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(2d ed. with Bowker, 2021); INTERNATIONAL HUMAN RIGHTS IN A NUTSHELL (5d ed. 2018, with Buergenthal, Shelton and Vazquez); Transnational and International Criminal Law (3d ed. 2018 with Luban, O'Sullivan and Jain); THE FOREIGN SOVEREIGN IMMUNITIES ACT: A GUIDE FOR JUDGES (Fed. Jud. Cntr. 2d ed. 2019); and INTERNATIONAL CRIMINAL LAW IN A NUTSHELL (West 3d ed. 2019). I thank the editors and their Board for inviting me to contribute to this volume honoring Bob Lutz.

Some of the most difficult problems—and therefore some of the most rewarding careers for problem solvers—can be found at the intersection of different disciplines or fields of professional endeavor. That is as true in the law as it is in other professions. It is also where Bob Lutz has spent much of his long and distinguished career: exploring substantive and procedural problems that arise where public and private interests meet along the border between domestic and international law and preparing his students to work in that challenging environment.

Bob has had the good fortune to work in many different capacities including being a law clerk to a federal judge, an attorney in private practice and in the federal government, a litigator and an arbitrator, an author and an editor, a government advisor, a highly respected law professor, and an expert and delegate to international conferences and meetings.

It has been my privilege to work with Bob in various contexts over the years, including the ABA Section of International Law under his leadership and through his participation in the North American Free Trade Agreement (NAFTA) Advisory Committee on Private Commercial Dispute Resolution,[1] the State Department's Advisory Committee on International Law, and his contributions to the preparation of the RESTATEMENT (FOURTH), FOREIGN RELATIONS LAW OF THE UNITED STATES.[2]

question whether PIL qualifies as a discrete subject or "field," as opposed to a shifting compilation of practical and legal challenges encountered in international practice, which, at best, may require a particular methodological approach. Without engaging in that debate, I would note that on some elements, there is a measure of agreement.

In its loosest, if not most common, conception, PIL encompasses the legal rules that apply in private transnational transactions—and particularly to the resolution of disputes arising from such transactions—where the parties, facts, or circumstances are connected with more than one domestic legal system.[3] Typically, the main question for a court is likely to be "what law applies to this situation?"

One might think, for example, of a cross-border commercial transaction between private parties in different countries, say a contract for the manufacture and sale of goods and the provision of services, where a dispute has arisen about performance of the contractual obligations. If either of the parties chooses to litigate the issues, the relevant rules will be typically determined under the domestic law that applies in the court resolving the dispute.

It could be, of course, that the conflicts rules of that jurisdiction will direct the court to look to and apply a relevant foreign law.[4] It could also be that the parties to the contract have agreed on which law will govern; if so, the question would be whether their choice of law is valid and enforceable in the jurisdiction considering the dispute. A separate but related inquiry may concern how the court is to determine the content and meaning of that foreign law and to apply it to the parties' dispute.

Another possibility is that each of the parties to the dispute has chosen to litigate in their respective domestic courts, resulting in "parallel" litigation. In cases with significant connections to more than one country, the relevant rules of domestic law will determine whether the courts of that country will have jurisdiction to address the dispute, whether or when one court might defer to the other jurisdiction, and where the eventual judgment(s) might, or might not, be recognized and enforced. Those issues are often complementary and are commonly designated as conflicts of jurisdiction and enforcement of judgments.

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3. *See generally* CHESHIRE ET AL., PRIVATE INTERNATIONAL LAW (Paul Torremans et al. eds., 15th ed. 2017). *Cf.* RESTATEMENT (SECOND) OF CONFLICT OF LAW § 1 (AM. LAW INST. 1971).

4. In some situations, the conflicts rules of the second jurisdiction may refer the court back to its own law, in a process known as *renvoi*. There may be mandatory rules of domestic law that apply no matter what the private parties have agreed, or that prevent application of the rules they

As the world has become more interconnected and cross-border activity is more common, such questions arise with increasing frequency. While they often concern commercial contracts or other business transactions and arrangements, they may also involve issues of tort, consumer or family law, as well as an increasing amount of issues of privacy and data protection, insolvency or succession, intellectual property, and even statutory claims. The common element is the cross-border aspect of the transaction or controversy. Yet, in many respects, the relevant rules remain largely domestic and diverse, and often conflicting, which presents challenges for courts and private parties alike.

