# TABLE OF CONTENTS

			Page
Pre	face		XXIX XXXIX
	pyri	ght Acknowledgements	xlv
CH	APT	TER I: INTRODUCTION: DEALING WITH THE INCREASED RISKS OF TRANSNATIONAL TRANSACTIONS	
A.	Ins	stitutional Protection	2
B.	Pu	rchased Protection	4
C.	Ne	gotiated Protection	5
CH	APT	THE EXPORT-IMPORT TRANSACTION: THE FOUNDATION OF INTERNATIONAL TRADE	7
A.	Th	e Export-Import Contract	7
	1.	Introduction	7
	2.	The History of the Law Merchant	8
B.	Th	e Documentary Sales Transaction	17
	1.	The Basic Structure	17
	2.	The Documents	19
	3.	Allocating Risks, Obligations and Title with	
		Price-Delivery Terms	21
	4.	The ICC Incoterms	26
	5.	The c.i.f. Term	31
		a. Biddell Brothers v. E. Clemens Horst Company,	
		Court of Appeal, [1911] 1 K.B. 934	31

		b. E. Clemens Horst Company v. Biddell Brothers,	
		[1912] A.C. 18 (H.L.)	43
		c. Notes	44
		d. Notes and Questions	47
	6.	The Importance of the Document of Title	49
		a. Comptoir D'Achat et de Vente du Boerenbond	
		Belge S/A v. Luis De Ridder, Ltda., (The Julia)	
		House of Lords [1949] A.C. 293	49
		b. Notes and Questions	65
C.	Th	e Consequences of Nonperformance	70
	1.	Excuse for Nonperformance	70
		a. Harold J. Berman, Excuse for Nonperformance in	
		the Light of Contract Practices in International Trade, 63	
		COLUM. L. REV. 1413, 1413-15 (1963)	70
		b. Tsakiroglou & Co. Ltd. v. Noblee Thorl G.m.b.H,	
		House of Lords [1962] A.C. 93	72
		c. Notes and Questions	86
		d. Czarnikow Ltd. v. Centrala Handlu Zagranicznego	
		Rolimpex, House of Lords [1979] A.C. 351	95
		e. Notes and Questions	108
	2.	Damages for Breach	113
		a. Seaver v. Lindsay Light Company, 233 N.Y. 273, 135	
		N.E. 329 (1922)	113
		b. Sharpe & Co. Ltd. v. Nosawa & Co., King's Bench	
		Division, [1917] 2 K.B. 814	115
		c. Notes and Questions	120
	3.	The Remedy for Breach: Specific Performance v. Damages	121
		Vivian Grosswald Curran, Cultural Immersion,	
		Difference and Categories in U.S. Comparative Law,	
		46 Am. J. Comp. L. 43, 79-83 (1998):	123
D.	Th	e Codification of International Sale of Goods Law	128
	1.	A Brief History of the U.N. Sales Convention	128
	2.	The Structure and Application of the Convention	129
		a. General Considerations	129
		b. Contract Interpretation	132
		c. Convention Rules on Contract Formation	133
		d. Gap-filling	134
		e. Remedies	135

		f.	Identification of the Goods to the Contract	. 138
		g.	Excuse for Nonperformance	138
	3.	No	tes and Questions	138
	4.	The	e Sales Convention in the United States	140
		a.	Delchi Carrier S.p.A. v. Rotorex Corp., 71 F.3d 1024	
			(2d Cir. 1995)	140
		b.	Notes and Questions	148
		c.	Selected Comparisons Between the Sales Convention	
			and the Uniform Commercial Code	159
			1) Definiteness of terms: CISG Articles 14(1), 55	
			and U.C.C. §2-205	159
			2) The Statute of Frauds: CISG Articles 11, 12,	
			18(2), 96 and U.C.C. §§1-206(1), 2-201	161
			3) The mailbox rule versus the receipt rule: CISG	
			Articles 15(2), 16(1), 22	163
			4) Revocability (duration) of offers: CISG Articles	
			15(1), 16	165
			5) Acceptance by conduct: Article 18 and U.C.C.	
			§2-206(1)(a); Restatement §§32, 45	165
			6) The battle of the forms: CISG Article 19 and	
			U.C.C. §2-207	166
			7) The parol evidence rule: CISG Article 8(3) and	
			U.C.C. §2-202	168
			8) Interpretive tools: CISG Articles 7, 8, 9 and	
			U.C.C. §§1-203, 1-205	169
	5.	The	e UNIDROIT Principles of International	
		Co	mmercial Contracts	171
		a.	Michael Joachim Bonell, The UNIDROIT Principles	
			of International Commercial Contracts: Why? What?	
			How?, 69 Tul. L. Rev. 1121 (1995)	171
		b.	Notes and Questions	185
E.	Th	e Let	tter of Credit Transaction—Financing the	
	Exp	ort-	-Import Transaction	186
	1.	Int	roduction to Basic Letter of Credit Law	186
		a.	H. Berman, The Law of International Commercial	
			Transactions (Lex Mercatoria), III INTERNATIONAL	
			Business Transactions (Folio 3) 22-28 (W. Surrey	
			& D. Wallace eds., 1983)	186

