

Quick Reference Rules of Law

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Reference Re Secession of Quebec

Sup. Ct. of Canada 2 S.C.R. 217, 37 I.L.M. 1340 (1998).

NATURE OF CASE: Advisory opinion regarding self-determination in relation to separatist movements.

INTERNATIONAL LAW The body of law applicable to dealings between nations.

FACT SUMMARY: Quebec attempted to secede from Canada.



RULE OF LAW

A people's right to self-determination cannot be said to ground a right to unilateral secession.

FACTS: [Facts not stated in casebook excerpt.]

ISSUE: Is there a right to self-determination under international law that would give the National Assembly, legislature, or government of Quebec the right to effect Quebec's unilateral secession from Canada?

HOLDING AND DECISION: [Judge not stated in casebook excerpt.] The international law principle of self-determination has evolved within a framework of respect for the territorial integrity of existing states. The right to external self-determination has only been granted to peoples under colonial rule or foreign occupation, based on the assumption that both are entities inherently distinct from the colonialist power and the occupant power. External self-determination has also been bestowed upon peoples totally frustrated in their efforts to exercise internally their rights to self-determinism. In this case, Quebec is neither a colony nor a foreign-occupied land. Further, the people of Quebec have not been victims of attacks on their physical existence or integrity or of massive human rights violations. Quebecers are equitably represented in legislative, executive, and judicial institutions; occupy prominent positions within the government of Canada; and enjoy the freedom to pursue their political, economic, social, and cultural development.

ANALYSIS

The *Reference Re Secession of Quebec* leaves open the possibility that the international law right of self-determination could entail secession as a "last resort" in cases of especially severe oppression in which other channels for exercising internal self-determination had been "totally frustrated."



Quicknotes

ADVISORY OPINION A decision rendered at the request of an interested party of how the court would rule should the particular issue arise.

Tinoco Claims Arbitration (Great Britain v. Costa Rica)

Contracting party (P) v. Restored regime (D)

1 U.N. Rep. Int'l Arb. Awards 369 (1923).

NATURE OF CASE: Arbitration of contract repudiation.

FACT SUMMARY: Great Britain (P) claimed that the former government of Costa Rica (D), the Tinoco regime, had granted oil concessions to a British company that had to be honored by the present regime.

RULE OF LAW

A government that establishes itself and maintains a peaceful de facto administration need not conform to a previous constitution and nonrecognition of the government by other governments does not destroy the de facto status of the government.



FACTS: The Tinoco regime had seized power in Costa Rica by coup. Great Britain (P) and the United States never recognized the Tinoco regime. When the Tinoco regime fell, the restored government nullified all Tinoco contracts, including an oil concession to a British company. Great Britain (P) claimed that the Tinoco government was the only government in existence at the time the contract was signed and its acts could not be repudiated. Costa Rica (D) claimed that Great Britain (P) was estopped from enforcing the contract by its nonrecognition of the Tinoco regime. The matter was sent for arbitration.

ISSUE: Does nonrecognition of a new government by other governments destroy the de facto status of the government?

HOLDING AND DECISION: (Taft, C.J., Arb.) No. A government that establishes itself and maintains a peaceful de facto administration need not conform to a previous constitution and nonrecognition of the government by other governments does not destroy the de facto status of the government. Great Britain's (P) nonrecognition of the Tinoco regime did not dispute the de facto existence of that regime. There was no estoppel since the successor government had not been led by British nonrecognition to change its position.

ANALYSIS

The arbitrator found there was no estoppel. The evidence of nonrecognition did not outweigh the evidence of the de facto status of the Tinoco regime. Unrecognized governments thus may have the power to form valid contracts.



Quicknotes

DE FACTO STATUS In fact; something that is recognized by virtue of its existence in reality, but is illegal for failure to comply with statutory requirements.

ESTOPPEL An equitable doctrine precluding a party from asserting a right to the detriment of another who justifiably relied on the conduct.

Salimoff & Co. v. Standard Oil

Former owner (P) v. Purchaser (D)

N.Y. Ct. App., 262 N.Y. 220, 186 N.E. 679 (1933).

NATURE OF CASE: Appeal from dismissal of action for an accounting.**FACT SUMMARY:** Salimoff (P) claimed that the Soviet government did not have good title to pass when it sold oil property confiscated from Russian nationals. **RULE OF LAW**

When no right of action is created at the place of the wrong, no recovery in tort can be had in any other state.

FACTS: Salimoff (P) was the equitable owner of oil property that had been seized by a nationalization decree and confiscated by the Soviet government in Russia. When the Soviet government sold oil extracted from that property to Standard Oil (D), Salimoff (P) sought an accounting, alleging that the confiscatory decrees by the unrecognized Soviet government had no legal effect. The complaint was dismissed and Salimoff (P) appealed.**ISSUE:** When no right of action is created at the place of the wrong, can recovery in tort be had in another state?**HOLDING AND DECISION:** (Pound, C.J.) No. When no right of action is created at the place of the wrong, no recovery in tort can be had in any other state. The United States government recognizes that the Soviet government has functioned as a de facto government since 1917, ruling within its borders. The courts cannot refuse to recognize a de facto government merely because the State Department has not recognized the Soviet government as a de jure government. Affirmed. **ANALYSIS**

Salimoff (P) claimed the Soviet government was nothing more than a band of robbers and had no legitimacy. The court asked the rhetorical question whether Soviet Russia was a band of robbers or a government. Everyone knows it is a government, according to this court.

