

Chapter 3

INTERNATIONAL LAW

Suggested Additional Assignments

Interview: An Importer

Students should locate a local businessperson who imports goods or sells imported goods. Why does she choose to deal in imported goods? What advantages do the goods give her over domestic goods? What problems has she encountered? What advice would she have for an entrepreneur who plans to sell imported goods?

Research: School Spirit and Child Labor

As noted in the text, some universities are responding to the tragedy of child exploitation by refusing to license the school logo to any apparel company that uses child labor. Duke University was one of the first, and other schools soon followed. Other apparel makers have similarly decided to insist on adult-made goods. Divide the class into groups of three or four students. Each group should be assigned to a college, university, or clothing brand name. The group's responsibility is to contact the assigned organization and track down who makes its apparel and what, if any, steps it has taken to ensure that children do *not* manufacture the goods.

Chapter Overview

Chapter Theme

The world is one economy, with every country linked in countless financial ways to almost every other. Business today often involves international commerce, a trend that will only increase. Businesspeople cannot afford to ignore requirements and principles of international law.

Quotes of the Day

“What affects men sharply about a foreign nation is not so much finding or not finding familiar things; it is rather not finding them in the familiar place.” –G. K. Chesterton (1874 1936), British author. “The greatest meliorator of the world is selfish, huckstering Trade.” –Ralph Waldo Emerson (1803 1882), American philosopher and poet.

International Law: Public versus Private

International law consists of rules and principles that apply to the conduct of states,¹ international organizations, businesses, and individuals across borders. The two branches of international law are public and private.

Public International Law

This is the law governing relations among governments and international organizations. It governs the law of war, acquisition of territory, disputes among nations, shared resources, and basic human rights for people.

Private International Law

¹Throughout the chapter, the authors use “state” to have the same meaning as “country” and “nation.”

This applies to private parties (such as businesses and individuals) in international commercial and legal transactions. It deals with two fundamental issues: Which law applies to a private agreement? How will people from one country settle their private disputes with parties on foreign soil?

Actors in International Law

Unlike domestic law, international law must balance the interests and roles of many different people, organizations, and states.

The United Nations

In 1945, 50 nations signed the Charter of the United Nations, binding themselves to its terms and obligations. Today, 193 countries are members of the United Nations. The UN Charter sets out the organization's governance, which includes the Secretariat, General Assembly, and Security Council. Much of the UN's work is done through its Specialized Agencies and related organizations, including influential agencies like the International Labor Organization (ILO), the World Health Organization (WHO), and the UN Educational, Scientific, and Cultural Organization (UNESCO). These agencies also operate under the UN's umbrella and have a great impact on world business: The World Bank, the International Monetary Fund (IMF), the World Intellectual Property Organization (WIPO), and the UN Commission on International Trade Law (UNCITRAL).

The International Court of Justice

The UN opened the doors of the International Court of Justice (ICJ), also known as the World Court, in 1946. It is comprised of 15 elected judges from 15 countries representing the world's principal legal systems. Only states can be a party to litigation before the ICJ. The ICJ only has jurisdiction over states that have agreed to be bound by its decisions. Additionally, the court has no enforcement power.

International Chamber of Commerce

The International Chamber of Commerce (ICC) is the world's largest global business organization. Its purpose is to facilitate international business. To that end, the ICC advocates on matters of international business policy and develops uniform rules to aid cross-border transactions. In 1936, the organization first proposed the Incoterms rules, which define a series of three-letter codes commonly used in international contracts for the sale of goods. Note that the ICC does not make law. Instead it proposes rules whose adoption is voluntary.

The European Union

The European Union (EU) is one of the world's most powerful associations, with a population of nearly half a billion people. Twenty-eight countries are members. The EU has accomplished goals such as eliminating trade barriers among member nations and permitting movement of EU citizens within its territory.

