



EuropaInstitut

AN DER UNIVERSITÄT ZÜRICH

RECHT BERATUNG WEITERBILDUNG

Introduction to US business law

XI Legal Education / US attorney-at-law Repetition / Exam / Questions

FS 2024

Prof. Dr. Andreas Kellerhals

Reptition last time

- > Size matters
- > Positive trade relations
- > CH big investor in USA (6th)
- > CH as headquarters for US firms
- > Pro/cons USA
- > Sanctions
- > Free trade agreement
- > Issues
 - > Banking secret
 - > Money laundering
 - > Agriculture

Law Schools

I. Law Schools (1)

- > Roughly 200 (recognized by ABA)
 - > First one around Revolution
 - > Connecticut
 - > After 3 years – JD
 - > Law schools and diversity
 - > Scholarships
-

I. Law Schools (2)

> Ranking

- > Disputed but important: US news & world report
 - > U.S. News currently uses 15 independent data items assembled from various data sources. These 15 data items are first combined into 7 variables:
 - > Academic reputation (1 item),
 - > retention (2 items),
 - > faculty resources (5 items),
 - > student selectivity (4 items),
 - > financial resources (2 items),
 - > Value added (1 item derived from data already included in other variables),
 - > and alumni giving rate (1 item)
-

One day at law school

> https://www.youtube.com/watch?v=risHT_ccvWM

First-Tier Law Schools (2019; ranked 2018)

Rank	School name	Tuition and fees	Enrollment (full-time)
#1	Yale University New Haven, CT	\$62,170 (full-time)	625
#2	Stanford University Stanford, CA	\$60,270 (full-time)	565
#3	Harvard University Cambridge, MA	\$62,792 (full-time)	1,757
#4	University of Chicago Chicago, IL	\$62,865 (full-time)	597
#5	Columbia University New York, NY	\$67,564 (full-time)	1,264
#6	New York University New York, NY	\$63,986 (full-time)	1,364
#7	University of Pennsylvania Philadelphia, PA	\$63,364 (full-time)	736

First-Tier Law Schools (2019; ranked 2018)

#8	University of Michigan—Ann Arbor Ann Arbor, MI	\$57,262 (in-state, full-time); \$60,508 (out-of-state, full-time)	931
#9 Tie	University of California—Berkeley Berkeley, CA	\$49,364 (in-state, full-time); \$53,315 (out-of-state, full-time)	936
#9 Tie	University of Virginia Charlottesville, VA	\$58,300 (in-state, full-time); \$61,300 (out-of-state, full-time)	912
#11 Tie	Duke University Durham, NC	\$62,247 (full-time)	666
#11 Tie	Northwestern University (Pritzker) Chicago, IL	\$62,084 (full-time)	657
#13	Cornell University Ithaca, NY	\$63,327 (full-time)	597
#14	Georgetown University Washington, DC	\$59,850 (full-time)	1,749
#15	University of Texas—Austin Austin, TX	\$35,015 (in-state, full-time); \$51,995 (out-of-state, full-time)	889
#16	University of California—Los Angeles Los Angeles, CA	\$45,657 (in-state, full-time); \$52,151 (out-of-state, full-time)	942

First-Tier Law Schools (2019; ranked 2018)

#17	Vanderbilt University Nashville, TN	\$55,083 (full-time)	557
#18	Washington University in St. Louis St. Louis, MO	\$55,423 (full-time)	677
#19	University of Southern California (Gould) Los Angeles, CA	\$62,711 (full-time)	624
#20	University of Minnesota Minneapolis, MN	\$44,066 (in-state, full-time); \$52,586 (out-of-state, full-time)	558
#21	University of California—Irvine Irvine, CA	\$45,155 (in-state, full-time); \$51,649 (out-of-state, full-time)	420
#22 Tie	Boston University Boston, MA	\$53,236 (full-time)	719
#22 Tie	Emory University Atlanta, GA	\$55,116 (full-time)	853
#24 Tie	George Washington University Washington, DC	\$58,520 (full-time)	1,296
#24 Tie	University of Notre Dame Notre Dame, IN	\$56,292 (full-time)	600

I. Curriculum Law School (1)

- > Law Schools usually offer a three-year, full-time program leading to the Juris Doctor (JD) degree.
 - > Students take 29 credit hours of required courses during the first year of the JD program.
 - > During the second and third years of the JD program, students take one 3-credit hour required course entitled Legal Profession, and design their own courses of study by selecting electives for the remaining 56 credit hours required for the degree.
-

