

BRADLEY  
GOLDSMITH

FOREIGN RELATIONS LAW  
Cases and Materials

ASPEN  
PUBLISHERS

Copyright © 2003 by Aspen Publishers, Inc.

All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopy, recording, or any information storage and retrieval system, without permission in writing from the publisher. Requests for permission to make copies of any part of this publication should be mailed to:

Permissions  
Aspen Publishers  
1185 Avenue of the Americas  
New York, NY 10036

Printed in the United States of America.

1 2 3 4 5 6 7 8 9 0

ISBN 0-7355-2840-3

**Library of Congress Cataloging-in-Publication Data**

Bradley, Curtis A.

Foreign relations law : cases and materials / Curtis A. Bradley, Jack L. Goldsmith.  
p. cm.

Includes bibliographical references and index.

ISBN 0-7355-2840-3 (hbk.)

1. United States—Foreign relations—Law and legislation. I. Goldsmith, Jack L.

II. Title.

KF4651.A4 B73 2002

342.73'0412—dc21

2002013250

# **FOREIGN RELATIONS LAW**

---

## **EDITORIAL ADVISORS**

### **Erwin Chemerinsky**

Sydney M. Irmas Professor of Public Interest Law, Legal Ethics,  
and Political Science  
University of Southern California

### **Richard A. Epstein**

James Parker Hall Distinguished Service Professor of Law  
University of Chicago

### **Ronald J. Gilson**

Charles J. Meyers Professor of Law and Business  
Stanford University  
Marc and Eva Stern Professor of Law and Business  
Columbia University

### **James E. Krier**

Earl Warren DeLano Professor of Law  
University of Michigan

### **Richard K. Neumann, Jr.**

Professor of Law  
Hofstra University School of Law

### **Kent D. Syverud**

Dean and Garner Anthony Professor  
Vanderbilt University Law School

### **Elizabeth Warren**

Leo Gottlieb Professor of Law  
Harvard University

## **EMERITUS EDITORIAL ADVISORS**

### **E. Allan Farnsworth**

Alfred McCormack Professor of Law  
Columbia University

### **Geoffrey C. Hazard, Jr.**

Trustee Professor of Law  
University of Pennsylvania

### **Bernard Wolfman**

Fessenden Professor of Law  
Harvard University

**To Kathy and David**

—*Curtis A. Bradley*

**To Leslie and Jack**

—*Jack L. Goldsmith*

# Preface

---

This casebook examines the constitutional and statutory law that regulates the conduct of U.S. foreign relations. The topics covered include the distribution of foreign relations authority between the three federal branches, the relationship between the federal government and the states in regulating foreign relations, and the status of international law in U.S. courts. In addition to including excerpts of the major Supreme Court decisions in this area (and some lower court decisions that we thought would be helpful for teaching purposes), we have included a variety of non-case materials, including historical documents; excerpts of statutes, treaties, and Executive Branch pronouncements; and detailed notes and questions.

One of our goals in the book is to give students a sense of the rich history associated with foreign relations law. History is especially important in this field because much of the content of U.S. foreign relations law has developed in response to, and thus can best be understood in light of, discrete historical events. Historical research also has played a significant role in foreign relations scholarship. As a result, much of the first chapter is devoted to history, and we sketch the historical origins of all of the major foreign relations doctrines as they are presented.

Despite these historical materials, the focus of the book is on contemporary controversies, such as debates over the validity of executive agreements, the nature and limits on the war power, the scope of the treaty power, the legitimacy of international human rights litigation, and the propriety of judicial deference to the Executive Branch. In addition to describing the positions taken on these issues by institutional actors, we have attempted to give students a sense of the rich academic debates on these topics. We have avoided, however, including long excerpts of law review articles, which are not the best vehicle for teaching, in our experience. Instead, we have attempted to weave the relevant academic arguments into the notes and questions that follow each set of cases and materials.

