**INTERNATIONAL CIVIL LITIGATION**

**Professor Mike Ramsey**

**Spring 2024**

**ICL Hypothetical – Version #6**

Assume all facts given in the prior versions of the hypothetical, plus the following:

On motions by the plaintiff and defense, the district court (a) denies the defense motion to dismiss for forum non conveniens, (b) denies the defense motion for a stay under lis alibi pendens, (c) denies the plaintiff’s motion for an antisuit injunction, and (d) rules that the forum selection clause in the McKenna-TIMCO Manufacturing contract does not apply to McKenna’s claim against TIMCO Investments. Thus it appears that the case will proceed to the merits, leading to the following considerations:

1. As Zach McKenna’s attorney, you discover a (hypothetical) provision of the U.S. federal securities law which provides a private right of action against “any person who (a) acts in interstate commerce; and (b) willfully defrauds any holder of a security issued by such person of any right or interest to which such holder is entitled as a holder of such security.” (As is typical of such statutes, “person” is defined to include a business entity.)

You are considering amending your complaint against the TIMCO entities to add a claim under this statute. What do you anticipate the TIMCO entities might argue in response and how will you address their argument?

1. McKenna’s original complaint alleged claims for tort and breach of contract. If U.S. federal law does not apply, what law does apply to these claims? What actions would you expect counsel for the defense to take?
2. TIMCO’s attorneys may argue that, to the extent that McKenna was deprived of his stock, TIMCO’s actions resulted from an order by the Chinese government compelling cancellation of all stock held by foreigners in certain technology-based companies. Do you anticipate that TIMCO will be able to invoke the act of state doctrine in connection with this argument?