

Alternative Dispute Resolution

International **Arbitration** law is perhaps one of the most important areas of law you will encounter when conducting international business operations. **In** light of the complexities and considerable amount of time involved in **litigating** in courts throughout the world the fast pace of international business demands another alternative. **In most** jurisdictions this is found in the **arbitration** clause accompanying almost any international contract.

When disputes arise in international business litigation is generally a poor answer **for** solving such disputes. In many countries throughout the world complex international litigation (and most international litigation can be construed by local courts as complex) can be tied up in court for many years¹⁸. Clearly, in an international business setting where disputes must be solved **within** months or days not decades or years arbitration is seemingly the only **answer** available. This is particularly **true** in ongoing business relationships where the parties do not wish to terminate their dealings over a relatively minor dispute. While alternatives to arbitration exist, namely **conciliation**, **mediation** and the infrequently used mini-trial, arbitration **clearly** remains the most potent (**powerful**) method of alternative dispute resolution.

Conciliation

Conciliation, or the attempted settlement of disputes in a **friendly**, mutually cooperative manner is the **least coercive** (forceful) of the various methods of alternative dispute resolution, and by far the most **common**. This is a nonantagonistic (**friendly**) approach, where the parties share their views towards reaching a mutually agreeable solution. It is **often** conducted in face to face open discussions, although it could occur over the telephone, through the post (mail), or wherever both parties are allowed to **freely** express their opinions and beliefs regarding the dispute. This is a highly informal method of unsupervised dispute resolution, **and** is generally the least expensive method.

Mediation

Mediation involves the intervention of a neutral third party, who attempts to persuade the parties to resolve their dispute **amicably**. Mediation is slightly more coercive than conciliation, but the mediator does not make binding rulings, and is merely present to assist the parties in resolving their dispute. Mediation is generally begun when the parties desire to reach a mutually agreeable solution, but their positions are **too** far apart to reach an agreement without the assistance of a neutral third party. **Other** instances where mediation is entered into by the parties involves the situation, where one or both parties

¹⁸ When I worked for Baker & McKenzie in Egypt I was told about a case that had been going on for 20 years. Although this is highly unusual, when conducting international business one should expect the unusual as these types of business transactions tend to stretch the local legal systems in many developing countries to their limits.

are fearful of a binding arbitrary ruling (perhaps because they perceive their position to be weak or liable to misinterpretation) and no arbitration clause exists. Mediation is slightly more expensive than Conciliation as it involves the employment of a neutral third party (often a lawyer familiar with the facts and law(s) governing the dispute). However, in mediation both parties retain the right not to reach an agreement, and if one is reached to refuse to implement it. Furthermore, unless agreed otherwise, either or both parties can withdraw from the mediation at anytime he/she/it may wish.

The Mini-Trial

The Mini-Trial, the final step one may indulge in before undertaking binding arbitration (and essentially a hybrid of mediation), is somewhat popular in America, but is generally not found in most other jurisdictions. The Mini-Trial owes its birth to high court costs in many jurisdictions today and lengthy delays involved in going to court. Subsequently, when the parties' dispute is not governed by an arbitration clause, the parties sometimes agree to submit their dispute to a mock trial, or more commonly referred to as a Mini-Trial. This mock trial is replete with a judge, and often times a mock or genuine courtroom as a setting for the proceedings. Some parties who engage in the use of this third method of alternative dispute resolution feel the presence of an off-duty or retired judge, in conjunction with the formal court-like surroundings, encourages the parties to take the proceedings seriously, and behave in a manner consistent with court room decorum. The parties are free to decide amongst themselves the procedures for submitting evidence to the tribunal, but generally follow the trial procedure of the relevant jurisdiction. After the evidence and arguments of the parties have been heard to the satisfaction of all, the judge then renders his decision within a set period of time, accompanied by the reasons he/she reached his/her conclusion.

Advantages of the Mini-Trial include the ability of the parties to achieve a rapid and possibly cheaper decision than if they had proceeded through normal legal channels. Furthermore, this forum is much more flexible than the standard courtroom trial, as the parties can mold the proceedings to fit their particular needs and desires.

A disadvantage of this particular method of alternative dispute resolution is, the relative high cost of these proceedings, as compared to those used in Conciliation and normal Mediation, yet comparable to that involved in an arbitral proceeding, but without the binding end result. To make the decision of the judge in the Mini-Trial enforceable by agreement would transform this third method of alternative dispute resolution into just another form of arbitration, which by nature is binding upon the parties.

Arbitration

Finally we come to possibly the most important form of alternative dispute resolution, namely arbitration. Arbitration is defined as the referral of a dispute to a neutral third

party, where said third party issues an enforceable decision **after** providing both parties with ample opportunity to present their case to the arbitrator. The structural make-up of **arbitral** proceedings is determined by the parties, but in International Commercial Arbitration it generally follows a three man format with each party proposing one arbitrator, **and** the third being **appointed** by the parties mutually or by the two previously appointed arbitrators **themselves**. Arbitral awards (decisions) are enforceable in most jurisdictions in the world, although some developing countries put limits upon the enforceability of the awards.

Another aspect of arbitration law is the severability of most arbitration agreements **from** the original contract. Most jurisdictions in the world recognize this principle, and will even use it **to** rewrite a contract in line with the parties initial intentions, when the original agreement is considered null and void, but the arbitration clause is found to be sound (good).

Worldwide Centers of Commercial Arbitration

The principal international centers for commercial arbitration are: **London**, New York and Paris. In London one can apply to the London Court of Arbitration or simply use it as a **Situs** for an International Chamber of Commerce, ICC, or Ad Hoc tribunal. New York is **frequently** the site for **numerous** American Association of Arbitrators, **AAA**, tribunals or once again used as the **Situs** for ICC or Ad Hoc formatted arbitrations. Paris is the international headquarters for the ICC, the institution **responsible** for the procedural guidelines and rules for the vast majority of international commercial arbitrations. However, **as** a hasty review quickly points out, the **Situs** of many of these arbitrations subject to ICC rules are by no means always Paris, and Paris is also the home to many Ad Hoc arbitrations as well.

Regional Centers of Commercial Arbitration

Other major regional centers of arbitration include, Miami, Florida for Latin American based arbitrations; Cairo, Egypt. and Istanbul, Turkey for Middle **Eastern** disputes, and in the Far East Hong Kong (subject to change **after** 1997) and Singapore. Thailand has also made attempts in recent years to become a **center** for commercial **arbitration**, and has created institutions to attract arbitrations to Thailand. However, this list is by no means exhaustive, but provided merely **to** give the reader some idea of the broad spectrum of potential rules, procedures and locations available.

