Smarthinking Tutor Response Form

Your tutor has written overview comments about your essay in the form below. Your tutor has also embedded comments **[in bold and in brackets]** within your essay. Thank you for choosing Smarthinking to help you improve your writing!

Hello, Phyllis! I'm Jay E. I look forward to working with you on this **Grammar and Documentation Review** to improve your writing today. Let's get started!

***Writing Strength:**

You use the singular form of the verbs that refer to singular subjects; conversely, you use the plural form of the verbs that refer to plural subjects. Your sentences thus have subject-verb agreement. Good job!

Word Choice:

You can strengthen your sentences by avoiding expletive constructions. Such sentences or phrases begin with *There* or *It* (where *It* has no antecedent) and a *be* verb. Using it once in a while to emphasize a point is fine, but using it often can lead to wordy writing. Sometimes, it can also weaken the sentence by making the subject unclear. Look at these examples:

> There is a need for courage in the face of adversity.
>
> It is important to be courageous in the face of adversity.

Compare them with this:

> Courage is important in the face of adversity.

Avoiding *There is* or *It is* places the focus on the subject, thus making the subject of the sentence clearer. It also makes the sentence more concise. Now, look at this:

> There is a case from India that was filed by an American-based company against an Indian private company for breaking the codes of the patent.

How can you rewrite this without using the expletive construction? See if you have other sentences in your paper that use expletive constructions and if you can improve these as well.

Grammar & Mechanics:

Make sure you're using commas properly as well. For example, avoid placing commas when you have an essential appositive. An essential appositive is essential to the meaning of a sentence. Look at these examples:

> Editor-in-chief Randy Wallace introduced a new layout for the magazine.
>
> The new editor-in-chief, Randy Wallace, introduced a new layout for the magazine.

In the first sentence, *Randy Wallace* is essential to the sentence because it tells us which editor-in-chief is the focus of the sentence. Thus, commas are not necessary in the sentence. On the other hand, in the second sentence, even if we remove "Randy Wallace," we still know which editor-in-chief is being referred to (the new one). Now, look at this:

> The plaintiffs West Shell and Andrew Hauck, filed a case against defendants R.W. Sturge, Ltd., the Council of Lloyd's, the Society of Lloyd's, and the Corporation of Lloyd's.

Here, you have a comma after *West Shell and Andrew Hauck.* But are the names essential here or not? If you remove it, will the reader be able to identify which specific plaintiffs you're referring to? If they are essential to the sentence, then remove the comma. Moving forward, use commas when the appositive is nonessential to the sentence's idea.

Documentation:

Also, follow the proper alignment in your citations. If you're using the APA style, note that the bibliographical list (called the references list) at the end of the paper should have a hanging indent: each line except the first line should be indented half an inch from the left margin. If you're using MS Word, just press CTRL+T. Look at this example:

Your alignment does not follow this. In fact, you are doing this the other way around: it is the first line that is indented. How should you format and align the list if using the APA format?

Summary of Next Steps:

- Avoid expletive constructions.
- Use commas properly.
- Follow proper alignment in your citations.

Thank you for submitting your essay for a review, Phyllis. I enjoyed helping you with this step in the revision process. Have a good day! ~ Jay E.

You can find more information about writing, grammar, and usage in the Smarthinking Writer's Handbook.

Please look for comments **[in bold and in brackets]** in your essay below.
Thank you for submitting your work to Smarthinking! We hope to see you again soon.

CASE STUDIES

Case Study

PHYLLIS PALESTINO 2/21/21 LEGAL ASPECTS OF BUSINESS DECISIONS

Abstract

In this article, the case laws by August, Mayer, and Bixby (2012) from their book titled *International Business Law* will be discussed in detail. Each case studied extensively and briefed in terms of facts, procedures, issues, holdings, and reasoning. The case of seizing the Saiga in Guinea is examined, in which SVG backed the Saiga, by defending their rights to fly their flag with freedom in the sea. Another case involved the change in venue of the appellate court, whose decision was made in favor of defendants because jurisdiction authorities were already mentioned in their investment contracts. The case of Libyan banks off-shore accounts has been studied in which the president of the U.S. froze the deposits, but the amount was reimbursed on the grounds of genuine arguments and earlier decisions. One of the cases involves the inflated taxes on international liquor brands by Japan compared to their local brands, as claimed by the EU, Canada, and the U.S. The court finds this act as a violation of GATT's regulations and recommended Japan conform to its law of taxes. There is a case from India that was filed by an American-based company against an Indian private company for breaking the codes of the patent. It was concluded to be a baseless allegation that resulted in a revocation of the plaintiffs' patent.

Case Studies

Case 2-5: *Saint Vincent and the Grenadines v. Guinea* International Tribunal for the Law of the Sea Case No. 2, 1999, posted at www.itlos.org

Facts

The Saiga oil tanker was captured by the government of Guinea as it was trading oil to fishing containers illegally in Guinea's exclusive monetary zone. Saint Vincent and the Grenadines (SVG), where the Saiga was registered, requested the International Tribunal for the Law of the Sea (ITLOS) to discharge the ship and its crew. According to SVG, it was a defilement of the rights of SVG and vessels to fly their flag freely to enjoy the liberty of navigation.

