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International Law Cases in the Courts of the United States

W. Harvey Reeves

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Within the last year the Federal courts have had presented to them a number of international law questions. Perhaps the most important and best known case is the *Sabbatino* case in which there had been decisions before the Sabbatino Amendment was passed by Congress and amended a year later in 1965. There have been four cases in which issues under this Amendment have been raised, two decisions in the *Sabbatino* case itself, and three others in which issues were raised requiring interpretation of the Sabbatino Amendment by the courts. The cases are as follows:

Banco Nacional de Cuba v. Farr,
243 F.Supp. 957, 981 (S.D.N.Y. 1965)

Finding that the Sabbatino Amendment should apply to all pending cases and that the *Sabbatino* case was still pending as no judgment had been entered on the mandate from the Supreme Court, the District Court decided that the transfer in Cuba under the confiscatory law of Cuba was ineffective to transfer title. However, the entry of judgment was delayed for a period of sixty days on the ground that:

> It is plain to me that proper respect and consideration for the Executive Arm requires that the court give full opportunity to the President to make the determination provided for by the Amendment and if, in his wisdom he sees fit, to have a suggestion filed on his behalf that in this case application of the act of state doctrine is required by the foreign policy interests of the United States.

Within that period the Justice Department addressed a communication to the District Court saying that no decision had been or would be made on this question. Thereafter a final order, unreported, was entered in favor of the defendants and against the plaintiff.

The case is now on appeal to the United States Court of Appeals for the Second Circuit. All issues in the case will, of course, be presented, but the particular issue at this time appears to be the constitutionality of the Sabbatino Amendment.

There are three additional cases in which the Sabbatino doctrine was discussed:

Republic of Iraq v. First National City Bank,
241 F. Supp. 567 (S.D.N.Y. 1965), *aff'd,* 353 F2d 47
(2d Cir. 1966)

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Effort was here made by the Republic of Iraq to obtain possession of certain property held in the United States for and in the name of King Faisal II. The property of the said King Faisal had been seized in Iraq under the laws of Iraq, and it was claimed by the Iraqian Government that this would also transfer the title to the property held in the name of King Faisal in New York. The court held that this confiscatory law of Iraq would not affect property within New York which had been there prior to the time of the confiscation law of Iraq. That property had never been in the jurisdiction of Iraq or under its control after the property of King Faisal II was seized in his home country. On this aspect the District Court said (at p. 572):

> Sabbatino, as well as the other 'act of state' cases, applies only to a taking within the territory of the foreign sovereign. We are here concerned with an attempted taking of property outside that territory. . . .

Another case in which reference was made to the Sabbatino Amendment occurred in the case of:

American Hawaiian Ventures, Inc. formerly *Hawaiian Sumatra Plantations Limited, Libelant,* against *M. V. J. Latuharhary, Etc.,* and against *Djakarta Lloyd Lines* Civ. Ac. No. 576-65 (U.S.D.C. N.J.) (Not Reported)

In this case a ship belonging to the Government of Indonesia was in the territorial waters of the United States in New Jersey. This ship was there libeled by the American Hawaiian Ventures, Inc. which claimed that, because of confiscatory actions taken in Djakarta against their property, the Government of Indonesia owed to them a sum of money—the value of the confiscated properties. The issue raised by the libelant and its disposition by the court is indicated in the following quotation:

> In reply, libelant asserts that the Sabbatino Amendment to the 1964 Foreign Assistance Act, §620(e) (2), 78 Stat. 1013 (1964), deprives Indonesia of any claim to sovereign immunity. This is incorrect. In *Banco Nationale* [sic] *de Cuba v. Sabbatino,* 376 U.S. 398 (1964), the Supreme Court ruled that American Courts were precluded by the Act of State Doctrine from determining whether Nation's expropriation of American property violated international law. All the 'Sabbatino Amendment' does is to overrule that decision and direct the courts to pass on this question unless the State Department requests that it refrain therefrom.

Continuing, the court said:

There was no question in *Sabbatino* of the Court's jurisdiction to hear a suit against Cuba, because an agent of Cuba had appeared voluntarily as plaintiff to claim proceeds of the sale of sugar which had been expropriated. . . .

