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Transnational Business Law in the Twenty-First Century

Introduction

*John G. Sprankling**

Welcome to McGeorge's twentieth annual International Law Symposium. Each year we bring together leading experts on transnational business law from practice, academia, business, and non-governmental organizations to discuss a contemporary topic. Our topic for this year is *Transnational Business Law in the Twenty-First Century*. We are proud to present an excellent array of speakers to address aspects of this topic. The principal virtue I bring to this Symposium is ignorance, because I began the practice of law as a California real property attorney. What could be further removed from the esoteric world of transnational business law than California real estate? However, we will discover a link.

When I used to do some mountain climbing, I learned an important precept: the mountain is clearer to the climber from the plain. This means that the climber should plan his route when he can see the entire mountain, rather than during the climb itself, when he cannot. In other words, distance brings perspective. In this spirit, I wonder what a conference like this would have been like one hundred years ago, on the brink of the twentieth century. Of course, there would not have been much transnational business law to discuss. If a conference had occurred at all, the participants probably would have discussed the domestic law of a handful of highly-industrialized nations, mainly from Western Europe, focusing on national tariff policies for the import of goods.

Consider some of the remarkable changes that have occurred over the last century: the rise of modern industrial economies in countries such as Brazil, China, Japan, Mexico, and Russia; the development of free trade arrangements such as the European Union and the North American Free Trade Agreement; the huge increase in the volume of international business transactions; the growing consumer aspirations of people in all nations; the new concerns about environmental despoliation; the evolution of a global free market under the auspices of the General Agreement on Tariffs and Trade and the World Trade Organization; the advent of international trade in services, not merely goods; and the gradual development of a legal infrastructure to regulate international transactions.

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However, as a former California real property lawyer, I find that one example best symbolizes the revolutionary changes of the last century. A few years ago, I learned about a Swiss attorney who was representing a client in a California real estate sales transaction via the Internet, without ever stepping foot in California. As technology develops, physical presence is less relevant than it was a century ago and, similarly, domestic law is less important. How can California regulate a Swiss attorney who is handling a California real estate transaction from his office in Geneva? In fact, it cannot. Consider what would have happened one hundred years ago: the Swiss attorney travels across the Atlantic Ocean by steamer, crosses the United States by train, conducts the transaction in California, and is promptly accused of practicing law in California without a license. How the world has changed!

This year's symposium consists of four panels. The first panel, "Developments and Challenges in Transactional Law," features two highly-experienced practitioners in private international law who are also adjunct professors at McGeorge. Frank X. Curci, a partner with Preston, Gates, and Ellis in Portland, discusses the potential harmonization of international intellectual property law. Ronald F. Lipp, in private practice in Sacramento, analyzes the changes to the universe of international commerce over the past two decades.

The second panel, "Developments and Challenges in Dispute Resolution," brings together two well-known law professors. McGeorge Professor Michael P. Malloy examines selected issues in international arbitration. Professor Claude Rohwer, also from McGeorge, discusses the use of litigation in foreign courts to enforce commercial agreements.

The panel entitled "Developments and Challenges in Financial Services" features McGeorge Professors Michael P. Malloy, for the second time, and Franklin A. Gevurtz. Professor Malloy explores seven issues on the financial services agenda for the new century, and Professor Gevurtz examines the globalization of insider trading prohibitions.

Our final panel, "Developments and Challenges in Trade Law," combines two distinctly different perspectives. Bruce Janigian, drawing on over twenty-five years of experience as a public and private international lawyer, presents the current state of global trade negotiations through the challenge of regionalism to continued development of the World Trade Organization's global agenda. Next, Michelle Leighton, the Director of International Programs at the Natural Heritage Institute, along with Elena Castaneda, a Doctoral candidate from the Universitat Pompeu Fabra School of Law, discuss the concerns of non-governmental organizations about the social and economic impacts of international trade.

In conclusion, I hope that the Symposium will provide all of us with new perspectives about the future of transnational business law. Like the prudent climber, let us plan our route up that mountain while we can still see if from the plain.