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the cases which have been analyzed under agency law could have been resolved under the partnership by estoppel doctrine. See, e.g., *McCluskey Commissary, Inc. v. Sullivan*, 524 P.2d 1063 (Idaho 1974) (noting trial court finding that plaintiff, who supplied goods to defendants' incorporated business, was led to believe that the business was a partnership or joint venture, but nonetheless affirming the trial court on the basis of agency law). Yet, under agency law, at least under the approach illustrated in *Saco Dairy* and *Judith Garden*, a third party can recover against an agent even where the third party did not rely on the individual liability of the agent.

40. 171 N.Y.S. 51 (App. Term 1918).

41. 191 N.Y.S. 720 (App. Term 1922).

42. 173 A.2d 116 (Pa. 1961).

43. 171 N.Y.S. at 52.

44. *Id.*

45. *Id.*

46. 191 N.Y.S. at 721.

47. *Id.*

48. 173 A.2d at 118.

49. *Id.* at 119.

50. *Id.* at 118-19.

51. *Id.* at 119.

52. *Id.*

THE SECRETS OF TEACHING INTERNATIONAL LAW IN AN
EXISTING UNDERGRADUATE BUSINESS LAW COURSE

by

Robert Weill*

For most undergraduate law professors the inclusion of international business law on their syllabi has yet to be accomplished. Many professors confess they know little about the subject and would not, in any event, know how to include this material in their current courses. This paper will attempt to show that international business is a very significant and timely topic and that, consequently, international business law is a very important and relevant subject. This paper will provide a format for bringing international business law into the undergraduate law curriculum so that even the most uninitiated professors in this area can successfully bring this topic in from "left field" and include it in their course coverage.

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Before World War II, the United States was a country consistently trying to improve its national economy with little regard economically towards the rest of the world. As the last fifty years have passed, this country and other nations have developed a complex web of international trading patterns for goods and services that has created the global marketplace that exists today. Whether it be singular export or import transactions or the mass movements of goods, services, capital or technology across country borders, businesses around the world derive an ever-increasing percentage of their revenues from international transactions.

Recognizing this state of affairs, universities, first gradually and now with an unprecedented fervor, are internationalizing their curricula.² While management, marketing, accounting and other traditional business courses have been the main beneficiaries of this infusion of international material, undergraduate law courses seem to have been modified only minimally in this direction. Yet the need and rewards of covering this material in greater depth is ever present.

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When I talk to law school and graduate professors regarding teaching international law, their approach is usually intellectual and straight forward. One starts by explaining the Act of State Doctrine, which basically holds that one country's courts cannot sit in judgement over the validity of another country's actions, and then proceed into the principle of Sovereign Immunity. This doctrine holds that one country does not have to adhere to another country's court verdicts anyway, since there is no jurisdiction. And then these erudite professors continue with other treaties and the many regulatory laws.

When I talk with undergraduate professors about teaching international law, especially as regards to including this material in existing courses, they tend to throw up their hands and confess they would not even know where to begin, since the aforementioned topics are just too sophisticated for the undergraduates. Adding to the dilemma is the fact that most business law books, at best, have just one chapter on international law, so there is not much material to teach from in any event. As a consequence, most professors tend to avoid the topic altogether. And yet, as noted above, more than ever we are in a global marketplace. So, how can we encourage professors to cover some important international legal issues, especially in the second or third semester business law course?

Some insights into making this material more palatable came to me when I was innocently taking surveys of my classes to see how much international material, in general, they had encountered in their classes. The responses from the surveys have been consistent, i.e., the students have had virtually no exposure to international issues in their basic courses. Most schools do not emphasize this material until senior level or graduate courses. So, the first insight became apparent: start with a little international business in general, open their eyes to today's world of global transactions, and then step into the accompanying legal issues.

As just mentioned, since the students have only had minimum, if any, exposure to international transactions, the most elementary approach is appropriate here. And since the average undergraduate law professor's knowledge of this area most likely consists of material gleaned from newspapers, journals and the media in the normal course of keeping up with current events, a simplistic approach is that much more desirable. A little time invested in the introductory chapters of international business books will allow the law professor to cover the beginning issues in this area, such as the following:

1. How important and how frequently occurring are international transactions today?
2. How many everyday consumer products are now the

result of international trade?

