

RAY AUGUST

国际商法 ■第三版

International Business Law Text, Cases, and Readings

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国际商法

第三版

International Business Law Text, Cases, and Readings

Ray August

Professor of Business Law

College of Business and Economics

Washington State University

J.D., University of Texas at Austin

LL.M in International Law, University of Cambridge

Ph.D. in American Legal History, University of Idaho



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内 容 简 介

本教材适合高年级本科生学习国际商法课程。它既强调理论学习,又注重实际运用,书后还附有案例和阅读材料。本书内容包括:国际法与比较法概述,国家责任与环境规则,争端解决,跨国公司,对外投资,货币与银行,货物贸易,服务贸易,知识产权,运输,支付,税收等13个部分。与前两版相比,具有以下新特点:(1)新增加了20个案例;(2)增加了关于国际保险、WTO争端解决机制、最新关税表等方面的新材料;(3)脚注和参考资料亦有较大更新;(4)对国际贸易及跨国公司的运作有较多论述。

出版前言

为适应经济社会发展的需要,以高质量的高等教育迎接经济全球化和新科技革命的挑战,培养数以千万计的高质量专门人才,教育部明确要求各高等院校创造条件使用英语等外语进行公共课和专业课教学,从而缩短我国在有关专业教学上与国际先进水平的差距,同时不断提升我国大学生的外语水平。其中一个重要的措施是在高等学校推动使用外语优秀教材。

为使高校学生能够及时使用世界先进水平的法学新教材,高等教育出版社受教育部高教司委托,聘请熟悉国内外教学和学科发展水平的专家,从欧美现行教材中遴选、引进了这批具有国际领先水准的英文版教材,以影印形式出版,供开设相应课程的高等学校选用。

引进这批教材时遴选和评定的依据主要有以下几个方面:(1)引进的教材与1998年教育部颁布的专业目录及后来批准的目录外专业所规定的主要课程相对应,内容符合专业培养目标和教学要求。(2)版本要新。国外的大学教科书一般三年左右即修订再版一次,增补新的内容。这批教材选择的都是国外权威教科书的最新版本,内容涵盖了相应学科最新进展的介绍和现实案例的分析。(3)内容规范简明,适合教学。由于这批影印教材主要是针对我国大学本科层次法学专业的基础课程和主干课程的,专家们在选择时充分考虑了内容的严谨、规范以及表述的准确性,同时考虑了使用外语教材可能遇到的课时限制问题,在内容相同的几种流行版本中选择相对简明的版本。另外,按照教育部的要求,这批教材的定价采取了与国内版教材相同的标准。

由于这批教材的作者所在国家的经济、政治、社会文化等与我国均有所不同,书中内容和观点难免有偏颇和错误之处,希望读者在阅读时注意鉴别。

我们希望这批影印教材的出版,对各高等院校的法学专业的教学有所促进和帮助。

高等教育出版社

2002年9月

Preface

Business today is truly international. Worldwide, approximately half of all business transactions are done across national borders. An enterprise, therefore, that chooses to ignore all but the laws and legal procedures of its own country is choosing to work half blind.

Lawyers and businesspeople have to have a basic understanding of legal systems other than their own. The consequence of failing to do so cannot be more forcefully stated than by quoting from a recent opinion of Philippine Supreme Court Justice Cruz:

The petitioners' counsel have submitted a memorandum replete with citations of American cases, as if they were arguing before a court of the United States. The Court is bemused by such attitude. While these decisions do have persuasive effect upon us, they can at best be invoked only to support our own jurisprudence, which we have developed and enriched on the basis of our own persuasions as a people, particularly since we became independent. . . .

We appreciate the assistance foreign decisions offer us. . . . But we should not place undue and fawning reliance upon them and regard them as indispensable mental crutches without which we cannot come to our own decision through the employment of our own endowments. We live in a different ambience and must decide our own problems in the light of our own interests and needs, and of our qualities and even idiosyncrasies as a people, and always with our own concept of law and justice.

Sanders v. Veridiano.

Philippine Supreme Court.

Supreme Court Reports Annotated, Second Series, vol. 162, p. 88 (1988).

The goal of this book is to show how firms doing business between the more than 185 countries of world are governed and regulated. No single legal system is emphasized; rather, cases and materials from many countries are collected to show both the diversity and the similarity of businesses and of the law.

International organizations also play a large role in regulating international business and they too are examined, along with the treaties, conventions and agreements that created them and the treaties, conventions and rules that they administer.

Special Features

This is a book of text, cases, and readings. Depending on the teaching style of the instructor, as well as the backgrounds of students, either the text or the cases and readings can be emphasized.

As much as possible, sexist language in the text has been avoided. Unfortunately, many (if not most) international statutory and case materials use only the masculine gender (i.e., he, him, his) when speaking of a person. Unfortunately, as well, the English language does not have a neuter pronoun that can be readily substituted for these words. To be consistent, and to avoid the clumsiness of phrases such as “he or she,” or “he/she,” or “s/he,” the masculine gender is also used in the text when general reference is made to an individual.

Plain Language Citations. Standard law abbreviations, such as [1961] 3 W.I.REP. 198, would be all but meaningless to most readers (even most lawyers with access to domestic citation dictionaries) since the cases and materials are taken from many uncommon sources. As a consequence, all citations are given in the following form: name, volume, part (if appropriate), series (if appropriate), page, court, and year. For example: *West Indian Reports*, vol. 3, p. 198 (Br. Guiana Supreme Ct., 1961).

