Chapter 1

**Introduction To International Business**

**Cases in This Chapter**

*Tarbert Trading Ltd. V. Cometals, Inc.*

*Russian Entertainment Wholesale, Inc. v. Close-Up International, Inc.*

*Dayan v. McDonald’s Corp.*

*In re Union Carbide Corporation Gas Plant Disaster at Bhopal*

*Transatlantic Financing Corp. v. United States*

*Gaskin v. Stumm Handel GMBH*

*Bernina Distributors v. Bernina Sewing Machine Co.*

*DIP SpA v. Commune di Bassano del Grappa*

**Teaching Summary**

The three basic forms of international business—trade, licensing of technology and intellectual property and foreign direct investment—are methods of entering foreign markets, but they are not mutually exclusive. They are not mutually exclusive and are often combined. The savvy manager of an international business will seek to create joint ventures and business opportunities to invest, or manufacture, trade via export and imports for goods and services and license its products where appropriate and protectable. However, international business opportunities are fraught with risk, selecting the appropriate methods of entering a foreign market or country must be consider the culture, politics, and economics of the host country. Through the study of international law, one can better identify and manage potential legal risks.

**Case Questions and Answers**

***Tarbert Trading Ltd. V. Cometals, Inc.***

1. Import/export transactions usually require much more documentation than domestic transactions. These include detailed invoices, packing lists, shipping and insurance documents, and specialized certificates. Here, a “certificate of origin” was required by the government of Columbia before the goods could be imported. Does it refer to the country from which the goods were shipped or where they were grown or made? Why do you think Columbia required a “CO”? What is its purpose?

Answer: The CO refers to the country where the goods were grown or made, not from where it was shipped. It identifies for the buyer where the goods come from so if goods from country A have a better reputation than those from country B, the buyer will know which goods it is receiving.

1. Suppose that the beans had arrived in Columbia and were then stopped by Columbian customs authorities because of a fraudulent certificate. What do you think might have happened to the beans? What would the risk have been to Cometals and Tarbert? What if the Columbian buyer had already paid for the beans?

Answer: They would have been impounded; not allowed to enter the country. Cometals and Tarbert likely would face fines and perhaps criminal punishment. If the buyer had already paid for the beans, the buyer could sue in Columbian court to recover damages as the buyer did not get what he bargained and paid for.

1. Evaluate and discuss the conduct of Cometals and Tarbert. Fraudulent documentation is not uncommon in international trade, especially when parties do not have a history of business together. What are the lessons to be learned by all parties?

Answer: Their conduct was illegal and unethical. You need to know the party you are dealing with. If that is difficult or impossible, the risk is greater and may lead to not doing business with them. Agreements protecting yourself are very important in international business.

***Russian Entertainment Wholesale, Inc. v. Close-Up International, Inc.***

1. What are the “limited exclusive” rights granted to the licensees in this case?

Answer: Each has the right to copy and distribute DVDs of the film. Krupny could distribute the films in the Russian language and Ruscico could distribute dubbed or subtitled films in various other languages.

2. What is the difference between the rights granted to the plaintiff and those granted to the defendants?

Answer: The language to be used in the films they distribute. Krupny can use only the Russian language and Ruscico can use any non-Russian language.

3. Do you agree or disagree with the court’s interpretation of the license agreements?

Answer: The court interprets what the licenses provide; it cannot add other language to the agreement.

4. What does this case tell you about negotiating and drafting a licensing agreement?

Answer: You must think how the language used in the licensing agreement will apply in practice. Be sure you have covered every possible scenario—especially true where the medium nay change—theatre films, streaming videos, use on tablets, phones, computers, etc.

***Dayan v. McDonald's Corp.***

1. What social or cultural factors affected McDonald's marketing in Paris?

Answer: Parisian customs will inevitably affect the franchise agreement, which required the Paris franchisee meet the quality, service and cleanliness standards set by McDonald's USA. A successful franchise requires the franchisee to have the ability or desire to meet those U.S. standards. This case also illustrates the problems of franchising (licensing) over long distances and beyond the day-to-day control of the franchisor. The problems here could have arisen as easily in the case of a manufacturing business and the licensing of technology.

2. How could McDonald's have exercised greater control over its franchisee?

Answer: Better training in the U.S., more frequent inspection visits, and closer supervision of the Parisian franchises.

3. What types of products and/or services are most suitable for foreign licensing?

Answer: Licensing generally is done as an alternative to foreign investment in plant and equipment where the licensor is unwilling to take the risks of further market penetration. Collecting royalties can be far safer than risking production overseas. Collecting royalties based on sales can be far safer than risking production overseas.

