

PREFACE AND ACKNOWLEDGEMENTS

This book began as an experiment – could a graduate seminar be structured around common legal problems placed in different country settings? It was first offered in 2009 to Master’s degree students and law students in the School of Labor and Employment Relations and the College of Law at the University of Illinois. Then, in 2010, it was offered to mid-career professionals engaged in a special program at the School of Labor and Employment Relations (LER). Aspects of the course have been offered in other settings as well. Based on the high levels of engagement generated, we were convinced that a book manuscript was appropriate.

We sought to identify easily recognizable, potentially common problems that we anticipated would reveal the variation in legal contexts and underlying values and assumptions. The problems were vetted by our participating human resource (HR) professionals. Some early problems were omitted as unreflective of real world issues and others put in place more representative of what multinational managers and their lawyers actually confront. In addition, the problems had to be manageable, “teachable” within the space and time available – which meant that some pressing and fascinating issues simply could not be taken on. The distinction between an “employee” and an “independent contractor,” for example, vexes virtually every legal system. But because it *is* so vexing, because the law is so highly nuanced and the literature so extensive, we concluded, with real regret, that it simply could not be taken on. Nevertheless, we believe the problems we set out, real in every sense as the appended comments of our participating managers evidence, have the necessary sweep and depth.

Five nations were selected, based on both the diversity of legal contexts and there being sufficient maturity in the systems to allow for answers across the many different topical areas. These are Australia, Brazil, Germany, Japan, and the United States. In each case, the countries are relevant both as important settings for investment by multinational corporations *and* as representative of a larger set of nations. Thus, the Australian legal system has close correlates in New Zealand and analogues to various degrees across the former British Commonwealth. The Brazilian system is, in part, reflective of legal challenges across South America and other rapidly developing nations, though there are also echoes of Portugal in this system. Germany is a lead case, of course, for most of Northern Europe and, to various degrees, for other parts of the European Union. Japan was first among Asian nations to be fully industrialized and the underlying Confucian values and assumptions can be found in China, Korea, and many parts of South-East Asia. The United States has a close correlate with Canada and features a language and culture that has come to play a dominant role in the global economy. The legal responses from these five countries will not precisely apply in other countries, but can be taken as illustrative of general tendencies in other related nations.

Two major economies – China and India – would be worthy of inclusion in this volume based on their size, but the maturity of their legal systems and the degree to which these systems do not fully operate under the rule of law would make it difficult to generate precise answers to many of the problems posed. Still, in these two cases, and in the case of other nations not included in the volume, we invite the generation of answers in additional contexts. *Indeed, instructors using the book in other countries are encouraged to generate answers to the questions in their legal system, which will add yet an additional opportunity to compare and contrast with the five countries selected here.*

The answers provided in this volume were generated by individuals who are each premier labor and employment law scholars in their respective nations. Not only did they provide precise and nuanced answers, but in many cases they provided the text of original primary sources (including excerpts from the law) and additional relevant references. We have kept the spelling of key words in the form used in each country – thus some entries will consider “labor” and others “labour” – and we have left the references in the formats used in each country. This means that even as the style of internal reference is not consistent across the book, the cultural integrity of each country entry is maintained. In this regard, we are bowing to the individual nature of each culture, rather than imposing a single consistent standard that would not honor local culture – a choice not unlike that faced by multinational corporations. However, references to supplemental references and readings are in uniform U.S. legal style for ease of access and consistency.

We are deeply appreciative of the engagement of the country experts – the task of responding to the many problems was a large one. The scope and depth of their work make an invaluable contribution without which this book simply would not exist. We are grateful for the assistance of the reference staff of the College of Law’s library and LER librarian Yoo-Seong Song. Students in the various classes at the University of Illinois and the Interdisciplinary Center at Herzliya, Israel, where earlier drafts were taught, also advanced our thinking. We would particularly like to highlight the contributions of HR professionals participating in a special online offering of the course, many of whose comments can be found highlighted at different points in the text. These add the depth of practical experience to the rather more dry legal analyses. In that regard, we also want to acknowledge the assistance and input of Andrew Bartlow, Shari Calhoon Bennett, Pat Canavan, David Halleck, Gary Newman, Howard Salazar, and Marc Thompson.

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