*Chapter 25*

# International Law

# in a Global Economy

Answers to Learning Objectives/

Learning Objectives Check Questions

at the Beginning and the End of the Chapter

**Note that your students can find the answers to the even-numbered *Learning Objectives Check* questions in Appendix E at the end of the text. We repeat these answers here as a convenience to you.**

**1A.** ***What is the principle of comity, and why do courts deciding disputes involving a foreign law or judicial decree apply this principle?*** Under the principle of *comity***,** one nation defers and gives effect to the laws and judicial decrees of another country, as long as those laws and decrees are con­sistent with the law and public policy of the accommodating nation. The appli­ca­tion of this principle is based primarily on courtesy and respect.

**2A.** ***What is the act of state doctrine? In what circumstances is this doctrine applied?*** The act of state doctrineis a judicially created doctrine that provides that the judicial branch of one country will not examine the validity of public acts committed by a recognized foreign government within its own territory. This doctrine is often employed in cases involving expropriation or confiscation.

**3A.** ***Under the*** ***Foreign Sovereign Immunities Act, in what situations is a foreign state subject to the jurisdiction of U.S. courts?*** Under the Foreign Sovereign Immunities Act, a foreign state may be subject to the jurisdiction of U.S. courts when the state has “waived its immunity either explicitly or by implication” or when the action is “based upon a commercial ac­tivity carried on in the United States by the foreign state.”

**4A.** ***What are some clauses commonly included in international business contracts?*** Choice-of-language, forum-selection, choice-of-law, and *force majeure* clauses are commonly used in international business contracts.

**5A.** ***What federal law allows U.S. citizens, as well as citizens of foreign nations, to file civil actions in U.S. courts for torts that were committed overseas?*** The Alien Tort Claims Act allows foreign citizens to bring suits in U.S. courts for injuries allegedly caused by violations of international tort law.

## Answer to Critical Thinking Question

**in the Feature**

**Beyond Our Borders—Critical Thinking**

***What are some steps that businesspersons can take to avoid any issues at the border with respect to the contents of their electronic devices?*** Obviously, the easiest way to avoid having the government access sensitive information on your electronic devices is to not put that sensitive information on them in the first place. One way to do this is to have your information reside in the cloud as well as on backup hard drives at your place of business and even at your home. In other words, it is now possible to have virtually all data accessible in the cloud without having it reside on any of your hard drives or mobile devices.

## Answers to Critical Thinking Questions

**in the Cases**

**Case 25.1—Critical Thinking—Ethical Consideration**

***Is it unethical to give the interest of fighting terrorism precedence over an international legal principle?******Discuss.*** No, it is not unethical to give precedence over an international legal principle to other considerations. Nations are not required, even under the principle of comity, to honor the actions of other nations. A nation will not give effect to an executive, legislative, or judicial act of another country if the act is inconsistent with the nation’s own law and public policy. It is not unethical for a nation to honor its own law and policy. In the *Linde* case, for example, the U.S. court that heard the case recognized that an interest in deterring the financial support of terrorism often outweighs the enforcement of foreign bank secrecy laws, even in other nations.

Arguably, of course, laws and policies that violate moral or ethical standards considered to weigh more heavily in the balance may not be given effect greater than an international legal principle based on those standards.

**Case 25.2—Critical Thinking—Legal Consideration**

***Would Plaza have been bound to the forum-selection clause if it had signed the subscription agreement as Moonmouth’s director but had no other relation to the agreement? Discuss.*** If Plaza had signed the subscription agreement as Moonmouth's director but had no other relation to the agreement, Plaza would not likely have been bound to the forum-selection clause.

The U.S. Court of Appeals for the Third Circuit identified three circumstances that determined Plaza should be bound to the forum-selection clause. Those circumstances were that the clause was valid, Plaza was closely related to the subscription agreement, and Carlyle’s claim arose from the Plaza’s status in relation to the agreement. If Plaza had had no relation to the agreement but for its signature as Moonmouth’s director, the second factor would not have been sufficiently significant to bind Plaza to the forum-selection clause.

# Case 25.3—Legal Consideration

***What are the consequences for Daimler of the decision in this case?*** Daimler AG was not exonerated by the decision in this case, but the corporation did avoid liability under the Court’s ruling. Otherwise, it might have been subject to huge claims for collaborating with the state security services of the Argentinian government’s alleged atrocities (extremely cruel acts). Of course, the plaintiffs might still seek other laws in other forums to obtain relief.

Answers to Questions in the Reviewing Feature

at the End of the Chapter

**1A.** ***Foreign Sovereign Immunities Act***

Because the armed forces of Honduras contracted to purchase weapons from a U.S. company (Robco), this would fall under the commercial activity exception to the FSIA. The sales contract was an action taken in connection with a commercial activity carried on in the United States, and the sale has a direct effect in the United States. Therefore, the FSIA would not bar this lawsuit.

