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International contracts a quantitative analysis of transnational contract formation

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INTERNATIONAL CONTRACTS:
A QUANTITATIVE ANALYSIS OF
TRANSNATIONAL CONTRACT FORMATION

by

DAVID T. ACKERMAN

A thesis submitted in partial fulfillment of the requirements
for the Honors in the Major Program in Legal Studies
in the College of Health and Public Affairs
and in The Burnett Honors College
at the University of Central Florida
Orlando, Florida

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Thesis Chair: Dr. Cynthia Brown

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ABSTRACT

Globalization is the promise of the future, and it presents, quite literally, a world of opportunities not available in the past. International collaborations in science, research, and business now enjoy increased probabilities of success, in part, because of the advance in technology and the possibility of instantaneous communications. The convenience, simplicity and affordability of technology are helping to make the world accessible to almost everyone. With new availability of international concerns and the growth of global partnerships in all areas of interest, an increased need arises for agreements that memorialize collaborators' commitments, responsibilities and obligations. There is a corresponding concern that the agreements be enforceable across national and international lines should anything go wrong.

There is no collaboration, partnership or venture that will not be touched in some way by the law. Whose law governs and how rules and regulations of different nations will be applied are of escalating concern. Empirically examining the state of international contract law is the overarching focus of my research. Adopting a research methodology involving both quantitative and qualitative techniques, I am investigating whether any consistency exists between attorneys of different practice sectors (academic, government, corporate and private) considering choice of law, enforcement of contract provisions, and the inclusion of preventative measures of international contracts.

My results contribute to the future success of international collaborations of all concerns by empirically identifying the need for increased education on various dispute resolution options, as well as the effect cultural awareness has on the drafting of international contracts.

DEDICATION

For my mentors, Cynthia Brown, M.H. Clark, Carol Bast, Elizabeth Plaisted, Denise Crisafi,
and Kelly Astro, for helping me to reach the limits of my potential and beyond.

And especially, for my family, without whom I would be nothing. While some merely stand
on the shoulders of giants, on the foundation of your support I can touch the heavens.

ACKNOWLEDGEMENTS

It is rare that a man gets the opportunity to appropriately thank the people that have altered the course of his life.

To Beth, I don't know how I would have ever navigated through my collegiate career without your guidance. You truly helped me attain every goal I set out to accomplish at UCF, and I am eternally grateful. To Denise, you have made me laugh like no "sparkle*" ever could. But seriously, you helped a wild idea become a reality. You lead me into Legal Studies, and through the HIM program. This paper would have never happened without you, and I don't think I can express in words what this experience has meant to me. Thank you from the bottom of my heart. To my teacher, guide, and friend Dr. Cynthia Brown, I could write volumes about how grateful I am for what you've done. But if I did, you would probably correct it. All kidding aside, the title mentor doesn't seem sufficient for the gifts you have given me. Whatever achievements I attain, I will always begin with, "This is dedicated to my Mom, Dad, Jason, and Cindy Brown. You set me on the path to make my dreams come true, and you will forever be a part of my family. Jason, you are my best friend, the greatest brother, and I am honored you have been at my side for every moment of your life. Even though this is only a beginning, your continued support has kept me strong. I can think of no better consigliere. Dad, there are no words. Your support made this possible. I will forever strive to take full advantage of the opportunities you have given me. Finally to my Mom. In my life, you continue to be my strength, my inspiration, and above all my encouragement. You are the foundation on which my life accomplishments are built on, and you have my word I will always remember where I came from. Nana and Pop are smiling on us.

And finally, to all of my friends, professors, and family,
thank you for everything you have done for me during my time at the University of
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I. INTRODUCTION

With the evolution of the internet, faster international shipping, and instantaneous communication, the option of doing business overseas is accessible to more businesses than ever before. According to the U.S. Census Bureau Foreign Trade Division, worldwide trade in goods and services of imports and exports¹ combined for over 3.5 trillion dollars in 2009.² The increase in both scope and volume of transnational enterprise and commerce is suggestive of not only the capital available abroad but also the legal challenges facing American business owners. Every dollar spent in global trade is likely to have some form of a binding agreement, more particularly an international contract, attached to it. Domestic contracts are sufficiently complex and tend to increase in complexity as the participating number of jurisdictions increase.³ When transacting business in the international arena, however, contracts can be an overwhelmingly complicated undertaking.

The great need for trained professionals operating locally within the United States, who are proficient in international contracting, is evidenced by the available market data. The global legal services market accounts for almost \$547 billion dollars worldwide in 2009.⁴ In addition, the annual growth rate from 2005-2009 was 4.2%.⁵ In some of the worst economic times in modern day history, the overall legal services market continued to grow across all countries and sectors. The Americas account for 59.2% of the global legal services

¹ Calculated on a balance of payments basis.

² See, e.g., United States Census Bureau, Foreign Trade Division, *U.S. Trade in Goods and Services - Balance of Payments (BOP) Basis*, (2010), available at <http://www.census.gov/foreign-trade/statistics/historical/gands.pdf>

³ See generally P. D. V. MARSH, *CONTRACT NEGOTIATION HANDBOOK* (3d ed. 2001).

⁴ Datamonitor, *Industry Profile: Global Legal Services*, 10 (2010). The report specifies that the legal services market “includes practitioners of law operating in every sector of the legal spectrum. These include commercial, criminal, legal aid, insolvency, labor/industrial, family and taxation law.”

⁵ *Id.*

share in 2009;⁶ however, the top three largest firms are headquartered in England. This is significant because the United States is a major foundation in the global economy,⁷ yet fails to host the headquarters of a top three international firm.⁸ Moreover, lawyers across the U.S. have been absconding across borders to find better opportunities than what may be available domestically. “U.S. lawyers and law firms have looked to overseas opportunities as holding the promise of salvation in the current economic downturn. If a strategy of globalization can protect against the ill-effects of the current economic crisis in the United States, then more actors may move in that direction in the future.”⁹

The shift in cognitive global methodology is not limited to just legal services and business. Education is expanding its policies to include broader transnational ideologies.¹⁰ “The language of globalization has quickly entered discourses about schooling. Government and business groups talk about the necessity of schools meeting the needs of the global economy.”¹¹

Today society is simultaneously local, national, regional, and global in terms of experience, politics, effects, and imaginaries. Further, these spaces are imbricated with unequal power relations which reflect both contemporary geopolitics and past political struggles.... If this is so, then education policy

⁶ *Id.* at 12.

⁷ As evidenced by the aforementioned statistics on import and export trade.

⁸ See Datamonitor, at 19-22. The report lists key facts on Linklaters LLP, Clifford Chance LLP, and Freshfields Bruckhaus Deringer.

⁹ Carole Silver, *What We Don't Know Can Hurt Us: The Need for Empirical Research in Regulating Lawyers and Legal Services in the Global Economy*, Akron L. Rev. 43, 1023-24 (2010).

¹⁰ The initiative to pursue a globalized philosophy is certainly not new, nor is it indicative of only business. However with the collapse of the world economy during the latter half of the 2000's, it became evident that the implementation of such processes must occur sooner rather than later. Thus, the shift in methods provides additional evidence to the claim that the need for additional attorneys proficient in cross-border negotiations and contracting is eminent.

¹¹ Joel Spring, *Research on Globalization and Education*, Rev. of Educ. Res. 330, 330 (2008).

analysis demands an empirical and theoretical stretching beyond the nation,
but in ways that do not overlook the importance of these layers.¹²

This educational philosophy is leading public education to greater emphasis on comparative education,¹³ world culture, world systems, postcolonialist, and culturalist acclimatization.¹⁴

The legal community must prepare for this challenge. In the 2011 State of the Union address, President Barack Obama said “In a single generation, revolutions in technology have transformed the way we live, work and do business Today, just about any company can set up shop, hire workers, and sell their products wherever there’s an Internet connection.”¹⁵ “Corporate challenges come from analyzing competitors as well as from the foreseeable pattern of industry evolution.”¹⁶ American companies have taken notice of this in the recent economic downturn, and attempted to use it as a catalyst to enter into foreign markets. “It is one of the things that will help prevent a recession. When the dollar is weak, imports are more expensive. So relatively speaking, domestic production and services are more

¹² Bob Lingard, *Researching Education Policy in a Globalized World: Theoretical and Methodological Considerations*, National Society for the Study of Education 226, 238 (2009).

¹³ Spring, *supra* note 13 at 333. Spring talks about comparative education “As a new field of study, researchers into the processes and effect of globalization on educational practices and policies come from a variety of education disciplines, including anthropology, curriculum studies, economics, history, sociology, educational policy, comparative education, psychology, and instructional methodologies.” *Id.*

¹⁴ *See id.* at 334. Refers to the concept of Educational Globalization. World culture, world systems, postcolonialist, and culturalist are the four major interpretations of this process of educational globalization. World culture refers to the premise that “all cultures are slowly integrating into a single global culture. Often called ‘neo-institutionalist,’ this school of thought believes that nation-states draw on this world culture in planning their school systems.” The other three interpretive models are sometimes overlapping. ... The world systems approach sees the globe as integrated but with two major unequal zones. Postcolonial analysis sees globalization as an effort to impose particular economic and political agendas on the global society that benefit wealthy and rich nations at the expense of the world’s poor.” Culturalist “emphasizes cultural variations and the borrowing and lending of educational ideas within a global context.” *Id.*

¹⁵ President Barack Obama, State of the Union Address (Jan. 25, 2011).

¹⁶ Gary Hamel & C.K. Prahalad, *Strategic Intent*, HARV. BUS. REV. 63, 135. This applies to the legal field as much as it does to business. The foreseeable pattern of industry evolution in the legal context is in the international arena.

competitive. Simple as that.”¹⁷ American companies, such as White Hound Advertising, have created a niche service by providing a boutique firm to facilitate entrance into the overseas market to American companies looking to expand into Europe. White Hound also provides consolidated freight, warehousing and inexpensive lodging to exhibitors to make the whole export process less daunting. The evolution and advancement of international contract formation needs to follow the same guiding principle, which is to provide the mechanism to minimize the costs and as much of the risk as possible to encourage foreign market developments for U.S. businesses.

The concept of an international contract has existed since our country’s inception. To advance the understanding of international contract construction, the study consists of a three part process. The identification of commonly disputed components of international contracts, the collection of empirical data by survey, and the extrapolation of conclusions based upon the data collected. Initial investigation has identified that as with the American model, international agreements seem to present issues that arise repeatedly.¹⁸ Upon researching different aspects of international contract design, the researcher identified similar components at issue within many international contracts and the negotiations surrounding their formation. The identification process utilized consisted of a comparison of research done on transnational contract formation, analysis of varied law review articles, and a combination of phone and face to face interviews. In a phone interview with current Secretary-General of the International Centre for the Settlement of Investment Disputes at the World Bank Meg Kinnear, issues were highlighted concerning politics in transactions. Ms. Kinnear mentioned

¹⁷ Marci Alboher, *Weak Dollar Has Small Businesses Thinking Globally*, N.Y. TIMES, Jan. 31, 2008. Available at <http://www.nytimes.com/2008/01/31/business/smallbusiness/31sbiz.html#>. (quoting Raphael Amit, a professor of entrepreneurship at the Wharton School at the University of Pennsylvania).

¹⁸ See MARCEL FONTAINE DOCTEUR EN DROIT & FILIP DE LY, *DRAFTING INTERNATIONAL CONTRACTS : AN ANALYSIS OF CONTRACT CLAUSES* (2006).

that in her vast experience, a common downfall of companies doing business internationally is that they “have no sense of the political scene...or how the local politics work administratively.”¹⁹ Political interference is in itself a potential issue to the successful completion of a transnational contract, but the study looks at where that aspect falls in comparison to other widely held considerations, such as enforcement. An additional example can be found in an interview with Dan Harris, Senior Partner of Harris & Moure, PLLC, and co-contributor of chinalawblog.com, where he advocates uniformity within a contract. “In most cases I advise my clients to keep the language, and choice of law of the contract consistent with the place it will be arbitrated. In China, contracts written in English are translated by a court translator into Chinese. I for one am not going to rest a case on a translation I have no control over if I can help it.”²⁰ This approach is in stark contrast to that advocated in the collaborative drafting benefits contained in an article by Professor Steven Salbu, where he states, “Dual-language contract development is likely to mitigate power disparities in the negotiation of terms. When...developed through the proposals of each parent and formulated in the language to which that parent is accustomed, neither partner has the advantage of presenting potentially skewed terms on its home turf.”²¹ As a final example, in an interview with Robert Q. Lee, a Partner in Diaz, Reus & Targ, LLP, he sighted the overall lack of understanding of the risk associated with transnational ventures. “Many companies look to be penny wise and pound foolish, not recognizing the economic consequences of not sufficiently exploring form or risk management issues...The next opportunity these issues are addressed is when a problem arises, and for smaller companies

¹⁹ Telephone Interview with Meg Kinnear, Sec’y Gen. of the ICSID (W. Bank) (July 20, 2010).

²⁰ Telephone Interview with Dan Harris, Senior Partner, Harris & Moure (Apr. 22, 2010).

²¹ Steven R. Salbu, *Parental Coordination and Conflict in International Joint Ventures: The Use of Contract to Address Legal, Linguistic, and Cultural Concerns*, 43 CASE W. RES. L. REV. 1233, 1250 (1993) (discussing the importance of the collaborative drafting of international agreements).

looking to globalize it could be too late by then.”²² This is noteworthy when viewed in comparison to the opinion of Michael Oleksak, co-founder of Trek Consulting, wherein he advises “that a proper exit plan is something that a staggering number of businesses don’t have, yet is essential to the continued financial competence of a company after an overseas venture is completed.”²³ Whereas the approaches of the various experts varied greatly from topic to topic, as briefly indicated above, a pattern emerged whereby the points of contention within contract design, implementation, and subsequent enforcement could be arranged.

These controversial components were subsequently categorized into five separate sub headings which are choice of law, enforcement, preventative measures, cultural concerns, and cost benefits. Within each heading questions were derived to pinpoint the precise value placed in relation to one another.

Surprisingly little empirical data is available to inform the legal community concerning the importance and approach lawyers of different disciplines take in regard to these issues. The survey developed focuses on the approach lawyers of different disciplines take in regards to the identified international contract topics. The research focuses on whether any consistency exists between attorneys of different countries, and practice sectors (academic, government, corporate and private) considering choice of law, enforcement of contract provisions, and inclusion of preventative measures of international contracts. It is the further intention of the researcher to identify the methods and procedures that attorneys worldwide use to approach these debatable elements. To supplement the quantitative data

²² Interview with Robert Q. Lee, Partner, Diaz, Reus & Targ, in Orlando, Fla. (Mar. 19, 2010).

²³ Telephone Interview with Michael Oleksak, Co-founder, Trek Consulting (Aug. 1, 2010). It poses an interesting dilemma when multiple facets of international business consultation are seemingly at odds with one another in dealing with the very structure and nature of global transactions. Whereas the current study focuses on the disparity between the approaches lawyers take on contractual structure, further examination into the level of disconnect between client needs assessments and attorney recommendations would be a beneficial derivative.

obtained from the survey, a qualitative component is added. The measure was pretested using two separate individuals of converse characteristics. The information obtained from the pilot study guided the final released version of the measure. An additional qualitative element will include direct communications by email or phone with individuals recognized as experts in their respective fields and practice sectors. Within that communication a request is made for feedback regarding the survey questions, design, and presentation. This element is designed to determine whether respondents comprehend questions as intended by the survey, and whether questions can be answered accurately.²⁴

The globalization of the average business is no longer a quixotic idea, and this study aims to aid the legal populace as the demand grows for international contracts. The results show how lawyers worldwide perceive international contract structure depending on their legal traditions and practice area. The underlying goal of the study is to provide quantitative and qualitative data on contract specifications to benefit the international legal community.

