
PREFACE TO THE FOURTH EDITION

When the first edition of this book was completed in 1988, the field of international civil litigation did not exist in the United States. No case book addressed the subject and virtually no course at any major law school dealt with the litigation of international disputes. Today, almost twenty years later, the fourth edition of this book has been joined by nearly a dozen ably-written competing casebooks on the subject of international civil litigation, a course which is taught at law schools around the United States. Practitioners, as well as academics, now regard international civil litigation as a vital, and profoundly challenging, area of the law.

Other changes have been almost as striking. When this book was conceived, the Alien Tort Statute had been the subject of hardly any litigation, the Supreme Court had not yet decided landmark personal jurisdiction cases like *Asahi* and *Helicopteros*, the Foreign Sovereign Immunities Act had only been recently enacted, *Piper's forum non conveniens* analysis was still fresh, *Timberlane* had only recently addressed the extraterritorial application of U.S. statutes, and the United States had only recently ratified the Hague Service Convention, the Hague Evidence Convention, and the New York Convention. Today, while the central themes addressed in the first edition remain unchanged, the legal landscape is vastly different. The Supreme Court has rendered major decisions in many of these areas, new treaties, statutes, new versions of the Federal Rules of Civil Procedure have come into force, and a growing body of European Union law has provided new opportunities for comparison—necessitating for the first time a separate Documentary Supplement to this edition, containing all the appendices referenced within.

The current edition of this book remains true to its original aspiration: to assist students, practitioners, and scholars alike in understanding international civil litigation in U.S. courts. It continues to do so through a deliberate effort to provide extensive discussion and references to authorities—on the premise that detailed answers provoke better, more challenging questions.

Nearly ten years have passed since the release of the third edition, and our efforts at revision would not have been possible without the assistance of countless colleagues, students, competitors, and friends. We cannot hope to acknowledge them all here and will not attempt to do so. That said, Steven Burbank at the University of Pennsylvania Law School, who has used the book for many years, shared very generously of his time and insight; we benefited hugely from his thoughts. Among our colleagues, Jason File, Kenneth Beale, Duncan Speller, Briana DiBari, Barney Ford, Gordon Jimison, and, especially, Maureen Smith provided invaluable research assistance, while Steve Young, a research librarian at the Columbus School

of Law and former librarian at the U.S. Supreme Court, provided constant support tracking down hard-to-find sources. Elke Jenner and Julie Kendrick, our respective assistants, helped with preparation of the manuscript in innumerable ways. Finally, we would like to thank the entire team at Aspen and Kluwer, especially Carol McGeehan, Taylor Kearns, Gwen de Vries, and Bas Kniphorst for their support.

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PREFACE TO THE SIXTH EDITION

The law governing international civil litigation has changed dramatically since the last edition was published. The Supreme Court continues to shape the jurisprudence in fields such as personal jurisdiction, sovereign immunity, and extraterritoriality. This current edition reflects those changes and raises important questions about the broader implications of those decisions.

Of course, the Supreme Court still only decides a tiny fraction of cases where review is sought, and the field of international dispute resolution is no exception. Consequently, much of the law in this area (like others) is shaped by the lower federal courts and state courts. Additionally, other branches of government play a critical role. For example, the Executive Branch shapes the law through its litigating positions (to which courts may defer) or through its assertion that a particular legislative enactment (or lawsuit) intrudes upon its foreign affairs power. State legislatures too can influence the law in this area through enactments that stretch the boundaries of their authority. The current edition aims to capture those trends, identify emerging splits in authority, and critique the doctrine.

