

International Business Contracting

International Business Contracting

Theory and Practice

SECOND EDITION

Stephen C. Sieberson

PROFESSOR OF LAW
CREIGHTON UNIVERSITY SCHOOL OF LAW



CAROLINA ACADEMIC PRESS

Durham, North Carolina

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LIBRARY OF CONGRESS CATALOGING-IN-PUBLICATION DATA

Names: Sieberson, Stephen C., author.
Title: International business contracting : theory and practice /
by Stephen C. Sieberson.
Description: Second edition. | Durham, North Carolina :
Carolina Academic Press, LLC, [2022] | Includes index.
Identifiers: LCCN 2021059393 (print) | LCCN 2021059394 (ebook) |
ISBN 9781531024390 (paperback) | ISBN 9781531024406 (ebook)
Subjects: LCSH: Export sales contracts. | LCGFT: Textbooks.
Classification: LCC K1030 .S55 2022 (print) | LCC K1030 (ebook) |
DDC 346/.065--dc23/eng/20220131
LC record available at <https://lcn.loc.gov/2021059393>
LC ebook record available at <https://lcn.loc.gov/2021059394>

Carolina Academic Press
700 Kent Street
Durham, NC 27701
(919) 489-7486
www.cap-press.com

Printed in the United States of America

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Preface to Second Edition

I am grateful to Carolina Academic Press for agreeing to produce a second edition of this book. After teaching the first edition for six years, I felt that some updating was in order, and as a result of feedback from several other users of the book, I have also added new material. Here is an updated summary of the second edition:

- Part I describes international business relationships, legal issues affecting such relationships, negotiation strategies, the law of contract, and standard terms in international commercial agreements.
- Part II addresses the international sale of goods, shipping arrangements, and letters of credit. In the chapter on shipping, I include a new document, a logistics agreement between a product seller and a freight forwarder. In this section, we present our first contract forms, along with point-by-point analysis of their provisions. In each chapter, we also introduce topics for discussion and drafting exercises. A major assignment is to negotiate and draft a sale agreement acceptable to two parties whose own contract forms have proven to be too one-sided. Also new to this section is a website development agreement that will allow a manufacturer to sell its products online.
- Part III is a series of chapters on international distribution arrangements. Here, the same parties who were involved in the purchase and sale negotiations have decided to expand their relationship first into a distributorship, then a sales agency, license agreement, and joint venture. Again, form contracts are provided, along with detailed analysis of their terms.
- Part IV is a single chapter in which one of our two parties decides to purchase the stock of the other. This material is designed to provide a challenging negotiation and drafting exercise for a complex transaction.
- Part V describes in detail the process of international lending and the documentation that is standard for a cross-border secured loan.

For their ongoing advice and support during the preparation of this new edition, I wish to thank Manuel Alba-Fernández, Troy Johnson, and Patrice Andersen. Additional thanks go to Shel Perkins, Amarech Tegegnetwork, and the following students: Jacob Mateo Baker, Tanner Creech, and Claudia de Albuquerque Garcia-Rivera.

Finally, let me note that my co-author of the first edition, Bruce King, has retired and allowed me to proceed on my own. That said, I have consulted with Bruce on a regular basis, and his insights have always been valuable.

STEPHEN C. SIEBERSON

Preface to First Edition

For many years law students and business students have been offered classes in international business transactions, known in academic circles as IBT. These courses are part of the international law or business law concentrations in law schools, and the international track in business schools. IBT generally focuses on those aspects of business relationships that are unique to the international setting, topics such as shipping, financing, currency exchange, cross-border investment, trade regulation, and dealings with sovereign entities. The study of IBT also includes discussion of how ethnicity, culture, and geopolitics can affect companies and individuals lucky enough and bold enough to “go international.”

Between us, we have spent more than fifty years practicing international business law, and during that time we have attended and presented at seminars on IBT topics. We have also given lectures or taught IBT courses at law schools in the United States, Europe, and Asia. One thing we have always felt is that the typical course or seminar stops short of offering hands-on skills training in the actual practice of designing and drafting international business contracts. Understanding how law, culture, and established practice affect cross-border business relationships is one thing; knowing how such relationships are documented is, in our opinion, equally important and often given short shrift.

