

INTERNATIONAL BUSINESS TRANSACTIONS: CONTRACTING ACROSS BORDERS

ELEVENTH EDITION

Ralph H. Folsom • Michael Wallace Gordon •

John A. Spanogle, Jr. • Peter L. Fitzgerald • Michael P. Van Alstine

WEST®

INTERNATIONAL BUSINESS TRANSACTIONS: CONTRACTING ACROSS BORDERS

Eleventh Edition



By

Ralph H. Folsom

*Professor of Law
University of San Diego*

Michael Wallace Gordon

*John H. and Mary Lou Dasburg Professor of Law Emeritus
University of Florida*

John A. Spanogle, Jr.

*William Wallace Kirkpatrick Professor of Law
The George Washington University*

Peter L. Fitzgerald

*Professor of Law
Stetson University College of Law*

Michael P. Van Alstine

*Professor of Law
University of Maryland
Francis King Carey School of Law*

AMERICAN CASEBOOK SERIES®

WEST®

A Thomson Reuters business

Thomson Reuters created this publication to provide you with accurate and authoritative information concerning the subject matter covered. However, this publication was not necessarily prepared by persons licensed to practice law in a particular jurisdiction. Thomson Reuters does not render legal or other professional advice, and this publication is not a substitute for the advice of an attorney. If you require legal or other expert advice, you should seek the services of a competent attorney or other professional.

American Casebook Series is a trademark registered in the U.S. Patent and Trademark Office.

© 2009 Thomson Reuters

© 2012 Thomson Reuters

610 Opperman Drive
St. Paul, MN 55123
1-800-313-9378

Printed in the United States of America

ISBN: 978-0-314-27613-1

We Dedicate This Book to:

Pixie

Elsbeth Wallace and Huntly Milne Gordon

Pamela

Susan

Lisa

PREFACE

This is a special edition adapted from Chapters 1–5, 6, 9 and 11 of the authors' widely used *INTERNATIONAL BUSINESS TRANSACTIONS: A PROBLEM-ORIENTED COURSEBOOK*, now in its 11th edition (2012). The purpose of this volume is to facilitate a focused study of the contractual issues arising out of international sales transactions.

Few lawyers engaged in commercial or corporate law, even those located in the remote corners of the United States, are likely to pass their careers without confronting one or more issues of international business. A New Hampshire sporting goods chain interested in purchasing a new line of tennis racquets directly from Germany 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. A California company becomes involved in a series of complaints regarding toys it purchased from a Chinese supplier, and now worries that any claims it has must be resolved under foreign law and in a foreign forum. The list of potential issues can go on and on, but one common element is that both avoiding legal issues, and resolving them once they do arise, begins with the parties' contracts and the law applicable to those contractual dealings.

After a brief introduction to the conduct of business in the world community, the book uses hypothetical problems to present what we believe are some of the most typical and important contract law issues arising out of international business transactions. This Coursebook also includes an Appendix which introduces the European Union Legal System and there is a Documents Supplement prepared especially for use with the volume. References are made in each problem to those parts of the Documents Supplement which are necessary to an analysis of the problem. It is essential that students use the Documents Supplement in many of the problems. 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.

Most of the problems can easily be extended to multiple 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.

The Teacher's Manual will help faculty using this volume for the first time, and should assist previous IBT users by comments in the initial paragraphs to each problem which explain changes made in each specific

problem. Professors can obtain a looseleaf edition of this coursebook, which facilitates the transfer of teaching notes, from West Group.

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 would offer a different perspective for law faculty teaching in this area. We welcome feedback on this special edition.