²⁴ See generally B.H. FORSYTH & J.T. LESSLER, COGNITIVE LABORATORY METHODS: A TAXONOMY (1991).

II. LITERATURE REVIEW

A contract is defined in its simplest form as “an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law.”²⁵ Through statute and established case law, the United States has a very well developed contract law tradition. Attorneys in the United States can rely on these controls to draft contracts to include language, provisions, and duties, which ultimately produce reasonably implied expectations for the contracting parties. An international contract is an agreement between members of different nations, creating obligations that are enforceable or otherwise recognizable by law. A major difference between contracts subject to American jurisdictions and those subject to interpretations of other nations is that the security offered by a well-established standard of enforcement and interpretation is often times not present in international contract disputes. As with most legal concepts, these basic definitions only scratch the surface of what contracts truly encompass both domestically and across borders. To the average American businessman, an international contract is a tool, which when utilized to trade with foreign businesses or markets, presents an immense potential for increased revenues. Yet to a greater number of lawyers practicing in the U.S. drafting an international contract is an increasingly necessary skill. Attorneys are being asked to draft and structure a wide variety of agreements, traversing remote jurisdictions and addressing complex legal and commercial issues. Prior to the commencement of commerce among members of different nations, contracting parties need to be fully aware of the applicable trading procedures and what is required to follow them. There is much that is feasible but

²⁵ BLACK'S LAW DICTIONARY 365 (9th ed. 2009).

unknown about intercontinental legal practice in a global context even under existing conventional wisdom.

History has shown that a lack of trade agreements among nations yields far less monetary gain than cooperation.²⁶ Recognizing the benefits of greater legal cooperation in promoting increased transnational business, the world's industrialized countries have joined to create a variety of assemblages and to draft numerous agreements that give global commerce a foundation on which to build. This is an inconceivable undertaking, considering the legal system of every state in the world has developed in a way unique to that state. Herodotus said, "If someone were to put a proposition before men bidding them choose, after examination, the best customs in the world, each nation would certainly select its own."²⁷ The collective wisdom of world leaders over the past fifty years has allowed each country to maintain its identity, while evolving global commerce and conflict resolution. Whereas the treaties and conventions mentioned herein are applicable to many international contracts, they will not be the focus of this study. However, it is important to be aware of their existence and importance.

The United Nations Commission on International Trade Law (UNCITRAL) is a commission²⁸ established in 1966, by the United Nations (UN) with the intention of creating a vehicle to bridge the gap between the disparities in various governing national laws.²⁹ This body is made up of sixty UN members elected by the General Assembly and is structured to

²⁶ CHAD P. BOWN, *SELF-ENFORCING TRADE : DEVELOPING COUNTRIES AND WTO DISPUTE SETTLEMENT* (2009).

²⁷ HERODOTUS, *THE HISTORIES* (Aubrey De Sélincourt trans., New ed. 1996).

²⁸ A commission is defined by *Black's Law Dictionary* as, "a body of persons acting under lawful authority to perform certain public services." *BLACK'S LAW DICTIONARY* 306 (9th ed. 2009).

²⁹ UNCITRAL should be active, inter alia, in "promoting ways and means of ensuring a uniform interpretation and application of international conventions and uniform laws in the field of the law of international trade [and] collecting and disseminating information on national legislation and modern legal developments, including case law, in the field of the law of international trade": General Assembly resolution 2205 (XXI) of 17 December 1966, available on UNCITRAL's website at <http://www.uncitral.org>.

be representative of the world's various geographic, economic, and legal regions.³⁰ In 1980, a convention called the United Nations Convention³¹ on Contracts for the International Sale of Goods (CISG) was established under the UNCITRAL umbrella.³² The CISG became effective in 1988, and established a body of commercial law for international transactions. It operates very similar to the way the Uniform Commercial Code establishes commercial law for domestic transactions in the United States.³³ The CISG currently is in effect in countries that account for over two-thirds of the world's trade.³⁴

Originally completed in 1947, the General Agreement on Tariffs and Trade (GATT), was enforced beginning in 1948.³⁵ Among the many political and economic facets, "the GATT system includes an international legal system with rules, a mechanism for interpreting those rules, and a procedure for resolving disputes under them."³⁶ The GATT rules are designed to work in conjunction with a nation's laws, not against them. "When, say, India conforms to GATT schedules for tariff and quota reduction, it opens its markets to an increased flow of foreign goods and removes the barriers that formerly relegated foreign

³⁰ RICHARD SCHAFFER ET AL., INTERNATIONAL BUSINESS LAW AND ITS ENVIRONMENT 64 (7th ed. 2009).

³¹ A convention is defined as, "an agreement or compact, especially one among nations." BLACK'S LAW DICTIONARY 380 (9th ed. 2009).

³² JAMES R. SILKENAT ET AL., THE ABA GUIDE TO INTERNATIONAL BUSINESS NEGOTIATIONS : A COMPARISON OF CROSS-CULTURAL ISSUES AND SUCCESSFUL APPROACHES (3d ed. 2009).

³³ *See id.*

³⁴ As of 19 November 2010, UNCITRAL reports that seventy-six States have adopted the CISG. Available on UNCITRAL's website at http://www.uncitral.org/uncitral/en/uncitral_texts/sale_goods/1980CISG_status.html. *See also* ANDRE JANSSEN & OLAF MEYER, CISG METHODOLOGY (2009). Janssen and Meyer originated the idea that the seventy-six countries of the CISG represent 2/3 of the world's trade at the time the book was written. *Id.*

³⁵ Originally drafted by twenty-three nations, including the United States, the GATT treaty became effective in 1947 with the signing of the *Protocol of Provisional Application*. UNDERSTANDING THE WTO: BASICS, THE URUGUAY ROUND, available on the WTO's website at http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact5_e.htm. *See also* RICHARD SCHAFFER, FILIBERTO AGUSTI & BEVERLY EARLE, INTERNATIONAL BUSINESS LAW AND ITS ENVIRONMENT (2009) "Although GATT 1947 was never ratified by the U.S. Congress as a treaty, it has consistently been accepted as binding legal obligation of the United States under international law. Until January 1, 1995, the GATT agreement was administered by *The GATT*, a multilateral trading organization based in Geneva, Switzerland, composed of countries that were signatories to the GATT agreement." *Id.* at 289.

³⁶ *Id.*

trading firms to a distinctly uncompetitive position.”³⁷ GATT’s overlaying theme promotes compliance as a necessity and in the best interest of all members to better ensure equal opportunity under the law.³⁸

The GATT can be largely defined by its two most important agreements, the Uruguay Round and the formation of the World Trade Organization (WTO).³⁹ Existing between 1986 and 1994, the Uruguay Round negotiations focused on tariff reductions, agricultural trade, and the trade of banking and finance services.⁴⁰ “Uruguay Round concluded with an agreement that sets minimum standards for intellectual property rights (IPR) enshrined in the Trade Related Aspects of Intellectual Property Rights (TRIPs). National patents are among the many legal instruments this agreement covers, with the agreement resulting in a higher standard of protection for all countries.”⁴¹ The WTO, however, is the modern replacement of the original GATT organization. “The organization became the WTO in 1995, 146 current members.”⁴² The WTO includes among its many roles a provision for a forum for the settlement of trade disputes between nations.⁴³ Additionally, the Geneva, (Switzerland) - based organization gives countries a neutral forum to resolve alleged unfair trade practices committed by a fellow member.⁴⁴ “The GATT/WTO is a set of self-enforcing agreements:

³⁷ See ALAN M. RUGMAN, *THE OXFORD HANDBOOK OF INTERNATIONAL BUSINESS* (2d ed. 2009)

³⁸ See e.g., RICHARD SCHAFFER, FILIBERTO AGUSTI & BEVERLY EARLE, *INTERNATIONAL BUSINESS LAW AND ITS ENVIRONMENT* 67 (George Werthman ed., West Legal Stud. in Bus. 2005).

³⁹ *Id.*

⁴⁰ See UNDERSTANDING THE WTO: BASICS, THE URUGUAY ROUND, Available on the WTO’s website at http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact5_e.htm

⁴¹ Phillip McCalman, *National Patents, Innovation and International Agreements*, 11 J. INT. TRADE ECON. DEVEL.: AN INTERNATIONAL AND COMPARATIVE REVIEW 1, 2 (2002), available at <http://www.informaworld.com/10.1080/09638190110093136>.

⁴² RICHARD SCHAFFER, FILIBERTO AGUSTI & BEVERLY EARLE, *supra* note 41, at 67.

⁴³ “Above all, it’s a negotiating forum...Essentially, the WTO is a place where member governments go, to try to sort out the trade problems they face with each other. The first step is to talk. The WTO was born out of negotiations, and everything the WTO does is the result of negotiations.” UNDERSTANDING THE WTO: BASICS, WHAT IS THE WORLD TRADE ORGANIZATION, is available on the WTO’s website at <http://www.wto.org/>.

⁴⁴ KYLE BAGWELL ET AL., *THE WTO: THEORY AND PRACTICE* (2009), <http://www.nber.org.exproxy.lib.ucf.edu/papers/w15445> (last visited 11/9/2010).

member countries enforce trading partners' commitments embodied in the agreements by challenging...through formal dispute settlement."⁴⁵

For the purposes of this study, the research emphasis is on international contract form and dispute resolution arising out of alleged contract breach. The treaties and organizations mentioned above, among others, have paved the way for a variety of private dispute resolution options in the international arena. All the same, a collection of agreements and conventions would be useless without a method of enforcement should a breach of terms occur.

Arbitration is largely held as the leading forum for private international alternative dispute resolution.⁴⁶ The New York Convention of 1958 "went a long way toward ensuring that arbitration agreements are respected and that arbitral awards are easily enforceable,"⁴⁷ and is arguably the most important agreement addressing international arbitration. The New York Convention in simplistic terms states that each contracting state will recognize arbitration agreements reduced to writing, refuse to allow litigation once arbitration proceedings have been initiated, and enforce foreign arbitral awards.⁴⁸ In January 1998, the International Chamber of Commerce (ICC) adopted rules for its International Court of Arbitration.⁴⁹ This body acts as a dispute resolution option for anyone who adds a dispute resolution clause into the contract.⁵⁰ The enforcement provision of the contract falls under

⁴⁵ CHAD P. BOWN, *SELF-ENFORCING TRADE : DEVELOPING COUNTRIES AND WTO DISPUTE SETTLEMENT* 5 (2009).

⁴⁶ Jonathan Hill, *Some Private International Law Aspects of the Arbitration Act 1996*, 46 *The Int'l & Comp. L.Q.* 274 (1997), available at <http://www.jstor.org/stable/760718>.

⁴⁷ *Id.* at 274.

⁴⁸ *See generally* UNITED NATIONS, *ENFORCING ARBITRATION AWARDS UNDER THE NEW YORK CONVENTION : EXPERIENCE AND PROSPECTS* (1999).

⁴⁹ *See* INTERNATIONAL COURT OF ARBITRATION, *RULES OF ARBITRATION*, I.C.C. (2010).

⁵⁰ *Id.* at 3.

the guidelines of the New York Convention of 1958, but as with the other arbitration forums the ICC does not directly enforce arbitral awards.⁵¹

In terms of enforcing arbitral awards under the New York Convention, the ICC provides information that pinpoints how the enforcement of awards is executed in various countries. To emphasize the complexity of the nature of arbitral enforcement, the sections of the report pertaining to Argentina and The Peoples Republic of China are highlighted herein. In Argentina it is important to be cognizant that the country is a “federal state comprising 23 provinces and the Autonomous City of Buenos Aires. The Argentine Congress...passes legislation applicable in all Argentine jurisdictions.”⁵² However the report also notes that “Argentine jurisdiction has its own legislation on arbitration (a procedural matter) applied by its own judiciary. In 2001, a national arbitration statute was submitted to the Congress, which took no action.”⁵³ This is in stark contrast to the Peoples Republic of China, which has a centralized system for the recognition and execution of arbitral awards. The report notes that to enforce arbitral awards the “competent court is the Intermediate People's Court at the domicile of the party against whom the enforcement is requested or at the place where the property to be enforced against is located.”⁵⁴ Although systems and procedures are in place

⁵¹ *Id.*

⁵² *Commission Report Special Supplement 2008: Guide to National Rules of Procedure for Recognition and Enforcement of New York Convention Awards*, ICC (2008) available at http://www.iccdri.com/COPE/printerFriendlyVersion_middle.gsp?sourcef.

⁵³ *Id.*

⁵⁴ *Id.* See also SPC Judicial Interpretations, 8 Sept. 2006, Art. 12. Other sources of law applicable to arbitration award enforcement noted in the article include: (i) Arbitration Law of the PRC, adopted at the Ninth Meeting of the Standing Committee of the Eighth National People's Congress on 31 Aug. 1994, promulgated by Order No. 31 of the President of the People's Republic of China on 31 Aug. 1994 and effective as of 1 Sept. 1995; (ii) Civil Procedure Law of the PRC, adopted on 9 Apr. 1991 at the Fourth Session of the 7th National People's Congress, revised by the 30th Session of the Standing Committee of the 10th National People's Congress on 28 Oct. 2007 and effective as of 1 Apr. 2008; (iii) Contract Law of the PRC adopted at the 2nd Session of the 9th National People's Congress on 15 Mar. 1999 and effective from 1 Oct. 1999; (iv) Other laws of the National People's Congress or its Standing Committee, which include specific provisions on arbitration; and (v) Judicial Interpretations, Regulations, Opinions and Notices issued by the Supreme People's Court ('SPC').

to govern in the instance of a foreign award, “it is also unclear how the courts will treat an award rendered by a foreign arbitration institution, where the place of arbitration is in China.”⁵⁵ The report further warns that “[i]t is to be expected that such award will not be recognized on grounds of a violation of Chinese law, which implicitly only allows Chinese arbitration institutions to conduct arbitration in China.”⁵⁶ Argentina and The Peoples Republic of China are extremely complex examples, but the vast differences between these two manufacturing giants further illustrate the potential complications that face the modern attorney in transnational transactions.

A similar alternative dispute institution to the ICC is the London Court of International Arbitration (LCIA), based in Great Britain, that dates back to 1883. It offers mediation and arbitration services.⁵⁷ Over 40 percent of the arbitrations handled by the LCIA are for amounts of 5 million USD or less (20% ≤ \$1 million).⁵⁸ The LCIA proves a viable dispute resolution option for business enterprises of varied sizes. According to the Director General’s report, “the largest categories in 2008 referrals were commodities transactions (in steel and carbon products in particular), accounting for almost 30% of the referrals that year, followed by the broad category of joint ventures and shareholders’ disputes, at a little over 20%, and loan or other financial agreements at around 15%.”⁵⁹ Additionally, approximately 75 percent of the 2008 filings were for disputes arising from contracts executed from 2005-2008.⁶⁰

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Adrian Winstanley, *LCIA Director General's Report* (London: LCIA,[2009]) (accessed 11/9/2010).