Without advocating any particular approach to constitutional interpretation, we also attempt to get students to focus closely on the text of the Constitution, a practice that we believe will be useful to them as lawyers. In addition, we emphasize issues of constitutional structure, especially federalism and separation of powers. Regardless of one's views about the *legal* relevance of these structural principles to foreign relations (a matter of some debate), we believe it is important to understand these principles at least for their *political* significance. A related theme of the book concerns "legal process" questions about the relative competence of various institutional actors to conduct U.S. foreign relations, questions that overlap with work that has been done in the political science area.

The casebook also emphasizes continuities and discontinuities between foreign relations law and "mainstream" constitutional law, statutory law, and federal jurisdiction issues. Indeed, we believe that many important constitutional law and federal courts doctrines—such as the political question doctrine, federal common law, and dormant preemption—have some of their most interesting applications in the foreign relations context. As a result, it is our hope that the book will appeal not only to students interested in international studies, but also to students interested in domestic constitutional and jurisdictional issues. We also hope that domestic law scholars will be tempted by this book to teach a course in foreign relations law.

Two features of the casebook's organization require special comment. First, it may seem unusual that we have placed the discussion of "Courts and Foreign Relations" near the front of the book, in Chapter 2. As we emphasize throughout the book, U.S. foreign relations law often develops outside the courts. Nevertheless, to fully understand the substantive topics of foreign relations law, we believe it is useful to first have a sense of when courts will, and will not, adjudicate foreign relations controversies. The second unusual feature is our placement of the topic of foreign sovereign immunity in the last chapter, Chapter 9. This topic is obviously related to courts and foreign affairs, and it is often considered alongside the act of state doctrine (which we cover in Chapter 2). Nevertheless, we decided to address this topic separately because of its complexity, because it is analytically separate from the other topics in Chapter 2, and because it is often covered in the basic international law course. We recognize, however, that some professors may wish to teach at least part of Chapter 9 earlier—for example, after the discussion of the act of state doctrine in Chapter 2, or in connection with the discussion of international human rights litigation in Chapter 7. The organization of Chapter 9, which has separate sections for each aspect of sovereign immunity, should make it easy to teach these materials out of order.

The September 11, 2001, terrorist attacks on the United States and the subsequent events relating to these attacks (such as the war in Afghanistan and the detention of prisoners at the U.S. naval base in Guantanamo, Cuba) implicate numerous issues of foreign relations law. We have included discussions of these issues throughout the book, especially in the sections in the war powers chapter (Chapter 4) devoted to the War Powers Resolution, military commissions, and individual liberties during wartime. We also have included a note in Chapter 7 on civil suits relating to terrorism, and we have included a section on suits against terrorist governments in Chapter 9. The legal issues relating to September 11 are developing quickly, however, and will continue to develop after the publication of the casebook. Users interested in keeping up with these and other developments in U.S. foreign relations law can consult our "Contemporary Developments in U.S. Foreign Relations Law" website at <http://www.foreignrelationslaw.com>.

Although (and indeed because) we have participated as scholars in many of the debates implicated by the cases and materials in this book, we have tried hard to present the issues and questions in a balanced manner. We welcome feedback on this and any other aspect of the casebook.

*Curtis A. Bradley*  
*Jack L. Goldsmith*

October 2002

# Acknowledgments

---

Many people and institutions have helped us in creating this casebook. We thank the extraordinary law librarians at the Universities of Chicago and Virginia for their quick, reliable, and unfailingly friendly assistance. We are grateful to our deans, John Jeffries at the University of Virginia School of Law, and Saul Levmore at the University of Chicago Law School, for their financial and other support. We would also like to thank the following individuals for helpful comments and suggestions on drafts of this casebook: Roger Alford, David Bederman, Joe Dellapenna, Martin Flaherty, Ryan Goodman, Jill Hasday, Caleb Nelson, David Sloss, Paul Stephan, Peter Spiro, Geof Stone, Phillip Trimble, Adrian Vermeule, and Andrew Vollmer. Thanks are also due to the anonymous reviewers for their suggestions, many of which we adopted. We also benefited greatly from being able to teach out of draft versions of this book, and we thank our students for suffering through a work in progress. Finally, we would like to thank our able research assistants: Elizabeth Amory, Michael Bell, Jared Berg, Bryan Dayton, Megan Davidson, Colin McNary, Mark Mosier, Cynthia Orchard, David Scott, Kendal Sibley, and David Zetony.