RALPH H. FOLSOM

rfolsom@sandiego.edu

MICHAEL W. GORDON

gordon@law.ufl.edu

JOHN A. SPANOGLE

aspanogle@law.gwu.edu

PETER L. FITZGERALD

fitz@law.stetson.edu

MICHAEL P. VAN ALSTINE

mvanalst@law.umaryland.edu

May 2012

ACKNOWLEDGMENTS

We wish to acknowledge that in writing this book we have been aided by numerous colleagues and students. Special appreciation is due several persons who have thoughtfully commented on individual problems. They are Amy Boss of Temple University, Andrzej Burzynski of Warsaw, James Byrne of George Mason University Law School, Richard Cummins of George Washington University, E. Allan Farnsworth of Columbia University, Roger Goebel of the Fordham Law School, Ignacio Gomez-Palacio of Mexico, Trevor Hartley of the London School of Economics, Hellen Hartnell of Golden Gate Law School, John O. Honnold of the University of Pennsylvania, Elmer Leroy Hunt, Robert B. Moberly and Jeffrey Davis of the University of Florida, Herbert I. Lazerow and Michael Ramsey of the University of San Diego, Peter Lichtenbaum of Steptoe and Johnson, Osvaldo Marzorati of Buenos Aires, Robin Morse of King's College, University of London, Professor Pierre Mousseron of the Faculte de Droit, Montpellier, Robert S. Rendell of Rogers & Wells, New York City, Keith S. Rosenn of the University of Miami and Peter Winship of Southern Methodist University. We also give particular thanks to the many foreign colleagues abroad with whom we have worked over the years and who by adding to our knowledge in international business transactions have helped make this volume possible.

TABLE OF CASES

The principal cases are in bold type. Cases cited or discussed in the text are in roman type. References are to pages. Cases cited in principal cases and within other quoted materials are not included.

- Adel Precision Products Corp. v. Grand Trunk Western R. Co.**, 332 Mich. 519, 51 N.W.2d 922 (Mich.1952), **200**
- Albemarle Corp. v. AstraZeneca UK Ltd., 2009 WL 902348 (D.S.C.2009), 469
- Allen v. Lloyd's of London, 94 F.3d 923 (4th Cir.1996), 469
- Allis-Chalmers Corp., Hydro-Turbine Division v. Friedkin**, 635 F.2d 248 (3rd Cir. 1980), **345**
- American Bell Intern., Inc. v. Islamic Republic of Iran**, 474 F.Supp. 420 (S.D.N.Y. 1979), **318**
- American-European Art Associates, Inc. v. Moquay, 1995 WL 317321 (S.D.N.Y.1995), 499
- American Trading & Production Corp. v. Shell Intern. Marine Limited, 453 F.2d 939 (2nd Cir.1972), 155
- Anderson v. Dassault Aviation, 361 F.3d 449 (8th Cir.2004), 481
- Archer Daniels Midland Co. v. JP Morgan Chase Bank, N.A.**, 2011 WL 855936 (S.D.N.Y.2011), **324**
- Asahi Metal Industry Co., Ltd. v. Superior Court of California, Solano County, 480 U.S. 102, 107 S.Ct. 1026, 94 L.Ed.2d 92 (1987), 448
- Baker Marine (Nig.) Ltd. v. Chevron (Nig.) Ltd., 191 F.3d 194 (2nd Cir.1999), 551
- Banco Santander SA v. Banque Paribas**, 2000 WL 191098 (CA (Civ Div) 2000), **286**
- Bankston v. Toyota Motor Corp.**, 889 F.2d 172 (8th Cir.1989), **497**
- Bergesen v. Joseph Muller Corp., 548 F.Supp. 650 (S.D.N.Y.1982), 547
- Berisford Metals Corp. v. S/S Salvador**, 779 F.2d 841 (2nd Cir.1985), **118**
- Biddell Bros. v. E. Clemens Horst Co., [1912] A.C. 18 (House of Lords), 97
- Bilski v. Kappos, — U.S. —, 130 S.Ct. 3218, 177 L.Ed.2d 792 (2010), 367
- Bonny v. Society of Lloyd's, 3 F.3d 156 (7th Cir.1993), 469
- BP Oil Intern., Ltd. v. Empresa Estatal Petroleos de Ecuador, 332 F.3d 333 (5th Cir. 2003), 85
- Bridgestone/Firestone, Inc., In re, 190 F.Supp.2d 1125 (S.D.Ind.2002), 506
- Broadcast Music, Inc. v. Columbia Broadcasting System, Inc., 441 U.S. 1, 99 S.Ct. 1551, 60 L.Ed.2d 1 (1979), 373
- Bulova Watch Co., Inc. v. K. Hattori & Co., Ltd., 508 F.Supp. 1322 (E.D.N.Y.1981), 482
- Butler v. Ford Motor Co., 724 F.Supp.2d 575 (D.S.C.2010), 70
- Carnival Cruise Lines, Inc. v. Shute, 499 U.S. 585, 111 S.Ct. 1522, 113 L.Ed.2d 622 (1991), 466
- Carolina Power & Light Co. v. Uranex, 451 F.Supp. 1044 (N.D.Cal.1977), 550
- C-ART, Ltd. v. Hong Kong Islands Line America, S.A., 940 F.2d 530 (9th Cir.1991), 55
- Central National-Gottesman, Inc. v. M.V. "Gertrude Oldendorff", 204 F.Supp.2d 675 (S.D.N.Y.2002), 468
- Chromalloy Aeroservices, a Div. of Chromalloy Gas Turbine Corp. and Arab Republic of Egypt, Matter of, 939 F.Supp. 907 (D.D.C. 1996), 551
- Citigroup Global Markets, Inc. v. Bacon, 562 F.3d 349 (5th Cir.2009), 526
- Clark v. Matsushita Elec. Indus. Co., Ltd., 811 F.Supp. 1061 (M.D.Pa.1993), 481
- Color Systems, Inc. v. Meteor Photo Reprographic Systems, Inc., 1987 WL 11085 (D.D.C.1987), 481
- Comedy Club, Inc. v. Improv West Associates, 553 F.3d 1277 (9th Cir.2009), 526
- Continental T. V., Inc. v. GTE Sylvania Inc., 433 U.S. 36, 97 S.Ct. 2549, 53 L.Ed.2d 568 (1977), 410
- Corsec, S.L. v. VMC Intern. Franchising, LLC, 909 So.2d 945 (Fla.App. 3 Dist.2005), 470
- Crosby v. National Foreign Trade Council**, 530 U.S. 363, 120 S.Ct. 2288, 147 L.Ed.2d 352 (2000), **340**
- C Sharpe & Co Ltd v Nosawa & Co, 1917 WL 18265 (KBD 1917), 152
- Delgado v. Shell Oil Co., 890 F.Supp. 1324 (S.D.Tex.1995), 507
- Distribuidora Internacional Alimentos v. Amcar Forwarding, Inc.**, 2011 WL 902093 (S.D.Fla.2011), **214**
- Ecuadorian Shrimp Litigation, In re, Case No. 94-10138-27 (1999), 507