	b.	The Multiple Contract Approach to Letter of Credit	
		Law	193
		1) United City Merchants (Investments) Ltd. v. Royal	
		Bank of Canada, [1982] 2 W.L.R. 1039, 1044 [1982]	
		2 Lloyd's L.R. 1, 6 (H.L.)	193
	c.	Basics of the Commercial Letter of Credit Transaction	195
	d.	The Standby Letter of Credit	197
		Substantive Legal Issues	198
2.	Th	e Separate Contract Rule	199
	a.	Urquhart Lindsay and Co. v. Eastern Bank, Ltd.,	
		[1922] 1 K.B. 318 (K.B. Div.)	199
	b.	Maurice O'Meara Co. v. National Park Bank	
		of New York, 239 N.Y. 386, 146 N.E. 636 (1925)	204
	c.	Notes and Questions	210
3.	Th	e "Irrevocable" Letter of Credit	212
	a.	Sztejn v. J. Henry Schroder Banking Corporation,	
		31 N.Y.S.2d 631 (Sup. Ct., N.Y. Co. 1941)	212
	b.	United Bank Ltd. v. Cambridge Sporting Goods Corp.,	
		41 N.Y.2d 254, 360 N.E.2d 943 (1976)	216
	C.	Notes and Questions	224
4.	Sta	andby Letters of Credit	230
5.	Str	rict Compliance!?!	231
	a.	J.H. Rayner & Co., Ltd. v. Hambro's Bank Ltd.,	
		[1943] K.B. 37 (C.A.)	231
	b.	Rockwell International Systems, Inc. v. Citibank	
		N.A., 719 F.2d 583 (2d Cir. 1983)	236
	C.	Notes and Questions	239
	d.	Dixon, Irmaos & Cia v. Chase National Bank of New	
		York, 144 F.2d 759 (2d Cir. 1944), cert. denied, 324	
		U.S. 850 (1945)	239
	e.	Notes and Questions	245
	f.	Banco Español de Credito v. State Street Bank and	
		Trust Co., 385 F.2d 230 (1st Cir. 1967), cert. denied,	
		309 U.S. 1013 (1968)	247
	g.	Notes and Questions	257

CH	HAPTER III: GOVERNMENTAL R	EGULATION	
	OF INTERNATIONA	LTRADE	259
A			250
	Introduction		259
В.	The Historical Evolution of United		260
	1. The General Framework for Di		261
	2. From the Constitution to the S		
	The Dual Function of Tariffs as		0 < 5
	and a Tool for the Protection o		265
	3. The Interwar Period		269
	4. The Development of Trade Rel		
	Law Prior to the GATT		271
	5. The GATT and its Influence or		
	in the United States		277
	a. The United States Role in t		277
	b. The Structure of the Gener		281
	c. GATT and the World Trade	e Organization as a	
	Source of Trade Law on the	e International Level	284
C.	. GATT and its Relationship to Unite	ed States Trade Law:	
	Coordination of Trade Relief Measi	ures with the GATT	287
D.	. U.S. Regulation of the Import Tran	saction	289
	1. Classification		291
	2. Valuation		296
	3. Rules of Origin		298
	4. Type of Entry		299
	5. Avenues in Leather, Inc. v. Unit	ted States, 178 F.3d 1241	
	(Fed. Cir. 1999)		301
E.	. U.S. Regulation of the Export Trans	saction	306
	1. The History of Export Control	S	306
	a. The Trading With the Ener	my Act	306
	b. The International Emerger	ncy Economic Powers Act	310
	c. The Export Administration	n Act	318
	2. The Purpose and Structure of 1	Export Controls	324
	a. National Security Controls		325
	b. Foreign Policy Controls		326
	c. Short Supply Controls		327
	d. The Extraterritorial Effect	of Export Controls	328
		extraterritorial effect of	
	export controls		328

