

AN INTERDISCIPLINARY APPROACH TO TEACHING INTERNATIONAL BUSINESS TRANSACTIONS IN A GLOBAL ECONOMIC ENVIRONMENT

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I: INTRODUCTION:

Several challenges face professors teaching International Business Transactions in a globalized business environment. One of these challenges is defining the scope and nature of the subject. The term International Business Transactions has been used and viewed by several experts, professors, text writers, and publishers as an umbrella phrase designed to capture virtually every conceivable transaction with any international dimensions. As such, the term has been used to embrace several divergent subject areas. For instance, international trade disputes concerning the obligations of nation states under The General Agreement on Tariffs and Trade (GATT) now the World Trade Organization (WTO) are often put under the umbrella of international business transactions notwithstanding their obvious public law and political implications. Thus, questions of dumping, duties, subsidies and countervailing duties are sometimes treated under the rubric international business transactions. Also included in this category are international sales of goods, documentary letters of credit, and import/export transactions many other sales related transactions. Issues relating to foreign direct investment and development and international commercial dispute resolution are often treated under this heading. In short, everything seems to fit in. Yet, it appears that the subject could benefit from a much more careful definition of its nature and scope.

II: DESIGNING INTERNATIONAL BUSINESS TRANSACTIONS:

The challenge posed by the over inclusiveness noted above is how to design a consistent course content that makes sense across jurisdictions. In general, the law of contracts, torts, property, corporations tends to have certain universal structural attributes across legal systems and jurisdictions. In the case of international business transactions such attributes appear to be missing. Students from the same law school are likely to have different conceptions of the subject depending on the professor and the text book used. If there is such a risk of significant variability within the same law school one can only image the degree of divergence on what the subject is across countries and jurisdictions. Perhaps, one of the most important tasks for professors of international business transactions is to design the general contours or basic structures of the subject to bring to some convergence or uniformity of purpose.

One such solution would be to design the structure of the subject with a significant focus on strategy and planning international business transactions. Strategic planning requires mastering many different areas of law, economic, business and culture.

The course design might then take on the appearance of such well known subjects as Conflict of Laws, Private International Law and Remedies all of which touch several different areas of the law. The roots of international transactions necessary for strategic planning lie in Corporations or Company Law, the Law of Contracts, Corporate Finance, Banking, Taxation and many others. Indeed, one of the most important areas of law essential to strategic planning is Civil Procedure. Unfortunately this is often ignored except in the limited context of forum selection and arbitration clauses. A well designed course would therefore be one that incorporates, touches upon and is sensitized to all the necessary elements of various aspects of the law of transactions without being overwhelmed by them. How this might work out will be illustrated in the suggested approach below.

(1). Strategic Planning in International Business Transactions: A Multidisciplinary Approach

The starting point for designing the structure of a course in strategy and planning in international business transactions is to be only as inclusive as is necessary to facilitate effective strategic planning. Thus, the focus is on those activities and transactions which form a part of the planning and strategic decisions made in international operations from innovation and product design to plant location, from production to market access and marketing and others. Most important in this approach is to design a system for a deeper understanding and appreciation of the business and economic theories that drive the strategic mind set of entrepreneurs and which influence their motivations, the strategies adopted and implemented. A corporate counsel that has this deep appreciation of the client's motivations and business is better able to design an effective legal strategy for implementing the goals and objectives of the client.

The more one understands the mind-set of business enterprises, the easier it would be to provide adequate and meaningful legal advice. That mind set may be acquired by studying the globalization of business and its implications through the strategic behavior of global enterprises.

(2). Globalization of Business

The current strategic behavior of global enterprises is best explained by three inter-related business phenomena. The first relates to the nature of the world economy. The economies of the several countries of the world have been transformed into a global village or a single global market place. This phenomenon has helped companies to focus their energies on seeking uniformity and universality in their product design and marketing strategies. The transformation of the world's economy has been facilitated by the second phenomenon: the emergence and spread of the MNE. As will become apparent later, the nature of MNEs is often dictated by their characteristic attributes and distinctive behavior. The MNE is an enterprise that has acquired the habit of mind for aggressive strategic maneuvering. Such conduct is facilitated by the transformation of the world economy. The nature of the world economy and the MNE together help explain the emergence of the third phenomenon: the global product. MNEs have developed products and services destined for the satisfaction of global consumers. Global products or services are products or services designed with universal attributes that can easily and slightly be modified to satisfy the needs of consumers in different regions of the world. How those products and services are distributed is a matter of corporate strategy.