- Edelweiss (United StatesA), Inc. v. Ven-groff Williams & Associates, Inc.**, 59 A.D.3d 588, 873 N.Y.S.2d 714 (N.Y.A.D. 2 Dept.2009), **199**
- Ferrostaal, Inc. v. M/V Sea Phoenix**, 447 F.3d 212 (3rd Cir.2006), 124
- Fireman's Fund Ins. Co. v. M.V. DSR Atlantic**, 131 F.3d 1336 (9th Cir.1997), 468
- GEMA, Re**, 10 Common Mkt.L.Rep. D35 (1971), 11 Common Mkt.L.Rep. 694 (1972), 373
- General Motors Corp. Dex-Cool Products Liability Litigation, In re**, 241 F.R.D. 305 (S.D.Ill.2007), 70
- Gill & Duffus SA v Berger & Co Inc**, 1984 WL 282930 (HL 1983), 98
- Goto v. Malaysia Airline**, 35 Minshü (No. 7) 1224 (Supreme Court, Oct. 16, 1981), **487**
- Hadley v Baxendale**, 1854 WL 7208 (Ex Ct 1854), 89
- Hall Street Associates, L.L.C. v. Mattel, Inc.**, 552 U.S. 576, 128 S.Ct. 1396, 170 L.Ed.2d 254 (2008), 526
- Hanwha Corp. v. Cedar Petrochemicals, Inc.**, 760 F.Supp.2d 426 (S.D.N.Y.2011), **74**
- Hargrave v. Fibreboard Corp.**, 710 F.2d 1154 (5th Cir.1983), 481
- Harris Corp. v. National Iranian Radio and Television**, 691 F.2d 1344 (11th Cir.1982), 334
- Hilton v. Guyot**, 159 U.S. 113, 16 S.Ct. 139, 40 L.Ed. 95 (1895), 455
- Hual As v. Expert Concrete, Inc.**, 2001 WL 1598367 (N.Y.Sup.2001), **197**
- Indussa Corp. v. S. S. Ranborg**, 377 F.2d 200 (2nd Cir.1967), 468
- Industria Nacional Del Papel, CA. v. M/V Albert F**, 730 F.2d 622 (11th Cir.1984), **212**
- In re (see name of party)**
- International Raelian Movement v. Hashem**, 2009 WL 2136958 (E.D.Cal.2009), 500
- Ipitrade Intern., S. A. v. Federal Republic of Nigeria**, 465 F.Supp. 824 (D.D.C.1978), 524
- Jain Irr. System, LTD v. Chemcolit, Inc.**, 2000 WL 1802069 (S.D.Tex.2000), **210**
- JH Rayner & Co Ltd v Hambros Bank Ltd**, 1942 WL 30851 (CA 1942), **235**
- John T. Brady & Co. v. United States**, 693 F.2d 1380 (Fed.Cir.1982), 349
- K. S. B. Technical Sales Corp. v. North Jersey Dist. Water Supply Commission of State of N. J.**, 75 N.J. 272, 381 A.2d 774 (N.J.1977), **342, 350**
- KSR Intern. Co. v. Teleflex Inc.**, 550 U.S. 398, 127 S.Ct. 1727, 167 L.Ed.2d 705 (2007), 367
- Laminoirs-Trefileries-Cableries de Lens, S. A. v. Southwire Co.**, 484 F.Supp. 1063 (N.D.Ga.1980), 550
- La Societe Nationale v. Shaheen Natural Resources Co., Inc.**, 585 F.Supp. 57 (S.D.N.Y. 1983), 548
- Libyan American Oil Co. v. Socialist People's Libyan Arab Jamahiriya**, 482 F.Supp. 1175 (D.D.C.1980), 524
- Libyan American Oil Company v. Socialist People's Libyan Arab Jamahiriya**, 684 F.2d 1032, 221 U.S.App.D.C. 510 (D.C.Cir.1981), 524
- Lite-On Peripherals, Inc. v. Burlington Aire Express, Inc.**, 255 F.3d 1189 (9th Cir.2001), 207
- Lubbe v. Cape PLC**, [2000] 2 Lloyd's Rep. 383 (H.L.), 451, 508
- Machat, United States v.**, 2009 WL 3029303 (S.D.N.Y.2009), 500
- Mapping Your Future, Inc. v. Mapping Your Future Services, Ltd.**, 266 F.R.D. 305 (D.S.D.2009), 500
- Matter of (see name of party)**
- Maurice O'Meara Co. v. National Park Bank of New York**, 239 N.Y. 386, 146 N.E. 636 (N.Y.1925), 269
- MBM Fisheries, Inc. v. Bollinger Mach. Shop and Shipyard, Inc.**, 60 Wash.App. 414, 804 P.2d 627 (Wash.App. Div. 1 1991), 499
- McCreary Tire & Rubber Co. v. CEAT S.p.A.**, 501 F.2d 1032 (3rd Cir.1974), 550
- Microsoft Corp. v. AT & T Corp.**, 550 U.S. 437, 127 S.Ct. 1746, 167 L.Ed.2d 737 (2007), 366
- Mid-America Tire, Inc. v. PTZ Trading Ltd.**, 95 Ohio St.3d 367, 768 N.E.2d 619 (Ohio 2002), **270**
- Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.**, 473 U.S. 614, 105 S.Ct. 3346, 87 L.Ed.2d 444 (1985), **531**
- Montrod Ltd v Grundkötter Fleischvertriebs GmbH**, 2001 WL 1479862 (CA (Civ Div) 2001), **283**
- Morales v. Ford Motor Co.**, 313 F.Supp.2d 672 (S.D.Tex.2004), 508
- M/S Bremen v. Zapata Off-Shore Co.**, 407 U.S. 1, 92 S.Ct. 1907, 32 L.Ed.2d 513 (1972), **461**
- National Oil Corp. v. Libyan Sun Oil Co.**, 733 F.Supp. 800 (D.Del.1990), **538**
- NFTC, Inc. v. Giannoulas**, 523 F.Supp.2d 731 (N.D.Ill.2007), 349
- Ocean Tramp Tankers Corp v V/O Sovfracht (The Eugenia)**, 1963 WL 21068 (CA 1963), **130**
- Owusu v. Jackson**, C-281/02 [2005] E.C.R. 0, pp. 451, 509
- Parsons & Whittemore Overseas Co., Inc. v. Societe Generale De L'Industrie Du Papier (RAKTA)**, 508 F.2d 969 (2nd Cir. 1974), **526**
- Patrickson v. Dole Food Company, Inc.**, Civil No. 97-01516 (Haw. 1998), 507
- Pere Marquette Ry. Co. v. J.F. French & Co.**, 254 U.S. 538, 41 S.Ct. 195, 65 L.Ed. 391 (1921), 207