			2)	The Netherlands: District Court at The Hague,	
			-,	Judgment in Compagnie Europeenne Des Petroles	
				S.A. v. Sensor Nederland B.V., Sept. 17, 1982,	
			1	22 I.L.M. 66 (1983)	331
			3)	Notes and Questions	337
	3	Th	,	port Licensing Process	340
	J.			e Export Administration Regulations	340
				e Commodity Control List and Country Chart	353
	1			teral Cooperation in Export Controls	361
	4.	IVIU	IIIIIa	teral Cooperation in Export Controls	301
CH	АРТ	ER	IV:	FINANCING THE COMPLEX	363
				TRANSNATIONAL TRANSACTION:	
				BEYOND THE LETTER OF CREDIT	
A.	Int	rodu	actio	$\mathbf{n}$	363
В.	Th	e Ex	port	-Import Bank of the United States	364
	1.	Wo	rkin	ng Capital Guarantees	365
	2.	Ex	port	Credit Insurance	365
	3.	Gu	aran	itees	365
	4.	Di	rect ]	Loans	366
	.5.	Ge	nera	l Application	366
				nd Questions	366
C.	Th	e Ov	erse	as Private Investment Corporation (OPIC)	
				ltilateral Investment Guarantee Agency (MIGA)	367
D.			rtra		367
	1.	Th	oma	s B. McVey, Countertrade and Barter: Alternative	
				Financing by Third World Nations, 6 INT'L TR. L.J.	
			7 (19		368
	2.			nd Questions	393
СН	APT	ER	V:	PROFESSIONAL RESPONSIBILITY IN A	395
				TRANSNATIONAL TRANSACTIONS	
				PRACTICE	
Α	т.	1			205
			ictio		395
D.				g the Applicable Rules: Whose Law Are You Practic-	
	_			Are You Practicing It, and Whose Ethics Rules Apply	201
	OJ	ı nat	rra	ctice?	396

	1.	The Conflicts Rule of the Model Rules of Professional	
		Conduct	396
	2.	Related Rules of Conduct	402
	3.	Regulation of Lawyers in the European Community	404
		a. The CCBE Code of Conduct	404
		b. European Law on the Cross-Border Practice of Law	406
		c. The Attorney-Client Privilege: Special Problems for In-	
		House Counsel and Non-European Lawyers	409
C.	Apı		411
		Practice in a Jurisdiction Other than That in Which the	
		Lawyer is Licensed	412
	•	a. El Gemayel v. Seaman, 72 N.Y.2d 701, 533 N.E.2d 245,	
		536 N.Y.S.2d 406 (N.Y. Ct. App. 1988)	412
		b. Notes and Questions	417
		c. Sanctions Against the Unauthorized Practice of Law	419
		d. Allowance of Limited Practice by Non-Licensed Lawyers	422
		e. Practice Limited to Federal Law Matters	425
		f. Pro Hac Vice Authorization of Limited Practice	427
	2.	Affiliation with Foreign Counsel	428
	3.	Advising on Foreign Law	430
	4.	Responsibility for the Conduct of Foreign Lawyers	435
	~	a. Liability for Referral to a Foreign Lawyer	435
		b. Opinions from Foreign Counsel and Direct Employ-	
		ment of Foreign Lawyers	437
		c. Duty to Report Unethical Conduct	441
	5.	Arbitration by Out-of-State Lawyers	442
D.		cific Ethical Issues in Advising on Transnational Sales Trans-	
	-	ions	444
	1.	Must a Lawyer Involved in Negotiation or Litigation of a	
		Contract Matter Be Aware of the Sales Convention?	444
	2.	Must a Lawyer in Litigation Disclose to Another Party That	
		the Sales Convention Applies, If Doing So Would Be to the	
		Detriment of His/Her Own Client?	445
	3.	Must a Lawyer Involved in Negotiations Disclose to Another	
	•	Party That the Sales Convention Applies, If Doing So Would	
		Be to the Detriment of His/Her Own Client?	447
	4.	Can a Lawyer Prepare a Document Designed to Be Effective	
		in Multiple Jurisdictions?	448