The manuscript for this casebook was completed before Professor Goldsmith took a leave of absence from the University of Chicago, in September 2002, to serve as Special Counsel to the General Counsel of the U.S. Department of Defense. Any views expressed in this casebook are those of the authors and do not reflect the official policy or position of the Department of Defense of the United States government.



# Editorial Notice

---

In editing the cases and other materials in this book, we have used ellipses to indicate deletions and brackets to indicate additions. We have not generally signified the deletion of citations or footnotes, and we have not used ellipses at the end of the excerpted material. We have retained citations within the excerpted material only when we thought the citations served a pedagogical purpose or when the citations were needed to identify the source of a quotation.

# Overview of International Law and Institutions

---

Because U.S. foreign relations law often intersects with international law, students may find it useful to acquaint themselves at the outset of this course with the basic sources of international law and some of the most important international institutions. The following is a brief overview.\*

## 1. Sources of International Law

International law can be divided into two categories: public international law and private international law. Traditionally, public international law regulated the interactions between nations, such as the laws of war and the treatment of diplomats. Since the mid-twentieth century, it also has regulated to some extent the way nations treat their own citizens. Private international law, by contrast, encompasses issues relating to transactions and disputes between private parties, such as international commercial standards, international choice of law rules, and the standards for enforcing foreign judgments. References in this course to international law are primarily references to public international law.

There are two principal sources of public international law: treaties and customary international law. Treaties are, quite simply, binding agreements among nations. All such agreements are referred to as “treaties” under international law, regardless of what they are called under each nation’s domestic law. By contrast, under U.S. domestic law, “treaties” refers only to the international agreements concluded by the President with the advice and consent of two-thirds of the Senate and does not include “executive agreements” made by the President alone or with a majority approval of Congress.

There are both “bilateral” treaties (between two nations) and “multilateral” treaties (among multiple nations). Typical bilateral treaties include extradition agreements, Friendship, Commerce, and Navigation treaties, and Bilateral Investment Treaties. Multilateral treaties—some of which resemble international legislation in their scope and detail—cover a wide range of subjects, including international trade, the environment, and human rights.

Customary international law results from the general practices and beliefs of nations. By most accounts, customary international law forms only after nations have consistently followed a particular practice out of a sense of legal obligation. It is also commonly accepted that nations that persistently object to an emerging customary international law rule are not bound by it, as long as they do so before the rule becomes settled. Nations that remain silent, however, may become bound by the rule, even if they did not expressly support it. Silence, in other words, is considered a form of implicit acceptance.

Treaties and customary international law have essentially equal weight under

\*For more extensive discussions, see, for example, Restatement (Third) of the Foreign Relations Law of the United States §§101-103 (1987); David J. Bederman, *International Law Frameworks* (2001); and Mark W. Janis, *An Introduction to International Law* (3d ed. 1999).

international law. As a result, if there is a conflict between these two sources of international law, the later of the two will be controlling. International and domestic adjudicators will likely attempt to reconcile these two sources, however, if that is reasonably possible. Although it is not uncommon for treaties to supersede customary international law, there are relatively few examples in which customary international law has superseded a treaty.

Before the twentieth century, customary international law was the principal source of international law. Subjects regulated by customary international law included maritime law, the privileges and immunities of diplomats, and the standards for neutrality during wartime. Although customary international law continues to play an important role today, its importance has been eclipsed to some extent by the rise of multilateral treaties, which now regulate many areas previously regulated by customary international law.

Some customary international law rules are said to constitute “*jus cogens*” or “peremptory” norms. A *jus cogens* norm is, according to one widely accepted definition, “a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.”\* These norms transcend requirements of national consent, such that nations are not allowed to opt out of them, even by treaty. Norms frequently described as *jus cogens* norms are the prohibitions (now contained in treaties) on genocide, slavery, and torture.

