Contracts and Dispute Resolution I
for Petrobras Attorneys
April, 2012

Resources on
International Commercial Law and Arbitration
and
Overview of the
US Court Structure

by

Judy Janes, Director of the Mabie Law Library
And Lecturer in Law, UC Davis School of Law
Mabie Law Library Resources
BOOKS

• Use Mort:
Searching MORT
Call Number Index – US Law (By Subjects)

2nd Level – See Floor Plan

- U.S. Law (by Subjects)
- Legal Research, Writing (KF 240 -)
- Legal Profession (KF 260 -)
- Legal History (KF 350 -)
- Conflict of Laws (KF 410 -)
- Family Law (KF 500 -)
- Property (KF 560 -)
- Trusts and Estates (KF 726 -)
- Contracts (KF 800 -)
- Torts (KF 1246 -)
- Business Associations (KF 1350 -)
- Bankruptcy (KF 1500 -)
Call Number Index
Level 1

• Courts, Procedure (KF 8700 -)
  – International Civil Litigation (KF 8840-)
  – International Civil Litigation – Jurisdiction & Conflict of Laws (KF8940-)
Call Number Index
Basement

• Comparative Law. International Uniform Law
  – Obligations
    • Contracts (K840-917)

• Commercial Law (K1000-1395)
  Commercial Contracts (K1024-1132)
  Sale of Goods (K1026-1045)
  Arbitration and Award (K2400-2405)
US Law

THE COMMON LAW AND CIVIL LAW TRADITIONS:

Above: A world map showing countries today that have a civil law system (light blue), countries that have a common law system (green), and countries that have both (orange).

Glossary
Conflict of Laws (KF 410 -)
Level 2

  - Originally published as part of the International Encyclopaedia of Law/Private International Law. Great overview with chapters on Contractual and Non-contractual Choice of Law clauses.


  - Addresses agreements on forum and choice of law clauses in commercial contracts, providing model provisions to avoid ambiguities that lead to litigation.

  Restatement (Second) of Conflict of Laws, Sections 80, 187-

  Narrative text of the state of the law drawn from the best cases nationally. Descriptive of the law and focusing on cases that reflect the “best interpretation” of the law. Persuasive authority.
Contracts (KF 800 -)
US Law – Level 2

• Corbin on Contracts; a comprehensive treatise on the rule of contract law.  KF801 .C65 1993


  Substantial discussion of Article 2 of the Uniform Commercial Code, and the Restatement(Second) of Contracts, the vienna Convention (CISG) and the UNIDROIT Principles applied to international contract issues.

Restatement of the Law of Contracts, American Law Institute  KF801.A823
Contracts (KF 800 -)  
US Law – Level 2 (Continued)

• **Hawkland’s Uniform Commercial Code Series, 11 volumes.** KF879.527 H38 1982-
  – Multi-volume treatise kept up to date with current releases. Contains references to adoptions of various parts of the UCC by states

**White, James J, Uniform Commercial Code, 6ed, West, 2010.** KF890.W45 2010

  An overview of the current uniform laws, with reference to important cases in commercial contract law.

**Uniform Laws Annotated (1968-)** KF165.A5 2ed
This title notes state adoptions and variations of each UCC provision. It contains the UCC Official Text as well as Official Comments and Commentaries. The annotations include citations to relevant cases and secondary sources.
Courts, Procedure (KF 8700 -)
International Litigation - Level 1

• *Newman, Lawrence W., et.al., The Practice of International Litigation, 2d, Juris, 2009*
  KF8840.N48 2009
  – This one-volume regularly updated treatise, written by practitioners, provides practical advise in resolving international disputes in the courts, or by arbitration.

  Covers jurisdiction, service of process, limitations, Foreign Sovereign Immunities Act, Act of State Doctrine, choice of law, evidence, judgments, and arbitration.
Courts, Procedure (KF 8700 -) Continued

  – Deals with US courts judicial jurisdiction, i.e. power of the court to adjudication a particular civil dispute.

Courts, Procedure (KF 8700 -) Continued

• Nanda, Ved P, Litigation of International Disputes in U.S. Courts, West,, 2005-.
  KF8940.P75 N36 2005
  – A 3-volume up to date treatise covering nuts and bolts issues such as personal jurisdiction, service of process, extraterritorial discovery, and forum non conveniens.

  Moore’s Federal Practice, LexisNexis, 2009-.
  KF8820.A313 M63 1997-
  Moore’s Federal Practice is a leading treatise on federal procedure, with more than 40,000 court citations.

  Analyses of CISG cases that provide practitioners organized access to key, legal case abstracts drawn from multiple jurisdictions and valuable, summary comments on each article of the CISG.


