

Foreign Corrupt Practices Act

Law 624

Spring 2021

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 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 motivating 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 and related risk management strategies 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; and

(vi) analyzing other legal and policy issues associated with the FCPA.

While this course is about a specific statute and related issues, 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 "Strategies for Minimizing Risk Under the Foreign Corrupt Practices Act and Related Laws" Mike Koehler (Edward Elgar Publishing, 2018).

In addition to text reading, assigned material may also include supplemental readings distributed to the class. 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 Law School Honor Code.**

To best achieve the learning objectives for this course, students are also strongly encouraged to periodically visit the FCPA Professor website (www.fcpaprofessor.com).

Course Logistics

Each week during the semester, students will receive an e-mail by 5 p.m. on Sunday (beginning on Sunday, Jan. 17th) with reading assignments, assigned lectures, and discussion questions that will be due the following Sunday by 9 p.m. As indicated below, timely completion of the weekly discussion questions (as well as quality of answers) are meaningful portions of the final grade.

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
Critique of an FCPA law review article and podcast
- 15% Skills Assignment
Risk Assessment
- 65% Comprehensive Final Exam (open book, open notes) to be administered online during the final exam period

Course Overview

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

(* Denotes Supplemental Reading)

<u>Topic</u>	<u>Reading / Lecture / Task</u>
Introduction and Overview What is Bribery and How Best To Address It?	Text (pgs. 1-15) Discussion Questions
The Story of the FCPA	"The Story of the FCPA"* Lecture "The Story of the FCPA" Discussion Questions
FCPA Foundational Knowledge	Text Chapter 1 Lecture "The Root Causes of FCPA Scrutiny" Lecture "FCPA Ripples" Discussion Questions
The FCPA's Core Anti-Bribery Provisions and Related Risk Management Strategies	Text Chapter 2 Lecture "The Anti-Bribery Provisions and Related Compliance Tips" (Beginning – 1 hour 32 minutes; 2 hours 14 minutes – 2 hours 26 minutes) Esquenazi Podcast* Discussion Questions
A Focus on Third Parties and Related Risk Management Strategies	Text Chapter 3 Lecture "The Anti-Bribery Provisions and Related Compliance Tips" (1 hour 32 minutes – 2 hours 14 minutes)

	Discussion Questions
The FCPA's Exception, Affirmative Defenses, and Related Risk Management Strategies	Text Chapter 4 Lecture "The Anti-Bribery Provisions and Related Compliance Tips" (2 hours 25 minutes – End) Discussion Questions
The FCPA's Books and Records and Internal Controls Provisions	Text Chapter 5 Lecture "The Books and Records and Internal Controls Provisions and Related Compliance Tips" Discussion Questions
FCPA Enforcement	DOJ Principles of Prosecution of Business Organizations* DOJ FCPA Corporate Enforcement Policy* Sample Resolution Documents* Lecture "FCPA Enforcement" Discussion Questions
Skills Assignment	Critique of FCPA law review article and podcast
Skills Assignment	Risk Assessment

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