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

No discussion on international law would be complete without the inclusion of The Hague Conference on Private International Law (The Hague). Representing sixty-nine states, the European Union, and spanning every continent, “the ultimate goal of the Organization is to work for a world in which, despite the differences between legal systems, persons - individuals as well as companies - can enjoy a high degree of legal security.”⁶¹ The issues addressed by The Hague include, but are not limited to, the jurisdiction of the courts, applicable law, and the recognition and enforcement of judgments. Starting in 1893, The Hague did not become a permanent inter-governmental organization until 1955.⁶² As with the ICC, the WTO, and many other organizations, The Hague is governed by its members.⁶³

Elements necessary to render an agreement legally binding in the international arena developed over time in countries recognizing both the civil and common law traditions.⁶⁴ The United States, with a common law tradition, requires that a valid contract contain an offer and an acceptance of material terms based on mutual assent, supported by legally sufficient consideration, of a legal purpose/nature, by those with competency under the law.⁶⁵ Having been derived through statute or precedent, the absence of any one of those elements creates a void contract.⁶⁶ By comparison, in the civil law tradition, the CSIG offers rules governing contract formation, and the rights and obligations of the seller and the buyer.⁶⁷ It

⁶¹ The Hague, *Hague Conference on Private International Law*, November 5, 2010, at 10, http://www.hcch.net/index_en.php

⁶² *Id.*

⁶³ *Id.*

⁶⁴ See generally C. CHATTERJEE, *NEGOTIATING TECHNIQUES IN INTERNATIONAL COMMERCIAL CONTRACTS* (2000).

⁶⁵ See *DOCTEUR EN DROIT & LY*, *supra* note 20.

⁶⁶ *Id.*

⁶⁷ See *JANSSEN & MEYER*, *supra* note 37.

does not, however, govern the interpretation of the validity of a contract; that duty is left to the individual state or nation.⁶⁸

An additional key issue is one of natural language.⁶⁹ The method of establishing the controlling language of a contract is a highly debated issue. Language clauses have developed that attempt to solve discrepancies, such as “this agreement shall be executed in both the English and the Spanish language. The English and Spanish texts shall both be valid, provided that in the event of any discrepancy and the resolution of a dispute the English text shall prevail.”⁷⁰ Yet, critics of language clauses propose that by drafting a contract in multiple languages the cost of litigation increases (because interpreters are needed) and in some cases the jurisdictional court will apply a translation supplied by a court-appointed translator different than the translation in the written draft. The variable of a court-appointed translator leaves much in terms of control of the interpretation and drafting of the contract. Finally, it is important to note that even with all of the strides made through treaties and resolution, culture and custom continue to play a tremendous role in the formation, interpretation, and enforcement of contracts.⁷¹ For example, Japanese negotiations are often a long process, with emphasis on forming not only a contract but a relationship between the parties.⁷² Japan contrasts sharply with the typical American form of negotiating where speed is always a high priority, time is money, and contracts are drafted in painstaking detail.⁷³ The issue of language carries over into the enforcement of some contracts. The ICC charted the

⁶⁸ JAMES R. SILKENAT ET AL., *THE ABA GUIDE TO INTERNATIONAL BUSINESS NEGOTIATIONS : A COMPARISON OF CROSS-CULTURAL ISSUES AND SUCCESSFUL APPROACHES* (3d ed. 2009).

⁶⁹ *See* DOCTEUR EN DROIT & LY, *supra* note 20.

⁷⁰ *Id.*

⁷¹ *See generally* KARLA C. SHIPPEY, *A SHORT COURSE IN INTERNATIONAL CONTRACTS : DRAFTING THE INTERNATIONAL SALES CONTRACT FOR ATTORNEYS AND NON-ATTORNEYS* (1999).

⁷² *Id.*

⁷³ *Id.*

results of a study done on arbitration award enforcement, which it specifies what portions of the award must be submitted to the respective country. Every country listed indicates translations of the required documents are required in some form.⁷⁴

Whereas the presented research has not been undertaken before, studies have been concluded that address similar issues. The International Association for Contract and Commercial Management (known herein as IACCM), is a non-profit membership organization that supports innovation and collaboration in meeting the demands of today's global trading relationships and practices.⁷⁵ It provides executives and practitioners with advisory, research and benchmarking services, and worldwide training and certification for contracts, commercial and relationship management professionals.⁷⁶ The organization has approximately twenty-thousand members worldwide, from one-hundred and thirty countries, whose membership includes representatives from around half of the global 500. The IACCM has launched a variety of studies examining different facets of international contracting. In the study, International Contracting – market comparisons,⁷⁷ “participants across a wide range of industries and regions, assessed the relative ease of doing business in almost 50 of

⁷⁴ See Figures 1-4.

⁷⁵ Available on the IACCM's website at <http://www.iaccm.com>

⁷⁶ *Id.*

⁷⁷ International Contracting – Market Comparisons, (2010) available at <http://www.iaccm.com/members/research/>. The survey included 221 responses and had three major purposes:

1. For the overseas negotiator: the findings will assist in anticipating some of the risks and issues they need to address or overcome. Of course, it may even mean they decide against a market entry at all.
2. For the domestic negotiator, the survey offers insight to external perceptions of their country and equips them to think about how they may address[s] the fears that their counterpart may have in doing business with them.
3. For government agencies, the findings represent an agenda for improvement.

the world's major markets”⁷⁸ where each participant had “direct experience of negotiating in overseas countries to rate their experiences on a scale of 1 to 5.”⁷⁹

The goal of this study was to look at the relative ease of doing business - broadly from a contracting and negotiations perspective. We were trying to understand the primary risk characteristics associated with doing business in major trading nations. We undertook the study by going out to our members who are engaged in international negotiations and contract management. All the members approached had direct contracting and negotiations experience and the study was based upon their experiences - not their prejudices or ideas. We approached 4000 negotiation and contract members of the association through sending out a web based survey. We weren't only looking at the general ranking of a country's relative ease or difficulty to trade with, we also required them to benchmark against nine specific criteria - such as business culture, problems with payment and challenges with legal systems or regulations.⁸⁰

The results of the survey⁸¹ showed Canada, Singapore, and Australia as the top three countries easiest to do business with. Nations in Africa rounded out the bottom three with China scoring a 2.25 right behind Saudi Arabia. The results are significant in that they show a statistical risk assessment for different industries in various countries around the world. “For the negotiator the study is an excellent checklist that they [sic]

⁷⁸ *Id.* at 3.

⁷⁹ *Id.*

⁸⁰ Interview with Tim Cumminns, CEO, IACCM (June 2010).

⁸¹ See Figure 5.

should consider if they look at the commercial risk, opportunity and options of doing business in different countries.”⁸²

As previously mentioned, language and translation is a point of contention between professionals in drafting transnational agreements. In 2009, the IACCM released the results from a translation survey that aimed at determining the “practices and processes global organizations are using to manage their template and document translations.”⁸³ The results showed⁸⁴ that when applicable, all practice sectors (commercial, public, and government) of the sampled population overwhelmingly contract in local languages. Interestingly, in all populations except the Asia Pacific, the typical practice is to use either third party translation providers, or a combination of internal and external resources.⁸⁵ The study concluded by citing comments made by participants. One such comment elaborated on a best practice employed by the survey taker’s company. The participant was quoted as saying, “We are in a global business and many of our customers are also international companies. Generally, we can use English for all regions. The only exception is sometimes we need to use local languages as mandated by governments or local law.”⁸⁶ An additional suggestion from an additional participant included:

We employ contracting staff (centrally) who are fluent in the languages of the countries in which we have local offices. Whenever translation services are

⁸² *Id.* at 18.

⁸³ Translation Survey, (2009) available at <http://www.iaccm.com/members/research/>. The survey was conducted in October 2009 and drew input from 148 participants across a wide range of industries and regions. The goal of the study was to identify the best practices related to document translations. The demographics reported were region, industry, and company revenue.

⁸⁴ See figure 6.

⁸⁵ See figure 7.

⁸⁶ Trans. Surv. (2009) at 6.

provided by an external (local) lawyer, we also run an internal check for consistency with the firm's other contracts and for the appropriate level of formality (particularly important in languages like Japanese where it is possible to say the same thing in many different ways according to the formality of the relationship).

In a final highlighted comment, on point with the nature of the research included herein, it is explained that “foreign language contracts will always be a concern. We have had internal personnel fluent responsible for negotiations in many instances; however, in instances where a non-native or native fluency speaker is unavailable, we have asked that contracts be negotiated in English and that the English language version control.”⁸⁷

Lastly, in 2007, IACCM published findings from the study, *International Contracting: Best Practices in Structure and Legal Review*.⁸⁸ The study showed “that a majority undertake international business in three forms – country-to-country export (76%); multi-country supply agreements (single source of supply, to multiple customer locations) (58%); and regional / global agreements covering multiple locations for both customer and supplier (80%).”⁸⁹ The study also showed that 25%

⁸⁷ *Id.* at 7.

⁸⁸ *Int'l Cont.: Best Practices in Structure and Legal Rev.*, (2007) available at <http://www.iaccm.com/members/research/>. The survey was undertaken in May 2007, and obtained data from one hundred major corporations. This included forty-six corporations representing international sales contracts, thirty-two representing international procurement contracts, and twenty-two providing data for both. The report explores a number of practices, with particular focus on Law Department policies, and the effect these have on cycle times. Although not defined in the report, a cycle time is defined by businessdictionary.com as the period required to complete a function, job, or task from start to finish. The report also highlights five practices that appear to generate faster cycle times. *Id.*

⁸⁹ *Id.* at 2. Additionally it should be noted that the primary focus was on the structure of the third type, regional/global agreements, because those contracts are of the greatest complexity and contain the longest delays.

of respondents have a central legal team that reviews and approves international contracts on behalf of all locations.⁹⁰ “This 25% has dispute resolution based on arbitration/mediation using the laws of the headquarters country.”⁹¹ The overall conclusion of this study was that the central decision making has a clear positive impact on cycle times for establishing contract terms.⁹² As a closing point, it is worthy to note that:

58% of respondents use arbitration / mediation as their preferred method of dispute resolution, with 16% using the laws of a third party country. Of those who regularly use litigation as the basis for dispute resolution, the largest group insist on litigation occurring in their headquarters country under that country’s laws (clearly seeking home turf advantage). Just 16% typically specify that litigation will occur in the country where the dispute occurs, using local law.⁹³

These statistics address an important issue, namely what methods of dispute resolution are preferred in practice by today’s attorneys drafting international contracts as it relates to the time required to complete a business transaction.

The information obtained by the aforementioned studies is invaluable. However, none of the studies addresses the cognitive process by which an attorney bases decisions while drafting cross-border agreements, nor any partialities among the demographics. The

⁹⁰ *Id.* at 4.

⁹¹ *Id.*

⁹² *Id.* It should be noted that the survey does not address whether the impact on implementation is positive or negative. The study also remarks that “some of the drive towards centralization reflects the growing consolidation of global procurement organizations, equipped with standard tools and systems that enable full electronic contracting and ordering.” *Id.*

⁹³ *Id.* at 5.

studies above provided evidence of which countries are viewed as difficult to deal with, by what procedure translations are conducted, and procedural matters as a function of transaction completion time. The results are void of information that would lead to conclusions of a propensity toward certain behaviors. Meg Kinnear, Secretary-General of the International Centre for the Settlement of Investment Disputes (ICSID) at the World Bank, acknowledged that the information simply isn't available that would give counselors any incite to any tendency or predisposition attorneys may have from certain practice sectors or various countries in regards a focus on contract construction.⁹⁴ Therein lies the need for the study at bar and how it departs from those that have been executed before. It seems that attorneys decisions when drafting a contract are a culmination of what they prefer to do, tempered by what they think they should do, but constrained by what is feasible to do. The overall aim of this study is to build upon the previous analyses, and to obtain sufficient data so as to deduce any proclivity attorneys drafting international contracts may have within the demographics accumulated.

⁹⁴ Telephone Interview with Meg Kinnear, Sec'y Gen. of the ICSID (W. Bank) (July 20, 2010).

III. METHOD

Quantitative Procedure

Participants

The participants for this study consisted of two groups: American attorneys (and their foreign equivalents) who are actively practicing in area of international contracts and related transactional procedures and American attorneys (and their foreign equivalents) who may not be engaged in the active practice of law but who are teaching, researching, writing, consulting or otherwise working in the practice area of international contracts and related transactional procedures. Data were gathered from 104 participants, which included eleven different native languages and thirty-four areas of concentration. Participants resided in twenty-three countries and were representative of five reported races. Contributors varied in age, work experience, nationality, education, and background. The socio-demographics assessed in this study included gender, race, predominant area(s) of practice⁹⁵, firm size, area(s) of concentration, first language, country of current residence, country of origin, current position, number of years at current position, number of years licensed as an attorney, and levels of education completed. Appendix D provides the specific countries and practice sectors from which participants originated.

The final survey instrument resulted, in part, from a pilot test that included two participants. Participant One was a Caucasian female originally from Germany, but currently residing in France. She holds a Ph.D. and has been a licensed attorney for three to five years.

⁹⁵ The term “practice area” is more generally known in the United States as “practice sector.” However, since the scope of this study is global in nature, the researcher decided to use “practice area” which favors International English as opposed to U.S. spoken English.

International law and contracts are her predominant areas of practice. Participant Two was a Caucasian male originally from and currently residing in the State of Florida in the United States. A licensed attorney for eighteen to twenty years, he also holds an LL.M. degree and currently teaches subjects related to international law. Each participant is trained and practices in different legal systems, specifically common law and civil law traditions.

Instruments

The instrument used to complete the quantitative portion of the study was a questionnaire written by the author specifically for this study. The research design used cross-sectional data aimed at empirically measuring the perception of legal practitioners and academics concerning international contract law, contract formation and dispute resolution, including specifics related to choice of law, cost benefits, preventative measures, cultural issues and contract enforcement. The measure consists of twenty-two statements that assess how much value is placed on various categories within international contract construction. The questionnaire uses twenty-one four-point Likert-type responses, and an ordinal response question for participants to rank the five aforementioned categories (choice of law, enforcement, preventative measures, cultural concerns, and cost benefits) in order of importance. The final version of the survey instrument can be found in Appendix A. For specific comments on a previous draft of the questionnaire refer to Appendix B.

Survey items were drafted with the intention of ranking each of the five identified categories of international contract drafting. However, no statistical evaluations were performed, such as a factor analysis or measures of internal consistency, that confirm how items load on to these assumed subfactors of international contract law. For instance, the item “A Contract should be drafted in the same language as the country hosting the decision

making body,” was categorized under Choice of Law. In contrast, the statement “I prefer arbitration over mediation as an alternative dispute resolution choice in my international contracts,” is placed in the category of Preventative Measures. The category, Enforcement, encompasses items addressing concerns surrounding breach of contract; for example, the statement “I prefer to arbitrate in a forum where it may be easier to obtain a decision resolving a contractual dispute but more difficult to collect a judgment.” Cultural Concerns indicate items accounting for traditions and customs as they relate to international contracting, for instance the statement “Face-to-face dealings with representatives of foreign entities are vital to successful contract negotiations.” Finally, the category of cost benefit analysis, focuses on the influences cost has on contract design as indicated by the statement, “When drafting a contract with an international party, exchange rate risk should be a priority over the language a contract is drafted in.”

Procedure

The system used to distribute the questionnaire is SurveyGizmo. SurveyGizmo is a web-based computerized self-administered questionnaire (CSAQ). The questionnaire was available electronically to the participants to enhance greater accessibility and convenience for the target population. Distribution of the CSAQ to the sample population was accomplished through e-mail correspondence, and to a lesser extent by direct contact via phone and e-mail communication. The predominant method of contact was through professional organizations. The professional organizations targeted for this study are comprised of lawyers dedicated to international law, international contracts or international business. The researcher contacted the International Association for Contract and Commercial Management, the International Law Association, the International Chamber of

Commerce, the British Institute of International and Comparative Law, the International Bar Association, the Hong Kong Bar Association, and the International Trade Center. In addition to the aforementioned professional organizations, the researcher made contact with the International Law Committees of the states of Florida, New York, California, and Louisiana. Using the options available in Survey Gizmo, separate and unique hyper-links were distributed to each entity that included the name of the survey and the individual professional organization.