**2A.** ***Act of state doctrine***

The act of state doctrine provides that the judicial branch of one country will not examine the validity of public acts committed by a recognized foreign government within its own territory. Here, the newly democratic government of Honduras is seeking to reduce the size of its military. The U.S. government likely recognized the new democratic regime since the U.S. supports democratization globally. The U.S. is also likely to be supportive of its efforts to reduce the size of its military and its inventory of weapons. Because the Honduran government’s policy decision is public act within its own territory, the U.S. judicial branch will most likely be unwilling to intervene and force the government to fulfill its contract to purchase arms. There is more at stake than a simple contract because enforcing an arms deal may harm international relations between the U.S. and the new government of Honduras.

**3A.** ***Doctrine of deference***

The principle of comity might apply here. This principle is a doctrine of deference. Under this principle, one nation will defer and give effect to the laws and judicial decrees of another country, as long as those laws are consistent with the law and public policy of the accommodating nation. The principle of comity is based on respect and is a customary courtesy extended to other nations. If a U.S. court extends comity to the new Honduran government’s law pertaining to arms dealing, then it would dismiss Robco’s case.

**4A.** ***Doctrine to collect damages***

Under the principle of comity, one nation will defer and give effect to the laws and judicial decrees of another country, as long as those laws are consistent with the law and public policy of the accommodating nation. This would be very useful to Robco in its attempt to collect damages under the award. Robco could take the judgment issued by a U.S. court to any nation in which the government of Honduras does have assets and ask that nation’s court to enforce the judgment under the principle of comity.

Answer to Debate This Question in the Reviewing Feature at the End of the Chapter

***The U.S. federal courts are accepting too many lawsuits initiated by foreigners that concern matters not relevant to this country.*** Our federal courts are already overwhelmed by normal lawsuits that concern purported wrongs committed on U.S. soil that involve residents of this country.  Why should we become the preferred jurisdiction for lawsuits that involve human rights issues in other countries?  Why should we become the preferred jurisdiction for purported employment discrimination that might have taken place outside of the U.S.?  We are not the world’s conscience.

The U.S. has one of the best-run and most fair federal judiciaries in the world.  We still support freedom and democracy.  Therefore, it is appropriate that when, for example, human rights are violated by companies that operate in other countries, the aggrieved can avail themselves of our federal courts.  Also, if a U.S. company that operates abroad violates our employment discrimination or antitrust laws, then that company should be sued in the U.S.  Obviously, other countries do not have the same high standards that we have in these matters.

Answers to Issue Spotters

at the End of the Chapter

**1A.** ***Café Rojo, Ltd., an Ecuadoran firm, agrees to sell coffee beans to Dark Roast Coffee Company, a U.S. firm. Dark Roast accepts the beans but refuses to pay. Café Rojo sues Dark Roast in an Ecuadoran court and is awarded dam ages, but Dark Roast’s as sets are in the United States. Under what circumstances would a U.S. court enforce the judgment of the Ecuadoran court?*** Under the principle of comity, a U.S court would defer and give effect to foreign laws and judicial de­crees that are consistent with U.S. law and public policy.

**2A.** ***Gems International, Ltd., is a foreign firm that has a 12 percent share of the U.S. market for diamonds. To capture a larger share, Gems offers its products at a below-cost discount to U.S. buyers (and inflates the prices in its own country to make up the difference). How can this attempt to undersell U.S. businesses be defeated?*** The practice described in this problem is known as dumping, which is regarded as an unfair international trade practice. Dumping is the sale of imported goods at “less than fair value.” Based on the price of those goods in the exporting country, an extra tariff—known as an antidumping duty—can be imposed on the imports.

Answers to Questions and Case Problems

**at the End of the Chapter**

**Business Scenarios and Case Problems**

**25–1A. *Letters of credit***

Dishonor of the letter of credit in this situation would probably be legal. Al­though it is arguable that the variance in shipment was not material, strict compliance with a letter of credit is required. Because air shipment raises a possibility of damage to the circuits, the variance is likely to be suf­ficiently ma­terial for dishonor.

**25–2A. *Dumping***

Yes, it is reasonable to rely on the producers’ financial records, which are reasonably reflective of their costs because their normal allocation methods were used for a number of years. These records are historically relied on to present important financial information to shareholders, lenders, tax authorities, auditors, and other third parties. Provided that the producers’ records and books comply with generally accepted accounting principles and were verified by independent auditors, it is reasonable to use them to determine the production costs and fair market value of canned pineapple in the United States.

