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Case Digest

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CASE DIGEST

The purpose of this *Case Digest* is to identify and summarize for the reader recent cases that have less significance than those that merit an in-depth analysis. Included in the digest are cases that apply established legal principles without necessarily introducing new ones.

This digest includes cases reported mainly from 1974. The cases are grouped in topical categories, and references are given for further research. It is hoped that attorneys, judges, teachers and students will find that this digest facilitates research in problems involving current aspects of transnational law.

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1. ADMIRALTY

STOWAGE OF CONTAINERIZED CARGO ABOVE-DECK IS NOT AN UNREASONABLE DEVIATION FROM A CLEAN BILL OF LADING UNLESS BELOW-DECK STOWAGE IS ORDINARILY CONTEMPLATED

Plaintiff contracted with defendant to ship two forty-foot containers of Teflon, and a clean bill of lading was issued with a clause that limited maximum liability to 500 dollars per package. The transporting ship was outfitted to carry containers on deck and had been approved for such by the American Bureau of Shipping. Plaintiff's containers were stored on deck without his knowledge and one was lost overboard. The court of the Southern District of New York gave plaintiff the maximum judgment of 500 dollars per package. On appeal, plaintiff argued that the carrier had deviated unreasonably from the bill of lading and was, therefore, liable for more than the maximum amount of liability under the Carriage of Goods by Sea Act (COGSA). The Second Circuit Court of Appeals disagreed ruling that the above-deck stowage was not unreasonable. The court stated that while such stowage traditionally has been held grounds for increased liability, Congress indicated in COGSA that it wished to change this severe rule. Furthermore, because of the construction of the ship, stowage above-deck was no more dangerous than that below-deck. This ruling continues the trend "that Technological innovation and vessel design may justify stowage other than below-deck," and changes the traditional rule of the courts only in the criteria establishing "unreasonable deviation from the bill of lading." *DuPont de Nemours Int'l, S.A. v. S.S. Mormacvega,* 493 F.2d 97 (2d Cir. 1974).

EMPLOYEE TEMPORARILY ASSIGNED AS CREWMAN IN MOTORBOAT IS NOT A JONES ACT SEAMAN

Plaintiff-employee, whose primary duties were ashore, was ordered to make a three and one-half hour trip by motorboat to collect water samples for defendant-employer's effluent control program. The boat was operated by another employee. While both employees were distracted, the motorboat struck a stump on the river bank, and plaintiff was injured. Plaintiff alleged that he was a seaman under the Jones Act and that his injury resulted from defendant's negligence and the unseaworthiness of the vessel. The District Court held for plaintiff. On appeal, the Fifth Circuit Court

of Appeals applied the *Robison-McKie* test, which requires that a plaintiff's relationship with the vessel must be both operational and relatively permanent to invoke the Jones Act. In the instant case permanency was found to be lacking and plaintiff was held not to be a Jones Act seaman. Nevertheless, under the provisions of the Longshoremen's and Harborworkers' Compensation Act prior to the 1972 amendments, plaintiff was permitted to recover for unseaworthiness but the award was reduced by twenty per cent because of his contributory negligence. The instant case involved the application of the recognized test for determining crew member status to a novel fact situation, which furthered the demarcation between seamen and casual workers on the water. *Brown v. ITT Rayonier, Inc.*, 497 F.2d 234 (5th Cir. 1974).

UNITED STATES CAN CHARGE A BERTHING AGENT'S BOND FOR THE UNCOLLECTED DUTY OF A SHIP WHICH WAS HANDLED AT THE AGENT'S DOCK AND REPAIRED ABROAD

Defendants were berthing agents who made arrangements for the docking of ships. Each year defendants filed a blanket bond to cover all vessels they handled during the year. The *S.S. Sea Pioneer* entered port on two separate occasions after receiving dutiable repairs abroad. The ship left port the second time without paying any of the duties; it was sold abroad, and the company which owned the ship went bankrupt. The government alleged that defendant's bond could be used as a fund to collect the duty due because the Custom Form 7569 on which the bonds were executed stated that *inter alia* the principal (defendants) would pay all duties legally due the United States from any ship the principal handled. Defendants replied that the bond did not cover duties and that defendants were sureties only for repairs to the ship at defendant's dock; when the ship was allowed to leave port, there was an unconsented release of security. Agreeing with the government, the court held that 19 C.F.R. §4.14 specifically makes such a bond suitable for payment of duty due because of repairs. In addition, although the statute requiring bond for a ship which has not paid its duties before leaving port does not state who is to pay the bond, if an agent wishes to allow the ship to leave, the agent's bond should be enforced against him. The argument that to allow release of the ship constitutes unconsented-to release denies the very purpose of the bond. The ruling indicates that the United

States now may use a berthing agent's bond in a way never before employed. *United States v. Gissel,* 493 F.2d 27 (5th Cir. 1974).