U.S. franchisors are getting a firm jump on the European market and have been particularly successful worldwide in franchising fast food restaurants as well as a host of service-related industries. An ability to adapt to local markets has proven to be a crucial factor in the success or failure of U.S. franchisors abroad. As the “Johannesburgers and Fries” article demonstrates, breaking into a foreign market requires franchisors to examine carefully the might of homegrown brands and local tastes.

***Gas Plant Disaster In re Union Carbide Corporation at Bhopal***

1. India gained independence from Great Britain in 1947. Like many developing countries with agrarian economies, independent India embarked on a long period of socialist and protectionist policies. What types of controls do you think developing countries placed on foreign investors? How do you think this defined the relationship between UCC and the Indian government prior to 1984?

Answer: This question calls for further student research and opinions. Students may be directed to review restrictions upon foreign investment presently existing in the developing world and contrast it to restrictions existing in 1984.

2. Why do you think UCC might have chosen to produce agricultural pesticides in India rather than export those products to India from plants in developed countries?

Answer: This question calls for student opinion, but obvious answers are reduced labor costs in India and relaxed safety requirements, which will reduce the overall cost of production.

3. Why did India require local management and control? Do you think this is still a problem for multinational companies today? What are the advantages and disadvantages of local management, and what problem does it present to the multinational?

Answer: This question calls for further student research and opinion. However, it should be noted that local management and control provides employment opportunities for nationals and allows host states to claim some regulatory control over the enterprise. Multinational companies may derive good will benefits from employing locals as well as specialized knowledge of the host state and its market. However, multinational companies may suffer a loss of control of the investment and risk liability when harmful events occur.

4. Had the legal requirements in India concerning the handling of hazardous chemicals been less than that required in the United States, should Union Carbide have ethically followed the higher U.S. standard?

Answer: This question might permit students to consider the loyalties and attitudes of Western managers operating in foreign countries.

5. Do you think that a parent corporation , like UCC in this case, should be financially liable for torts committed by its foreign subsidiary? Should the parent be protected by the limited liability of its corporate veil, or should a multinational firm with a “global purpose” be responsible under some theory of “single-enterprise” liability? How would this affect the attitude toward investment world-wide?

Answer: This question calls for student opinion. Students may be encouraged to discuss whether multinational corporations have a responsibility above and beyond compliance with the moral minimum as commanded by the law.

***Transatlantic Financing Corporation v. United States***

1. Did the parties agree on what would happen if the Suez Canal had closed? In other words, did they allocate the risk of closure? Would that have changed the result?

Answer: No, they did not. It would change the answer for Transatlantic as it could have recovered the extra cost if the contract specified via the Suez canal.

1. What is Transatlantic’s argument? If admiralty law implies that a ship’s journey will be by the “usual and customary” route, why did the court not hold that the contract had become impossible to perform? How does the court define “impossible?”

Answer: It argues it expected to use the Suez Canal and as it could not do so, the extra cost should be paid by the U.S. as shipper. The court found it was not impossible to perform the contract as the alternate route was feasible to use and the extra cost was not extreme.

1. Did Transatlantic’s performance become impracticable? How difficult was it for Transatlantic to take the alternate route around Africa?

Answer: No. It was a common alternate route and taking it was not impracticable.

1. Suppose it had been bad weather instead of a blocked canal? Would the case outcome have been different? How about a tsunami? What if a government order had prohibited the ship from departing Texas?

Answer: Bad weather would not make it any different, although a tsunami probably would because it would be unanticipated and not something that a vessel owner should plan for. A government order blocking the canal would provide a different result; the vessel could collect the extra cost.

***Gaskin v. Stumm Handel, GMBH***

1. Why did Gaskin claim that he was not bound by the forum selection clause included in the contract to which he agreed?

Answer: Gaskin asserted that since he did not understand what a forum selection clause was, due to it being in German, he could not have agreed to it.

2. Is a party to contract negotiations obligated to provide translation services to other parties?

Answer: Neither party is obligated, but translation services are available worldwide. The local offices of the U.S. Department of Commerce can assist a U.S. firm in arranging translation services abroad. One should clarify this in advance with the host.

3. If the parties to a contract execute two copies of a contract, one in each language, which is the operable and effective document?

Answer: Both represent the understanding of the parties, but this may depend in part on the court hearing the dispute. This practice is relatively common and is a requirement for doing business in many countries, notably the former Soviet Union and the People's Republic of China.

