First Issue for Journal of Private International Law for 2023

The first issue for the *Journal of Private International Law* for 2023 was just published today. It contains the following articles:

D McClean, "The transfer of proceedings in international family cases"

There is general agreement that jurisdiction over issues concerning children or vulnerable adults should lie with the court of their habitual residence. There are particular circumstances in which that is not wholly satisfactory and four international instruments have provided, using rather different language, the possibility of jurisdiction being transferred to a court better placed to decide the case. They include Brussels IIb applying in EU Member States since August 2022 and the Hague Child Protection Convention of growing importance in the UK. This paper examines that transfer possibility with a detailed comparison of the relevant instruments.

M Lehmann, "Incremental international law-making: The Hague Jurisdiction Project in context"

The Hague Conference on Private International Law is currently working towards a new instrument on jurisdiction and parallel proceedings. But critics ask if we need another instrument, in addition to the Hague Choice of Court Convention of 2005 and the Hague Judgments Convention of 2019. This article gives reasoned arguments for a "yes" and explores possibilities for the substantive content of the new instrument. It does so by looking back and contextualising the new instrument with regard to the two preceding Conventions, and by looking forward to what is still to come, ie the interpretation and application of all three instruments. On this basis, it argues that a holistic approach is required to avoid the risk of a piecemeal result. Only such a holistic approach will avoid contradictions between the three instruments and allow for their coherent interpretation. If this advice is heeded, incremental law-making may well become

a success and perhaps even a model for future negotiations.

B Köhler, “Blaming the middleman? Refusal of relief for mediator misconduct under the Singapore Convention”

The discussion surrounding the Singapore Convention on Mediation 2018 has gathered steam. In particular, the refusal of enforcement based on mediator misconduct as prescribed in Article 5(1)(e) and (f) has been the focus of debate and is widely perceived to be the Convention’s Achilles heel. These two provisions, already highly controversial in the drafting process, have been criticised as ill-suited to a voluntary process and likely to provoke ancillary dispute. This article defends these grounds for refusal, arguing that they play an indispensable role in guaranteeing the legitimacy of mediated settlements enforced under the Convention. It addresses some of the interpretative challenges within Article 5(1)(e) and (f) before discussing the tension between the provisions on mediator misconduct and the confidentiality of the mediation. The article then offers some guidance on how parties may limit the effects of the provisions, concluding with a brief outlook for the future.

A Yekini, “The effectiveness of foreign jurisdiction clauses in Nigeria: an empirical inquiry”

Business entities do not often include terms in commercial agreements unless those terms are relevant and are designed to maximise the gains of the parties to the agreement. To realise their reasonable and legitimate expectations, they expect that contractual terms and promises would be respected by the parties and courts. There is a growing body of literature suggesting that Nigerian courts are not giving maximum effects to foreign jurisdiction clauses (FJC). What is largely missing from the scholarly contributions is that no one has worked out a principled solution to overcome this conundrum. This article significantly contributes to the existing literature through an empirical analysis of Nigerian appellate court decisions on FJCs with a view to gaining deeper insights into the attitude of Nigerian courts to FJCs. Compared to the US where the national average of enforcement is 74%, a 40% rate for Nigeria does not project Nigeria as a pro-business forum. This outlook can potentially disincentivise cross-border

trade and commerce between Nigeria and the rest of the world. To address this problem, the paper proceeds by presenting a normative framework, built principally on economic and contract theories, for enforcing FJCs. As most of the cases are B2B transactions, the paper invites the courts to treat FJCs and arbitration clauses equally and to replace forum non conveniens considerations with a more principled approach which limits non-enforcement to overriding policy, and a strong cause that is defined by reasonableness and foreseeability.

MM Kabry & A Ansari, "The enforcement of jurisdiction agreements in Iran"

Parties to a contract may designate the court or courts of a particular country to decide their disputes which have arisen or may arise from a particular legal relationship. Many countries give party autonomy its binding effect in selecting the competent court and enforcing jurisdiction agreements. There is complete silence in Iranian law regarding the enforcement of jurisdiction agreements. The current study examines the enforcement of jurisdiction agreements under Iranian law. This study investigates whether parties in international disputes can agree to confer jurisdiction to Iranian non-competent courts and whether they can agree to exclude the jurisdiction of competent Iranian courts in favour of foreign courts. The study contends that parties can agree to grant jurisdiction to Iran's non-competent courts unless the excluded foreign court has exclusive jurisdiction to hear the dispute. On the other hand, parties may agree to exclude the jurisdiction of the competent Iranian courts in favour of foreign courts unless the Iranian courts assert exclusive jurisdiction over the dispute.

A A Kostin & DD Kuraksa, "International treaties on assistance in civil matters and their applicability to recognition of foreign judgments on the opening of insolvency proceedings (reflections regarding the Russian national and international experience)"

The article examines the question of admissibility of recognition of foreign judgments on commencement of bankruptcy proceedings on the basis of international treaties on legal assistance. It examines the background of these international treaties, as well as the practice of their application in respect of this category of foreign judgments. The authors conclude that foreign court decisions

on opening of insolvency (bankruptcy) proceedings should be regarded as "judgments in civil matters" for the purpose of the international treaties on legal assistance. This category of foreign judgments should be recognised on the basis of international treaties in the Russian Federation, despite the existing approach of Russian courts (including the Judgment of the Arbitrazh (Commercial) Court of the Ural District of 09.10.2019 in case No. A60-29115/2019).