Sovereign Nations

Sovereignty means that each government has the absolute authority to rule its people and its territory. Under this principle, states are prohibited from interfering in each other's legislative, administrative, or judicial activities. **Sovereign immunity** holds that the courts of one nation lack the jurisdiction (power) to hear suits against foreign governments. A lawsuit, or **waiver**, is permitted against a foreign country that waives its immunity, that is, voluntarily gives up this protection. A plaintiff in the United States can sue a foreign country engaged in **commercial**, but not political, activity.

The World's Legal Systems

The great majority—roughly 84 percent—of the world is governed by legal systems that take a very different approach from our own.

Common Law

The United States and former British colonies (including Australia, Canada, and India) inherited the common law system from England. The hallmarks of common law are the use of an adversarial process of dispute resolution presided over by an impartial judge, the doctrine of *stare decisis*, and the use of a jury to determine questions of fact.

Civil Law

More than 70 percent of the world's population is subject to civil law, including most European countries, Russia, Central and South America, China, large swaths of Asia, and parts of Africa.² **The main principle of civil law is that the law is found primarily in the statute books, or codes.** The main characteristics of the civil code tradition are the use of an inquisitorial process of dispute resolution, in which the judge acts as interrogator and investigator, how the courts base their judgments on the code, statutes, and writings of law professors, and not using juries.

Islamic Law

More than one-fifth of the world's population lives under legal systems influenced by the religion of Islam. Islamic law, also known as *shari'a*, is a legal system most commonly found in Africa, Asia, and the Middle East.³ *Shari'a* is based on the Muslim holy book, the Koran and the teachings and actions of the Prophet Muhammed.



Case: Saudi Basic Industries Corporation v. Mobil Yanbu Petrochemical Company Inc. and Exxon Chemical Arabia, Inc.⁴

Facts: Saudi Basic Industries Corporation (SABIC) was a Saudi Arabian corporation owned by the Saudi government. In the 1970s, it entered into joint ventures with Mobil and Exxon, under contracts governed by Saudi law. The agreements forbade the participants from charging a “mark-up” on any products purchased for the joint venture, but SABIC violated this provision for two decades.

ExxonMobil and SABIC sued each other in federal court in Delaware for breach of contract and tort.⁵ Because the Delaware court was required to apply Saudi law, the judge brought in notable experts in *shari'a* law for instruction.

The jury found SABIC liable for Saudi tort of usurpation (*ghasb*) and awarded ExxonMobil \$416 million. SABIC appealed to the Delaware Supreme Court for a new trial, arguing that the trial court's application of Saudi law was flawed.

Issue: Did the U.S. court err in its application of shari'a law?

Excerpts from Justice Jacobs's Decision:

²Note that “civil law,” as referred to in this chapter, is a legal system based on codes (*i.e.*, civil law versus common law systems). In common law systems such as ours, the same term is also used to describe contract, tort, and other areas of private law (*i.e.*, civil law versus criminal law).

³*Shari'a* means “path” in Arabic.

⁴A.2d 1 Delaware Supreme Court, 2005

⁵Exxon and Mobil entered into separate contracts with SABIC, but by the time of this lawsuit had merged to form one company named ExxonMobil.

In Saudi Arabia, Islamic law (*shari'a*), which is a fundamentally religious law based on both the Q'uran and the model behavior of the Prophet Muhammed, is the law of the land. Although early Islamic law scholars eventually coalesced into various guilds or schools, only four of those guilds have survived in modern times: the *Hanbali*, the *Hanafi*, the *Shafi'i* and the *Maliki*. In Saudi Arabia, the judges are instructed to rule exclusively in accordance with the teachings of the *Hanbali* guild.

The Saudi law system differs in critically important respects from the system of legal thought employed by the common law countries, including the United States. Perhaps most significant is that Islamic law does not embrace the common-law system of binding precedent and *stare decisis*. Indeed, in Saudi Arabia, judicial decisions are not in themselves a source of law, and with minor exceptions, court decisions in Saudi Arabia are not published or even open to public inspection. The trial judge was keenly mindful of this distinctive characteristic of Saudi law. Instead of relying upon statutes or decisional precedent to discern the law applicable to a particular case, judges in Saudi Arabia must “first and last navigate within the boundaries” of the Hanbali school’s authoritative works, which are the scholarly treatises. Using these writings as guides, Saudi judges identify a spectrum of possibilities on any given question, rather than a single ‘correct’ answer.

