CONTENTS

Foreword xi
About the Editor xiii
About the Authors xv
Chapter 1
Service and Citation on Foreign Parties 1
Frank G. Jones
§ 1.0 Introduction 1
§ 1.1 Applicable Federal Rules of Civil Procedure for Service of Process
in Foreign Countries 2
§ 1.1.1 Service on Foreign Defendants 2
§ 1.1.2 Methods of Service 3
§ 1.1.3 Practice Tips 8
§ 1.2 The Hague Service Convention 9
§ 1.2.1 Introduction 9
§ 1.2.2 Procedures for Executing Service 12
§ 1.2.3 Grounds for Refusal to Effect Service of Process 19
§ 1.2.4 Default Judgments 20
§ 1.2.5 Practice Tips 21
§ 1.3 The Inter-American Convention 22
§ 1.3.1 Introduction 22
§ 1.3.2 Scope of the Convention and Protocol 24
§ 1.3.3 Procedures for Executing Service 24
§ 1.3.4 Grounds for Refusal to Effect Service 27
§ 1.3.5 Default Judgments 27
§ 1.3.6 Practice Tips 27
§ 1.4 Due Process Considerations of Service on Foreign Defendants 29
§ 1.4.1 Introduction 29
§ 1.4.2 Notice 29
§ 1.5 Raising Service Objections 30
§ 1.5.1 Introduction 30
§ 1.5.2 Insufficiency of Process and/or Service of Process 30
§ 1.5.3 Discretion of Court 32
§ 1.5.4 Practice Tips 33
§ 1.6 Conclusion 33

iv CONTENTS

Appendix A Applicable Provisions of the Federal Rules of Civil Procedure: Rule 4 of the Federal Rules of Civil Procedure, with 1993 Notes of the Advisory Committee 35
Appendix B Service Under Federal Rules on Foreign Persons and Entities and Advantages and Disadvantages of Alternate Methods of Service 45
Appendix C The Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters 47
Appendix D Summary of The Hague Service Convention: Countries Where the Hague Service Convention Is in Force 57
Appendix E Forms for Service Abroad Under The Hague Service Convention 83
Appendix F Inter-American Convention on Letters Rogatory and Additional Protocol to the Inter-American Convention on Letters Rogatory 89
Appendix G Summary of Inter-American Convention on Letters Rogatory and Additional Protocol for Countries That Have Signed and/or Ratified Both 95
Appendix H Forms for Service Abroad Under the Inter-American Convention on Letters Rogatory 99
Chapter 2 Personal Jurisdiction Over Foreign Parties 113 Edward B. "Teddy" Adams, Jr. § 2.0 What is Personal Jurisdiction? 113 § 2.1 How is Personal Jurisdiction Established? 114 § 2.1.1 The Dual Framework—General Jurisdiction 115 § 2.1.2 The Dual Framework—Specific Personal Jurisdiction 117 § 2.2 Minimum Contacts are not Enough; the Exercise of Jurisdiction must be Fair and Reasonable 122 § 2.3 New Frontiers—Personal Jurisdiction and the Internet 123

§ 2.4 Personal Jurisdiction in a Federal Question Case § 2.5 Procedures for Challenging Jurisdiction 128 § 2.6 Review of the Court's Decision 130 § 2.7 Conclusion 131
Chapter 3 Federal Subject Matter Jurisdiction in Federal Court in International Cases 133 Layne E. Kruse and Rebecca H. Benavides
§ 3.0 Introduction 133 § 3.1 Nature of Subject Matter Jurisdiction 133 § 3.2 Federal Statutes that Create Federal Jurisdiction in International Litigation 136 § 3.2.1 The Extraterritorial Reach of Federal Law 136
§ 3.2.2 Selected Federal Statutes Directed at International Conduct 139 § 3.2.3 Federal Jurisdiction Based on International Law or the
"Common Law of Foreign Relations" 143 § 3.3 Diversity Jurisdiction Based on Foreign Parties 157 § 3.3.1 Defining Who Is a "Citizen" of a "Foreign State" 158 § 3.3.2 The Requirement of Complete Diversity 159 § 3.4 Practice Tips 161
Chapter 4 Antisuit Injunctions in Multinational Cases David J. Levy
§ 4.0 Introduction 163 § 4.1 The Two Approaches: The Liberal and The Restrictive 164 § 4.1.1 The Liberal Approach 164 § 4.1.2 The Restrictive Approach 168
§ 4.2 Practice Tips 174
Chapter 5 Compelling Arbitration in International Cases 175 John P. Bowman
§ 5.0 Introduction 175 § 5.1 The International Treaty Framework 176 § 5.1.1 New York and Panama Conventions 176 § 5.1.2 Treaties Addressing Investor Disputes with States 180
§ 5.1.2 Treaties Addressing Investor Disputes with States § 5.2 Compelling Arbitration Under the Federal Arbitration Act § 5.2.1 Implementing Legislation 182 § 5.2.2 Field of Application 182 § 5.2.3 Jurisdiction and Venue 183

