

Two recent Private International Law Articles published by International and Comparative Law Quarterly in 2022

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B Marshall, “Asymmetric Jurisdiction Clauses and the Anomaly created by Article 31(2) of the Brussels I Recast Regulation”

The English Court of Appeal and German Bundesgerichtshof recently decided that Article 31(2) of the Brussels I Recast Regulation applies to asymmetric jurisdiction clauses. This article contends that while this conclusion is sound, separating the ‘clause’ into two ‘agreements’ to reach it is not. This disaggregation prevents a solution to the anomaly that Article 31(2) creates for asymmetric clauses, where a lender sues under its option and the borrower subsequently sues in the anchor court. This article proposes a solution, based on a uniform characterisation of the clause as a whole, which protects the lender’s option and mitigates the risk of parallel proceedings

TD Grant, “Arbitration, Corruption and Post-Award Control in French and English Courts”

In September 2021, the French Cour de Cassation reversed the annulment that the Paris Cour d’appel earlier had granted in regard to an arbitral award in Alexander Brothers v Alstom on grounds of corruption. This brought French courts in line with their English counterparts, at least in that one case, the latter having accepted the Alexander Brothers award as enforceable. Noteworthy beyond the welcome consistency that the recent French judgment imparts in one case, that and other recent judgments cast light on several issues in international arbitration, including the arbitrability of allegations of fraud or corruption, the relevance of evidence of corruption ‘downstream’ from a contract, and the legal effects (if any) on third parties of internal compliance regimes that enterprises adopt in response to national regulatory and enforcement actions in respect of

corruption.