Arbitral Rules

As the above statement **indicates**, arbitration pushes contractual flexibility to the limits of one's imagination. Not only may the parties to the contract make choice of law provisions

governing the agreement, but within the arbitration clause they may also name the rules and procedures of arbitration, generally by referring to one of the above mentioned organization's rules and procedures, or **identifying** any number of national, state or regional codes, or **rules** of arbitration. The sheer variety provided by **these** systems is seemingly **limitless**.

Another option is provided by the UN's Model Law of Arbitration. This is accompanied by Model Rules as well, but the law is **frequently** criticized in commercial circles for being too middle of the road (not progressive nor conservative enough). In addition, the Model rules have **also** been criticized for **often** times not going far enough, and in some cases going too far.

However, as previously mentioned the clear favorite has and continues to be the ICC rules, and is frequently referred to as just that in most international business contracts.

Commercial Arbitration in Thailand

Thai arbitration law generally **follows** the modern international trend, but a notable exception is the Thai concept of an Umpire to unilaterally decide the dispute in the event the two arbitrators named by the parties can not reach a decision. The umpire in Thai law is distinguished **from** the concept of a third arbitrator generally **found** in modern arbitration rules by his inability to participate until a deadlock is reached. Therefore, as the umpire joins the proceedings relatively late by general standards, often times evidence and testimony must be reproduced at considerable cost to the parties. However a possible **benefit** accrues based upon the ability of the umpire to **unilaterally** decide the case. In other words, in the event of a three way tie his vote prevails. Thereby the prospect of deadlock is overcome, and the **arbitral** proceedings are finished. The potential value of this benefit vs. the potential increased cost of the umpire's late entry must be weighed **carefully** by the parties to the agreement before selecting Thai Arbitration rules. Subsequently unless the parties **desire** this unique feature of Thai arbitration rules, which by omission in the arbitration clause **the** Thai courts **will** construe (interpret) as desired, the parties should make reference to their own choice of rules in the arbitration clause.

Furthermore, as mentioned previously with respect to Thailand, the government and business community are making a concerted **effort** to transform Bangkok into a regional center of arbitration. The government provides relatively **low** cost, high quality **facilities** for the conduct of arbitration, and has modernized and liberalized the law in recent years in the hopes of attracting a large portion of the regional market. However it is too early to see if they will be successful. Factors that hamper its attempts to become a regional center include the language barrier, all documents must be translated into Thai before the local courts can act to support **the** arbitration, and severe work restrictions prevent foreigners from engaging in legal work (believed to include arbitration) in Thailand. There are some other procedural problems associated with the enforcement of awards in Thailand (i.e. principally the requirement that the award must be enforced within one year or lose its

enforceability), but these go beyond the scope of this short essay on commercial arbitration.

Arbitration Clauses

Many potential models exist for the **drafting** of an arbitration clause. In most western jurisdictions it is sufficient to say, "Arbitration under this agreement shall be conducted in (Location, ~~city and country~~)". to include your choice as to governing arbitral rules usually the rules of the place, or **situs** of the arbitral proceedings, will govern. However, if you desire to choose your own rules, or simply are not familiar with the rules of arbitration in the country of choice, then you have the option to choose your own governing rules, and there are numerous institutional, national and regional variations to choose from as **well**.

An excellent model arbitration clause as suggested by the ICC is:

All disputes arising in connection with the present contract shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce, ICC, by one or more arbitrators appointed in accordance with the said Rules. The place of Arbitration shall be _ _ _ _ _

However a word of caution, before blindly choosing an arbitration clause, one should look at the circumstances of the parties involved. In my opinion as a practitioner the ICC Rules and arbitral system of support are probably the best, but also some of the most expensive. Furthermore, the businessman or practitioner seeking to commit to an arbitration agreement **should**, as always in most legal matters, consult local legal counsel for an opinion, as **different** jurisdictions may require **different** wording.

Questions to evaluate reading comprehension.

Where is conciliation conducted?

What are the advantages of conciliation?

What is the difference between conciliation and Mediation?

What are the advantages of the Mini-trial?

What is the most important distinction between Mediation and Arbitration?

What are **some** of the worldwide centers for international commercial **arbitration**?

Where are some of the regional centers of commercial arbitration?

What at a **minimum** must an arbitration clause have to be **enforced** in the majority of jurisdictions?

What problems does Thailand have to overcome to become a regional center of commercial arbitration?

Please define the following terms.

1. **Conciliation**
2. Mediation
3. Mini-Trial
4. Arbitration

American Employment Law

American employment law is governed by a collection of **US/British** common law legal traditions, as well as a host of employment related statutes, administrative rules and constitutional rights. **While** remaining a largely market oriented economy, the US has a considerable number of **laws which** regulate issues concerning **Labor** Law (having to do with organized labor, unions), Employment Discrimination and the work environment.

US Labor Laws

Labor laws are **primarily** concerned with the relations between management, unions and the rights of the parties to organize and bargain collectively. These laws emerged from roughly a century of union attempts at mass organization of labor, and culminated in the **1950's, 60's and 70's** with the near institutionalization of several **large** nation-wide unions, **and** the general legal and **social** acceptance of their rights to **organize**. Several federal statutes regulate labor relations between management and the unions, with the National Labor Relations Act being chief among these. The Act and its accompanying National Labor Relations Board (a federal administrative agency), seeks to equalize the bargaining power of the two sides, and encourages **peaceful** solutions to labor disputes through the active enforcement of the labor laws.

Discrimination in the Work Place

Employment discrimination is regulated by several federal statutes, and the constitutional rights of the parties involved. Issues of concern are race (**ethnicity**), **gender** (sex i.e. male or female), age and religious based employment discrimination. Another issue of concern is employment discrimination based upon physical disabilities (discriminating against an employee or job applicant as a result of his physical handicap, i.e. **blindness**, inability to walk,). Central to suits involving employment discrimination is the Equal Employment Opportunity Commission (EEOC), a federal **agency** responsible for enforcing the laws. Victims of employment discrimination can lodge complaints with the EEOC, which then evaluates and may sue the offending businesses (at government expense) on **behalf** of the victims. However, victims may also sue independently if they choose.

International business **organizations** should be **particularly** aware (conscious) of the laws regarding employment discrimination, as a multinational corporation, with assets in the US, could find **itself** in US courts facing an employment discrimination law suit. This result is made possible by US long arm statutes, the wide ranging **language** of the Act itself, and the interpretation given to it by US courts. Therefore, it **is wise** to **be** aware of these considerations, even though local standards may allow an employer to engage in acts, which are **prohibited** by US law.

