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International Business Transactions (January 24, 1969)

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INTERNATIONAL BUSINESS TRANSACTIONS

January 24, 1969

Mr. Stason

Total time: Three hours. Allocate your time accordingly!

Total possible credit: 100 points.

I. (15 points)

Du Jour, a private citizen of the Republic of France whose funds are in French francs, has heard that the British are likely to devalue their pound sterling again within the year and that he could make a profit from the devaluation by dealing in pounds with his francs. He asks you, as a friend who is knowledgeable in international monetary matters, how he can go about doing this, (assuming that devaluation in fact occurs) and what international monetary agreement makes it possible. Answer his questions briefly, and tell him the simplest method of seeking this profit.

Also, Du Jour has some United States dollars with which he wishes to speculate by buying gold on the open market in the hope that the United States will devalue its dollar in relation to gold, that the free market will go up in consequence, and that he can re-sell at a profit thereafter. World deflation, however, combined with South Africa's recent announcement that it will sell all of the gold it produces on the free world market, has opened the possibility that gold will decline on that market in dollar terms - may be even below its present support price of \$35 U. S. per ounce - and that the United States will not devalue. Nevertheless, Du Jour wants to take that risk, at least if he can be sure of being able to re-sell to the United States at the support price should the risk materialize. Can you give him the assurance he seeks? If not, why not?

How would his situation be different regarding the gold transaction were he a citizen of the United States?

II. (10 points)

Describe briefly and simply the nature and functions of GATT, and of the most-favored nation provisions embodied in it.

III. (20 points)

In 1950, Montmorency invented an egg-washing machine, and took out patents on it in both England and the United States. He began to manufacture it in England, and sold it for some years in both countries. He established an excellent repute for it under the name "EGGZACT-JIFFY", which name, incorporated in a distinctive and fanciful artistic design, he attached to each machine as a trade mark. This mark became well-known everywhere as identifying the machine even before he had it registered as his trade mark in both countries.

Thereafter, he sold the United States mark and patent rights to Zilch in an agreement giving the latter the exclusive right to import the machines, thus marked, into the United States for resale. Montmorency retained the English trademark and patent, and continued to be the sole manufacturer. Manufacturing continued solely in England, as before. Zilch held the patent for protective purposes only, but imported and sold many of the machines under the franchise - always with the trade mark attached.

Montmorency then began selling the machines, with trade mark, to Milch, who imported them into the United States for resale in competition with Zilch. The latter's business was damaged considerably thereby, as Milch undersold him substantially.

In 1968, Zilch brought an action in a United States District Court to enjoin (a) importation, sale and use of the machines by Milch, or at least, (b) use of his trade mark on or in connection with them. What result, on each count of the above action, and why?

IV. (25 points)

Santos, a citizen of Panama and for ten years a professional blue-water sailor, resides in San Juan, Puerto Rico when not at sea. He has done so far for the past five years. He is quite successful in obtaining employment afloat and is unmarried, hence retains only a single room in San Juan, where he sleeps when ashore. His usual employment is with Navajeros Imperiales, S. A., a Panamanian shipping corporation whose vessels are of Panamanian registry and operate regularly between San Juan and New York, and which owns the "Santa Maria", on which Santos was employed when injured.

Santos was injured in December, 1968 while the "Santa Maria" was in port at Nassau (British) for emergency repairs that had become necessary while en route from New York to Panama City with a cargo of surplus military rifles that had been bought by the Republic of Panama for its armed forces. While the "Santa Maria" was not under charter to

IV. (continued)

Panama, the Republic had placed a representative aboard, Lt. Morales of the Panamanian Navy, under a charter clause by which he was to be in charge of loading, unloading and care of the cargo, while the ship's captain and crew would be responsible for maintenance and operation of the loading machinery.

The accident occurred in the following way: A cargo boom, while being used to shift a slingful of rifle cases in order to clear the way for necessary repairs, dropped a few feet with a heavy jolt because a defective supporting cable broke. The boom did not actually fall to the deck, but the jolt caused one of the rifle cases (they had been packed in New York by workmen employed for the purpose by the Panamanian Consul there) to break open; some of the rifles then fell from the ruptured case and through the meshes of the sling, striking Santos and thereby causing the injury complained of.

Santos, flown to New York for hospitalization, seeks your advice as to his right of recovery, if any, and against whom an action regarding it should be brought. He will not be satisfied with maintenance and cure alone. What advice will you give, particularly as (a) the combined negligence of rifle packing and cable maintenance caused the injury, which probably would not have occurred otherwise, (b) and probable recovery under the Jones Act, if it is found applicable, is far larger than that available elsewhere. What defenses may be anticipated to recovery and, if awarded, to attachment of the judgment defendants' goods to secure payment?

V. (30 points)

Widget Corp., a New York corporation that makes about half of the widgets in this country and exports them to Europe as well, has decided to enter the booming European market for widgets more effectively by establishing a large wholly-owned subsidiary in France and another in England. Its idea is that each will be a local entity in its own nation that will have its own research department, take out its own patents, and do its own manufacturing and selling exclusively within its own local market. Widget wishes to have access to any patents that may be granted to these proposed subsidiaries, and in turn to give them access to its own present and future patents, but does not want any outside companies to have use of any of them. It should be mentioned that, because of Widget's existing worldwide patents, its product is clearly superior to that of any domestic or foreign competitor.

Also, of course, Widget wants not only to prevent competition between itself and its subsidiaries, but also to suppress that presently

V. (continued)

existing between itself and all other foreign and domestic widget manufacturers.

Smith, the president of Widget New York, seeks your advice on the following matters:

(a) Is it proper under United States antitrust laws for Widget to establish exclusive patent cross-licensing agreements between itself and its proposed subsidiaries that contain clauses requiring each party to retain all patents unused until their use is approved by the board of the parent corporation, and forbidding both use of all patents outside of the country of establishment under any circumstances at all and licensing any third parties to use them:

(b) If the answer to (a), above, is "no", then what sort of remedial action (describe in some detail) could be taken against Widget and its subsidiaries should the latter be formed and the agreements made and put into effect? By whom could it be taken?

(c) If the above facts are the same, except that the proposed agreements are actually in effect and that the proposed subsidiaries instead are existing foreign companies that are and always have been independent of Widget, what defenses might be asserted by them against the remedial action you have proposed in (b) above?