- Piper Aircraft Co. v. Reyno**, 454 U.S. 235, 102 S.Ct. 252, 70 L.Ed.2d 419 (1981), **502**
- Porky Products, Inc. v. Nippon Exp. United StatesA. (Illinois), Inc., 1 F.Supp.2d 227 (S.D.N.Y.1997), 55
- Ramos-Santiago v. United Parcel Service, 524 F.3d 120 (1st Cir.2008), 526
- Republic of Bolivia v. Philip Morris Companies, Inc.**, 39 F.Supp.2d 1008 (S.D.Tex. 1999), **505**
- Richards v. Lloyd's of London, 135 F.3d 1289 (9th Cir.1998), 469
- Roby v. Corporation of Lloyd's, 996 F.2d 1353 (2nd Cir.1993), 469
- Scherk v. Alberto-Culver Co., 417 U.S. 506, 94 S.Ct. 2449, 41 L.Ed.2d 270 (1974), 469
- Scotch Whiskey Ass'n v. Barton Distilling Co., 489 F.2d 809 (7th Cir.1973), 371
- Self-Powered Lighting, Ltd. v. United States**, 492 F.Supp. 1267 (S.D.N.Y.1980), **344**
- Sinochem Intern. Co. Ltd. v. Malaysia Intern. Shipping Corp., 549 U.S. 422, 127 S.Ct. 1184, 167 L.Ed.2d 15 (2007), 445
- Societe Nationale Industrielle Aerospatiale v. United States Dist. Court for Southern Dist. of Iowa, 482 U.S. 522, 107 S.Ct. 2542, 96 L.Ed.2d 461 (1987), 454
- Spier v. Calzaturificio Tecnica, S.p.A.**, 71 F.Supp.2d 279 (S.D.N.Y.1999), **541**
- Spier v. Calzaturificio Tecnica S.p.A., 663 F.Supp. 871 (S.D.N.Y.1987), 550
- St. Paul Travelers Ins. Co. v. M/V Madame Butterfly, 700 F.Supp.2d 496 (S.D.N.Y. 2010), 124
- Sun Trust Bank v. Sun International Hotels, Ltd., 184 F.Supp.2d 1246 (S.D.Fla.2001), 467
- Sztejn v. J. Henry Schroder Banking Corp., 177 Misc. 719, 31 N.Y.S.2d 631 (N.Y.Sup. 1941), 269
- Toepfer v Continental Grain Co, 1973 WL 40135 (CA (Civ Div) 1973), 98
- Travelers Property Cas. Co. of America v. Saint-Gobain Technical Fabrics Canada Ltd., 474 F.Supp.2d 1075 (D.Minn.2007), 85
- Twohy v. First Nat. Bank of Chicago**, 758 F.2d 1185 (7th Cir.1985), **515**
- Union Carbide Corp. Gas Plant Disaster at Bhopal, India in Dec., 1984, In re**, 809 F.2d 195 (2nd Cir.1987), **509**
- United States v. _____ (see opposing party)**
- Vimar Seguros y Reaseguros, S.A. v. M/V Sky Reefer, 515 U.S. 528, 115 S.Ct. 2322, 132 L.Ed.2d 462 (1995), 468
- Voest-Alpine Trading Co. v. Bank of China**, 167 F.Supp.2d 940 (S.D.Tex.2000), **243**
- Volkswagenwerk Aktiengesellschaft v. Schlunk**, 486 U.S. 694, 108 S.Ct. 2104, 100 L.Ed.2d 722 (1988), **493**
- World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 100 S.Ct. 580, 62 L.Ed.2d 490 (1980), 448
- Ziraat Bankasi v. Standard Chartered Bank**, 84 N.Y.2d 480, 619 N.Y.S.2d 690, 644 N.E.2d 272 (N.Y.1994), **218**

