

International Business Transactions

International Business Transactions

Problems, Readings & Materials Relating
to Trade in Goods and Services

SECOND EDITION

Douglas Lee Donoho

NOVA SOUTHEASTERN UNIVERSITY
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Foreword

As suggested by its title, this book focuses on legal issues common to business transactions involving more than one nation. International business transactions are, in many respects, similar to domestic transactions that take place strictly within a single country. Like domestic business transactions, international transactions typically involve the exchange of goods, services, knowledge or capital between parties. They are, like domestic transactions, varied and diverse, ranging from a simple sale of goods to complex joint ventures, licensing of intellectual property, franchising, financing, and sale of services.

International business transactions, however, raise a host of legal and practical issues not shared by purely domestic transactions. Some of the complications are primarily practical, caused by distance, international borders, currency exchange, language and culture. Other complications arise because such transactions typically encounter regulatory limitations from multiple governments, which themselves may be the product of international cooperation and agreement. The goal of this course is to examine the legal framework under which these various issues are managed by businesses and the lawyers who counsel them. Rather than attempt a detailed study of the myriad business transactions that cross international boundaries, the materials focus on issues typical to the most common forms of international trade with some emphasis on export of goods and services.

There are essentially four sets of general subject areas presented in the materials. The first subject area focuses on the “private” side of international transactions—that is, the contractual, financial and transportation elements of typical transactions that are controlled by the parties themselves. The international sale of goods transaction provides the primary illustration of such issues. The second general subject area focuses on how government regulation affects international transactions. Here we consider U.S. laws and processes involving customs, export restrictions, boycotts and remedies for alleged unfair trade practices. A third, related subject area surveys the role of international law and institutions in international transactions. This section of the book examines the World Trade Organization (WTO), General Agreement on Tariffs and Trade (GATT), the European Union (EU) and free trade agreements such as the North American Free Trade Agreement (NAFTA). The final general subject area involves the role of intellectual property and licensing in international transactions.

The materials that follow primarily rely on the “problem method” of learning. Each subject presented in the materials is approached from the perspective of a lawyer working through legal issues arising in a hypothetical transaction. Students are provided with excerpts or internet links to relevant primary materials such as statutes, regulations and cases. Frequently, the readings also include links to useful web based resources concerning these primary materials.

In most chapters, secondary academic resources such as treatises and law review articles are deemphasized on the premise that working through primary sources will best prepare students for real practice. Although textual explanation and guidance on basic concepts from the author is always included, the materials are designed to encourage students to think for themselves, use primary sources in a critical and analytical fashion and make practical assessments of possible issues and solutions. *All questions posed in the text are meant to be answered by the students—there are no abstract, obtuse or unanswerable questions set out in the materials.* Students should look for italicized questions along with the assignment that follows each problem. With guidance from their instructor, students are required to examine the material provided not only to learn the relevant law but also to build the essential skills of effective lawyering.