# *International Business Law and Its Environment 10th edition Schaffer Solutions Manual*

SKU: 9781305972599-SOLUTIONS

# International Business Law and Its Environment, 10e

Chapter 2

## International Law and the World's Legal Systems

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# International Law (Slide 1 of 8)

- Defining International Law
  - "The body of rules that has been accepted as such by the international community"
  - Distinguishing characteristics:
    - Consists of rules countries agree to follow
    - Has no global authority for enforcement

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# International Law (Slide 2 of 8)

- Public and Private International Law
  - Public International Law
    - Governs the conduct of nations with other nations or in their relationship with individuals; norms regarded as binding on all members of the international community
    - Examples of issues: resolving boundary disputes or how nations treat foreign citizens

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# International Law (Slide 3 of 8)

- Public and Private International Law
  - Private International Law
    - Deals with the rights and responsibilities of private individuals or corporations operating in an international environment
- Sources of International Law
    - International treaties and conventions
    - International custom
    - General principles of law recognized by civilized nations

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# International Law (Slide 4 of 8)

- The Law of Treaties
  - A treaty is a binding agreement between two or more nations; treaties are bilateral or multilateral
  - A convention is a legally binding multilateral treaty of matters of common concern
    Examples: prisoners of war (Geneva); lost baggage reimbursement (Warsaw)

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# International Law (Slide 5 of 8)

- The Law of Treaties (cont'd)
  - Some Other Treaty Terminology
    - A protocol modifies or adds to a treaty or convention
    - Ratification: formal expression of a nation's consent
    - Signatories: nations adopting treaty
    - Reservation: exception to treaty →

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# International Law (Slide 6 of 8)

- The Law of Treaties (cont'd)
  - Self-Executing and Non-Self-Executing Treaties:
    - Self-executing has a "domestic law effect"
    - Non-Self-Executing requires Congressional action
  - Treaties of Friendship, Commerce and Navigation:
    - Bilateral agreements that provide protection to foreign nationals doing business in host country
    - See the **Ventress v. Japan Airlines** (2007) case
  - Vienna Convention on the Law of Treaties

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# International Law (Slide 7 of 8)

- Customary International Law
  - Includes those commonly accepted rules of conduct that, through a consistent and long-standing practice, nations have followed out of a sense of binding obligation
  - See **The Paquette Habana** case (1900)

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# International Law (Slide 8 of 8)

- Customary International Law (cont'd)
  - Limits on International Customary Law: The U.S. Alien Tort Statute
    - Enacted in 1789, gives federal courts jurisdiction over civil actions for damages brought by non-U.S. citizens for injuries occurring overseas
    - Used now for human rights cases brought against U.S. multinational companies; for the scope of the law today, see the **Sosa v. Alvarez-Machain** (2004) case

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# International Business Law and Crimes (Slide 1 of 6)

- Sources of International Business Law
  - Treaties, conventions, statutes, acts
  - Law merchant
  - UN Convention on Contracts for the International Sale of Goods

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# International Business Law and Crimes (Slide 2 of 6)

- Factors driving uniformity in International Business Law:
  1. Accelerating forces of free trade
  2. Need for nations to cooperate
  3. Intergovernmental organizations
  4. International tribunals
  5. Roles of private industry organizations and trade associations

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# International Business Law and Crimes (Slide 3 of 6)

- Factors influencing differences in International Business Law:
  1. National courts' interpretations
  2. Differences in national legal systems
  3. Varying levels of economic development
  4. National attitudes toward economics

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# International Business Law and Crimes (Slide 4 of 6)

- Crimes Related to International Business
  - Transnational organized crime
  - Transnational business crime
  - UN Convention Against Corruption

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# International Business Law and Crimes (Slide 5 of 6)

- Criminal Jurisdiction and the Extraterritorial Reach of Domestic Law
  - Territoriality
  - Nationality
  - Protective Principle
  - Passive Personality
  - Universality
    - See **United States v. Campbell** case (2011)

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# International Business Law and Crimes (Slide 6 of 6)

- International Court of Justice
  - Jurisdiction of the International Court of Justice: cases brought by nations against other nations; no individuals
  - Enforcing judgments by world opinion
  - Typical Cases. See the **Liechtenstein v. Guatemala** (1955) case
- International Criminal Court