TABLE OF CONTENTS

	Page
PREFACE	v
ACKNOWLEDGMENTS.....	vii
TABLE OF CASES.....	xxi
PART 1. THE CONDUCT OF BUSINESS IN THE WORLD COMMUNITY	
Chapter 1. Commerce or Isolation: The Decision to Trade, Transfer Technology and Invest Abroad.....	2
<i>Questions and Comments</i>	<i>6</i>
Chapter 2. The Actors: The Nations and Institutions of International Business	7
Section 2.1 Who Are the Foreign Traders?	7
Section 2.2 Nonmarket Economies and State Trading Organizations.....	11
Section 2.3 International Economic Organizations	11
Section 2.4 The Role of Counsel in International Business	16
Chapter 3. Forms of International Business	20
Section 3.1 Trading Goods Across Borders: Exports and Imports....	20
Section 3.2 Licensing Production Abroad	22
Section 3.3 Foreign Investment	24
PART 2. INTERNATIONAL TRADING OF GOODS	
Chapter 4. Agreements for the International Trading of Goods	28
Introduction 4.0 The Basic Transaction—Toys to Greece.....	28
Part A. Factors to Consider—How Is an International Commercial Transaction Different From a Domestic One?	28
Part B. The Sales Contract	30
Part C. The Letter of Credit	35
Part D. Seller Ships the Goods.....	37
Part E. Seller Obtains Payment; Buyer Obtains the Goods	50
<i>Questions and Comments</i>	<i>53</i>
Problem 4.1 Formation of an International Transaction: Insulation to Germany	58
Sec. I. The Setting	58