Parallel State Employment Regulations

The federal laws and agencies previously mentioned are mirrored by state regulatory agencies and laws. However, the parallel levels of regulations and organizations are separated by different jurisdictions, and typically where jurisdictions overlap, the state will defer to the greater resources of the **federal** agency for prosecution. Subsequently, the vast majority of employment related suits occur at the **federal** level.

Other American Employment Related Laws

In addition, there are numerous federal state and local laws that regulate the work environment (i.e. safety conditions, sound levels, , in the work place). These government regulatory agencies **often** enforce the laws through random on site spot inspections to catch violators, and assess substantial fines against violators during these random inspections. For example, an inspection by the local fire inspector ensures that the work place has adequate fire extinguishers, smoke alarms and fire exits in the event evacuation becomes necessary. Repeat offenders (those violators, who do not correct previously identified violations prior to the following inspection) are **fined** on an escalating scale, which can ultimately lead to closure of the work facility in **particularly** dangerous circumstances.

Modern Trends io US Employment Law

Finally, in response to what management and business spokesmen deemed **overregulation** of the employment and labor sectors during the **1950's 60' and 70'**, there were attempts during the Reagan and Bush administrations (1980-92) to scale back government involvement in the employment sector. However, the Clinton **administration (1992-present)** appears to be working toward a more **centrist** position, **which** attempts to neither alienate big business or the unions (upon which President Clinton's Democratic Party **has** traditionally been **largely** beholden to, but whose interests he has acted against in a couple of recent high profile instances'?).

Conclusion

Subsequently in light of Mr. Clinton's recent reelection, analysts expect US employment law to continue to develop in largely the same middle way previously discussed. Nonetheless, pro-labor critics argue that US labor laws are too weak, and favor management. These critics **often** extol a European labor oriented model. However, in an era of high European unemployment, in which European governments are attempting to

¹⁹ Chief among these moves, which tend to demonstrate President Clinton's independence from American labor unions, was his support for the North American Free Trade Agreement, which he signed in spite of widespread opposition within his own Democratic Party, and almost universal union denunciation. In fact, the trade agreement was only ratified over the almost overwhelming opposition of his own party, with the strong support of the opposition Republican Party. Union leaders fear NAFTA will take good paying American union jobs to Mexico where comparable labor costs are considerably cheaper.

reduce the benefits of their work force and employment regulation, few analysts predict a sudden reversion to the earlier pro-labor policies of the 1950's-70's.

Please Answer the Following Questions.

1. What area **of the** law does labor law control?

2. What types of employment discrimination are regulated under US law?

3. What are the **international** implications of the laws regulating US employment discrimination?

4. Other than US federal statutes, what kinds **of law** regulate employment in the US?

5. What is the task of the **Equal** Employment Opportunity Commission, and who pays for their services?

6. Do you think US employment **laws** are good for business, or do they hurt American competitiveness in the international market place?

7. Does your country have similar employment legislation, and if not, should it adopt similar measures?

Define the Following Terms and Phrases:

1. Racial Discrimination
2. Gender Discrimination

Drafting Contracts

The following contracts are provided as examples of American contracts, which can be used by the reader as a guide when **drafting** a contract. Furthermore, they represent the basic **types** of contracts a new associate will generally be tasked with drafting (**i.e. sales** contracts, employment contracts and power of attorney agreements). All of the basic contractual provisions are identified **therein**, and are explained below. Furthermore, this text attempts to identify several important issues to examine when drafting a contract.

Amount, Currency and Method of Payment

The lawyer drafting a contract should always be **careful** to clearly designate the amount **and** type of currency to be used in the contract. For example, a sales contract for 1 million dollars should clearly state that US dollars are intended therein **and** not for instance Taiwanese dollars (roughly \$1 US = 26 Taiwanese dollars). This simple inclusion will avoid potentially costly **misunderstandings from** developing.

In addition, the method of payment, including corresponding dates, should be included within the body of the contract to avoid misunderstandings regarding this all important **subject**. Letters **of credit** are a commonly used method for ensuring payment, and very **safe** when dealing with an unknown party. There are other forms of payment (**i.e. cash, checks, .**), but the letter of credit is perhaps the most secure method.

Arbitration Clauses

Another issue to be included is an arbitration clause, if the parties so desire, as this is **generally** much **cheaper and** faster **than litigation** (**going to court to settle a dispute**). The attorney **drafting** the clause should indicate the rules to be used (**i.e. ICC, AAA, . . .**) and the **Situs** (location) of the arbitration proceedings.

Controlling Language

Controlling language provisions should also be included, when the contract is to be translated into one or more languages, to avoid future misunderstandings regarding the exact **meaning** of words. It is very difficult to make exact legal translations of documents, as **often** languages do not have words, which **directly** (exactly) correspond to the intent of the drafters. A court **examining** a translation of the original agreement in another language might therefore, interpret the same clause(s) in a **different** manner based up the choice of wording utilized during the translation process.

Choice of Law

Choice of law clauses should also be used to eliminate **confusion**. Disputants will **generally** attempt to litigate in a jurisdiction, whose laws **favor** their interpretation of the agreement. Such attempts should be forestalled by declaring in the contract the **partys'**

choice of controlling **law**, and said declaration may well save the parties considerable time, money and **effort**.

Entire Agreement

Entire agreement provisions, allow the contract to assume a degree of finality. All additions to the **agreement** must ~~thereafter~~ be submitted in writing, and be agreed upon by both parties therein, A later uncorroborated **oral agreement** will not be accepted as part of the agreement. Subsequently this provision is a valuable tool for eliminating costly ~~litigation~~ concerning the terms of the contract.

Please answer the following questions based upon the passage above.

1. Why should you designate the currency to be used in the contract?

2. What is the purpose of an arbitration agreement?

3. Why should the parties designate a controlling language?

4. What is the main reason for designating a choice of law in the contract?

5. What purpose does an entire agreement clause serve?

Define the following:

1. Letter of Credit
2. Oral Agreement

EMPLOYMENT CONTRACT

This agreement, made this (DATE) _____ day of (MONTH) _____, (YEAR) _____, between (NAME OF EMPLOYER) _____ of (CITY, STATE or PROVINCE, COUNTRY) _____, hereafter designated as "Employer," and [NAME OF EMPLOYEE] _____ of (CITY, STATE or PROVINCE, COUNTRY), _____ hereafter designated as "Employee."