I. Curriculum Law School (1)

Frist year mandatory courses:

- > Civil Procedure
- > Constitutional Law I
- > Contracts I
- > Contracts II
- > Criminal Law
- > Legal Research & Writing
- > Obligations I
- > Property, Civil Law
- > Property, Common Law
- > Torts

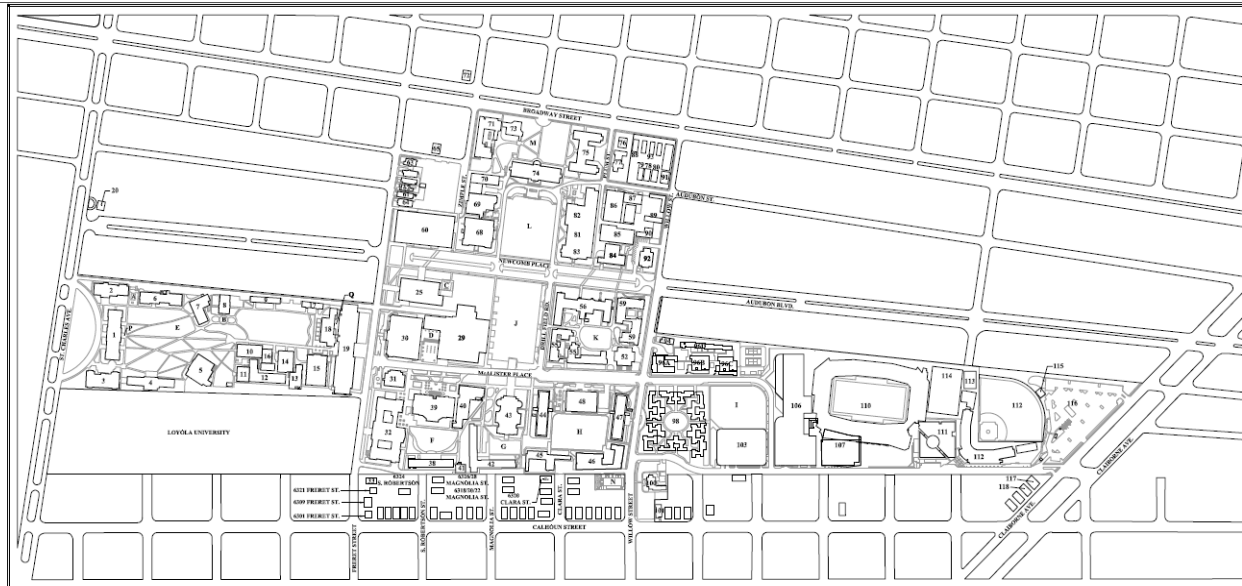
Second and third years courses: free!

I. Life in a US law school

- > Campus Universities
 - > most
- > Lectures – studying in library – sports – party
- > Security
- > Live on a island?

