

Recent Australian Journal Articles

Martin Davies, 'Reflections on the Past Decade of Transnational Litigation' (2009) 10 *Melbourne Journal of International Law* 46

The brief article begins:

The past decade of transnational litigation has seen a consolidation of the trend towards disputes about venue. Increasingly, transnational litigation takes the form of a battle about where the battle is to be fought.

Cameron Sim, 'Non-Justiciability in Australian Private International Law: A Lack of 'Judicial Restraint'?' (2009) 10 *Melbourne Journal of International Law* 102

The abstract reads:

The involvement of foreign states in domestic courts sits at the intersection between private and public international law. Whilst courts are becoming increasingly prepared to defer underlying notions of sovereignty and territoriality to protect private rights, they remain at times hesitant in adjudicating on matters concerning foreign states. The doctrine of non-justiciability affords protection to both foreign states and the forum executive in determining that courts will not adjudicate on the transactions of foreign states. This article examines the doctrine as adopted in the United Kingdom and applied in Australia, as well as the political questions doctrine of the United States and the merits-based approach followed in Canada. The article argues that foreign states are no longer sacrosanct in Australian courts, and a correct understanding of executive certification and the Australian executive's prerogative in foreign affairs ameliorates the need for the doctrine.

Peter Handford, 'Edward John Eyre and the Conflict of Laws' (2008) *Melbourne University Law Review* 822

The abstract reads:

In 1865 Edward John Eyre, the Governor of Jamaica, in the course of suppressing a revolt, caused a leading activist to be tried and executed under

martial law. Over the next three years, a group of leading politicians and thinkers in England attempted to have Eyre prosecuted for murder. When the criminal process failed, they attempted to have him sued for trespass and false imprisonment. Though this case, Phillips v Eyre, was mainly concerned with constitutional issues, Willes J laid down a rule for choice of law in tort which endured for nearly a century before it was finally superseded. In this article, the author illuminates the case by reference to its background. The author speculates on why the decision, which initially occasioned little notice, became the subject of academic and judicial controversy many years afterwards.