

First View of Third Issue of ICLQ

The first view of three recent private international law articles have recently appeared in *International and Comparative Law Quarterly*.

Ardavan Arzandeh, “*Brownlie II and The Service-Out Jurisdiction under English Law*”

FS Cairo (Nile Plaza) LLC v Brownlie (Brownlie II) is arguably the United Kingdom’s highest appellate court’s most significant decision this century on a private international law question. The judgment has ended nearly two decades of debate about the meaning of ‘damage’ sustained in England for the purpose of paragraph 3.1(9)(a) of Practice Direction 6B of the Civil Procedure Rules. In a four-to-one majority ruling, the Supreme Court decided that the provision was to be interpreted widely, such that, in a personal injury claim, any significant harm of any kind suffered by a claimant in England could provide a basis for the service of proceedings on a foreign-based defendant. The article is critical of the majority’s decision, as it is liable to create both immediate and long-term problems in the context of the service-out jurisdiction in England. It also examines the court’s pronouncements on the other question before it concerning proof of foreign law.

Richard Garnett, “Determining the Appropriate Forum by the Applicable Law”

The concepts of jurisdiction and applicable law have been traditionally regarded as separate inquiries in private international law: a court only considers the applicable law once it has decided to adjudicate a matter. While such an approach still generally applies in civil law jurisdictions, in common law countries the concepts are increasingly intertwined. This article examines the relationship between jurisdiction and applicable law in two key areas: applications to stay proceedings on the ground of *forum non conveniens* and to enforce foreign exclusive jurisdiction agreements. While courts generally apply the principle that jurisdiction and applicable law should coincide where possible, there are circumstances where a court may retain jurisdiction despite a foreign governing law or may ‘trust’ a foreign tribunal to apply the law of the forum. This article seeks to establish a framework by which courts may assess the role of the

applicable law in forum determinations.

Djakhongir Saidov, "An International Convention on Expert Determination and Dispute Boards?"

This article makes a case for an international convention on expert determination (ED) and Dispute Boards (DBs) that would require its Contracting States to recognise agreements on ED/DBs and enforce ED/DB decisions. Whilst strong, the case for the convention may not be compelling as there are arguments against it. But at least the time has come for the international legal community to start thinking about and debating the need for such an international regime. This article takes the first step towards imagining this international regime by evaluating a number of key issues relating to its scope of application.