

INTERNATIONAL BUSINESS TRANSACTIONS

A PROBLEM-ORIENTED COURSEBOOK

Ninth Edition

Ralph H. Folsom
Michael Wallace Gordon
John A. Spanogle, Jr.
Peter L. Fitzgerald

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Preface to the Ninth Edition

Few lawyers engaged in commercial or corporate law, even those located in the most remote corners of the United States, are likely to pass their careers without confronting one or more issues of international business. A farm client in Iowa learns that the President has imposed export controls on grain, or that the European Union has established a substantial levy on grain imports for the year because of unexpectedly high European farm production. A Texas manufacturer of tennis racquets discovers the market is flooded with a patent-infringing copy made in the Far East. A New Hampshire grocery store chain, which wants to purchase a new line of chocolates directly from Belgium, is introduced to letters of credit in the international context. A North Carolina fast food franchisor is asked by a group of Canadians for the franchise rights for Canada. The list could go on.

Of particular importance is that clients may never be directly engaged in international commerce, but nevertheless may have a serious international business problem. The tennis racquet manufacturer was satisfied with the United States market. But it now confronts the pirating of its patents and must consider whether imports of those tennis racquets may be stopped, and if any action might be taken in the foreign nation where the racquets are being illegally made. A manufacturer of dictating machines discovers the market flooded with machines from abroad at a price which must be well below cost. Was that government subsidizing the production or was the company dumping its products in the United States?

After a brief introduction to the conduct of business in the world community, the book uses 38 hypothetical problems to present what we believe are some of the most important issues in international business transactions. There is an Appendix which introduces the European Union Legal System. Except for a few areas, such as documentary sales, letters of credit, sovereign immunity, act of state, and the litigation problems, there is a modest amount of case law which is useful in discussing these issues. Extracted materials thus come from a wide variety of sources, including treaties, conventions, statutes and regulations. The hypothetical problems provide comparatively brief situations which are intended to make the purpose and relevance of the readings clear. Our choice of problems will not be agreed to by all. But we hope that it will promote a useful teaching method and, with other assigned readings, fulfill many interests.

There is a Documents Supplement prepared especially for use with the book. References are made in each problem to those parts of the Documents Supplement which are necessary to an analysis of the problem. The Documents Supplement includes the principal United States trade acts, with successive amendments to earlier acts integrated into those earlier acts. There are also numerous other United States statutes governing exports, sovereign immunity, foreign corrupt practices, the Caribbean Basin and the enforcement of foreign judgments. International treaties, such as the Convention on Contracts for the International Sale of Goods (CISG), as well as excerpts from numerous World Trade Organization agreements are included. Several regional documents are presented, including parts of the North American Free Trade Agreement. Portions of other laws and rules are included in the text, such as parts of the IMF rules, UCC, Incoterms, UCP, Restatements, CFR and the laws of Canada, Mexico, the United Kingdom and the European Union. It is

essential that students use the Documents Supplement in many of the problems.

None of us has ever completely covered all of the book in a single semester. The book provides ample material for a single broad survey course, or separate offerings such as an “International Business Transactions” course focusing primarily upon sales, letters of credit and dispute settlement or an “International Trade and Economic Relations” course centered on governmental regulation of trade and investment. By design there are many other course variations that can be taught from this book. We expect some professors may wish to expand upon Part One, which is a very condensed introduction, and then allocate one class session per problem. Most of the problems could easily be extended to additional class sessions, and many have been divided into two (or more) parts which may help such allocation. This should permit faculty to omit problems which they feel are less relevant to their goals in teaching the course, and to enhance those problems which they feel are most important with other readings.

This coursebook has been used in well over 120 schools. We have received comments from faculty using prior editions suggesting ways to improve the book. We have incorporated many and are very thankful for these comments. We hope more suggestions will be forthcoming with this edition. The Teacher’s Manual will help faculty using this edition for the first time, and should assist previous users by comments in the initial paragraphs to each problem which explain changes made in each specific problem, hopefully helping in the preparation of new class notes where they are needed. Professors can obtain a looseleaf edition of this coursebook, which facilitates the transfer of teaching notes, from West Group.

This coursebook is designed to introduce law students to a wide range of problems that are sequenced in Parts: international sales and letters of credit, trade regulation, technology transfers, foreign investment and dispute settlement. We explore those problems in developed, developing, nonmarket and transition economies. Our focus is on lawyers, public and private, as problem solvers. None of us was interested in undertaking this project for the sake of producing a “casebook”. We believed rather that a problem-oriented approach and the sequence of our Parts would offer a different perspective for law faculty teaching in this area. Professors of international business law often have extremely diverse concepts of what the course should include. We do hope that we have been sufficiently diverse to satisfy many of those views.

After considerable thought and discussion with many faculty who have adopted this book, and with West, we have decided to return to less frequent revisions than the annual update format used for the 6th through 9th editions. We expect that the next update will be available in the Summer of 2009, thus adopting a three update cycle.

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