(a). *The World as a Global Village.*

It is now a widely held view that the world has become, or is evolving into a single global market place, where the role of the political map characterized by national borders is fast becoming a thing of the past. The catalyst for this change is the proletarianization of communications and other forms of technology. Through technological advances, once isolated and impoverished societies have been brought into contact with the products and the allurements of modernity. Access to speedier and more efficient information technology has facilitated the instantaneous flow of financial and industrial activities once hampered by national boundaries and governmental controls. The resulting impact of powerful modern technology is “a new commercial reality—the emergence of a global village with a global market for global products or standardized consumer products on a previously unimagined scale of magnitude.” The Internet is perhaps the best example of the prototypical village of yester year brought to us electronically and on a global scale. However, the notion of a single unified global market seems terribly at odds with both current and legal realities. For, participants in this global village have to contend with issues of the exercise of contending legislative jurisdiction over activities within the village. Certainly, the role of strategy for plant location, market access and other business operations is thereby elevated.

The suggestion of a global village seems inconsistent with the persistent protectionist policies of several governments and the failure of the GATT/WTO system to achieve meaningful free trade for the world. There is therefore always some tension between the vision of MNEs and those of governments. Notwithstanding any regulatory obstacles, the strategic vision of global enterprises has long ceased to stop at their national or regional borders. MNEs have always seen their economic space to be the entire globe and the human or material resources of the world to have no national color. Moreover, to a vast majority of consumers, the national origins of products do not determine their ultimate buying conduct. Indeed, even if consumers' purchasing behavior were motivated by nationality considerations, it would be difficult to find a truly national product. Delocalization and outsourcing have made the rules of origin of products more difficult to apply in today's global economy. Both product ideas and products seem to lack a true national origin.

(b). *The Multinational/ Global Enterprise*

Developing a deeper sense of the business environment of entrepreneurs must start with that of global enterprises. The strategic vision of global enterprises in the world economy can best be understood from a study of the distinctive nature and characteristic behavior of these enterprises. Prominent among global enterprises is the multinational enterprise (MNE). The MNE continues to defy definition, even among its most astute observers. The MNE is nevertheless, best understood as an international system that often owns or commands globally significant amounts of technological, financial, managerial, human, or marketing resources. The MNE represents a network of operations, services, or a global multi-plant system connected through a common resource pool and a common strategy and with all its component parts, marching to the tune of a mono centric or polycentric management command system. MNEs differ in size, geographic and product diversification. Their complexity, flexibility and technical capabilities vary depending on the available resources and the number of countries in which they operate. Irrespective of their sizes, all MNEs have to respond to the specific requirements of national laws and geopolitical considerations. However, the MNE enjoys

tremendous operational flexibility, as its decisions are neither bound nor seriously limited by considerations of distance, time, space, or by regional, national, or cultural allegiances. Though specific decisions on plant location, or marketing might fall to the dictates of the management command system, such decisions are designed to enhance the *flexibility* of the multinational system.

This brief description of the global business environment and the mentality of global enterprises, raise several points of interest to transnational practitioners involved in strategic planning, designing collaborations and alliances or product distribution systems. It is apparent from the characteristic behavior of global enterprises that their transactions cannot be isolated and differentiated from the total corporate strategic vision. Whether or not the totality of corporate objectives can be achieved will depend on how effectively transnational practitioners comply with the laws of the different jurisdictions affected by the plan. The laws of different countries can be used to enhance operational efficacy at each stage of the operations. Thus, the choice of the situs for product design, outsourcing, assembly and other pre-marketing activities should be induced by engaging the laws of those countries that would make the ultimate objectives of the strategy most effective.

If the structure of international business transactions is designed with a mind to infusing business, economics, and socio-cultural issues into the law for the advancement of the interest of entrepreneurs we can perhaps begin to move towards some convergence in the critical elements of the law in this area.