Detailed Table of Contents¹

Cover, Copyright, Dedication

Preface	i
Summary Table of Contents	ii
Detailed Table of Contents	vi
I. An International Law Primer	I.A-1
A. International Law Defined	I.A-1
1. Private International Law	I.A-3
2. Foreign Relations Law	I.A-3
3. Foreign Law	I.A-3
4. Comparative Law	I.A-3
5. Transnational Law	I.A-4
6. Global Law	I.A-5
B. Sources and Evidence of International Law	I.B-1
1. Two Primary Sources of International Law	I.B-2
a. Treaties or International Agreements	I.B-2
i. Treaty-Making Steps	
i.1. Negotiation	
i.2. Adoption	I.B-4
i.3. Signature	I.B-4
i.4. Consent to Be Bound, by Ratification or Accession	I.B-5
i.5. Reservations, Understandings, and Declarations	
	ID (
i.7. Precise Meanings of "Signatory" and "State Party"	I.B-7
i.8. Finding Data on Treaty-Making Steps Taken by the United States or O	ther
Countries	I.B-7
b. Customary International Law	
i. First Customary International Law Element: General and Consistent State Pr	actice
	T D 0

¹ This Detailed Table of Contents for Am. Soc'y Int'l L., *Benchbook on International Law* (Diane Marie Amann ed., 2014), is available at <u>www.asil.org/benchbook/detailtoc.pdf</u>. To access the entire volume, see <u>www.asil.org/benchbook</u>.

i.1. Persistent State Objection and Absence of State Objection	<u>I.B-9</u>
ii. Second Customary International Law Element: Sense of Legal Obligation	
Juris	I.B-9
c. Jus Cogens or Peremptory Norm	I.B-9
d. Conflict between Treaty and Custom: Later-in-Time Rule	I.B-10
2. Secondary Source of International Law	I.B-10
a. General Principles	I.B-10
3. Subsidiary Means of Determining International Law Rules	I.B-11
a. Judicial Decisions	I.B-11
a. Judicial Decisions i. International Court of Justice	I.B-12
b. Teachings of Publicists, or Scholarly Writings	I.B-13
4. "Soft Law"	I.B-13
C. Uses of International Law in U.S. Courts	I.C-1
1 Direct Enforcement of Treaty Provisions	
Direct Enforcement of Treaty Provisions a. U.S. Constitutional Provisions and Treaty-Making Steps	I.C-1
b. How to Determine Which Treaty-Making Steps the United States Has Taken	
c. Status of Treaties in U.S. Law	
d. U.S. Courts and Direct Enforcement of Treaties	I.C 2
i. Doctrine of Treaty Self-Execution and Non-Self-Execution	I.C 3
i.1. Significance of Political Branch Declarations on Self-Execution or	1.0 5
Non-Self-Execution	I.C-5
2. Statutory Implementation or Incorporation of International Law	I.C-5
a. Legislation Implementing Treaty Provisions	I.C-5
i. Constitutional Treaty Power and Enactment of Implementing Legislation	
b. Incorporation of Treaties and Other International Law Sources	I.C-6
3. Application of Customary Norms and Other International Law Sources	
a. Customary International Law	I.C-7
b. Jus Cogens or Peremptory Norms	
c. General Principles	
d. "Soft Law"	I.C-9
4. Consultation of International Sources As an Aid to Interpretation	I.C-9
II. Jurisdictional, Preliminary, and Procedural Concerns	II.A-1
A. Jurisdiction	II.A-1
	II 4 2
1. Principles or Bases of Jurisdiction	II.A-2
a. Territoriality, Including Effects	II.A-2

b. Nationality/Active Personality	II.A-3
c. Passive Personality	II.A-3
d. Protective Principle	II.A-3
e. Universality	II.A-4
f. Reasonableness Inquiry	II.A-4
1 7	
2. Sources of Jurisdiction Under U.S. Law	II.A-4
a. Subject-Matter Jurisdiction	II.A-5
b. Personal Jurisdiction	II.A-5
i. U.S. Constitutional Jurisprudence	II.A-5
i.1. Constitutional Due Process and General Jurisdiction over Multinat	ional
Corporations	II.A-6
c. Jurisdiction to Enforce	II.A-6
3. Principles or Bases of Jurisdiction and U.S. Courts	
a. Territoriality	II.A-6
i. Effects Doctrine / Objective Territoriality	II.A-7
ii. Special Maritime and Territorial Jurisdiction	II.A-8
b. Protective Principle	II.A-8
c. Nationality/Active Personality	II.A-9
d. Passive Personality	II.A-10
e. Universality	II.A-10
f. Reasonableness	II.A-11
	TT A 11
4. Determining if Congress Intended to Give a Statute Extraterritorial Reach	
a. Express Statutory Language	II.A-12
b. Authoritative Judicial Interpretation	II.A-13
c. Pertinent Canons of Construction	II.A-13
i. Canon Presuming Against Extraterritoriality	II.A-14
i.1. Exception in Criminal Cases	
i.1.a. General Approach to Ambiguity in Criminal Statutes	
i.1.b. Presumption of Extraterritoriality in Criminal Statutes	II.A-15
ii. Charming Betsy: Construing Statute to Comport with International Law	/II.A-16
iii. Canon Disfavoring Undue Interference with Foreign States	II.A-16
D. Laurentitien and Othern Deulissianen Constituentions	
B. Immunities and Other Preliminary Considerations	П.Б-1
1 Immunities	II R_1
 Immunities a. Foreign Sovereign Immunity i. The United States: The 1976 Foreign Sovereign Immunities Act (FSIA) 	II.D-1 II R_2
i The United States: The 1976 Foreign Sovereign Immunities Act (FSIA)	II.D-2 II R_2
i.1. International Law Corollary to the FSIA	II.D-2 II R_3
ii. The FSIA in General	II.D-3
ii.1. Removal to Federal Court	п.D-3 II R_2
ii.2. Retroactive Application of the FSIA	II.D-3 II R_3
iii FSIA Definition of "Foreign State"	II.D-3
iii. FSIA Definition of "Foreign State" iii.1. Corporations As State Instrumentalities	п.D-3 II R_4
m.i. Corporations As State institutionanties	11.D-4

iv. FSIA Exceptions to Sovereign's Immunity from Suit	II.B-4
iv.1. Waiver Exception	II.B-5
iv.2. Commercial Activity Exception	II.B-5
iv.3. Expropriation Exception	II.B-6
iv.4. Exception for Torts Occurring in the United States	II.B-6
iv.4.a. Applicability of Exception	II.B-7
iv.4.b. Circumstances in Which Exception Does Not Apply	II.B-7
iv.5. Exception for Enforcement of Arbitration Agreements or Awards	
iv.6. Terrorism Exception	
iv.6.a. Countries Designated State Sponsors of Terrorism	II.B-8
iv.6.b. Time Bar	
iv.6.c. Litigation under the Terrorism Exception	
v. Extent of Liability under the FSIA	II.B-9
v. Extent of Liability under the FSIA	II.B-9
vi.1. Attachment of Foreign State Property before Judgment	II.B-9
vi.2. Attachment or Execution of Foreign State Property after Judgment	
vii. Jurisdictional Discovery in FSIA Cases	
b. Immunity of Foreign Officials: Common Law Principles	ILB-10
i. Head of State/Head of Government Immunity	
i.1. Head of State Immunity As Status-Based Immunity	II.B-12
i.2. Significance of Executive Branch View on Head of State Immunity	II.B-12
ii. Diplomatic Immunity	
ii.1. Status-Based Diplomatic Immunity	II.B-13
ii.2. Foreign Officials and their Families When Visiting or in Transit	II.B-13
ii.3. Conduct-Based Diplomatic Immunity	
iii. Consular Immunity	
iv. Other Foreign Officials	II.B-14
v. Immunity of Diplomatic and Consular Premises, Archives, Documents, and	nd
Communications	
v.1. Consent As Exception	II.B-15
c. Immunity of International Organizations and Officials of Those Organizations	s II.B-16
2. Act of State Doctrine	II.B-16
a. In General	II.B-17
b. Application	II.B-17
c. Exceptions	II.B-17
3. Political Question	II.B-18
a. In General	II.B-18
b. Application to Cases Touching on Foreign Relations	II.B-19
4. Forum Non Conveniens	II.B-20
a. In General	II.B-20
b. Procedure	II.B-20
c. Substance	II.B-21
i. Adequate Alternative Forum	II.B-21

