B735—International Business Transactions

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SUMMARIES OF MAJOR CASES:

Centros Ltd. V. Erhvervs-og Selkabsstyrelsen (ECJ 1999) (pg. 167)

In re Application of Fox Television Stations, Inc. (FCC 1995) (pg. 180)

In re Union Carbide Corp. Gas Plant Disaster at Bhopal India in December 1984 (US 1987) (pg. 195)

In re Roel (In the Matter of New York County Lawyers Ass’n) (Ct. App. NY 1957) (pg. 3)

AM&S Europe v. Commission of the European Communities (Ct of Justice of Euro. Comm. 1982) (pg. 14)

Banco Nacional de Cuba v. Sabbatino (US 1964) (pg. 68)

Facts: Banco sues on behalf of Cuban government for proceeds of sugar contract, but D claims it was a retaliatory, discriminatory taking without adequate compensation that violated norms

Holding: Supreme Court declines to rule based on the Act of State Doctrine

US Court will not sit in judgment as to what a foreign government does within its own territory—it must be determined on an intergovernmental level (executives)

Comes from the Separation of Powers Doctrine and the Court’s understanding of its role in foreign affairs

Congress later passed the Sabbatino Amendment overruling the doctrine in some cases

Sumitomo Shoji America, Inc. v. Avagliano (US 1982) (pg. 89)

Equal Employment Opportunity Commission v. Arabian American Oil Co. (US 1991) (pg. 98)

Mahoney v. RFE/RL, Inc. (US Ct. App. 1995) (pg. 108)

Hartford Fire Insurance Co. v. California (US 1993) (pg. 113)

United States—Import Prohibition of Certain Shrimp and Shrimp Products (Shrimp Turtle Case) (WTO Appellate Body, 1998) (pg. 137)

Banco Nacional de Cuba v. Chase Manhattan Bank (US Ct. App. 1981) (pg. 79)

Facts: Banco sues to recover monies held by Chase; Chase counterclaims to recover value of branches lost when they were expropriated by Cuba

Court must determine the standard of compensation under international law—evidence that states do not exhibit general and consistent state practice supported by a sense of legal obligation on any standard

If customary law doesn’t apply, the fallback should be STATE SOVEREIGNTY

M/S Bremen v. Zapata Off-Shore Company (US 1972) (pg. 23)

Mitsubishi Motors Corporation v. Soler Chrysler-Plymouth, Inc. (US 1985) (pg. 42)

Yusuf Ahmed Alghanim & Sons, WLL v. Toys “R” Us, Inc. (US Ct. App. 1997) (pg. 51)

Khulumani v. Barclay Nat. Bank Ltd. (US Ct. App. 2007) (pg. 206)

HOLDING: In the 2d Circuit, a plaintiff may plead a theory of aiding and abetting under the ATS against a corporation

RATIONALE:

J. Katzmann finds aiding and abetting cause of action in international law which requires acting with the purpose of facilitating the violation

J. Hall uses “federal common law” to determine aiding and abetting standards for ATS claims, with standard being knowledge that other’s conduct constitutes breach and provision of substantial assistance or encouragement for such conduct

Kiobel v. Royal Dutch Petroleum (ASIL Article)

More recent decision by the 2d Circuit on corporate liability for aiding and abetting under the ATS

HOLDING: “The 2d Circuit dismissed the ATS claims in Kiobel for lack of subject matter jurisdiction, because the claims were brought against corporations, rather than natural persons…Because no international tribunal has held a corporation liable for violating customary international law, the majority concluded that international law violations by corporations do not give rise to subject matter jurisdiction under the ATS”

IMPLICATIONS: “The decision in…Kiobel basically put a halt to cases against corporations in the 2d Cir. However, the Kiobel opinion may in fact give a boost to cases against individuals who acted on behalf of foreign states or corporations with its unremitting emphasis on the fact that ‘the moral men and women who have perpetrated it.’ This should give both foreign officials and corporate executives reason for pause.”

This issue still not totally resolved for business planning purposes

Filanto, S.p.A. v. Chilewich International Corp. (SDNY 1992) (pg. 279)

Sztejn v. J. Henry Schroder Banking Corporation (NY Supreme Ct 1941) (pg. 290)

Compagnie Européenne des Pétroles SA v. Sensor Nederland BV (DC at The Hague, 1982) (pg. 300)

Ingmar GB Ltd. V. Eaton Leonard Technologies Inc. (ECJ 2000) (pg. 331)

Metalclad Corporation v. United Mexican States (NAFTA Chap. 11 Tribunal 2000) (pg. 414)

United Mexican States v. Metalclad Corporation (SC Brit. Columbia 2001) (pg. 426)

Leasco Data Processing Equipment Corp. v. Maxwell (US Ct. App. 1972) (pg. 447)

Statement in the Matter of the Boeing Company/McDonnell Douglas Corporation (1997) (pg. 482)