TAX ON NONMUNICIPAL PILOTS DOES NOT MAKE THE USE OF PORT PILOTS COMPULSORY

Plaintiff, the United States, brought an action in personam against defendant, owner of the *S.S. President Van Buren,* for property damages sustained when the *Van Buren* collided with a moored government-owned vessel while maneuvering in the port of Long Beach under the direction of a municipal pilot. The defendant cross-claimed against the pilot and joined the pilot's employer, the City of Long Beach, as a third-party defendant. Claiming that the pilot was compulsory, defendant denied liability on the ground that while a shipowner is responsible for the negligence of a noncompulsory pilot, he is not personally liable for the negligent acts of a compulsory pilot. The trial court held for the plaintiff, and the *Van Buren* challenged the orders dismissing its cross-claim against the pilot and its third-party complaint against Long Beach. On appeal, the *Van Buren* first sought to establish that a tax, equal to three-fourths of the tariff for municipal pilots, charged by the City against ships using nonmunicipal pilots constitutes such an economic burden that the use of City pilots is compulsory; and secondly, that certain exculpatory provisions in the municipal pilot tariff agreement are unconscionable and void as against public policy. The court found the usage of city pilotage completely voluntary even though the same court previously had held earlier versions of the Long Beach tariff requiring the use of municipal pilots to provide for compulsory pilotage. According to the court, the three-quarter tariff, though a financial inducement to use City pilots, represented a justifiable charge on shippers for port operation costs. Addressing the unconscionability question, the court held that because of the voluntary nature of the pilotage and the availability of trip insurance from the City at normal cost, the provisions of the tariff exculpating the pilot and his employers from liability are valid and enforceable. The instant case establishes in the Ninth Circuit the principle that when the services of a municipal pilot are otherwise voluntary, financial inducement to use municipal pilotage through the levying of a tax on nonmunicipal pilots does not make the use of the port's pilots compulsory. *United States v. S.S. President Van Buren,* 490 F.2d 504 (9th Cir. 1973).

FREE STANDING ELECTRICAL TRANSFORMER ATTACHED TO SKID DOES NOT CONSTITUTE A PACKAGE WITHIN COGSA

Plaintiff-appellant, subrogee of a shipper of an electrical transformer damaged during shipping, brought an action against defendant shipping company to recover the sum paid the shipper for repairs to the transformer. Although the transformer was well suited for handling and transporting, at the specific request of the shipper the manufacturer had mounted and bolted the transformer to a heavy wooden skid in order to protect it during shipment. Plaintiff contended that the electrical transformer did not constitute a "package" within the meaning of §4(5) of the Carriage of Goods by Sea Act (COGSA). The trial court held that the shipment was a package and limited the liability of the shipping company to 500 dollars. On appeal, the Ninth Circuit Court of Appeals reversed and held that the subjective purpose for which the skid was attached was not determinative of whether the transformer had been shipped in a package, and that the electrical transformer did not constitute a package. This case applied a different test than the leading case in this area, *Aluminum Pozuelo v. S.S. Navigator,* 407 F.2d 152 (2d Cir. 1968), which held that cargo "put up in a form suitable for transportation or handling" is a package; and this present case may establish a new trend in "package" cases. *Hartford Fire Ins. Co. v. Pacific Far East Line, Inc.,* 491 F.2d 960 (9th Cir. 1974).

2. ALIEN'S RIGHTS

ALIENS MAY BE EXCLUDED FROM GRAND AND PETIT JURIES

Plaintiff, an alien and a resident of Maryland, brought suit in federal district court to challenge his exclusion, based solely on his alienage, from grand and petit juries in state and federal courts. Plaintiff contended that distinctions based on alienage have been held to be invidious, suspect, and subject to close judicial scrutiny under the equal protection clause of the fourteenth amendment. He also argued that the state had no compelling interest in excluding aliens from jury duty. The court upheld the exclusion despite plaintiff's equal protection argument, and found that the state does have a compelling interest in excluding resident aliens from jury duty. The court determined that the state has an obligation to preserve the political community; and in serving this end, it

may require that only members of the political community, that is, citizens, be permitted to serve in such government-related functions as jury duty. The court reasoned that since citizens are more likely to be loyal to, and familiar with, national and local customs and views than aliens, the exclusion was justified. The decision is significant in that it appears to represent the first instance since alienage was declared to be a suspect classification in *Graham v. Richardson*, 403 U.S. 365 (1971), that a statute excluding resident aliens from an activity has been upheld. *Perkins v. Smith*, 370 F. Supp. 134 (D. Md. 1974).

