



A proper Introduction to Franchising

Law 389

3 credits

Spring 2019

Instructor: Professor Shutii Viktoriia

Class Schedule: Mondays 12:45

Office Hours: by appointment

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I. GENERAL DESCRIPTION AND OBJECTIVES OF THE COURSE

This course will introduce students to the Franchising. This class will include a full review of Legal Regulation of Franchising; student will be able to learn the specifics of the conclusion, modification and termination of the franchising contracts. The course is interactive and practice-oriented, students will get practical skills in drafting franchising contracts.

II. PROGRAM AND COURSE LEARNING OUTCOMES

PROGRAM LEARNING OUTCOMES

Graduates of the Law Program should have the following competencies:

1. carry out professional activities in good faith on the basis of developed legal consciousness, legal thinking, and legal culture and with observation of ethical principles of the legal profession;
2. apply professional judgment, perform quality legal analysis, conduct legal research, and solve legal problems;
3. be able to speak and write in an argumentative, logical, and clear way in the legal context, have skills necessary to draft legal documents, be fluent in the English language at the level of professional communication;
4. draft normative legal acts and carry out their legal expertise in the field of professional activity;
5. interpret and apply substantive and procedural norms, provide qualified legal opinions and consultations in concrete types of legal activity;
6. demonstrate leadership qualities, active citizenship, take and develop initiatives aimed at promotion of civil society and welfare state;
7. understand the essence and significance of information in the development of modern society and law, master the basic methods of working with information and information technologies in the professional sphere.

COURSE LEARNING OUTCOMES

Upon successful completion of the course students will be able to:	Law Program Learning Outcomes
1. Identify and describe the main features of Franchising	#3, #5
2. Analyze and interpret certain articles of the Civil Code that related to the contracts; The Law of the Kyrgyz Republic on Trademarks, Service Marks and Appellations of Places of Origin of Goods; FTC Franchise rule, 16 C.F.R Part 436 (1999).	#2, #4,
3. Draft of franchising contract	#3, #5
4. Find a compromise through negotiations	#2,
5. Develop skills to work in groups during the group discussions	#6

III. TEACHING METHODS

The class will meet once a week. This course does not use traditional method of lecture and seminar division. Each class will be conducted in the form of interactive lectures, discussions and writing assignments. This method implies students to read new materials beforehand and be ready to discuss the given materials in class. Such method helps and equips the student a self-learning skill, which he/she will need in their further studies.

IV. COURSE REQUIREMENTS AND POLICY

- (1) The class will meet *once* a week. Class sessions are a mixture of lectures and interactive student-focused activities. Students are expected to come to classes prepared and be ready to discuss the assigned materials.
- (2) Students must be ON TIME for classes. If a student comes to class late and the instructor has already marked him/her as absent, the student is considered to be absent for the whole class.
- (3) CLASS ATTENDANCE is required. If the student misses a class with an excuse, a document explaining the absence must be presented to the instructor no later than the next class following the class during which the student was absent. If the requirements mentioned above are not observed, the student's absence is considered to be unexcused. If the student misses more than two (2) classes without an excuse or 50% of the whole course (irrespective of the reason for absence), the student will be assigned an "F" grade for the course.
- (4) Each student is required to be enrolled in the e-course system (www.e-course.auca.kg). The purpose of the e-course system is to allow students to get access to course materials, upload their course assignments, and benefit from a variety of interactive learning opportunities.
- (5) WRITTEN ASSIGNMENTS must be submitted by the set deadline and by the means specified by the instructor. Late submissions are NOT allowed. ***This rule applies to any student who was aware or should have been aware of an assignment and the deadline no matter whether he was sick or had any other excuse on the date of the deadline.***

- (6) The student has to follow the AUCA Academic Honesty Code and the Law Division’s Policy on Plagiarism. All types of **cheating** (plagiarism, etc.) are strictly prohibited. If a student fails to observe this requirement, the instructor may assign an “F” grade for the work or an “F” grade for the whole course depending on the type of assignment and other circumstances.
- (7) CELL PHONES and any other electronic devices should be turned off or kept on a silent mode and are allowed to be used only for academic purposes unless restricted by the instructor.

Please, note that this syllabus is subject to change. Any changes to the syllabus will be announced in class, and the updated version of the syllabus will be available in the e-course. It is students’ duty to stay informed of any adjustments made.

