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L44
INTERNATIONAL BUSINESS TRANSACTIONS

Prof. Williams
May 9, 1973

I.

Renewed Arab-Israeli conflict breaks out, and the Arab States, including Arabstan, a major supplier of petroleum to the US, and a holder of billions in US currency, cut off petroleum supplies and damage the US dollar position on international markets, due to US support of Israel. The "Black November" Arab guerrilla group stage a bloody terrorist attack at JFK International Airport. Congress then passes a statute prohibiting aliens (including foreign-owned corporations) of certain Arab States, including Arabstan, from engaging "in any activity in any geographic area", or "engaging in any occupation", with respect to which the Attorney General determines and certifies that such activity or occupation by such aliens will be detrimental to national security. The Attorney General then rules that the designated aliens may not engage in any activity within certain "defense oriented" zones, such as a described zone including within it the city of Norfolk and its environs. Further, he rules that such aliens may not engage in any occupation of "defense concern", such as "nuclear research".

Arabian Nights, Inc., a Delaware corporation wholly owned by Arabstan citizens and established for ten years in the US, has been engaged in nuclear research for five years at its Norfolk laboratory seeking to devise a nuclear powered, computerized tractor for farm use. The corporation receives notice from the Attorney General that it must immediately cease operating its laboratory in Norfolk and must cease its nuclear research. The corporation retains you for legal advice in the matter. Advise your client.

II.

Delco, a Virginia corporation, wishes to extend its manufacturing and sales operations to the Common Market area. It intends to manufacture its goods in France, and to establish sales and repair agencies in all Common Market countries. Delco is considering these alternative organizational structures:

- a. establishing a branch of Delco in France, which will control all European activities;
- b. establishing a Belgian subsidiary, which will control all European activities, or
- c. establishing a French subsidiary, which will control all European activities.

If Delco chooses the third alternative, the majority of the corporate board will be comprised of French investors in Delco and the minority will be comprised of Delco officials. Delco will own 100% interest under all arrangements. Meetings will be held in Paris under all arrangements. Under the first two arrangements, all controlling officials will be Delco officials. Delco will invest about \$6,000,000 in the French operations and will borrow funds from banks in France, Belgium and Germany.

Discuss the appropriate choice of law to govern the internal operations and affairs of Delco's French operations under each of the alternatives under the facts stated.

III.

P, a Virginia corporation, owns the valid and subsisting US trademark, "Whispering Pines". P adopted and used that trademark since 1930, in the sale of extracts from pine resin, both in US local and interstate commerce, and since 1965, in foreign commerce between the US and Canada. During these years, P developed good will associated with the trademark and trade name, "Whispering Pines", and with P's label as well, both here and in Canada, especially in Canadian centers of population along the border.

D, a Canadian corporation organized in 1969, by Sly, a US citizen resident in Montreal and Sneak, a Canadian citizen also resident in Montreal and who is the managing officer, used the name, "Whispering Pines", knowing of P's Mark and intending to appropriate the good will associated with the mark. D registered the mark in Canada in 1970, and contracted with a US corporation to manufacture cans identical to those used by P, and shipped the cans to Canada. Labels identical to those used by P were printed in Canada. Products were produced and canned in Canada and sold in Canadian towns. Business and individuals from the US bought some of D's products (Sales to US customers were equal to .1 % of P's total US sales. D's total sales were equal to 5% of P's total sales in Canada.) In 1972, D sent letters to P's distributors in the US and Canada declaring D to be the exclusive owner in Canada of the mark and asserting that exportation of P's products to Canada would infringe that mark. P's reputation and good will subsequently suffered. P filed a petition to cancel D's registration in Canada, on the ground that P was a prior user. The outcome of that petition is uncertain and will take at least a year. P contacts you for advice as to how he can get relief in US courts, if possible, to restrain the alleged infringement of its mark. Advise your client.

Virgo, Inc., a Virginia corporation, is a conglomerate. One of its subdivisions produces small, household electrical appliances. The subdivision is tenth largest in the US in its product lines and its sales account for 5% of US sales in its product lines. Virgo wants to enter into a joint venture with Chinco, a large Nationalist Chinese company with substantial "know-how" in certain new developments in these product lines. The purpose of the proposed joint venture is to build and operate a plant for production of these product lines in the Latin American country of Guatador. Virgo has never exported its products to Guatador, but other US competitors have. Exports of these products to Guatador equals 3% of the total US exports of these products. Chinco has exported, annually, about 80% of Guatador's purchases of these products. Chinco has never exported to the US.

