FUNDAMENTALS OF TRANSNATIONAL LITIGATION: THE UNITED STATES, CANADA, JAPAN, AND THE EUROPEAN UNION
Second Edition
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FUNDAMENTALS OF TRANSNATIONAL LITIGATION:
THE UNITED STATES, CANADA, JAPAN, AND THE EUROPEAN UNION

Second Edition

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Dedication

Dedicated to
Dan Fenno Henderson
(1921–2001)
&
Yasuhiro Fujita
(1935–2012)
Preface to Second Edition

Lawyers involved in litigation involving parties from two or more countries cannot be concerned solely with the relevant rules and standards that apply in only a single country. Parochial approaches do not suffice. By definition cross-border litigation requires lawyers to be cognizant of at least the basic differences in issues and approaches in other countries and legal systems. For lawyers involved — or may become involved — in such cross-border lawsuits in U.S. courts an awareness of the basic contrasts between U.S. law and the law in the most significant of the U.S. partners in trade — the European Union, Canada, China, Japan, Mexico, and Germany — has become increasingly imperative. These materials are designed first and foremost to meet that need. They thus focus primarily on three of the most significant in terms of volume of our trade partners — Canada, Japan, and the European Union — with references to Chinese, German, and Mexican law added as appropriate throughout.

The emphasis on Canadian law should require little explanation. Canada first provides an especially instructive comparative focus as our largest national trade partner thus potentially the most significant for cross-border civil and commercial litigation. Canadian approaches are also instructive in the contrast of Canada with the United States as a federal common law system. Study of Canadian law enables us to appreciate better the exceptional features of the United States law within the common law world.

The continued inclusion of Japan also remains amply justified. Japan’s prominence among the industrial democracies with well-established legal systems remains unequalled as the world’s third largest economy and, next to Canada, the United States’ leading partner in terms of both trade and investment. These factors help to explain the prevalence of litigation between parties from both countries in both countries. For comparative purposes, Japan is also exemplary. As a unitary civil law system with basically similar if not identical approaches to other civil law jurisdictions for resolving common issues and problems of transnational litigation, Japan provides an ideal national comparative perspective.

Finally, no materials on the fundamental aspects of transnational litigation would be complete without at least a basic introduction to European law under the 1968 Brussels Convention, EU Regulation 44/2001, and, from 2015, Regulation (EU) No. 1215/2012. Those concerned with the harmonization of the rules for the recognition and enforcement of foreign country judgments in addition to the more mundane aspects of transnational litigation and international commercial arbitration must pay heed to developments in EU law.

The materials have a secondary but still equally important aim. As expressed in the Preface to the first edition, the initial, unpublished versions were developed between 1967 and 1971 by Dan Fenno Henderson and Yasuhiro Fujita for an advanced comparative law course in the University of Washington Asian Law Program. The course was designed to introduce law students from both the United States and Japan to fundamental issues that arise in transnational litigation between parties from each country. They were thus originally developed for a course in which students from across the Pacific — increasingly around the globe — would participate and share both their understandings of their own systems as well as their difficulty in comprehending the contrasting concepts.
Preface to Second Edition

and underlying — often unstated — assumptions of their fellow students (and instructors) trained in others.

On an equally pedagogical note, the emphasis on judicial decisions and virtual exclusion of secondary sources is purposeful. Also as noted in the initial version, for purposes of case analysis and basic comprehension of potentially applicable legal rules and principles, lawyers today — especially those involved in transnational litigation — must become familiar with a variety of judicial decisions and their often idiosyncratic styles. Moreover, as these materials are intended to demonstrate, the legal rules and principles that apply today have been and will be continuously developed and articulated throughout the world in the context of adjudication and judicial decisions. These materials and the courses for which they have been prepared are premised on the proposition that detailed study of comparative case law has become globally essential to sound legal education.

Let me conclude with a special note of gratitude. The compilation of these materials would not have been possible without assistance of many individuals. Special thanks continue to be owed to Robert Britt and his colleagues at the University of Washington Gallagher Law Library for their on-going assistance. Appreciation must also be extended to Nancy C. Cummings and law librarians Wei Luo and Tove Kloving of the Washington University in St. Louis School of Law as well as Lindsey Ingham and Catherine Deane at the Vanderbilt Law School. Finally, these materials reflect the efforts and influence of literally hundreds of law students from across the United States and around the globe who studied from earlier versions. Needless to say, all of the errors and omission remain mine.
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