F. Palicio y Compania, S.A., Cifuentes y Compania, por Larranaga, S.A., Menendez, Garcia Compania, Limitada, and Tabacalera Jose L. Piedra, S.A. v. Gilbert P. Brush and Monroe Percy Bloch, copartners doing business under the firm name and style of BRUSH & BLOCH (U.S.D.C., S.D. N.Y.), 61 Civ. 2299, Decision Dated July 27, 1966

Since this case is one of the "Cuban cases" and the decision is lengthy the issues and decisions will be indicated by brief quotations from the decision itself except for necessary connective explanations.

The controversy which is the subject of this action arises out of the take-over by the Castro government of Cuba of five leading Cuban manufacturers of cigars whose businesses and principal assets were located in that country. . . .

This action is brought in the name of the five intervened Cuban business entities by Messrs. Rabinowitz & Boudin, a New York law firm who, as attorneys for the interventors, are acting for the Cuban government. . . . [Opinion, pages 1 and 2]

The defendants are the New York law firm of Brush & Bloch, who have been retained by the former owners of the five Cuban business entities and have brought eleven actions in this court. . . . [Opinion, page 3]

On September 15, 1960, all the physical assets of the five entities in Cuba, including the plants and inventory of cigars and tobacco, were taken over by the Cuban government. . . . The intervenors, . . . continued the manufacture of cigars in the seized plants. . . [and] subsequently sold the finished cigars to the United States importers who have not yet paid for them. For purposes of this case the intervenors are claiming only the price of cigars shipped after the intervention. [Opinion, page 20]

The ultimate issue raised here—whether the intervenors or the former owners of the five Cuban entities are entitled to control the eleven actions. . . . [Opinion, page 8]

The court found that the companies in question were Cuban incorporated and Cuban owned.

[I]t is settled doctrine that 'acts of a state directed against its own nationals do not give rise to questions of international law.' . . . [Opinion, page 14]

Except insofar as the validity of the *Sabbatino* decision has been over-

ruled by the Hickenlooper amendment it is still valid and controlling. . . . [Opinion, page 16]

The other issue in the case was whether the "former owners" or the "interventors" had the right to use the trademarks wherever registered. As to this the court said, page 31:

The rights of the former owners to conduct their businesses here include the right to make use of the good-will long established in this country of which the trademarks are an integral part. These trademark rights cannot be 'detached' from the good-will and the right to conduct the businesses by giving impermissible extraterritorial effect to the Cuban decrees through a holding that the interventors rather than the former owners are entitled to enforce claims for infringement. . . .

The court then decided the two issues which were numbered as follows:

(1) that the interventors through attorneys of their own choice are entitled to pursue the claims for debts due. . . .
for the sale of cigars after intervention.
(2) that the former owners may pursue the claims for trademark infringement involved in the pending actions and the interventors may not. . . . [Opinion pages 34 and 36]

Liability of Sovereigns in Commercial Matters

Three cases have been decided; two in the Second Circuit and one in the Court of Appeals for the District of Columbia, which again illustrate the difficulty of enforcing commercial liability against a sovereign. The three cases are, respectively:

Petrol Shipping Corp. v. Kingdom of Greece, Ministry of Com.,
326 F.2d 117 (2d Cir. 1964)

Victory Transport Inc. v. Comisaria General,
336 F.2d 354 (2d Cir. 1964)

Hellenic Lines Ltd. v. Luke Moore,
345 F.2d 978 (U.S.C.D. C.D. 1965)

By the Tate letter in 1952 our Government stated that it would no longer give a suggestion of immunity for a sovereign if breach of commercial contract was involved. However, of the three problems presented when a private individual does business with a sovereign, the Tate letter at most settled but one. The three are: (1) How may jurisdiction be obtained; (2) What is the defense against a plea of sovereign immunity after jurisdiction is obtained; and (3) How may a judgment be satisfied?

In the three cases above, all commercial cases, the sovereign pleaded immunity after entering into a contract which the other party alleged had been breached. In the Second Circuit, jurisdiction was acquired by service without the state under a New York statute permitting such service. The Court upheld jurisdiction. On the other hand, since the District of Columbia had no such statute the Marshal attempted service on the ambassador of the country involved. A plea of diplomatic immunity was here sufficient to defeat jurisdiction. Thus, in the three cases where as a matter of United States law as stated in the Tate letter, the sovereigns involved were not entitled to immunity on the issues of the complaint, jurisdiction was obtained in only some cases.