1. Duties of Employee

Employee, hereby agrees in consideration of the terms contained in this contract to **perform** the following duties:

[**Description** of Employee's Duties under the Contract (ie. to teach 2 courses in Law, per semester, at Ramkhamhaeng University during the 1997-School year, as outlined in the university bulletin)].

2. Remuneration (Payment) of Employee

In consideration thereof Employer agrees to pay Employee according to the following terms:

Employee shall receive his/her monthly salary for the previous month on the ___ day of each month. Employee's monthly salary shall be _____ (currency, ie **Thai baht**, US dollars,...) per month.

In addition, said employee shall receive the following **benefits**:

(i.e. A housing allowance of 8000 Thai **Baht** per month, 1 million Baht health insurance, and a university car and driver.)

3. Termination of Employment

Employee understands and agrees that Employer may terminate (end) this **employment** contract for just cause at any time without notice. "just cause" shall be **defined** herein as breach or neglect of the duties, which he/she is required to perform under **the** terms of this contract, violation of any law which effects employees ability to carry out his above stated duties or which **effects** either Employees or Employers reputation, dishonesty, insubordination, or gross misconduct.

4. Arbitration- (Optional)

Any disputes arising under this agreement between Employer and Employee, which **can** not be settled amicably, shall be settled by binding arbitration in _____ (City, Country, ie. Bangkok, Thailand) using three mutually agreeable arbitrators, or if no such individuals exist, then court appointed arbitrators shall be substituted Said arbitrators will have the power to make rules to govern any arbitration proceedings as they deems necessary, and which are not unduly prejudicial to either party involved.

5. Choice of Law

..(ie.Thai)_law shall be **controlling** in this and all proceedings **surrounding** this agreement.

6. Controlling

Furthermore , _____ {ie. Thai or English) shall be the controlling language of this agreement.

7, Entire Agreement

In accordance with the above stated terms and conditions, the parties to this agreemnt do hereby solemnly **swear** to be bound exclusively by said aforestated terms and condiditons, and that no additional terms or conditions shall be construed, substituted nor added without the express written consent of all parties to this agreement

Employer's Signature

(Printed Name and Tittle of Employer's Representative)

Employee's Signature

(Printed Name of **Employee**)

SALES CONTRACT

(DATE) _____

(NAME OF SELLER) Mr. Whipple Enterprises hereinafter referred to as "SELLER", sells, bargains and conveys all of SELLER'S rights, title and interest in: (DESCRIPTION OF PROPERTY) Two consecutive shipments of party favors as described in Attachment A, to (NAME OF BUYER) Timothy Leary Party Supplies, hereinafter referred to as "BUYER".

Warranty (if Any)

(All party supplies are **gurranteed** delivered fresh on or immediately before the desired delivery date.)

Amount, Currency and Method of Payment

SELLER shall promptly **recieve** via letter of credit transfer to SELLERS account (AMOUNT/CURRENCY) _____ from BUYER as payment in full for each shipment, upon receipt and acceptance of said shipment by BUYER, on the delivery dates specified in this agreement.

Locations and Dates of Delivery (i.e. separate locations for multiple deliveries)

As both parties to this agreement understand that time is of the essence in this agreement **both** BUYER and SELLER agree to strictly adhere to the schedule of delivery and payment contained herein.

The first shipment, as **specified** in Attachment A, shall be delivered to BUYER'S place of business located at 1313 Highwater Drive, NY., NY 66212, on or immediatley before (DELIVERY DATE OF FIRST SHIPMENT) October 1,1996.

The second shipment, as specified in Attachment A, shall be delivered to BUYER'S place of business located at 1776 Pennsylvania Avenue, NY. NY 66210, on or immediatley before (DELIVERY DATE OF SECOND SHIPMENT) November 1,1996.

Arbitration (Optional, but generally found in all large contracts)

Any disputes arising under this agreement between BUYER and SELLER which can

not be settled amicably, shall be settled by binding arbitration in London, England- (City, Country) using three mutually agreeable arbitrators, or if no such individuals exist, then ~~court~~ appointed arbitrators shall be substituted Said arbitrators will have the power to make **rules** to govern any arbitration proceedings as they **deem** necessary, and which are not unduly **prejudicial** to either party involved.

5. Choice of Law

The Laws of the State of California (or any other law the parties agree upon, **ie. Thai**) shall be controlling in this and all proceedings surrounding this agreement.

6. Controlling Language

Furthermore, English (or any other language the parties agree upon, ie. Thai) shall be the **controlling** language of this agreement

7. Entire Agreement

In accordance with the above stated terms and conditions, the parties to this **agreemnt** do hereby solemnly swear to be bound exclusively by said **aforestated** terms and **condiditons**, and that no **additonal** terms or conditions shall be construed, substituted nor added without the express written consent of all parties to this agreement ,

IN WITNESS WHEREOF, I have hereunto set my hand and **seal** this (DAY) ____ day of (MONTH) _____, (YEAR) _____.

Signature (SELLER)

IN WITNESS WHEREOF, I have **affixed** my signature, this (DAY) __ day of (MONTH) _-_____, (YEAR) _____.

Signature: (BUYER)

The Power Of Attorney

The power of attorney is an essential contract in modern society. It enables both the private individual and businesses to contract and conduct operations on a world-wide scale with a minimum of effort. However, used imprudently, the power of attorney can be a dangerous liability to any person or company, and therefore, must be used with the greatest of caution.

The General Power of Attorney

The general power of attorney is a contract which enables the attorney-in-fact to **perform** a broad (wide) array variety of duties. The attorney-in-fact is **specifically** or generally granted powers delineated (described) in the power of attorney, to act as **outlined** therein on behalf of the grantor. Typically the general power of attorney is only given to a very close family member or trusted associate, as its powers are generally limitless within the bounds of the law. For example, a son working abroad might give his father a general power of attorney enabling his father to do everything **from** paying his son's taxes to selling or buying property on his son's behalf. Once again it is important to reiterate that because the general power of attorney opens the grantor to considerable and varied liability, it is rarely granted except in the close personal relationships and not recommended in business **dealings**.

The Special Power of Attorney

In contrast, the special power of attorney delegates strictly limited powers to the **attorney-in-fact**, and only in **furtherance** of the stated interests of the grantor. This distinction makes the special power of attorney an essential tool of modern business. For example, if one **wishes** to buy a factory or business in a faraway location, but does not wish or does not **have** the time to personally conduct all of the arrangements, he can delegate the actual power to purchase said property to another individual, usually a lawyer representing his interests in the proceedings.