3. CONFLICTS

A CANADIAN JUDGMENT WILL BE ENFORCED IF IT MEETS THE REQUIRED STANDARDS DESPITE LACK OF RECIPROCITY

Plaintiff, a Canadian bank, sought summary judgment in an Arkansas court to enforce a Canadian judgment against defendant, guarantor of various automobile notes. Defendant had argued the case in Canada on the merits, but urged that the district court not enforce the judgment. He contended that no satisfactory showing had been made that a Canadian court would honor an Arkansas judgment, that he had meritorious defenses and that the original contract granted the bank powers broader than the public policy of Arkansas would allow. The District Court for the Eastern District of Arkansas held that the judgment should be enforced since it appeared to have been rendered by a competent court with jurisdiction over the parties and the subject matter; and since it was rendered in accordance with a recognized system of jurisprudence and was stated in a clear and formal record. In granting the motion for summary judgment, the court stated that reciprocity was not necessary under Arkansas law, and that enforcement of a foreign judgment was not violative of public policy simply because laws of the foreign district were more favorable to one party. *Toronto-Dominion Bank v. Hall*, 367 F. Supp. 1009 (E.D. Ark. 1973).

4. CUSTOMS

SOLE REMEDY FOR REFUSAL TO SUSPEND LIQUIDATIONS DURING PENDENCY OR RULING ON APPROPRIATE CUSTOM CLASSIFICATION IS TIMELY PROTEST

Plaintiff protested the denial of its requests for reliquidation of

"grader blade" steel shapes. Plaintiff claimed that the failure to withhold or defer appraisals and/or liquidations by customs officials during pendency of an administrative ruling on the appropriate custom classification violated its rights under 92 Treas. Dec. 54387(3)(1957). Plaintiff also contended that the erroneous classification of merchandise under the wrong item number was a mistake of fact entitling him to reliquidation under §520(c)(1), Tariff Act of 1930. Defendant argued that no requests for suspension were made, that the granting of such requests is discretionary, and that the error complained of was in the construction of law, which is not provided for in §520(c)(1). Therefore, plaintiff's sole remedy was a timely protest. The court accepted defendant's contentions. The court reasoned that a later ruling favorable to plaintiff operates only prospectively and that the regulation in issue merely establishes an administrative procedure for the guidance of the appropriate customs official. The court concluded that a discretionary decision whether to suspend liquidation is capable of judicial review only by a timely protest against the liquidation itself, not by way of §520(c)(1). *Gerry Schmidt & Co. v. United States*, 371 F. Supp. 1079 (Cust. Ct. 1973).

CUSTOMS REGULATION §10.122 DOES NOT APPLY TO THE FILING OF DOCUMENTS REQUIRED BEFORE EXPORTATION OF MERCHANDISE TO BE REPAIRED

Plaintiff exported its merchandise, refined naphthalene, to Canada for the purpose of altering its form. When the merchandise returned to the United States it was assessed with duty under item 403.6 Tariff Schedules of the United States. Plaintiff claimed the merchandise should have been classified, under item 806.20, as articles exported for repair and should have been assessed only on the cost of the alterations, under item 403.6. The United States moved for judgment on the pleadings, contending plaintiff failed to satisfy the conditions precedent to classification under item 806.20 by not filing Customs Form 4455 in compliance with §10.8(d) of the Customs Regulations. Plaintiff did not dispute the failure to satisfy §10.8(d) but sought to have the court utilize Customs Regulations §10.122, which provides for the filing of free entry documents after entry but prior to final liquidation of the entry. In granting the government's motion for judgment on the pleadings, the court found §10.122 refers to documents required to

be filed in conjunction with the entry of merchandise, but §10.8(d) directs the filing of Customs Form 4455 before the exportation of merchandise to give customs officials notice of the exportation and an opportunity to examine the articles beforehand. Filing the form after the return of the merchandise would defeat the purposes of §10.8(d). *F.W. Meyers, Inc. v. United States*, 374 F. Supp. 1395 (Cust. Ct. 1974).