In the early 1980s Steve was asked by Erasmus University in Rotterdam to teach a one-week course on the drafting of international business contracts. The Erasmus law faculty at that time was innovating in its curriculum by inviting visiting instructors to teach short seminars on a variety of topics not otherwise covered in traditional legal studies. As he began to prepare for the course, Steve found no textbooks or treatises on point, so he sifted through his own client files to find examples of contracts that might be useful in the classroom. He selected a handful of agreements, amended them for teaching purposes, and once in the classroom, walked his students through the documents point by point. As he worked through the material, he explained what the parties hoped to accomplish in their business deals and how their lawyers tried to facilitate the transaction while protecting their clients’ rights. This proved to be a successful approach, and Steve repeated the course over the next several decades in a variety of university classes and professional seminars.

Through their association as Seattle lawyers—occasionally representing clients on opposite sides of the table—Bruce learned of Steve’s courses. Bruce had had many years of experience representing business clients in countries such as Norway, England, Germany, Japan, and Bangladesh, and we decided to team up. Our first jointly offered course was at the University of the Netherlands Antilles in Curaçao. Later

we served together as Fulbright Senior Specialists at Comenius University in Bratislava, Slovakia. As we discussed our teaching and the materials we had developed, we decided that one day we would prepare them more formally as a textbook, to fill a void that continued to exist. Thus, this book was conceived, and we decided to distinguish it from the traditional IBT text by calling it *International Business Contracting*, shortened to IBC.

Two more developments were significant in the crafting of this book. First, at the University of Washington in Seattle, Steve on several occasions taught his contracting materials at the School of Business, twice in courses jointly offered with the School of Law. From those experiences it became clear that the study of contracts was as useful to business students as to those in the law school.

The second occurrence took place in the fall of 2000, when the UW law school invited Steve to create a course for its students in coordination with a class being taught to law students at the University of Tokyo, whose professor, Daniel H. Foote, was a former UW faculty member. Steve and Dan used several of Steve's contracts, along with other materials, and they coordinated their classes as best they could with the technology available at the time. A key component of the courses was a negotiation and drafting exercise, in which teams of Japanese students, representing a fictional Japanese client, negotiated with counterpart American teams who represented an American client. At the end of the semester, a joint video conference of all the students was memorable.

A dozen years later Steve recreated the UW-Tokyo experience with Professor Manuel Alba Fernández of Carlos III University of Madrid, Spain. In fact, through a faculty exchange Steve taught IBC at Carlos III, while Manuel taught a parallel course at Steve's home institution, Creighton University in Omaha. This time the two courses were taught in lock-step, using a single syllabus, and once again the capstone experience was the negotiating and drafting of a cross-border contract for hypothetical Spanish and American companies.

Thirty years after Steve started gathering these materials, and more than a dozen years after Bruce signed on, we believe it is time to share this material with others.

Along with this book we offer a teacher's manual containing suggested course syllabi, ideas for class-by-class coverage, and other commentary. We have tried to make this book and the manual as logical and accessible as possible. We look forward to hearing your comments and suggestions on how we can do this better. We truly hope your course on IBC will be memorable and useful.

We express our gratitude to the Practising Law Institute for permission to use and adapt the form of Purchase Order in Chapter 5, the form of Sale Order in Chapter 6 and the form of Distribution Agreement in Chapter 12. These materials have been published as part of "*The Preparation of Commercial Agreements*" by Ludwig Mandel, © Practising Law Institute. Reproduced with Permission. All rights reserved. No part of these materials may be reproduced, stored in a retrieval system, or transmit-

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We also wish to thank the staff at Carolina Academic Press for publishing this book. We also thank Professors Daniel H. Foote, Manuel Alba Fernández, and David P. Weber, along with Bryan Hanson and Laurel Johnson, for commenting on portions of these materials, and we offer our gratitude to all of the students who have responded so positively to the subject of IBC. We thank our law firm and law school colleagues who gave us the opportunity to teach and write. Finally, we dedicate this book to Carmelicia Sieberson and Theresa Townsend, who supported us so enthusiastically along the way.

STEPHEN C. SIEBERSON

BRUCE A. KING