Furthermore, as previously mentioned, the attorney-in-fact is prevented **from exceeding** his powers by the strict delineation of his powers contained therein. In the event the attorney-in-fact does exceed his powers, he is personally responsible for whatever contracts he **makes in excess** of his authority, and the grantor is not liable unless he independently agrees to assume **responsibility** for the additional obligations.

Expiration of a Power of Attorney

Finally when granting a power of attorney, one should also expressly identify a date **for termination** (expiration) of the agreement, **unless** he/she wishes the powers granted to be retained by the attorney-in-fact until the grantor revokes said powers in writing in a separate communication. This is an important issue as an **indefinite** agreement **will** generally stay in force until said agreement is revoked. For example if I grant an

indefinite special power of attorney to buy a factory in New Jersey, and agree to pay 10 million dollars in 1970, but am **refused**. However in 1997 the same factory is bankrupt, and my attorney-in-fact nevertheless purchases the factory for 10 million dollars, perhaps in collusion with the owners, even though it is now worthless. Nonetheless, even though you have long since forgotten the factory, you probably now own it.

However, regardless of the expiration date of the power of *attorney*, the grantor, unless **specifically** forbidden from doing so in the power of attorney (i.e. a irrevocably proxy agreement), may terminate the agreement whenever he/she chooses to by notifying the attorney-in-fact. Furthermore, upon the death or incapacity of the grantor, unless other&e designated therein the agreement expires when the attorney-in-fact receives notice, **or** should have received notice thereof. The intentional efforts of a power of attorney to remain ignorant of the termination of the agreement, if established, will serve as constructive notice thereof and terminate the agreement.

Please answer the following questions based upon the above paragraphs.

1. Why is it dangerous to grant the general power of attorney?
2. What is the difference between the general and special power of attorney.
3. Why is it important to **include** a date of expiration in the power of attorney?
4. What happens when the attorney-in-fact receives notice of the death of the grantor?
5. What happens if the attorney-in-fact exceeds his powers contained in the agreement?

SPECIAL POWER OF ATTORNEY

I, (NAME) (CITY, STATE, or PROVINCE, COUNTRY),
_____ have ma&, constituted, and appointed, [NAME]
_____, of (CITY, STATE or PROVINCE, COUNTRY),
_____ my true and **lawful** attorney; that is to say:

Do hereby grant unto my said attorney **full** power to act as follows:

[DESCRIPTION OF DUTY (i.e. to buy a condominium for me at 389 Grand Palace
Condominiums, 122 Lad Prao Rd., **Bangakapi**, Bangkok 10310 of not less than 100 sq.
meters, and pay no more than 1 million **Baht**.)]

FURTHER, I do hereby authorize my aforesaid attorney-in-fact to perform **all** necessary
acts in the execution of the aforesaid grant of power, with the same validity as I could
effect if personally present. I **further** declare that any act or thing lawfully done hereunder
by my said attorney shah be binding upon myself and my heirs, legal and personal
representatives, and assigns whether the same shall have been done either before or **after**
my death, or other revocation of this instrument, unless and until reliable intelligence or
notice thereof shah have been received by my said attorney.

PROVIDED, however, that **all** business transacted hereunder for me or for my account
shall be transacted in my name, and that **all** endorsements and instruments executed by
said attorney for the purpose of carrying out the foregoing powers shah contain my name,
followed by that **of my** said attorney and the designation "attorney-in-fact."

FURTHER, this power of attorney shall not be **affected** should I subsequently become
disabled or incapacitated.

FURTHER, unless sooner revoked or terminated by me, this Special Power of Attorney
shall become NULL and VOID **from** and **after** the ____ day of _____ (MONTH),
_____ (YEAR).

IN WITNESS WHEREOF, I have hereunto **affixed** my signature this ____ day of
_____, (MONTH), _____ (YEAR)

Signature:

Legal Correspondence

Lawyers are routinely asked to write legal letters on behalf of their clients. These letters typically include formal demands for payment (for debts long overdue), and letters of rejection (for goods which do not conform to the contract). Sample letters **can** be found herein, which correspond to the case MWE v. **TLPS**, and are included for the benefit of the reader. In addition, a letter of revocation for a power of attorney is also included.

Formal Demands For Payment

Formal demands for payment are made when a client or business associate has not paid his/her debts (they are overdue), and the **debtor** does not appear likely to settle (pay) them in the immediate **future**. Subsequently, in many jurisdictions throughout the world, including the US, before legal action can be taken to recover overdue debts, there must be proof that **not** only is the money owed to the claimant, but that **he/she** has unsuccessfully attempted **to** collect said debt. This is usually demonstrated by producing a **copy** of the format demand for payment, which was sent by registered mail to the debtor's address, and which clearly states the amount due and a deadline for payment, which has passed without the debt being settled. If the claimant can not demonstrate these facts for the court, then the claimant's motion for recovery is dismissed without prejudice, and he/she may refile **his/her** claim when **he/she** can demonstrate that he/she has **unsuccessfully** attempted **to** recover the debt.

Letters of Rejection

In contrast,, a letter of rejection merely demonstrates the senders unwillingness to accept goods rendered to **him/her** for whatever reason stated therein. Reasons for rejection can include: the: nonconformity of the goods to the contract (the goods delivered do not match those agreed upon in the contract, i.e. color, size, weight, consistency...), an exceedingly late delivery date, delivery to the wrong location, public health concerns, etc. However, inability to pay for the goods is not an acceptable reason for rejection, and the buyer will be liable for damages to the seller associated therewith. In the laws of many countries when rejection for cause is made, generally the seller has a reasonable time period to correct his error.

Revocations of Power of Attorney Agreements

Finally the letter of revocation for a power of attorney, is used to cancel the powers previously granted to an attorney-in-fact, prior to the normal expiration date contained in the contract, or omitted therefrom. This is an important document, albeit not as **common** **as** the **first** two, as it terminates the power of attorney agreement upon receipt or notification thereof **As** power of attorney agreements can be subject to abuse by unscrupulous (dishonest) attorney-in-facts, this can be a very important document.

Conclusions

All of these agreements are provided for the benefit of the reader, but are subject to local rules and regulations. Therefore, all persons considering using them should first consult with a legal practitioner (lawyer) in the jurisdiction in which they are to be utilized. Remember, location may not be as important as a controlling law provision in making this determination (decision).

Please answer the following questions based upon the above passage.

