First Issue of Journal of Private International Law for 2022

The first issue of the *Journal of Private International law* for 2022 was released yesterday. It features the following articles:

M Lehmann, "A new piece in the puzzle of locating financial loss: the ruling in *VEB v BP* on jurisdiction for collective actions based on deficient investor information"

For the first time, the CJEU has ruled in VEB v BP on the court competent for deciding liability suits regarding misinformation on the secondary securities market. Surprisingly, the Court localises the damage resulting from misinformation on the secondary financial markets at a single place, that where the financial instruments in question were listed. This raises the question of how the decision can be squared with earlier cases like Kolassa or Löber and other precedent. It is also unclear how the new ruling applies to special cases like dual listings or electronic trading venues. Furthermore, the judgment is of utmost importance for the jurisdiction over collective actions by postulating that they should not be treated any differently than individual actions, without clarifying what this means in practice. This contribution analyses these questions, puts the judgment in larger context, and discusses its repercussions for future cases.

F Rielaender, "Financial torts and EU private international law: will the search for the place of "financial damage" ever come to an end?"

The determination of jurisdiction and the applicable law concerning violations of financial law remains one of the most controversial subjects in EU private international law. Departing from its previously wayward case law regarding jurisdiction in disputes concerning purely financial losses, the Court of Justice of the European Union (CJEU) has finally taken a more principled approach in its Verenigeng van Effectenbezitters (VEB) decision, concentrating jurisdiction for actions based on issuer liability for inaccurate disclosures in the courts of the Member States where the issuer "has complied, for the purposes of its listing on

the stock exchange, with the statutory reporting obligations". While the judgment marks a necessary step forward, this paper argues that a market-oriented rule, which the CJEU has thus far not fully embraced, for conferring jurisdiction in disputes concerning infringements of securities law needs to be further developed and consistently applied in determining the applicable law.

M Ahmed, "Private international law and substantive liability issues in tort litigation against multinational companies in the English courts: recent UK Supreme Court decisions and post-Brexit implications"

This article examines the private international law and substantive liability issues in tort claims against UK based parent companies for the actions of their foreign subsidiaries. Arguments drawn from private international law's largely untapped global governance function inform the analysis and the methodological pluralism manifested in the jurisdictional and choice of law solutions proposed. The direct imposition of duty of care on parent companies for torts committed by foreign subsidiaries is examined as an exception to the bedrock company law principles of separate legal personality and limited liability. In this regard, the UK Supreme Court's recent landmark decisions in Vedanta v Lungowe and Okpabi v Shell have granted jurisdiction and allowed such claims to proceed on the merits in the English courts. This article assesses these decisions and their significance for transnational corporate accountability. The post-Brexit private international law regime and its implications for the viability of tort claims against parent companies are examined.

N Brannigan, "Resolving conflicts: establishing forum non conveniens in a new Hague jurisdiction convention"

In 1992, the Hague Conference on Private International Law (HCCH) commenced the Judgments Project with the aim of delivering a convention harmonising rules of jurisdiction and recognition and enforcement of judgments. Despite the ambition and promise the project held, the first major attempt at delivering a convention, the 2001 Interim Text, was unsuccessful after it failed to gain consensus among the Conference's Member States. The HCCH scaled back the Judgments Project to focus work on the 2005 Convention on Choice of Court Agreements and the 2019 Convention on the Recognition and Enforcement of Foreign Judgments. However, the issue of jurisdiction has not been forgotten, with the Hague having recently established a Working Group to begin drafting provisions for a fresh attempt at the subject which hopefully will succeed where the Interim Text did not. The aim of this article is to explore the issue of how the proposed convention shall address conflicts of jurisdiction in international litigation. A conflict of jurisdiction will typically arise where the same proceedings, or related ones, come before the courts of several fora, or in one forum which considers another forum to be better placed to adjudicate the dispute. One solution to such conflicts is the, originally Scottish, doctrine of forum

non conveniens, which allows a court discretion to decline to exercise jurisdiction on the basis that the appropriate forum for the trial is abroad or the local forum is inappropriate. This article argues for the inclusion of a version of forum non conveniens in the proposed jurisdiction convention to settle these conflicts when they arise. However, as there are many interpretations of what makes one forum more or less appropriate to hear a case than another, this article tackles the issue of how such a principle could be drafted to achieve consensus at the Hague Conference. Much of this analysis is based on the original 2001 Interim Text, and upon more modern cross-border agreements which utilise forum non conveniens.

J Huang, "Substituted service in Australia: problem, tension, and proposed solution"

Substituted service is an important and frequently used method to bring judicial documents to a defendant's attention when service of process in the manner otherwise required by the civil procedure rule is impracticable. Between substituted service and the Hague Service Convention 1965 exists a tension: as the scope of substituted service expands, the application of the Convention shrinks. The tension predated the pandemic but has become increasingly acute as Australian courts have frequently been called upon to address when substituted service may be ordered to replace service under the Convention. Addressing this tension is significant but complex as it involves Australia's international obligation to follow the Convention, a plaintiff's legitimate expectation to quickly effect service of process, and a defendant's fundamental right to due process. This paper is a digest of Australian private international law on substituted service. It provides timely proposals both at the domestic and international dimensions to address this tension.

AA Kostin & MA Pesnya, "The recognition of foreign judgments on personal status under Russian law (Historical aspects and current issues)"

The Article provides an insight into the development of the Russian rules of law concerning recognition of foreign judgments on personal status. The analysis reveals that initially the Russian (formerly Soviet) law did not include any specific provisions relating to recognition of foreign judgments on personal status. In this regard such judgments were recognised on the basis of the conflict of laws' provisions of the Family and Civil Codes. In turn the current Article 415 of the Civil Procedure Code of the Russian Federation addressing the recognition of foreign judgments on personal status and foreign divorces should be considered as a borrowing from the legislation of the former Socialist countries. The authors argue that the concept of "personal status" in Article 415 covers both foreign judgments affecting capacity and regarding filiation (kinship). Therefore, these foreign judgments shall be recognised in Russia in absence of an international treaty and without exequatur proceedings.