Brazilian and Portuguese books on Private International Law (2018 and 2019 so far)

For those who read Portuguese, here is a round-up of books published in Portugal and Brazil in the last year or so. Abstracts in English hereunder provided when available.

Rui Dias, Pactos de Jurisdição Societários, Almedina, 2018

"This study is dedicated to an analysis, from the point of view of both private international law and company law, of company-law related choice-of-court agreements under Regulation (EU) No. 1215/2012 of the European Parliament and of the Council, of 12 December 2012, on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (*Brussels Ia*).

After an introductory framing that emphasizes the intersection of EU private international law applicable to companies and Portuguese national corporate law, we begin by analysing the jurisprudence of the Court of Justice of the European Union in *Powell Duffryn*, where it has been established that «when the company's statutes contain a clause conferring jurisdiction, every shareholder is deemed to be aware of that clause and actually to consent to the assignment of jurisdiction for which it provides if the statutes are lodged in a place to which the shareholder may have access, such as the seat of the company, or are contained in a public register».

The European Court's reasoning raises issues, when confronted with the most common understanding of the choice-of-court agreement as a contract. That justifies an inquiry on the role of consent and agreement in its conclusion, and, in the end, the search for a comprehension of its legal nature, with the Brussels Ia legal framework in mind. By asserting the logical-legal antecedence of private autonomy, as put in motion by the conclusion of a jurisdictional agreement, vis-à-vis a so-called statutory ordinance of competence instituted by a given positive-legal regime situated in time and space, we see advantages in the delineation of a framework that considers illegitimate the allegation of existence and the exercise of a jurisdictional clause, whenever there is not an indispensable minimum of

correspondence between the contents of such clause and a person's consent — be it a *real*consent, or rather one that is to her reasonably imputable, given that the person was in the position to be able to know, or ought to know, the content of such clause, included in a contract or statutes that bind her.

With these elements in mind, we undertake an analysis of the conditions of admissibility, validity and effectiveness of a choice-of-court-agreement under Brussels Ia. After referring to the scope of application of such rules, as well as to the general framework regarding the «external» and «internal» limits of the binding effects of such agreements, we draw attention to the particular situation of the extension of such binding effects, beyond a strict understanding of consent, in statutes of companies.

We then tackle some situations of particular uncertainty, where company-legal and conflicts-of-law and conflicts-of-jurisdiction aspects are, more or less inextricably, simultaneously at stake, namely: the law applicable to jurisdiction agreements and the scope of its application (especially regarding the recast version of now Article 25 of Brussels Ia); the relevance of statutes and generally corporate-related regulation; the limitations imposed by the latter to jurisdictional undertakings; the possible safeguards against an abusive invocation or exercise of the jurisdiction agreement; and the need to set and analyse choice-of-court agreements within the framework of rules applicable to agreements related to corporate liability suits — thus crossing the borders of national and European law, and of corporate and jurisdictional law."

Dulce Lopes, Eficácia, Reconhecimento e Execução de Actos Administrativos Estrangeiros, Almedina, 2018

"The recognition of foreign administrative acts has gained again – after more than a century – a striking importance in doctrinal and legislative terms. In a world were distances are rapidly overcome and new forms of private and public interaction develop, the exercise of sovereignty is reconceptualised.

Now, with more importance and frequency, foreign administrative acts — originally or subsequently – aim at being recognised and executed in/by other States (the receiving, host or destination States, distinct from the issuing or home authorities), raising once again, but in a quite different manner, the challenging questions of extraterritoriality and jurisdiction.

However not always greater attention means better regulation. And this is a field were, unlike what should be expected (or desired), plurality and fragmentation are still the rule and the need for clarification of recognition procedures is crucial.

Indeed, beyond the recognition demands resulting from international and European Union law demands and from a few specific legislative provisions, there is no general framework on recognition and enforcement of foreign administrative acts, nor in what regards their possible effects, neither in what concerns the requirements and procedures from which they can or should be drawn.

Our proposal rests in the identification of three types of foreign administrative acts. While *supranational administrative acts,*despite their various origins, have an immanent and immediate aptitude to be applied to areas under State influence, *transnational administrative acts*have as a normal – but not always immediate – characteristic the extension of their effects to States that are under a recognition obligation. *Foreign administrative acts in a strict sense*, constitute a third category that doesn't have the same coherence as the former two. In principle, these acts only produce effects within the limits of the issuing State, because they do not have a qualified title to recognition, but this can also be altered.

A relevant part of our efforts was centred in the definition of the substantial and procedural criteria for recognition and enforcement of *such*foreign administrative acts, criteria that – varying according to the type of foreign act and respective effects – constitute the basis of a structured, however plural, proposal for *recognition*."

Afonso Patrão, Hipoteca e Autonomia Conflitual, Gestlegal, 2018

"Considering statistical data suggesting national compartmentalisation of mortgage markets (land security rights are essential for internal credit but less than 1% of all international credit involves mortgages) and acknowledging the failure of the proposals of building a European mortgage single market (unification of mortgage laws; introduction of *Eurohypothec* as an additional optional legal regime; securitisation of granted mortgage loans), this text studies the feasibility of introducing *party autonomy* in mortgage law, allowing the parties to choose the applicable law to this property right.

The choice of law to land security rights is in harmony with the tendency of *dépeçage* of private international law on property rights and with the purpose of European integration. Provided that adequate precautions are taken, the author aims to show there is no reason for the mandatory application of *lex rei sitae* to mortgages."

Dário Moura Vicente, Direito Internacional Privado – Ensaios, vol. IV, Almedina, 2018

This is a collection of essays published by the Professor of the University of Lisbon, now in its fourth volume.

Luís de Lima Pinheiro, Direito Internacional Privado, Volume III – Tomo I – Competência Internacional, AAFDL, 3rd edition, 2019

A new edition of the first part – on jurisdiction – of Volume III of the handbook on Private International Law by the Professor of the University of Lisbon.

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André de Carvalho Ramos / Nádia de Araújo (org.), A Conferência da Haia de Direito Internacional Privado e seus Impactos na Sociedade – 125 anos (1893-2018), Arraes Editores, 2018

A collection of essays celebrating the 125thanniversary of the Hague Conference on Private International Law.

Jean Eduardo Nicolau, Direito Internacional Privado do Esporte, Quartier Latin, 2018

A PhD thesis on the Private International Law of Sport.

Mariana Sebalhos Jorge, A Residência Habitual no Direito Internacional Privado, Arraes Editores, 2018

A Masters thesis on the habitual residence connecting factor in Private International Law.

Alexandre Jorge Carneiro da Cunha Filho et al. (coord.), Lei de Introdução às Normas do Direito Brasileiro – Anotada, Volume I,Quartier Latin, 2019

This is an article-by-article commentary to the Brazilian law containing rules on Private International Law.

Gustavo Ferraz de Campos Monaco, Conflitos de Leis no Espaço e Lacunas (Inter)Sistêmicas, Quartier Latin, 2019

Thesis recently presented by the Author to achieve full professorship at the University of São Paulo.