Since uniformity and consistency can provide a measure of certainty for the transacting parties and promote transactional clarity and efficiency, regional and international harmonization is generally viewed as a desirable goal and, in fact, has been achieved in a number of areas. Within the European Union, for example, private international law issues are increasingly addressed by the EU as part of its efforts to regulate the internal market and establish a "European area of justice."[5] For EU member states, the scope of private international law now includes a substantial corpus of EU regulations, directives, and decisional law.

A growing body of international instruments, including treaties and conventions, also contributes to this harmonization effort at the global level, as discussed below. The academic challenge is how to find the best way to introduce students to these issues and developments and to provide them the necessary tools to effectively deal with international private law problems in practice.

2. THE INSTRUCTIONAL CHALLENGE

In a number of countries around the world, private international law is taught as a discreet subject, often as a required course of study. One reason is that, particularly in civil law systems, the relevant rules are likely to have been codified by the legislature and are typically clearer in their expression and more certain in their application. In many countries, the national legislature has adopted a broad (even comprehensive) national code on private international law, while in others, the approach is less centralized.

By contrast, in common law jurisdictions, the rules are more likely to be found in judicially elaborated principles, rather than in legislation. Thus, their articulation anb1 (u)15.9 .9 (in)15.9 (ci)-4.6 (c)9 (t)-4.o(d p 10.9 (i)-4w -3n)15.9 (ci)-4.6 nd mi

trained lawyer would likely have. However, since different legal systems approach these domestic issues differently (and in some systems, such as the United States, there may not even be internal uniformity), the undertaking can prove difficult.

and commercial matters are still primarily a matter of state law.[16] This distribution of authority and competence within the federal system has sometimes made ratification of PIL treaties challenging in the United States.[17]

4. INTERNATIONAL BUSINESS LAW

The principles, instruments, and practices of private international law may also be addressed as part of a broader course on international business law, an area sometimes characterized as international business transactions (IBT) or transnational law. Such courses are typically practice-oriented and aim at introducing students to the substantive and procedural issues they are likely to encounter in the course of representing clients doing business in a globalizing world.[18]

Since differences in national laws and procedures governing commercial transactions often create impediments to cross-border trade, IBT courses are likely to have a comparative dimension[19] and to introduce students to at least some PIL efforts at international harmonization of substantive rules (for instance, the 1980 UN Convention on the International Sale of of ofS.7 (y ())-2.6 (.7 (psDC 0 4c 0 Tw 6.96 -0 0 6.96 390.36 478.264. 4

instruments, and methodology of private international law. A common way to address this challenge is through case studies or practical exercises, where the parties to the transaction come from different legal systems or traditions.

5. METHODS OF TRANSNATIONAL DISPUTE SETTLEMENT

From a practical perspective, one of the most consequential decisions facing counsel for parties in cross-border transnational relationships might be determining where disputes arising from such relationship can be resolved. In addition to litigation in domestic courts, or in one of the

encounter when litigating disputes with transnational dimensions. Consider the following.

Service. Different legal systems have different requirements, and rely on different methods, for notifying a litigant's opposing party of developments in the course of litigation, starting with formal notice that the proceeding has begun. U.S. practitioners are sometimes surprised to learn that, in many foreign legal systems, service of process can only be made by a government official and only by specified methods, not including personal service. Failure to observe local requirements may preclude enforcement of any resulting judgment.

To help bridge the differences, the 1965 Hague Service Convention[27] created an international framework for serving process outside of a home State. It applies "in all cases, in c(e)O p-1.6 (T/l (t o)10.8 (r)1. (l c)3.(t o)15.mm (l)11. (me)3.r (l)12.9 (e)

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practitioners are often surprised to find that the kind of extensive party-directed pre-trial discovery typical in U.S. courts is impermissible in many foreign jurisdictions. The 1970 Hague Evidence Convention[32] was designed to help bridge these differences by establishing agreed mechanisms for asking foreign authorities to carry out requests in accordance with local law. Analogous arrangements have been established within the EU[33] and the OAS.[34]

Legalization. The purpose of the 1961 Hague Apostille Convention[35] is to simplify the process of authenticating public documents issued in one legal system so they can be given effect in another. Such documents include birth, death, marriage, and citizenship records, graduation diplomas, certificates of incorporation, patents, and judicial documents.[36] The Hague Apostille Section keeps a current list of authorities designated to issue apostilles in each State Party's jurisdiction.[37] An electronic apostille program (e-APP) was launched in 2006.