Sec.		Page
	II. Focus of Consideration.....	59
	III. Readings, Questions and Comments.....	60
	Part A. The Traditional Analysis—Conflicts of Law.....	60
	Nafziger, the Louisiana and Oregon Codifications of Choice-of-Law Rules in Context.....	61
	Brand, The European Magnet and the U.S. Centrifuge: Ten Selected Private International Law Developments of 2008.....	61
	Juenger, The E.E.C Convention on the Law Applicable to Contractual Obligations: An American Assessment.....	62
	J. White and R. Summers, Uniform Commercial Code.....	64
	Rühl, The Battle of the Forms: Comparative and Economic Observations.....	68
	<i>Questions and Comments</i>	69
	Part B. Enter International Law (Herein of CISG).....	73
	Hanwha Corporation v. Cedar Petrochemicals, Inc.....	74
	Dimatteo, Dhooge, Greene, Maurer and Pagnattaro, the Interpretive Turn in International Sales Law: an Analysis of Fifteen Years of Cism Jurisprudence.....	75
	Brand, Professional Responsibility in a Transnational Transactions Practice.....	78
	Perillo, UNIDROIT Principles of International Commercial Contracts: The Black Letter Text and a Review.....	79
	Bonell, the CISG, European Contract Law and the Development of a World Contract Law.....	82
	R. Folsom, M. Gordon and J. A. Spanogle, International Business Transactions in a Nutshell.....	83
	<i>Questions and Comments</i>	84
	Part C. How Can Clients Avoid This Problem?.....	88
	<i>Questions and Comments</i>	88
Problem 4.2	Commercial Terms, Bills of Lading and Insurance—Books to Bath.....	90
Sec.		
	I. The Setting.....	90
	II. Focus of Consideration.....	91
	III. Readings, Questions and Comments.....	93
	Part A. The Role of Commercial Terms.....	93
	Schmitthoff's Export Trade: The Law and Practice of International Trade.....	93
	R. Folsom, M. Gordon, J. A. Spanogle, Principles of International Business Transactions.....	95
	<i>Comments</i>	97

		Page
Sec.		
	Zwilling-Pinna, Update of Important Commercial Terms: Revision of the Incoterms As of 2011	98
	International Chamber of Commerce, Incoterms in Practice	107
	Ramberg: ICC Guide to Incoterms® 2010... ..	108
	<i>Questions and Comments</i>	110
Part B.	The Basics of Carrier Liability	113
	Tetley, Marine Cargo Claims	113
	N. Horn & C. Schmitthoff, The Transnational Law of International Commercial Transactions	117
	Berisford Metals Corp. v. S/S Salvador	118
	<i>Questions and Comments</i>	123
Problem 4.3	Wars and Other Frustrations: Oil From Araby	125
Sec.		
I.	The Setting	125
II.	Focus of Consideration	128
III.	Readings, Questions and Comments	129
Part A.	Picking up the Pieces	129
	Ocean Tramp Tankers Corp. v. V/O Sovfracht (The Eugenia)	130
	J. White and R. Summers, Uniform Commercial Code	134
	Schwenzer: Force Majeure and Hardship in International Sales Contracts	137
	Honnold, Uniform Law for International Sales under the 1980 United Nations Convention	138
	Spivack, Of Shrinking Sweatsuits and Poison Vine Wax: A Comparison of Basis for Excuse Under UCC § 2-615 and CISG Article 79	140
	Baker, "A Hard Rain's A-Gonna Fall"—Terrorism and Excused Contractual Performance in a Post September 11th World	142
	Perillo, Force Majeure and Hardship Under the UNIDROIT Principles of International Commercial Contracts	149
	<i>Comment on Measuring Damages for Non-Delivery</i>	151
	<i>Questions and Comments</i>	153
Part B.	Counselling During Contract Drafting	157
	<i>Questions and Comments</i>	157
Problem 4.4	Electronic Commerce: Outbound Organics Company and Digital Products Ltd.	158
Sec.		
I.	Facts	158
II.	Focus of Consideration	159
III.	Readings, Questions and Comments	160
	Zaremba, International Electronic Transaction Contracts Between U.S. and EU Companies and Customers	160