Developments in this field are of course not limited to the United States, and comparative knowledge is essential to this field. While this book focuses primarily on United States law, the current edition deliberately incorporates more excerpts, more extensive references, and more questions concerning foreign law, especially European law. This includes recent developments in areas such as judicial jurisdiction, parallel proceedings, and judgment enforcement. In part, this reflects an intellectual desire to stimulate comparative thinking. It also reflects an important reality—known to many practitioners but perhaps less well known to the students—that successful practice in this area, even for the United States lawyer, increasingly requires a keen understanding of other legal systems. Whether the matter concerns judicial jurisdiction, the enforceability of forum selection, arbitration or choice-of-law clauses, the extraterritorial effect of legislation or the enforcement of judgments and arbitration awards, smart transactional lawyers must comprehend those differences even before a transaction is consummated. Moreover, when disputes do arise, savvy litigators must appreciate differences between legal systems in order to develop a sound strategy regarding the forum in which a dispute will be resolved. Developments in the different rules governing *forum non conveniens*, *lis alibi pendens*, and antisuit injunctions, all examined in this edition, illustrate the need for a deep comparative understanding. The extensively referenced documents—treaties, statutes, the Federal Rules of Civil Procedure, a growing (and changing) body of European Union Law—are all contained in a separate Documentary Supplement available for download at <http://www.wklegaledu.com/Born-InternationalCivilLitigation6> (password: Born6e).

Once again, this current work would not have been possible without the support of countless individuals. While the complete list would be too numerous

to reproduce here, we must once again acknowledge the exceptional support of Steve Burbank, at the University of Pennsylvania Law School, who has used this book for many years; this current edition has benefited greatly from his penetrating insights. Several colleagues, especially Marc Lee and Caroline Savini, along with Shouvik Bhattacharya, Xavier Brown, Wen-Chuan Dai, Shaudie Fassih, Kevin Huber, Amanda Newton, Nils Okeson, and Victoria Smith have provided invaluable assistance. Cindy Wentworth also helped with the preparation of the manuscript in numerous ways. Finally, we would like to thank the entire team at Aspen Publishers and Wolters Kluwer, and especially Max Donnewald, Troy Froebe, and Kathy Langone of The Froebe Group, for their support.

Corrections, comments and questions are encouraged, and can be sent by email to gary.born@kluwerlaw.com.

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PREFACE TO THE SEVENTH EDITION

As we put the finishing touches on this edition, we are reminded how important international civil litigation has become to both lawyers and law students. The U.S. Supreme Court's docket bursts with cases on topics ranging from foreign sovereign immunity to international discovery. Reported jurisprudence from the lower federal courts and state courts are likewise replete with pathbreaking decisions on topics like personal jurisdiction over foreign defendants and thorny issues of foreign judgment enforcement.

Nor are these trends confined to the United States. European lawmakers and jurists increasingly must examine the cross-boundary implications of their assertions of judicial or prescriptive jurisdiction. So too, European courts encounter parties from the United States engaged in transboundary forum shopping or wrestle with a range of American procedural devices like overseas discovery requests that test the boundaries of their own laws on matters like privacy.

Much like lawmakers and courts, the academic community now pays greater attention to the discipline. The new Restatement (Fourth) of U.S. Foreign Relations Law offers the best evidence. It pays much-needed attention to many of the topics addressed in this book and draws heavily on its analytic framework. In the wake of the Restatement, an already strong surge in academic commentary on these issues can be expected to continue.

While accounting for these important trends, this book remains true to its original purpose: to assist students, practitioners, and scholars alike in understanding international civil litigation in United States Courts. Despite the pressures of a growing corpus of law, it persists in a deliberate effort to offer a hybrid casebook and commentary, resting on the premise that extensive discussion and reference to authorities provoke better, more challenging questions.

As with our past editions it would not have been possible without the assistance of countless colleagues, students, competitors, and friends. Once again, we cannot hope to acknowledge them all here and will not attempt to do so. As in the past, Steven Burbank at the University of Pennsylvania Law School and Linda Silberman of New York University, both of whom have used the book for many years shared very generously of their time and insights. Among our colleagues, Rachel Byers, Jacqueline D'Aniello, Cara Musciano, Jacob Swanstrom, and Alexis Watson provided valuable research assistance. We'd especially like to single out Marc Lee

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