5. Time Bar II.B-22 6. Exhaustion of Remedies II.B-22 7. Comity II.B-23 a. In General II.B-23 b. Application II.B-23 c. Choice of Law II.B-23 a. Choice of Law II.B-24 a. Choice of Law II.B-24 b. Proof of Foreign Law II.B-24 b. Proof of Foreign Judgments II.B-25 a. Recognition and Enforcement of Foreign Judgments II.B-25 a. Recognition of Foreign Judgments II.B-25 i. Orverned by State Law II.B-25 i.1. State Statutes Based on Uniform Acts II.B-25 i.1. a. 1962 Uniform Foreign Money-Judgments Recognition Act II.B-27 i.1.c. Procedure for Recognition of Foreign Judgments II.B-27 i.1.c. Procedure for Recognition of Foreign Judgments II.B-27 i.1.c. Procedure for Recognition of Foreign Judgments II.B-29 b. Enforcement by U.S. Courts of Judgments by Courts of Foreign States II.B-29 c. Discovery and Other Procedures II.C-1 i. Individuals II.C-2 i. Coporations II.C-2 ii. Coporations II.C-3 <	ii. Balancing of Private Interests and Public Interests	II.B-22
7. Comity	5. Time Bar	II.B-22
a. In General II.B-23 b. Application II.B-23 b. Application II.B-23 8. Choice of Law II.B-24 a. Choice of Law Overview II.B-24 b. Proof of Foreign Law II.B-24 b. Proof of Foreign Ludgments II.B-25 a. Recognition and Enforcement of Foreign Judgments II.B-25 a. Recognition of Foreign Judgments II.B-25 i. Governed by State Law II.B-25 i.1. State Statutes Based on Uniform Acts II.B-25 i.1. State Statutes Based on Uniform Acts II.B-27 i.1. State Statutes Based on Uniform Meets II.B-27 i.1. State Statutes Based on Uniform Foreign-Country Money Judgments Recognition Act II.B-27 i.1. Defore for Recognition of Foreign Judgments II.B-27 i.1. Federal Law on Recognition in Defamation Suits II.B-29 c. Enforcement by U.S. Courts of Judgments by Courts of Foreign States II.B-29 c. Discovery and Other Procedures II.C-1 1. Service of Process Abroad II.C-2 ii. Corporations II.C-3 iii. Foreign States or State Agencies II.C-3 iii. Foreign States or State Agencies II.C-4	6. Exhaustion of Remedies	II.B-22
a. In General II.B-23 b. Application II.B-23 b. Application II.B-23 8. Choice of Law II.B-24 a. Choice of Law Overview II.B-24 b. Proof of Foreign Law II.B-24 b. Proof of Foreign Ludgments II.B-25 a. Recognition and Enforcement of Foreign Judgments II.B-25 a. Recognition of Foreign Judgments II.B-25 i. Governed by State Law II.B-25 i.1. State Statutes Based on Uniform Acts II.B-25 i.1. State Statutes Based on Uniform Acts II.B-27 i.1. State Statutes Based on Uniform Meets II.B-27 i.1. State Statutes Based on Uniform Foreign-Country Money Judgments Recognition Act II.B-27 i.1. Defore for Recognition of Foreign Judgments II.B-27 i.1. Federal Law on Recognition in Defamation Suits II.B-29 c. Enforcement by U.S. Courts of Judgments by Courts of Foreign States II.B-29 c. Discovery and Other Procedures II.C-1 1. Service of Process Abroad II.C-2 ii. Corporations II.C-3 iii. Foreign States or State Agencies II.C-3 iii. Foreign States or State Agencies II.C-4	7. Comity	II.B-23
 8. Choice of Law	a. In General	II.B-23
a. Choice of Law Overview II.B-24 b. Proof of Foreign Law II.B-24 9. Recognition and Enforcement of Foreign Judgments II.B-25 a. Recognition of Foreign Judgments II.B-25 i. Governed by State Law II.B-25 i.1. State Statutes Based on Uniform Acts II.B-25 i.1.a. 1962 Uniform Foreign Money-Judgments Recognition Act II.B-26 i.1.a. 1962 Uniform Foreign-Country Money Judgments Recognition Act II.B-27 i.1.a. 1962 Uniform Foreign-Country Money Judgments Recognition Act II.B-27 i.1.a. 1962 Uniform Foreign-Country Money Judgments Recognition Act II.B-27 i.1.a. 1962 Uniform Foreign-Country Money Judgments II.B-27 i.1.a. 1962 Uniform Foreign-Country Money Judgments II.B-29 i.1.c. Procedure for Recognition of Foreign Judgments II.B-29 c. Enforcement by U.S. Courts of Judgments by Courts of Foreign States II.B-29 c. Discovery and Other Procedures II.C-1 1. Service of Process Abroad II.C-1 a. Methods of Service II.C-1 i. Individuals II.C-2 ii. Corporations II.C-3 iii. Foreign States or State Agencies II.C-3 b. Service in the United Sta	b. Application	II.B-23
a. Choice of Law Overview II.B-24 b. Proof of Foreign Law II.B-24 9. Recognition and Enforcement of Foreign Judgments II.B-25 a. Recognition of Foreign Judgments II.B-25 i. Governed by State Law II.B-25 i.1. State Statutes Based on Uniform Acts II.B-25 i.1.a. 1962 Uniform Foreign Money-Judgments Recognition Act II.B-26 i.1.a. 1962 Uniform Foreign-Country Money Judgments Recognition Act II.B-27 i.1.a. 1962 Uniform Foreign-Country Money Judgments Recognition Act II.B-27 i.1.a. 1962 Uniform Foreign-Country Money Judgments Recognition Act II.B-27 i.1.a. 1962 Uniform Foreign-Country Money Judgments II.B-27 i.1.a. 1962 Uniform Foreign-Country Money Judgments II.B-29 i.1.c. Procedure for Recognition of Foreign Judgments II.B-29 c. Enforcement by U.S. Courts of Judgments by Courts of Foreign States II.B-29 c. Discovery and Other Procedures II.C-1 1. Service of Process Abroad II.C-1 a. Methods of Service II.C-1 i. Individuals II.C-2 ii. Corporations II.C-3 iii. Foreign States or State Agencies II.C-3 b. Service in the United Sta	8. Choice of Law	II.B-24
b. Proof of Foreign Law II.B-24 9. Recognition and Enforcement of Foreign Judgments II.B-25 a. Recognition of Foreign Judgments II.B-25 i. Governed by State Law II.B-25 i. 1. State Statutes Based on Uniform Acts II.B-25 i.1. State Statutes Based on Uniform Acts II.B-25 i.1. State Statutes Based on Uniform Money-Judgments Recognition Act II.B-26 i.1.b. 2005 Uniform Foreign Country Money Judgments Recognition Act II.B-27 i.1.c. Procedure for Recognition of Foreign Judgments II.B-27 i.1.c. Procedure for Recognition of Foreign Judgments II.B-27 i.1.c. Procedure for Recognition of Foreign Judgments II.B-27 i. Federal Law on Recognition in Defamation Suits II.B-28 b. Enforcement by U.S. Courts of Judgments by Courts of Foreign States II.B-29 c. Enforcement of Arbitral Awards II.C-1 a. Methods of Service II.C-1 i. Individuals II.C-2 ii. Corporations II.C-2 ii. Corporations II.C-3 iii. Foreign States or State Agencies II.C-3 ib. Service in the United States for Foreign Proceedings II.C-4 2. Taking of Evidence Abroad II.C-4 i. Unilateral Means of Evidence Gathering II.C-5 ii. Challenges to Such Requests II.C-6 iii. Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters II.C-7 iv. Letters Rogatory Compared II.C-7 iv. Letters Rogatory II.C-4 V.1. MLATs and Letters Rogatory Compared II.C-9	a. Choice of Law Overview	II.B-24
a. Recognition of Foreign Judgments II.B-25 i. Governed by State Law II.B-25 i.1. State Statutes Based on Uniform Acts II.B-25 i.1. State Statutes Based on Uniform Acts II.B-26 i.1.a. 1962 Uniform Foreign Money-Judgments Recognition Act II.B-26 i.1.b. 2005 Uniform Foreign-Country Money Judgments Recognition Act II.B-27 i.1.c. Procedure for Recognition of Foreign Judgments II.B-27 i. Federal Law on Recognition in Defamation Suits II.B-28 b. Enforcement by U.S. Courts of Judgments by Courts of Foreign States II.B-29 c. Enforcement of Arbitral Awards II.C-1 1. Service of Process Abroad II.C-1 a. Methods of Service II.C-1 i. Corporations II.C-2 ii. Foreign States or State Agencies II.C-3 b. Service in the United States for Foreign Proceedings II.C-4 a. Scope of Discovery in Civil Proceedings II.C-4 i. Unilateral Means of Evidence Gathering II.C-5 ii. Challenges to Such Requests II.C-6 iii. Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters II.C-7 v. Letters Rogatory II.C-7 v. Mutual Legal Assis	b. Proof of Foreign Law	II.B-24
a. Recognition of Foreign Judgments II.B-25 i. Governed by State Law II.B-25 i.1. State Statutes Based on Uniform Acts II.B-25 i.1. State Statutes Based on Uniform Acts II.B-26 i.1.a. 1962 Uniform Foreign Money-Judgments Recognition Act II.B-26 i.1.b. 2005 Uniform Foreign-Country Money Judgments Recognition Act II.B-27 i.1.c. Procedure for Recognition of Foreign Judgments II.B-27 i. Federal Law on Recognition in Defamation Suits II.B-28 b. Enforcement by U.S. Courts of Judgments by Courts of Foreign States II.B-29 c. Enforcement of Arbitral Awards II.C-1 1. Service of Process Abroad II.C-1 a. Methods of Service II.C-1 i. Corporations II.C-2 ii. Foreign States or State Agencies II.C-3 b. Service in the United States for Foreign Proceedings II.C-4 a. Scope of Discovery in Civil Proceedings II.C-4 i. Unilateral Means of Evidence Gathering II.C-5 ii. Challenges to Such Requests II.C-6 iii. Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters II.C-7 v. Letters Rogatory II.C-7 v. Mutual Legal Assis	9. Recognition and Enforcement of Foreign Judgments	II.B-25
i. Governed by State Law II.B-25 i.1. State Statutes Based on Uniform Acts II.B-25 i.1.a. 1962 Uniform Foreign Money-Judgments Recognition Act II.B-26 i.1.b. 2005 Uniform Foreign-Country Money Judgments Recognition Act II.B-27 i.1.b. 2005 Uniform Foreign-Country Money Judgments Recognition Act II.B-27 i.1.c. Procedure for Recognition of Foreign Judgments II.B-27 i. Federal Law on Recognition in Defamation Suits II.B-28 b. Enforcement by U.S. Courts of Judgments by Courts of Foreign States II.B-29 c. Enforcement of Arbitral Awards II.C-1 1. Service of Process Abroad II.C-1 a. Methods of Service II.C-1 i. Individuals II.C-2 ii. Corporations II.C-3 b. Service in the United States for Foreign Proceedings II.C-4 2. Taking of Evidence Abroad II.C-4 a. Scope of Discovery in Civil Proceedings II.C-4 b. Mechanisms for Discovery II.C-5 ii. Challenges to Such Requests II.C-6 iii. Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters II.C-7 v. Letters Rogatory II.C-8 V.1.MLATs and Letters Rogatory Compared II	a. Recognition of Foreign Judgments	II.B-25
i.1. State Statutes Based on Uniform Acts II.B-25 i.1.a. 1962 Uniform Foreign Money-Judgments Recognition Act II.B-26 i.1.b. 2005 Uniform Foreign-Country Money Judgments Recognition Act II.B-27 ii.1.c. Procedure for Recognition of Foreign Judgments II.B-27 ii. Federal Law on Recognition in Defamation Suits II.B-27 ii. Federal Law on Recognition in Defamation Suits II.B-28 b. Enforcement by U.S. Courts of Judgments by Courts of Foreign States II.B-29 c. Enforcement of Arbitral Awards II.C-1 1. Service of Process Abroad II.C-1 a. Methods of Service II.C-1 i. Individuals II.C-2 ii. Corporations II.C-3 iii. Foreign States or State Agencies II.C-3 b. Service in the United States for Foreign Proceedings II.C-4 2. Taking of Evidence Abroad II.C-4 4. Scope of Discovery in Civil Proceedings II.C-4 i. Unilateral Means of Evidence Gathering II.C-5 ii. Challenges to Such Requests II.C-6 iii. Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters II.C-7 v. Letters Rogatory II.C-8 v. Mutual Legal Assistance	i. Governed by State Law	II.B-25
i.1.a. 1962 Uniform Foreign Money-Judgments Recognition Act II.B-26 i.1.b. 2005 Uniform Foreign-Country Money Judgments Recognition Act II.B-27 i.1.c. Procedure for Recognition of Foreign Judgments II.B-27 i. Federal Law on Recognition in Defamation Suits II.B-28 b. Enforcement by U.S. Courts of Judgments by Courts of Foreign States II.B-29 c. Enforcement of Arbitral Awards II.B-29 c. Enforcement of Arbitral Awards II.C-1 1. Service of Process Abroad II.C-1 i. Individuals II.C-1 i. Individuals II.C-2 ii. Corporations II.C-3 iii. Foreign States or State Agencies II.C-3 b. Service in the United States for Foreign Proceedings II.C-4 2. Taking of Evidence Abroad II.C-4 b. Mechanisms for Discovery II.C-4 i. Unilateral Means of Evidence Gathering II.C-5 ii. Challenges to Such Requests II.C-6 iii. Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters II.C-6 iii. Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters II.C-7 iv. Letters Rogatory II.C-8 v. Mutual Legal Assistance Treaties, or MLATS II.C-8 v. Mutual Legal Assistance Treaties, or MLATS II.C-9	i.1. State Statutes Based on Uniform Acts	II.B-25
i.1.b. 2005 Uniform Foreign-Country Money Judgments Recognition Act II.B-27 i.1.c. Procedure for Recognition of Foreign Judgments II.B-27 ii. Federal Law on Recognition in Defamation Suits II.B-28 b. Enforcement by U.S. Courts of Judgments by Courts of Foreign States II.B-29 c. Enforcement of Arbitral Awards II.B-29 c. Discovery and Other Procedures II.C-1 1. Service of Process Abroad II.C-1 a. Methods of Service II.C-1 i. Individuals II.C-2 ii. Corporations II.C-3 iii. Foreign States or State Agencies II.C-3 b. Service in the United States for Foreign Proceedings II.C-4 2. Taking of Evidence Abroad II.C-4 b. Mechanisms for Discovery II.C-4 i. Challenges to Such Requests II.C-5 ii. Challenges to Such Requests II.C-6 iii. Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters V. Mutual Legal Assistance Treaties, or MLATs V.1. MLATs and Letters Rogatory Compared II.C-9	i.1.a. 1962 Uniform Foreign Money-Judgments Recognition Act	II.B-26
II.B-27 i.1.c. Procedure for Recognition of Foreign Judgments II.B-27 ii. Federal Law on Recognition in Defamation Suits II.B-28 b. Enforcement by U.S. Courts of Judgments by Courts of Foreign States II.B-29 c. Enforcement of Arbitral Awards II.B-29 c. Discovery and Other Procedures II.C-1 1. Service of Process Abroad II.C-1 a. Methods of Service II.C-1 i. Individuals II.C-2 ii. Corporations II.C-3 iii. Foreign States or State Agencies II.C-3 b. Service in the United States for Foreign Proceedings II.C-4 a. Scope of Discovery in Civil Proceedings II.C-4 b. Mechanisms for Discovery II.C-4 i. Unilateral Means of Evidence Gathering II.C-5 ii. Challenges to Such Requests II.C-6 iii. Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters II.C-7 v. Mutual Legal Assistance Treaties, or MLATs II.C-8 v.1. MLATs and Letters Rogatory Compared II.C-9		
Interview II.B-27 ii. Federal Law on Recognition in Defamation Suits II.B-28 b. Enforcement by U.S. Courts of Judgments by Courts of Foreign States II.B-29 c. Enforcement of Arbitral Awards II.B-29 c. Discovery and Other Procedures II.C-1 1. Service of Process Abroad II.C-1 a. Methods of Service II.C-1 i. Individuals II.C-2 ii. Corporations II.C-3 iii. Foreign States or State Agencies II.C-3 b. Service in the United States for Foreign Proceedings II.C-4 2. Taking of Evidence Abroad II.C-4 a. Scope of Discovery in Civil Proceedings II.C-4 b. Mechanisms for Discovery II.C-5 ii. Challenges to Such Requests II.C-6 iii. Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters Matters II.C-7 v. Mutual Legal Assistance Treaties, or MLATs II.C-8 v.1. MLATs and Letters Rogatory Compared II.C-9		
ii. Federal Law on Recognition in Defamation Suits II.B-28 b. Enforcement by U.S. Courts of Judgments by Courts of Foreign States II.B-29 c. Enforcement of Arbitral Awards II.B-29 c. Discovery and Other Procedures II.C-1 1. Service of Process Abroad II.C-1 a. Methods of Service II.C-1 i. Individuals II.C-2 ii. Corporations II.C-3 iii. Foreign States or State Agencies II.C-3 b. Service in the United States for Foreign Proceedings II.C-4 2. Taking of Evidence Abroad II.C-4 b. Mechanisms for Discovery II.C-4 i. Unilateral Means of Evidence Gathering II.C-5 ii. Challenges to Such Requests II.C-6 iii. Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters II.C-7 iv. Letters Rogatory II.C-8 v. Mutual Legal Assistance Treaties, or MLATs II.C-8 v.1. MLATs and Letters Rogatory Compared II.C-9	i.1.c. Procedure for Recognition of Foreign Judgments	II.B-27
b. Enforcement by U.S. Courts of Judgments by Courts of Foreign States II.B-29 c. Enforcement of Arbitral Awards II.B-29 C. Discovery and Other Procedures II.C-1 1. Service of Process Abroad II.C-1 a. Methods of Service II.C-1 i. Individuals II.C-2 ii. Corporations II.C-3 iii. Foreign States or State Agencies II.C-3 b. Service in the United States for Foreign Proceedings II.C-4 2. Taking of Evidence Abroad II.C-4 4. Scope of Discovery in Civil Proceedings II.C-4 b. Mechanisms for Discovery II.C-4 ii. Challenges to Such Requests II.C-6 iii. Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters II.C-7 iv. Letters Rogatory II.C-8 v. Mutual Legal Assistance Treaties, or MLATs II.C-9	ii. Federal Law on Recognition in Defamation Suits	II.B-28
c. Enforcement of Arbitral Awards II.B-29 C. Discovery and Other Procedures II.C-1 1. Service of Process Abroad II.C-1 a. Methods of Service II.C-1 i. Individuals II.C-2 ii. Corporations II.C-3 iii. Foreign States or State Agencies II.C-3 b. Service in the United States for Foreign Proceedings II.C-4 2. Taking of Evidence Abroad II.C-4 a. Scope of Discovery in Civil Proceedings II.C-4 b. Mechanisms for Discovery II.C-4 i. Unilateral Means of Evidence Gathering II.C-5 ii. Challenges to Such Requests II.C-6 iii. Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters II.C-7 iv. Letters Rogatory II.C-8 v. Mutual Legal Assistance Treaties, or MLATs II.C-9	b. Enforcement by U.S. Courts of Judgments by Courts of Foreign States	II.B-29
1. Service of Process Abroad II.C-1 a. Methods of Service II.C-1 i. Individuals II.C-2 ii. Corporations II.C-3 iii. Foreign States or State Agencies II.C-3 b. Service in the United States for Foreign Proceedings II.C-4 2. Taking of Evidence Abroad II.C-4 a. Scope of Discovery in Civil Proceedings II.C-4 b. Mechanisms for Discovery II.C-4 i. Unilateral Means of Evidence Gathering II.C-6 iii. Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters Matters II.C-7 iv. Letters Rogatory II.C-8 v. Mutual Legal Assistance Treaties, or MLATs II.C-8 v.1. MLATs and Letters Rogatory Compared II.C-9		
a. Methods of Service II.C-1 i. Individuals II.C-2 ii. Corporations II.C-3 iii. Foreign States or State Agencies II.C-3 b. Service in the United States for Foreign Proceedings II.C-4 2. Taking of Evidence Abroad II.C-4 a. Scope of Discovery in Civil Proceedings II.C-4 b. Mechanisms for Discovery II.C-4 i. Unilateral Means of Evidence Gathering II.C-5 ii. Challenges to Such Requests II.C-6 iii. Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters Matters II.C-7 iv. Letters Rogatory II.C-8 v. Mutual Legal Assistance Treaties, or MLATs II.C-8 v.1. MLATs and Letters Rogatory Compared II.C-9	C. Discovery and Other Procedures	II.C-1
a. Methods of Service II.C-1 i. Individuals II.C-2 ii. Corporations II.C-3 iii. Foreign States or State Agencies II.C-3 b. Service in the United States for Foreign Proceedings II.C-4 2. Taking of Evidence Abroad II.C-4 a. Scope of Discovery in Civil Proceedings II.C-4 b. Mechanisms for Discovery II.C-4 i. Unilateral Means of Evidence Gathering II.C-5 ii. Challenges to Such Requests II.C-6 iii. Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters Matters II.C-7 iv. Letters Rogatory II.C-8 v. Mutual Legal Assistance Treaties, or MLATs II.C-8 v.1. MLATs and Letters Rogatory Compared II.C-9	1. Service of Process Abroad	II.C-1
i. IndividualsII.C-2ii. CorporationsII.C-3iii. Foreign States or State AgenciesII.C-3b. Service in the United States for Foreign ProceedingsII.C-42. Taking of Evidence AbroadII.C-4a. Scope of Discovery in Civil ProceedingsII.C-4b. Mechanisms for DiscoveryII.C-4i. Unilateral Means of Evidence GatheringII.C-5ii. Challenges to Such RequestsII.C-6iii. Hague Convention on the Taking of Evidence Abroad in Civil or CommercialMattersII.C-7iv. Letters RogatoryII.C-8v. Mutual Legal Assistance Treaties, or MLATsII.C-8v.1. MLATs and Letters Rogatory ComparedII.C-9	a. Methods of Service	II.C-1
ii. CorporationsII.C-3iii. Foreign States or State AgenciesII.C-3b. Service in the United States for Foreign ProceedingsII.C-42. Taking of Evidence AbroadII.C-4a. Scope of Discovery in Civil ProceedingsII.C-4b. Mechanisms for DiscoveryII.C-4i. Unilateral Means of Evidence GatheringII.C-5ii. Challenges to Such RequestsII.C-6iii. Hague Convention on the Taking of Evidence Abroad in Civil or CommercialMattersII.C-7iv. Letters RogatoryII.C-8v. Mutual Legal Assistance Treaties, or MLATsII.C-8v.1. MLATs and Letters Rogatory ComparedII.C-9	i. Individuals	II.C-2
 b. Service in the United States for Foreign Proceedings	ii. Corporations	II.C-3
 b. Service in the United States for Foreign Proceedings	iii. Foreign States or State Agencies	II.C-3
a. Scope of Discovery in Civil Proceedings II.C-4 b. Mechanisms for Discovery II.C-4 i. Unilateral Means of Evidence Gathering II.C-5 ii. Challenges to Such Requests II.C-6 iii. Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters II.C-7 iv. Letters Rogatory II.C-8 v. Mutual Legal Assistance Treaties, or MLATs II.C-8 v.1. MLATs and Letters Rogatory Compared II.C-9	b. Service in the United States for Foreign Proceedings	II.C-4
a. Scope of Discovery in Civil Proceedings II.C-4 b. Mechanisms for Discovery II.C-4 i. Unilateral Means of Evidence Gathering II.C-5 ii. Challenges to Such Requests II.C-6 iii. Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters II.C-7 iv. Letters Rogatory II.C-8 v. Mutual Legal Assistance Treaties, or MLATs II.C-8 v.1. MLATs and Letters Rogatory Compared II.C-9	2. Taking of Evidence Abroad	II.C-4
b. Mechanisms for Discovery II.C-4 i. Unilateral Means of Evidence Gathering II.C-5 ii. Challenges to Such Requests II.C-6 iii. Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters II.C-7 iv. Letters Rogatory II.C-8 v. Mutual Legal Assistance Treaties, or MLATs II.C-8 v.1. MLATs and Letters Rogatory Compared II.C-9	a. Scope of Discovery in Civil Proceedings	II.C-4
ii. Challenges to Such Requests II.C-6 iii. Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters II.C-7 iv. Letters Rogatory II.C-8 v. Mutual Legal Assistance Treaties, or MLATs II.C-8 v.1. MLATs and Letters Rogatory Compared II.C-9	b. Mechanisms for Discovery	II.C-4
ii. Challenges to Such Requests II.C-6 iii. Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters II.C-7 iv. Letters Rogatory II.C-8 v. Mutual Legal Assistance Treaties, or MLATs II.C-8 v.1. MLATs and Letters Rogatory Compared II.C-9	i. Unilateral Means of Evidence Gathering	II.C-5
Matters II.C-7 iv. Letters Rogatory II.C-8 v. Mutual Legal Assistance Treaties, or MLATs II.C-8 v.1. MLATs and Letters Rogatory Compared II.C-9	ii. Challenges to Such Requests	II.C-6
Matters II.C-7 iv. Letters Rogatory II.C-8 v. Mutual Legal Assistance Treaties, or MLATs II.C-8 v.1. MLATs and Letters Rogatory Compared II.C-9	iii. Hague Convention on the Taking of Evidence Abroad in Civil or Cor	nmercial
iv. Letters Rogatory II.C-8 v. Mutual Legal Assistance Treaties, or MLATs II.C-8 v.1. MLATs and Letters Rogatory Compared II.C-9		
v. Mutual Legal Assistance Treaties, or MLATs II.C-8 v.1. MLATs and Letters Rogatory Compared II.C-9	iv. Letters Rogatory	II.C-8
v.1. MLATs and Letters Rogatory Compared II.C-9	v. Mutual Legal Assistance Treaties, or MLATs	II.C-8
v.2. Scope of Assistance II.C-10	v.1. MLATs and Letters Rogatory Compared	II.C-9
	v.2. Scope of Assistance	II.C-10