	5.			oes a Lawyer Know Which Jurisdiction's Law He ring in Order to Determine Which Ethical Rules	
		App	oly?		450
	6.	a Pa	rty i	awyer Admitted in Only One Jurisdiction Represent In Another Jurisdiction in a Single Isolated Matter to an International Contract Governed by the Sales	
		Cor	ivent	tion?	451
E.	Not	tes ar	nd Q	uestions	451
F.	Mu	ltidis	scipl	inary Practice	452
	1.	The	Cur	rent Framework	452
	2.	Not	es ar	nd Questions	454
CH.	APT	ER V	7I:	DISPUTE RESOLUTION IN INTERNATIONAL TRADE	457
	T . 71		•		
A.		•		actions Lawyer Needs a Basic Understanding of	
_		_		lement Issues	457
В.				to Adjudicate: Determining the Appropriate Forum	
			_	oute Arises	458
	1.			cess and Jurisdiction in United States Courts	459
				Origins of Due Process in American Jurisprudence	459
		b.	The	Fourteenth Amendment Due Process Clause and	
				estions of Jurisdiction	463
			1)	Pennoyer v. Neff: Territorial Concepts of	
				Jurisdiction	463
			2)	Long-Arm Statutes	465
			3)	General Due Process Analysis	470
			4)	International Shoe: Jurisdiction for a Mobile	
				Society	471
			5)	The Road From International Shoe to World-Wide	
				Volkswagen	474
			6)	World-Wide Volkswagen Corp. v. Woodson,	
				444 U.S. 286, 100 S. Ct. 559, 62 L. Ed. 2d 490 (1980)	479
			7)	World-Wide Volkswagen to Asahi: Reasserting and	
			,	Redefining the Limits of Jurisdiction Under the Due	
				Process Clause	485
			8)	Asahi Metal Industry Co., Ltd. v. Superior Court of	
				California, 480 U.S. 102, 107 S. Ct. 1026, 94 L. Ed.	
				2d 92 (1987)	489

		,	503
	2.	Due Process Analysis and Jurisdiction Under the Brussels	
		Convention	508
		a. Article 5(1) Contract Jurisdiction	510
		J. 111 (12 ( )	514
		1) Bier v. Mines de Potasse d'Alsace, [1976]	
,		E.C.R. 1741	515
1		2) Notes and Questions	519
		3) Post-Bier cases	520
		c. Article 3 Exorbitant Jurisdiction Provisions of	
		National Laws	520
		1) Jurisdiction Based on the Nationality of the	
		Plaintiff	521
		2) Jurisdiction Based on the Mere Presence of	
		Property Belonging to the Defendant	522
		3) Jurisdiction Based on the Nationality of	
		the Defendant	523
		4) Jurisdiction in Disregard of a Choice of Forum	
		Clause Between the Parties	525
		5) Jurisdiction Based on the Place of Contracting	
		or the Place of Performance of a Contract	526
		6) Jurisdiction Based on Service During Temporary	
		Presence in the Forum State	526
		d. Notes and Questions	527
C.	Ch	oosing the Law Prior to the Dispute	533
	1.	Tzortzis v. Monark Line A/B, [1968] 1 W.L.R. 406, 411–12	
		(H.L.)	534
	2.	U.C.C. §1-105	535
	3.	Restatement (Second) Conflict of Laws §187	536
	4.	The European Communities Convention on the Law	
		Applicable to Contractual Obligations, Arts. 3 & 4, 23 O.J.	
		Eur. Comm. (No. L 266) 1 (1980)	537
	5.	Russel Weintraub, How to Choose Law for Contracts, and How	
		Not to: The EEC Convention, 17 Tex. Int'l L.J. 155, 157-60	
		(1982)	538
	6.	İsaak I. Dore, Choice of Law Under the International Sales	
		Convention: A U.S. Perspective, 77 Am. J. Int'l. L. 521,	
		529-33 (1983)	540
	7.	Notes and Questions	541
			xvii

Ústřední knihovna právnické fakulty MU Brno

D.	Ch	oice	of Forum Issues: Litigation or Arbitration?	542
	1.		oice of Forum	542
		a.	Ronald A. Brand, Nonconvention Issues in the Prepara-	
			tion of Transnational Sales Contracts, 8 J.L. & Com. 145,	
			146-62 (1988)	542
		<b>b</b> .		
			473 U.S. 614 (1985)	562
		c.	Notes and Questions	581
		d.	Brand, Nonconvention Issues (continued)	582
	2.		oice of Arbitration Clauses	584
		a.	General Concerns	584
		b.	Notes and Questions	586
		c.	Pre-judgment Attachments in Arbitration	587
	3.	En	forcement of Arbitration Awards	588
E.	Rec	cogr	nition of Foreign Judgments in the United States	590
	1.	Sis	ter State Judgments: The Full Faith and Credit Clause	590
	2.	Fo	reign Nation Judgments: The Comity Approach	592
		a.	Common Law Foundations	592
		<b>b</b> .	Hilton v. Guyot, 159 U.S. 113, 16 S. Ct. 139, 40 L. Ed.	
			95 (1895)	593
		c.	Notes and Questions	602
		d.	After Hilton	603
			1) Somportex Ltd. v. Philadelphia Chewing Gum Corp	).,
			453 F.2d 435 (3d Cir. 1971), cert. denied, 405 U.S.	
			1017 (1972)	603
			2) Restatement Sections 481 and 482	615
			3) Notes and Questions	620
		e.	The Uniform Foreign Money-Judgments Recognition	
			Act and Current State Law	621
		f.	Defenses to Recognition	623
			1) Finality and Conclusiveness of the Judgment	623
			2) Due Process	624
			3) In Personam and In Rem Jurisdiction	625
			4) Subject Matter Jurisdiction	627
			5) Notice and Opportunity to be Heard	628
			6) Fraud	629
			7) Public Policy	630
			8) Inconsistent Judgments	632