Recruitment procedures included direct communication with law professors of applicable specialty from Columbia Law School, American University Washington College of Law, and Cornell Law School. Research specialty and practice focus of the staff and faculty was conducted to determine applicable candidates, and e-mail communication was transmitted by the researcher to the applicable emails listed on the respective law school websites. Additional communications were sent to members of the private sector, chosen at random through research and referral. E-mail addresses for those individuals were obtained either through the referring person or off the corresponding entity's website. Finally, recruitment was solicited by English speaking attorneys in the Peoples Republic of China, via telephonic conversations with previously identified English speaking attorneys.

Qualitative Procedure

Participants

Two participants are included in the qualitative portion of the study. Participant one is a Caucasian South African female, who currently resides in Israel, and conducts the majority of her legal counsel in nations experiencing rapid economic development within the

last 20 years, such as China and Russia. Her clients are headquartered internationally, with the majority located in Israel. Participant two is a white male, for whom Washington, D.C. provides his residence and his predominant work locale. His client base consists exclusively of companies founded in the United States, with a heavy emphasis on companies seeking to do business internationally for the first time.

Materials and Procedure

The survey used for the quantitative study concludes with the researcher's invitation to the participant to participate in a series of follow-up questions. Respondents willing to participate in the qualitative portion of the research were encouraged to contact the researcher via e-mail to schedule a date and time for a telephone interview. Each semi-structured interview was scheduled for an approximate duration of sixty minutes and consisted of three semi-structured questions. At the scheduled date and time, a dedicated phone line with international calling access was used to contact each participant. The researcher did not provide the questions to the participants in advance.

The follow-up interviews that formed the qualitative component of the study began with the researcher providing a brief overview of the research. During the recitation of the research overview, the researcher related the following: “[t]he research has identified five subjects which are consistently at issue when drafting international contracts. The survey you previously took was designed to assess and compare the dispositions of varying demographics of attorneys in relation to the identified topics. It is the goal of the study to discover distinct proclivities among demographics.” Subsequent to the overview statement, the researcher asked the participants the following three questions in order in a conversational

style:

1) What questions, if any, made you reassess or reexamine your current approach to international contract design?

2) Were the questions specific enough to accurately answer them?

3) According to our research there is evidence to suggest that cultural concerns are viewed statistically less important than other factors such as enforcement or cost benefit analyses. How do you react to this finding?

Each question is responded to with an answer, followed by a discussion and an exchange of ideas between the interviewer and interviewee. Notes are taken throughout the process, and reported herein.

IV. RESULTS

Quantitative Analysis

A series of mixed design factorial analyses of variance (ANOVA) were used to determine if relationships exist between (a) the categories presented and legal traditions and (b) categories and practice sectors. Post hoc pairwise comparisons were used to determine which groups differed from each other for significant ANOVAs. The Greenhouse-Geisser correction was used when the assumption of sphericity was violated.

Hypothesis I

The initial model tested the hypothesis that attorneys from different legal traditions differed in their perceptions of the importance or relevance of issues of international contract design. A mixed design ANOVA was run to assess the between-subject effects comparing attorneys from different legal traditions and within-subject effects comparing the importance of five identified issues of disputed international contract practices. This analysis showed no significant interaction between the contract categories and legal traditions ($F(5.44, 141.54) = .281, p = .934$). Therefore, attorneys were consistent in their concerns for contract law regardless of their legal tradition. The statistical results are presented in Table 1 (Descriptive Statistics Between-Subjects Factors), and Table 2 (Tests of Within-Subjects Effects). However, there were differences in the level of preference and importance that attorneys placed on each issue of international contract design, $F(2.72, 141.54) = 3.453, p = .022$. Least Significant Difference pairwise comparisons, presented in table 3, indicated that cultural concerns ($M = 2.28$) were less important when designing international contracts than preventative measures ($M = 2.57$), enforcement ($M = 2.67$), and cost benefit analysis ($M =$

2.62), $p < .05$. However, cultural concerns were just as important as choice of law ($M = 2.59$); and preventative measures, enforcement, cost benefit analysis, and choice of law were not different from each other. Standard errors and confidence intervals are presented in Table 4.

There were no differences between legal traditions in terms of the importance of contract law as a whole ($F(2, 52) = .277, p = .759$). Therefore, attorneys participating in the study were consistent in their overall approach to contract law regardless of their legal tradition.

Hypothesis II

The second hypothesis claimed that attorneys from different practice sectors differed in their preferences or importance of issues of international contract design. Because several attorneys practiced in more than one sector, three comparisons were made comparing one of three sectors (private, academic, and government) to the other two sectors. Attorneys working in the private sector showed no statistical difference in the way they endorsed the concerns for international contracts when compared to attorneys in the other sectors, $F(2.80, 148.29) = 1.088, p = .354$. The result for the main effect for contract categories is described in the previous section for Hypothesis I. Likewise, the perceptions of lawyers in private practice were no different from those in other sectors with respect to their overall views on contract law ($F(1, 53) = .180, p = .673$).

The second model for *Hypothesis II* tested the interaction between the contract categories and whether or not attorneys were in academia. Attorneys working in academia show no statistical difference in the way they endorse the categories when compared to attorneys in the other sectors, $F(2.76, 146.29) = .053, p = .979$. Similarly, the perceptions of

lawyer participants in academia were no different from those in other sectors with respect to their overall views on contract law ($F(1, 53) = .268, p = .607$).

The final model tested the interaction between the contract categories and whether or not the attorney was in a government position. Attorneys working in government show no statistical difference in the way they endorse the categories when compared to attorneys in the other sectors, $F(2.76, 146.08) = 1.762, p = .161$. Likewise, those in government practice were no different from those in other sectors with respect to their overall views on contract ($F(1, 53) = .044, p = .834$). Therefore, the results indicate that attorneys participating in the study shared perceptions that were consistent in their overall approach to contract law regardless of their practice sector.

Qualitative Analysis

A post-survey interview with Participant Two revealed that addressing cultural concerns in international contract design are warranted in many circumstances. The example provided by the interviewee pointed specifically to transactions within economically developing nations and within countries that may be developing new political or economic infrastructures. When negotiating in Russia, for instance, on behalf of her client in Israel, the interviewee found that cultural facets of contract negotiations presented unique challenges external to the substantive and procedural concerns. In Russia, the concept of “representation” did not exist under the former communist regime; therefore negotiating the representation provision of the contract contained a cultural phenomenon that had not been anticipated. Additionally, she adds that communication can be a challenge when clients attempt to manage everything. At times, delegation to a representative outside of the

company can give clients pause, leading to the attempt to oversee the dialogue between the cooperating parties. This can be particularly problematic since in international negotiations with multiple points of contact in the host country, it “turns the negotiation into a giant game of telephone.” A theme emerged throughout the conversation that fixated on the concept of perception, and the difficulties that can arise when cultural sensitivities are overlooked.

The post-survey interview with Participant Two indicated that cultural concerns can be important in relation to enforcement, which is an issue that must be addressed in the minds of the vast majority of clients. Throughout the discussion, the point was consistently made that limitation of liability was a primary concern for the vast majority of his clients. He related this concept of enforcement to the idea of culture in that different cultures assume liability in different ways. “Many other countries do not have strong local laws for or against finding liability in cases.” He indicated that many countries’ laws dealing with cross-border transactions mirror the U.S. system; although there is no way to know which countries mimic U.S. laws unless the knowledge is obtained through a trial by fire.

V. CONCLUSION AND RECOMMENDATIONS

The primary objective of this study is to help American businesses expand globally to more fully maximize their international opportunities. By providing attorneys with empirical observations previously unavailable, the study results may help facilitate the negotiation and drafting of transnational contracts. The researcher is hopeful that the findings from this study contribute to the gap currently existing between assumptions and actualities in the realm of international contracting. To that end, the following provides implications for the research findings as well as suggestions for future consideration.

The study showed that attorneys who draft international contracts attribute less significance to cultural concerns in comparison to other procedural considerations. This result, in and of itself, provides little clarification concerning the need for enhanced cultural competencies; however, attorneys' lack of attention to cultural particularities in the contracting process is a failing that could have significant impact on the effectiveness and ultimate success of their contracting efforts. As discussed in the results from the qualitative analysis of interviews with Participants Three and Four, the potential implication of the research findings has been partially substantiated. Attention to cultural-specific influences in transnational contracting may help attorneys better prepare for and avoid issues that though not substantive or procedural in nature have the potential of derailing contract negotiations just the same.

There are numerous resources that could be further developed to assist counsel in improving cultural competencies in an effort to improve the long-term success of their contracting efforts. A sample of possibilities is mentioned here. For example, for U.S.

attorneys the American Bar Association, (known herein as ABA), is a superb resource for a multitude of matters. Cultural competencies might be another area where the ABA could provide assistance. For example, a virtual library of materials populated by personnel knowledgeable about international cultural issues, or a professional exchange for guided discussions on cultural competencies could aid in the effort to better educate American attorneys in this area. Additionally, the host of bar associations, companies, foundations, universities and other entities that provide educational opportunities for lawyers might consider increasing their offerings to include seminars, courses, workshops and other outlets for the delivery of culturally relevant information. Another option and incentive could include the offering of continuing legal education (CLE) credits for attorneys allowing them to access helpful materials while simultaneously satisfying licensure requirements. Perhaps, the U.S. Department of State and the foreign equivalents could serve as additional resources for cultural information, in particular cultural differences, that might prove significant in conducting business across the globe. This could be facilitated by a link dedicated to lawyers on the U.S. State Department website, which would provide reference materials, online classes, and other similar workshops in relation to international contracting. A similar program could also be initiated by equivalent departments of state in foreign nations, which would provide a useful tool for any attorney attempting to contract within that nation.

Improving cultural competencies could prove helpful in the new global economy in many respects, not the least of which is in a burgeoning legal career. As early as law school, information impacting cultural interchange could be made available. One thought is to increase efforts to facilitate cultural exchange programs for law school students. Programs focused on providing law school students with the opportunity to expand their cultural

horizons by immersing them in cultures of interest could prove to increase the number of culturally competent lawyers within specific geographic regions, increasing business opportunities and benefiting the overall global market.

Professional and bar associations could, likewise, sponsor events in which international speakers provided information on a host of cultural topics that would enhance the cultural awareness of attorneys. Events presented in more informal or relaxed settings could promote further discussion, communications and collaboration, all of which have the potential of addressing cultural issues and specific needs attorneys may recognize in their own cultural edification.

A second finding presents somewhat unexpected implications. Initially, one assumption was that the procedural differences between the various legal traditions (i.e., civil law versus common law) would generate vastly different approaches to contract design for international contracts. To the contrary, however, the study revealed that attorneys from different legal traditions express similar perspectives when addressing the importance of the study's examined categories of international contract design. For example, a survey completed by a French attorney, educated within the civil law tradition, indicates that he places similar significance upon choice of law as does someone from a common law tradition, like that of the United States. Findings from the different practice sectors (private, academia, and government) are consistent. This result is particularly significant when one considers the preparation time expended in negotiating international contracts. Proper planning for negotiations is a costly and time consuming task. The element of possible disconnect due to the divergent legal traditions and/or variations in the practice sector of the parties can be eliminated as a possible concern prior to the onset of negotiations. If the

empirical results from this study are instructive, attorneys from different legal traditions can feel comfortable assuming their colleagues in areas hosting different legal traditions approach the creation of international contracts from similar perspectives – at least as those perspectives relate to the categories of interest addressed in this study. Knowing this reduces some of the amount of time necessary in strategizing about contract formation. In this respect, knowledge is power; knowing the commonalities of practical approaches saves time and money in the end.

Study results based on the limited number of participants, indicate that a number of previously identified assumptions about international contract practices are unsubstantiated. International arbitration is justifiably recognized as a leading method for resolving disputes in the international arena, but arbitration is often incorrectly depicted as the dispute resolution of choice. To the contrary, the study showed 44.9 percent of respondents either strongly disagree, or are inclined to disagree with using arbitration as their preferred means of dispute resolution. Designing a contract with the presumption that arbitration will be the best dispute resolution method could be problematic if an attorney's assumptions about arbitration are not confirmed when dealing with a co-counsel or counterpart in a foreign nation. There is now evidence to suggest that not only is arbitration not the sole method of dispute resolution, it is also not internationally viewed as the preferred method of dispute resolution. This is particularly significant for the American bar. Because arbitration is perceived by the American bar to be the primary means for resolving global contract disputes, there is an aspect of contract formation in a global context that may not be as efficient or as effective as it could be. Whether international contracting would meet with more success if American attorneys were armed with this additional information is a question beyond the scope of this

study. It is not, however, implausible to assume that, at minimum, international contracting could benefit from this finding.

One implication then of this finding is the need to increase the practicing bar's appreciation for additional methods of alternative dispute resolution. A means of facilitating this could be an educational campaign that specifically addresses other means of alternative dispute resolution advisable in drafting and negotiating contracts that cross national boundaries. Similar to the above suggestions, this campaign could be administered through the collective efforts of universities, law schools, foundations, professional associations, bar associations, private companies and others. An educational campaign that included a variety of delivery methods – CLEs, informal presentations, etc. -- again like those describe above, would be preferable.

In addition, further study is warranted into the preferred means of alternative dispute resolution in various countries and areas of concentration. It may very well be that the different cultures adopt preferable alternative dispute resolution approaches based, in part, on the area's cultural and historical ideologies. Thus, marrying cultural awareness and alternative dispute resolution programs could produce an exponential beneficial impact for the bar.

An additional widely debated topic centers around what is the best practice for determining the language in which a contract is drafted. The study results suggest that the practice of expending significant monies on drafting international contracts in multiple languages may be unnecessary. According to the findings, 91.9 percent of respondents either strongly agree, or are inclined to agree that English is their preferred contract language.

Based on previously mentioned interviews, this statistic is not indicative of Russia or China which require enforceable contracts to be written in those respective languages. Knowing, however, that English is a preferred contract language, could save significant expenditures by obviating the need to draft multiple-language documents, interpret foreign languages and incur expenses related to having language experts assist in editing resulting contracts. Having a common preferred contract language assists in other realms as well, like negotiations and contract enforcement. Given the study findings that indicate English is the preferred contract language, it may be possible to launch international efforts through multinational organizations to adopt English as a universal contract language. If successful, the results could prove to have direct, beneficial, long term impacts on the American economy.

The research has shown that a knowledge gap exists, and the cost of filling that gap can effect global commerce as the economic divide between nations increasingly fades away. The shortcomings in international contract design as evidenced in the research, can be seen as a hindrance on transnational commerce, or preferably as a tremendous learning opportunity for the attorneys of the world. Beyond the scope of this study, it is conceivable to think that other areas of cross-border contract design contain widely held assumptions that when placed under the microscope of empirical scrutiny are found to be rooted in myth more than fact. Collectively the answers can be provided, if we ask the right questions. Subsequently, it is the hope that the examples revealed in this study will encourage others to question the accepted norm, and help pave the way for the future of global fiscal cooperation through streamlined international contract design.