	Page
Sec.	
	CISG Advisory Council Opinion No. 1 Electronic Communications Under CISG..... 176
	Rustad and Onufrio, the Exportability of the Principles of Software: Lost in Translation? 177
	Cordera, E-Consumer Protection: A Comparative analysis of EU and US Consumer Protection on the Internet 182
	Andrews, Electronic Commerce: Lessons Learned From the European Legal Model..... 185
	<i>Questions and Comments</i> 189
Problem 4.5	The Bill of Lading: Computers to Caracas..... 191
Sec.	
I.	The Setting 191
II.	Focus of Consideration..... 193
III.	Readings, Questions and Comments..... 194
Part A.	Forged Indorsements and Misdelivery.. 194
	Schmitthoff's Export Trade 194
	Schoenbaum, Admiralty and Maritime Law 196
	Hual As v. Expert Concrete, Inc. 197
	Edelweiss (USA), Inc. v. Vengroff Williams & Associates, Inc. 199
	<i>Authors' Note on UCC Revised Article 7</i> 200
	Adel Precision Products Corp. v. Grand Trunk Western R. Co. 200
	Beecher, Can the Electronic Bill of Lading Go Paperless? 202
	<i>Questions and Comments</i> 205
Part B.	Misdescription and Disclaimers of Description 208
	Tetley, Marine Cargo Claims 208
	Jain Irrigation System, Ltd. v. Chemcolit, Inc. 210
	Industria Nacional Del Papel, CA. v. M/V Albert F 212
	Distribuidora Internacional Alimentos v. Amcar Forwarding, Inc. 214
	<i>Questions and Comments</i> 214
Part C.	Forged Bills of Lading 216
	Powles and Hazlewood, Maritime Fraud—I G. Gilmore and C. Black, The Law of Admiralty..... 218
	T.C. Ziraat Bankasi v. Standard Chartered Bank 218
	<i>Questions and Comments</i> 221
Chapter 5. Financing the International Sale of Goods	224
Introduction 5.0 Letters of Credit	224
	Folsom, Gordon and Spanogle, International Business Transactions in a Nutshell..... 225
Problem 5.1	The Letter of Credit and Electronic Communication: Gold Watch Pens For France 227
Sec.	
I.	The Setting 227
II.	Focus of Consideration..... 230

	Page
Sec.	
III. Readings, Questions and Comments	231
Pietrzak, Sloping in the Right Direction: A First Look at the UCP 600 and the New Standards as Applied to Voest-Alpine	232
JH Rayner and Company, Ltd. v. Hambros Bank Ltd. ..	235
Adodo, Conformity of Presentation Documents and a Rejection Notice in Letters of Credit Litigation: A Tale of Two Doctrines	238
Voest-Alpine Trading USA Corp. v. Bank of China	243
Bergami, What Can UCP 600 Do for You?	257
Pietrzak, Sloping in the Right Direction: A First Look at the UCP 600 and the New Standards as Applied to Voest-Alpine	260
Folsom, Gordon and Spanogle, International Business Transactions in a Nutshell	263
Questions and Comments	265
Problem 5.2	
Enjoining Payment of Letters of Credit for Fraud: Tablets From China	268
Sec.	
I. The Setting	268
II. Focus of Consideration	269
III. Readings, Questions and Comments	270
Mid-America Tire, Inc. v. PTZ Trading Ltd.	270
Dolan, Tethering the Fraud Inquiry in Letter of Credit Law	281
Montrod Ltd v. Grundkötter Fleischvertriebs GmbH....	283
Banco Santander SA v. Banque Paribas	286
Gao, The Fraud Rule in Law of Letters of Credit in the P.R.C.	289
Questions and Comments	298
Problem 5.3	
Standby Letters of Credit: Electronics to Israel	301
Sec.	
I. The Setting	301
II. Focus of Consideration	303
III. Readings, Questions and Comments	304
Blau and Jedzig, Bank Guarantees to Pay Upon First Written Demand in German Courts	305
Goode, Abstract Payment Undertakings in Interna- tional Transactions	307
Turner, The United Nations Convention on Interna- tional Standby Letters of Credit: How Would It Change Existing Letter of Credit Law in the United States?	309
Turner, New Rules For Standby Letters of Credit: The International Standby Practices	312
Kelly-Louw: International Measures to Prohibit Fraud- ulent Calls on Demand Guarantees and Standby Letters of Credit	314
American Bell Int'l, Inc. v. Islamic Republic of Iran	318
Archer Daniels Midland Co. v. JP Morgan Chase Bank, N.A.	324
Kimball and Sanders, Preventing Wrongful Payment of Guaranty Letters of Credit—Lessons From Iran	329
Questions and Comments	331