			9) Judgments Contrary to Party Agreement	632
			10) Inconvenient Forum	632
		g.	Problems with the U.S. Approach	633
		0	The U.S. Initiative at the Hague Conference on Private	
			International Law	635
		i.	The Difficult Issues Ahead in Negotiating a Hague	
			Convention	639
F.	The	e Eu	ropean Approach to Recognition and Enforcement	641
			e Brussels Convention	641
			gments from Non-Member States	645
		a.	Decision of the German Federal Court of Justice	
			(BGH) from June 4, 1992, translation from 32 I.L.M.	
			1327 (1993)	646
		b.	Notes and Questions	664
G.	For		Currency Judgments — Another Look at Choice of	
		0	and Choice of Law	665
	1.	Dis	cussion	665
			The Home Currency Judgment Rule as Federal Law	668
			The Statute	668
		c.	U.S. Case Law	671
		d.	Problems with the Rules	676
		e.	Miliangos, the Restatement and the Uniform	
			Foreign-Money Claims Act as Sources of a New Rule	679
			1) Miliangos v. George Frank (Textiles) Ltd.	679
			2) The Restatement (Third) of Foreign Relations	
			Law	683
			3) The Uniform Foreign-Money Claims Act	685
		f.	Testing the Alternatives	688
	2.		tes and Questions	692
H.	Liti	gatio	on Procedure After the Forum is Chosen	693
	1.	Ser	vice of Process	693
		a.	Rule 4 of the Federal Rules of Civil Procedure	693
		b.	Notes and Questions	700
		c.	Volkswagenwerk Aktiengesellschaft v. Schlunk,	
			486 U.S. 694, 108 S. Ct. 2104, 100 L. Ed. 2d 722	
			(1988)	700
		d.	Notes	718
	2.	Dis	covery Abroad	721

			The Evolution of Extraterritorial Discovery in the United	
			States	721
			U.S. Law and the Hague Evidence Convention	729
			Notes and Questions	732
			Société Nationale Industrielle Aérospatiale v. U.S. District	
			Court for the Southern District of Iowa, 482 U.S. 522, 107	
			S. Ct. 2542, 96 L.Ed. 2d 461 (1987)	734
		e. I	Notes and Questions	7.71
CH.	APT	ER V	II: DEALS AND DISPUTES INVOLVING FOREIGN	
			SOVEREIGNS: FOREIGN SOVEREIGN	
			IMMUNITY AND ACT OF STATE	775
Δ	Sor	oroia	n Immunity — The Jurisdictional Defense	776
A.		_	Schooner Exchange v. McFaddon, 11 U.S. (7 Cranch)	//0
	1.		3 L. Ed. 287 (1812)	776
	2		tinuation of the Absolute Theory of Sovereign	//0
	۷.		unity	781
			Berizzi Bros. Co. v. The Pesaro, 271 U.S. 562, 46	701
			S. Ct. 611, 70 L. Ed. 1088 (1926)	781
	3.		Rise of a Restrictive Theory of Sovereign Immunity	785
	J.		The "Tate Letter," 26 Dept. State Bull. 984 (1952)	786
			Notes and Questions	789
	4.		ect Matter Jurisdiction and the FSIA	789
	1.		Texas Trading v. Federal Republic of Nigeria, 647	, 0 )
			F.2d 300 (2d Cir. 1981), cert. denied, 454 U.S. 1148	
			(1982)	790
			Libra Bank Ltd. v. Banco Nacional De Costa Rica,	
			576 F.2d 47 (2d Cir. 1982)	814
			Notes and Questions	818
	5.		onal Jurisdiction and the FSIA	820
	6.	Fede	ral Question Jurisdiction and the FSIA	820
	7.	Note	es and Questions	821
B.	The	e Act o	of State Doctrine — The Substantive Defense	824
	1.	The	Act of State Doctrine Before Sabbatino	824
	2.	Note	es and Questions	831
	3.	Act o	of State Doctrine and Expropriation Cases:	
		The	First Hickenlooper Amendment	832