v.3. Individuals' Efforts to Use MLATs	II.C-10
v.3.a. Treaties	II.C-10
v.3.b. Case Law	II.C-11
3. Discovery Requests from Non-U.S. Courts	II.C-11
a. Applicable Law	II.C-12
b. Procedure	II.C-12
III. International Law in U.S. Courts: Specific Instances	III.A-1
A. International Arbitration	III.A-1
1. International Arbitration Defined	III.A-1
2. How International Arbitration Matters Arise in U.S. Courts	III.A-2
3. Legal Framework: The Federal Arbitration Act	III A-3
a. Chapter 1 of the Federal Arbitration Act: General Provisions Relating to 1	
Domestic and International Arbitrations	
b. Chapters 2 and 3 of the Federal Arbitration Act: Implementing the Conve	
i. Chapter 2: Implementing the New York Convention	III.A-4
ii. Chapter 3: Implementing the Panama Convention	III.A-5
iii. When Both Conventions Appear Applicable	III.A-5
iv. Chapters 2 and 3: Federal Jurisdiction	
v. Chapters 2 and 3: Removal	III.A-5
c. If Chapters 2 or 3 Conflict With Chapter 1	III.A-5
4. Distinguishing Domestic from International Arbitration Awards	ШАС
4. Distinguishing Domestic from international Arbitration Awards	III.A-0
 a. Common Requests to U.S. Courts by Parties to International Arbitration. i. Request for Order to Compel or to Stay International Arbitration. 	
ii. Legal Framework Pertaining to Such Requests	
iii. Commonly Raised Issues	ΠΙ.Α-7 ΙΠ Δ_8
iii. Commonly Raised Issuesb. Arbitration Clause Severable from Underlying Contract: <i>Prima Paint</i>	
c. Authority to Decide If Parties Agreed to Arbitrate	
i. First Options	
ii. The Arbitrability Decision and Investor-State Arbitrations	III.A 10
iii. The "Pro-Arbitration" Presumption: <i>Mitsubishi Motors</i>	
1	
5. Request for Injunctive or Other Provisional Measures	III.A-11
a. When Provisional Measures May Be Sought	III.A-12
b. Court-Ordered Provisional Measures	III.A-12
c. Standards for Judicial Relief: Federal Rules of Civil Procedure	III.A-13
i. Application of Rule 65: Injunctions and Restraining Orders	
ii. Application of Rule 64: Seizing a Person or Property	
iii. Prehearing Discovery	III.A-14