Procedure

In December 1997, the court of appeal sentenced six months' imprisonment of the Saiga's master along with 15,354,040,000 Guinean francs fine. According to this order, the freight and 4,941 metric tons of oil were confiscated, and the container was seized as an assurance of fine payment.

Issues

The issue was to identify whether the lack of an open relationship between the ship and the ensign state allows the other state to decline the nationality recognition of the vessel or whether the open connection between SVG and the Saiga existed before the incident.

Holdings

The first issue is addressed as there is no legal basis on which Guinea rejects the nationality recognition of the Saiga with SVG. Moreover, the second question is addressed as Guinea did not provide enough evidence to deduce any genuine relation between the Saiga and SVG.

Reasoning

The Tribunal denied the objection to permissibility, based on no open connection between SVG and the Saiga, which was made by Guinea. Guinea argued that the crew of the Saiga were not nationals of SVG; rather, they all were nationals of Ukraine. This argument was not enough to justify the absence of open relation between the Saiga and SVG. The first paragraph of article 91 of UNCLOS provides that, "there must exist a genuine link between the State and the ship," which was not enough to address the situation. The addition in the article was made as, "ships have the nationality of the State whose flag they are entitled to fly," which cleared the situation (Rayfuse, 2005).

Case 3-4: United States Sixth Circuit Court of Appeals, *Federal Reporter, Third Series*, vol. 55, p. 1227 (1995).

Facts

The plaintiffs West Shell and Andrew Hauck, filed a case against defendants R.W. Sturge, Ltd., the Council of Lloyd's, the Society of Lloyd's, and the Corporation of Lloyd's. The plaintiffs demanded to cancel the defendants' investment agreements as they violated the Ohio safeties law by vending unregistered and obliged securities in the Court of Common Pleas, Ohio. The defendants appealed for a motion due to the wrong venue selection of the case because the

plaintiffs signed an agreement to bear any legal proceeding under the English law and permitted the jurisdiction to the English Court of Laws.

Procedure

Roby court noticed that the forum of appeal and selection of law clauses could not be changed based on the biasedness of the international courts, or these courts will be less satisfactory than the courts of the United States (Sass, 1968). The court rejected the plaintiffs' argument because certain remedies for plaintiffs were observed under English law.

Issues

Whether the appeal of defendants should be accepted to move the case to the English Law Courts due to inappropriate venue or not.

Holdings

In December 1993, the magistrate judge of the United States District Court for Southern District of Ohio decided the motion to sack for the wrong venue. This recommendation was adopted by the District Court on 22nd December 1993.

Reasoning

The plaintiffs had signed the agreement with the defendants in which it was written that the English courts would possess the jurisdiction to proceed with any dispute or disagreement, and decisions will be made under the clauses of the law of England. Furthermore, there were no ambiguities seen in the courts' decision-making in England, and certain remedies were found for the plaintiffs if they succeeded in proving their argument.

Case 6-7: England, High Court of Justice, Queen's Bench Division, Commercial Court, 1987. *Lloyd's Reports*, vol. 1988, pt. 1, p. 259 (1988); *International Legal Materials*, vol. 26, p. 1600 (1987).

Facts

The Libyan Bank had a total of $131.5 million deposits in the London outlet of Bankers Trust Company, which a New York corporation. A deposit of over $ 161.4 million was present in the demand account of the same bank in the New York branch (Fernandez et al., 2016). On 8th January 1986, all the Libyan assets in the United States were seized by the President in accordance with the New York law, and not per the law of England, including the seizure of deposits applied to the London branch of Bank Trust. The Libyan Bank litigated the Bankers Trust with the recovery of their deposits along with many other claims. In contrast, the Bankers Trust claimed that the law of deposit agreement was governed by the New York Law.

Procedure

No prior decisions were made in the lower courts for this case, but the opinion of the judge was roaming around the decision in the court of Lord Justice Atkin in the case of N. Joachimson v. Swiss Bank Corporation, that if a bank promises to repay, that means it should reimburse at the branch where the account is reserved.

Issues

The issue faced by the court to address was to determine whether there were two contracts, with each representing the local law where the branch was present, or one contract that was governed by New York law. Another issue was to decide whether the Libyan Bank will get reimbursement or not.

Holdings

The judge found ambiguity in the number of agreements as he said that two agreements seem to be artificial and unattractive, but a decision cannot be made based on the number of contracts. Furthermore, the Bankers Trust was found liable to reimburse the amount present in the London outlet and the New York outlet.

