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# INTERNATIONAL BUSINESS LAW AND ITS ENVIRONMENT

FOURTH EDITION



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RICHARD SCHAFFER

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BEVERLEY EARLE

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FILIBERTO AGUSTI



# International Business Law and Its Environment

*Fourth Edition*

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# Preface

**I**t has been said that America's interest in international education has peaked and ebbed with the changing tide of the American political climate, rising in times of economic expansion and ebbing during periods of political isolation or economic protectionism. Perhaps however, the cycle has finally been broken, and industry leaders, government policymakers, and educators alike have come to understand the importance of making a permanent commitment to international education. During the last two decades America has been faced with an increasingly competitive global marketplace and a mounting trade deficit. As a result, the nation has realized the necessity of competing more aggressively with foreign firms, both here and abroad. More significantly, new trade and investment opportunities abroad have been spurred by the opening of markets in the developing countries and by the decline of communism. The outcome has been perhaps the greatest renewal of interest in international business education in our history—a renewal sure to last well into the next century.

These changes are broadly reflected in higher education in general and in business school curricula in particular. They have originated from stricter accreditation requirements, the needs of American industry, increased funding for international business research and travel, increased study-abroad opportunities for students, and a higher level of awareness by business faculty and administrators. These changes include the internationalization of the core curricula and the introduction of specialized courses in international business. This text is designed for use in courses in International Business Law, International Business Transactions, or the Law of Interna-

tional Trade and Investment. The authors have attempted to provide a fairly comprehensive treatment of the three primary forms of international business: the laws of international trade, the licensing of intellectual property, and foreign investment. Our approach is to present these three market-entry methods beginning with trade, which involves the least penetration into the foreign market, and concluding with foreign investment, which immerses the firm completely in the social, cultural, and legal systems of its host country.

Most readers will be familiar with textbooks written for courses in the Legal Environment of Business or the more traditional Business Law. While the format of *International Business Law* is similar to those other texts (particularly in the blending of text and edited cases), the content and the approach to the subject matter are very different.

**Environmental vs. Traditional Approach Balanced.** This text covers both the international aspects of traditional business law subjects (sales, commercial paper, corporate law, agency, etc.) and those subjects generally considered more “environmental” in nature (antitrust law, administrative law, ethics, trade regulation, employment law, crimes, environmental law and others).

**Emphasis on Private Law.** In keeping with the needs of the intended audience, this text emphasizes the law as it affects international business transaction, whether it be in the area of trade, licensing, or investment. Of course, in-depth

treatment also is given to the public law of international trade, investment restrictions, technology transfer laws, and other political controls over international business. General principles of international law, such as the law of treaties and the role of international and intergovernmental organizations, are presented to provide the fundamentals needed for study.

**International/Comparative Approach.** No text can attempt to teach the business law of every nation in which a firm might do business. As a result, discussions of foreign law are often intended simply to illustrate trends in the law in different regions of the world or within certain legal or economic systems. This comparative approach will be used throughout the text, in such areas as sales law, negotiable instruments law, advertising law, and antitrust law. Of course, U.S. law and relevant international treaties and conventions are treated in greater detail.

**A Business/Managerial Approach.** Where appropriate, the text focuses on management decision making for the business person. This approach is reflected in two important aspects of the text's organization. First, the discussion progresses from forms of international business that require the least involvement and commitment in foreign markets to forms that require the greatest penetration and risk—that is, from trade (exporting and importing) through the licensing of patents, copyrights, and trademarks to investment in overseas plants and factories. Second, it is often said that the management of international business is the management of risk. Chapter 1 is designed to introduce the reader to the risks of international business and to how they differ from the risks of doing business at home. A study of these subjects in subsequent chapters then should reveal to the reader the importance of planning to avoid, shift, or reduce these risks.

Where appropriate, the text links international business law to the development of a firm's international business strategy. For example, Chapter 13, on imports, customs, and tariff law, does not view importing as an isolated transaction but rather stresses the importance of customs and tariff law on business decision making

by the global firm (e.g., the use of Mexican *maquiladora* assembly plants by U.S. or Japanese manufacturing firms).

**Cultural, Political, and Economic Aspects.** Discussion of the cultural, political, and economic aspects of international business has been integrated throughout the text. For instance, political risk is introduced early in the first chapter but then is covered in more detail in later discussions of such topics as the risks of foreign investment, the impact of the 1979 Iranian crisis on American firms, or the impact of the 1956 closing of the Suez Canal on international shipping. Similarly, the cultural aspects of doing business in foreign cultures are discussed within the context of the legal problems of employing local sales or buying agents. Only through such integration can a coordinated approach to the subject be managed. Excerpted articles on the cultural and economic environments of international business, however, are included to provide varying perspectives.

