National Legal Systems

- Civil law (e.g., France, Germany, Japan)
- Common law (e.g., Great Britain, US, Canada, and Nigeria)
- Sharia (Islamic law)
- Socialist or Communist law (e.g., China, N. Korea, Cuba)
- Indigenous
- Hybrid
World Legal Systems

Orange: Civil law
Purple: Hybrid civil and common law
Green: Islamic (fiqh)
Lavender: Common law
Yellow: Customary/Indigenous
Civil Law System

• Rooted in Roman Justinian code and Canonical traditions

• Based on a comprehensive code (e.g., French *Code Napoléon*, German *Bürgerliches Gesetzbuch*)

• Legislation is primary source of law

• Inquisitorial: judge may act as advocate and investigator, as well as a neutral
Common Law System

- Rooted in the English tradition (bench, bar, attorney, Inns of Court)
- Based on rules that primarily evolve with judicial decisions (*stare decisis*)
- Judge rules on issues of law using case-based reasoning
- Adversarial: judge is neutral, lawyers advocate, jury acts as factfinder
Sharia or شريعة

- Legal framework within which public and private aspects of daily life are regulated for Muslim peoples
- Distinction between *fiqh* ("understanding of details" or interpretive law) and *sharia* (underlying principles expressed in the Qur'an and the Sunnah)
- Islamic law prohibits usury and investing in businesses that are considered unlawful
Socialist Law

- Written code based on socialist principles (State owns/controls means of production)
  - Only China, North Korea, Cuba, and Vietnam label themselves socialist
- Very little commercial law and individual rights almost non-existent, but this is changing (e.g., China passed first private property law in March 2007)
Indigenous Law

- American Indian nations are sovereign nations with their own legal systems
- Indigenous peoples of the world have always had their own legal systems
  – increasing recognition by governments

Navajo Nation & US flags
Example:
Peoples’ Republic of China
Hierachy of Chinese Legal Authority

- Constitution (1982)
- International Treaties
- Laws & Regulations
- Case Law
- Customary Law

Early Chinese Law (Fa or 法)
Of Interest

| • Macau (Portuguese system) & Hong Kong (common law) are outside PROC jurisdiction |
| • Constitution (amended 2004) includes protection of individual human rights and legally-obtained private property, but implementation untested |
China Law Digest (free)

http://www.chinalawdigest.com/
Official Government Website

PRIVATE INTERNATIONAL LAW

• The laws applying to private parties in international transactions
  – began with Sea Law of Rhodes in 300 BC
• Not a separate body of law, but web of state laws, treaties, and conventions that affect choice of law, choice of forum, and the recognition and enforcement of judgments
Research Links

- United Nations
- United Nations Commission for International Trade Law (UNCITRAL)
- World Trade Organization (1995)
Research Links

- **UNIDROIT** (International Institute for the Unification of Private Law)
- **International Chamber of Commerce (ICC)**
- **American Society of International Law**
Primary Commercial Law Links

Example: U.S.

Port of Seattle
US Trade Laws

- US customs and tariff laws are enacted by Congress and implemented and enforced by the **US Customs Service**
  - Agency functions: assess and collect tariff revenue, and enforce customs laws w/in US, Virgin Islands, and Puerto Rico
### Entry Process

<table>
<thead>
<tr>
<th>Required documents for goods</th>
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</thead>
<tbody>
<tr>
<td>– entry manifest or merchandise release form</td>
</tr>
<tr>
<td>– US Customs Entry Summary form</td>
</tr>
<tr>
<td>– proof of right to make entry (bill of lading, air waybill, carrier’s receipt)</td>
</tr>
<tr>
<td>– commercial or pro forma invoice</td>
</tr>
<tr>
<td>– packing slips</td>
</tr>
<tr>
<td>– other documents required by regulations (e.g., quota visa, certificate of origin)</td>
</tr>
</tbody>
</table>
• **Commercial invoice** required for shipments > $500 intended for sale or commercial use in US; must provide all pertinent info in English; must be signed by seller

• **Entry Summary Form** used to determine amount of duties owed and compliance with law, and to gather import stats
Enforcement

• Civil and criminal penalties for violating import law, according to degree of intent:
  – negligent (failure to use reasonable care in importing)
  – grossly negligent (act done w/disregard of law)
  – fraud (knowingly making materially false statement)

Counterfeit goods seized at border
Application of Tariff

- All goods entering a port are *dutiable* unless specifically exempted
- Tariffs applied according to the dutiable status of the goods as determined by
  - classification of merchandise
  - value of merchandise
  - country-of-origin of merchandise
- US Customs tariff application is binding
Liquidation & Protest

- **Liquidation** refers to final computation and assessment of applicable duty on import
  - generally at entry, but may take longer
- In event of dispute, importer may seek administrative review by filing *protest of entry* with port director w/in 90 days
- If protest denied, importer may seek judicial review with Court of Int’l Trade
1. Classifying Goods

- Classify according to **Harmonized Tariff Schedule of the U.S.** (HTSUS)
  - divides products into >5,000 classifications
  - 22 sections broken into 99 chapters
  - tariff items denoted by 10 digit codes in US
Interpretation

