

International Litigation

A Guide
to Jurisdiction,
Practice,
and Strategy

David Epstein

Charles S. Baldwin, IV

FOURTH REVISED EDITION

MARTINUS NIJHOFF PUBLISHERS

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A Guide to Jurisdiction, Practice, and Strategy

Fourth Revised Edition

By

David Epstein
Charles S. Baldwin, IV



MARTINUS
NIJHOFF
PUBLISHERS

LEIDEN • BOSTON
2010

This title is the continuation of the former Looseleaf work 'International Litigation – Third Edition' (ISBN 1-57105-083-3) by David Epstein, Jeffrey L. Snyder and Charles S. Baldwin.

This book is printed on acid-free paper.

Library of Congress Cataloging-in-Publication Data

Epstein, David, 1936-

International litigation : a guide to jurisdiction, practice, and strategy / by David Epstein, Charles S. Baldwin, IV. -- 4th rev. ed.

p. cm.

Includes bibliographical references and index.

ISBN 978-90-04-17885-4 (hardback : alk. paper) 1. Jurisdiction--United States. 2. Foreign law, Pleading and proof of--United States. 3. Judgments, Foreign--United States. 4. Civil procedure (International law) 5. Conflict of laws. I. Baldwin, Charles S., 1957- II. Title.

KF8858.673 2010

347.73'12--dc22

2010033538

ISSN 2210-6030

ISBN 978 90 04 17885 4

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International Litigation

*Dedicated with gratefulness, love, and appreciation
to Arlene, Jennifer, Sarah, Susannah,
Devon, Davis, and Selden.*

*We thank our families for once again enduring all of the
late evenings and weekends devoted to this project. Their
patience and support keeps us going.*

PREFACE

As every lawyer knows, each case turns on the specific facts involved. The material covered in these chapters should not be interpreted as fact-specific; the book is intended to provide only general background material and guidance to the reader and is not intended to, nor does it purport to, provide legal advice. Such advice can only be provided by counsel that is familiar with the specific situations of parties to cases that may be pertinent to the material covered in this book.

This fourth edition is the product of significant revision and updating of our prior eponymous treatise co-authored with Jeffrey L. Snyder. The subjects covered in this Guide span a wide range of areas and legal issues. We have made every effort to maintain and, in fact, expand our “practical” approach to the issues involved. We have added practice tips, strategies, and advice in more places, and many format changes have been made, all designed to illuminate and make the material more accessible and the Guide more helpful.

We welcome the many comments we have received from readers. The best way for us to make this Guide work for you is to learn how you use it and what would make it better.

The views presented in this book are the personal views of the authors, not those of the United States Department of Justice, its clients, or the law firm of Rountree, Losee & Baldwin, L.L.P., or its clients.

David Epstein
Washington, D.C.
April 2010

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April 2010

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CHAPTER 1

OVERVIEW OF TRANSNATIONAL LITIGATION

- § 1.01 Introduction
- § 1.02 Attractiveness of the U.S. Forum
- § 1.03 Forum Non Conveniens
- § 1.04 Pro-Forum Bias of U.S. Courts
- § 1.05 Pre-Litigation Considerations

§ 1.01 *Introduction*

The growth in transnational litigation has been attributed to the steady increase in foreign trade and industry in the United States. During the last several decades, the globalization of the economy has led to an expanded demand in the United States for foreign goods and services and strong competition between domestic and foreign companies for their share of the U.S. market. As we enter the next century, whatever theories economists have on how the changing world economy will impact on foreign trade in the United States, foreign companies will no doubt continue to control a sizeable share of the U.S. market. Correspondingly, the need will continue for U.S. lawyers to become more familiar with and better prepared to handle transnational litigation in U.S. courts.

Modern technological changes, especially in the areas of transportation and communication, have also contributed to the need for U.S. lawyers to understand foreign laws and procedures. It is not unusual for a U.S. attorney to engage in legal activities in another country, such as interviewing witnesses, reviewing documents, serving papers, obtaining evidence, etc. When engaged in legal activities in other countries, many U.S. lawyers are often surprised to discover that the extraterritorial application of U.S. laws and procedures is non-existent. In addition, U.S. lawyers are incredulous when confronted with the differences between foreign laws and procedures and the U.S. legal system they have been trained to understand. Those dealing with transnational issues soon learn that U.S. trial practice has no precise counterpart anywhere in the world. The purposes of this book are two-fold: (1) to educate the lawyer in the handling of transnational litigation issues under