***Bernina Distributors v. Bernina Sewing Machine Co.***

1. What were the importer’s two arguments in this case? How did the court address each?

Answer: Importer argued that as the contract permitted it to increase price to distributor if the “costs” to the importer had increased, the increased “cost” of paying in Swiss francs was a cost it could pass along. However, the court said the contract “costs” referred to cost of insurance, freight, handling and similar charges, but not the possible fluctuation in currency values. Importer also argued that increased cost made it “commercially impracticable” to fulfill contract and thus it was legally excused from performing. The court said contract was clear that importer was aware of and assumed the risk of currency exchange risk and that UCC provision re commercial impracticability did not include risks assumed by a party to the contract.

2. What is the effect of the fact that just prior to executing the contract, the dollar had fallen by 7 percent against the Swiss franc?

Answer: The importer as buyer pays in the seller’s currency and now it has to pay more dollars to buy the needed amount of swiss francs.

3. In any international business transaction, which party assumes the exchange rate risk?

Answer: The risk is assumed by the party whose currency is NOT being used; it is usually the buyer. The seller wants payment in its own currency, so the contract usually places the exchange risk on the buyer. A buyer with a strong negotiating position may be able to have the contract let it use its own currency, but this is not the norm.

***DIP SpA v. Commune di Bassano del Grappa***

1. What was the ostensible purpose of the Italian law?

Answer: The espoused purpose of the law was to protect consumers, achieve a balance between supply and demand, ensure free competition, and obtain a balance between different forms of distribution.

2. Do you think the law creates a climate ripe for corruption?

Answer: This question calls for student opinion.

3. Why was the law not found to be discriminatory?

Answer: Because in awarding licenses, it did not distinguish between Italian and non-Italian businesses (or the origin of the goods sold) but, rather, considered the type of business in relation to its market contribution.

4. Assume that a municipality in a foreign country passes a law limiting the size of retail stores in the city. How might this affect U.S. firms wanting to open stores there?

Answer: This question calls for further student research and opinions. Students may wish to consult the example of Wal-Mart in Germany, which sold its operations at a considerable loss due, in part, to the inability to build superstores in the country.

**Answers to Questions And Case Problems**

1 Answer: Both cases involve the question of what risky situations make a contract “commercially impracticable to perform”. Such impracticability is a legal excuse for nonperformance because the contract is considered “impossible” to perform. However, if a party knows of, or should know of, certain risks in performing a contract, but makes no provision for them in the contract, those risks are considered to be assumed by the party performing them. A risk assumed by a contracting party is not considered to be a risk that is impossible to perform.

In *Transatlantic*, the risk is that waring parties could block the Suez Canal and the court found that was a known risk that was foreseeable and was assumed by the shipper planning to use that passage route. In *Bernia,* the risk was the currency risk that the value of the dollar would fall compared to the value of the Swiss franc costing the importer more dollars. That risk was also a foreseeable risk assumed by a contracting party, the importer, so it was not impossible for it to perform its contract with its U.S. distributor.

2. Answer: Distance and differences in time, language, currency, culture, religion and political and legal systems increase the risks of doing business internationally.

Trade represents the least involvement, and thus the least political, economic, and legal risk. For example, exporting requires only a modest capital investment although firms must be careful to comply with applicable export controls. Importing may involve greater risks, including tariff and non-tariff barriers to trade. By contrast, licensing of intellectual property carries the risk of lack of recognition and adequate protection in the licensed foreign market and the possibility of counterfeiting. Foreign direct investment, such as ownership of a foreign firm or facility, has many advantages, including the avoidance of tariff and nontariff barriers, currency fluctuations, improved customer service and access to local natural resources, labor, and manufacturing economies of scale. However, foreign direct investment carries with it the obligations of corporate citizenship and complete involvement in all aspects of the foreign country.

3. Answer: Building trust can occur through meeting with people over meals, socializing with appropriate drinks and food. Sending notes to people, asking about their family and about their work (again, where appropriate) and keeping in touch. Perhaps sharing small gifts or stories about you and your family or your business. Most foreigners like to take their time in getting to know their business partners; they do not want to be rushed. Once you come to know a person you not only may be able to have greater trust, but also greater knowledge of how they might react if problems do arise.

4. Answer: Pro Golf was entitled to terminate its agency relationship with FFA, but it was not entitled to royalties on its trademarked goods because it had not perfected its right to use that trademark under Japanese law. When entering the Japanese market, Pro Golf should have a written agency and distributorship agreement. It did not do the needed research on Japanese customs and laws that should proceed any form of entry into a country like Japan.