Quicknotes**CONFISCATORY DECREE** A court order to condemn private property for public use.**DE FACTO GOVERNMENT** A government that sustains its power against the lawful government by force.**DE JURE GOVERNMENT** Government legally vested with the authority to govern.**NATIONALIZATION** Government acquisition of a private enterprise.**National Petrochemical Co. of Iran v. M/T Stolt Sheaf**

Iranian corporation (P) v. Unidentified party (D)

860 F.2d 551 (2d Cir. 1988).

NATURE OF CASE: Appeal of federal district court dismissal.**FACT SUMMARY:** [An Iranian corporation (P) brought suit as a plaintiff in a U.S. federal court. The district court dismissed the claim because the United States had never extended recognition to the government of the Islamic Republic of Iran.] **RULE OF LAW**

A foreign government is not necessarily barred from access to U.S. courts if it has not been formally recognized by the United States.

FACTS: [An Iranian corporation (P) brought suit as a plaintiff in a U.S. federal court. The district court dismissed the claim because the United States had never extended recognition to the government of the Islamic Republic of Iran. The U.S. government entered the case as amicus curiae, and argued that the Iranian corporation (P) ought to be granted access.]**ISSUE:** Is a foreign government necessarily barred from access to U.S. courts if it has not been formally recognized by the United States?**HOLDING AND DECISION:** [Judge not stated in casebook excerpt.] No. A foreign government is not necessarily barred from access to U.S. courts if it has not been formally recognized by the United States. Recognition can occur even where the U.S. government has withheld formal recognition, which it sometimes does where recognition can be misinterpreted as approval. In addition, the Executive Branch has the power to deal with foreign nations outside formal recognition. In this case, relations between the United States and Iran have been tumultuous. The Executive Branch must therefore have broad discretion involving matters of foreign relations. **ANALYSIS**

The case as excerpted does not illustrate the point as clearly as one might hope. But the thrust is that the intervention of the United States as amicus and its arguments in favor of allowing the case to proceed in the U.S. court system were exercises of the power of the executive branch over matters of foreign relations, to which the court deferred.

**Quicknotes****AMICUS CURIAE** A third party, not implicated in the suit, that seeks to file a brief containing information for the court's consideration in conformity with its position.

Island of Palmas Case (United States v. The Netherlands)

Discovering country (P) v. Occupier (D)

Perm. Ct. of Arbitration, 2 U.N. Rep. Int'l Arb. Awards 829 (1928).

NATURE OF CASE: Arbitration of territorial dispute.

FACT SUMMARY: The United States (P) claimed that the Island of Palmas was part of the Philippines but the Netherlands (D) claimed title as well.

RULE OF LAW

An inchoate title cannot prevail over a definite title founded on continuous and peaceful display of sovereignty.

FACTS: The United States (P) claimed the Island of Palmas was part of the Philippines and had been ceded by Spain by the Treaty of Paris in 1898. The United States (P), as successor to the rights of Spain over the Philippines, based its claim of title in the first place on discovery. The Netherlands (D) claimed that it had possessed and exercised rights of sovereignty over the island from 1677 or earlier to the present.

ISSUE: Can an inchoate title prevail over a definite title founded on continuous and peaceful display of sovereignty?

HOLDING AND DECISION: (Huber, Arb.) No. An inchoate title cannot prevail over a definite title founded on continuous and peaceful display of sovereignty. The continuous and peaceful display of territorial sovereignty is as good as title. Discovery alone, without any subsequent act, cannot suffice to prove sovereignty over the island. There is no positive rule of international law that islands situated outside territorial waters should belong to a state whose territory forms the nearest continent or large island. No one contested the exercise of territorial rights by the Netherlands (D) from 1700 to 1906. The title of discovery, at best an inchoate title, does not prevail over the Netherlands, (D) claim of sovereignty.

ANALYSIS

The arbitrator examined evidence of contracts made by the East India Company and the Netherlands (D). The Netherlands (D) also based its claims on conventions it had with the princes and native chieftains of the islands. Spain was found not to have had dominion over the island at the time of the Treaty of Paris in 1898.

Quicknotes

INCHOATE Impartial or incomplete.

SOVEREIGNTY The absolute power conferred to the state to govern and regulate all persons located and activities conducted therein.

Frontier Dispute Case (Burkina Faso/Mali)

[Parties not identified.]

I.C.J., 1986 I.C.J. 554.

NATURE OF CASE: Petition to resolve a border dispute.

FACT SUMMARY: Burkina Faso and Mali submitted a question to the International Court of Justice regarding a border dispute.

RULE OF LAW

There exists an obligation to respect pre-existing international frontiers in the event of a state succession.

FACTS: [Facts not stated in casebook excerpt.]

ISSUE: Does there exist an obligation to respect pre-existing international frontiers in the event of a state succession?

HOLDING AND DECISION: (Judges Lachs, Ruda, Bedjaoui, Luchaire, and Abi-Saab) Yes. There exists an obligation to respect pre-existing international frontiers in the event of a state succession, whether or not the rule is expressed in the form of *uti possidetis*. Thus, the numerous declarations of the intangibility of the frontiers at the time of the declaration of independence of the African states are declaratory. The fact that the principle did not exist when the states declared such independence in 1960 does not foreclose its present application.

ANALYSIS

The principle of *uti possidetis* developed with respect to the Spanish American colonies. In a similar dispute between El Salvador and Honduras, the Court described the principle as follows: "The general principle offered the advantage of establishing an absolute rule that there was not in law in the old Spanish America any *terra nullius*; while there might exist many regions that had never been occupied by the Spaniards . . . the regions were reputed to belong in law to whichever of the republics succeeded to the Spanish province to which these territories attached by virtue of the old Royal ordinances of the Spanish mother country."

Quicknotes

SUCCESSION The scheme pursuant to which property is distributed in the absence of a valid will or of a disposition of particular property.

TERRA NULLIUS Land belonging to nobody.

UTI POSSIDETIS In civil law, the granting of a right of possession to one who was already in possession of a thing in order that he may be declared the legal possessor.