Thus, in this highly different legal environment, the predominate factor in determining the Saudi law on a given issue is the study and analysis, or *ijtihad*, that a judge brings to bear in each particular case. To state it in different terms, the critical inquiry is whether the proper analytical procedures are followed in reaching the results.

The judge made exceptional efforts to ensure that she was fully informed of the Hanbali teachings. Before trial, the parties presented [her] with seven reports from four Saudi law experts. [She also] retained an independent expert, who conduct[ed] additional research in Saudi Arabia. After reviewing a total of nine reports and more than 1,000 pages of testimony, the judge then held a day-long pretrial hearing, to [hear] live testimony from [the experts]. Only after this extensive process did the trial court undertake to determine the disputed elements of *ghashb*. It is remarkable that SABIC, having [purposefully] selected this forum instead of a Saudi Court, knowing the United States legal system is dramatically different than the Saudi legal system, comes forward after a verdict against it to claim that no American judge is qualified to interpret and apply Saudi law. This is particularly incredible in light of SABIC’s vehement argument that this case should be tried by a U.S. judge.

For the foregoing reasons, the judgment of the Superior Court awarding damages to ExxonMobil is affirmed.

Question: What is the predominate factor in determining the Saudi law on a given issue?

Answer: The study and analysis, or *ijtihad*, that a judge brings to bear in each particular case. To state it in different terms, the critical inquiry is whether the proper analytical procedures are followed in reaching the results.

Question: Which four guilds in Saudi Arabia have survived into modern times?

Answer: The *Hanbali*, the *Hanafi*, the *Shafi'i* and the *Maliki*.

Question: Which of these guilds are judges in Saudi Arabia instructed to rule exclusively in accordance with?

Answer: The Hanbali.

Sources of Law

This section outlines the three major sources of international law: treaties, custom, and general principles of law.



Additional Case: *Avenues in Leather, Inc. v. U.S.*⁶

Facts: Avenues in Leather (Avenues) imported Calcu-Folios, which are 13 inches tall by 11 inches wide and 1.5 inches deep. They are made of paperboard covered in plastic with a padded handle. It is zippered on three sides and contains an interior sleeve, several small pockets, a calculator, and three-ring binder.

The Customs Service (Customs) classified the Calcu-Folio under tariff heading 4202 which covers “trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, and similar containers”. Avenues claims the Calcu-Folios should be classified under tariff heading 4820 which covers “binders, folders, file covers, memorandum pads, letter pads and similar articles”. Heading 4820 imposes a 3% tariff and heading 4202 imposes a 20% tariff. Avenues sued and the Court of International Trade found for Avenues. Customs appealed.

Issue: Was the Calcu-Folio properly classified as a briefcase or a binder?

Holding: Judgment affirmed. Avenues testified that the Calcu-Folio was designed as an organizational aid for taking notes, thus it is more like a “portfolio” or a flat case designed to hold papers.

Customs argued that Calcu-Folios was more like a “briefcase,” emphasizing the container elements of the good, and introducing evidence of the marketing of the good for business travel. Customs also argued that the good can be used to carry non-paper personal and business items.

Heading 4202 contains a list of specific items, and the general phrase “similar articles.” For a good to be considered a “similar article” that good must share the same essential purpose as those listed under the heading.

Although the Calcu-Folio may be used to carry small items, the internal carrying space is only 1 inch, thus making it unsuitable for carrying newspapers, books, and other objects that are normally carried in the items listed in heading 4202.