5. Answer: First, the court will attempt to discern what the reasonable understanding of the parties was (that may include reference to prior dealings between parties or industry practice). If, where, as here, the meaning of the word differs, the court will then rely on the meaning of the word in the language of the contract.

Of course, language problems are inevitable in international negotiations. In the case of sales contracts, as we shall see in later chapters, the use of samples helps greatly. For this reason, reliance on samples in doing business over great distances is very common. Certificates of analysis and the use of local inspection companies are also widely used. It is essential that the parties take the time to familiarize themselves with each other's products. Visits to a supplier's plant or buyer's place of business can be an invaluable learning experience and can serve to significantly reduce the potential for communication problems and misunderstanding.

6. Answer: Planning and commitment are essential because (1) poor planning fails to anticipate the various risks that pertain to doing business overseas, and (2) lack of commitment can undermine a sound, long-term strategic decision to penetrate overseas markets where early losses are sustained.

The search for a magic “elixir” can make the grass seem greener overseas. A company that fails in its home market must carefully analyze the reasons for that failure and make a clear-eyed assessment of whether overseas markets offer better opportunities for licensing, exporting, or direct investment. It is entirely possible that foreign markets may offer enhanced opportunities (less competition, lower labor costs, better access to markets, materials or sources), but if a company is failing in its home market, it may not have the planning and commitment to insure a sound, long-term strategy for going global.

7. Answer: This answer will depend on your location. Leading export firms can be found through various publications, state departments of commerce, or world trade clubs in your area. The impact of exports will vary, but the number of jobs created or maintained by exports is certainly a positive indicator for any state’s economy. Various groups (including the AFL-CIO) could provide information as to whether jobs have so far been gained or lost through the ratification of NAFTA and the Uruguay Round of GATT. State departments of commerce often sponsor trade missions and other export-encouraging seminars, workshops, and programs to educate state businesses about the opportunities existing beyond U.S. borders.

8. Answer: This question calls for general discussion among students. It might help to analyze which franchise operations have sold well in foreign countries generally and developing countries in particular. Which brands and products are so well known that they have customer acceptance in different cultures? What has the role of advertising been in establishing that success? Are there any problems with protecting franchise logos (as trademarks) in any foreign countries?

9. Answer: The U.S. Commercial Service is the trade promotion unit of the International Trade Administration within the U.S. Department of Commerce. The U.S. Commercial Services employs trade specialists in 107 U.S. cities and 80 foreign states to assist U.S. companies with exporting and sales efforts. Its services include, market research, sponsored trade events, introduction to qualified buyers and distributors, development of trade leads and counseling and advocacy through the export process. Trade statistics are available through the U.S. Government’s export portal, Export.gov. Statistics include national trade data regarding U.S. merchandise exports, imports and trade balances and state and regional export data as well as country commercial guides, overviews for 13 separate industries, market updates, multilateral development bank reports and a Market Assessment Checklist.

**Managerial Implications**

Derived from an actual business situation, this case has several objectives: To illustrate the interrelationship of our three forms of international business – trade, IP licensing, and FDI, to show that they are not mutually exclusive market entry methods, to examine the advantages and disadvantages of each method to this firm, and perhaps most importantly, to give students their first opportunity in this book to participate in strategic global planning for their firm. The latter may be best accomplished if the class is broken into small groups, each given the role of exploring a different strategy, and then returning to make their presentations and arguments. Because of the breadth nature of this chapter, the instructor and students should think beyond the purely legal issues.

Key facts: Quiet-Maid has valuable, patented technology (we do not know how or where patents were obtained). It is currently manufacturing in the United States, and is successful in the U.S. market. Products are large and heavy. We do not know the size or sophistication of the firm, but students can make assumptions.

Part 1. Exporting.

1. Advantages of exporting. Answer: Briefly, some of the advantages might include lower initial start-up costs, ability to control manufacturing quality at home, minimal country risk and exposure to foreign laws.

2. Foreseeable problems/barriers with exporting. Answer: Tariffs, non-tariff barriers (such as compliance with foreign technical regulations and product standards - including environmental and conservation standards), land and water transportation expense (products are both large and heavy and expensive to ship and insure), cargo risk (including rusting from salt water condensation, and from multimodal shipment), supply of service and repairs, maintaining/warehousing finished goods inventory and a supply of spare parts or accessories, currency risk, credit risk to foreign wholesale customers, difficulty of breaking into the market and entering channels of distribution (particularly through foreign retail chains). If firm is capable of doing more, exporting may show a lack of commitment by top management.

