

International Contracting: Law and Practice

THIRD EDITION

LARRY A. DIMATTEO



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International Contracting

*To my loving wife Colleen who continues to amaze me
with her commitment, dedication, and courage
in the face of adversity*

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Preface to Third Edition

One note to begin with is that there has been a slight change in the title of the book from “Law of International Contracting” to “International Contracting: Law and Practice” This was needed to increase the accessibility of the book in the general area of international law topics. Much has happened in the eleven years since the publication of the first edition in 2000. Some of the important events include the enactment of the new German Civil Code (BGB), the commencement of the Nordic Proactive Law Movement, the continued expansion of Member States to the United Nations Convention on Contracts for the International Sale of Goods, and the publication of the proposed Common European Sales Law (CESL) initiative. More profoundly, the financial crisis of 2008 has had a substantial impact on the legal profession, regulatory system, and how we view certain types of contractual instruments. The third edition seeks to update, along with providing additional materials. This edition introduces the idea of proactive or strategic contracting. A new chapter on confidentiality and non-disclosure agreements, as well as covenants not-to-compete have been added.

There are also plenty of new materials including: anti-bribery clause, Australian Unfair Contract Terms Law, Common European Sales Law, confidentiality agreements and clauses, covenants not-to-compete, European Union Directives, garden leave clause, strategic posturing (negotiations), and written confirmations. There are also additional materials on old topics including: Chinese Contract Law, Chinese Technology Contract Law, contract checklists, contract interpretation, common contract clauses, countertrade, EU agency law, guarantees of performance, mediation rules, performance bonds, Russian Federation contract law, and the United Nations Convention on the Use of Electronic Communications in International Contracts.

The Appendices include an expanded bibliography of sources. References have been placed throughout the book for those interested in more in-depth readings on a given subject. New Appendices include the Common European Sales Law (CESL) (Appendix 6) and excerpts from the Contract Law of the People’s Republic of China are provided in Appendix 7.

A special note of appreciation is to be given to attorney Shanna Dorresteyn for providing materials on service contracts, as well as consulting and confidentiality

agreements. I also would like to thank Simon Bellamy of Kluwer Law International for his support for the third edition of this book.

Larry A. DiMatteo
Gainesville, Florida
September 10, 2012

Preface to Second Edition

The second edition seeks to update, along with providing additional materials. Chapter 2 includes materials on the outsourcing of legal services, like contract drafting, to foreign law firms. It also reviews the use of information technology in the searching, drafting and execution of contracts. Finally, it introduces the concept of metadata that can lead to the disclosure of confidential information in the drafting and transmitting of contracts electronically. The coverage of joint venture agreements in Chapter 11 has been broadened and deepened. The new coverage includes selecting the organizational entity, developing a joint venture agreement checklist, master joint venture agreement, operating joint venture agreement, joint venture governance, transfer of joint venture interests, and restrictive covenants. A new Chapter has been added to provide expanded coverage of distribution agreements (Chapter 9). The enactment of China's Uniform Contract Law in 1999 is recognized and reviewed in Chapter 5.

The Appendices include an expanded bibliography of sources (including Internet sources).

I would like to thank the able research assistance provided by Pauline Wen-Men Cheung, Florida Law School Class of 2006. A special note of appreciation is to be given to attorney Andrew Joshua Markus for opening his files and providing materials on distribution and joint venture contracts. I also would like to thank Simon Bellamy of Kluwer Law International for his support for the second edition of this book.

Dr. Larry A. DiMatteo
Gainesville, Florida 2008

Preface to First Edition

The ability of a single volume or a series of volumes to deal with the many issues of international contracting law is limited. The approach offered here is to review some of the key contract issues unique to various types of contracting, such as sale of goods, licensing, intellectual property transfer, and the hiring of foreign agents and representatives. This work also attempts to analyze contract clauses and principles common to most international contracting scenarios. A number of contract clauses, such as choice of law and dispute resolution clauses, have become universally accepted. Along the same lines, the principles of good contract drafting are applicable to all types of international contracting. Thus, this is a book in fundamentals and not one directed at narrow, specialized areas of international business; it is intended for the generalist, both legal and non-legal. It is for anyone interested in some of the more common legal aspects of international business contracting. It is also written at a level that allows it to be used as a textbook or supplement in courses on international business transactions.

There are references throughout the text to a number of primary sources. All references to the Uniform Commercial Code or UCC are references to the law of the United States. The book also makes ample use of a variety of European Economic Community (EEC), European Community (EC), and European Union (EU) directives and regulations. I often refer to this body of law, apologetically, simply as EU Regulations. The reader may refer to the footnotes for the proper citation. Because of the overwhelming size of national laws that impact upon international business transactions, the book only provides a sampling of laws. For example, certain laws of the European Union, the People's Republic of China, and the Russian Federation have been singled out for purposes of illustration. The use of national laws serves to illuminate the typical issues found in international contracting.

I wish to thank the able research assistance of Hui Xue, along with the fine editorial assistance of Amy Reisinger. I would also like to thank John Berger of Kluwer Law International for his faith in the work and for ushering it through the editorial and publication process.

Larry A. DiMatteo
Gainesville, Florida 1999

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