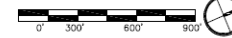


Campus map Tulane



- | | | | | | |
|--|--|--|---|---|-----------------------------------|
| 61 • GIBSON HALL | 67 • ALGER FORSTER HALL | 66 • LALLAGE FRAGLE WALL RESIDENTIAL COLLEGE | 70 • ELLENORRA F. McWILLIAMS HALL | 88 • 1115 BROADWAY ST. | 112 • TURCHIN STADIUM |
| 62 • TULLY BRIDGEMAN HALL | 68 • SHERET & SAN DBALLOR | 67 • PHELPS HALL | 71 • BARBARA GORDON/BLACK HOUSE | 89 • FACILITIES SERVICES GARAGE | 113 • TONY BOVO BASEBALL PAVILION |
| 63 • DOWNES HALL | 69 • PERCIVAL STEEN HALL | 68 • BIRNEY COMBONS | 72 • 1038 BROADWAY (VACANT LOT) | 90 • GORDON BLDG. | 114 • BARNEY MENZIE FIELD |
| 64 • RICHARDSON MEMORIAL HALL | 70 • PRESIDENTY HOUSE | 69 • WELLS HALL | 73 • JENNIFER MEMORIAL CHAPEL | 91 • 1131 ALDUBRN ST. | 115 • WARREN QUAD |
| 65 • RICHARDSON BUILDING | 71 • JOSEPH MEREDICK JONES HALL | 70 • KATZBERG & WILLIAM MAYER RESIDENCES | 74 • NEWCOMB HALL | 92 • STUDENT HEALTH CENTER | 116 • BROWN PARKING LOT |
| 66 • NORMAN MAYER BUILDING | 72 • LAW/MERCEDES CENTER FOR UNIV. LIFE | 71 • WARREN HOUSE | 75 • NEWCOMB CHILD CARE CENTER, 1105 BROADWAY ST. | 93 • 1121 BROADWAY ST. | 117 • 822 & CLABORNE AVE. |
| 67 • EDWARD FREERIE HALL | 73 • AVON B. FOULMAN ARENA IN BRYAN FIELDHOUSE | 72 • WATKINSHED HALL | 76 • NEWCOMB RESIDENT SCHOOL, 700 PLEAS ST. | 94 • 4061 WILLOW ST. | 118 • 822 & CLABORNE AVE. |
| 68 • ROBERT C. COLE HALL | 74 • NAVY ROTC BUILDING | 73 • SPONSORED PROJECTS ADMIN. & CONTROLLERS OFFICE, 100 FREERIE ST. | 77 • 1126 ALDUBRN ST. | 95 • BROWN RESIDENCES | A • PERSON PATIO |
| 69 • SOCIAL WORK BUILDING | 75 • BETHSARAH HALL | 74 • 7031 FREERIE ST. | 78 • 1116 & 1126 ALDUBRN ST. | 96 • ALDUBRN FCOS, 510 WILLOW ST. | B • WARREN PATIO |
| 70 • STANLEY THOMAS HALL | 76 • LAW ANNEX, 5125 FREERIE ST. | 75 • 6030 MEDIA PRODUCTION, LOGISTICS, AND TEACHER PREPARATION AND CERTIF., 1041 FREERIE ST. | 79 • 1131 & 1134 ALDUBRN ST. | 97 • ANNUAL FUNDS, 2518 CALHOUN ST. | C • CASBATT COURTYARD |
| 71 • WALTER E. MERRILL HALL | 77 • MONROE HALL | 76 • 7022 FREERIE ST. | 80 • NEWCOMB ART GALLERY | 98 • CONNELL COMPLEX, PARKING GARAGE | D • PARKER PARK |
| 72 • SCIENCE AND ENGINEERING LAB COMPLEX (MECHANICAL SERVICES) | 78 • GOLDEN/WOLDBERG HALL I | 77 • 6511 ACCOUNTING OFFICE, 100 ALDUBRN ST. | 81 • WOLDBERG ART CENTER | 99 • REEVE STUDENT RECREATION CENTER | E • GIBSON QUAD |
| 73 • CONNELL AND PAUL FLOWERS HALL | 79 • GOLDEN/WOLDBERG HALL II | 78 • 6910 HALL | 82 • FACILITIES SERVICES BUILDING | 100 • POWER PLANT BUILDING | F • HENDER PATIO |
| 74 • CHEMICAL ENGINEERING | 80 • TELECOMMUNICATIONS | 79 • 6900 HALL | 83 • POWER PLANT BUILDING | 87 • LOGISTICS/RECEIVING/SHIPPING BUILDING & POWER PLANT BUILDING EXPANSION, 1106 ALDUBRN ST. | G • MERRISON QUAD |
| 75 • SCIENCE AND ENGINEERING LAB COMPLEX | 81 • SHARP HALL | 80 • DIXON PERFORMING ARTS CENTER | | | H • SHARP QUAD |
| 76 • BOXER CENTER FOR ENERGY & BIOTECHNOLOGY | 82 • MAULSTER AUDITORIUM | | | | I • BROWN FIELD |
| 77 • SCIENCE AND ENGINEERING FACILITIES | 83 • DEPT. HALL | | | | J • LUC QUAD |
| | 84 • PATTERSON HOUSE | | | | |

Tulane University Uptown Campus
November, 2015



<http://tulane.edu/sites/tulane/files/-November-2015-Campus-Map.pdf>

II. Legal Carrier

- > Which law school?
 - > Grades
 - > Curves
 - > Among best 5% of class/year
 - > Law journal editor
 - > Carrier service
 - > Summer internship
 - > Clerkship for a federal court
-

Bar exam in New York (1)

<http://www.nybarexam.org/>

Attorney at law (1)

- > The American Bar
 - > Most lawyers in the world are in the US
 - > 1 : 250 Americans
 - > Each year about 40'000 new graduates
 - > Reputation
-



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Attorney at law (2)

- > Bar exam
 - > 4 years college
 - > 3 years Law School
 - > State exam
 - > Good only for one state
 - > 3 days exam
 - > Bar review course (crash courses)
 - > No internship – learning by doing
-

