

例題 9

助教授 濱本 正太郎

shotaro@rokkodai.kobe-u.ac.jp

5月28日までに e-mail で届いた答案は添削してお返しします。

以下は、アメリカ合衆国裁判所に1979年に提起されたある訴訟において、アメリカ合衆国の反トラスト法がイギリス領内におけるイギリス企業の行為に適用されそうになったときに、イギリス政府がなした抗議である。

[T]he British Government has consistently taken the position that British enterprises engaged in transnational business operation should comply with the laws and governmental policies of the countries in which they transact business... It has long been the position of the British Government that, in the context of the application of the U.S. antitrust laws to conduct outside the United States by non-U.S. citizens, the 'effects' test is inconsistent with international law...

The application of the effects doctrine to found jurisdiction in penal matters is regarded by Her Majesty's Government as being particularly objectionable in the field of anti-trust legislation. (1) The formation of a cartel and other activities against which anti-trust legislation is directed are not universally recognized as unlawful... (2) The assertion of extraterritorial jurisdiction in anti-trust matters represents an extension of the economic policy of one state which is likely to conflict with that of other states. (3) The effects doctrine is particularly uncertain in operation when applied in the field of anti-trust legislation. As the United States courts have recognized, almost any limitation of competition effected between economic units acting outside the United States may have repercussions, direct or indirect, on the economic interests of the United States...

問 あなたは本件原告たるアメリカ企業の顧問弁護士である。イギリスの主張に反論し、アメリカ反トラスト法の域外適用は国際法上問題ないと主張せよ。