International Business Transactions: Final Examination (May 20, 1970)

William & Mary Law School

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I. (20 points)

Zenith, a small U.S. tractor manufacturing company with sales branches in West Germany, England, and France, and with plans to manufacture and sell tractors in those nations through wholly-owned subsidiaries to be created there in the near future, contracted with similar companies Alpha and Beta to consolidate their foreign branches with its own for more effective and economical marketing in those three nations, in order to meet local competition that was threatening to drive them out altogether. In a separate but related agreement, Zenith contracted with Alpha and Beta that (a) the three would maintain uniform prices on their U.S. sales; (b) each would confine its U.S. sales efforts to a different geographic zone, and (c) no two of them would build and operate their contemplated foreign subsidiaries in the same country, but that Alpha would do so only in West Germany, Beta in France and Zenith in the United Kingdom.

This contract was put into effect, and the foreign subsidiaries created and put into operation, with great benefit to all parties regarding both foreign and domestic operations. Shortly thereafter, however, the Antitrust Division of the Department of Justice filed suit against these three companies for violation of United States Antitrust laws, and the case duly went to trial in the Southern District of New York.

What arguments should be made by (a) the government, to establish violation, and (b) the companies, as joint defendants, to convince the court that no violation had occurred? What should the court decide on each of the issues here involved, and why?
II. (20 points)

Under the recently concluded "Kennedy Round" of import-duty reductions under GATT, the United States became bound to refrain from imposing more than 10% duty upon Mark III widgets imported from any other signatory nation. Three questions:

A. Mark III widgets are manufactured in Sylvania, which is not a GATT signatory, but with which the U.S. has a Friendship Commerce and Navigation treaty containing the usual sort of most-favored nation clause.

Apart from GATT, the U.S. is not explicitly bound by treaty regarding rate of duty upon his product, and the U.S. duty tariff, established prior to GATT and not since explicitly modified regarding this particular product, provides for 15% duty thereon. Therefore, the collector of customs at the port of entry assessed duty at the latter rate; importer paid, under protest regarding the 5% above GATT rate.

What result will there be upon the importer's suit in the Customs Court for refund of this 5% "excess"? What legal arguments could be made in favor of the refund?

B. Leninia, a GATT-signatory socialist nation, wishes to establish its manufactures abroad in order to earn hard currency from free-economy nations. Its authorities decided that the best way to do so was to export "loss leaders" thereto. Aware of the anti-dumping restrictions of GATT and of the countermeasures that signatories may properly take under that treaty, Leninia manufactured excellent work-shoes in huge quantities in a factory especially made for the purpose. While these actually cost the factory (barebones cost; advertising, transportation, administrative overhead, etc. excluded) $6/pr., they were retailed by the government to the Leninian populace for two years the equivalent of $5/pr., and then exported to only one country -the U.S.A. - and there retailed at the same price. Comparable domestic shoes, or shoes imported from other nations, then sold for $10/pr.

Originally, the U.S. charged only the usual rate of
duty on these shoes - 15%. However, the customs authorities soon heard of the low retail price and the injury it was causing on sales of comparable shoes from domestic and other foreign sources. Finding that the Leninian shoes were being "dumped", the customs authorities raised the duty rate to compensate therefor.

The importers, a state trading company created for this particular purpose by Leninia, paid under protest and sued in the Customs Court for a refund and determination that the increase was improper under GATT as discriminatory against a member state.

What arguments can be made on each side. What result?

III. (20 points)

Giganticum Ltd. Schultz, GmbH, and Lorraine Industrie, S.A.-respectively, English, West German and French manufacturers of competing sheet steel and tube, contracted in 1965 to divide among themselves the world sales territories, including the United States, to avoid mutual the competition that was damaging all three. Therefore, they agreed that each could sell unlimited quantities of its product in the country of its incorporation ("siege social" being considered the equivalent thereof for purposes of the contract), but that each would be bound by its assigned quota-subject to change by mutual agreement—regarding exports to other nations. These quotas were made enforceable by fines.

The U.S. quota assigned to each was more than its then exports to that country. However, since then world trade conditions have improved, for some years each company has filled its U.S. quota. Whether or not it now could exceed that quota profitably is not known, as no contract signatory had attempted to do so.

Exports to the U.S. are handled here for all three companies by Jones Brothers, Inc., a Delaware corporation, whose shares are owned entirely by U.S. citizens. Jones Brothers arranges for the payment of import duties, compliance with other customs formalities, and sale to
U.S. wholesalers, who, in turn, sell to U.S. retail outlets. Neither Jones, nor the wholesalers, nor retailers have any direct connections with the three European manufacturers here involved, except for Jones' agreement with each of them to perform the above mentioned services on commission. None have anything whatever to do with the contract among the manufacturers and its quota provisions; in fact, as that contract was secret, none of them even knew of the quota system until receiving public notice through filing of the current antitrust action.

Each of the three manufacturers has a trade representative in New York, who maintains a small office for the display of samples and handling of queries. None of these will take orders or have anything whatever directly to do with sales.

The antitrust division, in some frustration, asks you to find a basis under U.S. antitrust laws to stop their seeming violation through the U.S. quota established by this contract.

What violations of our antitrust laws, if any, have been committed by establishment of the contract quotas? If violations do exist, can they be stopped? How?

How might the United States Supreme Court have decided these issues, had they been presented to it in 1910?

IV. (20 points)

Holly Co., an English manufacturer of ornamental glassware of a distinctive pattern, registered a valid English trademark therefor—"Hollyglass"—and filed it under the International Convention for the Protection of Industrial Property in all other signatory nations including the U.S. Thereafter, Holly manufactured all of this glassware under the trademark thus registered and filed in the United Kingdom, and sold it successfully for several years in some signatory states, as well as in England. It did not sell in the U.S., however, where preliminary marketing reports discouraged serious sales efforts.
In 1969, the defendant began to manufacture and sell a similar product in the U.S. under the "Hollyglass" trademark, which it made no attempt to register anywhere. On Holly's U.S. suit for infringement of this trademark, what result, and why?

V. (20 points)

The year is 1950. Pierre, a citizen of the Republic of France, asks you how he can make some money by the purchase and sale, including short sale, of both monetary gold and the national currencies of the United States, the United Kingdom, France and West Germany. He rules out the usual form of arbitrage, instead wishing to gamble on profitable (from his standpoint) developments that may be generated under the new International Monetary Fund agreement with its fixed member-nation currency ratios and reserve-currency/gold system. If you had a crystal ball that would reveal developments in the international gold and money markets from 1950 to date under the IMF Agreement, what advice would you give Pierre (with approximate timing of his moves), and why?

How would you alter your advice for Pierre, if naturalized U.S. citizen and permanent resident of New York?