Attorney at Law (3)

- > Switch between attorney at law, in-house counsel, judge
 - > Specialization important (Litigator, M&A, Banking, etc.)
 - > About half of American attorneys work solo or in small firms
 - > Also many mid-size firms (50 to 200 attorneys)
 - > since the 1970s, some law firms have merged to form giant firms with 1,000 attorneys or more
 - > Clifford Chance, Baker McKenzie, etc.
 - > Big law firms usually have 4 departments
 - > Litigation, corporate, tax, trust & estate
 - > Partners/associates
 - > 1 : 2
-

Attorney at Law (4)

- > Very often a whole group of lawyers is working together
 - > Research in common law more tricky
 - > Litigation in USA more demanding
 - > Pre-trial discovery
 - > Outsourcing of internal legal departments
-

Attorney at Law (5)

- > Lawyer's fees
 - > Free - usually not regulated
 - > Minimum fee regulation in Virginia was antitrust violation
 - > Either by the hour or contingency fee
 - > Business?
 - > Loser usually does not have to pay winner's legal fees
 - > In major law firms fees can be quite high
 - > Up to USD 1'500/h!!
-

Attorney at Law (6)

- > Rules of conduct
 - > Ethical rules (confidentiality, loyalty, conflicts of interests)
 - > Bar association
 - > Strict
 - > Also for inhouse lawyers
 - > Mandatory „continuing legal education“
 - > Regulation usually comes from the „Bench“ – highest state court
-

Attorney at Law (7)

- > Plaintiff lawyer – Defense (corporate) lawyer
 - > Transactional lawyers – litigators
 - > Trial – appellate attorney
-

Attorney at Law (8)

- > There are currently about 760,000 practicing lawyers in USA
 - > US legal system does not distinguish between lawyers who plead in court and those who do not
 - > Unlike Britain, which distinguishes between solicitors and barristers
 - > there is no delegation of routine work to notaries public
 - > Attorneys may use the post-nominal letters **Esq.**
-

Largest US Law Firms (turnover)

1.	Kirkland & Ellis	3'025	USA
2.	Latham & Watkins	3'000	New York
3.	DLA Piper	4'028	Chicago
4.	Baker & McKenzie	4'795	Chicago
5.	Skadden	1'644	New York
6.	Dentons	12'064	China
7.	White & Case	2'464	New York
8.	Sidley Austin	1'893	Chicago
9.	Clifford Chance	2'585	New York

(largest Swiss law firm: Lenz & Staehelin ~180)

Law firm (1)

Arrangements

- > Sole proprietorship
 - > General partnership
 - > Profession corporations
 - > Limited liability company
 - > Professional association
 - > Limited liability partnership (LLP)
-

Law firm (2)

- > Typically organized around partners
 - > Making partner is very prestigious
 - > Tough competition
 - > Income
 - > Equity/non-equity partner
 - > Oldest one: Cadwalader, Wickersham & Taft (founded 1792 in NY)
 - > Of counsel
-

Legal Research

- > Case research more important than under civil law regime
 - > Shepardizing
 - > West law
 - > Lexis nexis
 - > Leading provider
-

LL.M. in the USA

- > What is this?
 - > Where to go?
 - > When?
 - > Costs?
 - > Financial aids
 - > Does it make sense?
-

General Repetition

Repetition Introduction

- > Introduction
 - > History of the USA
 - > Declaration of independence
 - > Sister republics
 - > Civil law
 - > Common Law/Civil Law
 - > Pierson v. Post
 - > 3 Cai. R. 175 (N.Y. Sup. Ct. 1805)
-

Repetition Constitutional Law

- > Declaration of Independence
 - > Founding fathers
 - > US Constitution
 - > 3 branches
 - > Checks and balances
 - > esp. Power of the Federal Courts
 - > Marbury v. Madison (1803)
 - > Impeachment (Trump)
-

Repetition Court System

- > 2 court system
 - > Federal courts (3 levels)
 - > 94 District Courts
 - > 12 Courts of Appeal
 - > Supreme Court
 - > Appointed for life
 - > State courts
 - > differences
 - > Jurisdiction
-

Repetition Civil litigation (1)

- > 1938 Federal Rules of Civil Procedure
 - > Specialities
 - > Extensive pretrial discovery
 - > Heavy reliance on live testimony (jury)
 - > Aggressive pretrial motions
 - > Class actions
 - > Punitive damages
 - > Lawyers fees (no „loser pays“ rule)
 - > What is the judge/the parties doing?
-

