
TABLE OF CONTENTS

PREFACE.....	III
ACKNOWLEDGMENTS.....	V
TABLE OF CASES.....	XV

PART ONE. THE ENVIRONMENTS OF TRANSNATIONAL BUSINESS

Chapter I. Transnational Lawyering	3
A. The Lawyer's Role in Different Legal Systems.....	3
B. The Rules of Transnational Legal Practice	5
C. The Ethical Rules Governing Transnational Lawyers	10
AM & S Europe v. Commission of the European Communities	11
Questions.....	17
Chapter II. International Dispute Resolution	19
A. Litigation in National Courts.....	19
1. International Jurisdiction in U.S. Courts	22
M/S Bremen v. Zapata Off-Shore Company	23
Questions	31
2. Procedural Problems in International Litigation	32
Questions	35
3. The Enforcement of Judgments Internationally.....	36
Questions	40
B. Arbitration.....	40
1. The Treaty Structure of International Arbitration.....	41
2. Enforcing the Agreement to Arbitrate.....	44
Mitsubishi Motors Corporation v. Soler Chrysler-Plymouth, Inc.....	44
3. Enforcing Arbitral Awards	53
Yusuf Ahmed Alghanim & Sons, W.L.L. v. Toys "R" Us, Inc.	53
Questions	61
Chapter III. A Basic Introduction to Transnational Law	63
A. A Sketch of Transnational Law	63
B. Customary International Law	68
Banco Nacional de Cuba v. Sabbatino.....	70
Questions.....	81
C. The Law of Treaties	82
Sumitomo Shoji America, Inc. v. Avagliano	85
Questions.....	90
D. The Extraterritorial Application of National Law.....	91
1. Prescriptive Jurisdiction Under Customary International Law.....	91
Questions	94
2. Principles of Interpretation.....	94
RJR Nabisco, Inc. v. European Community	96
Questions	107

3.	Antidiscrimination Law	107
	Mahoney v. RFE/RL, Inc.	110
	Questions	113
Chapter IV.	Corporate Social Responsibility.....	115
A.	Anti-Corruption Law	116
	Questions.....	126
B.	The Multinational Enterprise	126
	1. The Organization of the MNE.....	128
	2. The Multinational Enterprise as Hero and Villain	129
C.	Codes of Conduct.....	131
	Guidelines for Multinational Enterprises	132
	Question.....	141
D.	Human Rights Litigation Against Corporations	141
	Questions.....	148
PART TWO. PROBLEM EXERCISES		
IN TRANSNATIONAL BUSINESS		
Problem 1.	Transnational Sales.....	151
A.	Introduction.....	151
B.	Choice of Law and Choice of Forum	152
	1. CISG.....	153
	2. Domestic Law	156
	3. Forms and Incoterms.....	161
	Filanto, S.p.A. v. Chilewich International Corp.	169
	Questions	173
C.	Transportation and Financing in International Trade	174
	1. Transportation	174
	2. Financing.....	175
	Sztejn v. J. Henry Schroder Banking Corporation	182
	Questions	186
D.	U.S. Regulation of Export Trade.....	187
	1. U.S. Export Controls.....	187
	Compagnie Européenne des Pétroles S.A. v. Sensor Nederland	
	B.V.....	193
	2. Anti-Boycott Legislation	198
	Questions	201
E.	International Trade Law	201
	1. The WTO System	202
	2. U.S. Trade Law	207
	Questions	211
Problem 2.	Agency and Distributorship Agreements	213
A.	Introduction.....	213
	Questions.....	219
B.	Termination.....	220
	1. A Primer on the European Union	220

2.	Commercial Agent Legislation	222
	Council Directive (86/653/EEC) of 18 December 1986 on the Coordination of the Laws of the Member States Relating to Self-Employed Commercial Agents.....	225
	Ingmar GB Ltd. v. Eaton Leonard Technologies Inc.	228
	Questions	231
C.	Exclusivity	232
1.	The Use of Exclusive Contracts.....	232
2.	Consequences Under U.S. Antitrust Law.....	233
3.	Consequences Under European Union Competition Law	238
	Commission Regulation (EU) No. 330/2010 of 20 April 2010 on the Application of Article 101(3) of the Treaty on the Functioning of the European Union to Categories of Vertical Agreements and Concerted Practices	242
	Questions	247
D.	Taxation.....	248
1.	U.S. Income Tax Treatment	248
	A.P. Green Export Co. v. United States	248
	Questions	254
2.	Foreign Tax Treatment.....	254
	Questions	256
	Problem 3. A Licensing Agreement.....	257
A.	Introduction.....	257
	Questions	262
B.	Introduction to Intellectual Property Law	263
1.	Types of Intellectual Property	263
2.	International Agreements Concerning Intellectual Property	266
C.	Intellectual Property and Developing Countries	268
1.	Regulating Licensing Agreements: The Role of Technology Transfer Laws	269
	Question.....	271
2.	The TRIPS Agreement and Public Health	271
	Questions	276
D.	Antitrust Aspects of Intellectual Property	277
1.	Licensing Under U.S. Antitrust Law	277
2.	Licensing Under EU Competition Law.....	280
	Questions	282
E.	Infringing and Gray Market Goods	283
	Impression Products, Inc. v. Lexmark International, Inc.	287
	Questions	295
	Problem 4. Establishment of an Operation Abroad.....	297
A.	Introduction.....	297
B.	Corporate Nationality and the Rights of Foreign Companies	299
1.	Establishing a Corporation’s Nationality	299
	Questions	304
2.	The Rights of Foreign Corporations.....	305