Guatador recently has completed a massive hydroelectric project and is completing projects to provide electricity to all parts of the country. Guatador wants an electrical appliance plant built there to provide jobs and to satisfy appliance needs cheaply. Guatador has offered to establish a state corporation with exclusive license to produce the appliances in question. To protect this infant industry, Guatador plans to establish tariffs that will cut the normal profit of export sales to Guatador by 75%. Guatador, in negotiations with Chinco and Virgo (Virgo would like to now break into this small but soon to be expanding market), has suggested that each company invest 45% of the capital needs, and the State will invest the other 10%. The chief corporate official will be a Guatadorian (the very able brother of the Guatadorian President) and the plant manager will be a former employee of Chinco (the ex-Vice-President who is at retirement age) and the assistant manager will be a former employee of Virgo (a hard-driving executive in the Market Expansion division). Chinco is for the arrangement, because it does not have the money to build the plant itself and does not have overseas plant experience, but does want to stay in the Guatadorian market, even if it must share it with Virgo. Virgo is for the arrangement, because it wants to break into a promising market; it has the funds and overseas plant experience, but needs Chinco's knowledge of the Guatadorian market and Chinco's "know-how" for quite inexpensive production methods, which is important for increased sales in Guatador. Also, Virgo hopes this arrangement does not violate any US antitrust laws. As to this latter matter, Virgo contacts you for advice, stating the above facts. Advise your client.

A. Gamble, Inc., a Virginia corporation, is considering building a plant in the Latin American State of Chaos, to produce construction materials (concrete, brick, etc.). Chaos recently expropriated certain wholly US-owned branches and subsidiaries conducting mining and public utilities activities in Chaos, and has a strong policy of rapidly increasing the "social and economic status" of her populace. However, the Chaoasian Government has advertised substantial benefits for foreign businesses that establish activities in Chaos, so long as they "truly contribute to Chaoasian society." Gamble, Inc., contacts you for advice on the problem of expropriation.

- a. Briefly advise your client as to the applicable conventional and customary international law on expropriation and compensation therefor, as it applies to his problem. Note that there is a US-Chaoasian Treaty of Friendship and Commerce with a provision identical to Article 5 of the US-West German Treaty you have studied at law school.
- b. Suggest to Gamble any relevant factors bearing on the risk of expropriation about which he might wish to seek information through US agencies.
- c. Suggest methods that Gamble might consider to avoid risks of expropriation and to protect itself if expropriation occurs.

B. Assume that subsequently, Gamble and Chaos enter into a concession agreement under which Gamble has the exclusive right to "produce and sell" all construction materials for public and private use in Chaos, at stipulated formulae for prices. Two years later, with Gamble's Chaoasian activities finally operating at full effectiveness, a new Government comes to power and Chaos passes legislation providing (a) that all transportation of "natural or man-made construction materials" is to be by state-owned trucks (Chaos has just built a state-owned truck factory.), and (b) that taxes on all corporate gross income are increased from 10% to 50%. Again Gamble consults you. 1. What arguments under applicable conventional or customary international law (Note Article 5 of the Treaty of Friendship and Commerce)? 2. What remedies? 3. How would you have sought to protect against this risk of adverse legislation in the drafting of the concession agreement?

A. Miss Informed, an American citizen resident in the US, becomes your client after having filed suit in a federal court on a contract action alleging she contracted in the State of Manana with ProntoCo. (a Mananian corporation), which was served through its US sales office, to lease her a villa, and that after several payments, Pronto breached the agreement and rented the villa to a Mr. De Nada, a Mananian citizen resident in the adjacent State of Amigo. It is important to you to secure (a) the lease agreement with Pronto, which has the only signed copy in its Mananian office; (b) evidence from Mr. De Nada concerning statements made to him by the agent of Pronto, and (c) records of the Bank of Manana about Miss Informed's lease payments, which Pronto says it never received. How would you seek to obtain these items of information? From discussion in I.B.T. at law school, what possible problems would you want to anticipate? Although other statutes might be present, assume that Manana and Amigo both have penal statutes penalizing "any person who, without being authorized, ... takes on behalf of a foreign government any action which is solely within the province of the (Mananian)(Amigan) authorities."

B. Assume the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters is in effect and that the US and Manana are parties. You wish to serve various legal documents directly upon Pronto at its Mananian office. What is the effect of the Convention on possible arguments of Manana that your attempt to serve these documents through the registered mails:

- a. infringes its sovereignty;
- b. is improper, because Manana has exclusive jurisdiction over the matter, or
- c. is improper, because under Mananian law the action is invalid since the lease never was sealed by the appropriate Mananian official.

Suppose use of the registered mails was not proper under Mananian law, but that Pronto did in fact receive service of the documents. What is the effect of the Convention regarding the authority of the US courts to recognize service has been made?

C. Assume that in the lease agreement there is this clause: "The parties agree that all disputes relating to this contract shall be tried before the courts of Taco, Manana, to the exclusion of all other courts which might have had jurisdiction apart from this provision." On the basis of the facts presented advise your client as to the anticipated reaction of the federal court to an objection by Pronto that the case must be heard in Manana. Of course, your client insists that, as an American citizen, she wants to pursue her suit for \$4,500 in the US courts.

D. Assume that your client secures a judgment for \$4,500 against Pronto and wishes to enforce it in the US (Pronto has assets worth only \$1,000 here), and in Manana. Manana's approach to foreign judgment enforcement, although generally similar to that of the US, also partakes of the French attitude. State, first, the usual "checklist" of defense that Pronto possibly might raise to enforcement of your client's US judgment in Mananian courts, and then, discuss anticipated defense that might be the most troublesome under the facts of this case.