3. How does an individual or company begin participating in the global marketplace and what format does expansion in this area take?

From the outset I have found that, once students are exposed to international issues, they are amazingly enthusiastic, because they do know to some extent what is happening out there. They know British Airways just sank \$300,000,000 into US Air. They know McDonald's and Levi jeans are all over the world. And, of course, the professor can inject into the discussions the lure and intrigue of international travel and the excitement of learning about other cultures. Additionally, the professor can stress the fact that so many of today's best jobs are with international companies. Since I teach a large number of accounting majors in my classes, I point out the demand for graduating seniors to work as internal auditors for multinational companies. Emphasizing these employment opportunities creates even more interest in this material.

Another insight into effectively teaching this material is to use humor. Since these students have not had much, if any, international business, they are in for a number of interesting surprises and funny anecdotes, because no other area I know of is fraught with so many humorous situations and comical mistakes made over and over again as people and companies try to do business overseas. There are even books published on these humorous episodes.³ Examples can include the countless stories of fledgling international attempts to "go global" like Chevrolet's unsuccessful efforts some years ago to market one of its models in Latin America. Believe it or not, it was not until Chevrolet was advised that "Nova" in Spanish means "no go" that Chevrolet even understood the problem.

Another humorous and educational situation occurs when I write the names of some top selling American car models on the board and ask the students how many of the models are "American made." When they are given the answer that only one, the Honda Coupe, made in Ohio, qualifies as "American made," at first they are shocked, then amused. (We are using the prevailing definition of "American made" which is that 75% of the car must be made or assembled in the U.S.A.)

Finally, another strategy of introducing this new material to the students is to comfort the students with the knowledge that international law is just an extension of the areas of law the students have already studied - contracts, civil procedure, constitutional law, insurance, tax, agency, partnerships, joint ventures, and corporations. It should be reassuring to the students that the latter subjects - agency, partnerships, joint ventures and corporations - which provide the legal formats for doing business domestically, are also the same legal structures for doing business overseas. This

is true whether it is the simplest import or export transaction or the larger commitment to foreign investment by building plants and setting up operations in other countries. Joint ventures are especially popular in international business as they provide a setting for combining assets and expertise. Additionally, a joint venture with a local company or the host government is often a prerequisite for doing business in a foreign country.

After spending as much time as is appropriate and/or available on the basics of international business, I then venture into international business law with a somewhat alphabetical survey of legal issues that arise in international transactions. I find that by using this alphabetical approach the students have a better sense of where we are going, since a lot of the material may not be in their book and is covered by handouts and lecture notes. The following are examples of this teaching method:

A - Anti-dumping Issues. Currently, many countries are sending goods to foreign markets and selling the goods at lower prices than the "fair value" of the goods in order to penetrate the target areas. Underselling competitors in this manner is deemed an unfair trade practice. As regards the U.S. market, foreign made mini-vans and steel are two examples of recent "dumping" situations. While anti-dumping measures, including additional duties, is traditionally the retaliatory measure, new wrinkles in this area are developing as foreign competitors now increasingly seek to avoid anti-dumping measures by exporting individual parts and materials and, later, assembling them in the country of destination.⁴

E - Expropriation of Property by a Foreign Government. The forfeiting of property to a "host" government is always a very real risk, and the legality or validity of such action may be a moot point due to the Act of State Doctrine. If the expropriation is done without compensation to the owner of the property or business, the action is specifically labeled "confiscation." Cuba's takeover of foreign investments in 1960 is one glaring example of this risk. The term "nationalization" consists of many expropriations in that all businesses or properties in a certain sector of the economy are taken over by the host government. For example, this happened in the past to the steel industry in Great Britain.⁵

E - European Economic Community. The banding together of European countries in this trading block continues to create economic and legal obstacles for outside countries. "Europe 92," the most recent attempt at even greater solidarity by these nations, certainly keeps these economic and legal issues at the forefront of corporate planning for non-member countries.