STEEL SIDE RAILS WHICH ARE DEDICATED TO A USE AND ARE NOT SUBJECTED TO SUBSTANTIAL ADDITIONAL PROCESSING ARE NOT ANGLES, SHAPES OR SECTIONS UNDER ITEM 609.80 OF THE TARIFF SCHEDULES OF THE UNITED STATES

Plaintiff, a builder of railroad cars and equipment, imported certain steel side rails, which it used as structural stress carrying members on railroad hopper cars. The articles were assessed at 9 per cent *ad valorem* under item 690.35 of the Tariff Schedules of the United States, 19 U.S.C. 1202 (1970), as parts of railroad cars. Plaintiff claimed that the proper classification of these rails was steel angles, shapes, or sections under item 609.80 of the Tariff Schedules, and that the proper tariff was 0.1 cent per pound. Defendant, referring to part 2, schedule 6 of the Tariff Schedules, which contains the tariff coverage of steel angles, shapes, or sections, claimed that headnote 1(iv) of that part excludes from its coverage all articles found elsewhere in the Tariff Schedules. Therefore, since parts of railroad cars are covered under item 690.35 of the Tariff Schedules, they should be taxed at the latter rate. Plaintiff contended, first, that since further processing is required after importation, the side rails are not "parts of articles" under headnote 1(iv) of part 2 of schedule 6, but rather are materials. Secondly, he asserted that an adverse holding would render the provision for steel angles, shapes, or sections entirely or substantially nugatory. Thirdly, the plaintiff contended that, notwithstanding item 690.35 of the Tariff Schedules, the item imported was of the kind intended to be classified under item 609.80. The court, noting that only minimal further processing is required to prepare the side rails for use on the railway car, held that the imported rails were properly classified by the government as parts of a railroad car. The court reasoned that item 609.80 of the Tariff Schedules was not rendered nugatory by its decision since substantial additional processing is often necessary to prepare an article

for use as a part of an article. This decision should clarify the tests which must be used to determine the basic coverage of the angles, shapes, and sections provision of the Tariff Schedule, and the possibility of a higher tariff being placed on a product if it enters the United States after having undergone even minor processing. *John V. Carr & Son, Inc. v. United States*, No. 72-7-01636 (Cust. Ct., Feb. 19, 1974).

5. FOREIGN AID

INDIVIDUAL TAXPAYER LACKS STANDING TO CHALLENGE EMERGENCY AID TO ISRAEL AS VIOLATION OF ESTABLISHMENT CLAUSE

Plaintiff brought suit in the district court challenging the constitutionality of the Emergency Security Assistance Act of 1973, which authorized emergency aid to Israel. On the basis of *Flast v. Cohen*, 392 U.S. 83 (1968), plaintiff contended that the Act violated the first amendment establishment clause, a specific limitation on the spending power of Congress. In holding for defendant, the court notes the second *Flast* requirement that sufficient nexus be established between the Act complained of and the right claimed to be violated. Noting that the nexus was established in *Flast* because the expenditures might have directly affected plaintiff's religious liberty, the court characterizes the present case as one falling within the earlier rationale of *Frothingham v. Mellon*, 262 U.S. 447 (1923), in which the plaintiff's interest, resulting from an increased tax burden, was no more than monetary and, therefore, insufficient to establish the necessary nexus. The decision is buttressed with mention of judicial deference to executive power in the foreign affairs area here in question, and cites *Baker v. Carr*, 369 U.S. 186 (1962), as limiting judicial intervention in the decisions of the political branches of the government. The question of foreign aid to Israel as an expenditure for religious purposes is not expressly addressed, but tacitly characterized as customary military assistance. The decision indicates the court's reluctance to expand concepts of taxpayer standing to challenge government expenditures, particularly in areas affecting foreign policy. *Dickson v. Nixon*, 42 U.S.L.W. 2650 (W.D. Tex. 1974).

