Global Intellectual Property Rights: Knowledge, Access and Development*, Macmillan 2002.
2. Frederick M Abbott, *The Doha Declaration on the TRIPs Agreement and public Health*, 5 *Journal of International Economic Law*, 469 (2002)
3. Daniel J Gervais, *The Internationalisation of Intellectual Property: New Challenges from the very Old and Very New*, 12 *Fordham Intellectual Property, Media and Ent. L.J.*, 929 (2001-2002)

<http://www.europa.eu.int>

<http://www.wipo.int>

Session 8 IPRs, international business transactions (contractual framework for transfer of technology and knowledge)

- The micro structure of international trade law and private sector interactions
- The international market for technology, know-how and knowledge.
- The nature of technology, know-how and knowledge and contractual transfer
 - Patent, Copyright, Trade Mark
 - Trade Secrets
- The benefits of arrangements under WTO and WIPO regimes for private sector
- The growth of international business and the role of franchise and license agreements
- The nature of international disputes in the areas of IPRs
 - Validity
 - Infringement
 - Contractual
- Choice of law and choice of jurisdiction issues
- The international legal framework for contractual transfer of IPRs: National and international legal norms
- The legal format of international export of IPRs (special rights)
 - Licensing contracts
 - Franchise contracts
 - Joint ventures and more complex contracts for transfer of technology
- Protection of trade secrets and confidential information

Seminar questions

1. What would be the most appropriate legal format for transfer of IPRs to Iran?
2. There is a rise of export of ideas vis-à-vis export of goods. Do you think contract law rules (Iranian or English law rules) are suitable for international franchise or licensing agreement?

Readings:

Special sessions and students contributions

1. Global Justice and International Law of Intellectual Property Rights
2. The nature of compulsory licences and its status under international economic law
3. The impact of e-commerce and globalisation of IPRs
4. Health, medicine and international trade in IPRs
5. Human rights and TRIPs agreement

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کارشناسی ارشد حقوق تجاری و اقتصادی بین المللی
درس حقوق شرکتها بورس
® دکتر محمود باقری
نیم سال دوم ۱۳۹۸-۹۹

جلسه اول: شناخت بازارهای مالی و تمایز آنها از بازارهای اقتصاد واقعی

۱. درآمد؛ پس انداز، سرمایه گذاری مستقیم و غیر مستقیم
۲. سرمایه گذاری و هرم ریسک پذیری
۳. مقایسه بازار های واقعی (اقتصاد واقعی) و بازار های مالی (اقتصاد مالی)
۴. زیر ساخت های حقوقی بازار های مالی
۵. هزینه های معاملاتی، کاستی زیر ساختها حقوقی و هزینه های تحمیلی به بازار پول و سرمایه
۶. اهمیت رابطه اقتصاد واقعی و اقتصاد مالی
۷. تعادل بین سرمایه و کار
۸. منابع: مقالات روزنامه ای مذکور در کلاس
- ۸,۱. چهار چوبهای حقوقی رشد اقتصادی
- ۸,۲. انحصار شکنی در تامین مالی
- ۸,۳. هرم ریسک پذیری
- ۸,۴. مقاله مربوط با ماهیت حقوقی صندوق های بازنشستگی

جلسه دوم: نظام سرمایه داری مدرن و تحول از اقتصاد معیشتی به اقتصاد شرکت محور

۱. نظام حقوقی سنتی (حقوق قراردادها، حقوق مسئولیت مدنی، حقوق اموال)
۲. سیر تکاملی حقوق شرکتها (شرح درس به زبان انگلیسی)
۳. منابع: فصل مربوط به حقوق شرکتها کتاب "نقش حقوق شرکتها و بورس" قابل دریافت از سایت مرکز پژوهش های مجلس

جلسه سوم: ماهیت بازار سرمایه و ظهور بورسهای اوراق بهادار

۱. تمایز بازار سرمایه از بازار پول
۲. تمایز بازار سرمایه اوراق محور از بازار سرمایه قرارداد محور
۳. دلایل ظهور و ماهیت حقوقی اوراق (اموال یا قرارداد)
۴. ظهور بورسهای اوراق بهادار و سازمان و ساختار آنها
۵. ماهیت بورسهای اوراق بهادار
۶. آیا بورسهای اوراق بهادار خصوصی هستند یا دولتی
۷. مکانیزم معاملات اوراق بهادار
۸. نظام حقوقی حاکم بر معاملات اوراق بهادار (حقوق خصوصی و حقوق قراردادها)
۹. تحول ماهیت اوراق بهادار از کاغذ به الکترونیک و تبعات حقوقی آن
۱۰. ظهور شرکت سپرده گذاری مرکزی و تسویه وجوه

منابع:

۱. حقوق معاملات سهام: مریم ابراهیمی
۲. حقوق اوراق بهادار: نفیسه شوشی نسب

جلسه چهارم: شناخت ارکان و بازیگران بازار سرمایه و اوراق بهادار

۱. سهامدارن یا سرمایه گذاران (خریداران)
۲. ناشران یا صادر کنندگان سهام و دیگر اوراق بهادار
۳. واسطه های معاملاتی
 - a. شرکتهای بورس و فرابورس و بورس کالا و یا بورس ارز
 - b. کارگزاران خریدار و کارگزاران فروشنده
 - c. شرکت های تامین سرمایه
 - d. حسابرسان و شرکتهای رتبه سنجی
۴. سازمان بورس و اوراق بهادار و شورای بورس (نهاد ناظر و تنظیم گر)

منابع: حقوق بازار سرمایه: دکتر محمد سلطانی

جلسه چهارم: رژیم های حقوقی مرتبط با بازار سرمایه و ظهور حقوقی عمومی بازار سرمایه

۱. حقوق قرارداد، اموال، شرکتها و حقوق عمومی مرتبط به بازار سرمایه
۲. دلایل دخالت دولت در بازار سرمایه
۳. کاستی بازار و نابرابری اطلاعات فیما بین ناشران (مدیران) و سرمایه گذاران (سهامداران و یا دیگر خریداران دیگر اوراق)
۴. ساختار و کارکرد سازمان بورس و تاریخچه سازمان های بورس

جلسه پنجم: جلوه های مهم حقوق عمومی بازار سرمایه

۱. ضرورت اخذ مجوز از سازمان بورس
۲. ثبت اوراق بهادار در نزد سازمان بورس
۳. افشای اجباری اطلاعات مربوط به عرضه اوراق (امید نامه)
۴. منع استفاده از اطلاعات نهانی
۵. منع دستکاری در بازار

WEEK ۵ : What are Capital/ Securities Markets and Why Regulate them?

WEEK ۶: Key Trends in and General Principles of Securities Regulation

WEEK ۷: The Regulatory Agencies in International Capital Markets

WEEK ۸: Initial Disclosures in Securities Offerings and Cross-Border Offerings

WEEK ۹: Continuous Disclosures and Enforcement Issues

WEEK ۱۰: Insider Dealing and Market Abuse

WEEK 11: Regulating Broker-Dealers and Investment Banks I: Regulating the "Service Provider" (ie Authorisation and Approval Requirements)

WEEK 12: Regulating Broker-Dealers and Investment Banks I: Regulating the "Service Delivery" (mainly Conduct of Business Rules (and the regulation of Conflicts of Interest)

WEEK 13: Trading Venues

WEEK 14: Credit Rating agencies and Global Governance

WEEK 15: Dispute Resolution in Capital Market