d. Anti-suit Injunctions	III.A-14
e. Judicial Enforcement of Arbitral Interim Measures	III.A-15
f. Finality of Arbitral Awards for Interim Relief	III.A-15
6. Request for Discovery Order	III.A-15
a. Subpoenas Seeking Documents and Witnesses for U.SSited Arbitrations	III.A-16
b. Extent of Judicial Power under Section 7 of FAA	
c. Requests for Documents and Testimony to Aid Foreign Arbitrations	III.A-18
d. Extent of Application of 28 U.S.C. § 1782 to Foreign Arbitrations	
i. Supreme Court <i>Dicta</i>	
ii. Lower Courts	III.A-19
7. Request to Confirm, Recognize, Enforce, or Vacate Arbitral Awards	III.A-20
a. Legal Framework Applicable to Applications to Confirm or Recognize Interr	
Arbitral Awards	
i. Timing of Requests to Confirm an International Arbitral Award	III.A-22
ii. Procedures for Applications to Confirm an International Arbitral Award	III.A-22
b. Grounds for Refusing to Enforce an Award	
i. Grounds Specified in the New York and Panama Conventions	III.A-23
ii. Application of Grounds Enumerated in Conventions	
iii. Frequently Invoked Grounds	III.A-24
iii.1. Contrary to Public Policy	III.A-24
iii.2. Insufficient Opportunity to Present a Case or Defense	III.A-25
iv. Other Grounds	III.A-25
c. Legal Framework Pertinent to Applications to Vacate International Arbitral A	Awards
i. Time Limit for Vacating an Award under FAA Chapter 1	
d. Grounds for Vacating an Award under FAA Chapter 1	III.A-26
i. Grounds Enumerated in Section 10 of the FAA	III.A-26
ii. Grounds Enumerated in Section 11 of the FAA	III.A-26
iii. Potential Unenumerated Ground: Manifest Disregard of the Law	
iii.1. Emergence of the "Manifest Disregard" Ground: Dictum in Wilko	
iii.2. Possible Rejection of "Manifest Disregard" Ground: Hall Street	
iii.3. Current Status of This Ground: Uncertain	III.A-28
iii.4. "Manifest Disregard" and International Arbitration Awards	III.A-28
8. Additional Arbitration Research Resources	III.A-29
a. Arbitration Restatement Project	III.A-29
b. Print Resources	III.A-29
c. Online Resources	III.A-30
B. International Law Pertaining to Families and Children	III.B-1
1. Overview	III.B-1
2. Cross-Border Abduction of Children	III.B-4