## 2. International Institutions

The United Nations was established at the end of World War II, pursuant to the United Nations Charter, a multilateral treaty. Today, 190 nations—almost all the nations in the world—are parties to the Charter and thus members of the United Nations. The purposes of the United Nations, according to the Charter, are to maintain international peace and security; develop friendly relations among nations; achieve international cooperation in solving economic, social, cultural, and humanitarian problems, and in promoting respect for human rights and fundamental freedoms; and to be a center for harmonizing the actions of nations in attaining these ends.

The central deliberative organ of the United Nations is the General Assembly, which is made up of representatives of all the member nations. The General Assembly is an important forum for discussion and negotiation, but it does not have the power to make binding international law. Instead, it conducts studies and issues non-binding resolutions and recommendations reflecting the views of its members.

The principal enforcement arm of the United Nations is the Security Council. The Council is made up of representatives from fifteen nations. Five nations (China, France, Russia, the United Kingdom, and the United States) have permanent seats on the Council, as well as a veto power over the Council’s decisions. The other ten seats on the Council are filled by representatives of other nations elected by the General Assembly. Under the United Nations Charter, the Council is given “primary responsibility for the maintenance of international peace and security.” To address “any threat to the peace, breach of the peace, or act of aggression,” the Council may call upon the members of the United Nations to apply “measures not involving

\*Vienna Convention on the Law of Treaties, art. 53, May 23, 1969, 1155 U.N.T.S. 331.

the use of armed force,” such as economic sanctions. If the Council determines that such non-military measures are inadequate, it may authorize “such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security.” The Charter obligates each member to “accept and carry out the decisions of the Security Council.”

Another component of the United Nations system is the International Court of Justice (also sometimes referred to as the “World Court”), which is based in The Hague, in the Netherlands. There are fifteen judges on the Court and they are elected to staggered nine-year terms. The Court has jurisdiction over two types of cases: contentious cases and cases seeking an advisory opinion. In contentious cases, only nations may appear as parties. In cases seeking advisory opinions, certain international organizations may also be parties. To be a party to a contentious case before the International Court of Justice, a nation must ordinarily be a party to the Statute of the International Court of Justice (a multilateral treaty) and have consented to the Court’s jurisdiction. Consent to jurisdiction can be given in several ways: a special agreement between the parties to submit their dispute to the Court; a jurisdictional clause in a treaty to which both nations are parties; or a general declaration accepting the compulsory jurisdiction of the Court.

In addition to the United Nations system, there are a variety of international institutions established to administer particular treaty regimes. A prominent example is the World Trade Organization (WTO), which was established in 1995 to administer the General Agreement on Tariffs and Trade and related agreements. The WTO has its own dispute settlement body, which adjudicates trade disputes between member nations. To enforce its decisions, the dispute settlement body can authorize the prevailing party to impose trade sanctions on the losing party.

Finally, there are regional international institutions, the most prominent of which is the European Union (EU). The EU currently is made up of fifteen member countries and is in the process of expanding its membership. The EU has a number of constitutive organs, including a European Parliament, which is elected by individuals in the member countries; a Council of the European Union, which has representatives from the member governments; and a European Commission (an executive body). It also has a European Court of Justice, based in Luxembourg, which interprets and applies the treaty commitments of the Union. Although not part of the EU system, there is also a European Court of Human Rights, based in Brussels, which interprets and applies the European Convention for the Protection of Human Rights and Fundamental Freedoms (which has been ratified by over forty countries). The decisions of both the Court of Justice and the Court of Human Rights are binding on the member countries.