	4.	Banco Nacional De Cuba v. Sabbatino	833
	5.	The Second Hickenlooper Amendment	856
	6.	Restatement (Third) Foreign Relations Law §444 (1987)	857
	7.	Notes and Questions	861
	8.	Alfred Dunhill of London, Inc. v. the Republic of Cuba,	
		425 U.S. 682, 96 S. Ct. 1854, 48 L. Ed. 2d 301 (1976)	862
	9.	Notes and Questions	885
	10.	Act of State as a Defense to U.S. Regulatory Legislation	886
		a. Mannington Mills, Inc. v. Congoleum Corp., 595	
		F.2d 1287 (3d Cir. 1979)	886
		b. Notes and Questions	894
		c. W.S. Kirkpatrick & Co., Inc. v. Environmental	
		Tectonics Corp., 493 U.S. 400, 110 S. Ct. 701, 107	
		L. Ed. 2d 816 (1990)	896
		d. Notes and Questions	903
CH	APT	ER VIII: LEGISLATING MORALITY IN INTERNATIONAL BUSINESS TRANSACTIONS: NATIONAL AND INTERNATIONAL PROHIBITIONS ON	
		CORRUPT BUSINESS PRACTICES	905
A.	The	e Foreign Corrupt Practices Act	905
	1.	Introduction	905
		a. The Accounting Provisions	907
		b. The Anti-Bribery Provisions	907
		c. The Exception	908
		d. The Affirmative Defenses	909
		e. The Knowledge Requirement for Vicarious Liability	910
		f. Rescission of the Eckhardt Amendment	911
		g. The International Anti-Bribery and Fair Competition	
		Act of 1998	911
		h. FCPA Compliance: Recognizing "Red Flags"	913
		i. Department of Justice Opinion Procedure and	
		Company Compliance Programs	915
		j. Penalties	916
	2.	Department of Justice Opinion Review Procedure	
		No. 96–2, Nov. 25, 1996	918
	3.	Notes and Questions	920

	4. United States v. McLean, 738 F.2d 655 (5th Cir. 1984)	922			
	5. Notes and Questions	927			
	6. United States v. Liebo, 923 F.2d 1308 (8th Cir. 1991)	929			
	7. Notes and Questions	934			
B.	International Developments	935			
	1. Introduction	935			
	2. The OECD Convention on Combating Bribery of Fore	eign			
	Public Officials	937			
	3. Notes and Questions	940			
СН	HAPTER IX: BEYOND THE DIRECT SALE: ALTERNATIV	E			
	FORMS OF INVOLVEMENT IN				
	INTERNATIONAL TRADE	943			
Α.	Introduction	943			
	Employees, Agents and Distributors	945			
	1. Host Country Regulation	945			
	2. Home Country Regulation				
	3. Equal Employment Opportunity Commission v. Arabian				
	American Oil Co., 499 U.S. 244, 111 S.Ct. 1227, 113				
	L.Ed.2d 274 (1991)	949			
	4. Notes and Questions	962			
	5. Sumitomo Shoji America, Inc. v. Avagliano, 457 U.S.				
	176, 102 S.Ct. 2374, 102 S.Ct. 2374 (1982)	963			
	6. Notes and Questions	970			
C.	Licensing	971			
СН	HAPTER X: INVESTMENT ABROAD — EXTENDING TH	IF.			
	INVOLVEMENT, INCREASING THE RISK	975			
A.	Introduction	975			
В.	Expropriation — The Ultimate Risk: The Application				
	of Public International Law to Private Investment				
	1. Development of the Right to Compensation	976			
	a. Chorzow Factory Case, 1926–29, P.C.I.J., Ser. A,				
	Nos. 7, 9, 17, 19.	976			
	b. The "Hull Doctrine"	981			