 Civil Aspects of Cross-Border Child Abduction Applicability in the United States of the 1980 Hague Child Abductio 	III.B-5 on Convention
III.B-6	
i. U.S. Reservations to Ratification of the Convention: Translation	and Fees
III.B-6	
ii. U.S. Implementing Legislation	
iii. U.S. Implementing Regulations	III.B-7
b. How Suits under the Hague Abduction Convention Arise in U.S. Co	
c. Prompt Adjudication Requirement and Purposes of Hague Abduction	
Litigation	III.B-8
i. Convention Provisions	III.B-8
ii. Implementing Legislation Provisions	III.B-9
iii. Case Law	III.B-10
d. Interpretation of Hague Abduction Convention Provisions	
i. Supreme Court's Interpretive Methodology	
i.1. Text of the Convention	III.B-12
i.2. Views of the U.S. Department of State	III.B-12
i.3. Case Law in Other Countries, Negotiating History, Expert C	Commentary, and
the Pérez-Vera Report on the Convention	
i.3.a. Decisions of Foreign Courts	
i.3.b. Negotiating History	
i.3.c. Expert Commentary	III.B-14
i.3.d. Pérez-Vera Explanatory Report	III.B-15
i.4. Objects and Purposes of the Convention	III.B-16
e. Left-Behind Parent's Petition	
f. Concurrent Federal and State Jurisdiction	
i. Federal Civil Actions for Access, or Visitation, Rights: Circuit Sp	
g. Petitioner's Prima Facie Case for Return	
i. First Element of Prima Facie Case: Child's Habitual Residence	III.B-20
i.1. Child	
i.2. Habitual Residence	III.B-21
i.2.a. Federal Courts' Different Approaches to Habitual Res	
ii. Second Element of Prima Facie Case: Breach of Custody Rights	III.B-22
ii.1. Rights of Custody	
ii 1 a. Determining Foreign Law	III.B 22 III.B-23
ii.1.a. Determining Foreign Law ii.2. <i>Ne Exeat</i> Orders and "Rights of Custody"	III.B 23
ii.2.a. Supreme Court in <i>Abbott: Ne Exeat</i> Order Requiring	Both Parents'
Consent Is a "Right of Custody"	III B-24
Consent Is a "Right of Custody"	III.B 24
iii. Third Element of Prima Facie Case: Exercise of Custody Rights	III.D 21
h. Defenses: Exceptions to Return	
i. Narrow Construction of Exceptions	III.D ² 20 III R ₋ 27
ii. Exception Based on Petitioner's Consent or Acquiescence	III.D-27 III R_77
iii. Exception Based on Child's Objection	III.D-28