Repetition Civil litigation (2)

4 Stages of the Trial

1. Pleading
2. Pre-Trial
3. Trial
4. Post-Trial

Forum shopping

Repetition Contracts (1)

- > State law
 - > 1942 uniform commercial code
 - > Payne v. Stalley (Florida)
 - > Offer- acceptance – consideration
 - > Expl. Prof. Banks
 - > Agreement – contract
 - > Chapell v. Nestle (Chocolat)
 - > Carbolic smoke case (value contract)
-

Repetition Contracts (2)

- Form of contract
 - Sealed contract
 - Breach of contract
 - Remedies (damage)
 - Forum shopping
 - Drafting US contracts
 - Long
-

Repetition Corporate Law (1)

- > Corporate law is basically state law
 - > Significant differences between states
 - > Players on market are free to choose
 - > Regulatory competition
 - > Dominant state jurisdiction: Delaware
 - 50% of all US companies
 - > Why Delaware?
 - > Tax, experienced courts, sometimes no juries, computerized registration system, Manager friendly approach, etc.
-

Repetition Corporate Law (2)

- > Certain harmonization
 - > National Conference of Commissioners on Uniform State Laws – NCCUSL
 - > Relevant federal legislation
 - > Securities Act of 1933
 - > Securities Exchange Act of 1934
 - > Sarbanes-Oxley Act of 2002
 - > Dodd-Frank Act 2010
-

Repetition Corporate Law (3)

- > Forms of doing business
 - > Sole Proprietorship = EF
 - > General Partnership (GP) = KG
 - > Limited Partnership (LP) = KomG
 - > Corporation (Corp.) = AG
 - > Public/closed corporations
 - > Board of Directors = VR / officers (Management)
 - > Duty of care/liability
 - > Piercing corporate veil (ex: taxi)
 - > One man corporations possible
 - > Closed corporations (family business)
 - > Limited Liability Company (LLC) – real estate / Limited Liability Partnership (LLP) insurance for law firms
-