V. GRADING

- class participation and attendance – 15%;
- writing assignments – 35%;
- one bonus assignment could be provided – 5%
- mid-term work – 20%;
- final – 30%

Students will have several writing assignments:

- Drawing up a legal analysis of the franchise agreement, which will be provided to students.
- Drawing up writing proposals for the improvement of franchising regulation in the Kyrgyz Republic.
- drawing up writing draft of Franchising Agreement and protocol of Negotiations.

Grading Scale of the Law Program

A	94-100%	C	68-73%
A-	90-93%	C-	64-67%
B+	86-89%	D+	60-63%
B	80-85%	D	54-59%
B-	77-79%	D-	50-53%
C+	74-76%	F	below 50%

VI. COURSE MATERIALS

Please, provide a list of required and recommended reading materials (books, articles, etc.). You may also indicate normative legal acts to be used in the course. The list of course materials should be updated each year.

1. Required Reading Materials

- The Civil Code of the Kyrgyz Republic Chapter 44
- The Law of the Kyrgyz Republic on Trademarks, Service Marks and Appellations of Places of Origin of Goods, January 14, 1998
- The Law of the Kyrgyz Republic No. 145 on Trade Names, December 23, 1999
- The Civil Code of Russian Federation Chapter 54
- The Bill on Franchising of Russian Federation, April 21, 2014
- FTC Franchise rule, 16 C.F.R Part 436 (1999)

- FTC Franchise rule, 16 C.F.R Part 436, COMPLIANCE GUIDE (2008)
- UNIDROIT MODEL FRANCHISE DISCLOSURE LAW, § 3, (2002)

2. Recommended Reading Materials

Recommended Reading Materials will be provided via e-course.

VII. COURSE OUTLINE

Week	Class topics	Assignments, materials to be read ¹
Week 1	What is Franchising? History and General overview of Franchising Regulation. The essence and significance of a franchising contract.	Joel Libava , The History of Franchising As We Know It, p.1-5 R. B. Katz , Franchising: Building an Enterprise, 2010, Chapter 1, p. 2-15 Chapter 44 of the Civil Code of the Kyrgyz Republic
Week 2	Overview of general contract. Content of the Franchising contract. Essential terms of the contract. Advantages and disadvantages of doing business through franchising.	Abell Mark , The Regulation of International Franchising, WWL, 2010 Michael Seid , The History of Franchising, THE BALANCE SMALL BUSINESS (2017) The history of success of Vladimir Dovgan , NEWBUSINESS (2016) Case: Pirtek (UK) Ltd v Robert Jackson
Week 3	Comparative overview of legal regulation of franchising in the Russian Federation and Kyrgyzstan. Commercial concession. Subconcession. IP Rights.	The Civil Code of Russian Federation Chapter 54 The bill On Franchising, RF, April 21, 2014 E.A. Sukhanov Civil law: Volume 1: General part p. 170-185 Inga Rykova , The new history and evolution of trademarks (2011) Case: Caspian Pizza Ltd and Others v Shah and Another
Week 4	Comparative overview of legal regulation of franchising in the USA and Kyrgyzstan. FTC rules. IP Rights. Significant Control or Assistance. “Required Payments”.	FTC Franchise rule , 16 C.F.R Part 436 (1999) FTC Franchise rule, 16 C.F.R Part 436, COMPLIANCE GUIDE (2008) Mary Tomzack, What is a UFOC Uniform franchise offering circular.
Week 5	Uniform franchise offering circular and FTC rules.	The UNIFORM FRANCHISE OFFERING CIRCULAR GUIDELINES , 2017 FTC Franchise rule, 16 C.F.R Part 436, COMPLIANCE GUIDE (2008). James A. Meaney , how to buy a franchise, SPHINX, (2004).
Week 6	Change and termination of the contract. Termination or	The Civil Code Part1 – Articles 370-380, 412-414 Chapter 44 of the Civil Code of the Kyrgyz

¹ This information may be provided either in the syllabus or in the e-course.