The Court agrees with the Court of Internal Trade’s finding that the characteristics of the Calcu-Folio most closely resemble an article of stationery and fall within heading 4820. While the memo pad is an item specifically listed under heading 4820, most of the other characteristics of the good pertain to writing or written documents.

Question: Why did Avenues Leather challenge the Customs Service classification of these costumes?

Answer: Because under the Customs classification Avenues would pay a 20% tariff on the goods. If classified under 4820, Avenues would pay a much reduced 3%.

Question: I thought the U.S. Customs Service stamped passports and looked in your luggage when you reenter the U.S. Why is it up to the Customs Service to distinguish between “briefcase” and “binder?”

Answer: The Customs Service also has the job of classifying merchandise entering the U.S.—that is, deciding what the goods are, and what duties and import restrictions apply to them.

Question: How did the Customs Service decide the nature of the Calcu-Folios in this case?

Answer: It looked at the good and focused on the “container” aspect of the Calcu-Folio to determine that its primary purpose was as a container.

Question: Why didn’t the court agree with that classification?

⁶ 423 F.3d 1326, Court of Appeals for the Federal Circuit, 2006.

Answer: Because the Calu-Folio was too small to carry anything a briefcase would contain, like a newspaper or books. Also, because of the attached memo pad, the Court agreed with Avenues that the purpose was as an article of stationery.

Treaties

A treaty is an international agreement governed by international law.

General Agreement on Tariffs and Trade (GATT) and the World Trade Organization (WTO)

The General Agreement on Tariffs and Trade (GATT) created the World Trade Organization (WTO) “to stimulate international commerce and resolve trade disputes.” They are both founded on the principles of free trade, most favored nation, and national treatment. The two cases below—actually the same case at different levels of the WTO dispute-resolution process—demonstrate the principles the WTO applies to balance the interests of GATT signatories.

ETHICS: Child Labor

The International Labor Organization estimates that worldwide there are 168 million child laborers under the age of 15. Some are as young as 7 or 8 years old. Some receive a pittance, working long hours in hideous conditions, while others are slaves, paid nothing at all. Is it ethical to import merchandise manufactured by child labor?

If students believe it is ethical to import such merchandise, ask them:

- Are there limits on what children can be forced to do?
- Should manufacturers be allowed to employ 10-year-olds? 8-year-olds? 6-year-olds?
- Should factories be permitted to pay subsistence wages, or no wages at all?
- If students believe that there should be some limits to child labor practices, what should the United States government do about importing products that violate the standards? What should consumers do?

If students believe it is not ethical to import such merchandise, ask them:

- Does the United States have a right to impose its “morality” in a part of the world where poverty is overwhelming?
- Isn’t an impoverished village in a developing nation better off with a few factories, even if they use child labor, than it would be with no industry at all?
- If local officials require factories to hire only adults, won’t the cost of the goods increase so much that manufacturers will relocate to countries that don’t require adult labor? What does that solve?

NAFTA, and GATS and TRIPs

Regional Trade Agreements reduce trade restriction and promote common trade policies among member nations. In 1993, the United States, Canada, and Mexico signed the North American Free Trade Agreement (NAFTA). The principal goal was to eliminate almost all trade barriers between the three nations.

The General Agreement on Trade in Services (GATS) extends the WTO/GATT principles to transnational services. The Agreement on Trade Related Aspects of Intellectual Property (TRIPs) covers intellectual property. The WTO administers both of these treaties.



Case: *United States—Measures Affecting the Cross-Border Supply of Gambling and Betting Services*⁷

Facts: Antigua is a small Caribbean nation. When it began hosting gambling websites, its economy thrived, boosted by U.S. gamblers. But when the United States started criminally prosecuting Internet gambling, Antigua's profits plummeted. The United States had the right to take this step, but it had to do so consistently—treating foreign and domestic sites the same. The problem was that it allowed Internet betting on horseracing within its borders.

Antigua challenged U.S. gambling laws in the WTO, arguing that they discriminated against foreign betting services. Both the United States and Antigua were members of GATS, under which each agree to free trade (including nondiscrimination and national treatment) in online services.

