

INTERNATIONAL BUSINESS TRANSACTIONS

A PROBLEM ORIENTED COURSEBOOK

Fifth Edition

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

American Casebook Series®



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Fifth Edition

By

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We Dedicate This Book to:

Pixie

Elsbeth Wallace and Huntly Milne Gordon

Pamela

*

Preface to the Fifth 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 to Iraq, or that the European Union has established a substantial levy on grain for the year because of unexpectedly high 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 one's client may never be engaged in international commerce, but may have a problem involving international trade. 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?

This coursebook is designed to introduce law students to a wide range of problems involving international trade, licensing and investment issues, and how those issues are affected by trade or investment in developed, developing nonmarket and transition economies. Our focus is on lawyers, public and private, as problem solvers.

After a brief introduction to the conduct of business in the world community, the book uses thirty-seven hypothetical problems to present what we believe are some of the most important trade, licensing and investment issues. Except for a few areas, such as the documentary sale, letters of credit, sovereign immunity and the act of state, there is relatively little case law which is useful in discussing these issues. Extracted materials thus come from a wide variety of sources. 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) and the basic GATT agreement are included as well as excerpts from the World Trade Organization, including the Uruguay Round agreements. Several regional documents are presented, including 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 laws of such nations as Canada, Mexico, the United Kingdom and the European Union. It is essential that students use the Documents Supplement in many of the problems.

The book is intended for a three semester hour course, although none of us has ever completely covered all of the book in a single semester. 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 one hundred twenty schools. In this Fifth Edition, we have created separate problems on fraud and injunctions in letters of credit and standby letters of credit, revised and updated the materials on E-commerce and the World Trade Organization, and substantially reconfigured the foreign investment problems.

We have received many 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 initial paragraphs to each problem which explain what changes were made in the specific problem, hopefully helping in the preparation of new class notes where they are needed.

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 organization outlined below 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.

The coursebook is divided into six parts. It moves from the basic sale of goods across national borders and regulation of international trade, through transfers of technology, to direct foreign investment. A final part focuses on the resolution of international business disputes.

Part One includes three brief chapters to introduce the student to a variety of ideas, actors and institutions in international business transactions. It is intended to be easy reading for the night before the course begins.

Part Two commences our venture into international business transactions with the trading of goods across borders. The first step in international commerce is usually an act of purchasing goods from abroad or selling goods to purchasers in foreign nations. This part includes two chapters devoted to the agreement for the sale of goods across borders, including distributorships, and the financing of the sales of those goods, principally by letters of credit.

In Part Three we continue our focus on goods crossing borders, imports and exports, but introduce characteristics beyond those directly related to the various contracts for the purchase and sale of those goods. Students are introduced in Part Three to tariffs and nontariff trade barriers and to responses of domestic producers to import competition. There are problems which involve NAFTA and environmental issues. We also consider several aspects of exports of both goods and services, focusing on United States restrictions on exports in general, boycotts, and our response to boycotts against nations friendly to the United States. This part additionally considers foreign corrupt payments, often associated with exports, and the United States response when its exports encounter barriers abroad.

A major shift of focus occurs with Part Four. No longer are goods being sold across borders. Now the parties wish to undertake the production of goods in another nation. Part Four considers the transfer of technology and Part Five carries the activity to the next stage—establishing a foreign direct investment, its operation, and its financing. At the end of Part Five, the foreign investment has been taken over by the host nation.

The final Part Six turns to dispute settlement options.

There is an Appendix which introduces the European Union legal system.

RALPH H. FOLSOM
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February, 2002

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