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).

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