This year’s class will be quite small and we will discuss how the class is to be structured at our first session. Please have some ideas ready about what types of things interest you the most in this field.

There will be a TWEN site for this class, but it will not be activated until we have decided on the format of the class, which will affect the syllabus. Please see the attached pages for the first day’s reading, questions and materials.


1/16 **Introduction to Transnational Litigation**

   Also see the daily questions (attached)
NB: No advocate would walk into a deposition or trial to examine a witness without knowing what points needed to be discussed. While that advocate would be open to discovering new ideas and new facts as the discussion progressed – particularly in a deposition – both sides (the questioning attorney and the defending attorney) generally know the area that will be covered in the course of the examination.

Since we’re in a class on litigation, I believe we should proceed in a similar vein. While the class is free to take the discussion into a new and unanticipated direction when in the heat of the moment, the interaction and debate can proceed on a higher level if everyone prepares similar material with similar goals.

The following questions will likely form the basis of our first class together, though there is no guarantee that we will cover everything or cover it in the order indicated. The same rules apply to future question lists. Please note: you should always feel free to ask questions in class about the material or issues under discussion, even if they are unrelated to the question list. Who knows, I may use your questions as the basis of discussion next year! Also, if you want the class to address a certain issue but don’t want to ask it in class, send me an email at least half an hour before class and we’ll try to cover it.

1. What are some of the types of transnational litigation that you might encounter in your practice as a lawyer?

2. What are some of the ways that transnational litigation differs from “regular” litigation? In your mind, does this mean that transnational litigation is indeed a separate body of law or not? What are the benefits of having transnational litigation considered a separate field? What are the downsides of considering transnational litigation as a separate field?

3. What aspects of U.S. law, practice and procedure do you think cause concern outside the U.S. and why?

4. Whose responsibility is it to create a well-structured transnational litigation regime? Who would have the power to enforce such a regime? Who would benefit from such an effort?

5. Why do we want to keep transnational disputes in national courts rather than letting them “exit” the system and go to arbitration?
6. Of the various cases cited in the reading,
a. Which were most interesting and why?
b. Which were surprising and why?
c. What subject matters were unexpected and which were expected?
d. Who is litigating these types of matters?

7. What are the five key themes of transnational litigation, according to Harold Koh? Why are these important? To what extent do each of the cases discussed in the reading reflect these issues?

8. Transnational lit includes a lot of procedure and relatively little international “substance.” Which of the matters in today’s reading look familiar and why?