	Page
Sec.	
Chapter 6. Government Procurement	335
Problem 6.1 Contract Preferences for Local Producers: Government Procurement of Photocopiers	335
Sec.	
I. The Setting	335
II. Focus of Consideration	335
III. Readings, Questions and Comments	337
Part A. Buy American Procurement	337
Note, The Trade Act of 1979: The Agree- ment on Government Procurement	338
Note, Federal Limitations on State "Buy American" Laws	339
Crosby v. National Foreign Trade Council ..	340
K.S.B. Technical Sales Corp. v. North Jer- sey District Water Supply Commission of the State of New Jersey	342
<i>Comment on the Application of the Federal Buy American Act</i>	344
Self-Powered Lighting, Ltd. v. United States	344
Allis-Chalmers Corporation, Hydro-Tur- bine Division v. Friedkin	345
R. Folsom, NAFTA and Free Trade in the Americas	347
<i>Questions and Comments</i>	349
Part B. GATT/WTO and Government Procure- ment	350
K.S.B. Technical Sales Corp. v. North Jer- sey District Water Supply Commission of the State of New Jersey	350
President Clinton's Submission to Con- gress of Documents Concerning Uruguay Round Agreements (Dec. 15, 1993)	351
Grier, Japan's Implementation of the WTO Agreement on Government Procurement ..	354
<i>Questions and Comments</i>	361

PART 3. TRANSFERS OF TECHNOLOGY

Chapter 7. Licensing, Theft and Protection of Intellectual Property	364
Introduction 7.0 Intellectual Property and International Transactions ...	364
Problem 7.1 Franchising and Trademark Licensing: Colonel Chick- en Goes Abroad	377
Sec.	
I. The Setting	377
II. Focus of Consideration	378
III. Readings, Questions and Comments	378
Part A. Preparing to Franchise Abroad	378
P. Zeidman, Memorandum to Foreign Counsel: An Introduction to Internation- al Franchising	378

		Page
Sec.		
	Pengilley, Legal and Commercial Aspects of International Franchising— Problems in Their Negotiation	380
	G. Glickman, Typical Franchise Agreements (Fast Food Franchise).....	382
	<i>Questions and Comments</i>	390
Part B.	Regulation of the International Franchise Agreement	392
	The Franchises Act, Alberta, Canada	392
	Hefter and Zeidman, Preparing a Trademark License Agreement: Contractual and Antitrust Considerations	395
	R. Folsom, Principles of European Union Law	398
	Commission Regulation 330/2010 on the Application of Article 101(3).....	401
	Gordon, Hamburgers Abroad: Cultural Variations Affecting Franchising Abroad	406
	<i>Questions and Comments</i>	410
Problem 7.2	Patent and Knowhow Licensing: Oil Drilling Bits in Germany and Mexico	411
Sec.		
	I. The Setting	411
	II. Focus of Consideration	414
	III. Readings, Questions and Comments	414
	Part A. The Licensing Agreement and Transfer of Technology to Germany	414
	R. Folsom, Principles of European Union Law	419
	Commission Regulation (EC) No. 772/2004 of 27 April 2004 on the Application of Article [101(3)] of the Treaty to Categories of Technology Transfer Agreements	422
	<i>Questions and Comments</i>	428
	Part B. The Transfer of Technology to Mexico	429
	Radway, Antitrust, Technology Transfers and Joint Ventures in Latin American Development.....	429
	J. McKnight and C. Muggenburg, Mexico's Industrial Property and Copyright Laws: Another Step Toward Linkage With a Global Economy	431
	R. Folsom, NAFTA and Free Trade in the Americas	433
	<i>Questions and Comments</i>	439
PART 4. DISPUTE SETTLEMENT		
Chapter 8. The Resolution of International Commercial Disputes		
Introduction 8.0 The Resolution of Business Disputes.....		442
Part A.	The Process of International Business Litigation	445
Part B.	The Choice of Forum.....	446