International Commercial Courts. As an alternative to litigation in foreign domestic courts, practitioners today need to consider the possibility of litigating their disputes in one of the international commercial courts that have recently been established. Some are specialized bodies, or chambers, within domestic legal systems and others are independent, but all seek to attract commercial disputes that would otherwise be submitted to domestic litigation or international commercial arbitration.[38]

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32. Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, Mar. 18, 1970, HCCH, https://assets.hcch.net/docs/dfed98c0-6749-42d2-a9be-3d41597734f1.pdf [hereinafter Hague Evidence Convention].

33. *See, e.g.*, Council Regulation 1206/2001, of 12 December 2012 on Cooperation Between the Courts of the Member States in the Taking of Evidence in Civil or Commercial Matters, arts. 1, 2, 17, 2001 O.J. (L 174) 1, 24.

34. *See* Inter-American Convention on Taking Evidence Abroad, Jan. 30, 1975, O.A.S.T.S. No. 44. *See also* Additional Protocol to the Inter-American Convention on Taking Evidence Abroad, May 24, 1984, O.A.S.T.S. No. 65.

35. Convention Abolishing the Requirement of Legalisation for Foreign Public Documents, Oct. 5, 1961, 2884 U.N.T.S., 142 [hereinafter AposeLafS.-13.7 (Iaf)16.5 (t)3/5 ( )14.6 (1)14 o5.5 ((p8.7 (oOC)12 .5 (,)17.6 4)0.n-14.5

b. Arbitration

Alternatively, parties to international transactions may decide to forego litigation in domestic courts altogether by agreeing to submit any disputes under their contract to international commercial arbitration. While they can create their own ad hoc tribunal, it is far more common today to choose institutional or "administered" arbitration, where an existing entity (such as the International Chamber of Commerce, the Permanent Court of Arbitration, or the London Court of International Arbitration) provides not only the rules but also administrative support and assistance for the arbitration.[39] Some entities (such as the Stockholm Chamber of Commerce or the Singapore International Arbitration Centre) spluch aeir fr owH l.3 (an)2.3 (pl(n)10.972 (so)12a (e

mobile equipment, such as aircraft, railroad rolling stock, satellites, and construction vehicles, is costly to build, use, and maintain; it is therefore often leased rather than purchased outright. Moreover, it frequently crosses national borders: not surprisingly, the laws concerning secured interests differ from jurisdiction to jurisdiction. The Convention creates an international interest that all contracting States must recognize; to provide notice of security interests, the Convention also provides for an electronic register.[55]

c. The Hague Conference

The Hague Conference on Private International Law (HCCH) works for the progressive unification of the rules of private international lah.3 (t)o (s)-2.3 (i)-2i[ce7 BDC 0 Tc 0 T

d. Regional Organizations

nothing APPIL creates is binding on any State—its activities and instruments are persuasive and may function as models for various domestic jurisdictions.[82]

7. GLOBAL GROWTH AND DEVELOPMENT

Finally, a different approach (but one well suited for law school seminars and practicums is to consider private international law from the perspective of the roles it can play in (and more precisely, the contributions it can make to) global economic growth and development. This is an under-studied but increasingly important area, with great potential for introducing students to the broader implications of the field.[83]

A useful point of reference for such an approach is offered by the UN Sustainable Development Goals (SDGs), first adopted in 2000 and revised in 2015.[84]

clarity, security, and protection to the weaker parties in relationships, whether contractual or not. The volume underscores the need for private international lawyers to be aware of, and to engage with, the larger political, social, economic, cultural, and public international law context of their daily work when dealing with cross-border private law relationships and transactions.[95] This perspective and exhortation make the volume particularly relevant for those engaged in preparing law students for an internationally oriented career.

8. CONCLUSION

Introducing our law students to the issues, methodology, and challenges of private international law must be an important component of preparing them to practice in an increasingly internationalized society. As an homage to Bob Lutz's creative apphaiSourzto Bg (z)38A ,hTo B0.7 (i)-4.6o185 Td[(i)-4.6(g (z)3(o)0.5