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Symposium on International Business Transactions: The Transfer of Technology in Transnational Business

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SYMPOSIUM ON INTERNATIONAL BUSINESS TRANSACTIONS: THE TRANSFER OF TECHNOLOGY IN TRANSNATIONAL BUSINESS

INTRODUCTION

THE building of a successful international business requires that American industries make continuing contributions to the market by way of special services, unique products, and new techniques in the application of know-how for materials. In this sense, technology and commerce are progressing together to expand the horizons of businessmen. Today technology offers the American and foreign businessman the opportunity to share in a mutually beneficial transnational enterprise heretofore beyond contemplation. Technology plays a dual role in transnational business. Through technological advances in transportation and communication new markets have appeared, and goods can be shipped to remote ports in less time and in better condition than ever before. Also, technology itself has become a marketable commodity which can be profitably transferred to foreign customers by various means. Thus, the American businessman has truly become a "merchandiser of science" in transnational transactions.¹

Lawrence C. McQuade has described the situation most accurately in his recent article in the *Denver Law Journal*, which sets the theme for this symposium.

Out of technology — that vigorous offspring of science — flows an impulse to change and innovation in commerce and industry. For the businessman of breadth and imagination, it opens new horizons. For the self-satisfied and the stand-patters, it poses a peril to markets and customers which can no longer be taken for granted. For the lawyer, it calls for adaptation and change at a rate fast enough to foster the new, yet moderate enough to preserve a responsible measure of stability and respect for the virtues of values which have endured the tests of experience.²

¹ Remarks by Emmett H. Heitler, Executive Vice President, Samsonite Corporation, in his Keynote Address to the Western Regional Conference on Transnational Transactions, Denver, Colorado, April 21, 1967.

² McQuade, *Transnational Transactions, Technology and the Law*, 44 DEN. L. J. 327, 328 (1967).

The partnership of technology and transnational business necessarily contemplates an exciting challenge for the creative lawyer. Each businessman entering into a transnational relationship seeks first of all to benefit from the transaction. Secondly, each party must see that his interests are protected to the fullest possible extent from violation by his "foreign partner." Third, he must have the necessary language in the legal contractual document that gives it the strength to guide both purposes to a successful conclusion.³ In order to accomplish these basic objectives, the advice and planning of counsel is a necessity. The lawyer's function in this transnational setting is one of anticipating and providing for the unforeseen yet avoidable disputes wrought by uncertainty and ambiguity in such agreements. These issues must be resolved within a legal framework, acceptable to both parties, which will promote the mutual confidence and good faith essential to a successful working relationship.

On April 21, 1967, the University of Denver College of Law hosted the Western Regional Conference on Transnational Transactions. The theme of the Conference was "Science, Industry and Law in Transnational Transactions." Its twin objectives were (1) to promote a wider participation of the community, both legal and business, in matters of international concern; and (2) to clarify basic policies through an in-depth discussion of some specific practical problems of transnational business transactions, including those pertinent to the Rocky Mountain region. The *Denver Law Journal* is privileged to include in this symposium articles representing the finished product of many of the issues raised at the conference.

In this symposium, two basic policy questions are discussed relating to the assumption that the goal of transnational business is to achieve the ultimate success of transferring technology in the most expeditious and mutually profitable manner. First, should the product of technology or the process itself be transferred, and what legal problems in the protection of the transfer might arise? Mr. Campbell, in his article on licensing, addresses this issue, suggesting that with careful planning, technological know-how can be licensed abroad and receive capital gains tax advantages in the United States. Furthermore, patent protection for the product of technology or for the process is discussed in an article which was not presented at the Conference, but which serves as an important contribution to the symposium theme. Secondly, what kind of arrangement should the American businessman enter into with his foreign neighbor for

³ Remarks by Phillip B. Smith, Vice President, Great Western Sugar Company, at the Western Regional Conference on Transnational Transactions, Denver, Colorado, April 21, 1967.

the transfer of his technology abroad, and what legal problems should he be prepared to encounter? The foreign joint venture arrangement and the distributorship are discussed in separate articles as feasible in particular circumstances. Problems of drafting agreements are considered also, with special regard to choice of law and choice of forum in order to anticipate possible questions of foreign law that might arise in transnational litigation.

Clearly, there is no single way to do business properly and profitably in the various countries throughout the world. There is no simple solution to building a transnational business. Each company and each product, each service, each country offers a potentially different problem and requires its own legal and business solution.⁴ However, the discussion contained in this symposium may serve as a guide to the lawyer with transnational business clients. It can serve as a springboard of ideas to spark his imagination and inventive genius as he faces the challenge of technology in the transnational business world.⁵

Timothy B. Walker
Symposium Editor

⁴ Remarks by Emmett H. Heitler, *supra* note 1.

⁵ The Board of Editors would like to thank Messrs. Emmett H. Heitler and Phillip B. Smith for having submitted notes and ideas to us for incorporation into this issue.