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# Ethics, Social Responsibility, and Codes of Conduct (Slide 1 of 3)

- International Business and Human Rights
  - Growing international consensus on business ethics and social responsibility
  - International human rights law protects individuals and groups from acts of governments that violate rights

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# Ethics, Social Responsibility, and Codes of Conduct (Slide 2 of 3)

- International Labour Organization:
  - International labor standards (recommendations) for basic worker rights
- Organisation for Economic Cooperation and Development:
  - guidelines encouraging responsible business conduct

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# Ethics, Social Responsibility, and Codes of Conduct (Slide 3 of 3)

- UN Global Compact:
  - partners who pledge to support voluntary principles on human rights, labor standards, the environment, and corruption
- CERES Principles:
  - network committed to environmentally and socially conscious business principles
- Corporate Codes of Conduct

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# Comparative Law: Differences in National Laws and Legal Systems (Slide 1 of 5)

- Modern Japan: Example of Legal Change by necessity
- Modern Legal Systems of the World

## Origins of Civil Law Systems

- Based originally on Early Roman Codes
- Followed by Napoleanic Codes of 1800s
- Followed by Germanic Codes of 1900s

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# Comparative Law: Differences in National Laws and Legal Systems (Slide 2 of 5)

- China
  - Legal system changed at 20th century with European influence
  - Communists seized power- In 1950s laws supported central state planning.
  - Today - Mixed economy with many modern law codes e.g., tax, securities.

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# Comparative Law: Differences in National Laws and Legal Systems (Slide 3 of 5)

- Origins of Common Law Systems.
  - The root is the Normandy region of France, transplanted to England in 1066 by William the Conqueror
  - All justice flowed from the King and the King's Courts. Introduced feudalism and trial by jury
  - Judges decided Cases and shared them with other judges– cases are legal precedent

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# Comparative Law: Differences in National Laws and Legal Systems (Slide 4 of 5)

- Differences Between Modern Civil Law and Common Law Countries
  - Civil law judges do not create binding precedent
  - Civil law judges take a more inquisitorial role in criminal cases
  - In contract cases, civil law judges do the work of both judge and jury →

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# Comparative Law: Differences in National Laws and Legal Systems (Slide 5 of 5)

- Islamic Law: *sharia* law
  - Islamic judges do not issue written opinions
  - Saudi Arabian Legal System
  - Pakistani Legal System
    - Influenced by British, but governed by Islamic principles
    - See the **M. Aslam Khaki v. Syed Mohammad Hashim** (2000) case

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# Conclusion (Slide 1 of 2)

- Although rooted in antiquity, international law affects the modern global economy
- Every area of international trade, foreign investment, and intellectual property rights is governed by at least one international convention →

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# Conclusion (Slide 2 of 2)

- International law offers solutions to:
  - Human rights abuses,
  - Pollution,
  - Transnational crimes, and
  - International terrorism, and more
  - But enforcement is dependent on nations working together

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# CHAPTER 2
# INTERNATIONAL LAW AND THE WORLD'S LEGAL SYSTEMS

## CASES IN THIS CHAPTER

*Ventress v. Japan Airlines*

*The Paquette Habana*

*Sosa v. Alvarez-Machain*

*United States v. Campbell*

*Liechtenstein v. Guatemala* (*Nottebohm* Case)

*Khaki v. Hashim*

## TEACHING SUMMARY

This chapter addresses the global context of cross-border interactions, be they business oriented, political, or criminal in character. By citing the many international covenants, treaties, and uniform rules, a strong case can be made that international law truly does exist, although it differs from the American notions of law found in state and federal codes and cases. The corpus of international law consists of treaties, conventions, customs, generally accepted principles among nations, and learned expositions (such as international tribunals and respected scholars). The increase in the number and influence of international institutions speaks to the growing importance of understanding international law which in many ways reflects its European roots. The chapter also explains the difference between private and public international law, the former referring to rules regulating affairs of private firms, organizations and individuals and the latter referring to regulation of conduct between and among states.

## CASE QUESTIONS AND ANSWERS

### *Ventress v. Japan Airlines*

1. What was the purpose of article VIII(1) of the FCN treaty? In what way would this give them greater control of their U.S. operations?

