

Jane K. Winn
University of Washington School of Law
11 March 2017 draft

Global Electronic Commerce Law

2017 Course Outline

Guanghua Law School, Zhejiang University, Hangzhou China

This is a short course designed to help law students studying outside the U.S. learn what impact globalization and technological innovation are having on the kind of traditional national commercial laws normally taught in law schools around the world. Examples from four different legal systems—United States, European Union, People’s Republic of China and India—will be used to illustrate the impact of globalization and technological innovation on national commercial laws.

Two credits, 32 contact hours

Textbook: course reader will be provided

Final exam: 4 short essay questions similar to practice exam questions discussed in class, students can choose any 2 questions out of 4 to answer

Course Syllabus

Topic 1: What is Globalization?.....	2
Topic 2: Technology and Business of E-Commerce	2
Topic 3: Regulatory Competition and Regulatory Culture.....	3
Topic 4: Electronic Contract Formation	3
Topic 5: US Electronic Contract Formation Cases.....	3
Topic 6: European Unfair Contract Terms Law	3
Topic 7: Electronic Payments and FinTech	4
Topic 8: Information Privacy	4
Topic 9: Global E-Commerce Law Strategies for Regulators and Lawyers	4

Learning Objectives:

- Recognize that electronic commerce is a combination of law, business strategy and technology innovation
- Recognize how international law, national law, governance and global legal pluralism can be sources of electronic commerce law
- Evaluate the likely success or failure of different national strategies based on different legal cultures for responding to the challenges of globalization and technological innovation with different kinds of commercial law reform
- Apply the six themes of the course in order to analyze new challenges facing national legal systems as a result of issues related to globalization, technological innovation and commercial law:
 1. Liberal democratic legal systems separate social regulation from economic regulation but global governance does not
 2. Advanced economies launched globalization for their own benefit, but now the tide has turned against them
 3. The pace of technological innovation is speeding up in areas of human life most affected by “smart machines”
 4. We know how to solve the problems created by globalization (continuous improvement) but we don’t use it consistently because it is so hard to do correctly.
 5. Global governance does not want to destroy national governments because it requires them to survive, but national governments are only the “first among equals” now.
 6. It is easy to overestimate the impact of radical innovation in the short term and to underestimate the impact of incremental innovation in the long term.

Topic 1: What is Globalization?

History of Western colonialism then internationalization then globalization

Impact of international commercial law on national markets

Impact of international economic law on national markets

Legal pluralism, private self-regulation and governance as sources of global e-commerce law

Economic strategies of United States, European Union & China for global competitiveness

Practice Exam Question 1

Topic 2: Technology and Business of E-Commerce

Business use of computers, networks, platforms

Smart machines: big data analytics; artificial intelligence/machine learning; mobile channel; internet of things; cloud computing; social production

Law & economics basic ideas: principal agent, cheapest cost avoider

Different types of innovation

Continuous improvement/evidence based problem solving
Economics of standards and networks: first mover advantage, lock-in
Economics of platforms, should competition law apply?
Practice Exam Question 2

Topic 3: Regulatory Competition and Regulatory Culture

Soft law versus Hard Law
What is regulatory competition?
Lawyer as social engineer, transaction cost engineer or governance engineer
Regulatory culture, innovation and globalization policies of:
 United States
 European Union
 China
 India

Jane K. Winn and Angela Zhang, China's Golden Tax Project: A Technological Strategy for Reducing VAT Fraud, 2010

Practice Exam Question 3

Topic 4: Electronic Contract Formation

UNCITRAL Model E-Commerce Law
UNCITRAL Model E-Signature Law
Jane K. Winn and Yuping Song, Can China Promote Electronic Commerce through Law Reform? Some Preliminary Case Study Evidence, 2007
Practice Exam Question 4

Topic 5: US Electronic Contract Formation Cases

Corinthian v. Lederle (1989)
Hill v. Gateway (1997)
Specht v. Netscape (2002)
Cullinane v. Uber (2016)
Practice Exam Question 5

Topic 6: European Unfair Contract Terms Law

Winn & Webber, EU Unfair Contract Terms Law

Brower v. Gateway (1998)

Practice Exam Question 6

Topic 7: Electronic Payments and FinTech

Jane K. Winn, Innovation Governance Competition: Payment Modernization Strategies in India and China 2015

Innovation in financial services versus FinTech

Bitcoin, blockchain and distributed ledger

Practice Exam Question 7

Topic 8: Information Privacy

US Information Privacy Law (weak)

EU information Privacy Law (strong)

PRC Information Privacy Law (social credit reporting system)

Practice Exam Question 8

Topic 9: Global E-Commerce Law Strategies for Regulators and Lawyers

China: Alibaba/Ant Financial, Tencent, Baidu, Xiaomi, Haier

U.S.: Google, Apple, Facebook, Amazon, Microsoft, Uber, AirBnB

Europe: Digital Single Market/Competition law to block expansion of platforms, mandate innovation

RegTech: Impact of globalization and technological innovation on the legal profession

Practice Exam Question 9