**Navigating Foreign Law Issues in U.S. Courts**

**Learning Objectives**

The globalization of business transactions and relative ease of international travel has led to increased application of foreign law to disputes in U.S. courts. In addition, the debate—among judges, lawyers, legislators, and the public—rages on about the propriety of considering how foreign jurisdictions handle certain issues when a U.S. court is deciding how to proceed in an area of first impression.

Our audience will hear discussion and learn information about the following topics:

• How are courts across the country handling the “chicken or the egg” question of which law governs the validity and enforcement of forum-selection clauses that choose an exclusive foreign forum?

* What concerns motivate courts to apply or deny application of foreign law (*e.g.*, jurisdiction, comity, ability to access foreign law and understand its requirements, due process)?
* How are these concerns prioritized?

• What conflicts-of-laws issues arise in the foreign law context?

* Do courts tend to apply conflicts-of-laws principles differently when the conflict is between foreign and U.S. law, as opposed to two foreign jurisdictions or two domestic jurisdictions?
* Do courts tend to apply conflicts-of laws principles differently in different substantive contexts, *e.g.*, commercial disputes, issues regarding family (divorce, custody)?
* How can judges protect against biases that might impact a neutral approach? How can advocates best represent clients when cases involve these factors?

• What factors and policies do U.S. courts consider when deciding whether to enforce foreign judgments?

* What weight is given to the question of whether the foreign tribunal’s procedures are compatible with U.S. due process?
* Which factors seem to be dispositive and which factors seem to be discretionary?
* For factors which seem discretionary, how might a judge’s background and experience impact the way he/she views their importance?

• What sorts of procedural and evidentiary pitfalls exist in proving up the substance of foreign law? How can advocates avoid these pitfalls or surmount them? Are there steps courts can take to streamline the process or account for added time and expense in scheduling case events?

• What is the status of legislative attempts in various states to bar state courts from some or all resort to foreign law? What separation-of-powers concerns do these efforts raise?