A WTO panel ruled that the United States' inconsistent gambling laws violated GATS and ordered that it bring them into compliance. Two years passed and the U.S. government did not act.

Frustrated, Antigua requested permission from the WTO to suspend its obligations to the United States under TRIPs. This suspension would mean that Antigua could freely use, reproduce, and distribute any U.S.-copyrighted, trademarked, or patented works—a real blow to the U.S. entertainment, pharmaceutical, and technology industries. The United States objected and submitted the matter to a panel of WTO experts.

Issue: When one WTO Member refuses to comply with a WTO ruling, can the injured Member retaliate by suspending its duties under another treaty?

Decision: Yes, the injured WTO Member may retaliate by suspending another treaty.

Reasoning: When a party that suffers harm from a violation of one treaty seeks to compensate by suspending its duties under another agreement, it must prove that (1) suspending its obligations under the breached treaty is not an effective remedy and (2) the circumstances are serious.

This case involves a dispute between a tiny, developing country and the world's dominant economy. Suspending Antigua's GATS obligations would have virtually no impact on the United States at all. Only Antigua would suffer: Its people would be forced to scramble for replacement services at uncertain cost. Moreover, Antigua imports services from the United States that are worth much less than the \$21 million a year that it is owed.

The circumstances of this case are sufficiently serious to allow suspension of TRIPs obligations. For years, the U.S. has refused to comply with a WTO ruling and has strangled Antigua's efforts trade in services.

This issue has been in dispute for over a decade. As of this writing, Antigua is creating an online platform to openly sell American movies, music, and medications at a discounted price—and keep the profit. Stay tuned.

Question: When a complaining party wishes to seek suspension in another agreement than that in which a violation was found, what must it prove?

Answer: It must prove that (1) it is not effective for it to suspend the same agreement and (2) that the circumstances are serious enough to suspend obligations under another agreement.

Question: What is the smallest WTO member?

Answer: Antigua.

Question: What does the acronym WTO stand for?

Answer: World Trade Organization.

⁷ WT/DS285/ARB WTO Arbitral Body, 2007

CISG

The United Nations Convention on Contracts for the International Sale of Goods (CISG) aims to make sales law more uniform and predictable—and to make international contracting easier. This treaty governs more than two-third of the world's trade.



Case: Forestal Guarani S.A. v. Daros International, Inc.⁸

Facts: Forestal Guarani S.A., in Argentina, entered into an oral agreement to sell wooden finger-joints to Daros International, Inc. in New Jersey.⁹ Forestal sent Daros the products but Daros declined to pay the full amount.

When Forestal sued Daros in the U.S. for breach of contract, Daros denied owing anything because, under New Jersey sales law, the contract would have had to be in writing to be enforceable. Further, it claimed, Argentina had not accepted the CISG's elimination of the writing requirement when it ratified the CISG. Since the contract was not in writing, it was also possible that Argentine law applied. The district court dismissed Forestal's claim because the parties' agreement was not in writing. Forestal appealed.

Issue: Which law applied to this contract—the CISG, Argentine law, or New Jersey law?

Decision: Either Argentine or New Jersey law could apply, so the case was sent back to the lower court.

Reasoning: Because both the United States, where Daros is located, and Argentina, where Forestal is based, are signatories to the CISG and the alleged contract at issue involves the sale of goods, the CISG generally governs the claim.

However, the CISG allows signatories to opt out of some of its rules, and Argentina did indeed opt out of the no-writing requirement. So while the CISG applies generally to this contract, it does not govern the issue of whether the agreement had to be in writing. Either Argentine or New Jersey law will determine the answer to that question. Since the court was not briefed on each jurisdiction's laws, the case is remanded for more information.

Question: What types of contracts does the CISG apply to?

Answer: Contracts of sale of goods between parties whose place of business are in different States when the States are Contracting States.

Question: What formalities associated with proving the existence of a contract does the CISG dispense with?

