

Table of Contents

| | |
|------------------------------------|------|
| Preface | ix |
| Foreword | xi |
| Introduction to the Second Edition | xiii |

Part I—Jurisdiction

| | |
|---|-------|
| Chapter 1. The <i>Verlinden Case</i> — Access to Federal Courts | I-1 |
| Chapter 2. State Responsibility in Transnational Actions | I-11 |
| Chapter 3. Expropriation of Investments Abroad | I-21 |
| Chapter 4. Proposed Amendments to Foreign Sovereign Immunities Act of 1976 | I-31 |
| Chapter 5. Enforcing Sovereign Debt: Is Comity New Back Door? | I-43 |
| Chapter 6. Enforcing International Obligations: <i>Frolova v. U.S.S.R.</i> | I-51 |
| Chapter 7. Legal Remedies Available to Hijack Victims of TWA Flight 847 | I-59 |
| Chapter 8. Mailed Service Outside the U.S. in Federal Cases | I-69 |
| Chapter 9. Jurisdiction under the Foreign Sovereign Immunities Act | I-83 |
| Chapter 10. International Insolvency and Section 304 of the Bankruptcy Code | I-89 |
| Chapter 11. Private Claims under the Foreign Corrupt Practices Act | I-97 |
| Chapter 12. Extraterritorial Jurisdiction of Federal Statutes | I-105 |
| Chapter 13. “Tag” Jurisdiction | I-115 |
| Chapter 14. Bank Account as Basis for Personal Jurisdiction over Foreign Defendant | I-123 |
| Chapter 15. Antisuit Injunctions and the Race to Judgment | I-133 |
| Chapter 16. Comity as Basis for Dismissal | I-141 |
| Chapter 17. Extraterritorial Securities Jurisdiction: Searching for the Right Ingredients | I-149 |
| Chapter 18. Alter Ego Jurisdiction over Foreign Corporations | I-157 |
| Chapter 19. Defenses to Payment of Foreign Debt | I-165 |
| Chapter 20. The Alien Tort Claims Act | I-173 |
| Chapter 21. Dismissal under the Doctrine of <i>Forum Non Conveniens</i> | I-183 |

iv The Practice of International Litigation

| | |
|--|-------|
| Chapter 22. Federal Question Jurisdiction in International Disputes | I-193 |
| Chapter 23. Does the ADEA Cover Foreign Employers Operating in the United States? | I-199 |
| Chapter 24. The Extraterritorial Application of RICO in the Second Circuit | I-205 |
| Chapter 25. Latin American and <i>Forum non Conveniens</i> Dismissals | I-213 |
| Chapter 26. Disputes with Foreign States | I-221 |
| Chapter 27. <i>Forum Non Conveniens</i> —Conditional Dismissals | I-227 |
| Chapter 28. Jurisdiction to Enforce Arbitral Awards | I-233 |
| Chapter 29. The Alien Tort Claims Act: How Far Will It Go? | I-239 |
| Chapter 30. Jurisdiction through the Internet | I-247 |
| Chapter 31. U S Supreme Court Narrows the Coverage of the Foreign Sovereign Immunities Act | I-253 |
| Chapter 32. Supreme Court’s Alien Tort Statute Compromise | I-259 |
| Chapter 33. The Race to the Courthouse: Article 27 of the Brussels Regulation | I-265 |
| Chapter 34. Jurisdiction to Challenge International Arbitral Awards | I-271 |
| Chapter 35. The Clash between the New York Convention and the U.S. Constitution | I-277 |
| Chapter 36. Home Sweet Home and General Jurisdiction | I-283 |

Part II —Attachments

| | |
|---|--------|
| Chapter 1. Prejudgment Attachments: Sovereign Immunity | II-1 |
| Chapter 2. Attachments Abroad I | II-13 |
| Chapter 3. Attachments Abroad II | II-21 |
| Chapter 4. Attachments in Aid of Arbitration | II-27 |
| Chapter 5. Prejudgment Attachments: Treaty Waivers of Immunity | II-39 |
| Chapter 6. Central Bank Property: Protection from Attachment | II-47 |
| Chapter 7. Attaching Proceeds of Letters of Credit | II-55 |
| Chapter 8. Enforcement of Foreign Provisional Remedies | II-67 |
| Chapter 9. Provisional Remedies in Aid of International Arbitration | II-77 |
| Chapter 10. Prejudgment Attachments in Aid of Foreign Proceedings | II-87 |
| Chapter 11. Lessons from English “Mareva” Injunctions | II-97 |
| Chapter 12. Is There Finally a Backlash against Rule B Attachments? | II-105 |