	modification of the contract by agreement of the parties.	<p>Republic Sergeev A.P., Tolstoy Yu.K., Civil Law, Parts 2 p.193-219 Martin Mendelsohn, The Guide to Franchising, Cengage Learning, EMEA, 2004</p> <p><u>Writing assignment:</u> Drawing up a legal analysis of the franchise agreement, which will be provided to students. It is required to describe the grounds for terminating the franchise agreement.</p>
Week 7	Disclosure documents. Prior business experience; litigation; information about bankruptcy and financial statements. Agreement of confidentiality.	<p>Uniform trade secrets Act with 1985 amendments, (1985). Valyaeva Julia Igorevna, Problems of information disclosure in pre-contract franchise relations, (2011) T. Fedorova, Features of reflection in the system of accounting preliminary relations on the franchising agreement, (2008) UNIDROIT MODEL FRANCHISE DISCLOSURE LAW, § 3, (2002). Churshina A.A., Disclosure of information and pre-contractual liability under a commercial concession agreement.</p>
Week 8	MID-TERM EXAMINATION	
Week 9	Disclosure documents. Review of UNIDROIT model franchise disclosure law. Practice of the USA and Russia. Consequences of termination of disclosure documents. Negotiations. (Students will work in groups as representatives of franchisee and franchisor. Their aim will be preparation of draft of disclosure documents and agreement of confidentiality.)	<p>The bill On Franchising, RF, April 21, 2014 International Comparative Legal Guides https://iclg.com/practice-areas/franchise-laws-and-regulations/usa Sergey Vatutin & Mikhail Trishin, Cloning of business. Franchising and other models of rapid growth, (2012) 16 CFR Part 436 Disclosure Requirements and Prohibitions Concerning Franchising, Staff Report to the Federal Trade Commission and Proposed Revised Trade Regulation Rule (1999)</p>
Week 10	Legal challenges/obstacles for the development of franchising in the Kyrgyz Republic. Problematic Issues in Franchising Regulation in the field of IP Rights. Absence of Disclosure obligation in the law of the KR	<p>The Law of the Kyrgyz Republic on Trademarks, Service Marks and Appellations of Places of Origin of Goods, January 14, 1998. The Law of the Kyrgyz Republic No. 145 on Trade Names, December 23, 1999 Intellectual Property Objects, PATENT & INTELLECTUAL PROPERTY SERVICES , http://www.ideaprotection.co.uk/intellectual-property/ Faridinova B., & Vandayev A., Problematic</p>

		issues of the legal regulation of franchising in the Kyrgyz Republic, PRAVUM.
Week 11	Solutions for the improvement of franchising regulation in the Kyrgyz Republic. Steps for choosing a franchise. Worldwide franchise buying practice.	<p>A. Alyshbaeva, Formation and development of small business in Kyrgyzstan, CA&CC PRESS.</p> <p>Alenkina Natalya Borisovna, Domestic practice of legal regulation of franchising, LAW AND ENTREPRENEURSHIP, (2005)</p> <p>K.N. Niyazalieva, Development of franchise relations in Business, Vestnik of KRSU. 2011. Vol 11. No. 5</p> <p>Writing assignment: Drawing up writing proposals for the improvement of franchising regulation in the Kyrgyz Republic (individual work).</p>
Week 12	Tax issues. Tax benefits of selling a franchise.	<p>Jean Murray, How Businesses Pay Franchise Taxes, 2017</p> <p>Denise Caldwell, Who Pays Franchise Taxes?, 2018</p> <p>International Franchise Association, State Taxation Of Franchise Royalties And Fees, 2012</p>
Week 13	Exemption based franchising for established and start-up franchisors. The Value of Exemption Based Franchising. Background and History of Exemption Based Franchising. Steps a Franchisor Should Take If It Loses the Qualifications for a Claimed Exemption.	<p>David B. Ramsey, Adam Siegelheim, Leonard Vines, Exemption based franchising, 2017, p. 3-18</p> <p>Executive Summary of Franchise Laws Around the World, DLA Piper 2009.</p> <p>Babette Märzheuser-Wood Brian Baggott, Franchise Law in the United States, 2015, p. 2-12</p>
Week 14	Negotiations. 1 step. Protocol of Negotiations. Students will work in groups as representatives of franchisee and franchisor. Their aim will be preparation of draft of franchising agreement.	Writing assignment: drawing up a writing draft of Franchising Agreement and protocol of Negotiations.
Week 15	Litigations in the field of franchising. Court practice. Corruption problems. Practical Recommendations on changing corruption issues. Negotiations. 2nd step.	<p>Case study: F45 Training Pty v Leo Star Ltd</p> <p>Hy-Brand Industrial Contractors, Ltd. & Brandt Construction Co. case</p> <p>Guirguis and Michel's Patisserie Case</p> <p>Civic Video Case</p> <p>(All cases will be provided via e-course)</p>
Week 16	FINAL EXAMINATION Место для ввода текста.	