Answer: A contract of sale need not be evidenced by writing, and it may be proved by any means, including witnesses.

Question: When does the elimination of a formal writing requirement by the CISG not apply?

Answer: A Contracting State whose legislation requires contracts of sale to be evidenced by writing may at any time make a declaration that the rule does not apply where any party has his place of business in that State.

Application of U.S. Law Abroad

As a general rule, U.S. statutes do not apply abroad, unless they specifically state that they do.

⁸ 613 F.3d 395 United States Court of Appeals for the Third Circuit, 2010

⁹ A finger joint is a method of attaching two pieces of wood. Rectangular cut-outs are made in the end of each piece. Then the pieces are joined together so that the cut-outs on one piece fit the projections on the other. It is as if you bent your fingers at the knuckle and then slid your hands together.

Extraterritoriality—the power of one nation to impose its laws in other countries.



You Be the Judge: *Carnero v. Boston Scientific Corporation*¹⁰

Facts: Boston Scientific (BSC) is an American company with headquarters in Massachusetts, that manufactures medical equipment. Ruben Carnero began working at a BSC subsidiary in Argentina (BSA). Carnero's employment contract stated that he would be paid in pesos, and that Argentine law would apply. Four year later, Carnero began working for a BSC subsidiary in Brazil (BSB). Carnero frequently travelled to Massachusetts, but did most of his work in South America.

BSB, and soon thereafter BSA, fired Carnero. Carnero claimed the firings were in retaliation for his complaint to BCS executives about inflated sales figures and other accounting fraud at both BSA and BSB. Carnero filed suit in Massachusetts alleging that his firing violated the Sarbanes-Oxley Act (SOX), an American law.

SOX was passed in response to corporate fraud at Enron and Arthur Andersen. SOX includes a whistleblower provision designed to protect employees who informed superiors or investigators of fraud within the company. The law allows for reinstatement and back pay.

BSC argued that SOX did not apply overseas and the District Court agreed. Carnero appealed.

You Be the Judge: Does SOX protect a whistleblower employed overseas by a subsidiary of an American company?

Argument for Carnero:

Congress passed SOX because the American people were appalled by the massive fraud in major corporations, and the resulting harm to employees, investors, the community, and the economy. The whistleblower protection is designed to encourage honest employees to come forward and report wrongdoing—an act that no employee wants to do, and one which has historically led to termination. Mr. Carnero knew his report would be poorly received, but believed he had an ethical obligation to protect his company. For that effort, he was fired, and now Boston Scientific attempts to avoid liability using the technicality of corporate hierarchy.

Yes, Mr. Carnero was employed by BSB and BSA. But both of those companies are owned and operated by Boston Scientific. It is the larger company, with headquarters in the United States, which called the shots. That is why executives in Massachusetts frequently asked Mr. Carnero to report to them—and why he brought them his unhappy news.

Argument for Boston Scientific:

The fact that Mr. Carnero was employed by companies incorporated in Argentina and Brazil is more than a technicality. He is asking an American court to go into two foreign countries—sovereign nations—and investigate accounting and employment practices of companies incorporated and operating there. Their laws, not ours, should apply to their companies.

If the United States can impose its whistleblowing law in foreign countries, may those nations impose their rules here? Suppose that a country forbids women to do certain work. May companies in those nations direct American subsidiaries to reject all female job applicants? Neither the citizens nor courts of this country would tolerate such interference.

Mr. Carnero's request is also impractical. How would an American court determine why he was fired? Must the trial judge here subpoena Brazilian witnesses and demand documentary evidence from that country?

Finally, SOX does not state that it applies overseas. Congress was well aware that American corporations operate subsidiaries abroad, but made no mention of those companies when it passed this statute.

¹⁰ 433 F.3d 1, First Circuit Court of Appeals, 2006.

Foreign Laws and Rulings in the United States

While Americans are proud to say that our Constitution has influenced the laws of other countries, the debate becomes considerably more heated when it involves the influence of foreign or international law on the U.S.