1. When do you make a formal demand for payment?

2. Why do you make a **formal** demand for payment?

3. What must you include in a letter of rejection?

4. What are **some** acceptable reasons for the rejection of goods?

5. What is not an acceptable reason for the rejection of goods?

6. When a power of attorney agreement has an expiration date contained therein (**April 1 1998**) and a revocation of the power of attorney is received (July 1997) revoking the agreement prior to the date **found** in the agreement, which date takes precedence (when does the power of attorney end)?

7. Are formal demands for payment required by the courts in **your** country before a suit may be brought to trial?

REVOCATION OF A POWER OF ATTORNEY

I, (NAME) _____, having previously appointed (NAME) _____
of (CITY, STATE or PROVINCE, COUNTRY) _____ as my
attorney-in-fact by a ([SPECIAL,, **GENERAL**) power of attorney dated (DATE OF
PREVIOUS **POWER** OF ATTORNEY) _____ hereby revoke said powers as
my attorney-in-fact effective (DATE) _____

IN WITNESS WHEREOF, I have hereunto **affixed** my signature this __ day of
_____, [MONTH], ____ (YEAR).

Signature:

LETTER OF REJECTION

Oct. 7, 1996

Timothy Leary Party Supplies
13 13 Highwater Drive
New York, NY 66212

Mr. Whipple Enterprises
2 1 Chippendale Avenue
Beverly Hills, California 902 10

To Whom It May Concern:

Please accept the following **as** formal notice of Rejection for the party supplies, which your company provided on Oct. 1, 1996, according to the agreement signed between our companies on 1 August 1996. This shall also constitute a rejection of all **future** shipments, unless you will **gurantee in writing** by Oct. 10, 1996, that you will not use a preservative, which we reasonably deem to be potentially hazardous to the health of consumers, in the production process.

We are not interested in receiving substitute goods, unless you provide the aforementioned assurances in **writing** prior to delivery. Furthermore, we seek the prompt **refund** of our first payment of _____ (AMOUNT, CURRENCY) for the goods rejected herein.

Best Regards,

T. Leary, President
(NAME, TITLE)

FORMAL DEMAND FOR PAYMENT

Oct. 10, 1996

Mr. Whipple Enterprises (CLAIMANT'S NAME)
2 1 Chippendale Avenue (CLAIMANT'S ADDRESS)
Beverly Hills, California 902 10

Timothy Leary Party Supplies (DEBTOR'S NAME)
13 13 Highwater Drive (DEBTORS ADDRESS)
New York, NY 662 12

To Whom It May Concern,

Please be advised, the following formal demand for payment is being sent in response to your refusal to provide the **payment** agreed upon, in the contract dated 1 August 1996 for the sale and delivery of party supplies by Mr. Whipple Enterprises to Timothy Leary Party Supplies, TLPS. Your firm has failed to remit payment for the second shipment of goods **lawfully** tendered under our agreement.

Subsequently, the sum of [AMOUNT and currency (ie. US dollars or Thai Baht)] is now past due and must be paid immediately to avoid legal action to collect this debt.

Our company Mr. Whipple Enterprises has attempted on **several** occasions to obtain payment **from** your company, however TLPS has refused to remit the payment as requested according to our agreement. If payment in **full** is not received at (CLAIMANT'S ADDRESS) _____ **by** (DATE) _____ this matter will be turned over to our Attorney, Michei Lance Zevitz. for collection.

Sincerely,

Mr. William Whipple, President
(CLAIMANTS NAME, TITTLE)

Michael Baumann

Current/Mailing Address

389 Grand Palace Condominium
Ladpraw 122 Rd. Apt. 147 B
Bangkapi, Bangkok, Thailand 103 10
Tel: (02) 542-2470-9 ext. 147 B

Permanent Address

7919 West 118th Place
Overland Park, Kansas 66210
USA
Tel: (913) 339.6619

Statement of **Intention:**

I am seeking a **position** which will allow me to **utilize** the knowledge and **skills** I have acquired and **provide** me with new **avenues** towards professional **growth**.

Work **Experience:**

Law Professor, **Ramkhamhaeng University, Bangkok, Thailand 1996-Present**

- **Full-time instructor** responsible for teaching courses in **International** Contracts, American Legal Institutions and **Legal English**.

International Commercial Legal Consultant, **Century Computer Consultants, Inc., USA, 1995**

- updated and internationalized **their existing** corporate legal structure and format
- **conducted** world-wide market research and **development**
- provided general legal **services**

Foreign Associate, Baker and McKenzie (**Cairo, Egypt Office**), 1994-S

-primarily engaged in a general **international business/corporate** practice

- worked **in** a diverse range of legal practice **areas** and fields of specialization **including:** environmental, **transfer of technology**, intellectual property, oil and **natural resources, labor**, banking, tax, **arbitration**, civil engineering **contracts** and privatization
- conducted basic legal translation work (**Arabic-English**)
- wrote articles on current developments in international law

Legal **Intern**, Equal Employment Opportunity Commission (St. **Louis Office**), Summer 1991

- **researched numerous** legal questions and **completed** all **tasks** in a timely and **efficient manner**
- also drafted a wide variety of legal documents

Degrees:

Juris Doctoris Washington **University**, 1993

- Scholars **in** Law (academic scholarship), 1990-1992
- William and Mary's (Spanish) **Summer Law** Scholarship (Madrid, Spain), 1991

Masters, **International** Affairs, Washington **University**, 1993

Bachelors University of **Kansas**, 1990, Cum **Laude**

- **Departmental** Honors: Political Science. and History
- **Numerous** Other Honors and Awards

(Additional Information)

Foreign Languages:

Arabic, Spanish and **Thai** (basic)

Licensed to Practice Law:

United States of America

Computer Skills:

Experienced with Macintosh and Microsoft (**DOS** and Windows) operating systems.
Applications include various word processing, spreadsheet and communications software.
Familiar with the Novell and **TCP/IP** (Internet) protocol.
Trained in the **efficient** use of **Westlaw** and **Lexis/Nexus**.