# Summary of Contents

---

|   |   |            |
|---|---|------------|
| <i>Contents</i>                                       | <i>ix</i>   |            |
| <i>Preface</i>  | <i>xvii</i>   |            |
| <i>Acknowledgments</i>                                | <i>xix</i>  |            |
| <i>Editorial Notice</i>                               | <i>xxi</i>  |            |
| <i>Overview of International Law and Institutions</i> | <i>xxiii</i>  |            |
| <br>  |   |            |
| Chapter 1   | Introduction: Historical and Conceptual Foundations | 1          |
| Chapter 2   | Courts and Foreign Relations                        | 39         |
| Chapter 3   | Congress and the President in Foreign Relations     | 107        |
| Chapter 4   | War Powers  | 161        |
| Chapter 5   | States and Foreign Relations                        | 275        |
| Chapter 6   | Treaties and Other International Agreements         | 337        |
| Chapter 7   | Customary International Law                         | 427        |
| Chapter 8   | Extraterritoriality                                 | 495        |
| Chapter 9   | Foreign Sovereign Immunity                          | 571        |
| <br>  |   |            |
| <i>Appendices</i>                                     |   | <i>659</i> |
| <i>Table of Cases</i>                                 |   | <i>691</i> |
| <i>Index</i>  |   | <i>701</i> |

# Contents

---

|   |       |
|---|-------|
| <i>Preface</i>  | xvii  |
| <i>Acknowledgments</i>                                | xix   |
| <i>Editorial Notice</i>                               | xxi   |
| <i>Overview of International Law and Institutions</i> | xxiii |

## Chapter 1

|   |    |
|---|----|
| <b>Introduction: Historical and Conceptual Foundations</b>              | 1  |
| <b>A. Constitutional Background</b>                                     | 1  |
| 1. Declaration of Independence  | 2  |
| 2. Articles of Confederation  | 4  |
| <i>Bradford Perkins, The Creation of a Republican Empire, 1776-1865</i> | 4  |
| <i>Jack N. Rakove, Making Foreign Policy—The View from 1787</i>         | 6  |
| 3. United States Constitution   | 7  |
| <i>Federalist No. 3 (Jay)</i>   | 8  |
| <i>Federalist No. 4 (Jay)</i>   | 8  |
| <i>Federalist No. 11 (Hamilton)</i>                                     | 9  |
| <i>Federalist No. 15 (Hamilton)</i>                                     | 9  |
| <i>Federalist No. 41 (Madison)</i>                                      | 10 |
| <i>Federalist No. 42 (Madison)</i>                                      | 10 |
| <i>Federalist No. 64 (Jay)</i>  | 10 |
| <i>Federalist No. 75 (Hamilton)</i>                                     | 11 |
| <i>Federalist No. 80 (Hamilton)</i>                                     | 11 |
| Notes and Questions   | 12 |
| <b>B. Neutrality Controversy of 1793</b>                                | 12 |
| <i>Proclamation of Neutrality, April 22, 1793</i>                       | 13 |
| <i>“Pacifcus” No. 1</i>   | 14 |
| <i>“Helvidius” Nos. 1, 2</i>  | 17 |
| <i>Grand Jury Charge of John Jay</i>                                    | 21 |
| <i>Neutrality Act of 1794</i>   | 22 |
| Notes and Questions   | 23 |
| <b>C. Nature of U.S. Foreign Relations Authority</b>                    | 25 |
| <i>Ex Parte Merryman</i>  | 26 |
| <i>Chinese Exclusion Case (Chae Chan Ping v. United States)</i>         | 27 |
| <i>Carter v. Carter Coal Co.</i>  | 29 |
| <i>United States v. Curtiss-Wright Export Corp.</i>                     | 30 |
| Notes and Questions   | 34 |

## Chapter 2

|  |    |
|--|----|
| <b>Courts and Foreign Relations</b>                    | 39 |
| <b>A. Jurisdiction over Foreign Relations Cases</b>    | 39 |
| <b>B. Justiciability: Standing, Ripeness, Mootness</b> | 41 |
| <i>Raines v. Byrd</i>                                  | 41 |

