Second Issue of 2012's ICLQ

The second issue of the *International and Comparative Law Quarterly* for 2012 includes three articles exploring choice of law issues.

Zheng Sophia Tang (Leeds University), Effectiveness of Exclusive Jurisdiction Clauses in the Chinese Courts — A Pragmatic Study

> *Chinese judicial practice demonstrates great diversity in enforcing exclusive jurisdiction clauses. In practice, the derogation effect of a valid foreign jurisdiction clause is frequently ignored by some Chinese courts. It may be argued that these Chinese courts fail to respect party autonomy and international comity. However, a close scrutiny shows that the effectiveness of an exclusive jurisdiction clause has close connections with the recognition and enforcement of judgments. If the judgment of the chosen court cannot be recognized and enforced in the request court by any means, the request court may take jurisdiction in breach of the jurisdiction clause in order to achieve justice. Chinese judicial practice demonstrates the inevitable influence of the narrow scope of the Chinese law in recognition and enforcement of foreign judgments. It is submitted that the Chinese courts do not zealously guard Chinese jurisdiction, or deliberately ignore party autonomy and international comity. Instead, the Chinese courts have considered the possibility of enforcement of judgments and the goal of justice. Applying the prima facie unreasonable decision test is the best the courts can do in the specific context of the Chinese law. The status quo cannot be improved simply by reforming Chinese jurisdiction rules in choice of court agreements. A comprehensive improvement of civil procedure law in both jurisdiction rules and recognition and enforcement of foreign judgments is needed.*

Jacob van de Velden (Gronigen University), The Cautious Lex Fori Approach to Foreign Judgments and Preclusion

> *If from the imperfect evidence of foreign law produced before it, or its misapprehension of the effect of that evidence, a mistake is made by an English court, it is much to be lamented, but the tribunal is free from blame. The mistake to be lamented presently is the High Court decision in Yukos Capital Sarl v OJSC Rosneft Oil Co that a Dutch judgment gave rise to an issue estoppel*

in English proceedings, precluding a party from disputing as a fact the partiality and dependence of the Russian judiciary. The decision was a mistake because on a proper construction of Dutch law the significance of the Dutch judgment was—if anything—evidential, not preclusive. The outcome is lamentable, because a party was unduly shut out from litigation by the application of English preclusion law to a foreign judgment that was not preclusive in the jurisdiction where it was originally given.

Aude Fiorini (Dundee University), Habitual Residence and the New Born – A French Perspective

Where a pregnant woman travels and subsequently gives birth to a child abroad, should the left behind father be able to petition for the 'return' of his child under the 1980 Hague Convention on the Civil Aspects of International Child Abduction? An affirmative answer would not only presuppose that the abduction of the child had been in breach of the father's actually exercised rights of custody, but would also depend on which country, if any, the child was habitually resident in immediately before the 'abduction'.

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