**Alternate Case Problems**

*Chapter 25*

**International Law in a Global Economy**

**25–1.  Act of State Doctrine.** W. S. Kirkpatrick & Co. learned that the Republic of Nigeria was interested in contracting for the construction and equipping of a medical center in Nigeria. Kirkpatrick, with the aid of a Nigerian citizen, secured the contract as a result of bribing Nigerian officials. Nigerian law prohibits both the payment and the receipt of bribes in connection with the awarding of government contracts, and the U.S. Foreign Corrupt Practices Act of 1977 expressly prohibits U.S. firms and their agents from bribing foreign officials to secure favorable contracts. Environmental Tectonics Corp., International (ETC), an unsuccessful bidder for the contract, learned of the bribery and sued Kirkpatrick in a federal district court for damages. The district court granted summary judgment for Kirkpatrick on the ground that resolution of the case in favor of ETC would require imputing to foreign officials an unlawful motivation (the obtaining of bribes) and accordingly might embarrass the Nigerian government or interfere with the conduct of U.S. foreign policy. Was the district court correct in assuming that the act of state doctrine barred ETC's action against Kirkpatrick? What should happen on appeal? Discuss fully. [*W. S. Kirkpatrick & Co. v. Environmental Tectonics Corp., International,* 493 U.S. 400, 110 S.Ct. 701, 107 L.Ed.2d 816 (1990)]

**25-2. Sovereign Immunity.** George Janini and other former professors and employees of Kuwait University (the plaintiffs) were terminated from their positions following Iraq’s invasion of Kuwait in August 1990. Following the invasion, the government of Kuwait is­sued a decree stating, among other things, that “contracts concluded between the Government and those non-Kuwaiti workers who worked for it .  .  . shall be considered automatically abrogated because of the impossibility of enforcement due to the Iraqi inva­sion.” The plaintiffs sued Kuwait University in a U.S. court, alleging that their termina­tion breached their employment contracts, which required nine months’ notice before termination. The plaintiffs sought back pay and other benefits to which they were entitled under their contracts. The university claimed that, as a government-operated institution, it was immune from the jurisdiction of U.S. courts under the doctrine of sovereign im­munity. What exceptions are made to this doctrine? Will an exception apply to the univer­sity’s activities with respect to the plaintiffs? Discuss fully. [*Janini v. Kuwait University,* 43 F.3d 1534 (D.C. Cir. 1995)]

**25-3. Sovereign Immunity.** Nuovo Pignone, Inc., is an Italian company that designs and manufactures turbine systems. Nuovo sold a turbine system to Cabinda Gulf Oil Co. (CABGOC). The system was manufactured, tested, and inspected in Italy, then sent to Louisiana for mounting on a platform by CABGOC’s contractor. Nuovo sent a represen­tative to consult on the mounting. The platform went to a CABGOC site off the coast of West Africa. Marcus Pere, an instrument technician at the site, was killed when a tur­bine within the system exploded. Pere’s widow filed a suit in a federal district court against Nuovo and others. Nuovo claimed sovereign immunity on the ground that its majority shareholder at the time of the explosion was Ente Nazionale Idrocaburi, which was created by the government of Italy to lead its oil and gas exploration and develop­ment. Is Nuovo exempt from suit under the doctrine of sovereign immunity? Is it subject to suit under the “commercial activity” exception? Why or why not? [*Pere v. Nuovo Pignone, Inc.,* 150 F.3d 477 (5th Cir. 1998)]

**25–4. Sovereign Immunity.** Tonoga, Ltd., doing business as Taconic Plastics, Ltd., is a manufacturer incorporated in Ireland with its principal place of business in New York. In 1997, Taconic entered into a contract with a German construction company to supply special material for a tent project designed to shelter religious pilgrims visiting holy sites in Saudi Arabia. Most of the material was made in, and shipped from, New York. The company did not pay Taconic and eventually filed for bankruptcy. Another German firm, Werner Voss Architects and Engineers, acting as an agent for the government of Saudi Arabia, guaranteed the payments due Taconic to induce it to complete the project. When Taconic received all but the final payment, the firm filed a suit in a federal district court against the government of Saudi Arabia, claiming a breach of the guaranty and seeking to collect, in part, about $3 million. The defendant filed a motion to dismiss based, in part, on the doctrine of sovereign immunity. Under what circumstances does this doctrine apply? What are its exceptions? Should this suit be dismissed under the “commercial activity” exception? Explain. [*Tonoga, Ltd. v. Ministry of Public Works and Housing of Kingdom of Saudi Arabia,* 135 F.Supp.2d 350 (N.D.N.Y. 2001)]

**25-5. Import Control.** In 1996, the International Trade Administration (ITA) of the U.S. Department of Commerce assessed antidumping duties against Koyo Seiko Co., NTN Corp., and other companies, on certain tapered roller bearings and their components imported from Japan. In assessing these duties, the ITA requested information from the makers about their home market sales. NTN responded in part that its figures should not include many sample and small-quantity sales, which were made to enable customers to decide whether to buy the products. NTN provided no evidence to support this assertion, however. In calculating the fair market value of the bearings in Japan, the ITA determined, among other things, that sample and small-quantity sales were within the makers’ ordinary course of trade. Koyo and others appealed these assessments to the U.S. Court of International Trade. NTN objected in part to the ITA’s inclusion of sample and small-quantity sales. On what basis should the ITA make such determinations? Should the court order the ITA to recalculate its assessment on the basis of NTN’s objection? Explain. [*Koyo Seiko Co. v. United States,* 186 F.Supp.2d 1332 (CIT [Court of International Trade] 2002)]