Figure 1

Country	Entire award must be supplied.	Entire contract must be supplied.	Only arbitral clause or arbitration agreement must be supplied.	Required documents must be translated in their entirety.
Algeria	√	—	√ ¹	√
Argentina	√	√	—	√
Australia	√	—	√	√
Austria	√	—	√ ²	√
Bahrain	√	—	√	√
Belgium	√	—	√	√
Brazil	√	—	√	√
Brunei Darussalam	√	—	√ ³	√
Cameroon	√	—	√	√
Canada	√	—	√	√
Chile	√	—	√ ⁴	√
China	√	—	√	√
Colombia	√	√	—	√
Croatia	√	√	—	√
Czech Republic	√	√	—	√
Denmark	√	—	√ ⁵	√ ⁶
Dominican Republic	√	√	—	√
Ecuador	√	—	√	√
Egypt	√	—	√ ⁷	√
Finland	√ ⁸	—	√	Discretionary ⁹

¹ Although Algerian law requires only the 'arbitration agreement', some judges in practice require the entire contract to be supplied.

² Under Austrian law, the courts have discretion to decide whether the arbitration agreement must be supplied.

³ Although the Brunei courts prefer the entire contract to be supplied, it is sufficient to supply only the relevant portions where the entire contract is extremely lengthy.

⁴ Although Chilean law requires only the arbitration agreement, it is advisable to supply the entire contract.

⁵ Danish law does not require arbitration agreements to be in writing.

⁶ Translation is required in Denmark unless the parties agree to forego translation and the court is comfortable with the foreign language. Danish courts will generally accept documents in Swedish, Norwegian and English.

⁷ Although not required by Egyptian law, it is standard practice to supply the entire contract.

⁸ Although the Finnish Arbitration Law requires the entire arbitral award to be supplied, the courts have in practice considered it sufficient to supply only the operative section of the award (*dispositif*) without the recitals or detailed reasoning of the arbitral tribunal.

⁹ Finnish courts have discretionary power to determine the extent of translation required.

Figure 2

Country	Entire award must be supplied.	Entire contract must be supplied.	Only arbitral clause or arbitration agreement must be supplied.	Required documents must be translated in their entirety.
France	√	—	√	√
Germany	√	—	— ¹⁰	— ¹¹
Greece	√	—	√	√
Guatemala	√	—	√	√
Hong Kong	√	—	√	√
India	√	—	√ ¹²	√
Iran	√	—	√	√
Ireland	√	√	—	√
Israel	√	√	—	√
Italy	√	—	√	√
Japan	√	—	— ¹³	√
Jordan	√	√	—	√
Korea	√	—	√ ¹⁴	√
Kuwait	√	—	√	√
Lebanon	√	—	√	√ ¹⁵
Lithuania	√ ¹⁶	—	√	√
Luxembourg	√	—	√	√
Malaysia	√	√	—	√

¹⁰ Under German law, it is not necessary to supply the arbitration agreement.

¹¹ Translation is not a mandatory requirement in Germany, but a court may request translation. It is common practice for the party seeking enforcement to translate the award into German.

¹² Although not required under Indian law, the entire contract containing the arbitration agreement should, in practice, be provided as a matter of practical convenience.

¹³ Under Japanese law, it is not necessary to supply the arbitration agreement.

¹⁴ Korean courts will accept only the arbitration agreement unless the respondent objects, in which case the entire contract must be supplied.

¹⁵ In Lebanon, translation of the entire contract may be requested by a judge.

¹⁶ Although the Lithuanian Code of Civil Procedure contemplates that only part of the arbitral award may be supplied, Lithuanian courts are in practice free to require the entire award if, for example, its contents are in dispute or are otherwise relevant to

Figure 3

Country	Entire award must be supplied.	Entire contract must be supplied.	Only arbitral clause or arbitration agreement must be supplied.	Required documents must be translated in their entirety.
Mexico	✓	—	✓	✓
Monaco	✓	—	— ¹⁷	✓
Morocco	✓	✓	—	✓
Netherlands	✓	—	✓	✓
New Zealand	✓	—	✓	✓
Nigeria	✓	—	✓ ¹⁸	✓
Norway	✓	—	— ¹⁹	✓
Pakistan	✓	✓	—	✓
Poland	✓	—	✓	✓
Portugal	✓	—	✓	✓
Romania	✓	—	✓	✓
Russia	✓	—	✓	✓
Senegal	✓	✓	—	✓
Serbia	✓	✓ ²⁰	—	✓
Slovak Republic	✓	✓	—	✓
South Africa	✓	—	✓	✓
Spain	✓	—	— ²¹	✓
Sweden	✓	—	✓ ²²	✓
Switzerland	✓	—	✓	✓
Thailand	✓	—	✓	— ²³

¹⁷ Monaco does not require the arbitration agreement to be supplied.

¹⁸ Although the Nigerian Arbitration and Conciliation Act only requires the arbitration agreement to be supplied, it is prudent to provide the entire contract containing the arbitration agreement.

¹⁹ Norwegian law does not require arbitration agreements to be in writing, but a court may require a written arbitration agreement to be supplied where one exists.

²⁰ Although not required under the Serbian Arbitration Law, the prevailing practice is to supply the entire contract. If the contract is exceptionally long or contains confidential information, certain parts may be omitted.

²¹ Under Spanish law, it is not necessary to supply the arbitration agreement.

²² Swedish law does not require arbitration agreements to be in writing. If the opposing party disputes the existence of an arbitration agreement, the applicant must supply the written arbitration agreement, if any (but not the entire contract), or otherwise prove that an arbitration agreement has been entered into.

²³ While there is no express guidance, Article 42 of the Thai Arbitration Law suggests that it is only necessary to provide a

Figure 4

Country	Entire award must be supplied.	Entire contract must be supplied.	Only arbitral clause or arbitration agreement must be supplied.	Required documents must be translated in their entirety.
Tunisia	√	—	√	√
Turkey	√	—	√	√
United Arab Emirates	√	√	—	— ²⁴
UK: England, Wales, Northern Ireland	√	√ ²⁵	—	√
UK: Scotland	√	√ ²⁶	—	√
United States of America	√	√ ²⁷	—	√
Uruguay	√	√	—	√ ²⁸
Venezuela	√	—	— ²⁹	√

²⁴ Where documents are lengthy, it is common practice in the UAE to limit translations to the relevant portions. However, a court may order translation of the entire document.

²⁵ In the United Kingdom—England, Wales and Northern Ireland, where the arbitration clause references other provisions of a contract, the entire contract must be supplied.

²⁶ Although there is no procedural rule on this point, it is likely that Scottish courts would insist that the entire contract be supplied.

²⁷ Although US law does not so specify, case law suggests that the entire contract must be supplied. Californian state law is an exception: the entire contract containing the arbitration agreement need not be supplied.

²⁸ Where documents are particularly lengthy, Uruguayan law allows the translation to be limited to the relevant parts of the award and the contract containing the arbitration agreement.

²⁹ Under Venezuelan law, it is not necessary to supply the arbitration agreement.

Figure 5

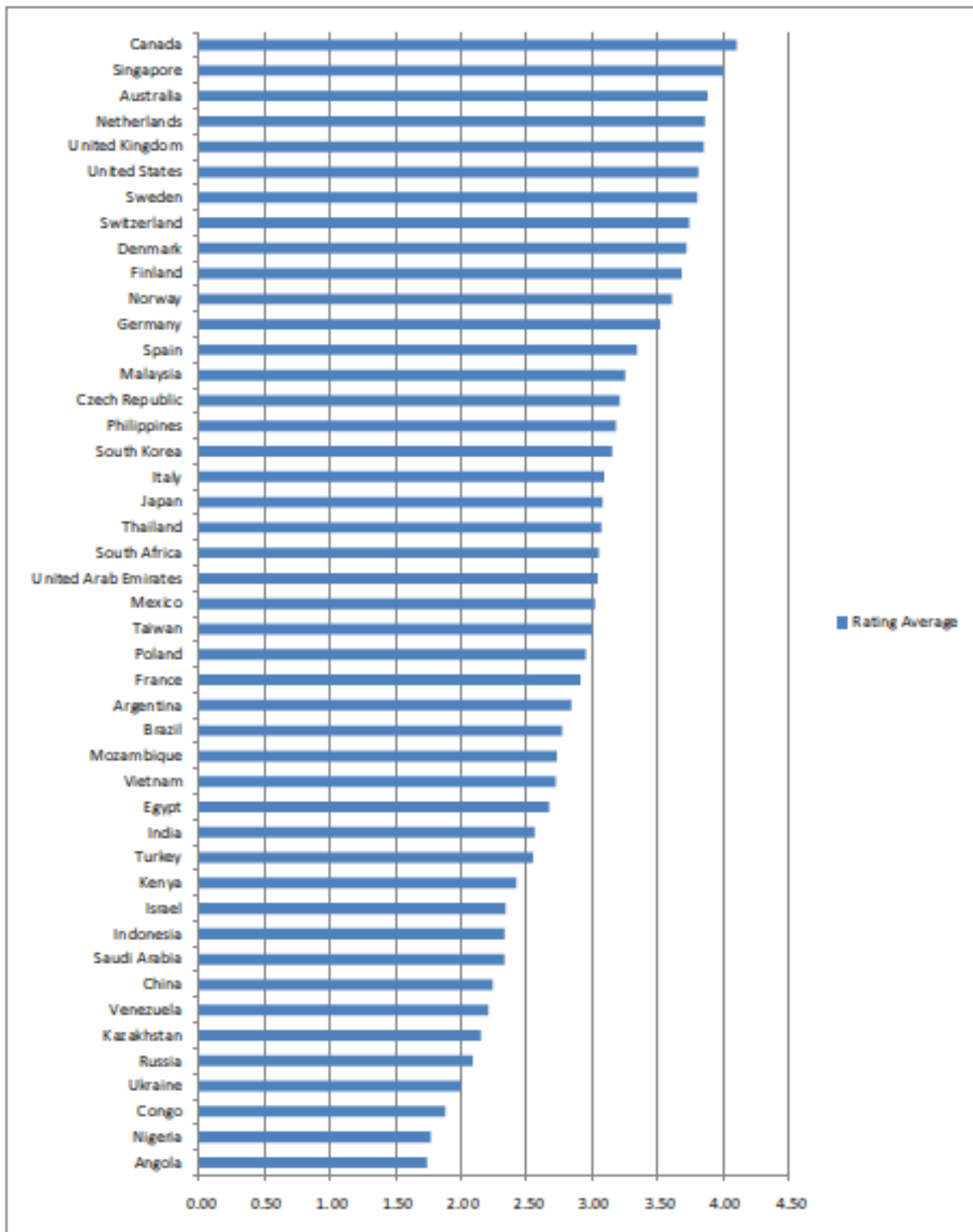


Figure 6

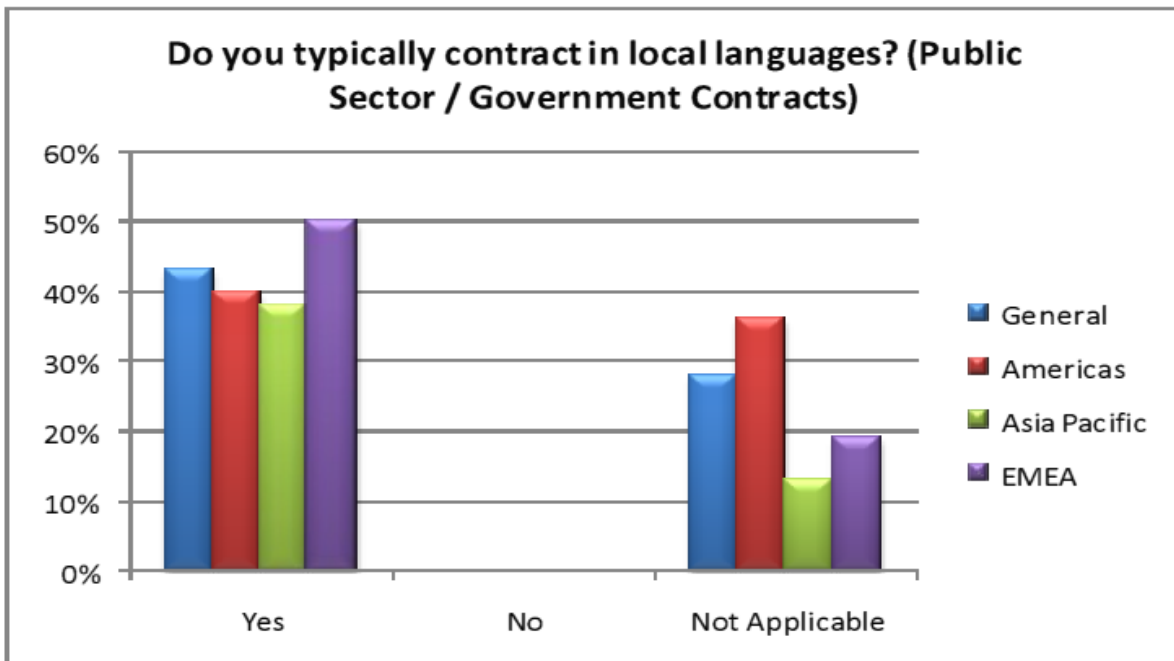
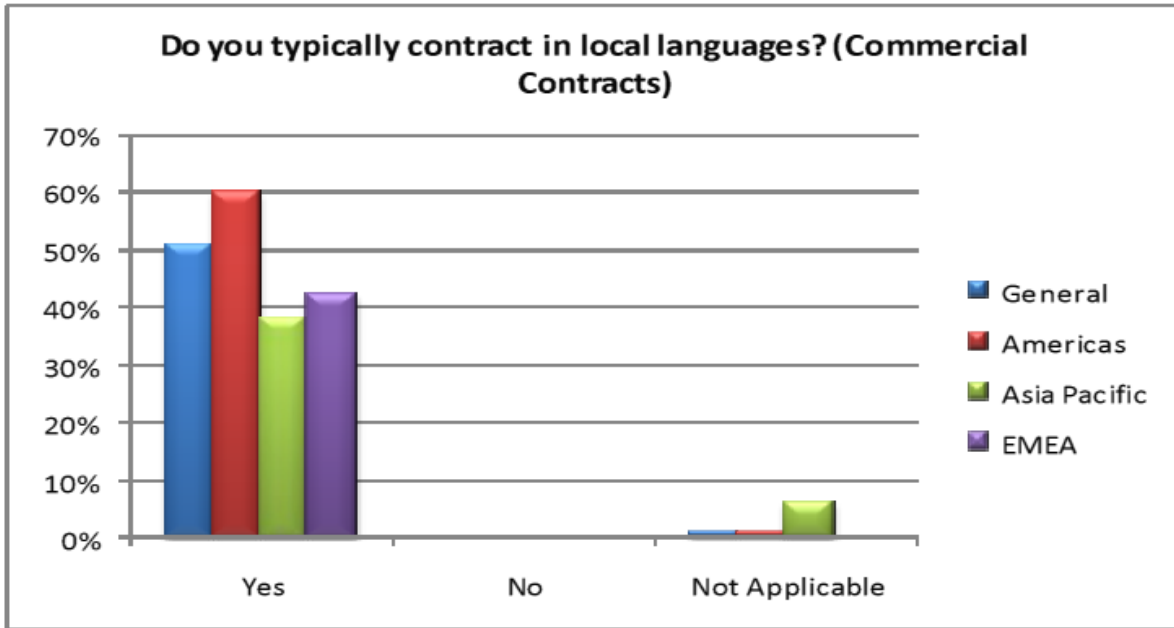