Commercial Law (K1000-1395)
Basement

Commercial Arbitration
K2400-

  — Extensive overview of ICA as well as arbitral awards, articles and treaties.


  ICA practice points such as drafting, requesting judicial assistance and enforcing awards.


  Seminal commentary on drafting, to enforcement. Analysis of investment treaty arbitration and international arbitration.

Online Resources
General Information US Law

• Intro to US Legal System: Federal, State & Local: Executive, Legislative, Judicial branches

Understanding the Federal Courts


Introduction to Basic Legal Citation

http://www.law.cornell.edu/citation/
Primary Law - US

• **U.S. Supreme Court**
  - http://supremecourtus.gov/
  - Provides opinions from the 1991 Term to current. Also provides oral argument transcripts from the 2000 Term forward, plus court rules, argument calendar, etc.

• **U.S. Courts**
  - http://www.uscourts.gov/
  - Links to the district courts, and the courts of appeals, plus other court information.

• **United States Code from the Office of the Law Revision Counsel**
  - Online source for the U.S. Code from the entity that prepares it.
Primary Law – US (cont.)

- **Fdsys Federal Digital System (US Legislation)**
  - [http://www.gpo.gov/fdsys/](http://www.gpo.gov/fdsys/)
  - Provides federal legislative materials, including bills, committee reports, and the Congressional Record. Use it to update code sections obtained from the Office of the Law Revision Counsel

- **California Legislation**
  - [http://www.leginfo.ca.gov](http://www.leginfo.ca.gov)

- **Code of Federal Regulations**
  - Provides pdf copies from 1996 to current
Primary Law – State Locator

- **Cornell LII**
  - [http://www.law.cornell.edu/states/index.html](http://www.law.cornell.edu/states/index.html)
  - Access to primary materials from the 50 states, plus Uniform laws

- **Washlaw Web**
  - [http://www.washlaw.edu/](http://www.washlaw.edu/)
  - Detailed jump page to state law and information
Uniform Laws by State

• Commercial Code Locator by State:
  http://www.law.cornell.edu/uniform/ucc.html
  California – Secs. 2101 to 2801 Commercial Code

• American Law Sources Online
  – United States – Uniform Laws and Model Acts
    – http://www.lawsOURCE.com/also/usa.cgi?usm#M
Commercial Laws – Federal Statutes

• Foreign Sovereign Immunities Act of 1976 (FSIA)
  – 28 USC Secs. 1330, 1332(a)(2) & (4), 1441(d), 1602-1611 (1976)

Convention on the Recognition and Enforcement of Foreign Arbitral Awards
  9 USC Secs 201-208

Inter-American Convention on International Commercial Arbitration
  9USC Secs. 301-307
Federal Jurisdiction

• **28 USC § 1331 - Federal question**
  – The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

  28 USC § 1332 - Diversity of citizenship; amount in controversy; costs

• (a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between—
  (1) citizens of different States;

  (2) citizens of a State and citizens or subjects of a foreign state;

  (3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and

  (4) a foreign state, defined in section 1603 (a) of this title, as plaintiff and citizens of a State or of different States.
Jurisdictional “Due Process” tests

• Does the party have sufficient “minimum contacts”, i.e. meaningful contacts, ties, or relations to a jurisdiction.
  – Restatement (Third) of Foreign Relations Law, Secs. 421 & 403. (Persuasive Authority)
Article Databases -

- Legal Trac – Citations, some full-text
- HeinOnline – journal articles, full-text pdf
- Index to Foreign Legal Periodicals, 1985-, Citations
- Kluwer Law International Journal Library, full-text
- LexisNexis Academic – US Law
- Oxford Journals
LexisNexis Academic
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<th>#</th>
<th>Title</th>
<th>Source</th>
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<td>1</td>
<td>Brazil, Where Oil and Women Mix Powerfully</td>
<td>The New York Times, April 11, 2012 Wednesday, Section F; Column 0; Energy; Pg. 9, 1461 words</td>
<td>April 11, 2012</td>
<td>1461</td>
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<td>Interview with Paulo Roberto Costa, Chief downstream officer, Petrobras</td>
<td>Chemical Week, March 26, 2012, A GLOBAL BUSINESS REPORTS PUBLICATION, PRESENTED WITH IH 28, 593 words</td>
<td>March 26, 2012</td>
<td>593</td>
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<td>3</td>
<td>Petrobras Using FPSO Vessel to Exploit Field in Deepwater Gulf</td>
<td>Natural Gas Week, March 12, 2012, REGIONAL MARKET ROUNDUP, 378 words</td>
<td>March 12, 2012</td>
<td>378</td>
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<td>5</td>
<td>Brazil's Petrobras names first female CEO; Women rise in Latin America: the Petrobras board meets</td>
<td>The Christian Science Monitor, February 9, 2012 Thursday, 870 words, Sara Miller Llana Staff writer</td>
<td>February 9, 2012</td>
<td>870</td>
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<td>7</td>
<td>Petrobras offshore well in Santos Basin shut after leak</td>
<td>Platts Oilgram Price Report, February 1, 2012 Wednesday, NEWS, 490 words, Dom Phillips</td>
<td>February 1, 2012</td>
<td>490</td>
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<tr>
<td>8</td>
<td>Petrobras renegotiates rig contracts, sells Gas Brasiliano stake</td>
<td>Project Finance, February 2012, 215 words</td>
<td>February 2012</td>
<td>215</td>
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LexisNexis Academic
Search Cases – Brazil and contract