F - Foreign payoffs and the Foreign Corrupt Practices Act. While payoffs to foreign officials to secure

business opportunities is considered normal and appropriate, even if costly, by the great majority of nations, the U.S. Government has thrown controversy into this already complex arena by passing in 1977 a law that has sought to prohibit American firms from "bribing" foreign officials by making it criminal for public companies to make false bookkeeping entries which traditionally were used to shield these "pay offs."⁶

F - Free Trade Areas. In these locations all barriers to trade among member nations are virtually removed. There are, presumably, no taxes, quotas or tariffs. Two of the most well-known free trade areas exist between the member European countries (European Community) and between the United States and Canada.⁷ On a consumer level, many people are aware of these privileges found in "duty free areas," such as certain ports (e.g., Hong Kong, St. Thomas, etc.), international airports, and ships and ferries that sail from one country to another.

G - General Agreement on Tariffs and Trade. This treaty has had historic importance as a vehicle to reduce trade barriers and encourage freer trade among member nations. As "rounds" of talks under this agreement strive for progress, world-wide events, such as the recent European demonstrations and protests regarding government subsidies, constantly highlight the significance of this agreement. And the drama continues to unfold as newer member countries seek to qualify for the special benefits under the agreement's "most favored nation" clause. Recent history of the GATT Agreement reveals optimistic statistics -- ninety percent of the disputes brought to GATT for resolution have been settled successfully and the average tariffs in industrial countries have drifted down to approximately five percent compared to an average of forty percent in 1947. However, in spite of these apparent successes, GATT is proving somewhat ineffective in the more recent wave of government subsidies which allow a country's own companies to compete more effectively globally through government support. Further, GATT rules do not cover services, foreign investments or intellectual property rights.⁸

I - Intellectual Property Issues. Copyright, patent, and trademark infringement are constant worrisome issues in international expansion. Whether it is McDonald's protecting its name and logos or pharmaceutical companies trying to protect formulas, this area continuously provides legal challenges as copyright and patent protection around the world is inconsistent and, at times, non-existent. Licensing and franchising agreements, which seek to grant rights to a third party for use of the grantor's intellectual properties, likewise have problems as regards contract formation, compensation, and undesirable consequences.⁹

L - Labor Laws. Labor laws in foreign countries pose many perplexing problems regarding visas and work

permits, employment contracts, and especially decisions regarding employee termination due to a recurring pesky problem - the lack of ability of foreign companies in many countries to discharge local employees, even with good cause. More traditionally, many countries require that foreign companies employ a certain percentage of their own citizens.¹⁰

M - Marketing. Many countries have specific laws that regulate what does and does not constitute deceptive advertising. Also, many countries have legislation that restrict the use of promotional devices or forbid advertisements that compare a company's products to the competition.¹¹ Many U.S. firms are thus finding their marketing efforts overseas more strictly controlled and monitored than in the United States.

N - Non-tariff Trade Barriers. Virtually all countries exercise government policies and establish bureaucratic measures that, in one way or another, limit imports. These may consist of quotas or bureaucratic regulations that frustrate the importation of goods under labels of safety or performance standards.¹² Further examples of technical and frustrating laws in this area include "local content regulations that require a certain percentage of the raw materials or component parts used in the final product to come from the host country's local sources."¹³ Such requirements limit foreign companies' importation of desired materials to be used in the finished product and lead to claims that, because of these requirements, the finished product cannot meet desired quality standards.

P - Profit Repatriation. Many countries set limits on the amount of profits that can be returned or repatriated to the home country. While the host countries, through these laws, are presumably protecting their local economies and currencies and seeking reinvestment, this can be frustrating, for example, to companies who want to transfer profits back to the parent company.¹⁴

T - Tariffs. Tariffs are the traditional laws that impose taxes or levies on incoming goods, usually based on the value of the imports. Tariffs have often been based on a nation's need to protect its own industries. One of the more notable incidences of a protectionist tariff occurred in 1983 when the United States International Trade Commission imposed a five year 49.4 percent tariff on imported Japanese heavy motorcycles in order to allow the American corporation, Harley-Davidson, to compete effectively with the Honda and Kawasaki companies of Japan.

