

**Mexican Law for
the American Lawyer**

Mexican Law for the American Lawyer

Jorge A. Vargas

UNIVERSITY OF SAN DIEGO
SCHOOL OF LAW

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Introduction

The presence of Mexican law in American courts is a recent and unprecedented development. Whereas fifty years ago the mention of Mexican law created little interest among legal practitioners and made American judges evoke arcane and alien legal realms, today—especially in California and Texas—Mexican law is beginning to be perceived as a common part of the legal milieu.

The gradual but increasing emergence of Mexican law in our court system is the direct consequence of three major factors: i) Mexico's physical contiguity to the United States; ii) the increasing number of Mexicans and Mexican Americans as an important part of the population of this country; and iii) the vigorous economic presence of U.S. foreign investment in Mexico.

Mexico's physical contiguity to the United States dates back to the treaties of Guadalupe Hidalgo of 1848 and the Gadsden Purchase of 1853. As a result of these treaties, the countries have been connected by one of the longest international boundaries in the world—extending across rivers, deserts and mountains—totaling 1,952 miles in length.

This boundary is unique both because of its length and because it runs between one of the world's major powers and a developing country. For decades, Mexico strove to improve on a number of fronts, including education, health and social security, communications, and industrial development. It has put special emphasis on alleviating poverty, recognizing the human rights of indigenous peoples, implanting a more modern and efficient justice system and solidifying its incipient democracy. Accordingly, the border area between the United States and Mexico has become a unique laboratory where the blending of peoples, cultures and wealth poses daily challenges to the contrasting legal systems and the rendering of justice in these friendly neighboring countries.

Today, Latinos represent the largest ethnic minority in our country. The majority are Mexican Americans or Mexican nationals. This demographic phenomenon should not be surprising, as history documents Mexican nationals among the very first immigrants to our country. When the United States acquired the vast Mexican territories north of the current international boundary in 1848, it also gained thousands of Mexican citizens living there. Demographic projections suggest that the Latino population—which is steadily gaining in education, economic status and political power—will reach 50 million by 2050.

The United States has been the largest foreign investor in Mexico since the end of World War II. This fact is clearly reflected in Mexico's commercial, industrial and business sectors, directly affecting trade, agriculture, manufacturing, scientific and technological developments, as well as the growth of the construction industry, telecommunications, assembly plants, mining and tourism. Therefore, it is certain that American courts in the future will take cognizance of and judicially resolve an increasing number of cases governed or influenced by Mexican law.

This book, written for the benefit of American legal practitioners, judges and magistrates, government officials involved with Mexico, law professors and students, provides a practical introduction to the most important areas of Mexican law that have regularly appeared in American courts in recent years. It reflects the law of Mexico as it stands today; however, in no way should the content be construed as providing professional legal advice on Mexican law.

Mexican Law for the American Lawyer collects the works of a select number of Mexican legal practitioners and academicians who have been recognized as leading specialists in Mexico and abroad in their respective areas of Mexican law. Many are also professors of law in prestigious law schools in Mexico, and many have received graduate degrees from U.S., Mexican or European universities.

To enhance its usefulness and practical value, this practical guide includes a number of special features. Glossaries have been added at the end of each chapter, giving concise and practical definitions of hundreds of Mexican legal terms. The definitions of most of these terms were taken from Mexican statutes, codes or regulations, thus guaranteeing their legal accuracy. Some chapters also include samples of Mexican legal documents in order to offer American readers the opportunity to compare and contrast them with the corresponding U.S. documents. At the end of most chapters readers will also find specialized legal bibliographies composed of sources published in Mexico (in Spanish) that may be of use for those who need to do more detailed research on a given subject.

A number of factors have contributed in recent years to an increasing number of American legal practitioners (as well as judges and magistrates) becoming fluent in the Spanish language: the growing presence of Mexican nationals and Mexican Americans in our country; the large number of Americans doing business in Mexico, visiting as tourists or retiring to some of its beautiful colonial cities; and the increasing number of cases governed by Mexican law and being resolved by American courts.

In turn, all of this has led some American law schools—including the University of San Diego School of Law (USD), a pioneer in this field—to add introductory courses on Mexican law to their curricula. A number of monographic seminars on practical Mexican law areas such as acquisition of real estate, contracts, foreign investment, companies, franchises or enforcement of judgments have also been added. The most recent trend is to add Mexican Legal Spanish courses.

This book turned into a feasible project when a group of friends, all eminent jurists attending a special conference on binational legal issues between Mexico and the United States at the Universidad Autónoma de Ciudad Juárez (UACJ) in October of 2006, strongly embraced the idea. In particular, I would like to express my sincere thanks to Jorge Alberto Silva, eminent Professor of Law at UACJ and a leading national expert on Private International Law, who not only contributed several important chapters to this work but assisted me in contacting the authors whose valuable contributions eventually materialized into this book. The original idea of this collaborative effort would have not become a reality save for Jorge Alberto's enthusiasm, decisive assistance and generous support.

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It is highly gratifying for me that Carolina Academic Press is publishing this book in 2009—twenty-six years after I began my academic association with USD. When I started teaching at USD, my Mexican law course at that time was perhaps nothing more than a legal curiosity. Although during these challenging, exciting and enriching years I taught other courses—Law of the Sea, International Environmental Law, Human Rights, International Law, NAFTA and the Environment, Immigration Law, Japanese Law, International Organizations and Comparative Law—my initial determination was to devote a substantial part of my academic career to inform, promote and disseminate the history and substance of Mexican law in this country. I hope that this work contributes to achieving that treasured goal.

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Prof. Jorge A. Vargas
Editor and Co-Author
University of San Diego School of Law