Foreign Corrupt Practices Act

Law 624
Spring 2017
Room 206 – Tuesday, Thursday (3:00 – 4:15)
Associate Professor Mike Koehler

Office: 210
Office Hours: By appointment
Phone: 618-453-8120
E-mail: mkoehler@siu.edu

Course Overview and Learning Objectives

The Foreign Corrupt Practices Act (FCPA) is a top legal and compliance concern for business organizations – both public and private and across a variety of industry sectors – doing business in the global marketplace.

This course is an in-depth study of the FCPA, FCPA enforcement, FCPA compliance, and related legal and policy issues. You will learn of the FCPA’s modern era and in doing so will dissect legal authority such as the FCPA statutory text, legislative history and judicial decisions as well as non-legal sources of information such as resolved FCPA enforcement actions and enforcement agency guidance.

Understanding the FCPA’s modern era is a fundamental skill-set for lawyers and other professionals navigating the global marketplace and the FCPA needs to be part of your professional vocabulary.

This course will develop that skill-set and the learning objectives include:

(i) understanding the events and policy reasons that motivated Congress to enact the FCPA and what Congress intended to capture in enacting the FCPA;

(ii) appreciating the root causes of why companies often become the subject of FCPA scrutiny as well as the typical origins of FCPA enforcement actions;

(iii) gaining a comprehensive understanding of the FCPA’s anti-bribery provisions and books and records and internal controls provisions, including the ability to identify legal risk through real-world issue-spotting videos;

(iv) exploring practical – as well as provocative reasons – for the general increase of FCPA enforcement in the modern era;
(v) understanding the FCPA’s many ripples such as how actual FCPA enforcement actions brought by the Department of Justice and/or the Securities Exchange Commission are often just one consequence of FCPA scrutiny or enforcement, as well as exploring other negative legal and financial consequences that often result from FCPA scrutiny or enforcement;

(vi) going beyond the FCPA and understanding other U.S. laws (such as the Travel Act) and certain foreign laws (such as the U.K. Bribery Act) relevant to conducting business in the global marketplace;

(vii) gaining practical FCPA compliance skills including the ability to conduct an FCPA risk assessment and to develop FCPA compliance policies tailored to unique risk profiles;

(viii) gaining insight into FCPA Inc. as a niche and vibrant industry full of career opportunities;

(ix) analyzing other legal and policy issues associated with the FCPA, FCPA enforcement and FCPA compliance;

(x) assessing whether the FCPA and FCPA enforcement policies are best achieving the objectives of the FCPA or whether FCPA reform is warranted.

While this course is about a specific statute, its enforcement, and compliance strategies learning objectives also include understanding:

(i) other general legal principles such as corporate criminal liability and the hierarchy of legal authority and other sources of information;

(ii) how business organizations operate in the global marketplace and various realities of the global marketplace; and

(iii) DOJ and SEC enforcement policies and resolution vehicles relevant to both business organizations and individuals including related resolution dynamics.

This foundational knowledge will best enhance your understanding and comprehension of the specific FCPA learning objectives highlighted above.

**Class Materials**

In addition to text reading, assigned material will also include supplemental readings posted on TWEN. The goal of the supplemental reading is to: (i) provide alternative format readings in furtherance of the learning objectives; (ii) stimulate classroom discussion; and (iii) emphasize the current and real-world nature of topics covered in this course. Supplemental readings will be treated the same as text reading for exam purposes.

To best achieve the learning objectives for this course, students are also strongly encouraged to frequent the following websites devoted to the FCPA.

- FCPA Professor (www.fcpaprofessor.com)
- FCPA Blog (www.fcpablog)
- FCPA Compliance and Ethics Blog (www.fcpacompliancereport.com)

**Attendance**

Part of your success in your legal career will be to show up at the right place at the right time. The same is true for this course.

As specified in the *Rules of the Southern Illinois University School of Law*, “regular attendance to class meetings in all courses is expected and required of all students in accordance with the rule to be announced by the professor at the beginning of each course. Attendance will be taken in class and attendance records will be kept. Violation of this rule shall subject the student to penalties ...”.

It is your responsibility to ensure that you sign the attendance sheet during class. You should also note that the *School of Law Honor Code* states that it is academic misconduct to sign another student’s name to an attendance sheet for a class that the other student did not attend.

Students may have no more than a maximum of five absences (partial or total) for any reason (other than jury duty, the student’s hospitalization, birth or adoption of the student’s child, or a death in the student’s immediate family – any of which shall be proven by documentation). Students with more than five absences will be referred to the Associate Dean and will be given the lowest possible grade – a failing grade – for the course.

**Participation**

Being physically present in class is, of course, not your only responsibility. You are also expected to arrive to class poised to learn and to actively participate in classroom discussions. Active participation in classroom discussions requires preparation for class
and reading the assigned course material, understanding the key concepts, and being able to provide answers to the discussion questions circulated prior to class.

Students will be randomly called upon during each class session and will be expected to facilitate learning of the assigned material through discussion.

**Workload Expectation**

The American Bar Association standards for accrediting law schools contain a formula for calculating the amount of work that constitutes one credit hour. According to ABA Standard 310(b)(1), “a ‘credit hour’ is an amount of work that reasonably approximates: (1) not less than one hour of classroom or direct faculty instruction and two hours of out-of-class student work per week for fifteen weeks, or the equivalent amount of work over a different amount of time.” This is a 3-credit hour class, meaning that we will spend approximately 150 minutes together each week. Applying the ABA standard to the number of credits offered for this class, you should plan on spending a total of approximately 8.5 hours per week (2.5 in class and 6 preparing for class) on course-related work.