   Answer: It allows a company from a foreign country (here Japan) to give preference to its own citizens when hiring executives. The firm could then more easily move their executives around (from California to Hawaii or Korea for example) and have executives with similar cultural and training backgrounds that might not occur if executives were from many different countries.

2. What was the basis of the court's ruling? Does the California whistle-blower protection statute "interfere with the employer's ability to hire their fellow citizens"?

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Answer: The court found the California law did not interfere with the employer's ability to hire fellow citizens; it allowed employees to report violations of domestic (U.S./ California) laws.

3. In citing *MacNamara v. Korean Airlines*, the court refers to the difference between "citizenship" and "national origin." What is the difference, and why was that important here?

Answer: Via the treaty, the airline can discriminate on the basis of citizenship, but not on the basis of national origin. A person born in Japan who becomes a U.S. citizen is Japanese by national origin, but an American by citizenship.

***The Paquette Habana***

1. Under what conditions is customary international law a part of U.S. domestic law?

Answer: Customary law is a part of U.S. domestic law where there is no contradictory statute or treaty and the only way to resolve the legal issue is by applying customary norms.

2. Which international norm or custom applies to this dispute?

Answer: That fishing vessels and their cargo are exempt from capture during times of war.

Supplemental Exercise: Have students locate and read the dissent (either in the official reporter or by using Westlaw):

a) Why would the dissenters have affirmed the seizure under the U.S. Law of Prize?

b) Why were they not persuaded by customary practices under international law?

c) Do you find their assertion regarding the power of the president persuasive?

***Sosa v. Alvarez-Machain***

1. What were the three specific offenses mentioned by Blackstone that were recognized as violations of customary international law at the time the ATS was enacted?

Answer: A violation of safe conduct rules, the infringement of the rights of ambassadors, and piracy are the three offenses specifically mentioned.

2. Is the Court willing to expand the ATS beyond these original three offenses? According to Justice Souter, what types of torts would give rise to jurisdiction under the ATS?

Answer: Possibly. If there is a violation of a norm that is accepted by the civilized world and that is well-defined with a specificity comparable to the three mentioned by Blackstone.

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3. Do you feel that this decision grants too much or too little power to the federal courts to hear tort claims occurring outside the country?

   Answer: It grants very little power to the federal courts, but this is in line with the separation of powers concepts found in our Constitution.

4. What foreign policy implications are involved in a U.S. court hearing a case under the ATS?

   Answer: The court's decision could be contrary to the foreign policies being pursued or followed by our legislative and/or executive branches of government.

5. In what way did the Supreme Court's subsequent decision in Kiobel further limit the application of customary international law?

   Answer: It said that the first two of the three specific offenses, the safe conduct rules and infringement of ambassadorial rights, mentioned by Blackstone could be a basis for applying such law only if they occurred in U.S. territory. If such offenses occurred outside the territory, the customary international law would not be used.

***United States v. Campbell***

1. If Congress did not state in the statute that it applied outside the United States, how did the court arrive at its conclusion.

   Answer: The court presumed Congress intends laws to apply only within U.S. territory.

2. What is meant by the "*Bowman* Exception?"

   Answer: The presumption does not apply regarding crimes that involve fraud against the U.S. or crimes that the U.S. seeks to defend itself from.

***Liechtenstein v. Guatemala* (*Nottebohm* Case)**

1. May individuals bring an action against a nation at the ICJ?

   Answer: No. ICJ jurisdiction is reserved for disputes between states rather than individuals.

2. On what basis did Liechtenstein file this action?

   Answer: Liechtenstein filed this action on behalf of Nottebohm because it alleged Guatemala's disregard of Nottebohm's Liechtenstein citizenship was an affront to it as a sovereign state.

3. Although a nation can determine its own criteria for citizenship, must that be recognized by other nations?

   Answer: No. If a nation's criteria do not conform to widely accepted principles, other nations need not recognize such grants of citizenship.

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4. Do you feel that this judgment interfered with Liechtenstein's sovereignty? Why or why not?

   Answer: No. Nottebohm's social ties of attachment to a country were to Guatemala, not to Liechtenstein. Liechtenstein granted him nationality status because of the war with Germany—so he could be considered from a neutral state not from a belligerent state.

5. Would this case be considered one of international public or private law?

   Answer: It is public law because it involves whether one state must recognize the nationality decisions made by another state. While it does affect individuals such as Nottebohm, the case involves a dispute between two states and affects their rights and obligations to other states.