|   |     |
|---|-----|
| Notes and Questions   | 45  |
| <b>C. Political Question Doctrine</b>                                     | 47  |
| <i>Baker v. Carr</i>  | 48  |
| <i>Goldwater v. Carter</i>  | 50  |
| <i>Japan Whaling Association v. American Cetacean Society</i>             | 54  |
| Notes and Questions   | 57  |
| <b>D. Act of State Doctrine</b>   | 60  |
| 1. The <i>Sabbatino</i> Decision  | 61  |
| <i>Banco Nacional de Cuba v. Sabbatino</i>                                | 62  |
| Notes and Questions   | 70  |
| 2. Limitations and Exceptions   | 74  |
| <i>First National City Bank v. Banco Nacional de Cuba</i>                 | 74  |
| <i>W.S. Kirkpatrick &amp; Co. v. Environmental Tectonics Corp., Int'l</i> | 81  |
| Notes and Questions   | 84  |
| <i>Note on Forum Non Conveniens and International Comity</i>              | 87  |
| <b>E. Judicial Deference to the Executive Branch</b>                      | 91  |
| <i>Mingtai Fire &amp; Marine Ins. Co. v. United Parcel Service</i>        | 91  |
| <i>Gonzalez v. Reno</i>   | 94  |
| <i>United States v. Lombera-Camorlinga</i>                                | 97  |
| Notes and Questions   | 102 |

## Chapter 3

### Congress and the President in Foreign Relations 107

|  |     |
|--|-----|
| <b>A. Sources of Congressional Power</b>                               | 108 |
| <i>Buttfield v. Stranahan</i>  | 108 |
| <i>United States v. Arjona</i>   | 109 |
| <i>Fong Yue Ting v. United States</i>                                  | 111 |
| Notes and Questions  | 116 |
| <b>B. Sources of Executive Power</b>                                   | 125 |
| <i>The Monroe Doctrine</i>   | 125 |
| <i>Theodore Roosevelt, An Autobiography</i>                            | 126 |
| <i>William Howard Taft, Our Chief Magistrate and His Powers</i>        | 126 |
| <i>Robert Kagan, A Twilight Struggle: American Power and Nicaragua</i> | 127 |
| <i>Youngstown Sheet &amp; Tube Co. v. Sawyer</i>                       | 128 |
| Notes and Questions  | 136 |
| <b>C. Relationship Between Congress and the President</b>              | 141 |
| <i>Dames &amp; Moore v. Regan</i>                                      | 142 |
| <i>Immigration and Naturalization Service v. Chadha</i>                | 148 |
| Notes and Questions  | 154 |

## Chapter 4

### War Powers 161

|                                     |     |
|-------------------------------------|-----|
| <b>A. Historical Background</b>     | 161 |
| <i>Federalist No. 41 (Madison)</i>  | 163 |
| <i>Federalist No. 69 (Hamilton)</i> | 163 |

|  |     |
|--|-----|
| <i>Federalist No. 74 (Hamilton)</i>  | 163 |
| <i>"Pacificus" No. 1 (Hamilton)</i>  | 165 |
| <i>"Helvidius" No. 4 (Madison)</i>   | 165 |
| Notes and Questions  | 166 |
| <b>B. Congress's Power to Declare of War</b>                                 | 168 |
| <i>Bas v. Tingy</i>  | 170 |
| <i>Dellums v. Bush</i>   | 173 |
| Notes and Questions  | 177 |
| <b>C. The President's Military Powers</b>                                    | 184 |
| <i>Little v. Barreme</i>   | 184 |
| <i>United States v. Smith</i>  | 186 |
| <i>Durand v. Hollins</i>   | 189 |
| <i>The Prize Cases</i>   | 190 |
| Notes and Questions  | 192 |
| <b>D. War Powers Resolution</b>  | 198 |
| <i>War Powers Resolution</i>   | 198 |
| <i>President Nixon's Message Vetoing the War Powers Resolution</i>           | 199 |
| <i>Campbell v. Clinton</i>   | 201 |
| <i>Joint Resolution of Congress Authorizing the Use of Force</i>             | 208 |
| <i>President's Letter to Congress on American Campaign Against Terrorism</i> | 209 |
| <i>President's Letter to Congress on American Response to Terrorism</i>      | 209 |
| Notes and Questions  | 210 |
| <b>E. Collective Uses of Force</b>   | 213 |
| 1. The United Nations Charter, Collective Security, and the Korean War       | 214 |
| a. The United Nations Charter  | 214 |
| b. The United Nations Participation Act                                      | 215 |
| c. The Korean War  | 215 |
| 2. NATO, Collective Self-Defense, and the Kosovo Bombing                     | 217 |
| a. Collective Self-Defense Treaties  | 217 |
| b. The 1999 Bombing of Yugoslavia  | 218 |
| Notes and Questions  | 219 |
| <b>F. Military Commissions</b>   | 225 |
| <i>Ex Parte Milligan</i>   | 226 |
| <i>Ex Parte Quirin</i>   | 230 |
| <i>Military Order of President George W. Bush</i>                            | 237 |
| Notes and Questions  | 239 |
| <b>G. War and Individual Liberties</b>                                       | 246 |
| <i>Schenck v. United States</i>  | 246 |
| <i>Abrams v. United States</i>   | 247 |
| <i>Korematsu v. United States</i>  | 251 |
| <i>New York Times v. United States</i>                                       | 257 |
| Notes and Questions  | 263 |
| <i>Note on Civil Liberties Following the September 11 Attacks</i>            | 267 |