4. PANAMA PROCESSES, S.A. v. CITIES SERV. CO., No. 71,598, Supreme Court of Oklahoma, 1990 OK 66; 796 P.2d 276; 1990 OK LEXIS 84; 61 O.B.A.J. 1934, July 17, 1990, Filed
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LexisNexis Academic
Shepards
LexisNexis Shepards

Shepard's® Citations

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Enter a citation to retrieve prior and subsequent history and all citing references.

Enter Citation 192 F.3d 240  Citation Formats  Check

SHEPARD'S SUMMARY

No subsequent appellate history. Prior history available.

Citing References:

Cautionary Analyses:
- Distinguished (1)

Positive Analyses:
- Followed (4)

Neutral Analyses:
- Dissenting Op. (2)

Other Sources:
- Law Reviews (18), Treatises (8), Court Documents (63)

LexisNexis Headnotes:
- HN2 (11), HN3 (3), HN4 (29), HN5 (20), HN6 (26), HN7 (2), HN8 (1)
Foreign and International General Resources

• **Cornell Foreign and International Selected Resources**
  - [http://library2.lawschool.cornell.edu/ForeignLawGuide/default.aspx](http://library2.lawschool.cornell.edu/ForeignLawGuide/default.aspx)
  - Directory to extensive set of foreign and international law on the web, including the United Nations and regional organizations

• **World Legal Information Institute**
  - [http://www.worldlii.org/](http://www.worldlii.org/)
  - Access to primary and secondary materials from numerous countries

• **Globalex**
  - [http://www.nyulawglobal.org/globalex/](http://www.nyulawglobal.org/globalex/)
  - Extensive set of guides to international, foreign, and comparative legal research.
International Arbitral Institutions

American Arbitration Association: International Centre for Dispute Resolution
  http://www.adr.org/

International Chamber of Commerce (ICC)
  http://www.iccwbo.org/

London Court of International Arbitration
  http://www.lcia.org/

ICSID – International Centre for Settlement of Investment Disputes
  http://icsid.worldbank.org/ICSID/Index.jsp
International Organization Resources on Arbitration

• American Society of International Law
  – International Commercial Arbitration/EISIL

• Pace Law School: CISG Database
  – The Database is a collaborative effort between the Institute of International Commercial Law and the [Pace Law Library](http://www.cisl.law.pace.edu/cisl/guides.html). For guidance using this database, see [Guide to the Pace Database on the CISG and International Commercial Law](http://www.cisl.law.pace.edu/cisl/guides.html). The Electronic Library now contains 9,000 bibliography citations, over 2,600 cases, and over 1,400 full texts of commentaries, monographs and books on the CISG and related subjects.
International Commercial Arbitration
Conventions ICA

• Convention on the Recognition and Enforcement of Foreign Arbitral Awards, also known as the "New York Arbitration Convention" or the "New York Convention,
  – www.newyorkconvention.org
  – Brazil ratified.
  – Deals with Validity of the Agreement and Enforcement of the Arbitral Award

ICSID Convention
Impartial international forum to facilitate legal disputes resolution through conciliation or arbitration procedures
http://icsid.worldbank.org/ICSID/Index.jsp
  Brazil not ratified.


CISG
  Brazil not ratified. But currently under Legislative review in Brazil ‘s Legislature
• XI. Arbitration Rules
• The following is a non-exhaustive list of ICA rules by institution.
• ICSID Convention, Regulations and Rules
• LCIA Arbitration Rules
• ICC Dispute Resolution Rules
• UNCITRAL Rules
• Permanent Court of Arbitration Rules
• AAA International Arbitration Rules
• IBA Rules on the Taking of Evidence in International Arbitration
Court Structure


These materials provide basic information and stimulate critical thinking about the structure and function of the courts as well as some of the precedent-setting decisions that have an impact on modern life.