Other Honors **and** Awards:

University of Kansas Undergraduate Research Award (Senior Thesis) **1989-90**
United **States** Air Force Achievement **Medal 1989**
University of Kansas **Hope** Award 1989
James C. **Mahlin Academic** Scholarship 1989
Initiated into the Political Science Honor Fraternity 1988
Initiated **into** Phi **Alpha** Theta, History Honor Fraternity 1988
Honor Graduate Air **Force** Security Police Academy 1986
United **States** Air Force Expert Marksmanship Ribbon **with** Cluster (**Rifle and** Pistol) 1986

Miscellaneous Activities:

Engaged in the ongoing process of Learning **Thai** (in Thailand), summer **1995-present**
Studied Arabic intensively (in Cairo, Egypt), summer 1993 -winter 1995
University of **Detroit** Mercy's London Law Program (**London, England**), Spring 1993
William and **Mary's** Spanish Legal Program (Madrid, Spain), Summer 1991
Traveled extensively throughout North America, Europe, Asia and the **Middle East**
Non-Commissioned **Officer** • United States Air Force Reserves **1986-94** (honorably discharged)
Sigma Nu Social Fraternity (**alumnus**)
Hobbies include: reading, writing, camping and hiking

Age: 28

Sex: **Male**

Citizenship:
American

Height: 5' 5"

Weight: 130 lb.

Capital Punishment (the Death Penalty) in the US

Capital Punishment in the US is generally reserved for only the most heinous {violent/gruesome) crimes. Some examples of these crimes include murder, rape and kidnapping (the forced detention of an individual for ransom), however, simply because one is charged with one of these crimes does not mean that if convicted (found guilty at trial) they will be subject to the death penalty.

The prosecutor will generally not ask the jury (a group of private citizens, who decide whether **the** accused is guilty or not) for the death penalty unless the crime was conducted in an unusually violent manner or heinous (reprehensible manner). For example, in the case of murder, generally torture (intentionally causing the victim to **feel/suffer** great pain) or premeditation (that the murder was planned before it occurred) must be shown. In the case of rape, the crime must also be committed in a very violent form before the prosecution will seek the death penalty, and the same is also true for kidnapping.

Once the prosecutor decides to ask the jury for the death penalty, the **jury** in an American criminal **trial** may decide either to apply the death penalty or a long prison term, assuming of course the person has been found guilty of the crime(s). If the death penalty is ordered, the defendant (accused) has unlimited appeals to higher courts to have his conviction and/or sentence overturned or reduced, which means in reality that it can be many years before the prisoner is put to death, if ever

Critics of the death penalty in the US argue that not only is it wrong for the courts and juries to play God with a person's life, but that the death penalty is "cruel and unusual punishment" barred in the constitution. In addition they claim it is not applied **fairly** across **the** racial spectrum. Civil rights leaders in the US argue that **African** Americans are disproportionately the recipients of this form of punishment, and blame racism as the cause.

While some studies tend to support some of these claims, proponents (**supporters**) of the death penalty identify the extensive institutional safeguards, previously mentioned, designed to prevent the abuse of the system, and **further** argue that the death penalty is only sought in cases involving the worst **criminal** acts. They argue that the death penalty is not cruel or unusual, as applied (by painless lethal injection in most states), and the US Supreme Court has determined to leave this issue to the respective states to decide on their own.

Nonetheless, the death penalty remains an issue of contention throughout the US with various groups actively involved on both sides. It can **often** turn into a political issue too in some crucial state elections, with **both** parties respective positions sometimes determining the outcome of a vote. In general the population as a **whole** seems to be in support of the law, and therefore it will probably continue to remain legal in the US for the foreseeable **future**.

Answer the following questions based upon the information contained in the paragraphs above.

1. The crime of kidnapping is defined as:
2. The jury is define as:
3. The **premeditation** is defined as:
4. In a murder trial, what must there be evidence of, before the death penalty can be ordered.?
5. Assuming the jury sentences the accused to death, when is the person executed (killed)?
6. Do you think that the death penalty should be used to punish the worst criminals?

Bankruptcy In the American Legal System

Bankruptcy in the American legal system is **designed** to give those individuals unfortunate enough to **require** its aid, **legal** protection from their creditors, so that they may start over again. While the rights of **the** creditors are also **deemed** important, bankruptcy laws in the US are also designed to encourage the economic rehabilitation of the insolvent party.

The American bankruptcy laws were written in direct opposition to those of the English system (the former colonial power in America), which allowed creditors to have insolvent (bankrupt) individuals imprisoned until their creditor's chums were **satisfied**. In London one whole prison (**Newgate** Prison) was associated with the imprisonment of debtors, and the Americans **legislators**, who wrote the various state bankruptcy laws, determined to turn away **from** this harsh British **system**²⁰.

Subsequently, there are **various** types of bankruptcy designed to suit the needs of the insolvent parties, and each provides varying degrees of court ordered supervision. There are bankruptcy laws **which** target both the individual and corporation, and various degrees of legal protection are available, however all are designed with the express intention to suit the needs of all parties involved, and not just those of the creditors.

With respect to personal bankruptcy, the court appoints a trustee to supervise the **insolvent** person's **assets**, and divide and apportion them among his/her creditors. Creditors are rated as either secured or unsecured creditors, and are paid according to their level of priority, as is the case in almost **all** jurisdictions throughout the world.

However, **unlike** most foreign jurisdictions, **persons** who apply for bankruptcy **protection** in the US are allowed to keep their home, and depending upon the jurisdiction, a **car** to enable them to begin **their** lives anew (over again) without the threat of debt hanging over them. In many cases these people are able to overcome their circumstances, and lead healthy and productive lives **thereafter**.

Finally, critics of the system argue that the current US laws provide **too** much protection to the insolvent party, and are subject to abuse as societal values towards bankruptcy have changed. In past generations such an admission of insolvency invited **societal** scorn (hatred) and derision (humiliation), and therefore, was considered to be **far** to **embarrassing** for **all** but the most desperate members of society to engage in. However with the advent of modern **lending** procedures (**easy** credit, i.e. credit cards) Coupled with the **frequency** and the relative commonality of declaring bankruptcy, these factors have combined to reduce or eliminate much of the previously **discussed** traditional **social** deterrent to declaring bankruptcy.

²⁰ Britain **ultimately abolished the system** of **debtor prisons** in the 19th century. However **vivid accounts of conditions in these prisons can still** be found in the **writings of Charles Dickens, and in the works of other British novelists.**

In support of this contention, experts in the field cite individuals on the verge of declaring bankruptcy going on shopping sprees, knowing **full** well they will be unable to pay off their newly acquired debts, and the courts will accordingly order relief. Furthermore, the statutory protections enable the insolvent party to retain his/her house (even really expensive ones) and **often** times a car, regardless of how recently it was purchased prior to his/her declaration of bankruptcy. The critics therefore argue with some validity that the laws must be tightened to encourage debtors to work out of debt, rather than **merely** turning to the courts for relief at the **first** signs of trouble.