• Goods are described in tariff schedules by:
  – common name (*eo nomine*)
  – description of article’s physical characteristics
  – description of article’s use
  – description of component parts

• Courts look to *common* or *commercial meaning* of a term
  – Example: does “anchovy” = “sardine”?
General Rules of Interpretation

- GRI are used to help determine which classification best describes an article.
- Rule of relative specificity
  - When an item may be classified in > 1 tariff classification, the item must be classified under the provision that most specifically describes (names) the item.
Camel Mfg Co. v. US

**FACTS:**

- Plaintiff importer of very large nylon tents into the US
- Importer entered goods as “sports equipment” under Item 735.20 w/10% ad valorem duty
- Customs Svc ruled tents were Item 389.60 as “textile articles not specially provided for” w/$0.25/lb and 15% ad valorem
- Upon liquidation, importer appealed
Camel Mfg Co. v. US

- Court of Int’l Trade (CIT) decided in 1988:
  - Issue: whether or not activity in which tents are used (“camping out”) is a sport, which would lead to conclusion that the tents are sporting equipment
  - Prior case law concerned lightweight tents for the sport of backpacking, but plaintiff’s tents aren’t for backpacking so are “textile articles not specially provided for”
  - Court wouldn’t expand definition of “sports” to include camping out because it would encompass every outdoor activity
  - Decision of government upheld
General Rules of Interpretation

- **Classification by *essential character***
  - If conflicting classifications describe only certain elements of article, article must be classified under heading describing the materials that give article its essential character.

- **Classification according to *actual use***
  - Use provision deemed more specific than name.
  - Principal use controls.

- CIT ruled for plaintiff that rule of relative specificity didn’t apply to shower curtain sets (textile curtain, inner liner, plastic hooks)
- Court used classification by essential character to decide that the shower liner was key element
General Rules of Interpretation

• The *doctrne of entireties* applies to classification of component parts
  – if item consists of unjoined parts that when assembled form an article that is commercially different from any of the parts, then item should be classified as the completed article, not separate parts
### 2. Valuation of Goods

- **Customs value = dutiable value**
- **Defined as transaction value of goods**
  - price actually paid or payable for goods when sold for exportation to US, plus certain expenses if not included in purchase price
  - intellectual property payments included
  - commissions paid to seller’s agent included
3. Country-of-Origin

• *Country-of-origin* determines tariff rate
• *Rules of origin* refer to laws that determine an article’s country of origin
  – that country where an article was grown, mined, produced, or manufactured
• *Country-of-origin* is where goods last underwent substantial transformation *(substantial transformation test)*
Substantial Transformation

- Occurs when original article or product loses its identity and is transformed into a new and different article of commerce with “a new name, character, or use” different from that of the original item.
- Courts examine whether transformation resulted in an increase in value or new tariff classification (tariff shift rule).
### Marking & Labeling

- Two primary US import labeling law
  - Customs Marking Rules: goods must be permanently marked in English to indicate country-of-origin to ultimate purchaser (exempt if substantial transformation to occur in US or unable to mark)
  - Federal Trade Commission Rules: if domestic content of product is 51%+, marking w/foreign country of origin not required; “made in USA” mark limited to products virtually completely made in US; failure to mark foreign country-of-origin is unfair trade practice
US Trade with Developing Nations

- Relevant conventions or laws include, but are not limited to:
  - Lome Convention for trade preferences and aid to nations of Africa, Caribbean, and Pacific
  - Caribbean Basin Economic Recovery Act

Beaded Masaai goods
Other US Customs Laws

• Foreign or Free Trade Zones:
  – defined areas outside Customs territory of the country in which they are located
  – monitored and under control of Customs authorities of that nation
  – In US, goods may be imported into FTZ w/out being subjected to tariffs until goods released into stream of commerce in US
  – Wilmington Port Terminal is in Foreign Trade Zone #66
Fact Situation

- Mita Copystar Corp. imported toner cartridges for photocopy machines.
- US Customs classified the items as “chemical preparations for photographic uses” under HTSUS subheading 3707.00.30 dutied at 8.5% ad valorem.
- Mita believed toner cartridges should be classified as “parts and accessories of electrostatic photocopying apparatus” under HTSUS 9009.90.30 and thus duty free.
Fact Situation

- Which classification is correct?
- What is the test for classifying the items -- relative specificity or essential character?
- What is the underlying philosophy for placing a duty on toner cartridges?
Case: **Mita Copystar v. US**

- Court upheld Customs determination: toner cartridges were “chemical preparations . . . “
- Since classifications of both Customs and Mita accurately described different aspects of subject merchandise, Court used General Rules of Interpretation
  - Rule of *relative specificity* not enough since neither classification was more specific
  - Court applied rule of *essential character*
Case: Mita Copystar v. US

- Court said basic function of toner cartridge is to supply toner to photocopier effectively, thus *toner* is the component giving the essential character to the product
- Therefore, properly classified as chemical preparation
WHAT ABOUT THESE THINGS?