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## Case Digest

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# Case Digest

This Case Digest provides brief analyses of cases that represent current aspects of transnational law. The Digest includes cases that establish legal principles to new and different factual situations. The cases are grouped in topical categories, and references are given for further research.

## I. ESTATE TAXATION

PURSUANT TO THE UNITED STATES-FRANCE ESTATE TAX TREATY, THE ESTATE OF A UNITED STATES CITIZEN WHO WAS DOMICILED IN FRANCE IS LIABLE TO THE UNITED STATES FOR TAXES ON REAL PROPERTY LOCATED IN FRANCE AT RATES EFFECTIVE WHEN THE CITIZEN DIED PROVIDED THE ESTATE RECEIVES CREDIT FOR THE ESTATE TAXES PAID TO FRANCE. *Norstar Bank of Upstate New York v. United States*, 644 F. Supp. 1112 (N.D.N.Y. 1986).

Norstar Bank of Upstate New York, acting as the trustee for the assets of Mildred J. Ricoy located in New York, filed suit to recover estate taxes which the Bank claims were illegally assessed and collected by the United States. Ms. Ricoy was a United States citizen who died domiciled in France. At her death, she owned real and personal property located in both countries. France assessed and collected taxes on Ms. Ricoy's property located in France. The Bank filed an estate tax return with the Internal Revenue Service (IRS) and paid the amount it calculated as the amount the Ricoy estate owed the United States. The Bank's calculation was based on its reading of the Convention for the Avoidance of Double Taxation and the Prevention of Evasion and Inheritance Taxes, United States - France (Oct. 18, 1946) 64 Stat. B-1 *et. seq.*, T.I.A.S. No. 1982 (effective 1949). The critical elements of the bank's calculations were: 1) that Ms. Ricoy's real property located in France was exempt from United States tax; and 2) that any tax liability for property located in France was subject to 1949 tax rates, the rates in effect when the treaty became effective. Initially, the IRS recalculated the tax liability using 1979 tax rates, the rates in effect when Ms. Ricoy died.

Later the IRS, audited the estate tax return and discovered that Ms. Ricoy's realty situated in France was not accounted for. The IRS then refigured the estate's liability and informed the Bank that the estate owed more tax. The Bank paid the tax and then sued to recover the

amount the Bank argues was illegally assessed and collected. The parties stipulated to the facts and both moved for summary judgment. The District Court for the Northern District of New York found for the United States. The Bank argued that the treaty prohibited the United States from taxing the realty located in France because the estate would wind up paying double taxes. The court observed that the treaty was intended to prevent double taxation of estates and explained that the treaty contained two systems to prevent double taxation. Namely, the treaty provided a credit and an exemption system. The credit system, the court noted, granted estates a credit for the taxes imposed by the country in which the property was located. The exemption system, on the other hand, stated a general rule for exempting real property located beyond the borders of the state assessing the tax. The court emphasized, however, that the exemption did not apply when the United States was the country assessing the tax. The court acknowledged that in 1949, when the treaty was signed, United States law itself provided an exemption for realty located outside of the United States. Congress, however, repealed the exemption in 1962. The court held therefore, that the Ricoy estate enjoyed no exemption for Ms. Ricoy's realty located in France. The estate's only protection from double taxation, the court reasoned, was the credit system. Because the credit system did protect the estate from double taxation, the United States' interpretation of the treaty did not contravene the treaty. *Significance* — Pursuant to the treaty with France, the United States may tax the estates of United States citizens who die domiciled in France for real property situated in France provided the estates are given credit for any estate tax paid to France for that real property.

## II. POLITICAL QUESTION

POLITICAL QUESTION DOCTRINE BARS JUDICIAL CONSIDERATION OF CLAIMS THAT THE UNITED STATES MINES PLACED IN THE NICARAGUAN HARBOR OF CORINTO DAMAGED A NORWEGIAN SHIP. *Krigsforsikring for Skib, gjensidig forening (The Norwegian War Risk Insurance for Ships, A Mutual Association) v. United States*, Slip Op. No. 86 Civ. 2500 (S.D.N.Y. Dec. 11, 1986).

A Norwegian shipping company and its Norwegian insurance company brought a negligence action against the United States for damages a Norwegian ship suffered when it struck a mine in the Nicaraguan harbor of Corinto on March 28, 1986. The ship's cargo was molasses and benzine and its destination was Texas. The plaintiffs sought recovery under the Federal Tort Claims Act. Specifically, the plaintiffs alleged that: 1) the Central Intelligence Agency, under the direction of the

President, negligently manufactured and placed the mines; 2) the United States breached a duty of care, a duty which it had established through prior practice, to innocent parties by failing to warn them of the mines and the mines' location; and 3) as a result the Norwegian ship hit a United States mine in the Nicaraguan harbor and incurred \$1.6 million in damages. The United States defended arguing that the court lacked subject matter jurisdiction over the claims, that the plaintiffs failed to state an actionable claim, and that the venue was improper. The District Court for the Southern District of New York dismissed the suit holding that the dispute presented a nonjusticiable political question. The court recited the six part political question test compiled by the Supreme Court in *Baker v. Carr*, 369 U.S. 186, 217 (1962), and explained that the case at bar caused problems under the first, second and sixth prongs of the *Baker* test. First, the court considered whether it had the judicial authority to adjudicate the claim. The plaintiffs argued and the court agreed that the judiciary had the authority to adjudicate tort claims brought against the government. But the court found that it could not entertain the claim because it actually asked the judiciary to interfere in foreign policy even though the plaintiffs sought only compensation for past injuries rather than an injunction to restrain future conduct. Consequently, the court found problems under the first *Baker* prong. Second, the court indicated that the next *Baker* test was implicated. Noting that the case really involved a question of foreign policy and national defense, the court held that it lacked the standards for decisionmaking and that the plaintiffs lacked access to the information crucial to its claims. The crucial information, the court explained, was inaccessible as national security secrets. Finally, the court declared that considering the merits of the plaintiffs' claims may generate embarrassing statements different from the denials already made by the United States. Passing on the merits of the case at bar, the court concluded, would result in the "multifarious pronouncements" discouraged by the sixth prong of the *Baker* analysis.

*Significance* — Any foreign companies which suffered damages from the United States' mining of Nicaraguan harbors will not be able to get relief through United States courts. Any compensation, therefore, will have to come from other means such as diplomatic negotiation.