There were certain cases which involved interpretation of the Trading with the Enemy Act or procedure taken under that Act.

Kondo v. Katzenbach,
356 F.2d 351, 362 (U.S.D.C. D.C. 1966)

In this action certain American citizens of Japanese ancestry sued to set aside the dismissal by the Attorney General of claims made under the Trading with the Enemy Act to recover the value of deposits made in the American branches of the Yokohama Specie Bank, Ltd. and credited in Japan. The yen accounts were by the contract also payable in dollars in the United States subject to varying exchange rates. The property in the United States of this Japanese bank was vested as enemy property. The aggregate of the claims exceeded the seized assets of the bank. Various technical difficulties, as alleged, prevented making the claims strictly in accordance with the terms of the Trading With the Enemy Act and the regulations laid down as to these claims. The court upheld the dismissal of the claims but one judge vigorously dissented on the ground as he stated:

> I agree with the court that these cases command sympathetic consideration for these many thousands of Japanese-American appellants. Respectfully, I dissent from the court's conclusion that we are powerless to provide relief.

Another case is that of

Von Clemm v. United States,
District Court, Southern District of New York,
November 23, 1965 and
Circuit Court of Appeals for the Second Circuit

This case is also to recover property seized by the alien property custodian alleged to have been brought into the United States by Von

Clemm contrary to the provisions of the Trading with the Enemy Act. The court dismissed the complaint and the dismissal was upheld (255 F.2d 353).

Miscellaneous Cases

While the question involved in the *Sabbatino* case and the questions involved concerning the immunity of sovereigns were probably the most significant during the year, other international questions appeared in certain isolated cases.

Islands Airlines Inc. v. Civil Aeronautics Board,
235 Fed. Supp. 990 (Dist. Ct. Hawaii), *aff'd,*
352 F.2d 735, and question of status of
statehood of Hawaii reviewed, opinion July 8, 1966,
United States Court of Appeals, 9th Circuit.
Not reported.

The issue arose on the basis of the assertion of the authority of the Civil Aeronautics Board over the operations of two airlines. The question decided was that the sea passages between the Islands of the Archipelago were part of the high seas and were not included within the territory of Hawaii. The court referred back to the rights of the Kingdom of Hawaii and found that under international law the Kingdom of Hawaii had no valid claim to the channels when the Islands ceased to be an independent kingdom.

Oregon-Pacific Forest Products Corporation v. Welsh Panel Company
248 F.Supp. 903, 910 (U.S.D.C. D. Ore. 1965)

In the above case the court found that in a contract between a United States corporation and a Japanese corporation the terms of the treaty of friendship, commerce and navigation between Japan and the United States are controlling on the terms of the contract. The court said:

This treaty, insofar as it affects the parties, is read into and becomes a part of the contract. A treaty is the supreme law of the land. . . . Even a state law must yield, when it is inconsistent with or impairs the policy or provisions of a treaty, and a state has no power to refuse enforcement of rights based on a federal policy which is evidenced by an international compact or agreement. . . .

U. S. v. First Nat. City Bank,
[the *Omar* case]
379 U. S. 378 (1965)

The Supreme Court of the United States, reversing the Court of Appeals decision of the Second Circuit which in turn had reversed the District Court, held that a tax distraint served on the head office of a United States bank in New York was sufficient to restrain a branch of that bank in a foreign country from paying out assets of a depositor. The action was to recover taxes alleged to have been due from the corporation on funds earned within the United States.

Lutcher S.A. Celulose e Papel v. Inter-American Development Bank,
253 F.Supp. 568 (U.S.D.C. D.C., 1966)

In this case a certain Brazilian paper company sought to enjoin the Inter-American Development Bank from making a proposed loan on the ground that the loan would enable the receiving company to expand facilities beyond the economic need of the area. The loan in contemplation was to be to a competitor of the company seeking the injunction. The Inter-American Development Bank defended on two grounds: (1) that the bank was immune from suit (at least of the type of direct action contemplated against it in this instance), and (2) that the complaint did not state a claim for which relief could be granted. The bank's position was sustained on both grounds.

The Acquisition of Jurisdiction Over Persons or Property Outside of the United States

There have been a number of cases involving acquisition of jurisdiction by a "long-arm" statute which included not only the States of New York but of Virginia, Colorado, and others. Except for the question of jurisdiction the issues did not involve questions of international law.