|  |            |
|--|------------|
| <b>Chapter 5</b>   |            |
| <b>States and Foreign Relations</b>  | <b>275</b> |
| <b>A. Statutory Preemption</b>   | 276        |
| <i>Hines v. Davidowitz</i>   | 276        |
| <i>De Canas v. Bica</i>  | 280        |
| <i>Crosby v. National Foreign Trade Council</i>  | 283        |
| Notes and Questions  | 290        |
| <b>B. Treaty Preemption</b>  | 293        |
| <i>Clark v. Allen</i>  | 293        |
| <i>In re World War II Era Japanese Forced Labor Litigation</i>                         | 295        |
| Notes and Questions  | 299        |
| <b>C. Dormant Preemption</b>   | 300        |
| <i>Zschernig v. Miller</i>   | 300        |
| <i>Note on the Dormant Foreign Commerce Clause</i>                                     | 304        |
| <i>Barclays Bank v. Franchise Tax Board of California</i>                              | 305        |
| <i>National Foreign Trade Council v. Natsios</i>                                       | 309        |
| <i>Gerling Global Reinsurance Corp. of America v. Low</i>                              | 312        |
| Notes and Questions  | 313        |
| <b>D. Federal Common Law of Foreign Relations</b>                                      | 321        |
| <i>Republic of the Philippines v. Marcos</i>   | 322        |
| <i>Torres v. Southern Peru Copper</i>  | 324        |
| <i>Pacheco de Perez v. AT&amp;T Co.</i>  | 325        |
| <i>Patrickson v. Dole Food Co.</i>   | 327        |
| Notes and Questions  | 331        |
| <i>Note on the Export Clause and Port Preference Clause</i>                            | 333        |
| <br><b>Chapter 6</b>   |            |
| <b>Treaties and Other International Agreements</b>                                     | <b>337</b> |
| <i>David P. Currie, The Constitution in Congress: The Federalist Period, 1789-1801</i> | 337        |
| <b>A. Self-Execution</b>   | 339        |
| <i>Asakura v. City of Seattle</i>  | 340        |
| <i>United States v. Postal</i>   | 341        |
| <i>Frolova v. Union of Soviet Socialist Republics</i>                                  | 344        |
| Notes and Questions  | 345        |
| <b>B. Last-in-Time Rule</b>  | 348        |
| <i>Whitney v. Robertson</i>  | 348        |
| <i>Cook v. United States</i>   | 350        |
| <i>Breard v. Greene</i>  | 351        |
| Notes and Questions  | 353        |
| <i>Note on Treaty Termination and Reinterpretation</i>                                 | 356        |
| <b>C. Separation of Powers and Delegation Limitations</b>                              | 359        |
| 1. Relationship with Congress's Power  | 359        |
| <i>Edwards v. Carter</i>   | 359        |
| Notes and Questions  | 364        |