6. JURISDICTION

FOREIGN INSURER WITHOUT SUFFICIENT NEXUS TO STATE IS NOT WITHIN JURISDICTION OF COURT

Plaintiff ordered a substantial quantity of chocolate from a German corporation, which purchased an insurance policy from a Swiss insuror to cover the shipment of the chocolate to New York. The policy was addressed to "bearer" and delivered to the German corporation at Cologne, which forwarded it to plaintiff in New York. Finding the chocolate damaged, plaintiff-purchaser sought to recover under the insurance policy and filed suit in New York against the Swiss insuror. Service was obtained under a New York statute that permits the Secretary of State to be agent for service of process for foreign insurors who deliver insurance contracts to residents of the state of New York. The court refused to exercise jurisdiction over the case. Since the insurance contract was not made directly with the New York purchaser, the insuror could not be certain that the purchaser of the insured goods was a corporation authorized to do business in New York and, consequently, a corporation entitled to invoke the New York statute. Lacking that certainty, the insuror did not knowingly and voluntarily submit to the constructive agency imposed by the statute, a fundamental prerequisite to valid substituted service. The court also rejected plaintiff's argument that substituted service imposed jurisdiction under a broader New York statute permitting such service if the served party conducts "any other transaction of business in New York." The court noted that the mailing of the insurance policy into New York lacked the "physical nexus" with the state that is required to bring that statute into play. The appointment of a claims survey firm in New York to investigate the extent of the damage to the shipment was also inadequate to bring the insuror within the "doing-business" statute. For that statute to operate, the court would require a true agency relationship between the insuror and the claims survey firm. The court found the firm in the instant case to be no more than an independent contractor for the insuror. This case indicates that a foreign insuror must knowingly and voluntarily submit to the constructive agency imposed by a state and, thus, restricts the jurisdiction of the courts. *Ringers' Dutchocs, Inc. v. Helvetia Swiss Fire Ins. Co.*, 494 F.2d 678 (2d Cir. 1974).

IT IS CONSTITUTIONALLY PERMISSIBLE TO TRY SERVICEMEN BY COURT-MARTIAL IN PEACE TIME FOR OFFENSES COMMITTED AGAINST FOREIGN PERSONS IN FOREIGN LANDS

Appellant brought this action against the Secretary of the Army to compel him to set aside appellant's conviction and to grant him an honorable discharge. In 1960 appellant, stationed in Germany as a member of the United States Armed Forces, was tried by a general court-martial and was convicted of robbery, disrespect and the communication of a threat to a German national. Appellant based the present action on the contention that the Supreme Court ruling in *O'Callahan v. Parker*, 395 U.S. 258 (1961), determined that a military court did not have jurisdiction to try him for the robbery of a civilian when away from the post since it a was not a service-related crime and that the decision should be applied retroactively. The court chose not to make a specific ruling on the retroactivity of the decision, but decided that even if *O'Callahan* was retroactive, its reach did not extend to court-martials in peace time to try non-service offenses committed by servicemen against foreign nationals in foreign lands. The court stated that the *O'Callahan* decision was based on a statutory interpretation that subjected the military court's competence to terms most narrowly consistent with the fifth and sixth amendment guarantees rather than on a lack of constitutional jurisdiction of the court-martial. The court, therefore, adopted a test to determine whether there was an imbalance between article I §8 clause 14 jurisdiction over soldiers who commit civilian offenses in peace time and the requirements of article III and the fifth and sixth amendments. The court first found that since the appellant was in Germany because of his status with the Armed Services there was sufficient connection between his crime and his army status to find his offense fell under the "arising within the land or navel forces" clause for the purpose of finding an exception under the fifth amendment. Secondly, the court stated that there could not be a jury trial as guaranteed by the sixth amendment since there were no United States federal courts in Germany and if the trial were moved to the United States, a jury could not be selected from "the State and District wherein the crime was committed." Furthermore, if this were done, it would be beyond the power of the federal courts to compel German witnesses to appear. Therefore, the choice became one between an American court-martial and a foreign court, and

the court found that an individual has no constitutional guarantee to be tried before a foreign court. *Williams v. Froehlke,* 490 F.2d 998 (2d Cir. 1974).

AIRCRAFT OVERFLIGHT OF DISTRICT GIVES RISE TO PROPER VENUE TO PROSECUTE CONSPIRACY IN THAT DISTRICT

Defendants conspired to smuggle marijuana by airplane into California from Mexico. Several overt acts were alleged as part of the conspiracy, but the venue of the action was based on mere aircraft overflight of the judicial district. Defendants argued that the nexus of the conspiracy with the Southern District was too tenuous to justify venue. The court, however, determined that this was a "continuing crime" involving movement or conduct occurring in more than one place. In such cases venue may lie in any district in which the continuing conduct occurred. The court reasoned that since venue would be proper if defendants had smuggled marijuana across the district by surface transportation, it should make no difference that air transport had been employed. *United States v. Barnard,* 490 F.2d 907 (9th Cir. 1973).

