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Litigation of International Disputes in U.S. Courts

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BOOK REVIEWS

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*Reviewed by T.C. Hartley**

Nanda, V.P. and Pansius, D.K., Litigation of International Disputes in U.S. Courts, Clark Boardman, New York (1986); $85.00 ISBN 0-87632-509-6, 546 pp.; index. (Volume 4, International Business & Law Series).

This book covers the principal areas of law relevant to international litigation in American courts. The authors identify eleven such areas and each of these is the subject of a separate chapter.[1] The chapters are, however, of greatly differing lengths and almost half the book consists of just two chapters, dealing respectively with sovereign immunity and the act of state doctrine. These are both topics of great importance in transnational litigation, though they concern one particular aspect of it, namely the legal position of foreign states and the extent to which they are exempt from the rules applicable to private citizens. Sovereign immunity is concerned with the extent to which a state is immune from the jurisdiction of the courts of other states, and the act of state doctrine lays down principles regarding the right of the courts of one country to sit in judgment over the acts of a foreign state. These separate, but related, doctrines are relevant only when a plaintiff seeks to obtain a remedy against a foreign state (or its agency) or seeks to obtain a remedy with regard to acts of a foreign state.

Other topics given substantial treatment are personal jurisdiction and extraterritoriality. The former, which is concerned in particular with the constitutionally-mandated requirement of minimum contacts, raises issues which are basic in any transnational action in an American court; the latter, on the other hand, concerns a question which, though of great interest (and the cause of significant international disputes between the United States and other countries), is likely to be of practical importance in only a relatively small number of cases.

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1. There is also a twelfth chapter, on the recognition of American judgments and arbitral awards in foreign countries, which, though obviously relevant, is not, strictly speaking, within the main theme of the book.

Two other topics of great practical importance are given fairly substantial treatment. These are *forum non conveniens*, which is raised in almost every international case, and forum-selection and choice-of-law clauses in transnational contracts.

The remaining topics are dealt with briefly: service of process abroad, venue in suits with alien defendants, extraterritorial discovery, pleading and proof of foreign law, the recognition of foreign judgments and arbitral awards in American courts and the recognition of American judgments in foreign courts. Many of these topics do not warrant more than summary treatment. However, the subject of extraterritorial discovery deserves fuller treatment than the nine pages devoted to it. For example, the problem of foreign blocking statutes and bank-secrecy laws is covered simply by discussing the relevant sections of the draft Restatement of the Foreign Relations Law of the United States.[2] Major cases are then listed in a footnote. The Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (now being considered by the Supreme Court in the *Aerospaciale* case)[3] is discussed in less than a page, in spite of its complexities and the number of cases in which it has been in issue both in the United States and in foreign countries (where American litigants have often experienced considerable difficulties in obtaining documentary evidence needed in American actions). More could also have been said in the chapters on the recognition of judgments in foreign courts. Rather than to summarize the law of six countries in twenty pages, it might have been better to omit this latter chapter altogether, since it does not fit within the scope of the book.

In spite of these limitations (which are of minor importance when set against the excellent coverage of the topics mentioned earlier) the book as a whole deals with most of the questions within its scope. It is, moreover, an area of such great academic interest and practical importance that it is surprising that no comparable books have been published.[4] For this reason alone, the publication of this book is an important event for all those interested in transnational law. But what makes it particularly valuable is the excellent job of work that the authors have performed. In most of the chapters they have found a level of specificity which succeeds both in giving the reader a clear general picture and in supplying sufficient detail to lead to a good understanding. This is not an easy thing to do and shows both the expositional skills of the authors and their grasp of complex areas of the law. Just as important, they have dealt with the main

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2. RESTATEMENT (SECOND) OF THE LAW OF FOREIGN RELATIONS (Tentative Draft No. 3 1982).

3. *Re Societe Nationale Industrielle Aerospaciale*, 782 F.2d 120 (8th Cir. 1986). At the time of writing (February 1987), the Supreme Court has not yet handed down its decision.

4. G. DELAUME, TRANSNATIONAL CONTRACTS: APPLICABLE LAW AND SETTLEMENT OF DISPUTES (1975), a multi-volume work by a well-known authority, covers some of the topics dealt with by Nanda and Pansius, but its greater length and higher degree of specialization sets it apart.

topics clearly and systematically, showing how different theories fit together in different ways. For example, they explain how the minimum contacts doctrine might apply differently in federal courts in diversity cases and federal-question cases, and how subject-matter jurisdiction and personal jurisdiction are separate requirements, though this fact may sometimes be overlooked. For these reasons, the book will be of great value to the practising attorney: it will enable him to grasp the problems that lie ahead when he begins an international action. He will learn from it what to do and what to avoid and, if he has to argue one of the points covered in the book, it will provide the starting point for his research. (In this respect, it is a pity that the book does not provide a table of cases and a list of the main articles and specialized books dealing with each of the topics covered: these would have made the task even easier).[5] The book will also be of use to students in the many law school courses now devoted to transnational law, since its clarity and structured presentation make it a delight to read straight through.

5. It is also a pity that the cut-off date, which appears to be some time in 1984, is not specified, so that the reader knows how far back he must go when researching for new material.