St. Clair v. Righter,
250 F.Supp. 148, 152 (U.S.D.C. W.D. Va. 1966)

In the above case acquisition of jurisdiction was attempted by extraterritorial service. The court endeavored to define the limitations upon a long-arm statute saying:

A 'long-arm statute,' therefore, is merely legislative approval for the exercise by the courts in that state of their inherent jurisdictional power *at least* to the limits set out in the statute. It goes without saying that the mere fact that the legislature has passed a statute does not permit an extension of jurisdiction beyond due process limits even if authorized by the legislation. Conversely, if the limits of state jurisdiction as set out in the statute fall well within the scope of due process, this does not restrict the courts and prohibit them from extending their jurisdic-

tion to the limits of due process even if such an assumption of latent power is not expressly authorized by the statute. This necessarily follows from the fact that jurisdiction is a question of power which is ultimately defined by due process and not by state legislation. . . .

United States v. Montreal Trust Company, as Executor,
District Court Opinions, 35 F.R.D. 216; 235 F.Supp. 345 (S.D.N.Y. 1964) rev'd., 358 F.2d 239 (1966), cert. denied, 384 U.S. 919 (1966), rehearing denied, 384 U.S. 982 (1966).

The question here was the jurisdiction of the court. An action was brought under the Internal Revenue Code to collect a tax claim fixed some years before against one Klein, a nonresident alien by reason of alleged constructive receipt in Canada of income from the United States. Montreal Trust Company was the executor of the estate of said lien. The government asserted extraterritorial, *in personam* jurisdiction over the Canadian corporate executor of the alleged nonresident deceased delinquent taxpayer. The court upheld the jurisdiction of the court thus acquired, one judge dissenting. Certiorari was subsequently denied; the Court of Appeals decision not yet published.

Pappas v. Steamship ARISTIDIS,
249 F.Supp. 692 (E.D. Va. 1965)

Although the action involved a ship there was no in rem process. Under the Virginia long-arm statute, i.e., permitting personal service outside the state, the Commonwealth of Virginia had endeavored to secure jurisdiction over a certain steamship which had never been in Virginia waters from the date of a particular accident, the basis of the action. The action was to recover for an accident aboard that same ship when it was docked at Wilmington, North Carolina. The *in personam* jurisdiction was attempted over the Panamanian corporation which owned the ship. The court found that no jurisdiction could be obtained because the cause of action arose in North Carolina and the respondent's commercial contacts with Virginia had been confined to two trips in five years which were insufficient contact on which the state of Virginia could acquire *in personam* jurisdiction by service outside of the state.

Konstantinidis v. S. S. TARSUS,
248 F.Supp. 280 (S.D.N.Y. 1965)

The action was a libel by a charterer for alleged breach of charter party. The charter party contained agreement for arbitration, and an

arbitration was held and the award paid into a blocked account in Turkey. The facts of this case are so particularized and complicated and the case so much based on Turkish law which was presumed to govern the agreements that no universal rule can be deducted from the case. The court, however, found that, in spite of certain peculiarities, the arbitral award was final and binding and had been paid, and dismissed the application on the determination that respondent's obligation under Turkish law had been discharged under Turkish law.

NOTE: Since the obligation was under Turkish law the rule was not involved that an obligation created in one country and payable or performable in another, if lawful by both countries when the obligation was created, is still payable or performable without regard to any changes in the law of the obligor's country.