Figure 7



Table 1

Tests of Within-Subjects Effects

Measure: MEASURE_1

Source		Type III Sum of Squares	df	Mean Square
categories	Sphericity Assumed	2.524	4	.631
	Greenhouse-Geisser	2.524	2.722	.927
	Huynh-Feldt	2.524	2.997	.842
	Lower-bound	2.524	1.000	2.524
categories * Legal_tradition	Sphericity Assumed	.411	8	.051
	Greenhouse-Geisser	.411	5.444	.076
	Huynh-Feldt	.411	5.995	.089
	Lower-bound	.411	2.000	.206
Error(categories)	Sphericity Assumed	38.006	208	.183
	Greenhouse-Geisser	38.006	141.538	.269
	Huynh-Feldt	38.006	155.862	.244
	Lower-bound	38.006	52.000	.731

Table 2

Tests of Within-Subjects Effects

Measure: MEASURE_1

Source		F	Sig.
categories	Sphericity Assumed	3.453	.009
	Greenhouse-Geisser	3.453	.022
	Huynh-Feldt	3.453	.018
	Lower-bound	3.453	.069
categories * Legal_tradition	Sphericity Assumed	.281	.972
	Greenhouse-Geisser	.281	.934
	Huynh-Feldt	.281	.945
	Lower-bound	.281	.756

Table 3

Pairwise Comparisons

Measure: MEASURE_1

(I) categories	(J) categories	Mean Difference (I-J)	Std. Error	Sig. ^a	95% Confidence Interval for Difference ^a	
					Lower Bound	Upper Bound
1	2	.020	.115	.862	-.211	.251
	3	-.086	.109	.434	-.305	.133
	4	.308	.159	.058	-.010	.627
	5	-.031	.092	.735	-.217	.154
2	1	-.020	.115	.862	-.251	.211
	3	-.106	.057	.069	-.221	.008
	4	.288	.131	.033	.024	.552
	5	-.051	.108	.629	-.264	.161
3	1	.086	.109	.434	-.133	.305
	2	.106	.057	.069	-.008	.221
	4	.394	.121	.002	.151	.637
	5	.055	.108	.614	-.162	.271
4	1	-.308	.159	.058	-.627	.010
	2	-.288	.131	.033	-.552	-.024
	3	-.394	.121	.002	-.637	-.151
	5	-.339	.143	.021	-.626	-.053
5	1	.031	.092	.735	-.154	.217
	2	.051	.106	.629	-.161	.264
	3	-.055	.108	.614	-.271	.162
	4	.339	.143	.021	.053	.626

Based on estimated marginal means

a. Adjustment for multiple comparisons: Least Significant Difference (equivalent to no adjustments).
 *. The mean difference is significant at the .05 level.

Table 4

Estimated Marginal Means

1. categories

Estimates

Measure: MEASURE_1

categories	Mean	Std. Error	95% Confidence Interval	
			Lower Bound	Upper Bound
1	2.586	.082	2.422	2.751
2	2.566	.059	2.449	2.684
3	2.672	.057	2.558	2.787
4	2.278	.123	2.031	2.526
5	2.618	.087	2.442	2.793

Table 5

Tests of Within-Subjects Effects

Measure: MEASURE_1

Source		Type III Sum of Squares	df	Mean Square
categories	Sphericity Assumed	.472	4	.118
	Greenhouse-Geisser	.472	2.798	.169
	Huynh-Feldt	.472	3.025	.156
	Lower-bound	.472	1.000	.472
categories * Private_VS_Other	Sphericity Assumed	.773	4	.193
	Greenhouse-Geisser	.773	2.798	.276
	Huynh-Feldt	.773	3.025	.255
	Lower-bound	.773	1.000	.773
Error(categories)	Sphericity Assumed	37.644	212	.178
	Greenhouse-Geisser	37.644	148.290	.254
	Huynh-Feldt	37.644	160.351	.235
	Lower-bound	37.644	53.000	.710

Tests of Within-Subjects Effects

Measure: MEASURE_1

Source		F	Sig.
categories	Sphericity Assumed	.665	.617
	Greenhouse-Geisser	.665	.565
	Huynh-Feldt	.665	.576
	Lower-bound	.665	.418
categories * Private_VS_Other	Sphericity Assumed	1.088	.363
	Greenhouse-Geisser	1.088	.354
	Huynh-Feldt	1.088	.356
	Lower-bound	1.088	.302

Table 6

Tests of Within-Subjects Effects

Measure:MEASURE_1

Source		Type III Sum of Squares	df	Mean Square
categories	Sphericity Assumed	2.928	4	.732
	Greenhouse-Geisser	2.928	2.760	1.061
	Huynh-Feldt	2.928	2.982	.982
	Lower-bound	2.928	1.000	2.928
categories * Academic_VS_Other	Sphericity Assumed	.038	4	.010
	Greenhouse-Geisser	.038	2.760	.014
	Huynh-Feldt	.038	2.982	.013
	Lower-bound	.038	1.000	.038
Error(categories)	Sphericity Assumed	38.379	212	.181
	Greenhouse-Geisser	38.379	146.289	.262
	Huynh-Feldt	38.379	158.040	.243
	Lower-bound	38.379	53.000	.724

Tests of Within-Subjects Effects

Measure:MEASURE_1

Source		F	Sig.
categories	Sphericity Assumed	4.043	.004
	Greenhouse-Geisser	4.043	.010
	Huynh-Feldt	4.043	.009
	Lower-bound	4.043	.049
categories * Academic_VS_Other	Sphericity Assumed	.053	.995
	Greenhouse-Geisser	.053	.979
	Huynh-Feldt	.053	.984
	Lower-bound	.053	.819

Table 7

Tests of Within-Subjects Effects

Measure: MEASURE_1

Source		Type III Sum of Squares	df	Mean Square
categories	Sphericity Assumed	.818	4	.204
	Greenhouse-Geisser	.818	2.756	.297
	Huynh-Feldt	.818	2.977	.275
	Lower-bound	.818	1.000	.818
categories * Govt_VS_Other	Sphericity Assumed	1.236	4	.309
	Greenhouse-Geisser	1.236	2.756	.449
	Huynh-Feldt	1.236	2.977	.415
	Lower-bound	1.236	1.000	1.236
Error(categories)	Sphericity Assumed	37.181	212	.175
	Greenhouse-Geisser	37.181	146.083	.255
	Huynh-Feldt	37.181	157.802	.236
	Lower-bound	37.181	53.000	.702

Tests of Within-Subjects Effects

Measure: MEASURE_1

Source		F	Sig.
categories	Sphericity Assumed	1.166	.327
	Greenhouse-Geisser	1.166	.323
	Huynh-Feldt	1.166	.324
	Lower-bound	1.166	.285
categories * Govt_VS_Other	Sphericity Assumed	1.762	.138
	Greenhouse-Geisser	1.762	.161
	Huynh-Feldt	1.762	.157
	Lower-bound	1.762	.190

APPENDIX A: INTERNATIONAL CONTRACT SURVEY

INTERNATIONAL CONTRACT SURVEY

Explanation and Disclaimer



EXPLANATION OF RESEARCH

Dear Contributor,

You are invited to take part in a research study which will include legal professionals from all over the world. You have been asked to take part in this research study because you are a lawyer or other legal professional who deals with international contracts. You must be 18 years of age or older and a licensed attorney to be included in the research study and consent to this form.

The person doing this research is David T. Ackerman, a Legal Studies student of International Contract Law at the University of Central Florida. Because the researcher is a student, the study is being overseen and directed by Dr. Cynthia Brown, a UCF faculty member in Legal Studies.

Study Title: International Contracts: A Quantitative Analysis of International Contracts.

Purpose of the research study: The research will focus on whether any continuity exists between attorneys of different practice sectors (academic, government, corporate, and private) when dealing with issues concerning choice of law, enforcement, preventative measures, & monetary interests of international contracts.

Voluntary Participation: The survey is voluntary. Whether or not you choose to participate is up to you. You may choose not to participate in this study, and you may discontinue your participation

in this study at any time.

Benefits: Surprisingly little data is available to inform the legal community concerning the importance and approach lawyers of different disciplines take in regards to the aforementioned international contract topics. The benefit to the participants is a better understanding of how the world legal community approaches international contract issues.

Anonymous research: This study is anonymous. That means that no one, not even members of the research team, will know that the information you gave came from you. Since this is an online survey, all of the responses that you provide to will be SQL (structured query language) encrypted to ensure anonymity.

Study contact for questions about the study or to report a problem: If you have questions, concerns, or complaints, please email ContractsSurvey@gmail.com or call our contact line at +1 (407) 362-7890. You can also contact Dr. Cynthia Brown, Project Supervisor, Department of Legal Studies, at cbro@mail.ucf.edu.

IRB contact about your rights in the study or to report a complaint: Research at the University of Central Florida involving human participants is carried out under the oversight of the Institutional Review Board (UCF IRB). This research has been reviewed and approved by the IRB. For information about the rights of people who take part in research, please contact: Institutional Review Board, University of Central Florida, Office of Research & Commercialization, 12201 Research Parkway, Suite 501, Orlando, FL 32826-3246 or by telephone at (407) 823-2901.

Thank you for taking the time to complete this survey. I truly appreciate your participation.

Sincerely,

David T. Ackerman

) I am involved in the legal industry.

Yes

No

) By clicking below I certify that I am at least 18 years of age, and the completion of this survey serves as my informed consent. Please click the accept button if you wish to participate.

- Accept and continue to survey
 - Decline and end survey
-

Page One

Please respond by selecting the most appropriate response from the choices provided.

1.) A Contract should be drafted in the same language as the country hosting the decision making body.

Decision Making Body – Examples include a judge, advocate, moderator, arbitrator, mediator, justice, magistrate, or other authority.

- Strongly Disagree
- Inclined to Disagree
- Inclined to Agree
- Strongly Agree

2.) I prefer to draft an international business contract in English only.

- Strongly Disagree
- Inclined to Disagree
- Inclined to Agree
- Strongly Agree

3.) For my clients, I prefer to draft a business contract with a foreign entity only in the language of the foreign entity's country.

- Strongly Disagree
- Inclined to Disagree
- Inclined to Agree
- Strongly Agree

4.) For my clients, I prefer to draft a business contract with a foreign entity in both English and the language of the foreign entity's country.

- Strongly Disagree
- Inclined to Disagree
- Inclined to Agree
- Strongly Agree

5.) For my clients, I prefer to draft a business contract with a foreign entity in English only.

- Strongly Disagree
- Inclined to Disagree
- Inclined to Agree
- Strongly Agree

Page Two

6.) I prefer arbitration over mediation as an alternative dispute resolution choice in my international contracts.

- Strongly Disagree
- Inclined to Disagree
- Inclined to Agree
- Strongly Agree

7.) I prefer mediation over arbitration as an alternative dispute resolution choice in my international contracts.

- Strongly Disagree
- Inclined to Disagree
- Inclined to Agree
- Strongly Agree

8.) I prefer to arbitrate in a forum where it may be easier to obtain a decision resolving a contractual dispute but more difficult to collect a judgment.

- Strongly Disagree
- Inclined to Disagree
- Inclined to Agree
- Strongly Agree

9.) I prefer to arbitrate in a forum where it may be more difficult to obtain a decision resolving a contractual dispute but easier to collect a judgment.

- Strongly Disagree
- Inclined to Disagree
- Inclined to Agree
- Strongly Agree

10.) A contract in international business is more of a deterrent to breach than a(n) effective vehicle for remedying breach.

- Strongly Disagree
- Inclined to Disagree
- Inclined to Agree
- Strongly Agree

Page Three

11.) A contract in international business is more of a(n) effective vehicle for remedying breach than a deterrent to breach.

- Strongly Disagree
- Inclined to Disagree
- Inclined to Agree

Strongly Agree

12.) When first walking into your office, most clients think international contract disputes are only handled in the United States.

Strongly Disagree

Inclined to Disagree

Inclined to Agree

Strongly Agree

13.) Face-to-face dealings with representatives of foreign entities are vital to successful contract negotiations.

Strongly Disagree

Inclined to Disagree

Inclined to Agree

Strongly Agree

14.) When drafting a contract with an international party, exchange rate risk should be a priority over the language a contract is drafted in.

Exchange Rate Risk - Exposure or uncertainty that is inherent in dealing with two or more currencies that do not have fixed-parity values. It may also be called currency risk.

Strongly Disagree

Inclined to Disagree

Inclined to Agree

Strongly Agree

15.) I include a detailed conflict resolution clause in my international contracts.

Conflict Resolution Clause – Language in the contract that determines what happens in case of breach or disagreement.

Never

Once or twice

- Regularly
 - Very Often
-

Page Four

16.) The potential for political interference from foreign governments influences the drafting of a contract.

- Never
- Once or twice
- Regularly
- Very Often

17.) The potential for political interference from your home country (i.e., U.S., France, etc.) government influences the drafting of a contract.

- Never
- Once or twice
- Regularly
- Very Often

18.) I explain to my clients the expense of litigating contract disputes in foreign forums.

- Never
- Hardly ever
- Most of the time
- All of the time

19.) After receiving my explanation of costs I believe clients accurately appreciate the expense of litigating contract disputes in foreign forums.

- Never

- Hardly ever
- Most of the time
- All of the time

20.) Even after receiving my explanation, clients underestimate the expense of litigating contract disputes in foreign forums.

- Never
- Hardly ever
- Most of the time
- All of the time

Page Five

21.) Proceeding with dispute resolution options to remedy contract issues against a foreign entity results in the termination of the business relationship.

Dispute Resolution Options – Examples are court, litigation, mediation, arbitration, or other hearings.

- Never
- Hardly ever
- Most of the time
- All of the time

22.) Please rank in order of importance (1-most important to 5-least important) the following considerations (as defined above) when drafting international contracts.

- _____ Choice of Law
- _____ Enforcement
- _____ Preventative Measures
- _____ Cost Benefit Analysis
- _____ Cultural Concerns

Demographic Questions - Final Page

) Sex

- Male
- Female

) Race

- Asian/Pacific Islander
- Black/African-American
- Caucasian
- Hispanic
- Native American/Alaska Native
- Other/Multi-Racial
- Decline to Respond

) Which best describes your predominant area of practice? Mark up to three that apply.

- | | |
|--|--|
| <input type="checkbox"/> Private Firm | <input type="checkbox"/> In-house Counsel – Privately held corporation |
| <input type="checkbox"/> Government -City | <input type="checkbox"/> In-house Counsel – Public corporation |
| <input type="checkbox"/> Government - County | <input type="checkbox"/> In-house Counsel – Partnership |
| <input type="checkbox"/> Government - State | <input type="checkbox"/> In-house Counsel – Sole Proprietorship |
| <input type="checkbox"/> Government – Federal | <input type="checkbox"/> In-house Counsel – Not-for-profit |
| <input type="checkbox"/> Government - Other | <input type="checkbox"/> In-house Counsel – LLC |
| <input type="checkbox"/> Academic – community college/junior college | <input type="checkbox"/> Retired/Inactive |
| <input type="checkbox"/> Academic – college/university | <input type="checkbox"/> Judiciary – City |
| <input type="checkbox"/> Academic - law school | <input type="checkbox"/> Judiciary – County |
| <input type="checkbox"/> Academic – medical school | <input type="checkbox"/> Judiciary – State |
| <input type="checkbox"/> Academic – other | <input type="checkbox"/> Judiciary – Federal |

- | | |
|--|---|
| <input type="checkbox"/> Judiciary – Other | <input type="checkbox"/> Public Defender |
| <input type="checkbox"/> Trade/Professional Organization | <input type="checkbox"/> Non-Law Related |
| <input type="checkbox"/> Legal Aid/Legal Services | <input type="checkbox"/> Other (please specify) |

) Number of Attorney's in your office (school, firm, etc.)