**Seating Chart**

To better facilitate classroom discussion and assessment of attendance and participation, there will be a seating chart for this class.

**Grading and Learning Assessment Opportunities**

Your final grade will be based on the following:

- 10% Attendance and Participation
- 5% Skills Assignment #1
  
  Memo to Board of Directors regarding an FCPA Enforcement Action
- 5% Skills Assignment #2
  
  Critique of an FCPA-related law review article
- 25% Skills Assignment #3
  
  Capstone writing assignment: FCPA risk assessment and compliance strategies
- 55% Comprehensive Final Exam (closed book, notes) on May 9th
**Professional Courtesies**

Be on time. Be respectful of your fellow students, their desire to learn and their learning styles. Cell phones, iPods, and other such devices are not to be used (or heard) in the classroom. Should you choose to take notes during class using a laptop computer, use of the computer shall be strictly limited to taking notes (any other use will result in forfeiture of future computer usage).

**Emergency Procedures**

Southern Illinois University Carbondale is committed to providing a safe and healthy environment for study and work. Because some health and safety circumstances are beyond our control, we ask that you become familiar with the SIUC Emergency Response Plan and Building Emergency Response Team (BERT) program. Emergency response information is available on posters in buildings on campus, available on BERT's website at [www.bert.siu.edu](http://www.bert.siu.edu), Department of Safety's website [www.dps.siu.edu](http://www.dps.siu.edu) (disaster drop down) and in Emergency Response Guideline pamphlet. Know how to respond to each type of emergency. Instructors will provide guidance and direction to students in the classroom in the event of an emergency affecting your location. It is important that you follow these instructions and stay with your instructor during an evacuation or sheltering emergency. The Building Emergency Response Team will provide assistance to your instructor in evacuating the building or sheltering within the facility.

**Disability Policy**

Disability Support Services (DSS) provides the required academic and programmatic support services to students with permanent and temporary disabilities. DSS provides centralized coordination and referral services. To utilize DSS services, students must come to the DSS to open cases. The process involves interviews, reviews of student-supplied documentation, and completion of Disability Accommodation Agreements. [http://disabilityservices.siu.edu/](http://disabilityservices.siu.edu/). Upon completion of a Disability Accommodation Agreement with DSS, students should bring the agreement to the School of Law Registrar’s Office to ensure the School of Law provides the proper classroom and examination accommodations.

**Saluki Cares**

The purpose of Saluki Cares is to develop, facilitate and coordinate a university-wide program of care and support for students in any type of distress—physical, emotional, financial, or personal. By working closely with faculty, staff, students and their families, SIU will continue to display a culture of care and demonstrate to our students and their families that they are an important part of the community. For Information on Saluki Cares: (618) 453-5714, or siucares@siu.edu, [http://salukicares.siu.edu/index.html](http://salukicares.siu.edu/index.html). At
the School of Law, Assistant Dean Judi Ray is also available to help students access university resources. Her email is judiray@siu.edu, and her phone number is 618-453-3135.
# Course Overview

*(Subject to Modification Based on the Flow of the Semester)*

(* Denotes Reading Posted on TWEN*)

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<th>Topic</th>
<th>Reading / Task</th>
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<tbody>
<tr>
<td>Introduction and Course Overview</td>
<td>Text (pgs. v – xxiii)</td>
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<tr>
<td>What is Bribery and How Best To Address It?</td>
<td>Discussion questions</td>
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<tr>
<td>The Story of the FCPA</td>
<td>Text – Chapter 1 (pgs. 1-45)</td>
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| FCPA Foundational Knowledge | Text – Chapter 2 (pgs. 46-78)  
DOJ Principles of Prosecution of Business Organizations*  
Sample Resolution Documents* |
| The FCPA’s Anti-Bribery Provisions | Text – Chapter 3 (pgs. 79-135)  
In the Matter of BNY Mellon Corp.*  
U.S. v. Esquenazi*  
U.S. v. Kay*  
Issue-spotting videos |
| The FCPA’s Books and Records and Internal Controls Provisions | Text – Chapter 4 (pgs. 136-168)  
In the Matter of Mead Johnson Co. *  
Issue-spotting videos |
| FCPA Enforcement (Corporate and Individual) | Text – Chapter 5 (pgs. 169-177; 182-187; 193-233)  
Sample DPA Guidelines |
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<th>Section</th>
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<td>Reasons for the General Upward Trend in FCPA Enforcement</td>
<td>Text – Chapter 6 (pgs. 234-260)</td>
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<td>The Bribery Racket*</td>
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<td>FCPA Inc: The Business of Bribery*</td>
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<td>FCPA Ripples</td>
<td>Text – Chapter 7 (pgs. 178-182; 187-193; 260-303)</td>
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<td>Beyond the FCPA</td>
<td>Travel Act Reading*</td>
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<td>U.K. Bribery Act Reading*</td>
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<td>FCPA Compliance Best Practices</td>
<td>Text – Chapter 8 (pgs. 304-339)</td>
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<td>Third-Party Compliance Best Practices Supplement*</td>
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<td>FCPA Career Day</td>
<td>FCPA Associate Q&amp;A’s*</td>
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<td>A Q&amp;A with FCPA Practitioners</td>
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<td>FCPA Reform</td>
<td>TBD</td>
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