***Khaki v. Hashim***

1. What is *riba*? Why is *riba* not permitted pursuant to the *Sharia* law?

   Answer: Riba is the payment of interest by banks on loans and deposits. The Sharia states that lenders should only loan money on humanitarian grounds to achieve a reward in the next life or to save their money through a safer hand. Sharia permits the borrowing of money only in cases of dire need and discourages the practice of incurring debts for living beyond one's means or to grow one's wealth.

2. What would the effect be on Pakistan if the decision were implemented in Islamic banks?

   Answer: As such banks have depositors and customers who are not Muslim, the funds of those parties might be withdrawn and potential customers also could decide not to invest in such banks. Consequently, there would be a risk to the economic stability and security of the country.

3. In what other ways have culture and religion influenced modern legal systems?

   Answer: The answer to this question calls for opinion, but students may want to explore the relevancy of religious and ethical beliefs with respect to commercial practices in general and international trade and other exchanges in particular.

## ANSWERS TO QUESTIONS AND CASE PROBLEMS

1. Answer: Customary international law does not hold a corporation liable for a violation of human rights. The customary law does hold corporations liable for some crimes, but not for human rights violations. Individuals such as corporate managers or executives could be held liable for human rights violations, but neither treaties nor customary international law holds corporations so liable. Drug trafficking is "universally condemned" and illegal but this does not make it into a "customary international law."

2. Answer: The statute applies extraterritorially because the context of the wording shows that Congress assumed much of the conduct regarding bringing illegal aliens into the

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U.S. would occur outside the U.S. It is for this reason that the Bowman exception does not apply. That exception relates to statutes involving domestic conduct—where no external conduct was contemplated—while here external conduct is very likely. U.S. immigration offenses are often planned outside U.S. territory.

3. Answer: It does apply outside the U.S. The subject offense is directed against the U.S. border and the security they provide to the U.S. Yes, the Bowman exception applies to justify extraterritoriality. Terrorist attacks, like immigration offenses, can and often are planned abroad or in both domestic and foreign areas. In both cases, impact/consequences are inside the U.S.

4. Answer: They could arguably be prosecuted under Campbell precedent. However, the "tampering" law seems entirely focused on use of products inside the U.S. and their prescription inside the U.S. Therefore, for this consumer product, it seems a "stretch" to apply extraterritoriality for what is a consumer protection law not related to "integrity of state issues."

5. Answer: A wide variety of problems lend themselves to resolution through the application of international law. These issues include problems arising between states in their relations with one another and the conduct of states in their relations with individuals. Specific examples include human rights, criminal law, and transnational crimes, such as terrorism.

6. Answer: Typically such individuals are speaking from a legal egocentric understanding of law or are speaking in shorthand. Those who claim that international law is non-existent may mean that international law does not possess the characteristics of American law: there is no international constitution; there is no legislatively drafted code; there is no one court system with supreme authority to interpret law, decide disputes, and issue binding decisions. Nonetheless, there is, very clearly, international law. There exist a multitude of international treaties, essentially contracts, between nations setting out standards and legal rules. There exist a variety of adjudication mechanisms, including courts and arbitration venues. There is also a well-developed body of legal understandings, such as those found in customary law that are accepted and enforced globally despite the absence of codification.

7. Answer: International conventions tend to harmonize national laws by creating uniform and widely accepted bodies of law. Harmonization benefits business by making applicable law more uniform and predictable. Harmonized laws are not identical, but they can be considered similar, generally having the same objective. As business and individual life becomes more global in nature, firms and individuals seek laws that are similar or harmonious. As laws are interpreted and enforced nationally, they are more national than international.

8. Answer: This question calls for an opinion regarding the efficacy of corporate codes of conduct and the extent to which they may replace government regulation.

9. Answer: Compliance with corporate codes of codes may be promoted through effective communication with employees, incorporation into corporate culture, adoption of disciplinary measures for assuring compliance, and development of a system for measuring effectiveness.

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10. Answer: Corporations are accountable to all of their stakeholders, including shareholders, employees, customers, members of the supply chain, the governments of their home and host states, and the community at large. Human rights are of increasing concern globally and firms that are unconcerned or nonresponsive will lose favor.