In summation, while certain problems do exist within the system, both critics and proponents agree that the liberal bankruptcy laws are still an essential element of the American legal system. While many argue there is room for reform, almost **all** agree that debtors should continue to be offered some form of court ordered protection to encourage their **rehabilitation** and reentry into society as productive members.

Answer the following questions.

1. **Define** the role of bankruptcy in the American legal system.
2. What is the main purpose of Bankruptcy Law in the US?
3. What task does the court appointed trustee **perform** in the US system?
4. What properties, if any, are insolvent (bankrupt) people allowed to retain?
5. In your opinion, do the US bankruptcy laws provide the bankrupt party with too much protection from his/her creditors?

The Foreign Corrupt Practices Act

One of the key **legal** pillars for American entities doing business abroad is the Foreign Corrupt Practices **Act** of 1977, as amended, which prohibits American **businesses from making illegal payments (bribes)** to foreign government employees, either directly or indirectly (i.e. through local **agents**, representatives or **distributors**).

The **origins** of the Act can be traced to a series of scandals involving the payment of illicit funds to foreign government officials by US corporations, and the ensuing US congressional investigation into the business practices of US multinational corporations abroad. These **scandals** forced a certain degree of soul searching among US law makers, which culminated in the passing of the Act in 1977. Subsequent amendments have sought to **strengthen** the Act by closing or narrowing loopholes through which violators were able to escape prosecution.

American violators of this act are **susceptible** to prosecution in the US, **for** crimes committed both abroad, and in the US. Penalties include both **finer** and imprisonment depending upon the severity of the violation. Nonetheless, international competition and the **frequency** of bribery in the conduct of such activities continues to encourage many American businesses to push the Act to its limits.

The urge to engage in bribery is **further** strengthened by tax incentives given by some foreign countries to participate in such illicit activities outside of their home country. In some countries, money spent bribing officials **abroad** is the basis for an income tax deduction. The argument used to support such governmental incentives designed to promote seemingly illicit activities, is one of necessity. Or in other words, how can companies of our nation **compete** if other countries have a competitive advantage through bribery, which our companies can not **exploit** for fear of prosecution. This **argument** is echoed by **American** opponents of the **Act**, but has been **largely** countered by one of moral responsibility to the people of the world. **Furthermore**, on a more practical level supporters of the **law** claim it prevents embarrassing scandals **from** erupting, which would lead to the creation of Anti-American feeling among foreign **peoples**.

Regardless of the arguments for or against **it**, **the** Foreign Corrupt Practices Act is **fairly** clear as to what payments are **forbidden**, and what are **allowable** (permissible). Payments made to private foreign corporations, even when used to **influence** that corporation's policy are legal. so **long** as the employee or corporation is not an extension of the **government (state enterprise)**.

Furthermore "grease **payments**" **made** to speed the **delivery** of goods, or the **processing** of paperwork are deemed necessary for the conduct of international business in many countries where such payments are not only common place, but expected. A **further** justification is that such payments do not influence governmental policy, but merely permit the business in question to operate in the market place. Thus, as grease payments are considered to be a necessary lesser evil, they are permitted under the act.

However the Act categorically forbids American businesses **from** paying bribes in any way shape or form to foreign government officials, which are designed to **influence** policy decisions (i.e. obtain contracts for the supply of goods, rendering of services . . .), in any manner either directly or indirectly.

In other words, American companies are forbidden to make large **gifts** of cash, travel, and other expensive presents to foreign government officials, which can not be directly attributed to legitimate business or promotional expenses. For example, an American company may not pay foreign government **officials** money (no matter how it is disguised, i.e. an envelope **full** of cash, bonds, stock options, plane tickets, a company job or pension **after** he leaves government, etc.).

Examples of legitimate business expenses include the payment of legitimate travel expenses for foreign government officials *to* inspect *company* facilities or product quality, if the product is such that it is easier to inspect abroad, rather than in the government official's home country (i.e. a giant turbine engine, which can not be easily or cheaply transported for show or a demonstration prior to purchase). In such case scenarios the obvious measure to determine legality is the necessity of the action. The same argument could not be put forward to justify travel to America to examine a new textbook to be purchased for government schools, as the book could be generally transported much more easily and cheaply to the proposed buyer.

Small **gifts** of generally less than \$500 US (Thai **Baht** 12,500) are generally found to be acceptable when given in circumstances, where local custom requires that a **gift** be given, **Examples** of acceptable gifts include a Cross ball point pen to a government official upon the signing of a new business deal, or a fine bottle of Champagne to celebrate the closure of the previously mentioned business deal. When evaluating the legality of such **gifts** the government investigators will look to the appropriateness of the gift to the occasion. The delivery of an expensive **gift** (for example a gold chain) to a government employee in charge of allocating contracts to foreign companies on the eve of the decision making, would probably not be viewed in the same light as the two previous examples.

Companies may however provide government officials with small quantities of inexpensive samples of their product in most cases, but if it is something which is of **use** to that individual it should only be given in small quantities. For example if a knife manufacturer wished to obtain a contract to supply a foreign country's army with knives, and thus provided said governmental official with a few expensive knives as samples, or appropriate numbers to **facilitate** testing of said knives (i.e. 10 or 20 as may be required for testing), this is acceptable. However, providing the foreign official with say **100** knives, might be deemed illegal if such knives were subject to resale, or possessed some other means of conveying value to said foreign governmental official (i.e. were prized as **gifts** in that country). Therefore, even the giving of samples may be deemed an act of bribery under the **Act**, and such actions should be evaluated in light of the circumstances of the proposed deal and the nature of the goods.

As a lawyer it is your duty to make your clients aware of the potential dangers associated with engaging in such acts, before your client finds himself in an embarrassing situation, which could not only prove **financially** devastating, but also destroy his/her business reputation as **well**. The prosecution of violators of this Act would be subject to both extradition treaties (in the event of criminal prosecution, if the **offending official** is not resident, living, within the US), and other international agreements. Furthermore, in the two tiered American system of Justice the burden of proof for civil (i.e. monetary claims) is much lower in the US, and the individuals could find themselves being sued in US civil court actions as **well**, in accordance with the various American Long-Arm statutes,

Questions For Discussion.

Please Answer the Following Questions

1. What motivated the US Congress to investigate, and create the US Foreign Corrupt Practices Act?
2. What sorts of **gifts** are permissible under the Act?
3. What kinds of gifts are not permissible under the **Act**.
4. Under Thai law are government ministers allowed to accept bribes from foreign businesses?
5. Is corruption in government a problem in Thailand? If so how can it be better controlled?

Please Define the following:

1. Bribe:
2. Scandal:
3. Grease Payment :