Gesellschaftsformen des US-amerikanischen Rechts

Gesellschaftsformen	ohne eigene Rechtspersönlichkeit (vgl Personengesellschaften)			„Zwitter“	mit eigener Rechtspersönlichkeit (vgl Kapitalgesellschaften)		
	General Partnership	Limited Partnership	Limited Liability Partnership <i>neuere Form</i>	Limited Liability Company <i>neuere Form</i>	Business Corporation (= Stock Corp.) <i>wichtigste Form</i>	Unterformen der Business Corporation	
	<i>Grundmodell</i>					Public Corporation (= Öffrechtl. Körp.)	Private Corporation (= Close Corp.)
1. Gründung	<ul style="list-style-type: none"> - 2 oder mehr Personen - nat oder jur Personen - durch schriftl, mündl oder konkl Vertrag (partnership agreement) - keine gesetzl Mindesteinlage - nicht registrierpflichtig - keine Gründungsgebühr 	<ul style="list-style-type: none"> - parallel zur General Partnership BESONDERHEIT: - registrierpflichtig iFv Gründungsurkunde in beschworener Form (sworn certificate) - Offenlegungspflicht: „L.P.“ - max 35 Gesellschafter 	<ul style="list-style-type: none"> - strenge formelle Voraussetzungen - gebührenpflichtige Registrierung - jährlicher Fortführungsantrag erforderlich - Versicherungspflicht über Höhe gesetzl Mindestdeckung - Offenlegungspflicht: „L.L.P., R.L.L.P.“ 	<ul style="list-style-type: none"> - parallel zur General Partnership BESONDERHEIT: - registrierpflichtig (filling of documents) - kein Mindestkapital - Freiberufler, Einmann - Offenlegungspflicht: „L.L.C.“ 	<ul style="list-style-type: none"> - jede beliebige Einzelperson (incorporator) - corporate book - Gesellschaftssatzung 1 (articles of incorporation / certificate of incorporation) - initial meeting (initial directors) - Gesellschaftssatzung 2 (bylaws) - Wahl des board of directors unter Bestellung von executive officers - gesetzl Mindesteinlage (capital stock) je nach Bundesstaat - Offenlegungspflicht: „Corporation/Corp., Incorporation/Inc., Limited/Ltd., Company/Co.“ 		
2.a. Rechtsquelle (Bundesgesetze) / Rechtsnatur	<ul style="list-style-type: none"> ⇒ Grundmodell - UPA 1997 - Gesamthandsvermögen - teilrechtsfähig ⇒ vgl OHG (105ff HGB) 	<ul style="list-style-type: none"> - ULPA 1916 - RULPA 1985 - Gesamthandsvermögen - teilrechtsfähig ⇒ vgl KG (161ff HGB) 	<ul style="list-style-type: none"> ⇒ neue Gesellschaftsform; für Freiberufler geschaffen - UPA 1997 - Gesamthandsvermögen - teilrechtsfähig ⇒ vgl PartG (PartGG) 	<ul style="list-style-type: none"> - ULLCA 1995 - rechtsfähig - Elemente von Personen- und Kapitalgesellschaft ⇒ vgl GmbH oder KG ohne Komplementär 	<ul style="list-style-type: none"> ⇒ wichtigste Gesellschaftsform - MBCA 1969 - RMBCA 1984 - juristische Person - rechtsfähig 	<p>daneben BESONDERHEIT:</p> <ul style="list-style-type: none"> - Publikumsgesellschaft: freie Übertragbarkeit der shareholder Anteile - geschlossene Gesellschaft: geschlossene Gesellschaftergruppe <p>→ Public Corp. iSv Öffentlich-rechtlicher Körperschaft</p>	
2.b. Kollisionsrecht	<p>a) <i>Innenverhältnis</i> §106 UPA: Sitztheorie; es gilt das Recht am Ort der Hauptverw oder des Hauptgeschäfts ABER: §106 UPA dispositiv (iM): Vereinbarung des Rechts des Gründungsstaates möglich</p> <p>b) <i>Außenverhältnis</i> allgemeines Kollisionsrecht</p>	<p>a) <i>Innenverhältnis</i> § 901 RULPA: Recht des Gründungsstaates; str, ob dispositiv</p> <p>b) <i>Außenverhältnis</i> Recht am Vornahmeort der Handlung, allgemeines Kollisionsrecht</p>	<ul style="list-style-type: none"> - nicht alle Staaten erkennen L.L.P. an; wenn doch: a) <i>Innenverhältnis</i> § 1101 UPA: Recht des Gründungsstaates b) <i>Außenverhältnis</i> allgemeines Kollisionsrecht 	<p>a) <i>Innenverhältnis</i> Recht des Gründungsstaates</p> <p>b) <i>Außenverhältnis</i> allgemeines Kollisionsrecht</p>	<p>a) <i>Innenverhältnis</i> Recht des Gründungsstaates (internal affairs rule)</p> <p>b) <i>Außenverhältnis</i> allgemeines Kollisionsrecht</p>	dito	dito

Repetition Antitrust Law (1)

- > Antitrust = competition law
 - > US first regulation (1890)
 - > reasons
 - > Extraterritorial application
 - > International coordination? (GE/Honeywell)
-

Repetition Antitrust Law (2)

- > Federal regulations
 - > Sherman Act 1890
 - > Cartels
 - > Monopoly (abuse of dominant position)
 - > Clayton Act (1914)
 - > Merger Control
 - > Private law suits
 - > Federal Trade Commission Act (1914)
 - > Second enforcement authority
 - > Unfair competition
-

Repetition Antitrust Law (3)

- > Rule of Law vs. Per se prohibition
- > Influence by courts and by administration
- > International cooperation
- > Private enforcement
 - > Tribble damage

Repetition Business regulation

> Business friendly regulation

1. US Business Organizations (lobbies)
2. Tax Law
3. Securities Regulations
4. Committee on Foreign Investment in the United States (CFIUS)
5. Intellectual Property Rights
6. Trade Sanctions
7. Criminal Law – esp. FCPA
8. Money Laundering

Repetition Business Relations CH-USA

- > Size matters
- > Swiss-US business/trade relations good
- > significance
- > Opportunities
- > Relevance of CH as a trading partner for the US
- > Challenges
- > Free Trade Agreement?

Repetition US attorney/US law schools

- > Legal studies
- > Importance of relevant law school
- > Bar admission
- > US legal practice
- > Legal form of organization

Exam

Exam (1)

> Regular exam

- > 26.6.
- > 120 min.
- > Open book
- > ppp, written notes
- > Covering all issues discussed during lectures

> Exchange students

- > 5.6./6.6.
- > Oral
- > EIZ

Exam (2)

> What kind of questions?

Questions?

Thank you very much for attending this lecture!

I hope you liked the classes!

Good luck for the exams !

All the very best!