In the U.S., most states have adopted the **Uniform Foreign Money Judgments Recognition Act** to determine when courts will recognize foreign judgments.

Parties who want to avoid courts altogether generally opt for **arbitration**.

Essential Clauses in International Contracts

International business brings great reward, but it also carries significant risk associated with distance, language, politics, culture, and different legal systems. However, some of these risks can be controlled by carefully thinking about contract terms beforehand. Considering the choice of law, choice of forum, and choice of language and currency are all ways to avoid the risks when negotiating international deals.

Matching Questions

Match the following terms with their definitions:

- | | |
|--------------|--|
| (4) A. GATT | 1. A trade agreement between Mexico, the United States, and Canada |
| (1) B. NAFTA | 2. The World Court |
| (5) C. TRIPS | 3. An international convention that governs the sale of goods |
| (3) D. CISG | 4. A treaty that governs trade |
| (2) E. ICJ | 5. A treaty that governs intellectual property |

True/False Questions

Circle true or false:

1. T F The ICC makes international law.
2. T F States can opt out of ICJ jurisdiction.
3. T F The CISG requires parties to negotiate internationally in good faith.

4. **T** **F** Incoterm rules define terms used in international contracts.
5. **T** **F** The WTO settles disputes involving individuals, businesses, or countries.

Multiple Choice Questions

- For which of the following activities can a foreign sovereign be sued?
(a) **Operating a factory dangerously**
(b) Issuing a law that discriminates against a certain group
(c) Suspending the civil rights of its people
(d) None of the above
- Outdoor Technologies (an Australian company) obtained a judgment for \$500,000 against Silver Star (a Chinese company) in a court in Australia. Silver Star owned property in Iowa so Outdoor filed suit in Iowa to collect the judgment. Which of the following statements is true?
(a) Outdoor cannot collect in the United States a judgment that was issued by an Australian court.
(b) Outdoor cannot collect in the United States because Silver is not an American company.
(c) **Outdoor can collect in the United States if the Australian court was fair and proper.**
(d) Outdoor can collect in the United States, because both the United States and Australia have common law systems.
- The President negotiates a defense agreement with a foreign government. To take effect, the agreement must be ratified by which of the following?
(a) Two-thirds of the House of Representatives
(b) **Two-thirds of the Senate**
(c) The Supreme Court
(d) A and B
(e) A, B, and C
- Lynn is an author living in Nevada. She contracted with a company in China, which promised to print her custom children's books. After receiving Lynn's payment, the company disappeared without performing. Lynn wants to sue for fraud, but the contract does not say anything about which country's law will be used to resolve disputes. Both China and the United States are signatories of the CISG. Will the CISG apply in this case?
(a) Yes, because both countries are signatories.
(b) Yes, because the parties did not opt out of the CISG.
(c) **No, because the contract does not involve goods.**
(d) No, because the CISG does not establish rules for fraud.
- Austria, Indonesia, and Colombia are all members of the WTO. If Austria imposes a tariff on imports of coffee beans from Colombia, but not from Indonesia, is it in violation of WTO principles?
(a) Yes, the WTO prohibits tariffs.
(b) Yes, the WTO prohibits excise taxes.
(c) **Yes, Austria is violating the WTO's most favored nation rules.**
(d) No, the WTO's most favored nation rules permit Austria to do this.

Case Questions

1. A Saudi Arabian government-run hospital hired American Scott Nelson to be an engineer. The parties signed the employment agreement in the United States. On the job, Nelson reported that the hospital had significant safety defects. For this, he was arrested, jailed, and tortured for 39 days. Upon his release to the United States, Nelson sued the Saudi government for personal injury. Can Nelson sue Saudi Arabia?

Answer: Based on *Saudi Arabia v. Nelson* (US S. Ct. 1993). The Supreme Court found that FSIA applied to immunize Saudi Arabia from the suit. While employing someone is a commercial activity, the Court reasoned that the injury stemmed from his arrest. Since a private citizen cannot jail someone, this is purely a governmental activity.