- 1-5 Lawyers
- 6-10 Lawyers
- 11-20 Lawyers
- 21-50 Lawyers
- 51-100 Lawyers
- 101+ Lawyers

) What are your areas of concentration? Mark up to five that apply.

- | | |
|---|---|
| <input type="checkbox"/> Administrative/Reg. | <input type="checkbox"/> Employee benefits |
| <input type="checkbox"/> Agricultural | <input type="checkbox"/> Entertainment, Arts & Sports |
| <input type="checkbox"/> Antitrust/Trade | <input type="checkbox"/> Environment |
| <input type="checkbox"/> Appellate Practice | <input type="checkbox"/> Family Law |
| <input type="checkbox"/> Arbitration/Mediation | <input type="checkbox"/> Finance and Securities |
| <input type="checkbox"/> Bankruptcy/Insolvency | <input type="checkbox"/> Food, Drug and Cosmetic |
| <input type="checkbox"/> Banking | <input type="checkbox"/> Franchise |
| <input type="checkbox"/> Business Law | <input type="checkbox"/> General Practice |
| <input type="checkbox"/> Corporate Law | <input type="checkbox"/> Health and Hospital |
| <input type="checkbox"/> Civil Rights Plaintiff | <input type="checkbox"/> Immigration/Naturalization |
| <input type="checkbox"/> Civil Rights Defense | <input type="checkbox"/> Insurance Plaintiff |
| <input type="checkbox"/> Communication | <input type="checkbox"/> Insurance Defense |
| <input type="checkbox"/> Construction | <input type="checkbox"/> Intellectual Property |
| <input type="checkbox"/> Criminal Public Defense | <input type="checkbox"/> International Law |
| <input type="checkbox"/> Criminal Private Defense | <input type="checkbox"/> Labor/Employment Plaintiff |
| <input type="checkbox"/> Criminal Prosecution | <input type="checkbox"/> Labor/Employment Defense |
| <input type="checkbox"/> Elder Law | <input type="checkbox"/> Libel |

- | | |
|--|---|
| <input type="checkbox"/> Litigation General Civil | <input type="checkbox"/> Science/Engineering/Technology |
| <input type="checkbox"/> Litigation Commercial | <input type="checkbox"/> Personal/Property Injury Plaintiff |
| <input type="checkbox"/> Maritime | <input type="checkbox"/> Personal/Property Injury Defense |
| <input type="checkbox"/> Media Law | <input type="checkbox"/> Tax, Corporate Business |
| <input type="checkbox"/> Municipal Law | <input type="checkbox"/> Tax, Personal |
| <input type="checkbox"/> Product Liability Plaintiff | <input type="checkbox"/> Transactional |
| <input type="checkbox"/> Product Liability Defense | <input type="checkbox"/> Transportation |
| <input type="checkbox"/> Public Contract | <input type="checkbox"/> Trusts and Estates |
| <input type="checkbox"/> Public Utilities/Regulated Ind. | <input type="checkbox"/> Workers Compensation |
| <input type="checkbox"/> Real Property | <input type="checkbox"/> Other(please specify) |

) Please select your first language.

- | | |
|-------------------------------------|---|
| <input type="checkbox"/> English | <input type="checkbox"/> Punjabi |
| <input type="checkbox"/> French | <input type="checkbox"/> Wu |
| <input type="checkbox"/> Spanish | <input type="checkbox"/> Telugu |
| <input type="checkbox"/> Mandarin | <input type="checkbox"/> Marathi |
| <input type="checkbox"/> Hindi/Urdu | <input type="checkbox"/> Vietnamese |
| <input type="checkbox"/> Arabic | <input type="checkbox"/> Korean |
| <input type="checkbox"/> Bengali | <input type="checkbox"/> Tamil |
| <input type="checkbox"/> Portuguese | <input type="checkbox"/> Italian |
| <input type="checkbox"/> Russian | <input type="checkbox"/> Turkish |
| <input type="checkbox"/> Japanese | <input type="checkbox"/> Cantonese/Yue |
| <input type="checkbox"/> German | <input type="checkbox"/> Other (please specify) |

) Please select the Country where you currently reside.

- | | |
|---|------------------------------------|
| <input type="checkbox"/> United States of America | <input type="checkbox"/> Angola |
| <input type="checkbox"/> Afghanistan | <input type="checkbox"/> Antigua |
| <input type="checkbox"/> Albania | <input type="checkbox"/> Argentina |
| <input type="checkbox"/> Algeria | <input type="checkbox"/> Armenia |
| <input type="checkbox"/> Andorra | <input type="checkbox"/> Australia |

- Austria
- Azerbaijan
- Bahamas
- Bahrain
- Bangladesh
- Barbados
- Barbuda
- Belarus
- Belgium
- Belize
- Benin
- Bhutan
- Bolivia
- Bosnia
- Botswana
- Brazil
- Brunei Darussalam
- Bulgaria
- Burkina Faso
- Burundi
- Cambodia
- Cameroon
- Canada
- Cape Verde
- Central African Republic
- Chad
- Chile
- China
- Colombia
- Comoros
- Congo (Brazzaville)
- Congo (Kinshasa)
- Costa Rica
- Cote d'Ivoire
- Croatia
- Cuba
- Cyprus
- Czech Republic
- Denmark
- Djibouti
- Dominica
- Dominican Republic
- Ecuador
- Egypt
- El Salvador
- Equatorial Guinea
- Eritrea
- Estonia
- Ethiopia
- Fiji
- Finland
- France
- Gabon
- Gambia
- Georgia
- Germany
- Ghana
- Greece
- Grenada
- Guatemala

- Guinea
- Guinea-Bissau
- Guyana
- Haiti
- Herzegovina
- Honduras
- Hungary
- Iceland
- India
- Indonesia
- Iran
- Iraq
- Ireland
- Israel
- Italy
- Jamaica
- Japan
- Jordan
- Kazakhstan
- Kenya
- Kiribati
- North Korea
- South Korea
- Kosovo
- Kuwait
- Kyrgyzstan
- Lao
- Latvia
- Lebanon
- Lesotho
- Liberia
- Libyan Arab Jamahiriya
- Liechtenstein
- Lithuania
- Luxembourg
- Macedonia
- Madagascar
- Malawi
- Malaysia
- Maldives
- Mali
- Malta
- Marshall Islands
- Mauritania
- Mauritius
- Mexico
- Micronesia
- Moldova
- Monaco
- Mongolia
- Montenegro
- Morocco
- Mozambique
- Myanmar
- Namibia
- Nauru
- Nepal
- Netherlands
- New Zealand
- Nicaragua

- Niger
- Nigeria
- Northern Ireland
- Norway
- Oman
- Pakistan
- Palau
- Palestine
- Panama
- Papua New Guinea
- Paraguay
- Peru
- Philippines
- Poland
- Portugal
- Qatar
- Romania
- Russian Federation
- Rwanda
- Saint Kitts and Nevis
- Saint Lucia
- Saint Vincent and the Grenadines
- Samoa
- San Marino
- Sao Tome and Principe
- Saudi Arabia
- Senegal
- Serbia
- Seychelles
- Sierra Leone
- Singapore
- Slovakia
- Slovenia
- Solomon Islands
- Somalia
- South Africa
- Spain
- Sri Lanka
- Sudan
- Suriname
- Swaziland
- Sweden
- Switzerland
- Syrian Arab Republic
- Tajikistan
- Tanzania
- Taiwan
- Thailand
- Tibet
- Timor-Leste
- Tobago
- Togo
- Tonga
- Trinidad
- Tunisia
- Turkey
- Turkmenistan
- Tuvalu
- Uganda
- Ukraine

- United Arab Emirates
- United Kingdom of Great Britain
- Uruguay
- Uzbekistan
- Vanuatu
- Venezuela
- Vietnam
- Yemen
- Zambia
- Zimbabwe

) Please select your Country of Origin.

- United States of America
- Afghanistan
- Albania
- Algeria
- Andorra
- Angola
- Antigua
- Argentina
- Armenia
- Australia
- Austria
- Azerbaijan
- Bahamas
- Bahrain
- Bangladesh
- Barbados
- Barbuda
- Belarus
- Belgium
- Belize
- Benin
- Bhutan
- Bolivia
- Bosnia
- Botswana
- Brazil
- Brunei Darussalam
- Bulgaria
- Burkina Faso
- Burundi
- Cambodia
- Cameroon
- Canada
- Cape Verde
- Central African Republic
- Chad
- Chile
- China
- Colombia
- Comoros
- Congo (Brazzaville)
- Congo (Kinshasa)
- Costa Rica
- Cote d'Ivoire
- Croatia
- Cuba

- Cyprus
- Czech Republic
- Denmark
- Djibouti
- Dominica
- Dominican Republic
- Ecuador
- Egypt
- El Salvador
- Equatorial Guinea
- Eritrea
- Estonia
- Ethiopia
- Fiji
- Finland
- France
- Gabon
- Gambia
- Georgia
- Germany
- Ghana
- Greece
- Grenada
- Guatemala
- Guinea
- Guinea-Bissau
- Guyana
- Haiti
- Herzegovina
- Honduras
- Hungary
- Iceland
- India
- Indonesia
- Iran
- Iraq
- Ireland
- Israel
- Italy
- Jamaica
- Japan
- Jordan
- Kazakhstan
- Kenya
- Kiribati
- North Korea
- South Korea
- Kosovo
- Kuwait
- Kyrgyzstan
- Lao
- Latvia
- Lebanon
- Lesotho
- Liberia
- Libyan Arab Jamahiriya
- Liechtenstein
- Lithuania
- Luxembourg
- Macedonia

- Madagascar
- Malawi
- Malaysia
- Maldives
- Mali
- Malta
- Marshall Islands
- Mauritania
- Mauritius
- Mexico
- Micronesia
- Moldova
- Monaco
- Mongolia
- Montenegro
- Morocco
- Mozambique
- Myanmar
- Namibia
- Nauru
- Nepal
- Netherlands
- New Zealand
- Nicaragua
- Niger
- Nigeria
- Northern Ireland
- Norway
- Oman
- Pakistan
- Palau
- Palestine
- Panama
- Papua New Guinea
- Paraguay
- Peru
- Philippines
- Poland
- Portugal
- Qatar
- Romania
- Russian Federation
- Rwanda
- Saint Kitts and Nevis
- Saint Lucia
- Saint Vincent and the Grenadines
- Samoa
- San Marino
- Sao Tome and Principe
- Saudi Arabia
- Senegal
- Serbia
- Seychelles
- Sierra Leone
- Singapore
- Slovakia
- Slovenia
- Solomon Islands
- Somalia
- South Africa

- | | |
|---|--|
| <input type="checkbox"/> Spain | <input type="checkbox"/> Trinidad |
| <input type="checkbox"/> Sri Lanka | <input type="checkbox"/> Tunisia |
| <input type="checkbox"/> Sudan | <input type="checkbox"/> Turkey |
| <input type="checkbox"/> Suriname | <input type="checkbox"/> Turkmenistan |
| <input type="checkbox"/> Swaziland | <input type="checkbox"/> Tuvalu |
| <input type="checkbox"/> Sweden | <input type="checkbox"/> Uganda |
| <input type="checkbox"/> Switzerland | <input type="checkbox"/> Ukraine |
| <input type="checkbox"/> Syrian Arab Republic | <input type="checkbox"/> United Arab Emirates |
| <input type="checkbox"/> Tajikistan | <input type="checkbox"/> United Kingdom of Great Britain |
| <input type="checkbox"/> Tanzania | <input type="checkbox"/> Uruguay |
| <input type="checkbox"/> Taiwan | <input type="checkbox"/> Uzbekistan |
| <input type="checkbox"/> Thailand | <input type="checkbox"/> Vanuatu |
| <input type="checkbox"/> Tibet | <input type="checkbox"/> Venezuela |
| <input type="checkbox"/> Timor-Leste | <input type="checkbox"/> Vietnam |
| <input type="checkbox"/> Tobago | <input type="checkbox"/> Yemen |
| <input type="checkbox"/> Togo | <input type="checkbox"/> Zambia |
| <input type="checkbox"/> Tonga | <input type="checkbox"/> Zimbabwe |

) Which best describes your current position? Mark up to three that apply.

- Associate on Partnership Track
- Supervising Attorney
- Permanent Associate
- Contract Attorney
- Staff Attorney
- Solo Practitioner or Proprietor
- Equity Partner/Shareholder
- Solicitor
- Barrister
- Magistrate
- Non-equity Partner/Shareholder

- Of Counsel
- Paralegal
- Legal service, public defender, public interest
- Teacher or Administrator in Law School
- Local, State, Federal Judge
- Other (please specify)

) How many years are you licensed as an attorney?

- 0-2 years
- 3-5 years
- 6-8 years
- 9-11 years
- 12-14 years
- 15-17 years
- 18-20 years
- 21-23 years
- 24-26 years
- 27-29 years
- 30+ years

) How many years have you worked in your current position?

- Less than 1 year
- 1 to less than 3 years
- 3 to less than 5 years
- 5 to less than 10 years
- 10 to less than 15 years
- 15 to less than 20 years
- 20 to less than 25 years
- 25+ years

) Please select the level(s) of education you have achieved?

JD

JSD

JM

DCL

MCL

MJ

LLM

LLB

SJD

MD

PhD

EdD

Other (please specify)

Thank You!

Thank you for taking our survey. Your response is very important to us.

Follow Up Information

If you are interested in more information about the research, or would be willing to participate in a follow up interview please contact the research team at +1 (407) 362-7890, or via e-mail at ContractsSurvey@gmail.com.

APPENDIX B: PILOT TEST RESPONSES

Summary Report – Participant 1

Survey: International Business Contract Survey

I am involved in the legal industry.

Value	Count	Percent %
Yes	1	100%

Statistics		
Total Responses		1

By clicking below I certify that I am at least 18 years of age, and the completion of this survey serves as my informed consent. Please click the accept button if you wish to participate.

Value	Count	Percent %
Accept and continue to survey	1	100%

Statistics		
Total Responses		1

A Contract should be drafted in the same language as the country hosting the decision making body.

Value	Count	Percent %
3	1	100%

Statistics		
Total Responses		1
Sum		3.0
Average		3.0
Max		3.0

I prefer to draft an international business contract in English only.

Value	Count	Percent %
2	1	100%

Statistics		
Total Responses		1
Sum		2.0
Average		2.0
Max		2.0

For my clients, I prefer to draft a business contract with a foreign entity only in the language of the foreign entity's country.

Value	Count	Percent %
3	1	100%

Statistics		
------------	--	--

Total Responses	1
Sum	3.0
Average	3.0
Max	3.0

For my clients, I prefer to draft a business contract with a foreign entity in both English and the language of the foreign entity's country.

Value	Count	Percent %
2	1	100%

Statistics		
Total Responses	1	
Sum	2.0	
Average	2.0	
Max	2.0	

For my clients, I prefer to draft a business contract with a foreign entity in English only.

Value	Count	Percent %
1	1	100%

Statistics		
Total Responses	1	
Sum	1.0	
Average	1.0	

Max	1.0
-----	-----

I prefer arbitration over mediation as an alternative dispute resolution choice in my international contracts.

Value	Count	Percent %
1	1	100%

Statistics		
Total Responses		1
Sum		1.0
Average		1.0
Max		1.0

I prefer mediation over arbitration as an alternative dispute resolution choice in my international contracts.