		C.	Sources of International Law	982		
			1) Statute of the International Court of Justice			
			Articles 38 & 59:	982		
			2) Restatement (Third) Foreign Relations Law			
			of the United States §102 (1987):	983		
			3) U.N. General Assembly Resolutions: The U.N.			
			Charter	983		
			4) U.N. General Assembly Resolutions: An Example	984		
		d.	Notes and Questions	993		
		e.	International Arbitral Tribunal: Award on the Merits in			
			Dispute Between Texaco Overseas Petroleum Company/	/		
			California Asiatic Oil Company and the Government			
			of the Libyan Arab Republic (Compensation for			
			Nationalized Property), 17 I.L.M. 1 (1978)	994		
		f.	Notes and Questions	1019		
	2.	Ins	surance for Political Risk	1022		
		a.	The Overseas Private Investment Corporation (OPIC)	1022		
		b.	American Arbitration Association, In the Matter of:			
			Revere Copper and Brass, Inc. and Overseas Private			
			Investment Corp. (OPIC), Case No. 16 10 0137 76,			
			17 I.L.M. 1321 (1978)	1024		
		C.	Notes and Questions	1048		
		d.	The Multilateral Investment Guarantee Agency			
			(MIGA)	1052		
C.	Bilateral Investment Treaties					
	1.	R. '	Todd Shenkin, Trade-Related Investment Measures in			
		Bil	ateral Investment Treaties and the GATT: Moving			
	Toward a Multilateral Investment Treaty, 55 U. PITT. L.					
		RE	v. 541 (1994)	1054		
	2.	No	tes and Questions	1058		
D.	Th	e Int	ternational Centre for Settlement of Investment			
	Dis	spute	es Between States and Nationals of Other States (ICSID)	1058		
E.	Th	e Dr	aft Multilateral Agreement on Investment	1061		
F.	Revisiting the Takings Issue: Two Views of the Development					
	of	the F	Right to Compensation Over Time	1062		
	1.	JOH	HN A. WESTBERG, INTERNATIONAL TRANSACTIONS AND			
		CL	aims Involving Government Parties: Case Law			

		OF THE IRAN-UNITED STATES CLAIMS TRIBUNAL 219–227,	1062	
	2.	249–252 (1991) Kenneth J. Vandevelde, Sustainable Liberalism and the	1062	
	International Investment Regime, MICH. J. INT'L L. 373			
		(1998)	1073	
	3.	Notes and Questions	1091	
СН	APT	TER XI: U.S. ANTITRUST REGULATION		
		OF INTERNATIONAL BUSINESS		
		TRANSACTIONS	1093	
A.	Int	roduction: The Economics and History of U.S. Antitrust		
	Lav	V	1093	
	1.	The Basic Statutes	1094	
	2.	Enforcement of the Antitrust Laws	1103	
	3.	Jurisdiction and the Antitrust Laws	1105	
		a. American Banana Co. v. United Fruit Co., 213 U.S.		
		347 (1909)	1106	
		b. Branch v. FTC, 141 F.2d 31 (7th Cir. 1944)	1111	
		c. United States v. Aluminum Co. of America, 148		
		F.2d 416 (2d Cir. 1945)	1111	
		d. U.S. v. Aluminum Co. of America, 91 F. Supp. 333		
		(S.D.N.Y. 1950)	1123	
		e. Notes and Questions	1125	
		f. Continental Ore Co. v. Union Carbide & Carbon		
		Corp., 370 U.S. 690 (1962)	1126	
		g. Notes and Questions	1131	
		h. Hartford Fire Insurance Co. v. California, 509 U.S.		
		764 (1993)	1131	
		i. Notes and Questions	1150	
	4.	Interaction Between American and Foreign Antitrust Laws	1151	
		a. Youri Devuyst, The International Dimension of the EC's		
		Antitrust Policy: Extending the Level Playing Field, 2		
		European Foreign Affairs Review 459,		
		460-462,464-468, 476-478 (1998)	1152	
		b. Notes and Questions	1161	
B.	Res	straints of Trade Involving Governments	1162	
		United States v. Sisal Sales Corp., 274 U.S. 268 (1927)	1162	