**25–3A. *International agreements and jurisdiction***

The Supreme Court explained in an earlier case (*Garamendi*, 533 U.S. 396) that “state law ‘must give way’ to the foreign policy of the United States, as set by the President, where there is ‘evidence of clear conflict between the policies adopted by the two.’” Hence, litigation of the plaintiffs’ benefits claims in court in the U.S. was preempted by executive branch policy favoring resolution of claims by the ICHEIC. The district court was correct to deny the claims. Although Italy was not a party to the agreement with Germany, the U.S. had determined that, as a matter of public policy, all such Holocaust-era claims filed in the U.S. would be subject to ICHEIC resolution as the exclusive remedy.

**25–4A. *Sovereign immunity***

The doctrine of sovereign immunity exempts foreign nations from the jurisdiction of U.S. courts, subject to certain conditions. The Foreign Sovereign Immunities Act (FSIA) of 1976 codifies this doctrine and exclusively governs the circumstances in which an action may be brought in a U.S. court against a foreign nation. A foreign state is not immune from the jurisdiction of U.S. courts when the state (1) waives immunity, (2) engages in commercial activity, or (3) commits a tort in the United States or violates certain international laws. Under the FSIA, a foreign state includes its political subdivisions and “instrumentalities”—departments and agencies. A commercial activity is a regular course of commercial conduct, transaction, or act that is carried out by the foreign state within the United States or has a direct effect in the United States.

The details of what constitutes a commercial activity are left to the courts. But it seems clear that a foreign government can be considered to engage in commercial activity when, instead of regulating a market, the government participates in it. In other words, when a foreign state, or its political subdivisions or instrumentalities, performs the type of actions in which a private party engages in commerce, the state’s actions are likewise commercial.

In the facts of this problem, Iran engaged in commercial activity outside the United States by making and marketing its counterfeit versions of Bell’s Model 206 Series helicopters. This activity caused a direct effect in the United States by the consumer confusion that will likely result from Iran’s unauthorized use of Bell’s trade dress. Thus, the court can exercise jurisdiction in these circumstances, and Iran may be as liable as a private party would be for the same acts.

In the actual case on which this problem is based, Iran did not respond to Bell’s complaint. The court held that it had jurisdiction under the FSIA’s commercial activity exception, as explained above. The court entered a default judgment against Iran and awarded damages and an injunction to Bell.

**25–5A. *Sovereign immunity***

No, a U.S. court does not have jurisdiction in the *Santivanez* case. When applicable, the doctrine of sovereign immunity shields a foreign nation from the jurisdiction of a U.S. court. In such a case, individuals who own (or owned) property overseas generally have little legal protection against government actions with resp3ect to their property in those countries. The federal Foreign Sovereign Immunities Act (FSIA) exclusively governs the circumstances in which an action may be brought in the United States against a foreign nation, including attempts to attach a foreign nation’s property. Under the law, a plaintiff generally has the burden of showing that a defendant is not entitled to sovereign immunity. An exception exists when a foreign nation has (1) waived its immunity, (2) engaged in commercial activity in the United States, or (3) committed a tort here.

In this problem, the government of Bolivia expropriated land from Francisco Loza for public projects and directed compensation in exchange for his land, but never paid. His heirs, Genoveva and Marcel Loza, filed a suit in a U.S. federal district court against Bolivia seeking damages for the taking. The FSIA provides for U.S. jurisdiction over cases in which rights in property are taken in violation of international law. But when a foreign nation confiscates the property of its own citizens, a U.S. court does not have jurisdiction. None of the exceptions under the FSIA apply here.

In the actual case on which this problem is based, a federal district court ruled in Bolivia’s favor. On the Lozas’ appeal, the U.S. Court of Appeals for the Eleventh Circuit affirmed, based on the reasoning above.

**25–6A. Business Case Problem with Sample Answer—*Import controls***

Yes, an antidumping duty can be assessed retrospectively (retroactively). But it does not seem likely that such a duty should be assessed here.

In this problem, the Wind Tower Trade Coalition (an association of domestic manufacturers of utility scale wind towers) filed a suit in the U.S. Court of International Trade against the U.S. Department of Commerce, challenging its decision to impose only *prospective* antidumping duties on imports of utility scale wind towers from China and Vietnam. The Commerce Department had found that the domestic industry had not suffered any “material injury” or “threat of material injury,” and that it would be protected by a prospective assessment. Without a previously cognizable injury—and the fact that any retrospective duties collected would not by payable to the members of the domestic industry in any event—it does not seem likely that retroactive duties should be imposed.

In the actual case on which this problem is based, the court denied the plaintiff’s request for an injunction. On appeal, the U.S. Court of Appeals for the Federal Circuit affirmed the denial, holding that the lower court acted within its discretion in determining that retrospective duties were not appropriate.

**25–7A. *The principle of comity***

Yes, the principle of comity supports the defendants’ request to dismiss the plaintiffs’ claims. Under the principle of comity, one nation defers to and gives effect to the laws and judicial decrees of another country when those are consistent with the laws and public policy of the accommodating nation.