C.	Choice of Corporate Form.....	308
1.	Limited Liability	309
	Questions	313
2.	Tax Considerations	314
	Questions	316
D.	Restrictions on Foreign Investment	316
1.	Foreign Investment in Mexico.....	316
	Questions	329
2.	Foreign Investment in the United States.....	329
	Questions	332
E.	Tax Issues Affecting Foreign Operations	333
1.	Tax-Minimizing Techniques and Legislative Reactions to Them	334
2.	Accommodation Among National Tax Systems: Unilateral and Bilateral Techniques.....	337
3.	The Foreign Tax Credit	339
4.	Tax Treaties.....	340
	Problem 5. Mergers and Acquisitions	343
A.	Introduction.....	343
B.	Share Purchase Agreement.....	344
	Questions.....	349
C.	Securities and Corporations Law.....	349
1.	Securities Aspects of Transnational Acquisitions.....	349
	Morrison v. National Australia Bank Ltd.	350
	Questions	361
2.	Tender Offers and Takeover Defenses.....	362
	Questions	365
D.	Antitrust Law.....	366
1.	U.S. Antitrust Law with Respect to Mergers.....	366
2.	EU Merger Regulation.....	368
	Council Regulation (EC) No. 139/2004 of January 20 2004 on the Control of Concentrations Between Undertakings (the EC Merger Regulation)	370
3.	Concurrent Jurisdiction: The Boeing/McDonnell Douglas Merger.....	377
	Statement of Chairman Robert Pitofsky and Commissioners Janet D. Steiger, Roscoe B. Starek III and Christine A. Varney in the Matter of The Boeing Company/McDonnell Douglas Corporation	378
	Commission Decision of 30 July 1997 Declaring a Concentration Compatible with the Common Market and the Functioning of the EEA Agreement	380
	Questions	385
E.	Exon-Florio.....	385
	Questions.....	390
F.	Privatization.....	390
	Questions.....	394

Problem 6. An International Joint Venture	397
A. Introduction.....	397
B. A U.S.-Chinese Joint Venture Contract	399
Questions.....	405
C. Chinese Regulation of Foreign Investment.....	406
Law on Sino-Foreign Equity Joint Ventures.....	407
Questions.....	412
D. Resolving Differences.....	413
1. Tensions in the Joint Venture Relationship.....	413
Questions	417
2. Dispute Resolution in U.S.-Chinese Joint Ventures.....	417
Questions	424
E. Antitrust.....	424
1. Joint Ventures Under U.S. Antitrust Law	424
2. Joint Ventures Under EU Competition Law.....	430
3. Joint Ventures Under China’s Anti-Monopoly Law.....	432
Questions	433
 Problem 7. A Concession Agreement	 435
A. Introduction.....	435
B. Drafting Problems in Concession Agreements.....	437
Questions.....	460
C. Some Legal Aspects of Concession Agreements.....	460
1. Choice of Dispute Resolution Mechanisms in Concession Agreements.....	461
2. Choice of Law in Concession Agreements	463
3. Stabilization Clauses	464
Questions	466
D. International Law on the Breach or Repudiation of Concession Agreements.....	467
1. Customary International Law.....	467
2. International Investment Agreements	470
3. Choices When Disputes Arise.....	482
Questions	485
E. Political Risk Insurance	486
Questions	488
F. Renegotiation of Concession Agreements.....	488
Questions	492
 Problem 8. International Debt Instruments	 493
A. Introduction.....	493
B. Drafting International Debt Instruments.....	496
Comment on Terms and Conditions	516
Questions	521
C. Enforceability of International Debt Instruments.....	522
1. Foreign Sovereign Immunity.....	522
Republic of Argentina v. Weltover, Inc.	523
2. Act of State Doctrine.....	528
Allied Bank International v. Banco Credito Agricola	528

3. Enforcing Judgments.....	532
Questions	533
D. Restructuring Sovereign Debt.....	534
1. Key Players.....	534
2. The Collective Action Problem	536
Pravin Banker Associates, Ltd. v. Banco Popular del Peru	537
Questions	545
Annex	547
INDEX	583