- Court Structure
- Fast Facts
- Understanding the Federal Courts
- Law-Related Web Sites
Court System

• The Federal Court System in the United States: An Introduction for Judges and Judicial Administrators in other Countries.
# The United States Federal Courts

<table>
<thead>
<tr>
<th>Structure of Federal Courts</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Supreme Court</strong></td>
</tr>
<tr>
<td><strong>Appellate Courts</strong></td>
</tr>
<tr>
<td>U.S. Courts of Appeals</td>
</tr>
<tr>
<td>12 Regional Circuit Courts of Appeals</td>
</tr>
<tr>
<td>1 U.S. Court of Appeals for the Federal Circuit</td>
</tr>
<tr>
<td><strong>District Courts</strong></td>
</tr>
<tr>
<td>U.S. District Courts</td>
</tr>
<tr>
<td>94 Judicial Districts</td>
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<tr>
<td>U.S. Bankruptcy Courts</td>
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<tr>
<td>U.S. Court of International Trade</td>
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<tr>
<td>U.S. Court of Federal Claims</td>
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<tr>
<td><strong>Federal Courts and Other Entities Outside the Judicial Branch</strong></td>
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<tr>
<td>Military Courts (Trial and Appellate)</td>
</tr>
<tr>
<td>Court of Veteran's Appeals</td>
</tr>
<tr>
<td>U.S. Tax Court</td>
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<tr>
<td>Federal administrative agencies and boards</td>
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</tbody>
</table>
FEDERAL COURTS & WHERE THE CASES ARE PUBLISHED

United States Supreme Court
(Court of last resort)

Federal Circuit Courts Of Appeals
(intermediate appellate courts)

Federal District Courts
(trial level courts)

United States Supreme Court Reports (Official)
Supreme Court Reports Lawyers Edition, U.S.
Supreme Court Reporter

Federal Reporter
or Federal Appendix
(unpublished cases)

Federal Supplement
CALIFORNIA COURTS & WHERE THE CASES ARE PUBLISHED

California Supreme Court

California Court of Appeals (Districts 1-6)

County Superior Court
Small Claims Court (regional)

California Reports
(Official)
California Reporter
Pacific Reporter

California Appellate Reports (Official)
California Reporter
Pacific Reporter

Not reported
How to Read a Citation

CASES

Court cases are often published by more than one publisher, so there can be more than one citation appearing after the name of the case.

Usually the first citation given is to the official reports for a particular court, and is called the “official citation”. This is the publisher with which the court has contracted to publish cases. Other publishers may produce sets of court cases as well. These are the "unofficial " or "parallel" citations. Generally when a case is cited, both official and unofficial citations are used, since the writer cannot tell what set or reporters the reader may have.

In the Federal system, the official reporter for the Supreme Court is the United States Reports (or U.S.C). Unofficial reporters are the Supreme Court Reports (or S.Ct.) or the Lawyer's Edition (L.Ed.).

In California the official reports for the California Supreme Court cases are published in the California Reports (1st - 4th series) and the Courts of Appeal cases in California Appellate Reports (1st - 4th series).

Sample Federal Case Cite: Official reporter and parallel citations

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<th>Names of the parties</th>
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<th>Parallel citations</th>
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<td>Page 310</td>
<td>Supreme Court Reports</td>
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Sample California Case Cite—Official reporter and parallel citations

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<tr>
<td><em>Daniel v. Weigum</em></td>
<td>190 Cal. App. 2d 620</td>
<td>16 Cal. Rptr. 27 (1964)</td>
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<tr>
<td>Volume 190</td>
<td>Page 620</td>
<td>California Reporter 27 Date of Opinion</td>
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<tr>
<td>California Appellate Reports, 2nd Series</td>
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</table>

**STATUTES OR CODES**

There are two sets of the California Codes: West and Deering's. Each code section has identical wording in either publication; but each publisher provides different annotations to the code sections.


**Sample citations for California Codes and U.S. Codes:**


Copyright dates or edition years are included in code citations. The dates will vary by the publication.
**CALIFORNIA CODES**

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<th>Business and Professions</th>
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<td>Civil Procedure</td>
<td>Civ. Proc. or CCP</td>
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<td>Mil. &amp; Vet.</td>
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<td>Penal or P.C.</td>
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<td>Public Contact</td>
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<td>Revenue and Taxation</td>
<td>Rev. &amp; Tax</td>
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<td>Streets and Highways</td>
<td>Sts. &amp; High.</td>
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<td>Unemployment Insurance</td>
<td>Unemp. Ins.</td>
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