THE INTERNATIONAL LAWYER'S CALENDAR

All ABA activities shown in boldface

1966		*For Information write to:*
October 9-15	Colloquium on the Law of Outer Space, Madrid, Spain	International Astronautical Federation, 1725 DeSales St., N.W., Washington, D. C.
October 25-27	Council Meeting of International Society for Military Law and Law of Way, Dublin, Ireland	c/o Col. W. B. Moran, Deputy Judge Advocate General, Dept. of Defense, Parkgate, Dublin 8, Ireland
November 7-11	Meeting of the Committee of Experts of the United International Bureaux for the Protection of Intellectual Property on a Model Law for Trademarks, Geneva, Switzerland	32 Chemin des Colombettes, Geneva, Switzerland
November 10-13	Inter-American Bar Association Council Meeting, Caracas, Venezuela	W. R. Vallance, Secretary General, 705 Federal Bar Building, Washington, D. C.
November	General Assembly of the International Institute for the Unification of Private Law, Rome, Italy	International Institute for the Unification of Private Law, 28 Via Panisperna, Rome, Italy
December 5	U.N. and South Africa, New York, N. Y.	Hammerskjold Forum Association of Bar of City of New York, 42 W 44 Street, New York, N. Y.
December	African Conference on the Rule of Law, Africa (Place not yet determined)	International Commission of Jurists 2, Quai du Cheval-Blanc, 1211 Geneva, Switzerland
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(Date not yet selected)	22d Congress of International Association of Lawyers, Vienna, Austria	Secretary, 51 av. F. D. Roosevelt, Brussels 5, Belgium
(Date not yet selected)	Meeting of Inter-American Council of Jurists, Caracas, Venezuela	Department of Juridical Affairs, Pan American Union, Washington, D. C.
January or February	Seminar on African Law, Washington, D. C.	Howard University, Washington, D. C.
February 12	**Council Meeting of International and Comparative Law Section, ABA, Houston, Texas**	Robert Layton, Secretary, 405 Park Avenue, New York, New York, 10022
March 25	Procedural Aspects of Law of Human Rights, Syracuse, N. Y.	American Society of International Law, 2223 Massachusetts Avenue, N.W., Washington, D. C.

		For Information write to:
March 31-April 1	**ABA Seminar on the Problems of Lawyers in the Practice of International Law, New Orleans, La.**	Max Chopnick, Chairman, Committee on Continuing Legal Education, International and Comparative Law Section, 9 East 46th Street, New York, N. Y.
April 10-15	XV Conference of Inter-American Bar Association, San Jose, Costa Rica	W. R. Vallance, Secretary General, 705 Federal Bar Building, Washington, D. C.
April 14-15	1st Conference on Inter-American Commercial Arbitration, San Jose, Costa Rica	W. R. Vallance, Secretary General, 705 Federal Bar Building, Washington, D. C.
April 27-28	Annual Meeting, Washington, D. C.	American Society of International Law
April 27-28	**Council and Section Meeting of International and Comparative Law Section, ABA, Washington, D.C.**	Robert Layton, Secretary, 405 Park Avenue, New York, N. Y. 10022
April	4th International Congress of International Society for Military Law & Law of War, Madrid, Spain	Secretariat of Society, Faculte de Droit, Institut de Science Crimelles et Penitentaires, Esplanade, Strasbourg, France
June 5-30	Parker Summer School: Legal Problems of Americans Doing Business Abroad, New York, N. Y.	Willis L. M. Reese, Director of the Parker School of Foreign and Comp. Law, Columbia Univ., 435 W 116th St., New York, N. Y. 10027
July 9-15	World Conference on Peace Through Law, Geneva, Switzerland	World Peace Through Law Center, 75 rue de Lyon, 123 Geneva, Switzerland
August 5	**Council Meeting of International and Comparative Law Section, ABA, Honolulu, Hawaii**	Robert Layton, Secretary, 4$5 Park Avenue, New York, N. Y. 10022
August 6-9	**Section Meetings of International and Comparative Law Section, ABA, Honolulu, Hawaii**	Robert Layton, Secretary, 405 Park Avenue, New York, N. Y. 10022
August 7	**Oceanography Sessions of International and Comparative Law Section, ABA, Honolulu, Hawaii**	Robert Layton, Secretary, 405 Park Avenue, New York, N. Y. 10022
August 8	**Space Law Sessions of International and Comparative Law Section, ABA, Honolulu, Hawaii**	Robert Layton, Secretary, 405 Park Avenue, New York, N. Y. 10022
September	European Colloquium on Rural Law, Germany (Place not yet determined)	R. Randier, 10 Rue de la Liberté, Vincennes, Seine, France

The Section of International and Comparative Law, which was organized in 1933 under the leadership of the late Dean John H. Wigmore, is divided into four divisions—international law, comparative law, international trade and investment, and international organizations—and fifty-six committees. Committee work affords a challenging opportunity for members to contribute to Section activity and at the same time receive the benefits that flow from such participation.

The Section has traditionally met twice a year—in the summer during the annual meeting of the Association and in the spring in Washington, D.C.

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* Attorneys who are not members of the ABA will be sent an application for such membership, which is a prerequisite to Section membership.

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