7. IMPORT

LOCAL STANDARDS OF PRESIDING JUDGE UPHELD IN PROHIBITING IMPORTATION OF OBSCENE FILM

A motion picture entitled "Sinderella" was offered for entry into the United States. The film was seized by customs officials, who considered it in violation of the Tariff Act of 1930, §305, 19 U.S.C. §1305 (1970), which prohibits the importation of "obscene" material. The government filed a complaint in rem to have the film confiscated and destroyed. The government's case consisted solely of placing the film in evidence and exhibiting it to the court. The owner-claimant, however, introduced the testimony of three experts who concluded the film was not obscene. The District Court in the Eastern District of New York, using local standards, found the film obscene and ordered it destroyed. The Court of Appeals for the Second Circuit determined that the government was not required to introduce any evidence other than the film in support of its complaint. In addition, the court found that the trial court's decision, although predating *Miller v. California,* 413 U.S. 15 (1973), had properly applied *Miller's* narrow geographic standards.

This decision, by supporting the trial judge's use of his own local standards to determine whether the film is obscene, points out the possibility that if the same material was brought in through a different port of entry, it might be admissible. *United States v. One Reel of 35MM Color Motion Picture Film Entitled "Sinderella," Shirpix, Inc.*, 491 F.2d 956 (2d Cir. 1974).

8. TAXATION

REAL VOTING POWER AND NOT MECHANICAL VOTING POWER DETERMINES WHETHER A COMPANY IS A CONTROLLED FOREIGN CORPORATION UNDER 26 U.S.C.A. §1248(A)

Appellant taxpayers initially owned 100 per cent of the common stock in a Liechtenstein corporation. In 1962, taxpayers doubled the corporation's capital by selling preferred stock, with voting rights, to foreigners, and reduced their voting strength to 50 per cent. The instant case was instituted to determine the method of taxation to be applied following the sale of the taxpayers' shares. According to 26 U.S.C. §1248, sale of stock of a controlled foreign corporation is to be treated as a dividend to the extent of a proportionate share of post-1962 earnings and profits. 26 U.S.C. §957(a) defines a "controlled foreign corporation" as any foreign corporation of which more than 50 per cent of the corporation's voting power is vested in United States shareholders. Taxpayers argued that since their combined voting power was not more than 50 per cent, §957(a) is inapplicable; therefore they can treat the transaction as a capital gain. The commissioner urged the court to apply a less literal meaning to the act and to examine the effective or real voting power in determining whether the corporation was a controlled foreign corporation. The Court of Appeals, treating the profits as dividends, affirmed the decision of the Tax Court. . The court followed the rule of *Garlock, Inc. v. Commissioner,* 489 F.2d 197 (1973), which held that a shift in mechanical voting power away from the United States is not effective to escape §957(a) if the real voting power is retained. Since appellant taxpayers selected the foreign shareholders and possessed controls over any transfer of the preferred stock, they had retained effective control and the corporation remained a controlled foreign corporation. The holding indicates that application of 26 U.S.C. §1248(a) extends to those corporations where United States shareholders control the

real voting power, regardless of their technical voting rights. *Kraus v. Commissioner*, 490 F.2d 898 (2d Cir. 1974).

9. TREATIES

STATUTE OF LIMITATIONS ON INTERNATIONAL SALE OF GOODS SET AT FOUR YEARS BY UNITED NATIONS CONVENTION ·

A recent convention establishes a uniform four-year limitation period applicable to claims arising under contracts for the international sale of goods, provided that the "places of business" of the contracting parties are located in states which are signatories to the convention. A "place of business," should a party have more than one, is defined as "that which has the closest relationship to the contract and its performance, having regard to the circumstances known to or contemplated by the parties at the time of the conclusion of the contract." The convention applies whenever the international nature of the contract appears in the dealings predating the contract or in the contract itself. However, the parties may preclude its application by so stipulating in the contract. The convention establishes a general four-year limitation period for the bringing of any "legal proceedings," after which the claim is barred, although it still may be used as a set-off. In addition, "legal proceedings" are defined to include judicial, arbitral and administrative proceedings. The convention sets forth the conditions which trigger commencement of the limitation period and its tolling, as well as the legal effect of the running of the period. As of June 17, 1974, the convention, which becomes effective Jan. 1, 1975, had been signed by all of the Common Market members except Italy and Luxembourg, and most of the major industrial nations including the United States, Canada, Australia and the Soviet Union. The convention represents a small but significant step toward coordinating judicial systems and facilitating world trade. *Convention on the Limitation Period in the International Sale of Goods,* 13 INT'L LEGAL MATERIALS 952 (1974).