iv. Exception Based on Grave Risk of Harm	<u>III.B-29</u>
iv.1. Defining "Grave Risk" and "Intolerable Situation"	III.B-30
iv.2. Federal Adjudication of Grave Risk Exception	III.B-30
iv.3. Whether Proof of Harm to Parent Satisfies Grave Risk Exception	III.B-31
iv.4. Additional Resources on the Grave Risk Exception	
v. Exception Based on Contravention of Fundamental Human Rights Princip	
	III.B-32
i. Nature and Timing of the Return Remedy	III.B-33
i. Commencement of Proceedings	III.B-34
ii. No Equitable Tolling	III.B-34
iii. Whether Child Is Settled in New Environment	III.B-34
iii.1. Immigration Status	III.B-35
iii.2. Discretion of the Court	III.B-36
j. Final Civil Remedy Considerations	III.B-36
i. Fees in Civil Remedy Proceedings	III.B-36
ii. Appeal of District Court Order: Question of Mootness	III.B-36
4. Criminal Aspects of Cross-Border Child Abduction: Federal Prosecution	III.B-37
a. Interrelation of the United States' Civil and Criminal Laws on Child Abduction	
	III D 27
b. Text of the International Parental Kidnapping Crime Act	
c. Elements of the Parental Kidnapping Offense	III.B-40
i. "Child"	III.B-40
i. "Child" ii. Removal or Retention of Child	III.B-40
iii. Intent to Obstruct Parental Rights	III.B-41
iii.1. Requisite Intent	III.B-41
iii.2. "Parental Rights"	III.B-42
iv. Rights-Holder Other Than a Parent	III.B-42
d. Defenses	III.B-42
d. Defenses i. Enumerated Affirmative Defenses	III.B-42
i.1. Domestic Violence	III.B-43
ii. Other Defenses	
ii.1. Rejected Defense Impugning the Left-Behind Parent	III.B-44
ii.2. Rejected Defenses Based on the U.S. Constitution	III.B-44
ii.2.a. Foreign Commerce Clause	III.B-44
ii.2.b. Free Exercise of Religion	III.B-45
ii.2.c. Equal Protection	III.B-45
e. Penalties	
5. Research Resources	III.B-46
a. Print Resources	III.B-46
b. Online Resources	III.B-46
i. State Department's Office of Children's Issues	III.B-46
ii. Hague Conference on Private International Law	III.B-47
C. International Sale of Goods	III.C-1

Benchbook on International Law Detailed Table of Contents (2014)

1. U.N. Convention on Contracts for the International Sale of Goods	III.C-2
a. Status of the Convention As U.S. Federal Law	III.C-3
b. Organization of the Convention	III.C-3
c. Sphere of Application of the Convention	III.C-4
i. Place of Business	III.C-5
ii. Contracts for the Sale of Goods	III.C-5
ii.1. Convention Text	III.C-5
ii.1.a. Case Law Interpreting the Convention's Application to "Good	
ii.1.b. Consumer/"Personal Use"	
ii.1.c. "Auction"	
ii.1.c. "Auction" iii. Contracts for Supply of Goods vs. Mixed Goods-Labor Contracts	III.C-8
iii.1. Contracts for Supply of Goods to be Manufactured or Produced	
iii.2. Mixed Contracts: Supply of Labor or Other Services As Well As C	
iii 3 Mixed Contracts and Computer Software	
iii.3. Mixed Contracts and Computer Software	III.C -9
iv. Designation of Applicable Law within the Agreement	III.C-10
iv.1. Excluding Application of the Conventioniv.2. Derogating or Modifying the Effect of the Convention	III.C-10
d. Interpretive Issues	
i. Article 7: Interpretation of the Convention's Text and Gaps	111.C-11
i.1. International Character of the Convention and Need to Promote Uni	
i 2. Deletion of the Convention to the Uniform Commencial Code	$\frac{111.C-12}{111.C-12}$
i.2. Relation of the Convention to the Uniform Commercial Code	III.C-12
i.3. Observance of Good Faith in International Trade	III.C-13
i.4. Treatment of Matters Not Expressly Discussed in the Convention	
i.4.a. General Principles in the Convention's Text	III.C-15
i.4.b. Informality: General Principle That Agreement Need Not Be i	
	III.C-15
i.4.c. Exception: Opting Out of the Informality Principle	
ii. UNIDROIT Principles	III.C-16
iii. Article 8: Interpretation of the Parties' Conduct	
iii.1. Absence of a Parol Evidence Rule	III.C-18
iii.2. Subjective Determination of Parties' Intent	III.C-18
iii.3. Objective Determination of Parties' Intent	III.C-19
iv. Article 9: Usage As a Circumstances Relevant to Interpretation	
iv.1. Usages Agreed to and Practices Established between Themselves	
iv.2. International Trade Usages	III.C-20
2. Researching International Sales Law	III.C-21
a. Print Resources	III.C-21
b. Online Resources	III.C-21
i. UNCITRAL ii. CISG-Advisory Council	III.C-21
ii. CISG-Advisory Council	III.C-22
iii. Pace Law School Database	III.C-22