Value	Count	Percent %
4	1	100%

Statistics		
Total Responses		1
Sum		4.0
Average		4.0
Max		4.0

I prefer to arbitrate in a forum where it may be easier to obtain a decision resolving a contractual dispute but more difficult to collect a judgment.

Value	Count	Percent %
4	1	100%

Statistics		
Total Responses		1
Sum		4.0
Average		4.0
Max		4.0

I prefer to arbitrate in a forum where it may be more difficult to obtain a decision resolving a contractual dispute but easier to collect a judgment.

Value	Count	Percent %
2	1	100%

Statistics		
Total Responses		1
Sum		2.0
Average		2.0
Max		2.0

A contract in international business is more of a deterrent to breach than a(n) effective vehicle for remedying breach.

Value	Count	Percent %
2	1	100%

Statistics		
Total Responses		1
Sum		2.0
Average		2.0
Max		2.0

A contract in international business is more of a(n) effective vehicle for remedying breach than a deterrent to breach.

Value	Count	Percent %
3	1	100%

Statistics		
Total Responses		1
Sum		3.0
Average		3.0
Max		3.0

When first walking into your office, most clients think international contract disputes are only handled in the United States.

Value	Count	Percent %
1	1	100%

Statistics		
Total Responses		1
Sum		1.0
Average		1.0
Max		1.0

Face-to-face dealings with representatives of foreign entities are vital to successful contract negotiations.

Value	Count	Percent %
3	1	100%

Statistics		
Total Responses		1
Sum		3.0
Average		3.0
Max		3.0

When drafting a contract with an international party, exchange rate risk should be a priority over the language a contract is drafted in.

Value	Count	Percent %
3	1	100%

Statistics		
Total Responses		1
Sum		3.0

Average	3.0
Max	3.0

I include a detailed conflict resolution clause in my international contracts.

Value	Count	Percent %
4	1	100%

Statistics		
Total Responses		1
Sum		4.0
Average		4.0
Max		4.0

The potential for political interference from foreign governments influences the drafting of a contract.

Value	Count	Percent %
3	1	100%

Statistics		
Total Responses		1
Sum		3.0
Average		3.0
Max		3.0

The potential for political interference from your home country (i.e., U.S., France, etc.) government influences the drafting of a contract.

Value	Count	Percent %
3	1	100%

Statistics		
Total Responses		1
Sum		3.0
Average		3.0
Max		3.0

I explain to my clients the expense of litigating contract disputes in foreign forums.

Value	Count	Percent %
3	1	100%

Statistics		
Total Responses		1
Sum		3.0
Average		3.0
Max		3.0

After receiving my explanation of costs I believe clients accurately appreciate the expense of litigating contract disputes in foreign forums.

Value	Count	Percent %
3	1	100%

Statistics		
Total Responses		1
Sum		3.0
Average		3.0
Max		3.0

Even after receiving my explanation, clients underestimate the expense of litigating contract disputes in foreign forums.

Value	Count	Percent %
2	1	100%

Statistics		
Total Responses		1
Sum		2.0
Average		2.0
Max		2.0

Proceeding with dispute resolution options to remedy contract issues against a foreign entity results in the termination of the business relationship.

Value	Count	Percent %
3	1	100%

Statistics		
------------	--	--

Total Responses	1
Sum	3.0
Average	3.0
Max	3.0

Please rank in order of importance (1-most important to 5-least important) the following considerations (as defined above) when drafting international contracts.

Item	Total Score ¹	Overall Rank
Preventative Measures	5	1
Enforcement	4	2
Choice of Law	3	3
Cultural Concerns	2	4
Cost Benefit Analysis	1	5

Total Respondents:

¹ Score is a weighted calculation. Items ranked first are valued higher than the following ranks, the score is the sum of all weighted rank counts.

Sex

Value	Count	Percent %
Female	1	100%

Statistics	
Total Responses	1

Race

Value	Count	Percent %
Caucasian	1	100%

Statistics		
Total Responses		1

Which best describes your predominant area of practice? Mark up to three that apply.

Value	Count	Percent %
Academic "college/university"	1	100%

Statistics		
Total Responses		1

Number of Attorney's in your office

Value	Count	Percent %
1-5 Lawyers	1	100%

Statistics		
Total Responses		1
Sum		1.0
Average		1.0
Max		1.0

What are your areas of concentration? Mark up to five that apply.

Value	Count	Percent %
International Law	1	100%

Statistics		
Total Responses		1

Please select your first language.

Value	Count	Percent %
German	1	100%

Statistics		
Total Responses		1

Please select your Country of Origin.

Value	Count	Percent %
Germany	1	100%

Statistics		
Total Responses		1

Please select the Country where you currently reside.

Value	Count	Percent %
France	1	100%

Statistics		
Total Responses		1

Which best describes your current position? Mark up to three that apply.

Value	Count	Percent %
Other (please specify)	1	100%

Statistics		
Total Responses		1

How many years are you licensed as an attorney?

Value	Count	Percent %
3-5 years	1	100%

Statistics		
Total Responses		1
Sum		3.0
Average		3.0

Max	3.0
-----	-----

How many years have you worked in your current position?

Value	Count	Percent %
5 to less than 10 years	1	100%

Statistics		
Total Responses		1
Sum		5.0
Average		5.0
Max		5.0

Please select the level(s) of education you have achieved?

Value	Count	Percent %
PhD	1	100%

Statistics		
Total Responses		1

Summary Report – Participant 2

Survey: International Business Contract Survey

I am involved in the legal industry.

Value	Count	Percent %
Yes	1	100%

Statistics		
Total Responses		1

By clicking below I certify that I am at least 18 years of age, and the completion of this survey serves as my informed consent. Please click the accept button if you wish to participate.

Value	Count	Percent %
Accept and continue to survey	1	100%

Statistics		
Total Responses		1

A Contract should be drafted in the same language as the country hosting the decision making body.

Value	Count	Percent %
4	1	100%

Statistics		
Total Responses		1
Sum		4.0
Average		4.0
Max		4.0

I prefer to draft an international business contract in English only.

Value	Count	Percent %
4	1	100%

Statistics		
Total Responses		1
Sum		4.0
Average		4.0
Max		4.0

For my clients, I prefer to draft a business contract with a foreign entity only in the language of the foreign entity's country.

Value	Count	Percent %
2	1	100%

Statistics		
------------	--	--

Total Responses	1
Sum	2.0
Average	2.0
Max	2.0

For my clients, I prefer to draft a business contract with a foreign entity in both English and the language of the foreign entity's country.

Value	Count	Percent %
2	1	100%

Statistics		
Total Responses	1	
Sum	2.0	
Average	2.0	
Max	2.0	

For my clients, I prefer to draft a business contract with a foreign entity in English only.

Value	Count	Percent %
3	1	100%

Statistics		
Total Responses	1	
Sum	3.0	
Average	3.0	

Max	3.0
-----	-----

I prefer arbitration over mediation as an alternative dispute resolution choice in my international contracts.

Value	Count	Percent %
3	1	100%

Statistics		
Total Responses		1
Sum		3.0
Average		3.0
Max		3.0

I prefer mediation over arbitration as an alternative dispute resolution choice in my international contracts.

Value	Count	Percent %
2	1	100%

Statistics		
Total Responses		1
Sum		2.0
Average		2.0
Max		2.0

I prefer to arbitrate in a forum where it may be easier to obtain a decision resolving a contractual dispute but more difficult to collect a judgment.

Value	Count	Percent %
2	1	100%

Statistics		
Total Responses		1
Sum		2.0
Average		2.0
Max		2.0

I prefer to arbitrate in a forum where it may be more difficult to obtain a decision resolving a contractual dispute but easier to collect a judgment.

Value	Count	Percent %
3	1	100%

Statistics		
Total Responses		1
Sum		3.0
Average		3.0
Max		3.0

A contract in international business is more of a deterrent to breach than a(n) effective vehicle for remedying breach.

Value	Count	Percent %
4	1	100%

Statistics		
Total Responses		1
Sum		4.0
Average		4.0
Max		4.0

A contract in international business is more of a(n) effective vehicle for remedying breach than a deterrent to breach.

Value	Count	Percent %
2	1	100%

Statistics		
Total Responses		1
Sum		2.0
Average		2.0
Max		2.0

When first walking into your office, most clients think international contract disputes are only handled in the United States.

Value	Count	Percent %
2	1	100%

Statistics		
Total Responses		1
Sum		2.0
Average		2.0
Max		2.0

Face-to-face dealings with representatives of foreign entities are vital to successful contract negotiations.

Value	Count	Percent %
3	1	100%

Statistics		
Total Responses		1
Sum		3.0
Average		3.0
Max		3.0

When drafting a contract with an international party, exchange rate risk should be a priority over the language a contract is drafted in.

Value	Count	Percent %
3	1	100%

Statistics		
Total Responses		1
Sum		3.0

Average	3.0
Max	3.0

I include a detailed conflict resolution clause in my international contracts.

Value	Count	Percent %
4	1	100%

Statistics		
Total Responses		1
Sum		4.0
Average		4.0
Max		4.0

The potential for political interference from foreign governments influences the drafting of a contract.

Value	Count	Percent %
1	1	100%

Statistics		
Total Responses		1
Sum		1.0
Average		1.0
Max		1.0

The potential for political interference from your home country (i.e., U.S., France, etc.) government influences the drafting of a contract.

Value	Count	Percent %
1	1	100%

Statistics		
Total Responses		1
Sum		1.0
Average		1.0
Max		1.0

I explain to my clients the expense of litigating contract disputes in foreign forums.

Value	Count	Percent %
5	1	100%

Statistics		
Total Responses		1
Sum		5.0
Average		5.0
Max		5.0

After receiving my explanation of costs I believe clients accurately appreciate the expense of litigating contract disputes in foreign forums.

Value	Count	Percent %
2	1	100%

Statistics		
Total Responses		1
Sum		2.0
Average		2.0
Max		2.0

Even after receiving my explanation, clients underestimate the expense of litigating contract disputes in foreign forums.

Value	Count	Percent %
3	1	100%

Statistics		
Total Responses		1
Sum		3.0
Average		3.0
Max		3.0

Proceeding with dispute resolution options to remedy contract issues against a foreign entity results in the termination of the business relationship.

Value	Count	Percent %
4	1	100%

Statistics		
------------	--	--

Total Responses	1
Sum	4.0
Average	4.0
Max	4.0

Please rank in order of importance (1-most important to 5-least important) the following considerations (as defined above) when drafting international contracts.

Item	Total Score ¹	Overall Rank
Choice of Law	3	1
Preventative Measures	2	2
Enforcement	1	3
Cultural Concerns	0	4
Cost Benefit Analysis	0	5
Total Respondents:		

¹ Score is a weighted calculation. Items ranked first are valued higher than the following ranks, the score is the sum of all weighted rank counts.

Sex

Value	Count	Percent %
Male	1	100%

Statistics		
Total Responses		1

Race

Value	Count	Percent %
Caucasian	1	100%

Statistics		
Total Responses		1

Which best describes your predominant area of practice? Mark up to three that apply.

Value	Count	Percent %
Academic " college/university	1	100%
Academic - law school	1	100%

Statistics		
Total Responses		1

Number of Attorney's in your office

Value	Count	Percent %
1-5 Lawyers	1	100%

Statistics		
Total Responses		1
Sum		1.0
Average		1.0
Max		1.0

What are your areas of concentration? Mark up to five that apply.

Value	Count	Percent %
International Law	1	100%
Other(please specify)	1	100%

Statistics		
Total Responses		1

Please select your first language.

Value	Count	Percent %
English	1	100%

Statistics		
Total Responses		1

Please select your Country of Origin.

Value	Count	Percent %
United States of America	1	100%

Statistics		
Total Responses		1

Please select the Country where you currently reside.

Value	Count	Percent %
United States of America	1	100%

Statistics
Total Responses 1

Which best describes your current position? Mark up to three that apply.

Value	Count	Percent %
Teacher or Administrator in Law School	1	100%

Statistics
Total Responses 1

How many years are you licensed as an attorney?

Value	Count	Percent %
18-20 years	1	100%

Statistics
Total Responses 1

Sum	18.0
Average	18.0
Max	18.0

How many years have you worked in your current position?

Value	Count	Percent %
10 to less than 15 years	1	100%

Statistics		
Total Responses		1
Sum		10.0
Average		10.0
Max		10.0

Please select the level(s) of education you have achieved?

Value	Count	Percent %
JD	1	100%
LLM	1	100%

Statistics		
Total Responses		1

APPENDIX C: PILOT TEST COMMENTS

Substantive Comments – Pilot Test Feedback

Based off of the responses from the pilot test, the following changes were suggested.

Participant 2 noted “My only minor criticism is that a few questions didn’t fit those completing the survey who are in academe or in governmental entities or NGOs (e.g., how many lawyers in your firm).” This led to the altering of a demographic question from “How many lawyers in your firm” to “Number of Attorney’s in your office.” By eliminating the reference to a firm, the question encompasses a greater variety of organizations. An additional change made off the pilot responses was derived from a comment by Participant 1. In her critique she noted, “What do you mean by country of origin? Nationality /residence. It only became clear to me when answering the next question.” This led to a change in the order of two demographic questions. In the final version of the measure, “What is your country of origin,” was preceded by “Please select the country where you currently reside” instead of the reverse, thus eliminating the confusion noted by Participant 1. Participant 1 also suggested the possible inclusion of “sometimes” and “always” answer choices. In conforming with the intent of the survey, this proposition was ultimately rejected. It was determined that the results would be of greater benefit if the participant was forced to take a side on the presented issues. Although not expressly stated, the participant is not required to answer every question. Thus, if the answers presented do not accurately convey the belief of the participant, the participant has the option to skip the question. Participant 2 also indicated,

“I particularly like the contrasting questions between preferred language of contract verses enforcement preferences to the contract. Additionally, my experience has been...that most clients have difficulty appreciating the risks of a contract, or ramifications down the road—international or otherwise. My speculation is that your conclusions on this particular issue will probably be quite similar to analogous surveys asking about the risks of contracts from the domestic perspective. Thus, in

my opinion, it is the lawyer's job to remember and to constantly and repeatedly remind the client of the pitfalls—domestic or international, and preferably in writing.”

**APPENDIX D: COUNTRY OF ORIGIN AND PRACTICE SECTOR
DEMOGRAPHIC INFORMATION**

Country of Origin	% of total participants
United States of America	36.1%
Argentina	1.6%
Australia	3.3%
Brazil	1.6%
Bulgaria	1.6%
Canada	3.3%
Cuba	1.6%
Finland	3.3%
France	3.3%
Germany	4.9%
India	13.1%
Italy	1.6%
Netherlands	4.9%
Pakistan	3.3%
Peru	1.6%
Portugal	1.6%
South Africa	1.6%
Switzerland	1.6%
Turkey	1.6%
United Kingdom of Great Britain	6.6%
Vietnam	1.6%

Practice Area	% of total participants
Private Firm	48.4%
Government – County	1.6%
Government – State	1.6%
Government – Federal	6.5%
Government – Other	3.2%
Academic – college/university	6.5%
Academic - law school	6.5%
Academic – other	3.2%
In-house Counsel – Privately held corporation	19.4%
In-house Counsel – Public corporation	19.4%
Judiciary – Federal	1.6%
Trade/Professional Organization	4.8%
Legal Aid/Legal Services	11.3%
Other	11.3%

Table of Contents

*Whereas Blue Book citation style does not contain rules for the formatting and/or inclusion of a table of contents, pursuant to the UCF thesis and dissertation formatting manual a reference list is contained herein.

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