

Second Issue of the Journal of Private International Law for 2023

The second issue of the *Journal of Private International Law* for 2023 has just been published. It contains the following articles:

DJB Svantesson & SC Symeonides, “Cross-border internet defamation conflicts and what to do about them: Two proposals”

Conflicts of laws in cross-border defamation cases are politically and culturally sensitive and their resolution has always been difficult. But the ubiquity of the internet has increased their frequency, complexity, and intensity. Faced with the realities of the online environment—including the virtual disappearance of national borders—several countries have acted unilaterally to preserve their values and protect their interests. Some countries enacted laws favouring consumers or other potential plaintiffs, while other countries took steps to protect potential defendants, including publishers and internet service providers. As a result, these conflicts are now more contentious than ever before. We believe there is a better way—even-handed multilateral action rather than self-serving unilateral action. In this article, we advance two proposals for multilateral action. The first is a set of soft law principles in the form of a resolution adopted by the Institut de Droit International in 2019. The second is a proposed Model Defamation Convention. After presenting and comparing these two instruments, we apply them to two scenarios derived from two leading cases (the first and one of the latest of the internet era) decided by courts of last resort. The first scenario is based on Dow Jones & Company Inc v Gutnick, which was decided by the High Court of Australia in 2002. The second is based on Gtflix Tv v. DR, which was decided by the Court of Justice of the European Union at the end of 2021. We believe that these two instruments would produce more rational solutions to these and other cross-border defamation conflicts. But if we fail to persuade readers on the specifics, we hope to demonstrate that other multilateral solutions are feasible and desirable, and that they are vastly superior to a continuing unilateral “arms race.” In any event, we hope that this article will spur the development of other proposals for multilateral action.

G McCormack, "Conflicts in insolvency jurisdiction"

The Hague Judgments Convention 2019 contains an insolvency exception. The paper suggests that the proposed Hague Jurisdiction Convention should contain an insolvency exception that mirrors that contained in the existing Hague Judgments Convention. It is also submitted that international instruments in the field of insolvency, and related matters, are best dealt with by the United Nations Commission on International Trade Law (UNCITRAL).

L Theimer, "Protection against the breach of choice of court agreements: A comparative analysis of remedies in English and German courts"

In fixing the place and provider for the resolution of disputes in advance, choice of court agreements increase procedural legal certainty and the predictability of litigation risks. Hence, their protection is crucial. This article undertakes a functional comparison of the remedies for breach of exclusive choice of court agreements in English and German courts, painting a picture of different approaches to a common problem. English courts, now no longer constrained by EU law, employ an entire arsenal of remedies, most strikingly the anti-suit injunction and damages effectively reversing a foreign judgment. In contrast, German courts exercise greater judicial restraint, even though damages for the breach of a choice of court agreement have recently been awarded for the first time. Against this backdrop, two distinct but interrelated reasons for the diverging approaches are identified and analysed, the different conceptions of choice of court agreements and the different roles of comity and mutual trust.

V Shikhelman, "Enforcement of foreign judgments – Israel as a case study"

This article shows how enforcement of foreign judgments in Israel works in practice. Using an original hand-coded dataset, the article seeks to determine empirically which factors increase the likelihood of a foreign judgment being enforced by Israeli courts. To do so the article makes use of two major theories about enforcement of foreign judgments – international comity and vested rights. Also, the article hypothesises that enforcement can be influenced by specific characteristics of the Israeli court and the foreign judgment.

The article finds that the best predictor of foreign judgment enforcement in Israel is the specific characteristics of the foreign judgment and of the Israeli court – cases with a contractual-commercial nature, and cases brought before one of the central districts of Israel are more likely to be enforced. Additionally, the volume of trade between the issuing country and Israel might also be a certain predictor of enforcement. Finally, the article finds that the due process in individual cases might have some influence on the enforcement decision.

D Zannoni, “How to balance respect for diversity and the rights of the vulnerable? (Non-)recognition of forced and underage marriage under the lens of the European Convention on Human Rights”

Partly in view of the migratory phenomenon to which Europe is exposed, forced and underage marriages nowadays deserve careful consideration both as social phenomena and as legal institutions. This paper aims to verify whether and to what extent forced and underage marriages should be recognised in Europe. On the one hand, recognising the validity of these acts could arguably clash with fundamental values and rights protected by the European Convention on Human Rights and the Convention on Preventing and Combating Violence against Women and Domestic Violence. On the other hand, it is not possible to a priori exclude that a flat refusal to recognise a marriage validly established abroad might entail a violation of further rights of the spouses and ultimately have detrimental consequences for the parties that the refusal aims to protect. The aim is to assess whether private international law tools and techniques can offer a proper balance between respect for the fundamental values of reception societies and protection of the rights and interests of the parties involved.

Review Article

B Hayward, Putting the recognition and enforcement of foreign judgments in context: *Comparative Recognition and Enforcement*, by Dr Drossos Stamboulakis