Part III—Service and Discovery

| | |
|--|---------|
| Chapter 1. Obtaining Evidence Abroad | III-1 |
| Chapter 2. Discovery Abroad: The Hague Convention | III-15 |
| Chapter 3. The Hague Convention on Taking Evidence Abroad | III-27 |
| Chapter 4. Depositions and Other Discovery in Arbitration | III-39 |
| Chapter 5. Production of Evidence for Use in Foreign Tribunals | III-49 |
| Chapter 6. Service of Process in Switzerland | III-59 |
| Chapter 7. Extraterritorial Reach of Rule 45 Subpoena | III-67 |
| Chapter 8. Obtaining Evidence in the United States for Foreign Tribunals | III-75 |
| Chapter 9. Subpoenas Under the Federal Arbitration Act | III-83 |
| Chapter 10. Obtaining Evidence from U.S. Nationals Abroad | III-91 |
| Chapter 11. Changes to the Federal Rules of Civil Procedure Affecting International Litigation | III-99 |
| Chapter 12. U.S. Discovery for Foreign Litigants | III-111 |
| Chapter 13. Automatic Disclosure of Documents: The English Experience | III-117 |
| Chapter 14. Injunctions against Transfer of Assets | III-125 |
| Chapter 15. Service through the Internet | III-131 |
| Chapter 16. A Tale of Two Cities: Compulsory Testimony Abroad | III-139 |
| Chapter 17. Service of Process in Latin America: Potential Pitfalls | III-145 |
| Chapter 18. Discovery in Aid of International Arbitration | III-151 |
| Chapter 19. International Arbitration: Witness Statements – Good or Bad? | III-157 |
| Chapter 20. Use of Section 1782 in Aid of International Arbitration | III-163 |
| Chapter 21. Manifest Disregard: Challenging Arbitral Awards and Discovery in Arbitration | III-167 |
| Chapter 22. N.Y. State versus Federal Arbitration Procedure | III-173 |

Part IV—Judgments

| | |
|--|-------|
| Chapter 1. Enforcement of Foreign Judgments: Iran | IV-1 |
| Chapter 2. Enforcement of Money Judgments Abroad | IV-9 |
| Chapter 3. Jurisdiction to Enforce Foreign-Country Money Judgments | IV-19 |
| Chapter 4. Enforcing Judgments and Awards against Foreign States | IV-27 |
| Chapter 5. Foreign Currency Judgments | IV-35 |
| Chapter 6. “Loser Pays”: Attorneys’ Fees in England and Germany | IV-43 |
| Chapter 7. Recognition of Foreign Judicial Systems in U.S. Courts | IV-51 |

vi The Practice of International Litigation

| | |
|--|--------|
| Chapter 8. Due Process Consideration in the Recognition of Foreign Judgments | IV-61 |
| Chapter 9. The Proposed Hague Convention on Judgments | IV-71 |
| Chapter 10. Jurisdiction to Enforce Foreign Judgments | IV-79 |
| Chapter 11. Passing Judgment on Other Countries' Courts | IV-87 |
| Chapter 12. International Judgment Enforcement—Thinking Outside the Box | IV-95 |
| Chapter 13. Orders in Support of Foreign Proceedings | IV-101 |
| Chapter 14. Enforcing Multiple-Damage Judgments in Europe | IV-109 |
| Chapter 15. A Challenge by any Other Name: The <i>Gulf Petro</i> Case | IV-115 |
| Chapter 16. A Blow against Libel Tourism | IV-121 |
| Chapter 17. Judgment Enforcement Against Foreign Debtors | IV-127 |

Part V—International Arbitration

| | |
|--|-------|
| Chapter 1. Judicial Intervention in Arbitrability of International Claims | V-1 |
| Chapter 2. Will RICO Move Abroad through International Arbitration? | V-9 |
| Chapter 3. Consequences of International Arbitration of Antitrust and RICO Cases | V-19 |
| Chapter 4. International Arbitration Provisional Remedies | V-31 |
| Chapter 5. Arbitrating with Foreign States | V-41 |
| Chapter 6. Remedies in Aid of International Arbitration | V-51 |
| Chapter 7. Training for International Arbitrators | V-59 |
| Chapter 8. Enforcement of Arbitration Provisions in Bankruptcy | V-67 |
| Chapter 9. Arbitration in Transnational Pricing Disputes | V-77 |
| Chapter 10. Punitive Damages Awards in International Arbitration | V-83 |
| Chapter 11. Consolidation of Arbitrations | V-93 |
| Chapter 12. Arbitration and Disputes Involving Multiple Parties | V-103 |
| Chapter 13. “Fast-Track” Arbitration | V-115 |
| Chapter 14. The Preclusive Effect of Arbitral Awards: Who Decides? | V-123 |
| Chapter 15. ‘Non-domestic’ Arbitral Awards and the New York Convention | V-131 |
| Chapter 16. Alternatives for the Resolution of Letter of Credit Disputes | V-143 |
| Chapter 17. International Litigation and Arbitration Arbitration of Antitrust Disputes | V-153 |
| Chapter 18. Cross-Examination in International Arbitration | V-161 |
| Chapter 19. International Arbitration—Unfinished Business | V-167 |
| Chapter 20. Ethics in International Arbitration | V-177 |