11. Answer: Transnational business crimes are a major problems calling for global solutions. Typical crimes include bribery and corruption, tax evasion, customs fraud, criminal violations of export control laws, financial crimes, and criminal violations of environmental laws, securities laws, and antitrust laws

12. Answer: **Territoriality** refers to jurisdiction over all persons, places, and property within the territory, airspace, or territorial waters of a state. **Nationality** requires individuals and corporate citizens comply with the laws of the state of their nationality no matter where they are located in the world. The **protective principle** allows jurisdiction of noncitizens for acts done abroad on the basis of a country's need to protect its national security, vital economic interests, and governmental functions. It has been used as a basis for the prosecution of accused terrorists. **Passive personality** jurisdiction gives a state the right to hear cases stemming from crimes committed against their own citizens by foreign citizens outside of their own territory. It also has use in the prosecution of terrorism. The **universality principle** permits any state to prosecute perpetrators of the most heinous and universally condemned crimes regardless of where they occurred or the nationality of the victims or perpetrators. **Universal jurisdiction** has been reserved for piracy, war crimes, and crimes against humanity. Terrorism has been omitted from this list due to difficulties in achieving a uniform international definition or proscription. The Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment recognizes universality by calling upon signatories to enact laws punishing those who commit torture and exercise jurisdiction if the victim was one of their citizens, if the act occurred in their territory, or if the offender was later found in their state.

13. Answer: The International Court of Justice hears cases brought by nations against other nations. Individuals and private corporations are not parties to cases before the court. The court has jurisdiction over all cases brought by nations under the UN Charter or involving treaties, conventions, international obligations, or questions of international law. The Rome Statute of the International Criminal Court (124 parties as of 2016), is a 2001 treaty that created the International Criminal Court, which sits at The Hague, Netherlands. It is independent, and not a part of the United Nations. The court hears three types of crimes: genocide, crimes against humanity (attacks against civilians through murder, slavery, forced deportations, torture, rape and sexual violence, disappearances, apartheid, and other persecutions on the grounds of religion, race, ethnicity, national origin, political beliefs, or gender), and war crimes. The European Court of Justice hears disputes from EU members and conflicts between member nation laws and the EU Treaty. Its role is similar to the U.S. Supreme Court's role regarding federal and state laws.

## MANAGERIAL IMPLICATIONS

1. Students may discuss numerous methods by which to demonstrate respect for a foreign state's culture, environment, natural resources, and local laws. Some examples include

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affirmation of the OECD Principles, adoption of codes of conduct adopted by other private organizations, and respect for such principles expressed in the company's own code of conduct.

2. The United States may assert jurisdiction using the territoriality and passive personality principles. South Korea may exercise jurisdiction utilizing the nationality principle. Canada may exercise jurisdiction using the protective and passive personality principles. Finally, Saudi Arabia may exercise jurisdiction utilizing the territoriality principle. An action arising from the abduction asserted pursuant to the Alien Tort Statute will fail due to the holding with respect to arbitrary arrest in the U.S. Supreme Court's opinion in *Sosa v. Alvarez-Machain.*

3. Students should distinguish between legal and ethical ramifications, particularly in developing countries that are largely unregulated. One's domestic law, however, may still restrain certain business practices abroad. Furthermore, regardless of whether regulations exist, business practices considered unethical may invite negative customer response at home.

## ETHICAL CONSIDERATIONS

The first scenario primarily implicates the theories of moral relativism and utilitarianism. Moral relativism is implicated to the extent that one may contend that the sale of lifesaving (but expired) pharmaceuticals is acceptable given the time and place of the sales. Utilitarianism is implicated to the extent that the sale of such pharmaceuticals adds to the overall utility of the community. Ethical conduct is that which is likely to produce the greatest overall good not just for the decider but for all persons who will be affected by the decision. In this case, the alternative would be the destruction of the pharmaceuticals. Why not utilize the remaining life of these products to save lives in the developing world?

The second scenario primarily implicates moral relativism and the related topic of cultural relativism. The quotation attempts to justify bribery on the basis that it may be acceptable given the time and place in question. Cultural relativism is defined as the belief that different practices and accepted behaviors in different cultures should be respected rather than subject to condemnation. Cultural relativism would serve as an additional ground supporting bribery in certain circumstances if such practices were the cultural norm in business transactions.

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