



# International Business Transactions

Problems, Cases, and Materials

Third Edition

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*To my wife Ching and our son Alan*

**DC**

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## *Preface to the Third Edition*

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We take pleasure in offering our colleagues and friends and law and business students an updated third edition of our book, *International Business Transactions: Problems, Cases, and Materials*. Our purpose remains to offer in the most compact format possible primary materials on the laws of international business operating in our increasingly complex world. In the years since the publication of the second edition there have been many new developments, which we try our best to include in this edition, but the overall framework of the law remains the same. Thus users of this book will find much that is familiar, but we have endeavored to update all the chapters of the book.

We continue to believe—more than ever—that law students interested in business law are remiss if they do not take a course in international business transactions law. International business operations are no longer exotic or uncommon. Virtually all business enterprises now engage or will engage in some international activities, and there is no bright line distinction between domestic and international business ventures. Thus, the law or business student and practicing lawyers need familiarity with the expanding corpus of relevant international laws and practices businesses must cope with in their international operations.

For pedagogical reasons in this book we distinguish international business transactions law from international trade law, which we cover in a companion book, Chow and Schoenbaum, *International Trade Law: Problems, Cases, and Materials* (2d ed. 2012). We believe that international business law, which is mainly private international law and the international dimensions of private law, is conceptually distinct from international trade law, which is mainly public international law. Despite the fact that the practicing lawyer may deal in cases that combine both trade and transactional law, we believe it is confusing for law students to study both of these subjects together in the same course. In addition, the corpus of law in both these areas is now so vast that it is impossible to cover them both in a single course. Of course in this book we do cover a modicum of trade law, especially customs law, which is essential to import and export sales of goods.

We include in this edition, as in prior editions, many short problems that are designed to allow the student to apply his or her knowledge of international business law to concrete situations. We have designed the materials and the problems to fit together so the book will function as a learning tool. We believe, however, that the materials stand on their own, so the instructor has the flexibility to omit some or all of the problems or to substitute his or her own problems for ours.

We also include in this edition an updated Document Supplement that is designed to be used in conjunction with the Casebook itself.

We are always happy to receive comments from colleagues or students on how we can further improve this book as a learning tool.

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- "Accidents Do Happen: Hazardous Technology and International Tort Litigations," by Stephen C. McCaffrey, 1 *The Transnational Lawyer* 41 (1988). Reprinted with the permission of the University of the Pacific McGeorge Law Review and the author.
- "The Bhopal Settlement," by Shyam Divan and Armin Rosencranz, 1989 *Environmental and Policy*, 166. Reprinted with the permission of IOS Press B.V. and the authors.
- "Confronting Industrial Pollution in Rapidly Industrializing Countries: Myths, Pitfalls and Opportunities," by H. Jeffrey Leonard, 12 *Ecology Law Quarterly* (1985). Reprinted with the permission of the Regents of the University of California and the author.
- "Council Recommendation of the Application of the Polluter-Pays Principle to Accidental Pollution," Organization for Economic Co-operation and Development, 28 *I.L.M.* 1320 (1989). Reprinted with the permission of the American Society of International Law.
- Exporting Hazardous Industries: Should American Standards Apply? By Maureen A. Bent, 20 *NYU J. Int'l L. & Politics*, 777, 78-81 (1988). *Journal of International Law and Politics*. Reprinted with the permission of the NYU Journal of International Law and Politics.
- "Extraterritorial Jurisdiction Under the Third Restatement of the Foreign Relations Law of the United States," by Kathleen Hixson, 12 *Fordham L. Rev.* 127, 129-37. Reprinted with the permission of the author.
- "Human Rights Responsibilities of Private Corporations," by Jordan J. Paust, 35 *Vanderbilt Journal of Transnational Law*, 801, 802-12 (2002). Reprinted with the permission of the Vanderbilt University Law School.
- Lanco v. Argentine Republic*, 40 *ILM* 457 (2001) March 2001, Vol. XL, pp. 457-473.
- "The Legal System of the People's Republic of China in a Nutshell," by Daniel C.K. Chow — excerpt (words only) and p. 33—Chart: GDP of Top Ten Countries. Reprinted with the permission of Thomson West and the author.
- LG&E Energy Corp. v. Argentine Republic*, 46 *ILM* 40 (2007) January 2007 Vol. 46, pp. 40-76.
- Marvin Feldman v. Mexico*, 42 *ILM* 625 (2003).
- "The OECD Guidelines for Multinational Enterprises," Organization for Economic Cooperation and Development 2011 Edition, OECD Publishing.
- "The Road to the Tribunal and Beyond: International Arbitration and the United States," by Susan Karamanian, 34 *George Washington International L. Review* 17, 19-21. Reprinted with the permission of the George Washington University.

"The Role of Organized, Crime, Local Protectionism and the Trade in Counterfeit Goods in China," by Daniel C.K. Chow, Text pp. 473-481, Table p. 482, Map p. 477. Reprinted with the permission of Elsevier Science and the author.

"Transnational Corporations and Developing Public International Law," by Jonathan Charney, Duke L.J. 748, 762-69 (1983). Reprinted with the permission of the Duke University School of Law.

Wena Hotels Ltd. v. Arab Republic of Egypt (ICSID Case No. ARB/98/4), p. 129, 41 ILM 881 (2002).

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