

Brussels IV – The Problems of Trusts and Characterisation

Richard Frimston ([Russell Cooke solicitors](#)) has written a note in the new issue of *Private Client Business* on “**Brussels IV – The Problems of Trusts and Characterisation in the Civil Law**” (P.C.B. (2007) No.3 Pages 170-180). The abstract reads:

Discusses European Commission plans to propose rules on jurisdiction and enforcement of judgments concerning succession (Brussels IV), considering how these plans may affect succession planning with lifetime gifts and settlements. Anticipates what the Commission may propose, and speculates how Brussels IV may interact with the Hague Convention on the Law Applicable to Trusts and on their Recognition 1985. Examines how the UK and Ireland may be particularly affected, because of the different classification of trusts in civil law countries.

A little bit from the conclusion:

In the past, jurisdictions have attempted to protect trust assets from foreign succession law claims on a unilateral basis. With the probability that succession law will become more, rather than less, directly enforceable between European jurisdictions, even more care needs to be given to the legal implications of the initial transfer, especially since change is also in the air, as to the relevant law of such transfer, particularly for dematerialised securities. It is to be hoped that issues of classification will be a matter to be decided by the law of the forum.

The European Commission Green Paper on Succession and Wills (i.e. Brussels IV) can be found [here](#). The UK response to the Green Paper is [here](#). The P.C.B. article can be found on

Westlaw for those with access.