3. Factors influencing success in Europe. Answer: Can the product be designed to appeal to European customers and meet European standards? Can they be packaged appropriately for shipment? Most importantly, will Quiet-Maid be able to locate a European distributor to handle warehousing, sales, parts and repairs, returns, and to advise on marketing, advertising, and compliance issues? Is top management truly committed to doing business in outside their home market?

Part 2. Manufacturing Joint Venture with Spanish Manufacturer.

1. Why a manufacturing joint venture? Answer. The CEO is probably thinking that Quiet-Maid is not yet ready to “go it alone” in Europe and that it’s safer to do it with a local partner. His plan is to leverage his intellectual property rights in exchange for minority interest share of profits with a Spanish manufacturer. This would provide a European partner who brings to the table what Quiet-Maid is lacking: local manufacturing, local know-how, an understanding of the European market and European customers, an understanding of the European tax and regulatory environment, and access to the Spanish company’s existing European channels of distribution. It brings Quiet-Maid “closer” to its customers and reduces the time from production line to customer. (Think about the risks of international business discussed in this chapter: time, distance, currency and credit risk, etc.) Allows greater foreign market penetration than is capable even with a foreign distributor alone. However this option means that Quiet-Maid is giving up control of manufacturing and other operations, and although Quiet-Maid will no doubt have a say on the board of directors, the CEO will likely be from the Spanish partner. Students should be thinking about what it means to be a minority owner in a distant investment with foreign partners that they may not know very well.

2. Why not start a new subsidiary, presumably one that is “wholly owned?” Answer. Some of this has already been covered. As compared to the alternatives, this would assume that Quiet-Maid has the human and capital requirements necessary to make such a large foreign investment. Does it have people capable of leading its entrance into Europe, including overseeing site selection, construction, personnel, and market entry? Does it have the financial resources to see it through and does it have the necessary banking arrangements for a European investment? Is the firm sophisticated enough to become a “citizen” of Europe and of the country in which it would build its plant? Is it capable of translating its success with consumers in the United States to consumers in Europe, and can it put into place a strategy for success on a new continent? For example, for many years American furniture did not sell well in foreign markets, notably Japan and Europe, because the large, bulky furniture sold in the U.S. did not appeal to foreign consumers with smaller homes and apartments. Smaller, more efficient, front-loading washers became commonplace in Europe many years before becoming accepted in the U.S. Can Quiet-Maid adapt to foreign demand, as well as to foreign environmental standards on washers and dryers? Does it have adequate legal and accounting advice to become a European “citizen?” Finally, does it have the time required to put this plan into operation, or are there some reasons to hasten Quiet-Maid’s attack on the European market? It seems that the CEO does not think Quiet-Maid is ready to take this step alone, and thus favors the joint venture.

Part 3. Quiet-Maid reevaluates its joint venture strategy.

1. What Quiet-Maid discovered. Answer: Quiet-Maid discovered that the CEO’s chosen partner was “cooking the books” to cheat Spanish tax authorities. This illustrates the risk of making a foreign investment with a relatively unknown foreign partner. It puts the student into the position of being able to reevaluate the CEO’s plan and to make recommendations accordingly.

2. Risks of this investment with this firm. Answer: Quiet-Maid learned that its future partner might not be so trustworthy. After all, if the Spanish firm is willing to “cook the books” for Spanish tax authorities, how can Quiet-Maid ever trust it to run it’s company, and to show a profit, to which Quiet Maid would be entitled to share? Obviously the risks are too great to proceed with this firm as partner.

3. No joint venture, no wholly-owned subsidiary. Now what? Answer. Students should see this as an opportunity for Quiet-Maid to look for some safer alternative, in other words, to “back up and punt.” Quiet-Maid needs to find some way to enter the European market in a safe and cost-effective manner, and in a way that best leverages its available resources. Clearly its greatest resource is its patented technology on home appliances. Assuming that Quiet-Maid can adequately protect its patents and technology in Europe, it should consider a licensing agreement with a foreign manufacturer. It turns the manufacturing and marketing over to a local firm, overcoming the disadvantages of exporting from the United States, without the risk of making a costly direct investment itself. Of course, most students will still not want to do business with this Spanish company. But if Quiet-Maid does, it will find that policing a royalty based on a percentage of sales is easier than getting its share of profits which can be hidden in expense accounting.

