

LECTURES IN THE HISTORY OF
INTERNATIONAL
ECONOMIC RELATIONS
AND MATERIALS AND METHODS

BY H. JACKSON

Amelia Catherine Smith

**LEGAL PROBLEMS
OF
INTERNATIONAL ECONOMIC
RELATIONS**

**CASES, MATERIALS AND TEXT ON THE
NATIONAL AND INTERNATIONAL
REGULATION OF TRANSNATIONAL
ECONOMIC RELATIONS**

By
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AMERICAN CASEBOOK SERIES

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Noel and Phillips' Products Liability in a Nutshell, 365 pages, 1974 (Text)

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Browder, Cunningham and Julin's Cases on Basic Property Law, 2nd Ed., 1397 pages, 1973 (Casebook)

Burby's Hornbook on Real Property, 3rd Ed., 490 pages, 1965 (Text)

Donahue, Kauper and Martin's Cases on Property, 1501 pages, 1974 (Casebook)

Moynihan's Introduction to Real Property, 254 pages, 1962 (Text)

Phipps' Titles in a Nutshell, 277 pages, 1968 (Text)

Smith and Boyer's Survey of the Law of Property, 2nd Ed., 510 pages, 1971 (Text)

Uniform Eminent Domain Code, Official Text with Comments, 160 pages, 1975

Uniform Land Transactions Act, 1975 Official Text with Comments, 170 pages, 1976

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REAL ESTATE

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O'Connell's Remedies in a Nutshell, 364 pages, 1977 (Text)

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York and Bauman's Cases and Materials on Remedies, 2nd Ed., 1381 pages, 1973 (Casebook)

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Burby's Law Refreshers
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Simpson's Hornbook on Suretyship, 569 pages, 1950 (Text)

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Chommie's Review of Federal Income Taxation, 90 pages, 1973 (Text)

Hellerstein's Cases on State and Local Taxation, 3rd Ed., 741 pages, 1969 (Casebook)

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Kramer and McCord's Problems for Federal Estate and Gift Taxes, 206 pages, 1976 (Problem book)

Lowndes, Kramer and McCord's Hornbook on Federal Estate and Gift Taxes, 3rd Ed., 1099 pages, 1974 (Text)

McNulty's Federal Estate and Gift Taxation in a Nutshell, 343 pages, 1973 (Text)

McNulty's Federal Income Taxation of Individuals in a Nutshell, 322 pages, 1972 (Text)

Rice's Problems and Materials in Federal Estate and Gift Taxation, 2nd Ed., 496 pages, 1972 (Casebook)

Rice's Problems and Materials in Federal Income Taxation, 2nd Ed., 589 pages, 1971 (Casebook)

Selected Federal Taxation Statutes and Regulations, 1133 pages, 1975

TORTS

Green, Pedrick, Rahl, Thode, Hawkins and Smith's Cases and Materials on Torts, 1311 pages, 1968 (Casebook)

Green, Pedrick, Rahl, Thode, Hawkins and Smith's Cases and Materials on Injuries to Relations, 466 pages, 1968 (Casebook)

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Keeton's Computer-Aided and Workbook Exercises on Tort Law, 164 pages, 1976 (Coursebook)

Keeton and Keeton's Cases and Materials on Torts, 1193 pages, 1971, with 1974 Supplement (Casebook)

Kionka's Torts: Injuries to Persons and Property in a Nutshell, approximately 435 pages, June, 1977 (Text)

Prosser's Hornbook on Torts, 4th Ed., 1208 pages, 1971 (Text)

Shapo's Cases on Tort and Compensation Law, 1244 pages, 1976 (Casebook)

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TRADE REGULATION

Oppenheim and Weston's Cases and Materials on Unfair Trade Practices and Consumer Protection, 3rd Ed., 1065 pages, 1974 (Casebook)

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TRIAL ADVOCACY

Jean's Trial Advocacy (Student Edition), 473 pages, 1975 (Text)

McElhaney's Effective Litigation, 457 pages, 1974 (Casebook)

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WATER LAW

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Atkinson's Hornbook on Wills, 2nd Ed., 975 pages, 1953 (Text)

Bogert's Hornbook on Trusts, 5th Ed., 726 pages, 1973 (Text)