In the fact of this problem, Holocaust survivors and the heirs of other Holocaust victims filed a suit in a federal district court in the United States against a variety of entities based in Hungary—the national railway, the national bank, and several private banks—alleging that the defendants expropriated property from Hungarian Jews who were victims of the Holocaust seventy years ago. The plaintiffs had not tried to exhaust remedies available through Hungarian courts nor did they provide a legally compelling reason for not making the attempt. As the defendants requested, the court should dismiss the suit. Comity requires that Hungarian courts be given the first opportunity to hear the claims. Of course, the U.S. court could agree to hear the suit if the plaintiffs could show that Hungarian remedies were inadequate, procedural rules would unreasonably bar their claims, or other circumstances would prevent a fair and impartial hearing.

In the actual case on which this problem is based, the court dismissed the complaint. The U.S. Court of Appeals for the Seventh Circuit affirmed the dismissal for the reason stated above.

**25–8A. A Question of Ethics—*Terrorism***

**1.** The doctrine of sovereign immunity, which is codified in the Foreign Sovereign Immunities Act (FSIA), generally provides foreign states with immunity from suit in U.S. courts.

This statute includes a “state-sponsored terrorism exception,” which abrogates a foreign state’s immunity for personal injuries caused by terrorist acts committed by a state’s officials or agents. Under this exception, a foreign state is subject to suit if (1) the U.S. Department of State designated it as a “state sponsor of terrorism” before the incident out of which the suit arises; (2) the foreign state had a reasonable opportunity to arbitrate any claim in the suit based on acts that occurred in that state; and (3) either the victim or the claimant was a U.S. national at the time those acts took place. In the *Hurst* case, the plaintiffs met those requirements: Libya was designated as a sponsor of terrorism at the time of the incident; Libya was not denied a chance to arbitrate; and all of the victims were U.S. citizens.

(Note: The FSIA does not create a cause of action against a foreign state. The state-sponsored terror exception only waives the immunity of a foreign state without creating a cause of action against it. This exception, however, does allow a cause of action to be brought against a foreign state under another source of law.)

Arguments in favor of such a “state-sponsored terrorism exception” are probably obvious in light of events that have occurred since this exception was added to the FSIA in the 1990s. Reasons in support of such an exception might include the provision to victims of an avenue through which they can obtain damages, the reduction of the number of “safe harbors” through which a terrorist might avoid liability, and the discouraging of foreign states’ sponsorship of, and cooperation with, terrorists. Arguments against such an exception might include the adage that “one person’s terrorist is another’s freedom fighter,” but this statement might find few adherents in the United States.

**2.** The contention that the plaintiffs’ claims should be barred by the settlement between the defendants and the other plaintiffs “is unavailing,” according to the court in the *Hurst* case. The court explained that “[t]he settlement concerned only the injuries to the victims and/or their legal representatives. The [settlement] specifically provides that it covers ‘compensatory death damages’ for those entitled to recover ‘on behalf of the 270 decedents' estates.’ “ The plaintiffs who were excluded from that settlement and continued the suit against the defendants were not parties to that settlement and these plaintiffs’ claims were specifically excluded. “Thus, Plaintiffs may proceed.”

**Critical Thinking and Writing Assignments**

**25–9A. Business Law Critical Thinking Group Assignment**

**1.** Factors to consider when expanding operations into another country by advertising online include (1) business costs such as Web site design and maintenance; (2) marketing considerations such as which business model to use; (3) security concerns such as the safety of company and customer information; (4) practical elements such as inventory storage and product shipping; and (5) cultural characteristics such as language and customs. The benefits of Internet advertising include that it is relatively inexpensive to reach a vast market, compared to the cost of traditional marketing. And because the operation can be digitized, “testing the waters” of a potential market, as well as tracking consumers and accumulating market data, can be easier and less costly.

**2.** A partnership in another country typically requires local participation—nationals of the other country must own a specific share of the business. Of course, if the partnership dissolves, the firm’s technology and other expertise may fall into in the hands of a foreign competitor. The domestic firm that initiated the partnership may have little recourse in the foreign country against their former partner’s use of this expertise.

Thus, to take in a partner in a foreign nation, a domestic business firm should define each party’s duties and risks in a written contract, including the object or subject of the partnership, the assets that each party contributes to the firm, what is expected of each party with respect to the firm’s intellectual property, and the sharing of profits and losses. Important provisions would also cover forum selection, choice of law, choice of language, and the resolution of disputes, as well as remedies and the division of assets on the firm’s dissolution.

**3.** Problems that may arise when a domestic business company decides to manufacture its products in a foreign location include the costs and other considerations in obtaining and using foreign labor, shipping, and raw materials. There may also be different cultural, economic, legal, political, and social conditions to take into account.