

The Tricks and Traps of International Contracts

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Differences in Language, Law and Customs

- Asia is different; it is not homogenous.
- The relationship is crucial, but it is not sufficient.
- English is the language of commerce (usually).
- History matters, and their history is different from ours.

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Distributors and Representatives and Foreign Flavors

- Key differences and important similarities.
- Foreign variations on these concepts.

Brand Protection

- First to use is paramount in this country.
- First to file is paramount almost everywhere else.
- Crucial covenants forbid registration and mandate assignment.
- Your brand should be your identity, not that of your distributor.

Renewal Terms

- Make all foreign contracts have a term of certain duration.
- Evergreen clauses may be convenient, but in some parts of the world they are perpetual annuities.

Confidentiality in the International Context

- When you try to grab too much, you end up grasping nothing.
- The varying utility of oral testimony and the importance of lists.
- The questionable availability of injunctive relief may affect your contracts.
- Penalties, though frowned upon here, may be perfectly legitimate elsewhere.

Dispute Resolution in an International Contract

- Clauses making local courts the exclusive forum for dispute resolution is a terrible idea.
- There is no bilateral treaty or multilateral convention in force between the United States and any other country on reciprocal recognition and enforcement of **judgments**.
- Arbitration is the preferred vehicle for dispute resolution in the international context.
- The United States is a party to the International Convention on the Recognition and Enforcement of Foreign Arbitral Awards.
- Tips and tricks on where and with whom to arbitrate.

Governing Law

- Typical governing law provisions are ineffective in the international context.
- Applicability of United Nations Convention on the International Sale of Goods.

Terms of Trade

- Who knows what CPT, DAT, FAS, and FOB mean?
- A set of definitive definitions exists. It is called INCOTERMS.

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