In addition, when case materials are available on the Internet, the World Wide Web address for those materials is provided in a footnote. These addresses are also listed on the “links” page of the textbooks’ web site at <http://august1.com/pubs/ibl/>.

Margin Notes. Key words and phrases are defined in margin notes for ready reference and easy review.

Chapter Questions and Review Problem. Each chapter concludes with a series of questions that highlight the major topics of the chapter. For instructors (or students) who prefer to have a single unifying problem tying all of the elements of each chapter (and the book) together, an “applicational” review problem is also provided.

Supporting Materials

Author's Web Site. Supporting materials for this textbook are available on the Internet at the author's web site at <http://august1.com/pubs/ibl/>. These include update information and errata, model syllabuses for both undergraduate and graduate courses, and links to case materials and other supporting materials.

Publisher's Web Site. Prentice Hall has established a Companion web site for this textbook at <http://cw.prenhall.com/bookbind/pubbooks/august/>. The Web site has postings on current events, Internet exercises, links to research materials, and a variety of other student and faculty resources.

Student Guide. A guide for students containing summaries of the text, practice true-false, multiple choice, and essay questions, and lists of key words and phrases for each chapter is available on the Internet at <http://august1.com/pubs/ibl/guide/>.

International Law Dictionary and Directory. A dictionary of international legal and business terms, plus links to key international organizations and resources on the World Wide Web, is available on the Internet at <http://august1.com/pubs/dict/>.

On-Line Lectures. Audio-video lectures covering the entire textbook are available on the Internet at <http://august1.com/lectures/ibl/>. These contain both outlines and narration by an animated cartoon character. They can be viewed—even with low-speed Internet connections—using free downloadable software available at the Web site above.

Changes in the Third Edition

Major changes occurred in the world between the publication of the First Edition in 1993 and the Second Edition in 1997. The Uruguay Round of multilateral trade negotiations was concluded; the World Trade Organization (WTO) came into being; the Soviet Union broke up; the Cold War came to an end; the European Community became the European Union; and national governments and international organizations began setting up Web sites on the Internet. These changes were reflected in the Second Edition. Most notably, the WTO materials were substantially rewritten and expanded, and the textbook's chapters were reordered to group together the WTO materials.

The changes in the world have not been quite as dramatic since the publication of the Second Edition. Over the last three years, the international legal community has focused on implementing and consolidating the changes made in the previous five years. The Third Edition incorporates materials that show this process of implementation and consolidation.

There are 35 new cases—approximately one-third of all the cases—in the Third Edition. Most significant, are five new cases in Chapter 10 interpreting the *United Nations Convention on the International Sale of Goods*. As with the previous editions, the cases are taken from a wide range of jurisdictions. New jurisdictions represented include Austria, Hungary, Micronesia, and the World Trade Organization.

There are new materials in Chapter 1 describing the structure and organization of the European Union. Chapter 2 has been renamed to reflect the addition of new materials on environmental protection. There are updated materials in Chapter 4 on the United States *Foreign Corrupt Practices Act*, which was amended in 1998; new materials in Chapter 5 dealing with the international trading of securities; and new materials in Chapter 7 dealing with the WTO and the General Agreement on Tariffs and Trade. The immigration materials in Chapter 8 have been expanded. The discussion of the United Nations *Convention on International Bills of Exchange and Promissory Notes* (CIBN) in Chapter 12 has been relegated to a footnote, as only two states have ratified the Convention and prospects for its coming into force in the near-term seem unlikely. Finally, the tax tables in Chapter 13 are completely updated.

Acknowledgments: First Edition

It would have been impossible to have produced this book without the help of a great many people. I want to thank my wife, Diana Pace, who drew all of the maps, who proofread the manuscript more times than either one of us cares to remember, and who helped me in so many ways. Diana's mother, Genny Pace, also kindly and carefully proofread the manuscript. Mary Arndt, Gerald D'Souza, Otis Henderson, Meredith Kinzer, Katie Leid, Sandie Meyers, Kristi Nelson, Rae Ann Pugliese and Kelly Rice all helped with typing.

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Acknowledgments: Second Edition

Much of the work that went into completing the second edition was done while I was on sabbatical leave from Washington State University. I want to thank Dean Gale Sullenberger and former Dean Rom Markin of the College of Business and Economics and Prof. Glenn L. Johnson, Chairman of the Department of Accounting and Business Law, not only for allowing me to take a leave but also in providing me with help and encouragement to complete the book. While I was on sabbatical, I was a Visiting Scholar at the School of Law at the University of Washington. My thanks to Dean Wallace D. Loh, Emily Swanson, the faculty, and especially the librarians for opening up their resources to me. My thanks as well to the librarians at Washington State University, the University of Idaho, and the University of Idaho College of Law, all of whom were most helpful.

The editorial staff at Prentice Hall was, as always, hard working, professional, and most supportive. My thanks to Don Hull, John Larkin, Andrea Cuperman, Anne Graydon, and Nancy Marcello.

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Acknowledgments: Third Edition

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Again, I want to thank my dean, Dean Gale Sullenberger, of the College of Business and Economics at Washington State University, and Professor Glenn Johnson, the director of my school, the School of Accounting Information Systems and Business Law, both of whom provided support and encouragement for the revision of this textbook. Again, I greatly appreciate the help of the librarians at Washington State University, the University of Washington, the University of Idaho, and the University of Texas at Austin, all of whom helped me identify and locate materials on international business law.

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As always, I could not have written this textbook without the help, support, and encouragement of my wife, Diana Pace. Thank you, my darling.

—Ray August
ray@august1.com
September 15, 1999

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