Clark, Lusky and Murphy's Cases and Materials on Gratuitous Transfers, 2nd Ed., 1102 pages, 1977 (Casebook)

Gulliver's Cases and Materials on Future Interests, 624 pages, 1959 (Casebook)

Gulliver's Introduction to the Law of Future Interests, 87 pages, 1959 (Casebook)

Mennell's Cases and Materials on California Decedent's Estates, 566 pages, 1973 (Casebook)

Powell's Cases on Future Interests, 3rd Ed., 621 pages, 1961 (Casebook)

Powell's Cases on Trusts and Wills, 639 pages, 1960 (Casebook)

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Simes' Hornbook on Future Interests,
2nd Ed., 355 pages, 1966 (Text)

Turrentine's Cases and Text on Wills
and Administration, 2nd Ed., 483
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Uniform Probate Code, Official Text
With Comments, 351 pages, 1976

WOMEN AND THE LAW

Davidson, Ginsburg and Kay's Text,
Cases and Materials on Sex-Based
Discrimination, 1031 pages, 1974, with
1975 Supplement (Casebook)
See also Employment Discrimination

WORKMEN'S COMPENSATION

See Social Legislation

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To Joan, Jeannette, Lee Ann and
Michelle, who had much
fun in spite of it all

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PREFACE

Preparing a book on the subject of international economic regulation is like trying to describe a landscape while looking out the window of a moving train—events tend to move faster than one can describe them. Certain other law subjects have similar problems, but in the case of international economic law, this problem is compounded by the lack of definition of the borderlines of the subject. In its broadest extent, a study of international economic transactions and governmental actions relating to them, could be a subpart of dozens of existing law subjects in the law school curriculum. It certainly involves subject material considered in international law, conflicts of law, constitutional law, contracts and sales, corporations, tax, anti-trust, civil procedure, and administrative law.

As yet there is no generally agreed subject matter selection for this course in the United States law curricula, not even an agreed “core”, as you would find in most courses in the law school curriculum. This is both the challenge and the danger of preparing published materials.

No doubt as time goes on, we shall see the course subject matter selection “shake down,” become more cohesive and develop some agreement among law teachers. For the moment, however, this is not the case, and consequently any casebook on this subject must involve a series of decisions about scope, emphasis, and selection of subjects and materials, that can be appropriately challenged.

For these reasons it is perhaps especially important that this author explain the bases for his choices, and the premises on which he has developed this book. There are many of them.

First, and foremost, this book is constructed so as to emphasize the *legal system* and legal process of international economic relations in context.

The objective of this book is to look at the legal principles and processes as they affect decisions regarding international economic relations, whether the decisions be those of private citizens or enterprises, or government officials. Thus there is an integration of national regulation and international law, and to a lesser extent private transaction law (which however is not emphasized in this course because it is often a part or at least analogous to material learned in other courses.) For example, United States constitutional and regulatory rules have an intimate and weighty connection and influence on the international rules of GATT (The General Agreement on Tariffs and Trade.) One must study both to fully understand how they operate, because they interact.

Secondly, the emphasis is on trade in goods and related monetary problems, because these are generally at the center of international economic relations. Many other subjects are important, e.g. various “invisibles” or service transactions such as shipping, insurance, tourism—but although these may be touched upon from time to time, constraints of space and time suggest a priority treatment for the center of gravity of international economic relations. The principles learned there,

PREFACE

however, are almost always transferable to other economic relation subjects e.g. the constitutional problems of division of governmental authority within a nation, the practicalities of negotiating new international rules, the "constitutional" status of international norms, the difficulties of international dispute settlement procedures, the particular weight of special interest groups and their influence compared with broader but more diffuse foreign policy objectives or the interests of the consumers, the operation of legislative bodies, the decision and voting processes of international organizations, the economic complexity of some of the rules, and the difficulty of fact finding.

