

# Bostanji on immunities and international jurisdiction in Tunisian private international law



**“Droit international privé - Immunités de juridiction et compétence internationales des tribunaux tunisiens”** (Private International Law - Jurisdictional Immunity and International Jurisdiction of Tunisian Courts) is the title of the long-awaited book recently published by Prof. Sami Bostanji, a distinguished Professor at the Faculté de

droit et des sciences politiques de Tunis, Director of the DRIMAN research center, and one of the leading private international law scholars in Tunisia.

The book represents the first detailed and in-depth analysis of the rules and practices governing the judicial function in Tunisian private international law, viewed through the lenses of jurisdictional immunities and international adjudicative jurisdiction. It offers a systematic approach to the subject drawing on the most recent - and often unpublished - decisions of Tunisian courts. The author justifies his focus on these two aspects of the judicial function by highlighting “the importance of these issues, both on a theoretical and practical level,” which—according to him—demonstrates a “shift in the center of gravity” (*déplacement du centre de gravité*) in private international law, moving from conflicts of laws to conflicts of jurisdictions (p. 29, para. 16).

The book, which follows the classical French two-parts *plan*, begins first with a general introduction in which the author discusses some key concepts, briefly introduces some aspects of the legal history of judicial jurisdiction in Tunisian private international law, and examines the notion of internationality as a prerequisite for the operation of the private international law system in Tunisia, as well as the relevance of the subject.

The book is then divided into two main parts.

Part One focuses on the study of jurisdictional immunities, approached from the perspective of “restrictions on the power to adjudicate” (*Les restrictions au pouvoir de juger*). In this first part, the author thoroughly examines how immunities are regulated, starting with the broader international rules governing these issues (Title I) before delving into the solutions provided by Tunisian law, particularly the Code of Private International Law (Title II). The author highlights both legal developments and practical applications of these rules in Tunisian court decisions.

Part Two explores the system of international jurisdiction of Tunisian courts through the perspective of “the capacity to adjudicate” (*l’aptitude à statuer*). Here, the author analyzes the various forms in which this capacity manifests (*Les déclinaisons de l’aptitude à statuer*), emphasizing their specific characteristics. This part is divided into three titles.

Title I offers a theoretical analysis of international jurisdiction, examining its nature and guiding principles.

Title II, which serves as the core of the book, is dedicated to the grounds of international jurisdiction for Tunisian courts. These grounds can be derived from (limited) international or (primarily) domestic sources, either through statutory provisions or case law and cover a range of issues. These include exclusive jurisdiction; general jurisdiction based - according to the author - on the domicile of the defendant, the agreement of the parties and connexity; special jurisdiction justified by various concerns such as the protection of children, proximity and administration of justice, location of property etc.; the intricate issue of nationality as ground of international jurisdiction and *forum necessitatis*.

Title III addresses the challenges to the jurisdiction of Tunisian courts, including cases where the defendant contests jurisdiction, either by appearing before the court and raising the issue or when the judge raises it *ex officio*. It also examines the implications of foreign proceedings (*lis pendens*) and foreign judgments (*res judicata*) on the jurisdiction of Tunisian courts.

In a nutshell, this book provides a comprehensive and detailed account of the theory and practice of jurisdiction in Tunisia, making a significant contribution to the field of private international law in the country and abroad. Written in French,

it offers French-speaking scholars and practitioners a valuable opportunity to gain insights into Tunisian jurisdictional rules. The publication of the book is particularly timely, considering the ongoing discussions on jurisdiction within the Hague Conference on Private International Law (HCCH). It indeed offers a new perspective that may prove invaluable to those involved in drafting future international frameworks on jurisdiction to take into account different views and approaches from various parts of the world, especially from the standpoint of a North African and an Arab jurisdiction (although the author highlights from time to time along the pages the “exceptional” aspect of the Tunisian regulation of the issue of jurisdiction as compared to other MENA Arab countries).

Lastly, given the expertise of the author and his long experience as a dedicated scholar and law professor, it is hoped that this work will be followed by further volumes addressing other aspects of Tunisian private international law, particularly the recognition and enforcement of foreign judgments and choice of law.

Probably some of these aspects will be addressed in Prof. Bostanji’s forthcoming stimulating course titled “**Secularization and Private International Law in the Arab Countries**” which will be delivered during next year’s Summer Courses at the Hague Academy of International Law, as recently announced. For more details, see here.

Much remains to be seen and unveiled!!

The blurb of the book reads as follows:

*L’étendue de la fonction juridictionnelle est une question centrale du droit international privé contemporain. Le pouvoir de juger, en matière internationale, connaît des restrictions qu’illustrent les immunités de juridictions. Par ailleurs, le périmètre de ce pouvoir, qui se déploie sous le rapport de la compétence internationale, présente des singularités sur le plan des critères qui la fondent et des incident affectant sa mise en œuvre. L’intérêt doctrinal porté, au cours de ces dernières années, à ces questions ainsi que la pléthore des décisions rendues, dans domaines, attentent incontestablement de leur importance aussi bien d’un point de vue théorique que pratique. C’est sous ces différents prismes que le présent ouvrage cherche à éclairer l’évolution de la matière en droit international*

*privé tunisien. (The scope of the judicial function is a central issue in contemporary private international law. The power to adjudicate, in the international context, faces some limits, as illustrated by jurisdictional immunities. Moreover, the reach of this power, which is exercised in relation to international jurisdiction, displays certain unique features regarding the criteria that define it and the issues that affect its operation. The scholarly interest in these issues in recent years, along with the abundance of rulings in this area, undeniably attests to their significance from both theoretical and practical perspectives. It is through these various lenses that the present book seeks to shed light on the evolution of this field in Tunisian private international law.)*

The book's Table of content (in French) can be viewed [here](#).