	2.	2. United States v. Socony-Vacuum Oil Co., Inc., 310 U.S.						
		150	(1940)	1166				
	3.	Gol	dfarb v. Virginia State Bar, 421 U.S. 773 (1975)	1169				
	4. Notes and Questions							
	5. Occidental Petroleum Corp. v. Buttes Gas & Oil Co., 331							
		F. S	Supp. 92 (C.D. Cal. 1971), aff'd per curiam, 461 F.2d					
			1 (9th Cir. 1972), cert. denied, 409 U.S. 950 (1972)	1172				
	6.	tes and Questions	1189					
	7.	- 10110 TT 0TIT D FOF (TTT 1001)						
	8.	Inte	ernational Association of Machinists and Aerospace					
	Workers, (IAM) v. Organization of Petroleum Exporting Countries (OPEC), 649 F.2d 1354 (9th Cir. 1981), cert.							
			ied, 454 U.S. 1163	1195				
	9.		tes and Questions	1206				
CH	APT	'ER X	KII: U.S. TAXATION OF EXPORT AND OVERSEAS					
			OPERATIONS	1207				
Α.	Int	rodu	ction	1207				
B.	The Basic Factors: Status and Source							
	1. Status of the Taxpayer							
		a.	Citizens	1209				
			1) Cook v. Tait, 265 U.S. 47 (1924)	1209				
			2) Notes and Questions	1212				
			3) Taxation Jurisdiction in Other Systems	1212				
			a) De Beers Consolidated Mines, Ltd. v.					
			Howe, [1906] A.C. 455 (H.L.)	1212				
			b) Notes and Questions	1215				
			4) Special Code Sections for Natural Persons Abroad	1215				
		b.	Resident Aliens	1216				
		c.	Domestic Corporations	1217				
		d.	Treaty Adjustments to the Basic Status Rules	1217				
		e.	Notes and Questions	1218				
	2.	Sou	irce of Income	1218				
		a.	The Basic Issues and Code Sections	1218				
		b.	A.P. Green Export Co. v. United States, 284 F.2d 383					
			(Ct. Cl. 1960)	1219				
		c.	Notes and Questions	1229				

C.	Fundamental Issues o	f Corporate Taxation	1230		
D.					
	1. Alternative Levels	of Involvement in Overseas Markets	1231		
	2. Code Provisions	Dealing with International Transactions	1235		
	3. Basic Planning St		1239		
E.	Entering the Overseas Market: The Foreign Tax Credit and				
	Branch Operations (§	§78, 164, 275(a)(4), 894(a), 901–907)	1240		
	1. The Credit and D	eduction Alternatives	1240		
	2. What Taxes are C	reditable?	1241		
	a. Keasbey & M	attison Co. v. Rothensies, 133 F.2d 894			
	(3d Cir. 1943	)	1242		
	b. Other Post-B	iddle Cases	1245		
	3. The Direct Credit	t of §901	1247		
	4. The Section 904 I	Limitation	1249		
	5. Revisiting the \$16	54 Deduction Alternative	1250		
	6. The \$902 Indirect	t Credit	1252		
	7. Notes and Questions				
F.	Bilateral Tax Treaties				
	1. General Issues		1257		
	2. Rev. Rul. 76–322,	1976–2 C.B. 487	1258		
	3. Other Convention	n Issues	1261		
	4. Notes and Questi	ons	1262		
G.	Establishing a Foreign	Subsidiary (§§332, 351, 367)	1263		
H.	Operating Through a Foreign Subsidiary (Subpart F:				
	\$\$951–964, with a focus on \$\$951(1) & (b), 952, 954(a), (b),				
		8(a), 959(a), 960(a)(1), and 964(a) & (b))	1264		
	1. The purpose behi	*	1264		
	2. CCA, Inc. v. Com	missioner, 64 T.C. 137 (1975)	1270		
	3. Notes and Questi		1275		
		nings in U.S. Property (§956)	1275		
,		issioner, 68 T.C. 979 (1977)	1276		
		eflect Imputed Income	1281		
I.	Intercompany Pricing: Preventing Tax Avoidance Through				
	§482 Reallocations				
	1. Introductory Not		1282		
		el Corp. v. Commissioner, 617 F.2d 942			
	(2d Cir. 1980)		1284		
	3. Notes and Questi	ons	1295		

4.	4. Relief from Double Taxation: When Sections 482 and 90			
	Co	nverge	1296	
5.	Sch	Schering Corp. v. Commissioner, 69 T.C. 579 (1978)		
6.	Notes and Questions			
7.	Administrative Guidance for Avoidance of Double		•	
	Taxation in §482 Reallocations		1311	
	a.	Rev. Proc. 91–22, 1991–1 C.B. 526; 1991–11 I.R.B.		
		11, March 18, 1991	1312	
	b.	Rev. Proc. 91–23, 1991–1 C.B. 534; 1991–11 I.R.B. 18,		
		March 18, 1991	1332	
	C.	Rev. Proc. 91–26, 1991–1 C.B. 543; 1991–17 I.R.B. 7,		
		April 29, 1991	1352	
	d.	Rev. Rul. 80–231, 1980–2 C.B. 219; Rev. Rul. 80–231,		
		July, 1980	1353	
8.	Notes and Questions for Review		1359	