Thirdly, the emphasis of this book is on the legal processes in *context*, but the emphasis is on *law*. The context obviously includes difficult conceptional and empirical questions of economics and political science, of sociology, history and especially overall foreign policy. But the emphasis here is on those subjects which have developed relatively sophisticated *rule* systems. There are many important subjects which have not yet developed such rule systems, and while touched upon they have not been selected for extensive treatment. (A course in economics, or world politics, therefore, might involve quite a different selection.) For example, both export controls and problems of developing countries merit considerable policy attention. But rule systems or the influence of law on those subjects, is not (yet) weighty. Both subjects are dealt with in this book, but the focus on the primary goal of understanding the operation of *law*, means that it is necessary to eschew some tempting elaborations of policy questions when they, as yet, depend so little on law. This does not foreclose, of course, the opportunity for a particular teacher to construct for his class a rule formulating exercise based on the current and temporary materials bearing on the policy issues. Nor does this reflect any view of the author regarding the relative importance in a broader context of non-legal materials or information. It reflects his view that it is useful for law students to examine closely to what extent their particular skills and knowledge could contribute to solution of the myriad international economic problems.

A word at this point might be in order as to the differences perceived by the author between a "legal" or lawyer's approach on the one hand, and the approach of an economist or political scientist on the other. Such a word, of course, risks angering one or the other of these groups, but may nevertheless be interesting and provocative to the reader. It seems to this writer that the lawyer is often more concerned with precision, with individual problems, and with the practical limitations on realizing objectives, than his counterparts from other disciplines. The economist skillfully analyzes the overall or macro effects of various policies, and sees them in statistical terms. Often the political scientist does likewise. The lawyer is frequently forced to resolve individual problems, either those of particular citizens or those of a particular circumstance, often involving competing policy goals—both (or all of them) valid, but necessitating compromise. Likewise the lawyer is often a person who is asked to *implement* a policy and faces practical obstacles to such implementation. Could one say that the economist tells us what should be done, and then the lawyer worries about how to do it? In some cases, however, the lawyer is forced to (uncomfortably) play the role of the guardian of long run goals (preserving a constitution, for example) against those who strive for short term expediency.

PREFACE

Obviously these reflections are not entirely accurate, but it seems clear that there is a difference in role as well as approach between those trained as lawyers and those trained in other disciplines—for better or worse.

Fourthly, a basic goal of these materials is to be sensitive to their use in the setting of the American law school curricula, so as to avoid unnecessary duplication of other courses, and to present to the student a coherent subject matter that he is not likely to obtain elsewhere. This is the reason, for example, for deemphasizing private transaction law in this book, while focusing on government regulation. It is also a reason for minimizing duplication of material often included in either public or private (conflicts) international law. To a certain degree this author sees this course as a logical sequel to the course in public international law. However this book is designed to accommodate the many students who take it without first having taken international law.

Fifthly, closely related to the previous “premise”, is the notion that this course should be sensitive to the problems faced by practitioners—lawyers or officials, but should also offer the student something which he may never again (in practice) have the opportunity to get—namely, an opportunity to examine at length and in depth the overall operation of the “legal system” governing international economic affairs. The day to day problems faced by practitioners will quickly give the young lawyer experience in “how to do it”, and great expertise on rather precise narrow topics. What is hard to obtain after leaving law school is the opportunity to spend a considerable amount of time achieving a comprehensive understanding of the total system and the interrelationships of its parts. This book emphasizes this comprehensive viewpoint.

Sixthly, so as to minimize the otherwise rapid obsolescence of both this book and students’ learning, attention has been directed more toward the “constitutional” or fundamental aspects of the subject, eschewing too much concern with very recent “current events.” In this respect the timing of this book has some advantages and some disadvantages. United States law has just undergone an enormous overhauling. The Trade Act of 1974 has revised the comparable 1962 statute, and added many subjects. Probably this law will remain in place for more than a decade, and the reader will discover that this law forms a sort of “leitmotiv” for this book, consistently appearing in almost every chapter as it bears on our subject matter. The GATT—which represents at the international level the basic “statute” is in great need of change, but the likelihood of much change in the near future seems remote. Trade negotiations underway in Geneva as this is written could bring fruition for some changes in the near future, but competent observers suspect results will take somewhat longer. On the other hand this book catches the international monetary system in the middle of fundamental revision—and the materials reflect that and focus on the likely results of that revision.

Finally, although designed primarily as an instructional tool for law courses, this book has also been designed so as to be useful for research and reference. Concerning almost every subject there has been included a “research footnote”, that is, a relatively long footnote listing some of the more general and useful recent secondary works concerning the subject, which should assist a person—be he student or practitioner—to approach the subject so as to help solve his problem.