iv. Autonomous Network of CISG Websites	III.C-22
v. UNILEX	III.C-23
vi. Other Sources	III.C-23
D. International Air Transportation	III.D-1
1. History of International Aviation Law	III.D-1
2. Treaties Applicable in U.S. Courts	III.D-2
3. Key Treaties and U.S. Principle of Self-Execution	III.D-4
4. Inter-Carrier Agreements	III.D-4
5. Scope of Application of Treaties	III.D-5
6. Determining the Applicable Law	III.D-6
a. Preliminary Issues	III.D-6
b. International Round-Trip Flights	III.D-6
i. International Round Trips Beginning and Ending in the United States	
ii. International Round Trips Beginning and Ending Outside the United	
c. One-Way International Air Carriage	
i. Either the Place of Departure or the Place of Destination is in the Unit	ed States
_	III.D-7
ii. Neither the Place of Departure nor the Place of Destination is in the U	
=	
1 June Constant According to	
d. Inter-Carrier Agreements	III.D-8
i. Claims Governed by the Montreal Convention	III.D-9
ii. Claims Governed by the Warsaw Convention and Subsequent Amend	
	III.D-9
iii. Claims Not Covered by Any Treaty	III.D-9
7. Federal Jurisdiction	III.D-9
a. Federal Question Jurisdiction	III.D-9
b. Removal Jurisdiction	III.D-10
c. Removal Jurisdiction and Complete Preemption	III.D-10
8. Venue	III.D-11
9. Types of Claims Covered by Treaties	III D-12
a. Death or Bodily Injury of a Passenger	III.D 12 III D_12
b. Destruction or Loss of or Damage to Checked or Unchecked Baggage	
 c. Destruction or Loss of or Damage to Cargo d. Damage Caused by Delay in the Carriage of Passengers, Baggage or Cargo 	go III.D-12
10. Limitation of Liability	III.D-13
~	

a. "Special Drawing Rights"	III.D-13
b. Periodic Adjustment for Inflation	III.D-13
c. Limitation of Liability for Death or Injury of Passengers	III.D-14
d. Limitation of Liability for Claims Involving Baggage, Cargo, or Delay	III.D-14
e. No Punitive Damages	III.D-14
f. Prior Changes in Liability Limitations	III.D-15
11. Other Defenses a. Contributory Negligence b. Estoppel	III.D-15
a. Contributory Negligence	III.D-15
0. Lstopper	
c. Statute of Limitations	III.D-15
d. Federal Preemption	III.D-15
e. Sovereign Immunity	III.D-16
12. Treaty Interpretation	III.D-16
E. Human Rights	III.E-I
1. Alien Tort Statute	III.E-2
a. Overview of Alien Tort Statute Litigation	III.E-2
b. Elements of an Alien Tort Statute Claim	III.E-3
i. Alien Plaintiff	III.E-3
i.1. Maintenance of Alien Tort Statute and Torture Victim Protection	
	III.E-3
ii. Tort	III.E-4
ii.1. Violation of a Treaty of the United States	III.E-5
ii.2. Violation of the Law of Nations	III.E-5
ii.3. Supreme Court's <i>Sosa</i> Framework for Determination	
ii.3.a. Accepted by Civilized World	
ii.3.b. Defined with Specificity	
ii.3.c. Practical Consequences	III.E-0 III.E-7
ii.4. Supreme Court's Application of Framework in <i>Sosa</i>	
ii.5. Post-Sosa Rulings in Lower Courts on Actionable Claims	
ii.5.a. Ruled Actionable	
ii.5.b. Division of Authority on Actionability	III.Е-о III Е О
ii.5.c. Ruled Not Actionable	
iii. Proper Defendant	ШЕ 10
iii.1. Natural Persons	III.L-10
iii 2 a Organizations	
iii.2.a. Organizations	$\frac{111.L-11}{111 E 12}$
iii.2.b. Sovereign States	III.E-12 III F_12
iii.2.c. Corporations	$\frac{111.12-12}{111 \text{ F}_{-}12}$
iii.3.a. International Law Torts Applicable to State and Nonstate	
iii.3.b. International Law Torts Requiring State Action	III.E-13
miero, meriadona Lair Toris requiring State Action	

iii.3.c. Division of Authority on Applicability to Private Actors	III.E-13
iii.3.d. Potential Liability of Private Actors for Torts Requiring Stat	e Action
•	III.E-14
iv. Defendant's Acts Constitute an Actionable Mode of Liability	III.E-14
iv.1. Dispute over Consultation of International or Domestic Law	
c. Defenses	
i. Presumption against Extraterritoriality	III.E-16
i.1. Reasoning in <i>Kiobel</i>	III.E-16
i.2. Lower Court Rulings Post-Kiobel	III.E-18
ii. Immunities	III.E-19
ii.1. Foreign States and the Foreign Sovereign Immunities Act	III.E-19
ii.2. Foreign Officials and Common Law Immunities	III.E-19
ii.2.a. Foreign Official's Common Law Immunities	III.E-19
ii.2.b. Waiver	
iii. Act of State	III.E-20
iii.1. Degree of Consensus	III.E-21
iii.2. Foreign Relations Implications	III.E-21
iii.3. Existence of Foreign Government	III.E-21
iv. Political Question	III.E-22
iv. Political Question iv.1. Textual Commitment to Political Branches	III.E-22
iv.2. Ability of Court to Identify Standards by Which to Rule	III.E-23
iv.3. Respect for the Political Branches	
v. Forum Non Conveniens	III.E-23
vi. Time Bar	III.E-24
vii. Exhaustion of Remedies	III.E-24
viii. Comity	III.E-25
d. Damages and Other Remedies	III.E-25
 2. Torture Victim Protection Act a. Overview of Torture Victim Protection Act Litigation i. Overview of Defenses 	III.E-26
a. Overview of Torture Victim Protection Act Litigation	III.E-27
i. Overview of Defenses	III.E-27
i.1. Extraterritoriality Not a Defense	III.E-28
b. Elements of a Torture Victim Protection Act Claim	III.E-28
i. Proper Plaintiff	III.E-28
1.1. Human Victim	III.E-28
i.2. Victim's Legal Representative / Wrongful-Death Claimant	III.E-29
i.3. Any Nationality	
i.4. Maintenance of Alien Tort Statute and Torture Victim Protection A	ct Claims
	III.E-29
ii. Conduct Alleged	III.E-30
ii.1. Torture	III.E-30
ii.2. Extrajudicial Killing	III.E-31
iii. Proper Defendant	III.E-32
iii.1. "Individual": Natural Person Only	III.E-32
iii.1.a. Foreign States	III.E-32
iii.2. Actual or Apparent Authority or Color of Law	III.E-32