Reasoning

According to the judge, the universal rule is that the agreement between customers and their bank is administrated by the regulation of the city, where the account is reserved (Cerutti et al., 2005). The judgment of Lord Justice Atkin was found, following the general rule, where he stated that if a bank promises to refund, it means that it should refund at the branch where the account was reserved. Another reason, as claimed by Mr. Sumption, the defender of Bankers Trust, was that the contract was governed by English law for the account in the London branch till 1980. However, it was changed afterward, and the authority to look after Libyan accounts was transferred to New York law. Furthermore, the claim of Mr. Cresswell, who is the representative of the Libyan Bank, was supported by the saying of Lord Denning in R. v. Grossman that the outlet of Barclays Bank in Douglas should be treated as the different entity which is separated from the London's

head office. Therefore, it granted the Libyan Bank $131.5 million and $161.4 million from London and New York branches.

Case 7-2: World Trade Organization, Dispute Settlement Panel, 1998 Panel Reports WT/DS8/R, WT/DS10/R, and WT/DS11/R

Facts

The case was filed against Japan by Canada, the European Union, and the United States as Japan was imposing high tax ratios on imported liquors and beverages, including Vodka. They claimed that tax ratios on their local brand Sochu were lower than those imposed on imported brands. According to the plaintiffs, The Japanese Liquor Tax Law was not consistent with the General Agreement on Tariffs and Trade (GATT).

Procedure

In 1987, it was concluded in the Panel Report subjected to the submitted arguments by Finland, European Communities, and the United States that Sochu (a Japanese liquor) and Vodka (imported liquor) are "like products" according to the Article III:2 due to same appearance and raw material usage (Regan, 2002).

Issues

Issues that were to be addressed by the Panel were to define if Sochu and Vodka were "like products" or not and if Japan had violated the GATT law by imposing higher taxes on international liquor brands as compared to local liquor brands.

Holdings

The first issue was addressed under the Panel Report of 1987 that Sochu and Vodka are like products as their color, appearance, ingredients, and end uses are the same. Furthermore, it was concluded that Japan had violated Article III: 2 of GATT by imposing higher taxes on imported liquors as compared to their local liquor.

Reasoning

The Panel observed that the plaintiffs claim that the Japanese Liquor Tax Law violates Article III: 1 and Article III: 2 of the General Agreement on Tariffs and Trade. The excess amount of taxes that were imposed on Vodka were to maintain the tax/price ratio to be roughly constant, as argued by Japan (Body, 1996). The Panel refused this argument of Japan in the light of Article III: 2, where it is stated that internal taxes on foreign products should not exceed as imposed on local products. The Panel commented that making tax/price ratios roughly constant is irrelevant to imposing high taxes; rather, it showed that a high amount of taxes on international liquor brands prohibit them from entering the business market of Japan. Based on the above-mentioned reasoning, it was concluded that Japan violated the GATT's regulations by imposing higher taxes on Vodka than Sochu and recommended that Japan should conform Liquor Tax Law to its implications under the act of General Agreement on Tariffs and Trade 1994.

Case 9-3: India, Supreme Court, 1986 *Supreme Court Journal*, vol. 1, p. 234 (1986)

Facts

The case was filed against a private Indian company by a multinational company, the Monsanto Company of St. Louis, Missouri, the United States, alleged for infringement of their two

patents numbered as 104120 and 125381. The plaintiffs claimed that an Indian private limited company started marketing the products using the formulas and constituent active chemical Butachlor used for herbicides to save rice fields from weed. Their claim included that the production of Butachlor was patented, and they had copyrights on its production. According to the plaintiffs, the constituents mentioned on the tin of the product manufactured by the Indian private company were based on nothing but manufactured through the process and ingredients mentioned in plaintiffs' patents.

Procedure

This case study did not refer to any previous court decisions, and it was based on the findings and analysis in the light of given evidence and reports.

Issues

The issue that the Supreme Court of India had to address was the identification of the production of Butachlor by an Indian Private Company Limited, whether it was legal or illegal, as per the claim of plaintiffs.

Holdings

Analyzing the reports, events, and evidence, the Supreme Court of India concluded that the claims of plaintiffs were baseless as the production of Butachlor was not patented by anyone.

Hence, it was concluded that the defendants did not violate the secrecy and privacy of the patent; rather, the patent was revoked.

Reasoning

As explained by the Supreme Court of India, by looking closely at the production of Butachlor, it was proved that it was not patented by anyone. It was considered a general process is known to most researchers to prevent the growth of weed in rice fields without affecting rice production (Magbanua, 1960). Moreover, it was admitted by the plaintiffs that their patent did not include the production of Butachlor, as the Butachlor was commonly used as an active material for herbicide applications. Furthermore, the court was able to find that production of Butachlor was known and introduced before 1966/67, which was even before the date of their patent submissions. The production of Butachlor in the patents of plaintiffs did not cover the definition of "inventions" as stated in the Indian Patents Act. Therefore, the court decided to revoke the patent as neither the process nor the product was an invention in their patent. Moreover, their patent did not include any inventive steps (Ames, 1961). Hence, the court was unable to find infringement of the patent by Indian Private Company Limited.

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