Table of Contents vii

| | |
|--|-------|
| Chapter 21. <i>Forum Non Conveniens</i> and Enforcement of Foreign Arbitral Awards | V-185 |
| Chapter 22. Cultural Predictability in International Arbitration | V-193 |
| Chapter 23. The Standard for Challenging Arbitration Awards | V-199 |
| Chapter 24. Dispute Resolution Opportunities for Foreign Investors | V-205 |
| Chapter 25. Arbitration Against Foreign States: Enforcement of Awards | V-211 |
| Chapter 26. <i>Forum Non Conveniens</i> : Determining the Adequacy of an Alternative Forum | V-217 |
| Chapter 27. International Arbitration—Unfettered Freedom to Participate? | V-223 |
| Chapter 28. Enforcement of Arbitration Clauses: A Tale of Two Cases | V-229 |
| Chapter 29. The “Manifest Disregard” Standard and Vacating Arbitration Awards | V-235 |
| Chapter 30. International Arbitration—Past, Present and Future | V-241 |
| Chapter 31. Twenty-Five Years of International Litigation | V-247 |
| Chapter 32. Cross-Examination in International Arbitration | V-253 |
| Chapter 33. Disclosures of Conflicts by Arbitrators | V-259 |
| Chapter 34. Corruption in International Dispute Resolution | V-265 |
| Chapter 35. Predictability in International Arbitration | V-271 |
| Chapter 36. Chairperson’s Role in International Arbitration Is Often Misunderstood | V-277 |
| Chapter 37. In-House Counsel Privilege around the World | V-283 |
| Chapter 38. Damages in International Arbitration | V-289 |
| Chapter 39. Prefatory N.Y. Remedies to Aid International Arbitration | V-295 |
| Chapter 40. The Party-Appointed Arbitrator Dialectic | V-301 |
| Chapter 41. Arbitrator Efficiency in International Arbitration | V-307 |
| Chapter 42. Assessing Costs in International Arbitration | V-313 |
| Chapter 43. The Difference between Commercial and Investment Arbitration | V-319 |
| Chapter 44. Bribery in Investor-State Arbitration: All or Nothing for Investors? | V-321 |
| Chapter 45. “Manifest Disregard” and International Arbitration Awards | V-327 |
| Chapter 46. Soft Law Guides Parties on Procedures in International Arbitration | V-333 |
| Chapter 47. The Fourth Arbitrator: Contrasting Guidelines on Use of Law Secretaries | V-339 |
| Chapter 48. Who Decides Arbitrability? | V-345 |

viii The Practice of International Litigation

| | |
|---|-------|
| Chapter 49. Awards of Interest in International Arbitration | V-351 |
| Chapter 50. Awarding Costs in International Arbitration | V-357 |
| Chapter 51. When Arbitrators Stray: Ex Parte Communications | V-363 |
| Chapter 52. The Yukos Case: More on the Fourth Arbitrator | V-369 |

Part VI—International Contracts

| | |
|---|-------|
| Chapter 1. U.N. Sales Convention: Traps for Unwary? | VI-1 |
| Chapter 2. Excessive Hardship in Long-Term Contracts | VI-9 |
| Chapter 3. Termination of Distributors in Middle East Countries | VI-17 |
| Chapter 4. Enforceability of Forum-Selection Clauses under New York General Obligations Law | VI-27 |
| Chapter 5. Changed Circumstances under the U.N. Sales Convention | VI-39 |
| Chapter 6. General Principles of International Commercial Law | VI-49 |
| Chapter 7. Letter of Credit Disputes | VI-57 |
| Chapter 8. The New OECD Convention on Combating Bribery and its Impact on International Litigation | VI-67 |

Part VII—Foreign Tribunals

| | |
|--|--------|
| Chapter 1. General Principles of Law in the Iran-U.S. Claims Tribunal | VII-1 |
| Chapter 2. International Disputes: Courts or Arbitration? | VII-11 |
| Chapter 3. Enforceability of Iran-U.S. Claims Tribunal Awards | VII-17 |
| Chapter 4. The Pursuit of Claims against Iraq | VII-29 |
| Chapter 5. Iran-U.S. Claims Tribunal: A Review | VII-37 |
| Chapter 6. Enforceability of The Hague Tribunal Awards | VII-45 |
| Chapter 7. U.S. Evidence for Foreign Tribunals | VII-53 |
| Chapter 8. Gulf War Claims against Iraq | VII-63 |
| Chapter 9. Simultaneous Litigation in the United States and Abroad | VII-73 |
| Chapter 10. Changes in Civil Litigation in England | VII-81 |
| Chapter 11. International Arbitration in Brazil | VII-87 |
| Chapter 12. Criminal Proceedings in Civil Disputes Abroad | VII-93 |

| | |
|----------------------|---------|
| Table of Cases | TC-1 |
| Table of Authorities | TA-1 |
| Index | Index-1 |