**25–6. Import Controls.** DaimlerChrysler Corp. makes and markets motor vehicles. DaimlerChrysler assembled the 1993 and 1994 model years of its trucks at plants in Mexico. Assembly involved sheet metal components sent from the United States. DaimlerChrysler subjected some of the parts to a complicated treatment process, which included the application of coats of paint to prevent corrosion, to impart color, and to protect the finish. Under federal law, goods that are assembled abroad using U.S.-made parts can be imported tariff free. A federal statute provides that painting is “incidental” to assembly and does not affect the status of the goods. A federal regulation states that “painting primarily intended to enhance the appearance of an article or to impart distinctive features or characteristics” is not incidental. The U.S. Customs Service levied a tariff on the trucks. DaimlerChrysler filed a suit in the U.S. Court of International Trade, challenging the levy. Should the court rule in DaimlerChrysler’s favor? Why or why not? [*DaimlerChrysler Corp. v. United States,* 361 F.3d 1378 (Fed.Cir. 2004)]

**25–7. Comity.** Jan Voda, M.D., a resident of Oklahoma City, Oklahoma, owns three U.S. patents related to guiding catheters for use in interventional cardiology, as well as corresponding foreign patents issued by the European Patent Office, Canada, France, Germany, and Great Britain. Voda filed a suit in a federal district court against Cordis Corp., a U.S. firm, alleging infringement of the U.S. patents under U.S. patent law and of the corresponding foreign patents under the patent law of the various foreign countries. Cordis admitted, “[T]he XB catheters have been sold domestically and internationally since 1994. The XB catheters were manufactured in Miami Lakes, Florida, from 1993 to 2001 and have been manufactured in Juarez, Mexico, since 2001.” Cordis argued, however, that Voda could not assert infringement claims under foreign patent law because the court did not have jurisdiction over such claims. Which of the important international legal principles discussed in this chapter would be most likely to apply in this case? How should the court apply it? Explain. [*Voda v. Cordis Corp.,* 476 F.3d 887 (Fed.Cir. 2007)]

**25–8.** **Sovereign Immunity.** When Ferdinand Marcos was president of the Republic of the Philippines, he put assets into a company called Arelma. Its holdings are in New York. A group of plaintiffs, referred to as the Pimentel class, brought a class-action suit in a U.S. district court for human rights violations by Marcos. They won a judgment of $2 billion and sought to attach Arelma’s assets to help pay the judgment. At the same time, the Republic of the Philippines established a commission to recover property wrongfully taken by Marcos. A court in the Philippines was determining whether Marcos’s property, including Arelma, should be forfeited to the Republic or to other parties. The Philippine government, in opposition to the Pimentel judgment, moved to dismiss the U.S. court proceedings. The district court refused, and the U.S. Court of Appeals for the Ninth Circuit agreed that the Pimentel class should take the assets. The Republic of the Philippines appealed. What are the key international legal issues? [*Republic of the Philippines v. Pimentel,* 553 U.S. 851, 128 S.Ct. 2180, 171 L.Ed.2d 131 (2008)]

**25–9. Dumping.** The fuel for nuclear power plants is low enriched uranium (LEU). LEU consists of feed uranium enriched by energy to a certain assay—its percentage of the isotope necessary for a nuclear reaction. The amount of energy is described by an industry standard as a “separative work unit” (SWU). A nuclear utility may buy LEU from an enricher, or the utility may provide an enricher with feed uranium and pay for the SWUs necessary to produce LEU. Under an SWU contract, the LEU returned to the utility may not be exactly the particular uranium the utility provided. This is because feed uranium is fungible and trades like a commodity (such as wheat or corn), and profitable enrichment requires the constant processing of undifferentiated stock. LEU imported from foreign enrichers, including Eurodif, S.A., was purportedly being sold in the United States for “less than fair value.” Does this constitute dumping? Explain. If so, what could be done to prevent it? [*United States v. Eurodif, S.A.,* 555 U.S. 305, 129 S.Ct. 878, 172 L.Ed.2d 679 (2009)]

**25-10. A Question of Ethics**

Ronald Riley, a U.S. citizen, and Council of Lloyd’s, a British insurance corporation with its principal place of business in London, entered into an agreement in 1980 that allowed Riley to underwrite insurance through Lloyd’s. The agreement provided that if any dispute arose between Lloyd’s and Riley, the courts of England would have exclusive jurisdiction, and the laws of England would apply. Over the next decade, some of the parties insured under policies that Riley underwrote experienced large losses, for which they filed claims. Instead of paying his share of the claims, Riley filed a lawsuit in a U.S. district court against Lloyd’s and its managers and directors (all British citizens or entities), seeking, among other things, rescission of the 1980 agreement. Riley alleged that the defendants had violated the Securities Act of 1933, the Securities Exchange Act of 1934, and Rule 10b-5. The defendants asked the court to enforce the forum-selection clause in the agreement. Riley argued that if the clause was enforced, he would be deprived of his rights under the U.S. securities laws. The court held that the parties were to resolve their dispute in England. *[Riley v. Kingsley Underwriting Agencies, Ltd*.,969 F.2d 953 (10th Cir. 1992)]

**1.** Did the court’s decision fairly balance the rights of the parties? How would you argue in support of the court’s decision in this case? How would you argue against it?

**2.** Should the fact that an international transaction may be subject to laws and remedies different from or less favorable than those of the United States be a valid basis for denying enforcement of forum-selection and choice-of-law clauses?

**3.** All parties to this litigation other than Riley were British. Should the court consider this fact in deciding this case?