iv. Defendant Subjected Victim to Torture or Extrajudicial Killing	III.E-33
c. Defenses	
i. Nonretroactivity	III.E-34
ii. Act of State	
iii. Exhaustion of Local Remedies	III.E-34
iv. Explicit Time Bar	III.E-35
d. Damages and Other Remedies	III.E-35
3. Human Trafficking	III E-36
a. Overview of Statutory Law	III.E-36
i. Developments Leading to Adoption of the Trafficking Victims Protection	Act
1. Developments Leading to Adoption of the Tranteking Vietnis Protection A	III.E-37
ii. Relation between the Trafficking Victims Protection Act and International	Legal
Instruments	
b. The 2000 Trafficking Protocol	III.E-39
c. Trafficking Defined	III.E-40
d. Reservations Accompanying U.S. Ratification of the Trafficking Protocol	III.E-40
i. Jurisdiction	
ii. Federalism	III.E-41
e. Elements of the Treaty Implemented by U.S. Law and Policy	III.E-41
i. General Protection of Victims	III.E-42
ii. Immigration Measures	III.E-43
iii. Prosecution of Traffickers: Criminal Prohibitions and Definitions	III.E-44
iv. Monetary Remedies	
v. Civil Remedies and Restitution	III.E-45
vi. Federal Civil Actions under Chapter 77	III.E-46
vii. Extraterritorial Jurisdiction	
f. Common Affirmative Defenses	III.E-46
i. Limitations Period Defense	III.E-46
ii. Constitutional Overbreadth Defense	III.E-46
iii. Timing of Conduct: Pre-Enactment Activity Defense	III.E-47
iv. Status of the Accused: Diplomatic Immunity Defense	III.E-47
v. "No Force, Fraud, or Coercion" Defense vi. Status of Alleged Victim: Family Member Defense	III.E-47
vi. Status of Alleged Victim: Family Member Defense	III.E-47
vii. Cultural Defense	III.E-48
viii. Immigration Status of Alleged Victim: Lack of Standing	III.E-48
ix. Immigration Status of Alleged Victim: Immigration "Fraud"	III.E-48
x. Defense of Consent xi. Defense Based on Perceived Age of Alleged Victim xii. "Not Slavery" Defense	III.E-48
xi. Defense Based on Perceived Age of Alleged Victim	III.E-48
xii. "Not Slavery" Defense	III.E-49
xii. "Not Slavery" Defense xiii. Independent Contractor/Lack of Agency Defense xiy. Payment of Legal Wages Defense	III.E-49
xiv. I dyment of Legal wages Defense	
xv. Conclusion	III.E-49
A Non refoulament or Nonreturn	
4. <i>Non-refoulement</i> , or Nonreturn a. History and Scope of <i>Non-refoulement</i> Principle	E-50
a. This of y and scope of Non-rejourement Filliciple	

b. Pertinent Treaty Provisions Binding the United States	III.E-51
i. Protocol Relating to the Status of Refugees	
ii. Convention Against Torture	III.E-52
ii. Convention Against Torture iii. International Covenant on Civil and Political Rights	III.E-53
c. Customary International Law and Non-refoulement	III.E-53
d. <i>Non-refoulement</i> in U.S. Litigation	III.E-54
d. <i>Non-refoulement</i> in U.S. Litigationi. <i>Non-Refoulement</i> in Processes of Deportation and Removal	III.E-54
i.1. Withholding of Removal Under the Refugee Act of 1980	III.E-54
i.2. Withholding of Removal Under FARRA, the Foreign Affairs Ret	
Restructuring Act of 1998 (CAT Withholding)	
i.2.a. Overall Procedure	
i.2.b. Diplomatic Assurances	III.E-57
i.3. Deferral of Removal Under the Foreign Affairs Reform and Rest	ructuring Act
of 1998	
i.3.a. Overview	III E-58
i.3.b. Diplomatic Assurances	III E-58
ii. <i>Non-refoulement</i> in the Context of Extradition	III.E 50
iii. <i>Non-Refoulement</i> in Other Detention Contexts	III.E 59
III. How Rejourchien III Ouler Detention Contexts	
F. Criminal Justice	IILF-1
1. Benchbook Sections related to Criminal Justice	III.F-1
2. Federal Criminal Statutes with Extraterritorial Reach	III.F-2
3. International Treaties Concerning Criminal Justice	III.F-3
4. Conclusion	III.F-4
G. Environment	III.G-1
1. Domestic Law and Jurisprudence	III.G-1
a. Relevant U.S. Statutory Framework	III.G-1
a. Relevant U.S. Statutory Frameworkb. Key Legal Issues in <i>Massachusetts v. EPA</i>	III.G-3
i. Standing after Massachusetts v. EPA	III.G-3
 i. Standing after <i>Massachusetts v. EPA</i> ii. Substantive Interpretation of General Environmental Provisions in <i>Ma</i> 	issachusetts
v. EPA	III.G-4
v. EPA c. Other Types of Regulatory Actions	III.G-5
i. Suits to Compel Government Action	III.G-5
ii. Suits to Stop Government Action	III.G-6
d. Public Nuisance Suits Regarding Climate Change, and American Electric	Power Co. v
Connecticut	
2. Treaties and Other International Agreements	III.G-7
a. U.N. Framework Convention on Climate Change	III G-7
b. Kyoto Protocol to the U.N. Framework Convention on Climate Change	
o. Rysto i rotocor to the o.r.t. i rane work convention on chinate change	

c. Copenhagen Accord	III.G-9
d. Conclusion	III.G-9
IV. Research and Interpretive Resources	IV.A-1
A. Judicial Interpretation of International or Foreign Instruments	IV.A-1
1 Vienna Convention on the Law of Treaties	IV A-1
 Vienna Convention on the Law of Treaties a. Background on the Vienna Convention on the Law of Treaties 	IV.A-1
b. Status of the Vienna Convention on the Law of Treaties within the United	States
c. Key Provisions on Interpretation in the Vienna Convention on the Law of	Treaties
	IV.A-3
i. Article 31: General Rule of Interpretation ii. Article 32: Supplementary Means of Interpretation	IV.A-3
ii. Article 32: Supplementary Means of Interpretation	IV.A-3
iii. Article 33: Interpretation of Treaties Authenticated in Two or More L	anguages
iv. Judicial Reliance on Interpretive Provisions of the Vienna Convention	n on Treaties
-	
B. Research Resources	IV.B-1
1. Restatements and Other Print Resources	IV.B-1
a. Restatements	IV.B-1
i. Foreign Relations Restatement	IV.B-1
ii. Arbitration Restatement Project	IV.B-2
b. Additional Print Resources	
2. Online Databases	IV.B-2
a. Databases Maintained by the United Nations	IV.B-2
b. U.S. Department of State Digest of U.S. Practice	IV.B-3
c. Comprehensive Databases	IV.B-3
 d. Databases Organized by Country or Region e. Databases on Regional or International Courts or Tribunals 	IV.B-4
e. Databases on Regional or International Courts or Tribunals	IV.B-5
f. Databases on Specific Topics	IV.B-6
V. Contributors	V-1
VI. Acknowledgments	VI-1
VII. Index and Tables	
A. Table of Treaties and Other International Instruments	
B. Table of Judicial Decisions	VII-5

1. International Courts	VII-5
a. International Court of Justice	VII-5
2. National Counts	VIII E
2. National Courts	VII-5
a. United States	VII-5
i. U.S. Supreme Court ii. U.S. Courts of Appeals	
iii. U.S. District Courts	VII-9
iv. U.S. Bankruptcy Courts	VII-10
b. Countries Other Than the United States	VII-10
i. Austria	VII-10
ii. Canada	VII-10
iii. Germany	VII-10
iv. Italy	VII-10
v. Switzerland	VII-10
C. Table of National Laws, Legislative Materials, Jury Inst	
	VII-11
1 U.C. Constitution	X711 11
1. U.S. Constitution	V II-1 1
2 U.S. Statutes	VII-11
2. U.S. Statutes a. Statutes by Name	VII-11
b. Statutes by Citation	VII-12
o. Sundos of Churton	······································
3. U.S. Regulations	VII-13
4. U.S. Legislative Materials	VII-13
5. U.S. Jury Instructions	VII-13
6. Uniform Laws	VII-13
D. Table of Scholarly Writings	VII-14
1. Books	VII-14
2. Chapters	VII-15
2 Anticles	VII 16
3. Articles	v11-16
1 Other	VII 17
4. Other	v 11-1 /
E. Keyword Index	VII-18
	, II 10