

F2

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Global Business and International Trade

International legal forces and
intellectual property rights

Today's program

- International legal forces
- International dispute settlement
- Intellectual property
- Some interesting intellectual property disputes

International legal forces

- Rule of law
 - country must be governed by the rule of law; if not, it creates a huge disadvantage
 - investors know that their interest will be protected
 - an advantage Hong Kong has over Shanghai
- Sources of international law
 - bilateral and multilateral treaties between countries (international organizations such as the UN have provided forum for creation of many treaties)
 - customary international law (consists of international rules derived from customs and usage over centuries)
 - Is international law superior to national law?

International legal forces

- Extraterritoriality
 - countries often attempt to enforce their national laws outside their borders
 - done through traditional legal means
 - tax laws (typically US - imposed on all US citizens and US permanent residents)
 - antitrust or environmental laws
 - international law has priority to national law

International dispute settlement

- Litigation process
 - which jurisdiction's law should apply and where the litigation should occur
 - each country has elaborate special laws for this determination (adjective law)
 - this could be prevented by special law provisions included in contracts
 - choice of law clause (which law will govern in the event of a dispute)
 - choice of forum clause (where the dispute will be settled)

Performance of contracts

- Problems getting the other side to perform its obligations
- Problem is that national courts do not have the power to enforce their decrees outside national borders – each country has its own rules for recognizing decrees and judgments from other countries (but progress has been made)
- Solution (ex ante)
 - multilateral treaties – UN CISG (Convention on Contracts for the International Sale of Goods) – rights and obligations of the buyer and seller (opt out clause)
 - arbitration – a dispute resolution mechanism; is quicker, less expensive and more private
 - customs and practices – INCOTERMS, documentary credits

Intellectual property

- Organizations
 - World Intellectual Property Organization (WIPO)
 - administers 24 international intellectual property treaties
 - advises developing countries on these issues
 - TRIPS
 - ACTA (Anti-Counterfeiting Trade Agreement)

Intellectual property

- Forms
 - Patents
 - Trademarks and trade names
 - Copyrights
 - Industrial design
 - Geographical indication
- What is the difference?

Intellectual property

- Patent
 - a government grant giving the inventor of a product or process the exclusive right to manufacture, exploit, use and sell that invention or process
 - harmonization of patent treatment
 - Paris Union, European Patent Organization (EPO)
 - typical in drug industry

Intellectual property

- Patent
 - debate over the length of protection period (typically 15 to 20 years)
 - smaller nations have been mounting attacks on it, but MNC are resisting the changes
 - Is it reasonable (evincible) to protect?

Intellectual property

- Trademarks and trade names
 - designs and names officially registered, by which merchants or manufacturers designate and differentiate their products
 - can be a shape, a color or design, a catchy phrase, an abbreviation or even a sound
 - protection varies from country to country, as does its duration, which may be from 10 to 20 years (with possible renewals)

Intellectual property

- Copyrights
 - exclusive legal rights of authors, composers, creators of software, playwrights, artists and publishers to publish and dispose of their works
 - protected under the Berne Convention of 1886, the WIPO Copyright Treaty and the TRIPS Agreement

Intellectual property

- Copyrights
 - As a general rule copyright protection lasts for the life of the author plus an additional 70 years
 - For an anonymous work or a work made for hire the copyright endures for a term of 95 years from the year of its first publication or a term of 120 years from the year of its creation, whichever expires first

Intellectual property

- Industrial design
 - Industrial design is the use of both applied art and applied science to improve the aesthetics, design, ergonomics, functionality, and/or usability of a product
 - It may also be used to improve the product's marketability and even production

Intellectual property

- Industrial design
 - Industrial design rights are intellectual property rights that make exclusive the visual design of objects that are not purely utilitarian. A design patent would also be considered under this category.
 - Under the *Hague Agreement Concerning the International Deposit of Industrial Designs*, a WIPO-administered treaty, a procedure for an international registration exists

Intellectual property

- Geographical indication
 - A geographical indication is a sign used on goods that have a specific geographical origin and possess qualities, a reputation or characteristics that are essentially attributable to that place of origin
 - Most commonly, a geographical indication includes the name of the place of origin of the goods. For example, agricultural products typically have qualities that derive from their place of production and are influenced by specific local factors, such as climate and soil.

Intellectual property

- Geographical indication
 - A geographical indication right enables those who have the right to use the indication to prevent its use by a third party whose product does not conform to the applicable standards
 - For example, in the jurisdictions in which the Darjeeling geographical indication is protected, producers of Darjeeling tea can exclude use of the term “Darjeeling” for tea not grown in their tea gardens or not produced according to the standards set out in the code of practice for the geographical indication

Intellectual property

- Why does it matter?
 - It is at the core of what drives businesses and many other types of organizations forward. Every institution holds intellectual property of varying degrees of importance to the fulfillment of its mission.
 - It's what an organization's community knows in the aggregate and what its people can do. Intellectual property is often a key driver of new business lines.

Intellectual property management

- IP treating
 - You should treat it as a core asset class
 - It is as important as other forms of property
 - At the same time, it is different from other types of assets, because of its instability (e.g. when patents are claimed invalid by a court)
 - It is not exactly „property“, it is its special form that can be used by many people at the same time, at virtually no marginal costs

Intellectual property management

- IP treating
 - It is an information, which is not exhausted the more that people use it
 - It often gains in value the more that other people use it

Intellectual property management

- How to acquire IP?
 - Develop it on your own
 - Simplest, cleanest and most obvious way (but not always the most economical)
 - Develop it with others
 - Typically based on joint development agreements (JDAs)
 - With competitors?

Intellectual property management

- How to acquire IP?
 - License it from the others
 - Logo, popular character
 - As producer, you might get contacted
 - Buy it, by acquiring a company or part of its assets
 - Typical in pharmaceutical industry (patents)
 - Or IT industry

Intellectual property management

- IP limited exclusion
 - A good way how to profit
 - Trademark and copyright licensing
 - Patent licensing
 - Strategy typically involves extensive price discrimination
 - Price based on territory, product, etc.
 - Beneficial for both sides – you do not lose
 - Brand awareness (with potential troubles)

Intellectual property management

- IP full exclusion
- Open access
 - Why?
 - Open-source software
 - Drugs to developing countries

Intellectual property

- Teamwork 😊