

Chinese Journal of Transnational Law (Vol. 1, Issue 1) was released

The first issue of the Chinese Journal of Transnational Law (Vol.1 Issue 1, 2024) was recently published by SAGE. It includes three articles relevant to private international law.

Consensus and Compulsion: The Extra-territorial Effect of Chinese Judicial and Specially-Invited Mediation in Common Law Countries, Jie (Jeanne) Huang

This article conducts exhaustive research on case law in major common law jurisdictions (Australia, Canada, Hong Kong, New Zealand, Singapore, the UK, and the US) regarding the recognition and enforcement of Chinese judicial mediation decisions (MTS). In contrast to the rich literature criticizing the systematic deficiency of Chinese judicial mediation where an adjudicator plays the dual role of mediator and judge in the same case and the consequent injustice to the parties, the deficiency is not an issue currently in recognition and enforcement of MTS in common law jurisdictions. Why is this so and what would be the future trend? Answering these questions, this article explores the recent expansion from judicial mediation to Specially-Invited Mediation at the people's courts in China and discusses whether the features of Specially-Invited Mediation impact the recognition and enforcement of MTS at the common law jurisdictions. It also addresses controversies on applicable law, challenges to the enforceability of civil liability clauses, debates on the finality of MTS, and recognition and enforcement of MTS under China's judicial assistance agreements, the Hague Choice-of-Court Convention, the Hague Judgments Convention, and the Singapore Mediation Convention.

Procedural Estoppel in International Commercial Arbitration Proceedings, Ilias Bantekas

This article argues that arbitral practice has effectively given rise to a general principle whereby the parties to arbitral proceedings are deemed to have waived rights arising from a procedural rule where they have failed to timely raise an objection against a procedural irregularity. Tribunals do not refer to such a process as abuse of right, or procedural estoppel, but as a tacit waiver of procedural rights. Even so, the effects are the same. This rule is well enshrined in

article 4 of the UNCITRAL Model Law on International Commercial Arbitration. There is a line of domestic case law suggesting that the presumption in favour of the waiver does not apply where the party in question had no knowledge of the facts giving rise to the breach; where failure to apply it was not predicated on bad faith and/or; where the delay in exercising the right was not significant.

Consumer Jurisdiction and Choice of Law Rules in European and Chinese Private International Law, Zhen Chen

This article compares consumer jurisdiction and choice of law issues in China and the EU. It aims to answer the following questions. What is the notion of consumer? Are farmers, package travel tourists and timeshare tourists consumers? Are dual-purpose contracts consumer contracts? Is a consumer jurisdiction rule needed in China and if yes, under what ground and with what conditions? Is choice of court agreement in consumer contracts valid? How to limit the exercise of party autonomy and what role mandatory provisions may play? Shall consumer contract and tort claims be subject to the same applicable law? Based on a comparative analysis with European law, this article concludes that to improve cross-border consumer protection, China should reform its law to include package travel contracts and timeshare contracts into consumer contracts and determine the nature of dual-purpose contracts pursuant to their primary purpose. Moreover, the current limitation on party autonomy should be lifted by providing freedom to both parties and relying on mandatory provisions as a safety valve. The consumer choice of law rule and its interaction with the general contract choice of law and tort choice of law rule needs to be reexamined.