**Ethical Considerations\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Although students will study ethical considerations in more detail in the next chapter, this may be an opportune time to introduce ethical frameworks to the class. Such frameworks may be generally divided into teleological and deontological frameworks. Teleological frameworks focus on the ramifications resulting from the actions and conduct of individuals. Deontological frameworks focus on duties or obligations in determining whether a given action is right or wrong.

There are several ethical theories based upon teleology. Ethical egoism is defined as a theory of ethics recognizing that people act in their own self-interest. A person should act in a manner that best promotes his or her interests unless the net result will generate negative rather than positive results. People should limit their judgments to their own ethical egos and not interfere with the exercise of ethical egoism by others. Another theory within the teleological framework is moral relativism. Moral relativism focuses on determining what is right behavior based upon the time and place of the circumstances. The proper resolution of ethical dilemmas is based on weighing competing factors at the moment and making a determination to select the lesser of evils as the resolution. A final example of a theory within the teleological framework is utilitarianism. Utilitarianism focuses on whether an individual’s action 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.

There are also several theories within the deontological framework. Divine command theory is defined as a theory of ethics in which resolution of dilemmas is based upon tenets of faith within religious beliefs. Examples include the Ten Commandments in the Jewish and Christian faiths and the Sharia (God’s law) in Islam. These examples share many similarities with the natural school of law, which proposes that there are certain rights of divine origin. The Declaration of Independence is an example in its statement that white males were endowed with certain inalienable rights by their creator. The Categorical Imperative derives from Immanuel Kant’s *Foundations of the Metaphysics of Morals* (1785). Kant stated that “[o]ne ought to act such that the principle of one’s act could become a universal law of human action in a world in which one would hope to live.” There are no exceptions to these universal standards of conduct, and if one is unwilling to permit others the right to a particular type of behavior, he may not make an exception for himself. Kant also stated that “[o]ne ought to treat others as having intrinsic value in themselves, and not merely as a means to achieve an end.” Furthermore, behavior is only ethical if a person acts out of goodwill and pureness of heart. A final example of deontological thinking is contractarianism. This theory holds that membership in society is imbued with certain duties and responsibilities. Individuals agree to the norms governing society by establishing a contract with other members of society. It is assumed that people will develop social contracts through rational consideration of the results and consequences if there were no rules. These norms should be fair to everyone. This once again assumes rational people will always select that which is the fairest and most equitable resolution of a dilemma without regard for personal consequences. Inequalities in rights and duties are only acceptable if they generate benefits for everyone in society.

Students’ opinions should reflect some understanding and consideration of these concepts.

**Supplemental Activity: Case Brief Assignment**

Instructors who want to hone the writing and analytical skills of students may wish to require students to write a case brief on a supplemental case and answer a series of questions. This first example is relatively simple, while later examples become more complex. For briefing a case, you may suggest a style of your own, borrowing one from a legal writing text, or hand out the example here.

**Briefing a Case**

A case brief reduces a case to its essential components: what it is about and what it means in terms of the law. Case briefs generally comply with the following format:

**Case Name and Citation:** include the name of the case, the year decided, the court that decided the case

**Facts:** a brief recitation of the relevant facts giving rise to the dispute (this may also include a relevant statute or legal rule and a lower court’s decision)

**Plaintiff and Defendant Arguments:** outline the complaint of the plaintiff and defendant and any defenses raised

**Issue:** what is the essential issue before the court (the question the court must answer); phrase in the form of a question (e.g. does U.S. anti-discrimination law apply to U.S.-based businesses operating outside the U.S.?)

**Answer:** a simple answer to the question (e.g. yes, U.S. anti-discrimination law applies extra-territorially

**Rule:** explain the legal reason provided by the court for its decision; note any law relied upon

**Decision:** Who won; What was the remedy

**Supplemental Case:**

**Eckert International, Inc. v. Government of the Sovereign Democratic Republic of Fiji.**

Have students find, read, and brief *Eckert International, Inc. v. Government of the Sovereign Democratic Republic of Fiji, 834 F.Supp. 167* (E.D. Va. 1993). This case appears in the context of the sometimes precarious nature of newly independent states and the concept of sovereign immunity. Fiji’s new prime minister, who came to power through a coup, sought to terminate a pre-existing commercial contract with Eckert International, an American corporation. Eckert sued Fiji for breach of contract, and Fiji asserted sovereign immunity. Concluding that the contract was commercial in nature, the court found sovereign immunity inapplicable.