It is a virtual truism that business has become more global and internationalized with each passing year. Advances in technology, communications, and transportation have put all the world’s markets within the reach of most every merchant. The notion of a “local economy” has become quaint, as small town merchants whose specialized wares once gave reason for weekend trips to the country now market those wares directly to potential buyers in every corner of the globe over the Internet and offer two-day shipping. Corporations have globalized, with many Fortune 500 companies now maintaining a global physical presence with offices and marketing agents all over the world, often using complex layers of corporate entities. Foreign companies look to U.S. financial markets for access to capital, banking services, and to educate their workers and executives. Even foreign governments operate on a multinational scale, with many governments, particularly those in developing economies, creating and owning corporations that operate in important markets across the globe.

It is also a truism that the globalization of business has led to the globalization of business disputes, and the resolution of those disputes continues to occur through a patchwork of courts and arbitral tribunals, with the venue used for a particular dispute often being dependent upon the foresight of the parties and their lawyer, but perhaps just as often being dependent upon the speed with which a party can commence proceedings in a venue that it finds advantageous.

This book addresses the topics that arise when these international disputes find their way to U.S. courts, which they do with great frequency. International cases find their way to the United States for a number of reasons. Perhaps the parties, as many sophisticated ones do, included jurisdictional and forum selection clauses in their agreement stipulating that the case would be heard in a U.S. court. Perhaps they did not make such an agreement but agreed to have their contract governed by the law of a U.S. state. Perhaps a U.S. company is involved and seeks to have the dispute heard in a nearby courthouse by an American judge applying familiar rules of law. Or perhaps a foreign plaintiff has sought to bring its case in the United States, attracted by media reports of multi-million-dollar jury verdicts and broad discovery. Whatever the reason, cases with little or no connection to the United States come before the U.S. courts every day.

American courts frequently find themselves being brought into international disputes even when the principal responsibility for resolving the substantive dispute lies elsewhere. This can happen in a number of ways, such as through ancillary proceedings to enforce an arbitration agreement or award, authorize the taking of discovery in aid of foreign proceedings, or enforce a foreign judgment.

The purpose of this book is to explain the authority and competence of American courts with regard to international disputes and explore the topics that arise most often, and cause practitioners the greatest amount of confusion and difficulty, in connection with those disputes. These topics tend to be procedural in nature, as the most important question in any case where a U.S. court (or any national court, for that matter) is asked to become involved in an international dispute is whether the U.S. court can, or should, grant the relief it is asked to afford. Jurisdictional and prudential doctrines that many domestic litigators take for granted take on outsized importance in international disputes, and we address those topics here in what we hope to be a comprehensive and user-friendly fashion.

We begin in Part I with a basic overview of the U.S. court system, which finds its origins in English common law but which, owing to the United States’ system of dual sovereignty and several critical
differences between the U.S. system and its English forebears, makes it unique among the world's legal systems. We continue with a discussion of the concepts of subject matter and personal jurisdiction, which operate as important gatekeepers that regulate both the types of cases that courts can hear and the persons who can be compelled to litigate there, to concepts of forum and venue, which serve a similar regulating function, and then to comity, an often misunderstood but critical concept through which U.S. courts determine their role with respect to a particular dispute relative to the role that could, or should, be played by the courts of other nations.

Part II focuses on applicable law, determining the mode by which courts determine what law applies, and the manner of determining that law's substance. Choice of law is critical in international disputes, especially those cases in which the parties have not agreed on the law that will apply to their dispute. Even in cases where the parties have made such an agreement, issues of foreign law may arise with respect to specific issues within a case (such as determining interests in property held abroad or determining the existence of certain legal duties for conduct that occurred abroad), making it necessary for a U.S. court to ascertain the substance of foreign law and ultimately to apply it.

Part III turns to the issue of discovery, a critical aspect of U.S. litigation that is so often feared and misunderstood by foreign litigants and attorneys. Part IV discusses enforcement, touching once more on comity, the doctrine whose concepts govern U.S. courts' determination of whether to give effect to foreign judgments and decrees; and preclusion, a concept that takes on particular importance in international proceedings inasmuch as it determines when an issue has been finally decided—and can no longer be relitigated—and what its effect is in the United States.

Arbitration has become a critical tool in the effective resolution of international disputes, and Part V discusses U.S. law of arbitration and the statutes and treaties that are used to uphold the bedrock American policy favoring the use of arbitration in the resolution of international disputes.

Finally, Part VI addresses three specific types of international disputes that arise frequently in the business context: litigation involving foreign states, international bankruptcy proceedings, and disputes involving trade. The U.S. courts handle significant numbers of cases in these areas every year, and each is governed by rules that are unique and differ from ordinary commercial disputes.

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