2. The Instituto de Auxilios y Viviendas is a government agency of the Dominican Republic. Dr. Marion Fernandez, the general administrator of the Instituto and Secretary of the Republic, sought a loan for the Instituto. She requested that Charles Meadows, an American citizen, secure the Instituto a bank loan of \$12 million. If he obtained a loan on favorable terms, he would receive a fee of \$240,000. Meadows secured a loan on satisfactory terms, which the Instituto accepted. He then sought his fee, but the Instituto and the Dominican government refused to pay. He sued the government in United States District Court. The Dominican government claimed immunity. Comment.

Answer: The suit arose out of a loan agreement. Since this is activity that an individual can engage in, the Dominican government is not immune.

3. Asante, located in California, purchased electronic parts from PMC, whose offices were in Canada. When Asante sued PMC for breach of contract, it alleged that California sales law should apply. PMC argued that the CISG automatically applied because both Canada and the United States have ratified the treaty. Who is right?

Answer: CISG applies. The two parties are located in two member countries and the parties did not opt out.

4. During the Spanish-American War, the United States blockaded Cuba. It seized two commercial fishing vessels sailing under a Spanish flag off the Cuban coast. The crew knew nothing about the war and had no arms on board. U.S. officials auctioned off the captured vessels, but their owners protested, claiming that since ancient times countries at war had respected each other's commercial ships. There was no law or treaty on this matter. Do the ship owners have a valid claim?

Answer: Since ancient times countries at war had respected each other's commercial ships. This indicates that this practice is a custom in international law that is widespread, longstanding, and to which nations are bound. The US violated customary international law. Based on *The Paquete Habana*, 175 U.S. 677 (1900).

5. Many European nations fear the effects of genetically modified foods, so they choose to restrict their importation. The EU banned the entry of these foods and subjected them to strict labeling requirements. Does this policy contravene the principles of WTO/GATT?

Answer: The US challenged this practice and WTO ruled that GM food had to be allowed into the EU. The WTO held that no scientific evidence supported the EU's fears and therefore the regulation unduly burdened trade.

Discussion Questions

1. After reading this chapter, do you believe that international law exists? Has your concept of law and legal rules changed?

Answer: Answers will vary.

2. After the 9/11 terrorist attacks, the U.S. government imprisoned suspected terrorists in Guantanamo Bay, Cuba. Officials argued that these detainees did not enjoy constitutional rights because they were not on U.S. soil, even though they were held by Americans. Are the freedoms guaranteed by the U.S. Constitution reserved for U.S. citizens on U.S. soil or do they apply more broadly?

Answer: In *Boumediene v. Bush*, 553 U.S. 723 (2008), the Supreme Court disagreed, holding that the Constitution protected the rights of noncitizens outside U.S. borders.

3. The United Kingdom has not signed the CISG. Until recently, major world traders like Japan and Brazil had refused to sign. Imagine that you are a legislator from one of these countries. What might your objections be to ratifying a treaty on sales law?

Answer: Answers may include the following:

- Legal uncertainty caused by introducing a new set of rules of sale
- Who will interpret new rules and how? These broadly formulated rules contain many undefined and new terms which have to be developed in the international arena by courts and arbitral tribunals and no principles of *stare decisis*.
- The introduction of foreign solutions to well-known problems
- The absence of certain underlying principles
- The law is robbed of its flexibility and is fossilized in a code which is almost impossible to change.

The integrity of the Convention is threatened by diverse interpretational approaches and tradition.

4. Generally speaking, should the United States pass laws that seek to control behavior outside the country? Or, when in Rome, should our companies and subsidiaries be allowed to do as the Romans do?

Answer: Answers will vary.

5. What responsibility, if any, does the United States have to obey international law? Is it any different from other countries' responsibility to uphold international law? Why or why not?

Answer: Answers will vary.