§ 5.2.4 Removal Under Section 205 186
§ 5.2.5 Compelling Arbitration Under Sections 206 and 303(a) 188
§ 5.3 Application of the Four-Part Test to Determine Whether to
Compel Arbitration 189
§ 5.3.1 First Element: Existence and Scope of Arbitration Agreement 190
§ 5.3.2 Second Element: Convention Country Site 192
§ 5.3.3 Third Element: A Commercial Relationship 193
§ 5.3.4 Fourth Element: Reasonable Relation with Foreign State 193
§ 5.3.5 Exceptions to the Four-Part Test 194
§ 5.4 Forum Non Conveniens 195
§ 5.5 Conditions Precedent and Time Limitations 197
§ 5.6 Stay Versus Dismissal of Court Action 200
§ 5.7 Appealability of Court Rulings on Motions to Compel 202
§ 5.8 Practice Tips 204
Chapter 6
Forum Non Conveniens in International Cases 205
Anne M. Rodgers
§ 6.0 Introduction 205
§ 6.1 The Doctrine of Forum Non Conveniens 205
§ 6.1.1 Determining Whether an Alternative Forum Is Available and Adequate 206
§ 6.1.2 Determining the More Convenient Forum For Litigating
the Case 209
§ 6.2 The Motion to Dismiss for Forum Non Conveniens 215
§ 6.3 Practice Tips 219
Chapter 7
Choice of Law in International Cases 221
Richard T. "Tom" Stilwell
§ 7.0 Introduction 221
§ 7.1 The Effect of Jurisdiction and Venue 222
§ 7.1.1 Diversity Jurisdiction—Which Law Applies to
the Case? 222
§ 7.1.2 Federal Question Jurisdiction—What Law Governs Pendent
State Claims? 224
§ 7.1.3 Does the Transfer of Venue Affect the Choice of Law for
the Case? 231
§ 7.2 Constitutional Concerns of Due Process and Full Faith & Credit 234

§ 7.3 Contractual Clauses—Forum Selection, Choice of Law,
and Arbitration 236
§ 7.3.1 Forum Selection Clauses 237
§ 7.3.2 Choice of Law Provisions 240
§ 7.3.3 Arbitration Provisions 241
§ 7.4 Claims Beyond the Reach of a Contractual Choice of
Law Provision 243
§ 7.4.1 First Restatement of Conflict of Laws 244
§ 7.4.2 The Restatement (Second) of Conflicts of Laws: The Most
Significant Relationship Test 245
§ 7.4.3 The New York "Interests Analysis" 248
§ 7.4.4 California's "Governmental Interest Approach" 253
§ 7.4.5 Leflar's Five Factor Analysis 257
§ 7.4.6 Depecage—Applying the Law of Different States to
Separate Issues 258
§ 7.5 Admiralty & Maritime Cases 259
§ 7.5.1 Admiralty Jurisdiction Defined 259
§ 7.5.2 Invocation of the Admiralty Choice of Law Rules 261
§ 7.5.3 Federal Maritime Choice of Law Rules—
The Lauritzen Triad 262
§ 7.5.4 Does State Law or Federal Maritime Law Govern the
Deaths of Non-Seamen in U.S. Territorial Waters? 264
§ 7.5.5 The Outer Continental Shelf Lands Act Adopts the Law of
the Adjacent State 265
§ 7.5.6 Maritime Contracts 266
§ 7.5.7 Anti-Indemnity Statutes 267
§ 7.5.8 Foreign Arbitration Provisions Under the Carriage of Goods
by Sea Act 268
§ 7.6 Aviation Law: The Warsaw Convention 269
§ 7.6.1 Whose Choice of Law Rules Apply? 270
§ 7.6.2 Whose Law Defines the Damages or Remedies that
May Be Sought and Recovered Under the
Warsaw Convention? 270
§ 7.6.3 Whose Law Defines the Conduct that Voids the Warsaw
Convention's Limitation of Liability Provisions? 272
§ 7.7 Proof of Foreign Law 273
§ 7.8 How to Approach Choice of Law 274
97.8 How to Approach Choice of Law 274
Chanter &
Chapter 8 Conducting Discovery in Foreign Countries 275
Graig J. Alvarez § 8.0 Introduction 275
- 프라이트 CONTROL CONTRO
§ 8.1 Distinctions Between U.S. and Foreign Evidence-Gathering 276