**Ethics.** Because ethical questions can arise in varying contexts, the discussion of ethics and social responsibility also has been integrated throughout the text. The great influence of political, economic, and social forces on international business requires an even broader discussion of ethics than normally would be undertaken in a legal environment course. These questions are pursued in many contexts, including bribery and corrupt practices, export controls, investment in developing countries (e.g., the Bhopal case), and technology transfer. Many of the case problems at the end of the chapters present ethical issues for discussion.

**Developing and Nonmarket-Economy Countries and Privatization.** In any international business text, a thorough treatment of these topics is essential. Here again, however, we have chosen to integrate our discussions throughout the text. The decision was made to address the legal problems of doing business in the developing countries of Africa, Asia, Latin America, and the Caribbean, or in countries with economies in transition (including many formerly communist countries of Russia and

Eastern Europe), within the context of the three forms of international business on which the book is based: trade, licensing, and investment. This context seems most in keeping with the format of the book and the nature of international business.

The most difficult aspect of preparing this book has been the need to update the content on an almost daily basis. Political changes during the past few years have had a great impact on trade and investment law. We can only trust that the diligent student will make every effort to follow current events and to consider this text in that light.

**Key Revisions.** Since the publication of the third edition of *International Business Law and Its Environment*, many political and economic changes have taken place around the world. These changes are addressed in this new edition.

### **Part One: The Legal Environment of International Business**

- Political and economic changes in the republics of the former Soviet Union and Eastern Europe and their impact on firms trading and investing there are addressed.
- Updated trade and economic data, including new charts and graphs.
- Expanded coverage of the principles of international law and the importance of international organizations.
- Expanded coverage of the recent changes in the European Union.
- A revised chapter on the resolution of disputes.

### **Part Two: International Sales, Credits, and the Commercial Transaction**

- Revised treatment of international sales law and new case selections, including choice of law clauses; requirements of a contract; international battle of the forms; warranties; *force majeure*; and a comparative analysis of U.S., Chinese, and international contract law.
- Thorough analysis of Incoterms 1990.

- New material on the liability of air carriers under the Warsaw Convention and a new U.S. Supreme Court case on maritime bills of lading.
- Inclusion of a new *Uniform Customs and Practices 500* and its new rules for handling letters of credit.

### **Part Three: International and U.S. Trade Law**

- Thorough coverage of the new GATT 1994 and World Trade Organization agreements and the *North American Free Trade Agreement*.
- An updated chapter on GATT 1994 and its basic principles, including WTO dispute settlement cases.
- A chapter on *Laws Governing Access to Foreign Markets*, including technical barriers to trade, ISO standards, important licensing, government procurement, trade in agriculture and textiles, and intellectual property.
- Updated discussion of U.S. Section 301.
- Updated sections on unfair import laws, with new discussion on Chinese prison labor.
- A chapter on *North American Free Trade Laws*, including trade and tariff provisions, Mexican import regulations, rules of origin, cross-border issues, environmental and labor issues, and dispute settlement.
- Updated material on doing business in Mexico.
- U.S. export control material updated to reflect political changes of the 1990s.

### **Part Four: Regulations of the International Marketplace**

- A chapter devoted to laws regulating the protection of labor and employment discrimination outside the United States and extra-territorial application of U.S. law.
- A chapter on environmental law, including regulations for the export of hazardous material and marine pollution.
- A chapter on privatization—the sale of state-owned property to private interests—and on legal aspects of economic restructuring in Latin America, Eastern Europe, and the republics of the former Soviet Union.
- Updated treatment of foreign investment regulations in developing countries.

- Expanded and updated sections on international protection of patents, trademarks, and copyrights.

### **Pedagogical Features of the Fourth Edition**

- Revised case selection, reflecting recent legal changes.
- New sample documents and forms.
- Up-to-date regional maps.
- Issues boxes providing real-world examples.
- Increased discussion of cultural and ethical issues.
- Detailed subject-matter index.
- Internet addresses to direct students to relevant international sites.

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Richard Schaffer  
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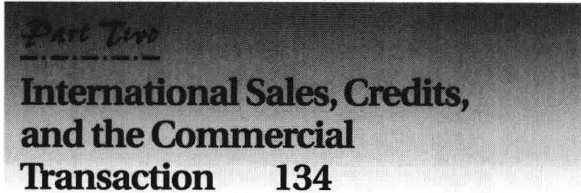
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