

# Foreign Corrupt Practices Act

Law 624  
Spring 2020

Online

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## **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 online 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;

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**

The assigned text is "The Foreign Corrupt Practices Act in a New Era," Mike Koehler (Edward Elgar Publishing, 2014).

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; and (ii) 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.

Recorded class lectures will also assist students accomplish the learning objectives and students will be provided instructions for how to access the lectures. The recorded lectures are provided to students for use in this class only and may not be used for any other purpose or disseminated to others in any form. Doing so, shall be deemed a violation of the *School of Law Honor Code*.

To best achieve the learning objectives for this course, students are also strongly encouraged to periodically visit the FCPA Professor website ([www.fcprofessor.com](http://www.fcprofessor.com)).

### **Course Logistics**

Each week during the semester, students will receive an e-mail by 5 p.m. on Sunday with reading assignments, assigned lectures, and discussion questions that will be due the following Sunday by 5 p.m. As indicated below, timely completion of the weekly discussion questions (as well as quality of answers) is a meaningful portion of the final grade.

### **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.

### **Grading and Learning Assessment Opportunities**

Your final grade will be based on the following:

- 15% Timely Completion and Quality of Answers to Weekly Discussion Questions
- 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

- 50% Comprehensive Final Exam (closed book, no notes) to be administered online during the final exam period

### **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/>. 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](mailto:siucares@siu.edu), <http://salukicare.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](mailto: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)*

<u>Topic</u>	<u>Reading / Task</u>
Course Overview	Text (pgs. v – xxiii)
What is Bribery and How Best To Address It?	Discussion Questions
The Story of the FCPA	Text (pgs. 1-45) Lecture "The Story of the FCPA" Discussion Questions
FCPA Foundational Knowledge	Text (pgs. 46-78; 304-311) Lecture "The Root Causes of FCPA Scrutiny and Enforcement" Discussion Questions
The FCPA's Anti-Bribery Provisions	Text (pgs. 79-135) In the Matter of BNY Mellon Corp.* U.S. v. Esquenazi* U.S. v. Kay* Third Party Supplement* Lecture "The Anti-Bribery Provisions and Related Compliance Tips" Discussion Questions

The FCPA's Books and Records and Internal Controls Provisions	Text (pgs. 136-168; 316-330)  Lecture "The Books and Records and Internal Controls Provisions and Related Compliance Tips"
Skills Assignment #1	
FCPA Enforcement (Corporate and Individual)	Text (pgs. 169-177; 182-187; 193-233)  DOJ Principles of Prosecution of Business Organizations*  DOJ's FCPA Corporate Enforcement Policy*  Sample Resolution Documents*  A Q&A With George McLean*  Carlos Rodriguez: My Dad, My Hero*  Lecture "FCPA Enforcement"
Reasons for the General Upward Trend in FCPA Enforcement	Text (pgs. 234-260)  The Bribery Racket*  FCPA Inc: The Business of Bribery*  Lecture "FCPA Enforcement"
Skills Assignment #2	
Beyond the FCPA	Travel Act Reading*  U.K. Bribery Act Reading*
FCPA Ripples	Text (pgs. 178-182; 187-193; 260-303)  Lecture "FCPA Ripples"

Skills Assignment #3	
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