T - Taxation. Besides the more straightforward issue of profits being taxed in the country where realized is the more perplexing issue of a government attempting to tax profits on foreign subsidiaries around the world, when the parent multinational corporation is headquartered in the country in question. Further complicating this issue

is the practice of multinationals to defer payment of taxes until the income is returned to the parent corporation. "Transfer pricing," if allowed by law, is also a device to depress the impact of taxes.¹⁵ But in the United States the Internal Revenue Code clouds the effectiveness of this technique in order to prevent tax evasion.¹⁶

U - United Nations Convention on Contracts for the International Sale of Goods (CISG). This document sets forth uniform rules to govern the formation of international sales contracts between parties of subscribing nations. The rights and obligations of the parties are also covered in the document, which is itself strongly influenced by the Uniform Commercial Code of the United States. The need for this important document derives from the fact that parties from different nations have to decide which country's laws will prevail or the parties have to agree to a common, uniform set of rules.¹⁷

As these legal issues are being covered, each can easily be exemplified by current situations such as BMW recently making commitments to open up an automobile assembly plant in South Carolina or the French farmers recent demonstrations aimed at thwarting progress in the current round of the GATT (General Agreement on Tariffs and Trade) talks.

The students now have a fledgling knowledge of international business and attendant legal issues - so it is time to put their knowledge and imagination to work. For their most interesting assignment in this area, I tell them to choose any product and select any country - as long as there is no repetition - and prepare a report introducing this product into the foreign country utilizing one of the legal formats we have already studied (joint venture, corporation, etc.). The students are directed to do background research on the chosen country and identify and analyze at least six legal issues they foresee having to grapple with as they "internationalize" their product. As part of the project the students are taken to the college library where they are shown the vast array of books and publications that exist on almost every country. There is an unbelievable amount of information on the social, cultural, legal and economic issues of most countries. And the students have responded most enthusiastically - their papers have reflected diligent efforts and creative thinking as to their products that they will "sell" in the "host" country. The papers have also displayed serious attempts at analyzing the legal issues that are expected to arise as the students "internationalize" their product.

After the reports have been written, the students make oral presentations of their papers. Again, their enthusiasm and creativity is very apparent. They draw country maps on the board and list the various laws and legal issues their

research has uncovered; many even go to the effort of duplicating and handing out materials to make their presentations more effective. And some students even create prototypes of their products, which make their presentations that much more "corporate" and "realistic."

For all these reasons, injecting international business law into a business law class is not only interesting and rewarding, but appropriate and timely as we become increasingly more a global marketplace, and colleges show continued progress in "internationalizing" their curricula.

ENDNOTES

1. See David A. Ricks, Series Forward to Michael Litka, International Dimensions of the Legal Environment of Business, V (2nd ed. 1991).
2. See id. at V-VI.
3. See, e.g., David A. Ricks, Blunders in International Business (1993).
4. Michael Litka, International Dimensions of the Legal Environment of Business, 87-88 (2nd ed. 1991).
5. Id. at 68-69.
6. Id. at 115-117.
7. Michael R. Czinkota et al., Rivoli and Ronkainen, International Business, 110 (2nd ed. 1992).
8. Donald A. Ball & Wendall H. McCulloch, Jr., International Business, Introduction and Essentials, 139-140 (5th ed. 1993).
9. See Betty Jane Punnett & David A. Ricks, International Business, 260 (1992).
10. Vern Terpstra & Kenneth David, The Cultural Environment of International Business, 207 (3rd ed. 1991).
11. Czinkota, supra note 7, at 193.
12. Richard Schaffer et al., Earle & Agusti, International Business Law and Its Environment, 257 (1990).
13. Terpstra & David, supra note 10, at 215.
14. Punnett & Ricks, supra note 9, at 133.
15. See generally, Czinkota et al., supra note 7, at 426-428.
16. See Internal Revenue Code, Section 482.
17. See generally Roy J. Girasa, Legal Aspects of Selling Goods Abroad: The United Nations Convention, Westchester Bar Journal, Vol. 19, No. 2, Spring 1992 (analyzing the Articles of the United Nations Convention and comparing and contrasting them with the appropriate sections of the U.S. Uniform Commercial Code).