viii CONTENTS

§ 8.2 Threshold Legal Considerations 278
§ 8.3 The United States Supreme Court's Decision in Aérospatiale 282
§ 8.4 Foreign Discovery Under the Federal Rules of
Civil Procedure 284
§ 8.4.1 Extra-Territorial Depositions Under the
Federal Rules 284
§ 8.4.2 Document Production Under Federal Rules 34 or 45 286
§ 8.4.3 Deposition or Document Production by Letter
of Request 287
§ 8.5 Foreign Discovery Under The Hague Evidence Convention 288
§ 8.6 Letters Rogatory: Customary Judicial Assistance 294
§ 8.7 Foreign Discovery: A Country-by-Country Look 295
§ 8.7.1 Canada 296
§ 8.7.2 China 299
§ 8.7.3 France 301
§ 8.7.4 Germany 303
§ 8.7.5 Italy 306
§ 8.7.6 Japan 307
§ 8.7.7 Mexico 310
§ 8.7.8 United Kingdom 311
§ 8.8 Practice Tips 314
Appendix I U.S. State Department Contacts and On-Line Tools and Resources for Forms 315
Appendix II
Forms for the Taking of Extra-Territorial Discovery 319
Appendix III
Foreign Central Authorities 329
Chapter 9
Enforcing and Resisting Judgments 341
George G. Murr
§ 9.0 Introduction 341
§ 9.0.1 Procedure for Enforcement of Foreign Judgments in the
United States 344
§ 9.1 Elements for Recognition of Foreign Judgments 346
§ 9.1.1 The Doctrine of Comity in <i>Hilton v. Guyot</i> 346
§ 9.1.2 The Uniform Foreign Country Money-Judgment
Recognition Act 347
§ 9.1.3 Applying the Four Main Elements 348

§ 9.2 Defenses to Enforcement and Grounds for Nonrecognition of
Foreign Country Judgments 350
§ 9.2.1 Common Law and the Doctrine of Comity:
Hilton v. Guyot 351
§ 9.2.2 The Uniform Foreign Country Money-Judgment
Recognition Act 351
§ 9.2.3 Defenses to Enforcement and Grounds for Nonrecognition
of Foreign Country Judgments 352
§ 9.3 Reciprocity 356
§ 9.4 Avoiding Comity: Trading State Court for Foreign Country
Judgments 357
§ 9.4.1 Foreign Judgments and the Full Faith and
Credit Clause 357
§ 9.4.2 Trading State Court for Foreign Country Judgments 357
§ 9.4.3 Refusing Enforcement of Foreign Country Judgments as
State Court Judgments 358
§ 9.5 Res Judicata, Collateral Estoppel and Foreign Judgments 359
§ 9.6 Uniform Foreign-Money Claims Act 360
§ 9.7 Recognition and Enforcement of Foreign Arbitral Awards as
Foreign Judgments 361
§ 9.7.1 The New York Convention 361
§ 9.7.2 The Federal Arbitration Act 362
§ 9.7.3 Domesticating Foreign Judgments Confirming Foreign
Awards 362
§ 9.7.4 ICSID Awards as Judgments of U.S. Courts 364
§ 9.8 Practice Tips 365
Index 267